IN THE COURT OF CHANCERY FOR THE STATE OF DELAWARE

STEEL PARTNERS II, L.P.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 3695-CC
	)	
POINT BLANK SOLUTIONS, INC., a Delaware corporation,	)	
	)	
	)	
Defendant.	)	

PLAINTIFF STEEL PARTNERS II, L.P.'S ANSWERING BRIEF IN OPPOSITION TO DEFENDANT POINT BLANK SOLUTIONS, INC.'S MOTION TO POSTPONE ANNUAL MEETING OF STOCKHOLDERS

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Plaintiff Steel Partners II, L.P. ("Steel Partners") submits this Answering Brief in opposition to the Motion to Postpone Annual Meeting of Stockholders filed by defendant Point Blank Solutions, Inc. ("Point Blank" or "the company") on Thursday, July 24, 2008. For the reasons set forth herein, Point Blank's motion should be denied.

INTRODUCTION

Point Blank's 19-page motion fails to identify even one example where this Court, or any other court, affirmatively authorized a Delaware corporation to violate the statutory mandate of Section 211 of the Delaware General Corporation Law.[1] The two authorities cited by Point Blank in its papers[2] certainly do not suffice, as they arise under a different legal framework than the one the Court faces here – the Court in those cases was declining to issue a preliminary injunction prohibiting a board from moving a meeting date, where the company was not already subject to an Order issued pursuant to Section 211, where the postponements sought were far less than the three-month delay Point Blank seeks (and perhaps longer, given that the motion is conditioned on the completion of the strategic process), and where the directors involved were the elected boards of the corporations, unlike this case, where six of Point Blank's directors were appointed by management to their positions and have never faced a stockholder election.

Point Blank's motion raises a fundamental issue of Delaware corporate law concerning the balance of power in a corporation. A board's authority to govern, like a

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1 8 DEL. C. § 101, *et seq.* ("DGCL").

2 *See* Motion at 16-17.

government's, ultimately derives from the consent of the governed.[3] For a corporation, those are its stockholders, "the ultimate holders of power under Delaware law."[4] The governed give their consent through the mechanism of electing those who will govern them – in the case of stockholders, the directors. The election of directors at the annual meeting is oftentimes the only mechanism by which the stockholders are able to express their voice, and pass judgment on the performance of those who govern the corporation on their behalf. Recognizing this, the courts of this State have repeatedly emphasized the special importance that the annual meeting holds in the governance structure of Delaware corporations, and, as a result, the Court's duty under Section 211 of the Delaware General Corporation Law to ensure that the annual meeting occurs promptly.

Point Blank's motion seeks to demolish this "cornerstone of Delaware corporate law"[5] by seeking the Court's blessing on allowing the Point Blank board to ignore the clear mandate and purpose of Section 211 and allow them to postpone the meeting until such time as the company's strategic process is complete. Point Blank seeks what is in effect an indefinite extension of time for holding the annual meeting, for the acknowledged purpose of permitting the seven-member board to complete a search for strategic alternatives and make fundamental decisions concerning the stockholders' ownership stake in Point Blank, even though six of those seven members were appointed by management to serve and have never faced a stockholder election. Point Blank does not and cannot state with any degree of confidence when this strategic process will be complete, nor what its actual outcome will

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3 *See, e.g., Unisuper Ltd. v. News Corp.*, 2005 Del. Ch. LEXIS 205, at *25 (Del. Ch. Dec. 20, 2005).

4 *Id.*

5 *Newcastle Partners, L.P. v. Vesta Insur. Group, Inc.*, 887 A.2d 975, 979 (Del. Ch. 2005).

likely be. All that Point Blank can offer is the tepid statement that "[i]t remains quite possible that a viable transaction could emerge from this process,"[6] maybe within the next three months, maybe not.

Point Blank has failed to demonstrate "good cause" for delaying the meeting any longer, let alone satisfy its burden under Court of Chancery Rule 60(b) and non-appealed stipulated Order entered by the Court on May 23, 2008 (the "Order"). Point Blank presents no new circumstances justifying relief. The unfounded accusations Point Blank makes in the motion regarding Steel Partners and Mr. Brooks are based on information that was already known, and even presented to the Court, during the proceedings that led to the negotiated settlement resulting in the Order setting August 19 as the date for the annual meeting, as was the existence of the strategic process itself. Likewise, the professed concerns about Steel Partners and Mr. Brooks, and the strategic process itself, were known to the Point Blank board when it initially delayed the April 22 annual meeting to August 19, and in May 2008 when Point Blank settled the action and the Court entered the Order.

