



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

RICHARD W. SCHOON and)	
WILLIAM J. BOHNEN,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 2362-N
)	
TROY CORPORATION, a Delaware)	
corporation,)	
)	
Defendant.)	

ANSWER AND AFFIRMATIVE DEFENSES OF TROY CORPORATION

Defendant Troy Corporation (“Troy”) hereby pleads as follows, upon knowledge as to itself and its own acts and upon information and belief as to all other matters.

ANSWER

1. This is an action brought against defendant Troy Corporation (“Troy” or the “Company”) pursuant to Section 145 of the General Corporation Law to enforce provisions of Troy’s certificate of incorporation and bylaws (“Charter” and “Bylaws,” respectively) that provide Mr. Schoon and Mr. Bohnen with advancement rights.

ANSWER: Denied, except that Troy admits that plaintiffs Richard Schoon (“Schoon”) and William Bohnen (“Bohnen”) purport to bring this action under Section 145 and Troy’s certificate of incorporation and bylaws (“Charter” and “Bylaws,” respectively).

2. In this action, Mr. Schoon and Mr. Bohnen seek a determination that (i) Troy must advance to them expenses they have incurred, are currently incurring and will incur defending an action brought against them in this Court by the Company alleging breaches of fiduciary duties (the “Fiduciary Duty Action”), including expenses related to

the same issues as the Fiduciary Duty Action but incurred in a separate action and (ii) Troy must indemnify them for the expenses they are incurring and will incur bringing this action to enforce their advancement rights.

ANSWER: Denied, except that Troy admits that Schoon and Bohnen are seeking this relief in this action.

3. Plaintiff Mr. Schoon is a present director of Troy.

ANSWER: Admitted.

4. Plaintiff Mr. Bohnen is a former director of Troy. He served as a director of Troy from 1999 until February 28, 2005.

ANSWER: Admitted.

5. Defendant Troy is a privately held Delaware corporation with its principal place of business in Florham Park, New Jersey.

ANSWER: Admitted.

6. Non-party Steel Investment Company ("Steel") is a Delaware corporation and significant stockholder of Troy. Mr. Bohnen is a director and major stockholder of Steel.

ANSWER: Admitted that Steel is a Delaware corporation and a significant shareholder of Troy. Troy has no personal knowledge regarding the remainder of this paragraph which is therefore denied.

7. In the beginning of August, 2005, Mr. Schoon submitted a request to Daryl Smith, the Chairman and Chief Executive Officer of Troy, for books and records of the Company to assist Mr. Schoon in fulfilling his fiduciary duties as a director of Troy. Not receiving a response to his initial request, Mr. Schoon submitted an additional

request to the Company for certain books and records. The Company eventually responded to Mr. Schoon's initial letter and denied his request for the books and records he sought.

ANSWER: Admitted that Mr. Schoon submitted a request to Daryl Smith in August, 2005 for certain Troy records as well as numerous updates. Denied that the request was for information to assist Mr. Schoon in fulfilling his fiduciary duties. Denied that Mr. Smith did not respond. Denied that Company denied Mr. Schoon's books and records requests.

8. On September 29, 2005, Mr. Schoon initiated an action in this Court pursuant to Section 220 of the General Corporation Law to compel the Company to provide the books and records Mr. Schoon had requested (the "220 Action").

ANSWER: Admitted that Mr. Schoon initiated action on September 29, 2005 against Troy purportedly brought under Section 220 ("Section 220" or "§220") of the General Corporation Law.

9. On October 25, 2006, Troy filed its answer in the 220 Action and asserted eleven affirmative defenses. Of the eleven affirmative defenses, four alleged that Mr. Schoon had breached his fiduciary duties to Troy and its stockholders and that he was acting against the interests of Troy.

ANSWER: Admitted that Troy filed its answer and affirmative defenses to Schoon's complaint on October 25, 2006 [sic], and refer the Court to Troy's Answer and Affirmative Defenses for the substance thereof.

10. On November 7, 2005, Steel also filed an action in this Court pursuant to Section 220 to compel Troy to provide books and records that Steel had requested of the

Company, but which the Company had not provided to Steel. The Court consolidated Steel's books and records action with the 220 Action, and Troy answered Steel's complaint and asserted ten affirmative defenses. Of the ten affirmative defenses, two asserted that Steel would improperly use the books and records by sharing the documents with third parties.

ANSWER: Admitted that Steel filed on November 7, 2005 a §220 action against Troy and that the Court consolidated that action with Schoon's §220 action against Troy. Admitted that Troy filed an answer to Steel's complaint and asserted affirmative defenses and refer the Court to this filing for the substance thereof.

11. On January 23, 2006, Troy moved for leave to file an amended and supplemented answer and verified counterclaims and a third-party complaint in the 220 Action. The verified counterclaims and third-party complaint mirrored the Company's affirmative defenses in the 220 Action. The verified counterclaims asserted claims for breach of fiduciary duty against Mr. Schoon. The third-party complaint asserted claims for breach of fiduciary duty against Mr. Bohnen. Mr. Schoon and Steel opposed Troy's motion.

ANSWER: Admitted that Troy moved for leave to file an amended and supplemental answer and verified counterclaims with a third-party complaint in the 220 Action and refer the Court to that filing for the substance thereof. Admitted that Schoon and Steel opposed Troy's motion for leave to file an amended and supplemental answer and verified counterclaims.

