

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

EFiled: Feb 9 2007 3:26PM EST
Transaction ID 13756836
Case No. 2728-N



MARKET STREET SECURITIES, INC.
individually, and on behalf of all others
similarly situated,

Plaintiff,

v.

ROBERT E. ROSSITER, DAVID E. FRY,
VINCENT J. INTRIERI, CONRAD L. MALLET,
JR., LARRY W. MCCURDY, ROY E.
PARROTT, DAVID P. SPALDING, JAMES A.
STERN, JAMES H. VANDENBERGHE, HENRY
D.G. WALLACE, RICHARD F. WALLMAN,
LEAR CORPORATION, AREP CAR
HOLDINGS CORP., AREP CAR ACQUISITION
CORP. and AMERICAN REAL ESTATE
PARTNERS, L.P.

Defendants.

C.A. No. _____

CLASS ACTION COMPLAINT

Plaintiff, as and for its Class Action Complaint alleges as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action individually and as a class action on behalf of the public shareholders of Lear Corporation ("Lear" or the "Company") in connection with the sale of Lear to American Real Estate Partners, L.P. ("AREP"), AREP Car Holdings Corp., and AREP Car Acquisition Corp. (collectively the "AREP Entities") for \$36 per share, pursuant to a Merger Agreement announced on February 9, 2007 (the "Buyout"). Plaintiff alleges that the sale of Lear to the AREP Entities constitutes a breach of the fiduciary duties of the directors of Lear in the sale of the Company, aided and abetted by the AREP Entities.

THE PARTIES

2. Plaintiff, Market Street Securities, Inc. is a current stockholder of Lear and owned Lear stock continuously since prior to the Merger Agreement.

3. Defendant Robert E. Rossiter is the Chairman of the Board, a position he has held since January 1, 2003. Defendant Rossiter has been a Director of the Company since 1988 and also serves as the Company's Chief Executive Officer, a position he has held since October 2000. Defendant Rossiter served as President of the Company from 1984 until December 2002 and served as Chief Operating Officer from 1988 to April 1997 and from November 1998 to October 2000. Defendant Rossiter has been a director of Lear since 1988. Defendant Rossiter also served as the Company's Chief Operating Officer — International Operations from April 1997 to November 1998.

4. Defendant David E. Fry has been a director of Lear since August 2002. He has also been the President and Chief Executive Officer of Northwood University since 1982. Additionally Defendant Fry serves as a director of Reynolds and Reynolds Company, Decker Energy International and Chemical Bank and Trust Co. (Midland, Michigan). Defendant Fry is also a director and member of the executive committee of the Automotive Hall of Fame and past Chairman of the Michigan Higher Education Facilities Authority.

5. Defendant Vincent J. Intrieri has been a director of Lear since 2006. Defendant Intrieri has been affiliated with Icahn Associates Corp. since 1998. Defendant Intrieri has been a director of American Property Investors, Inc., the general partner of American Real Estate Partners, L.P., affiliates of Carl C. Icahn, since July 2006. Since November 2004, Defendant Intrieri has been Senior Managing Director of Icahn Partners LP and Icahn Partners Master Fund LP, private investment funds controlled by Mr. Icahn. From 1998 to March 2003, Defendant Intrieri served as portfolio manager for Icahn Associates Corp. Defendant Intrieri has also served

as the Senior Managing Director for other entities owned and controlled by Mr. Icahn. He is the President and Chief Executive Officer of Phillip Services Corporation, a director of American Railcar Industries, Inc., and a director of XO Holdings, Inc., each affiliated with Mr. Icahn. He is also chairman of the board of Viskase Companies, Inc., a public company in which Mr. Icahn holds an interest.

6. Defendant Conrad L. Mallett, Jr. has been a director of Lear since August 2002, and has been the President and CEO of Sinai Grace Hospital since August 2003. Prior to his current position, Justice Mallett served as the Chief Administrative Officer of the Detroit Medical Center since March 2003. Previously, he served as President and General Counsel of Hawkins Food Group LLC from April 2002 to March 2003, and Transition Director for Detroit Mayor Kwame M. Kilpatrick and Chief Operating Officer for the City of Detroit from January 2002 to April 2002. From August 1999 to April 2002, Justice Mallett was General Counsel and Chief Administrative Officer of the Detroit Medical Center. Justice Mallett was also a Partner in the law firm of Miller, Canfield, Paddock & Stone from January 1999 to August 1999. Justice Mallett was a Justice of the Michigan Supreme Court from December 1990 to January 1999 and served a two-year term as Chief Justice beginning in 1997. Justice Mallett also serves as a director of TechTeam Global, Inc. and serves as a General Board Member of the Metropolitan Detroit YMCA.