Shorn of its self-serving spin, the core argument of Point Blank's motion is that the current board knows better than Point Blank's stockholders who should be leading the company at what may be a critical moment in its history. But that is not a decision that the Point Blank board is entitled to make. The choice as to who should lead is one that Delaware law grants to the stockholders. There is nothing that prevents Point Blank from holding the annual meeting on August 19 and giving the stockholder franchise back to the stockholders. Point Blank is vigorously contesting the August 19 election and getting its story (accurate or not) out. Steel Partners respectfully submits that granting the relief Point

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[6] Motion to Postpone Annual Meeting of Stockholders ("Motion") at 13.

Blank seeks would be inconsistent with Delaware law and thus the Court should deny the motion.

FACTUAL BACKGROUND

Steel Partners' Offer To Acquire Point Blank

Steel Partners began investing in Point Blank in March 2007. On August 20, 2007, representatives of Steel Partners met with General Larry Ellis, the President and CEO of Point Blank, to express Steel Partners' desire to enter into negotiations to acquire the company. Steel Partners subsequently sent a private letter to the board on August 22, 2007 to memorialize in writing its discussions with General Ellis at the August 20 meeting and to put a specific proposal before the board. In the letter, Steel Partners set forth its willingness to enter into discussions with the board to pursue negotiations of a definitive merger agreement to acquire 100% of the shares of Common Stock of Point Blank, through a newly formed acquisition vehicle affiliated with Steel Partners, for $5.50 per share in cash. The board advised Steel Partners on August 24, 2007 that the offer had been referred to the board for review and discussion and that the board would contact Steel Partners in due course. Steel Partners later discovered that the company did not hire Wachovia as its financial advisor until October 1, 2007.

After two months had passed without any word from the board regarding the offer, Steel Partners sent a public letter to the board expressing its disappointment that it had not yet received a substantive response from the company and publicly setting forth Steel Partners' offer to acquire the company.

On November 9, 2007, Point Blank sent Steel Partners a letter stating that the board considered the offer with its financial advisors and that the board concluded that it should not

pursue the offer and that the company should instead continue to make progress on resolving legacy issues as well as implementing its growth and profitability strategy in order to maximize stockholder value.[7] In the November 9 Letter, the board recognized Steel Partners' success in assisting companies in the defense industry and stated that it would welcome Steel Partners' experience to help meet the company's goals of growth and added value for its stockholders. The board enclosed a Confidentiality and Non-Disclosure Agreement ("NDA") that it required Steel Partners to sign as a pre-condition to meeting with the board. The NDA included what Steel Partners viewed as an onerous and unwarranted two-year standstill provision.

Shortly thereafter, Steel Partners sent the board a letter on November 21, 2007 stating its belief that its offer represents the best alternative for the company to maximize stockholder value and that Steel Partners is not willing to enter into an NDA that includes any onerous standstill provisions at all.[8] Steel Partners also stated in the letter that the board's insistence on a standstill shows that the board does not have a genuine interest in meeting with Steel Partners and is using the NDA as a means to limit Steel Partners' rights as stockholders.

In December 2007, Point Blank's outside counsel informed Steel Partners' counsel that under no circumstances was the company willing to move forward with discussions with Steel Partners without a standstill.

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[7] Motion, Ex. 2.

[8] Motion, Ex. 3.

Point Blank Announces A Date For Its Annual Meeting

Point Blank's last annual meeting at which directors were elected was held on May 6, 2005.[9] On January 31, 2008, Point Blank announced that it would hold its 2008 annual meeting of stockholders on April 22, 2008 in Pompano Beach, Florida.[10] Steel Partners announced approximately a week later that it had nominated five individuals for election as directors at the annual meeting.[11] Thereafter, each of Steel Partners and the company proceeded to file definitive proxy statements with the SEC in connection with the annual meeting, and each communicated with stockholders through distribution of proxy statements along with other materials and conversations.[12]

Point Blank Invites Steel Partners To Meet, Takes Statements Out Of Context That Were Meant For Settlement Purposes Only, And Then Unilaterally Delays Its Annual Meeting

At the request of General Ellis, on March 31, 2008, Warren Lichtenstein of Steel Partners agreed to meet at the offices of the company's outside counsel in New York City. During the meeting, Mr. Lichtenstein and General Ellis discussed the company's business, operations and future prospects. During the meeting, General Ellis asked Mr. Lichtenstein what he would look for in any potential settlement arrangement. Mr. Lichtenstein expressed to General Ellis his belief that the company should be sold to the highest bidder and that he would seek for the company to immediately commence a sale process. After the meeting, Steel Partners submitted to the company a proposed framework

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9 *See* Complaint ¶ 4; Answer ¶ 4.