12. Throughout Troy's motion for leave to file its amended answer, counterclaim, and third-party claim, Troy represented affirmatively to the Court that the

issues raised in its new claims were identical to the issues raised by Troy's affirmative defenses in the 220 Action.

ANSWER: Denied, except that Troy refers the Court to its affirmative defenses in the consolidated 220 actions and to its proposed counterclaims for the similarities and differences in those pleadings and the arguments Troy made regarding the similarities.

13. The Court denied Troy's request for leave to amend its answer, and Troy filed the Fiduciary Duty Action. In the Fiduciary Duty Action, Troy (i) alleges Mr. Schoon and Mr. Bohnen breached their fiduciary duties to Troy and its stockholders and (ii) asserts precisely the same claims it had tried to assert as counterclaims and third-party claims in the 220 Action. Troy then sought to prove *in the 220 Action* that Mr. Schoon and Mr. Bohnen had breached their fiduciary duties to Troy and its stockholders.

ANSWER: Admitted that the Court denied Troy's motion for leave to amend to add a counterclaim. Troy denies the remainder of the paragraph except that Troy refers the Court to the allegations and counts in Troy's complaint, most of which are not based on fiduciary duties and most of which do not name Schoon or Bohnen.

14. The Charter and Bylaws provide indemnification and advancement rights to present and former directors of Troy.

ANSWER: Admit that Troy's current charter and bylaws contain advancement and indemnification provisions and refer the Court to those documents for the substance thereof.

15. Paragraph EIGHTH, Section 9 of Troy's Charter,¹ titled "Expenses Payable in Advance," provides that:

Losses reasonably incurred by a director or officer in defending any threatened or pending Proceeding (or as provided in Section 7 of this Paragraph EIGHTH) shall be paid by the Corporation in advance of the final disposition of such Proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Paragraph EIGHTH. Losses incurred by other employees may be so paid upon such terms and conditions, if any, as the Board of Directors deems appropriate.

ANSWER: Admit that Troy's current Charter contains such a provision and admit that Schoon is seeking to have that Charter set aside in another action he has brought in this Court against Troy and its directors.

16. Article VIII, Section 9 of Troy's Bylaws,² contains a nearly identical provision, also titled "Expenses Payable in Advance," which provides that:

Losses reasonably incurred by a director or officer in defending any threatened or pending Proceeding (or as provided in Section 7 of this Article) shall be paid by the Corporation in advance of the final disposition of such Proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article. Losses incurred by other employees may be so paid upon such terms and conditions, if any, as the Board of Directors deems appropriate.

ANSWER: Admit that Troy's current Bylaws contains such a provision and admit that Schoon is seeking to have those Bylaws set aside in another action he has brought in this Court against Troy and its directors.

¹ This reference is to the Charter, as amended November 3, 2005. Mr. Schoon has challenged the validity of certain provisions in the Charter but for purposes of this action is prepared to assume the validity of the advancement provisions.

² This reference is to the Bylaws, as amended November 3, 2005. Mr. Schoon has challenged the validity of certain provisions in the Bylaws but for purposes of this action is prepared to assume the validity of the advancement provisions.

17. Under Paragraph EIGHTH, Section 1 of the Charter and Article VIII, Section 1 of the Bylaws, the term “Losses” is defined as “all expense liability and loss (including, without limitation, attorney’s and other professionals’ fees and expenses, claims, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered.”

ANSWER: Admit that paragraph EIGHTH, Section 1 of the Charter and Article VIII, Section 1 of the current Bylaws define “Losses” and respectfully refer the Court to the substance thereof.

18. Both the Charter and Bylaws contain a “Survival of Indemnification” provision in Section 12 which provides that the “rights conferred by this [Article or Paragraph] shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of such person.”

ANSWER: Admit that the Charter and Bylaws contain a provision for Survival of Indemnification and respectfully refer the Court to the substance thereof. Such provision does not by its terms apply to advancement.

19. The Fiduciary Duty Action asserts that Mr. Schoon and Mr. Bohnen breached fiduciary duties they owed as directors of Troy to the Company and its stockholders. Mr. Schoon and Mr. Bohnen have incurred, are incurring, and will incur expenses in defending the Fiduciary Duty Action.

ANSWER: Admit that one out of the seven counts in Troy’s complaint in C.A. 1959 (the “Troy Action”) is against Schoon and Bohnen for breach of fiduciary duty and respectfully refer the Court to the substance of that complaint for the allegations therein. Admit that Schoon and Bohnen have been among five of the nine named

defendants in the Troy action that are represented by Abrams & Laster, and that Laster has provided Troy with invoices which include time which appears to be related to Abrams & Laster's defense of its five clients who have been defendants in the action brought by Troy. The remainder of this paragraph is denied.

20. By letter dated February 1, 2006, Mr. Schoon demanded advancement of expenses and provided an undertaking to repay all amounts advanced to him by Troy if the Court ultimately determines that he is not entitled to indemnification. Mr. Schoon's letter complied with Paragraph EIGHTH, Section 10 of the Charter and Article VIII, Section 10 of the Bylaws.