7. Defendant Larry W. McCurdy has been a director of Lear since 1988. In July 2000, Defendant McCurdy retired from Dana Corporation, a motor vehicle parts manufacturer and after-market supplier, where he served as President, Dana Automotive Aftermarket Group, since July 1998. Defendant McCurdy was Chairman of the Board, President and Chief Executive Officer of Echlin, a motor vehicle parts manufacturer, from March 1997 until July 1998 when it

was merged into Dana Corporation. Prior to this, Defendant McCurdy was Executive Vice President, Operations of Cooper Industries, a diversified manufacturing company, from April 1994 to March 1997. Defendant McCurdy also serves as a director of Mohawk Industries, Inc., as well as the non-executive Chairman of Affinia Group Inc., a privately-held supplier of after-market motor vehicle parts. Defendant Larry W. McCurdy

8. Defendant Roy E. Parrott has been a director of Lear since February 1997. In January 2003, Defendant Parrott retired from Metaldyne Corporation where he served as President of Business Operations since December 2000. Metaldyne Corporation, an integrated metal solutions supplier, purchased Simpson Industries, Inc. in December 2000. Previously, Defendant Parrott was the Chief Executive Officer of Simpson Industries, Inc. from 1994 to December 2000 and Chairman of Simpson Industries, Inc. from November 1997 to December 2000.

9. Defendant David P. Spalding has been a director of Lear since 1991. Defendant Spalding has been a Vice Chairman of The Cypress Group L.L.C., a private equity fund manager, since 1994. Defendant Spalding is also a director of AMTROL, Inc., Republic National Cabinet Corporation and Cooper-Standard Automotive Inc.

10. Defendant James A. Stern has been a director of Lear since 1991. Defendant Stern is Chairman of The Cypress Group L.L.C., a private equity fund manager, a position he has held since 1994. He is also a director of Affinia Group Inc., AMTROL, Inc., WESCO International, Inc. and MedPointe Inc.

11. Defendant Richard F. Wallman has been a director of Lear since November 2003. Defendant Wallman has more than 25 years of executive-level operations and financial oversight experience, most recently as Senior Vice President and Chief Financial Officer of Honeywell

International, Inc. from 2000 to 2003 and of AlliedSignal, Inc. from 1995 to 1999. He has also held positions with International Business Machines Corporation, Chrysler Corporation and Ford Motor Company. Defendant Wallman also serves as a director of Hayes-Lemmerz International, Inc., Ariba, Inc., Avaya Inc. and ExpressJet Holdings, Inc.

12. Defendant Wallace has been a director of Lear since February 2005. Defendant Wallace worked for 30 years at Ford Motor Company until his retirement in 2001 and held several executive-level operations and financial oversight positions, most recently as Group Vice President, Mazda & Asia Pacific Operations in 2001, Chief Financial Officer in 2000 and Group Vice President, Asia Pacific Operations in 1999. Defendant Wallace also serves as a director of AMBAC Financial Group, Inc., Diebold, Inc. and Hayes-Lemmerz International, Inc.

13. Defendant Vandenberghe is the Company's Interim Chief Financial Officer, a position he has held since March 10, 2006. Defendant Vandenberghe has been a director of Lear since 1995 and Vice Chairman of Lear since November 1998. He served as Lear's President and Chief Operating Officer — North American Operations from April 1997 to November 1998. He also served as the Company's Chief Financial Officer from 1988 to April 1997 and as Executive Vice President from 1993 to April 1997.

14. As Directors of the Company, the Individual Defendants referred to in paragraphs 3 through 13 (collectively the "Individual Defendants"), are in a fiduciary relationship with the Company, Plaintiff and the public stockholders of Lear. Accordingly, the Individual Defendants owe the highest obligations of good faith, fair dealing, due care, loyalty and full and candid disclosure.