ANSWER: Admit that Schoon sent a letter to Troy dated February 1, 2006—weeks before Troy filed its only action—demanding advancement. Troy respectfully refers the Court to the contents of the letter. The remainder of this paragraph is denied.

21. By letter dated February 2, 2006, Mr. Bohnen demanded advancement of expenses and provided an undertaking to repay all amounts advanced to him by Troy if the Court ultimately determines that he is not entitled to indemnification. Mr. Bohnen's letter complied with Paragraph EIGHTH, Section 10 of the Charter and Article VIII, Section 10 of the Bylaws.

ANSWER: Admit that Bohnen sent a letter to Troy dated February 2, 2006—weeks before Troy filed its only action—demanding advancement. Troy respectfully refers the Court to the contents of the letter. The remainder of this paragraph is denied.

22. Mr. Schoon and Mr. Bohnen have complied with all the requirements of the Charter and Bylaws with respect to advancements. Pending final disposition of the Fiduciary Duty Action, Mr. Schoon and Mr. Bohnen are entitled to advancement of all

legal fees and expense they incur in defending against the claims brought in the Fiduciary Duty Action.

ANSWER: Deny the first sentence above. Admit that directors of Troy may be entitled to advancement as set forth in Troy’s charter and bylaws; indeed, Troy has advanced certain of the fees submitted to Troy by Plaintiffs’ counsel. However, Schoon and Bohnen seek from Troy among other advances, advancement of fees and expenses (i) incurred by others, (ii) incurred for actions they initiated—not defended, (iii) not incurred by reason of their directorships in Troy but in order to extort an unwarranted and unfair buyout of Steel’s shares, and/or (iv) that are patently unreasonable, such as duplicative fees and expenses. Troy denies that Schoon and Bohnen are entitled to advancement of such fees and expenses as these.

23. In litigating the 220 Action, Troy raised eleven affirmative defenses to Mr. Schoon’s complaint and ten affirmative defenses to Steel’s complaint.

ANSWER: Admitted.

24. Troy’s fourth affirmative defense to Mr. Schoon’s 220 complaint asserted that “Mr. Schoon is acting in breach of his fiduciary duties of loyalty and care that he owes to Troy and its stockholders, and Mr. Schoon is acting in bad faith, insofar as Mr. Schoon desires to share most of (if not all of) the requested confidential business information with third parties, and insofar as the third parties refuse to execute confidentiality agreements.”

ANSWER: Admitted. Indeed, based on the evidence presented at trial regarding this affirmative defense, in its June 27, 2006 Opinion in that §220 action, “the court found that Troy established at trial that Schoon’s request for inspection of the

company's books and records was not for a proper purpose reasonably related to his position as a director. Rather, Schoon's request for inspection of Troy's books and records was made in consultation with and at the direction of Steel to obtain information for Steel so that it could sell its equity stake in Troy." **Opinion at 3.**

25. Troy's ninth affirmative defense to Mr. Schoon's 220 complaint asserted that "Mr. Schoon has a conflict of interest, and, thus, Mr. Schoon is not entitled to inspect the books and records of Troy in the absence of the execution of a confidentiality agreement and order sufficient to preserve Troy's confidential business information, and to proscribe misuse of Troy's information by Mr. Schoon."

ANSWER: Admitted. Indeed, based on the evidence presented at trial regarding this affirmative defense, the Court found such a disabling conflict of interest in its June 27 Opinion in that §220 action as follows.

Most telling, Steel authorized and approved a commission to Schoon of up to \$500,000 if Schoon was able to sell Steel's shares in Troy by December 2005. Therefore, it is clear that Schoon's request for inspection of Troy's books and records was made when he had a financial incentive to assist Steel in selling its shares at the highest price attainable. Due to this *undisclosed conflict of interest*, the court cannot find that Schoon's request was made for a purpose related to his directorial duties, and therefore did not grant any relief to Schoon."

June 27 Opinion at 3-4 (emphasis added).

26. Troy's tenth affirmative defense to Mr. Schoon's 220 complaint asserted that "Mr. Schoon's purpose is improper insofar as he seeks to employ Section 220(d) of the DCL to obtain documents for and for the benefit of third parties that the third parties have been (a) unable to obtain from Troy in the absence of [sic] confidentiality

agreement, and (b) unwilling to demand from Troy under section 220(b) of the DCL because such demand would be conditioned upon the execution of confidentiality agreements by the third parties.”

ANSWER: Admitted. See responses to paragraphs 24 and 25 above.

27. Troy’s eleventh affirmative defense to Mr. Schoon’s 220 complaint asserted that “Mr. Schoon’s purpose is adverse to the Company insofar as Mr. Schoon is an agent of third parties and is representing the interests of third parties, rather than the interests of Troy, in connection with Mr. Schoon’s request for information.”

ANSWER: Admitted. See responses to paragraphs 24 and 25 above.

28. Troy’s tenth affirmative defense to Steel’s 220 complaint asserted that “Steel’s purpose is improper insofar as it seeks to employ Section 220 of the DGCL to obtain documents for and for the benefit of third parties, and insofar as Steel intends to disclose such documents to third parties, including competitors of Troy.”

ANSWER: Admitted. See responses to paragraphs 24 and 25 above.

29. As previously noted, on January 23, 2006, Troy moved to amend its answer to assert plenary counterclaims for breach of fiduciary duty against Mr. Schoon and a third-party claim for breach of fiduciary duty against Mr. Bohnen.

ANSWER: Admit that Troy sought to assert counterclaims in the 220 action against eight different defendants, five of whom were represented by Abrams & Laster including Schoon and Bohnen. Troy respectfully refers the Court to the proposed counterclaims, most of which were not for breach of fiduciary duty.

30. Throughout Troy’s motion for leave to file its amended answer, counterclaim, and third party claim, Troy represented affirmatively to the Court that the

issues raised in its new claims were identical to the issues raised by Troy's affirmative defenses in the 220 Action. According to Troy: "[I]n both the Schoon Answer and the Steel Answer, Troy asserted affirmative defenses that introduced into this action the issue of Steel and Mr. Schoon's mishandling of Troy's confidential business information." Troy cited the fourth, ninth, tenth and eleventh affirmative defenses in its answer to the Schoon 220 complaint and the ninth and tenth affirmative defenses in its answer to the Steel 220 complaint. Troy then reiterated that "the issues alleged in the counterclaim have been previously introduced in this action by Troy."

ANSWER: Denied except admit that Troy has argued that certain of the issues raised in Troy's proposed counterclaims in the 220 action had already been raised in certain of Troy's affirmative defenses in the 220 action. One need only review and compare the proposed counterclaims with the affirmative defenses to see that while some of the relevant facts of the Section 220 action and Troy's action may overlap, Troy's affirmative defenses in the 220 action are not "identical" to the claims asserted by Troy in its complaint.

31. Later in its motion to amend, Troy stated: "Moreover, all of the claims alleged in the counterclaims and in the third-party complaint are related to numerous affirmative defenses asserted in the Schoon Answer and in the Steel Answer."

ANSWER: Troy admits that it filed the referenced motion. Troy respectfully refers the Court to the referenced motion for the contents thereof.

32. Still later in its motion to amend, Troy stated: "[G]ranted the [motion to amend] will not impact any of the counterclaim or third-party defendants adversely because the information that Troy seeks to introduce against counterclaim and third-party

defendants in a separate action is the identical information that Troy will introduce in support of its affirmative defenses in this action.”

ANSWER: Troy admits that it filed the referenced motion. Troy respectfully refers the Court to the referenced motion for the contents thereof.

33. Throughout its reply in support of the motion to amend, Troy reiterated these points. According to Troy:

[T]he Counterclaim and Third-Party Complaint (a) alleges causes of action that are identical to the affirmative defenses asserted in this action by Troy, (b) does not add a single issue of fact to this action, (c) would not result in an additional deposition being taken by Troy, (d) would not result in any additional document request or interrogatory being served by Troy, and (e) would not result in a single question being asked by Troy during a deposition or during trial that would not otherwise be asked by Troy in this action.

ANSWER: Troy admits that it filed the referenced reply in support of the motion to amend. Troy respectfully refers the Court to the referenced reply for the contents thereof.

34. Troy later stated in its reply:

In this action, it is beyond dispute that the issues being litigated in the Section 220 action are directly related to the issues that will be litigated in the Counterclaims and Third Party Complaint. ... [S]uch issues are identical to the issues that form the basis for Troy’s affirmative defenses. Whether or not the Motion is granted, the issues set forth in the Counterclaim and Third-Party Complaint will be adjudicated by this Court in the Section 220 action.

ANSWER: Troy admits that it filed the referenced reply in support of the motion to amend. Troy respectfully refers the Court to the referenced reply for the contents thereof.

35. Troy repeated this point later in its reply: “[T]he causes of action alleged in the Counterclaim and Third-Party Complaint are identical to the affirmative defenses asserted by Troy in the Section 220 action.” Troy then continued:

In fact, the causes of action alleged in the Counterclaim and Third-Party Complaint will not expand the scope of this proceeding in any manner. Simply stated, the issues in the Counterclaim and Third-Party Complaint are the same as the issues in this action, the scope of the document requests in the Counterclaim and Third-Party Complaint are the same as the scope of the document requests in this action, the scope of the interrogatories in the Counterclaim and Third-Party Complaint are the same as the scope of the interrogatories in this action, and the number of depositions and the parties and witnesses to be deposed in the Counterclaim and Third-Party Complaint are the same as the number of depositions and the parties and witnesses to be deposed in this action.

ANSWER: Troy admits that it filed the referenced reply in support of the motion to amend. Troy respectfully refers the Court to the referenced reply for the contents thereof.

36. Troy’s reply also stated:

Troy’s defenses to Plaintiffs’ inspection demands and Troy’s proposed Claims overlap. ... Both center on the Bohnen family’s actual and threatened breaches of Troy’s confidences and misuse of confidential information. Both stem from Troy’s legitimate concerns about Plaintiffs’ refusal to agree to maintain the confidentiality of Troy’s proprietary business and financial information, particularly from Troy’s competitors.

ANSWER: Troy admits that it filed the referenced reply in support of the motion to amend. Troy respectfully refers the Court to the referenced reply for the contents thereof.