15. Defendant Lear Corporation, is a Delaware Corporation that provides automotive interior systems worldwide. It has three segments: Seating; Interior; and Electronic and

Electrical. The Seating segment manufactures, assembles, and supplies vehicle seating requirements. The Interior segment includes instrument panels and cockpit systems, headliners and overhead systems, door panels, flooring and acoustic systems, and other interior products. The Electronic and Electrical segment includes electronic products and electrical systems, primarily wire harnesses and junction boxes; interior control and entertainment systems; and wireless systems. Lear Corporation serves automotive and light truck markets. The company was founded in 1917 and with principal offices at 21557 Telegraph Road, Southfield, Michigan 48034.

16. Defendant AREP is a Delaware limited partnership engaged in the gaming, real estate, and home fashion businesses. AREP maintains its headquarters at 767 Fifth Avenue, Suite 4700, New York, New York 10153.

17. Defendant AREP Car Holdings Corp. is a Delaware corporation formed February 1, 2007 for the purpose of effecting the Buyout. AREP Car Holdings Corp.'s registered agent in Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

18. Defendant AREP Car Acquisition Corp. is a Delaware corporation formed February 1, 2007 and is a wholly-owned subsidiary of AREP Car Holdings Corp. AREP Car Acquisition Corp.'s registered agent in Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

19. The Individual Defendants, together with Lear and the AREP Entities are sometimes collectively referred to herein as "Defendants."

CLASS ACTION ALLEGATIONS

20. Plaintiff brings this action individually and as a class action pursuant to Rule 23 of the Rule of the Court of Chancery, on behalf of all public stockholders of the Company

(except Defendants herein and their affiliates) and their successors in interest, who are or will be threatened with injury arising from Defendants' actions as more fully described herein.

21. This action is properly maintainable as a class action.

22. The class of stockholders for whose benefit this action is brought is so numerous that joinder of all Class members is impracticable. As of November 3, 2006 there were 67,377,448 shares of the Company's common stock outstanding.

23. There are questions of law and fact which are common to the Class including, *inter alia*, whether:

(a) The Lear directors have breached and continue to breach their fiduciary duties to plaintiff and the members of the Class in the sale of Lear to maximize value for all Lear stockholders;

(b) The Merger Agreement with the AREP Entities is unfair to the public stockholders conveys an unfair premium to AREP as a Lear stockholder at the expense of the public stockholders;

(c) The AREP Entities aided and abetted the breaches of duties by the directors; and

(d) Plaintiff and the other members of the Class will be irreparably damaged by the wrongs complained of herein.

24. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. The claims of Plaintiff are typical of the claims of the other members of the Class and Plaintiff has the same interests as the other members of the Class. Accordingly, Plaintiff will fairly and adequately represent the Class.

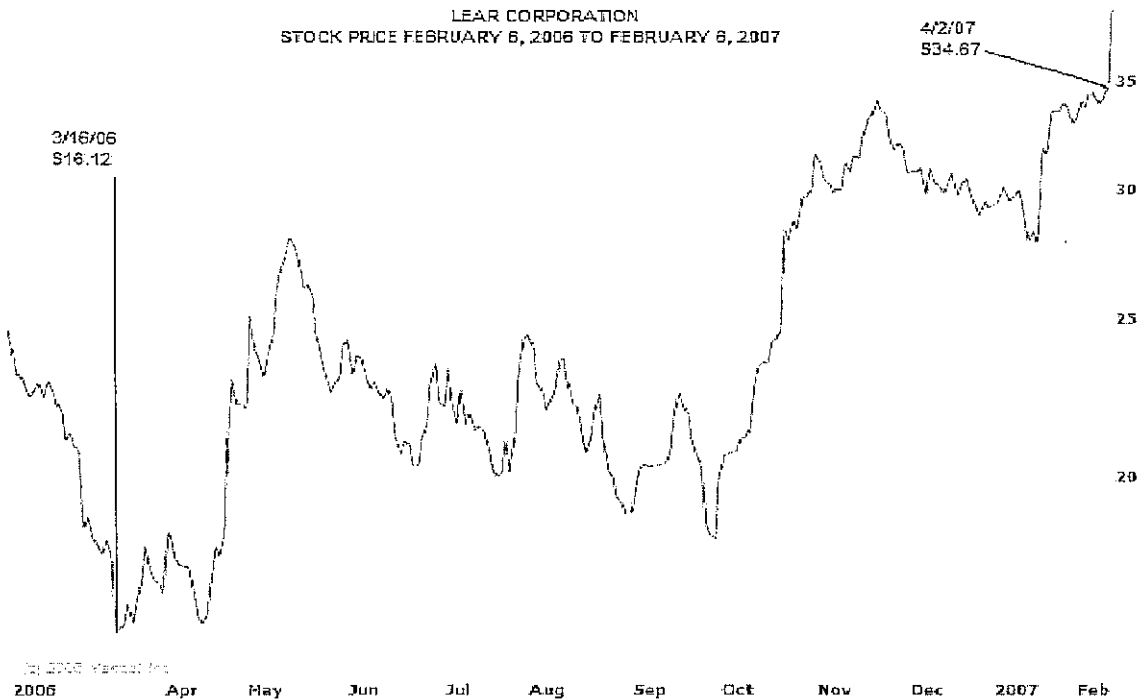
25. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class and establish incompatible standards of conduct for the party opposing the Class.