37. Troy’s reply further stated:

Importantly, Troy expects to take no different or additional discovery to support its Counterclaim and Third Party Complaint than it would to support its Section 220 defenses, as they stem from the same central issue – the misuse of Troy’s confidential information by the Bohnen family and

their agents. ... Troy does not anticipate serving any new written discovery requests if its Motion is granted.

ANSWER: Troy admits that it filed the referenced reply in support of the motion to amend. Troy respectfully refers the Court to the referenced reply for the contents thereof.

38. During the hearing on the motion for leave to amend, counsel for Troy asserted that both cases “involve trying the same facts and issues,” and that Troy’s affirmative defenses in the Section 220 Action “are sort of the mirror image of our counterclaims and our third-party complaint.” Troy’s counsel represented to the Court that “we don’t intend to take ... discovery on a single fact in support of the counterclaims in the third-party complaint that we wouldn’t take in support of our affirmative defenses.”

ANSWER: Troy admits that it’s counsel offered argument on Troy’s motion to amend in the 220 action. Troy respectfully refers the Court to the transcript of the referenced argument for the accurate contents thereof.

39. The Court denied Troy’s motion for leave to file an amended answer, counterclaims and third-party claims. Troy then filed the Fiduciary Duty Action and then attempted to build its case in that action through discovery *in the 220 Action*. Indeed, Troy proceeded to do exactly what it represented to the Court it would do: seek to prove in the 220 Action that Mr. Schoon and Mr. Bohnen had shared Troy information with third parties in breach of their fiduciary duties. Troy deposed Mr. Schoon and Mr. Bohnen on these issues in the 220 Action. Troy also took depositions in the 220 Action of third parties who allegedly were involved in the information sharing. At trial, Troy made these issues the centerpiece of its defense. Accordingly, the expenses incurred by

Mr. Schoon and Mr. Bohnen in the 220 Action that relate to the Fiduciary Duty Action should be included in the advancements they are seeking in this action.

ANSWER: Admit that the Court denied Troy's motion to amend the complaint in the 220 Action and that Troy later filed Troy's complaint in C.A. No. 1959. Troy admits that it took limited discovery approved by the Court over Schoon's and Steel's objections to support Troy's affirmative defenses in the 220 action, upon which affirmative defenses Troy prevailed. See June 27 Opinion at 3-4. Troy denies the remainder of the paragraph.

40. Despite plaintiffs' compliance with the requirements of the Charter and Bylaws to receive advancements, Troy never responded to Mr. Schoon's letter and undertaking dated February 1, 2006 or Mr. Bohnen's letter and undertaking dated February 2, 2006.

ANSWER: Troy denies that Schoon's February 1, 2006 letter and Bohnen's February 2, 2006 letter complied with Troy's Charter and Bylaws. No response was requested or required as Schoon and Bohnen did not specify which proceedings they were seeking advancement for and did not provide Troy with any fees or expenses to be considered for advancement until the end of March 2006, in a letter from Abrams & Laster dated March 15, but which Troy received several days later. Troy did respond to that letter with questions about various line items, and ultimately, Troy's board of directors approved reimbursement of those items subject to advancement.

41. By letter dated March 15, 2006, plaintiffs' counsel sent to Troy a statement of legal fees and expenses incurred by Mr. Schoon and Mr. Bohnen in

defending the Breach of Fiduciary Duty Action through approximately March 14, 2006, including legal fees and expenses incurred in connection with the 220 Action that related to the defense of the Fiduciary Duty Action (the "March 15 Letter"). The March 15 Letter demanded that payment of \$233,958.61 in legal fees and expenses be made on or before March 24, 2006.

ANSWER: Admit that Troy received from Plaintiffs' counsel a letter dated March 15, 2006 for the first time enclosing invoices and respectfully direct the Court to the contents thereof. Denied that the invoiced fees and expenses were "incurred by Mr. Schoon and Mr. Bohnen in defending [Troy's] Breach of Fiduciary Duty Action." To the contrary, virtually all of the invoiced time was incurred in January and February of 2006. Troy did not even file its first complaint until February 27, and it was not served until March 1, 2006. The invoices themselves reveal what the time and expenses were really incurred for. The invoice directed to Mr. Bohnen is "Re: Advice re Stock Investment in Troy Corp." Troy denies the remainder of the paragraph.

42. Troy did not respond to the March 15 Letter for over two months. By letter dated May 22, 2006, Troy's counsel explained that the Board of Directors of Troy had started a process for communicating to Mr. Schoon and Mr. Bohnen whether the Company would honor its advancement obligations, but that the process had no definite deadline. Specifically, Troy's counsel stated:

(a) that on May 16, 2006, the Board of Directors of Troy ... created a committee to review and consider the request for advancement, (b) that the committee will meet in the near future to review and to consider the request for advancement, (c) that, after the committee reviews and considers the request for advancement, the committee will make a recommendation to the Board, and (d) that, after the committee makes a

recommendation to the Board, the Board will make a decision regarding advancements and will communicate the decision to Messrs. Schoon and Bohnen.

ANSWER: Denied, except admit that Troy's general counsel, Gordon Andrews, wrote Mr. Laster on May 22, 2006 and respectfully refer the Court to the contents of the letter. Troy also notes that Schoon, as a director of Troy, was involved in the May 16, 2006 Troy board of director's meeting at which the invoices his counsel had provided were discussed by the board and submitted to a Troy board committee.

43. The May 22 Letter and the procedures it described were attempts by Troy to appear as though it were seriously considering the plaintiffs' requests for advancements. In reality, Troy had no intention of honoring its advancement obligations: (i) Troy did not form the committee to "review and consider" the requests for advancement for *three and a half months* after it received the plaintiffs' requests and *two months* after it received the March 15 Letter and (ii) Troy set no definitive date by which it would communicate to Mr. Schoon and Mr. Bohnen its decision regarding advancements.

ANSWER: Denied. Except admit that Troy did not set a "definitive date by which it would communicate to Mr. Schoon and Mr. Bohnen its decision regarding advancements."

44. By letter dated May 31, 2006, plaintiffs' counsel sent a second statement of legal fees and expenses incurred by Mr. Schoon and Mr. Bohnen through May 26, 2006 in the total amount of \$216,754. This amount was in addition to the legal fees and expenses requested previously in the March 15 Letter.

ANSWER: Admit that Plaintiffs' counsel sent a letter dated May 31, 2006, which was received by Troy in early June. Troy respectfully refers the Court to the

contents of the letter. Troy denies that most of the fees and expenses were incurred by Schoon or Bohnen or that they were incurred in defense of Troy's actions. In further response, the few fees incurred in defense of Troy's action were largely incurred by Steel who answered Troy's February complaint and asserted counterclaims against Troy on June 30, 2006, after seeking four months of extensions. Schoon and Bohnen did not join in Steel's answer and counterclaims; instead, they brought with two other defendants a short motion to dismiss on June 30. Nevertheless, plaintiffs seek to have Troy advance to them the fees incurred by Steel in connection with its answer and counterclaims.

45. On July 31, 2006, Troy effectively conceded that Mr. Schoon and Mr. Bohnen should be advanced legal expenses incurred in connection with the 220 Action that relate to the Fiduciary Duty Action. The committee advised the Board that it was "the sense" of the committee that it would recommend advancing to Mr. Schoon and Mr. Bohnen legal fees and expenses incurred by them in the 220 Action in connection with opposing Troy's motion for leave to file an amended answer, counterclaims and third-party claims in the amount of \$14,025.17. The Board then adopted a resolution to advance Mr. Schoon and Mr. Bohnen the \$14,025.17.

ANSWER: Denied, except admit that the Troy board approved the advancement of \$14,025.17 to Plaintiffs and respectfully refer the Court to the authorizing resolution for the contents thereof. The following resolution of the Advancement Committee was presented to the Board (where Schoon was in attendance): "RESOLVED, that it is the sense of this Committee that Richard W. Schoon and William J. Bohnen be advanced, in the aggregate, legal fees of \$13,819.00 and expenses of \$206.17 incurred

on their and others' behalf in connection with that certain Opposition to Defendant's Motion for Leave to File an Amended Answer and Verified Counterclaims, dated February 3, 2006, and filed with the Court of Chancery of the State of Delaware, New Castle County, in that certain action styled *Richard Schoon and Steel Investment Company vs. Troy Corporation* (Consol. C.A. No. 1677-N), and that the Committee report this sense to the Board of Directors of the Company, at its next meeting, together with the recommendation of the Committee that such advancement be approved thereby."

46. The Board and the committee took no further action whatsoever on advancing all legal fees and expenses incurred in defending the Fiduciary Duty Action, including other legal fees and expenses incurred by Mr. Schoon and Mr. Bohnen in the 220 Action related to defending the Fiduciary Duty Action. The Board and committee made no indication of when, if ever, they would take further action regarding the plaintiffs' advancement requests.

ANSWER: Denied except admit that as of the date of plaintiffs' complaint in this action, the Troy board had not yet taken action on the minimal fees and expenses actually incurred by Schoon and Bohnen in connection with their June 30 response to Troy's February 27 complaint.

47. By letter dated August 11, 2006, plaintiffs' counsel sent to Troy a third statement of legal fees and expenses incurred by Mr. Schoon and Mr. Bohnen in defending the Breach of Fiduciary Duty Action through August 10, 2006, including legal fees and expenses incurred in connection with the 220 Action that related to the defense of the Fiduciary Duty Action (the "August 11 Letter"). The August 11 Letter demanded

that payment of \$89,448.28 be made immediately. This amount was in addition to the legal fees and expenses requested previously by plaintiffs' counsel.

ANSWER: Denied except admit that plaintiffs' counsel sent Troy a letter dated August 11, 2006, attaching additional statements and Troy respectfully refers the Court to the letter and statements for the contents thereof.

48. Troy paid on August 16, 2006 the \$14,025.17 that the committee indicated on July 31 that it thought would be advanced. Plaintiffs accepted the payment subject to a reservation of their right to seek advancements for the remaining legal fees and expenses incurred in the 220 Action related to the Fiduciary Duty Action.

ANSWER: Troy admits the first sentence of paragraph 48, but lacks information regarding the second sentence which is therefore denied.

49. The Company has advanced no other sums to Mr. Schoon or Mr. Bohnen with respect to the significant legal expenses they have incurred in defending the Fiduciary Duty Action, including those fees and expenses incurred in the 220 Action related to the Fiduciary Duty Action.