26. Defendants have acted and are about to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

SUBSTANTIVE ALLEGATIONS

27. On October 17, 2006, certain affiliates of Carl Icahn entered into a Stock Purchase Agreement with Lear, at the invitation of Lear management, to acquire approximately \$200 million in common stock of Lear for a purchase price of \$23.00 per share. The Icahn affiliates acquired 8,695,122 shares pursuant to the Stock Purchase Agreement, raising the total ownership of Icahn Affiliates to 11,994,943 shares, or 15.77% of the Company's outstanding common stock. The purchase agreement entered into in connection with the transaction provides Icahn and his affiliates with the right to a representative, Defendant Intrieri, on Lear's Board of Directors and contains certain other corporate governance terms and conditions with respect to Icahn's ownership position.

28. As indicated in the chart below the Company has tremendous potential growth. Indeed, in less than a year, from March 13, 2006, until the last trading day before AERP made its offer February 2, 2007, the stock increased in value by over 100% from \$16.12 per share to \$34.67 per share.



29. On February 5, 2007, Lear announced, in a Form 8-K filed with the SEC, that AREP made an offer to acquire all of the issued and outstanding shares of Lear for \$36.00 per share in cash. According to the announcement, the acquisition proposal contemplates that Bob Rossiter, Lear's chairman and CEO, and the rest of the senior management team will remain with the Company.

30. According to a Schedule 13D filed by affiliates of Icahn and AREP on February 5, 2007, AREP delivered the \$36.00 offer to the Company in the evening on Friday February 2, 2007 and during the ensuing weekend discussed the transaction with key senior executives including Rossiter "who indicated to AREP that if the deal were consummated they would remain with the Issuer."

31. Immediately after the public announcement shares of the Company stock surged nearly 11.5 % to close at \$38.64 per share and reached a peak of \$41.14. Investors and analysts opined that the offer was too low. In particular, Morningstar analyst John Novak commented

that this is "not such a great deal for shareholders." According to his estimates the Company is worth somewhere in the mid \$40s per share and ACP's offer to purchase it for \$36 per share comes at a substantial discount.

32. After the close of trading on February 5, 2007, Pzena Investment Management LLC, which holds more than 10% of Lear shares for its clients, announced that it has informed Lear of its "strong opposition" to the possible sale of the company to AREP. In its letter to Lear directors, Pzena Investment Management LLC, said it believes that Icahn's \$36-a-share offer is "far below the fair value of the company." Richard Pzena, CEO of Pzena Investment reportedly characterized the deal as "horrendous," viewing the correct valuation of Lear shares closer to \$60 and correctly identified the AREP offer as an attempt by Icahn and management to steal the company at an inadequate price before the Company's earnings normalize. Additionally, on February 6, 2007, The Wall Street Journal reported that Pzena Investment Management urged Lear's directors to oppose the offer. According to Pzena the Company has a long term value of \$60 per share.