ANSWER: Denied except admit that as of the date of the Complaint Troy had advanced no further expenses.

50. Both Paragraph EIGHTH, Section 1 of the Charter and Article VIII, Section 1 of the Bylaws provide that an indemnitee "shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware Law."

ANSWER: Admitted.

51. Both Paragraph EIGHTH, Section 11 of the Charter and Article VIII, Section 11 of the Bylaws provide:

If a claim for indemnification or advancement of expenses under this [Article VIII or Paragraph EIGHTH] is not paid in full within sixty (60) days after a written claim therefor by the indemnitee has been received by the Secretary of the Corporation as prescribed in Section 10 of this [Article VIII or Paragraph EIGHTH], the indemnitee may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such a claim. In any such action the Corporation shall have the burden of proving that the indemnitee was not entitled to the requested indemnification or advancement of expenses.

ANSWER: Admitted.

52. Troy failed to make any payment of the requested advancements within sixty days of Troy's Secretary's receipt of Mr. Schoon's February 1, 2006 demand and undertaking and Mr. Bohnen's February 2, 2006 demand and undertaking.

ANSWER: Admitted. As plaintiffs know, no specific advancements were requested with Schoon's February 1 or Bohnen's February 2 letters. Indeed, Troy's action was not filed until February 27, 2006, and Troy received no invoices from plaintiffs' counsel until late March 2006.

53. Accordingly, Mr. Schoon and Mr. Bohnen are entitled to indemnification for the legal fees and expenses they have incurred, are incurring and will incur to bring this action to enforce their advancement rights under the Charter and Bylaws.

ANSWER: Denied.

COUNT I

Mr. Schoon's Right to Advancements under the Charter and Bylaws

54. Plaintiff Mr. Schoon repeats and re-alleges the allegations set forth above as if fully set forth herein.

ANSWER: Troy incorporates its responses to each of the preceding paragraphs.

55. Mr. Schoon is a present director of Troy.

ANSWER: Admitted.

56. Mr. Schoon has been sued by Troy by reason of the fact that he has served and currently serves on the Board.

ANSWER: Denied, except admit that Troy has an action pending against Schoon and refer the Court to the complaint therein.

57. Mr. Schoon has delivered to Troy the undertaking required by the Charter and Bylaws.

ANSWER: Denied, except admit that Schoon delivered an undertaking to Troy dated as of February 1, 2006, and respectfully refer the Court to the undertaking for the contents thereof.

58. Under Paragraph EIGHTH, Section 9 of the Charter and Article VIII, Section 9 of the Bylaws, Mr. Schoon is entitled to advancements for the fees and expenses he has incurred, is incurring and will incur litigating the Fiduciary Duty Action, as those fees are incurred.

ANSWER: Denied, except admit that Mr. Schoon is entitled under the cited provisions to be advanced reasonable fees and expenses actually incurred by him in defending claims brought against him for actions taken by him in his capacity as a current director of Troy.

59. Under Paragraph EIGHTH, Section 9 of the Charter and Article VIII, Section 9 of the Bylaws, Mr. Schoon also is entitled to advancements for the fees and expenses he incurred in the Section 220 Action related to the same issues as the Fiduciary Duty Action.

ANSWER: Denied.

60. Troy has failed to provide advancements for the fees and expenses Mr. Schoon has incurred in the Fiduciary Duty Action, including all the fees and expenses incurred in the 220 Action related to the same issues as the Fiduciary Duty Action.

ANSWER: Denied, except admit that as of the date of the August 22, 2006 complaint in this action, Troy had made no other advances since the August 16, 2006 advances described in paragraph 48 above.

61. An actual dispute exists over whether Mr. Schoon is entitled to advancements in connection with the Fiduciary Duty Action, including all the fees and expenses incurred in the 220 Action related to the Fiduciary Duty Action.

ANSWER: Denied except admit that Troy disputes that Schoon is entitled to advancement of fees and expenses incurred in the 220 Action other than those that Troy has already advanced.

62. Mr. Schoon is entitled to a declaratory judgment determining that he is entitled to such advancements for his legal fees and expenses incurred in connection with the Fiduciary Duty Action, including all the fees and expenses incurred in the 220 Action related to the Fiduciary Duty Action.

ANSWER: Denied.

63. Mr. Schoon is also entitled to an award of damages in the amount of the legal fees and expenses he has already incurred in connection with the Fiduciary Duty Action, including all the fees and expenses incurred in the 220 Action related to the Fiduciary Duty Action.

ANSWER: Denied.

COUNT II

Mr. Bohnen's Right to Advancements under the Charter and Bylaws

64. Plaintiff Mr. Bohnen repeats and re-alleges the allegations set forth above as if fully set forth herein.

ANSWER: Troy repeats and incorporates herein its responses to the preceding paragraphs.

65. Mr. Bohnen is a former director of Troy.

ANSWER: Admitted.

66. Mr. Bohnen has been sued by Troy by reason of the fact that he has served as a director of Troy.

ANSWER: Denied.

67. Mr. Bohnen has delivered to Troy the undertaking required by the Charter and Bylaws.

ANSWER: Denied, except admit that Bohnen delivered an undertaking to Troy dated as of February 2, 2006, and respectfully refer the Court to the undertaking for the contents thereof.

68. Under Paragraph EIGHTH, Sections 9 and 12 of the Charter and Article VIII, Sections 9 and 12 of the Bylaws, Mr. Bohnen is entitled to advancements for the

fees and expenses he has incurred, is incurring and will incur litigating the Fiduciary Duty Action, as those fees are incurred.

ANSWER: Denied.

69. Under Paragraph EIGHTH, Sections 9 and 12 of the Charter and Article VIII, Sections 9 and 12 of the Bylaws, Mr. Bohnen also is entitled to advancements for the fees and expenses he incurred in the Section 220 Action related to the same issues as the Fiduciary Duty Action

ANSWER: Denied.

70. Troy has failed to provide advancements for the fees and expenses Mr. Bohnen has incurred in the Fiduciary Duty Action, including all the fees and expenses incurred in the 220 Action related to the Fiduciary Duty Action.

ANSWER: Denied.

71. An actual dispute exists over whether Mr. Bohnen is entitled to advancements in connection with the Fiduciary Duty Action, including all the fees and expenses incurred in the 220 Action related to the Fiduciary Duty Action.

ANSWER: Denied except admit that Troy disputes that Bohnen is entitled to advancement of fees and expenses incurred in the 220 Action other than those that Troy has already advanced.

72. Mr. Bohnen is entitled to a declaratory judgment determining that he is entitled to such advancements for his legal fees and expenses incurred in connection with the Fiduciary Duty Action, including all the fees and expenses incurred in the 220 Action related to the Fiduciary Duty Action.

ANSWER: Denied.

73. Mr. Bohnen is also entitled to an award of damages in the amount of the legal fees and expenses he has already incurred in connection with the Fiduciary Duty Action, including all the fees and expenses incurred in the 220 Action related to the Fiduciary Duty Action.

ANSWER: Denied.

COUNT III

Mr. Schoon's and Mr. Bohnen's Right to Indemnification for This Action

74. Plaintiffs Mr. Schoon and Mr. Bohnen repeat and re-allege the allegations set forth above as if fully set forth herein.

ANSWER: Troy repeats and incorporates herein its responses to the preceding paragraphs.

75. Under Paragraph EIGHTH, Sections 1 and 11 of the Charter, Article VIII, Sections 1 and 11 of the Bylaws, and 8 *Del. C.* § 145(c), Mr. Schoon and Mr. Bohnen are entitled to indemnification for expenses incurred in prosecuting this advancement claim.

ANSWER: Denied.

76. Mr. Schoon and Mr. Bohnen have requested advancements they are entitled to in the manner prescribed in the Charter and Bylaws by sending a request to Troy's Secretary.

ANSWER: Denied.

77. Troy failed to pay the requested amount within sixty days from the time Troy's secretary received a written claim for advancements.

ANSWER: Admitted.

78. Mr. Schoon and Mr. Bohnen are entitled to a declaratory judgment determining that they are entitled to indemnification for legal fees and expenses incurred in connection with this action for advancements, including attorneys' fees and costs.

ANSWER: Denied.

79. Mr. Schoon and Mr. Bohnen are also entitled to an award of damages in the amount of the legal fees and expenses they have incurred in connection with this action for advancements.

ANSWER: Denied.

PRAYER FOR RELIEF

Wherefore, Troy respectfully requests that the Court enter an order denying all relief sought by Troy, dismissing the action with prejudice, awarding Troy its costs and expenses (including attorneys' fees), and granting Troy such other and further relief as this Court may deem just, proper and equitable.

AFFIRMATIVE DEFENSES

Without assuming the burden of proof on any issue where it would not otherwise lie, Troy hereby pleads the following affirmative defenses, upon knowledge as to itself and its own acts and upon information and belief as to all other matters.

1. Plaintiffs' advancement claims fail to state a claim to the extent that Plaintiffs seek advancement of fees and expenses that they themselves did not incur.
2. Plaintiffs' advancement claims fail to state a claim to the extent that Plaintiffs seek advancement of fees and expenses that were not reasonably incurred by them.

3. Plaintiffs' advancement claims fail to state a claim to the extent that Plaintiffs seek advancement of fees and expenses that were not incurred in *defending* any threatened or pending proceeding.

4. Plaintiff Bohnen's advancement claims fails to state a claim to the extent that he was a former director of Troy at the time of the proceeding for which he seeks advancement.

5. Plaintiffs' advancement claims fail to state a claim to the extent that Plaintiffs seek advancement of fees and expenses that were not incurred in defending against claims not brought against them by reason of the fact that they are or were a director of Troy, but instead were acting in some other capacity.

6. Plaintiffs' advancement claims regarding advancement of fees and expenses incurred in connection with the action *Troy v. Richard Schoon, William Bohnen, James Bohnen, Steel Investment Company, Peter J. Solomon Company Limited, Peter J. Solomon Company, L.P., Peter J. Solomon Securities Company LED, International Specialty Products Inc., C.A. No. 1959*, as they are not ripe.

7. Plaintiff Schoon's advancement claims fail to state a claim to the extent that he seeks advancement of fees and expenses incurred in asserting and prosecuting as "counterclaims" in the Troy Action certain claims that he originally initiated in a separate action Schoon filed months before Troy brought any action.

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