33. On February 9, 2007, Lear announced a Merger Agreement pursuant to which AREP will acquire the Lear shares it does not already own for \$36.00 per share, the very same price offered to Lear management on February 2. The Merger Agreement provides that Lear can solicit alternatives for 45 days and can terminate the Merger Agreement based on a Superior Transaction. Termination, however, entitles AREP to receive a termination fee payable by Lear.

34. If, in certain instances, the Merger Agreement is terminated by either the Company or AREP, including if the Individual Defendants recommend a Superior Proposal or the shareholders vote down the Merger and the Company enters into an alternative transaction within one year, the Company must pay AREP a termination fee. Depending on the

circumstances surrounding the termination, the fee owed to AREP will range from \$73,500,000 plus the lesser of actual expenses or \$6,000,000 to \$85,225,000 plus the lesser of actual expenses or \$15,000,000. These termination fees will pay AREP anywhere between \$6.13 to \$8.35 a share based on its ownership of 11,994,943 shares. Lear will apparently be required to pay a termination fee even if it accepts a Superior Proposal during the 45 day “go-shop” period.

35. In addition, AREP’s affiliates have entered into a voting agreement with the Company to vote in favor of the Merger Agreement or any superior acquisition agreement.

36. Thus, the Merger Agreement effectively conveys to AREP a premium over the public Lear stockholders in a sale of the Company at any price over the unfair \$36.00 per share AREP bid for the Company and to which the Board agreed without a proper process to determine the availability and price of alternatives.

37. The Company’s public announcement of the Merger Agreement tacitly concedes that the Merger Agreement was entered into without a sale process to maximize value for all shareholders. Rossiter is quoted “. . . we intend to solicit other offers to ensure that value is maximized for all our stockholders.”

38. Upon learning of the Merger Agreement on Friday, February 9, 2007, Richard Pzena expressed disappointment in the deal and indicated that he intended to push the Board to solicit alternate proposals.

39. By virtue of their positions as directors of Lear, the Individual Defendants owe fiduciary duties of care, loyalty and good faith to the Company and its stockholders.

40. AREP co-opted Lear management in its scheme to obtain special value for itself at the expense of the public shareholders by stating that AREP intends to keep senior management in place.

41. As indicated in the Financial Times on February 5, 2007, “By its very nature, any chief executive office looking to buy his company faces a huge conflict of interest with the company’s stockholders. The job of an executive is to make a company as valuable as possible so its shares reach the highest possible price; that same executive looking to buy the company is motivated to purchase it at the lowest possible price so that he can reap a maximum reward in the future.”

42. By engaging in the foregoing conduct, the Individual Defendants have breached their fiduciary duties by, among other things, failing to investigate and obtain the best value available for all Lear stockholders on a sale of the Company. Instead, the Lear directors have approved the Merger Agreement which unfairly conveys a special sale premium to AREP if the Company is sold to a higher bidder than the unfair \$36.00 Merger Agreement.

43. Unless enjoined by this Court, the Individual Defendants will continue to breach their fiduciary duties, and violate Delaware law to the detriment of Lear and its stockholders.

44. Defendant AREP has aided and abetted the Individual Defendants in their breaches of fiduciary duty. AREP knows of the Individual Defendants’ breaches of fiduciary duty, and in fact actively and knowingly has encouraged and participated in said breaches in order to obtain the substantial financial benefits that the proposed acquisition would provide it at the expense of Lear’s stockholders.

45. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff respectfully requests that this Court:

- (a) Declare this to be a proper class action;

(b) Enjoin, preliminarily and permanently, any acquisition of the Company under the terms presently proposed until the Board of Directors has taken all steps to ensure a fair and proper process to maximize value for all Lear stockholders;

(c) Declare the termination fee provisions of the Merger Agreement to be unfair, unreasonable and improper deal protection devices, and enjoining the payment of any termination fee to AREP or its affiliates;

(d) declaring that Defendants have breached their fiduciary duties to plaintiff and the class and that AREP aided and abetted such breaches;

(e) awarding pre-and post judgment interest, attorney's fees, expert fees and other costs, in an amount to be determined; and

(f) Grant such other and further relief as the Court deems appropriate including damages plus interest.

Dated: February 9, 2007

CHIMICLES & TIKELLIS LLP

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