10 Motion, Ex. 4.

11 Motion, Ex. 5.

12 Motion, Ex. 6;

for a potential settlement to which the company responded with a counter-proposal. Mr. Lichtenstein suggested during this meeting that the company should postpone the 2008 annual meeting, but only within the framework of a definitive settlement agreement that would include the immediate appointment of stockholder representatives to the board and the company's immediate commencement of a sale process. After the meeting and at the company's request, Steel Partners submitted to the company a proposed framework for a potential settlement to which the company responded with a counter-proposal.

On April 8, 2008, before Steel Partners had a chance to respond to the company's counter-proposal to the proposed framework for a potential settlement, the company issued a press release announcing that the board had decided to explore all strategic alternatives to enhance stockholder value, including a possible sale of the company.[13] To Steel Partners' surprise, the company also announced that it elected to delay the 2008 annual meeting from April 22, 2008 until August 19, 2008, purportedly to focus on exploring strategic alternatives, and stating that Steel Partners had suggested and endorsed that the company postpone the annual meeting. The press release contained numerous misstatements relating to the meeting between Warren Lichtenstein and General Ellis on March 31, 2008, and Steel Partners responded to these misstatements in a letter to General Ellis.

In the letter, Steel Partners expressed its frustration and disappointment with the company for having falsely stated that it was Steel Partners' idea that the company postpone the annual meeting and for having referenced aspects of the March 31 discussions that were clearly meant for settlement purposes only.[14] Steel Partners responded that Mr. Lichtenstein

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[13] *See* Point Blank Solutions, Inc. Form 8-K, filed April 8, 2008 (Ex. A hereto).

[14] *See* Point Blank Solutions, Inc. Schedule 14A, filed April 10, 2008, Letter at 1 (Ex. B hereto).

did not in any way suggest during these discussions that Point Blank postpone the annual meeting to initiate a strategic process. Steel Partners also expressed its dismay that the company took certain parts of the discussions so blatantly out of context and spun them for its own selfish interests. In the letter, Steel Partners recounted how during the March 31 meeting Mr. Lichtenstein discussed at length his strong belief that the company should be sold to the highest bidder and that the company should immediately commence a sale process, and that the company might postpone the 2008 annual meeting as part of a definitive settlement agreement that would include the immediate appointment of stockholder representatives to the board and the company's immediate commencement of a sale process. Steel Partners also expressed its disappointment that the press release was issued one business day after it had received a settlement counter-proposal from the company and questioned whether the board ever had a genuine interest in settling this matter. Finally, Steel Partners demanded that the company hold the annual meeting on April 22, 2008 as originally schedule,d indicating that if it failed to do so, Steel Partners would take all action necessary to protect the interests of all stockholders, including enforcing its right to compel an annual meeting under Delaware law.

Steel Partners Commences Legal Action In This Court To Compel Point Blank To Hold Its Annual Meeting Without Delay

On April 16, 2008, Steel Partners brought this action pursuant to 8 *Del. C.* § 211 to compel the company to hold an annual meeting of stockholders for the purpose of electing directors. After conferences with the Court on May 9 and May 19, 2008, the parties entered into a Stipulation and Order, entered by this Court on May 23, 2008, providing that the annual meeting would be held no later than August 19, 2008.

Point Blank Continues To Exclude Steel Partners From Participating In Strategic Process By Demanding Steel Partners To Enter Into Standstill Provisions

Adding insult to injury, Steel Partners was effectively precluded from participating in the company's sale process due to the company's insistence that Steel Partners sign a standstill.[15] On May 21, 2008, Steel Partners sent a letter to General Ellis expressing its surprise that after months of hiding behind a standstill, clearly intended to prevent Steel Partners from conducting due diligence to acquire the company, Steel Partners was once again being asked to sign a non-disclosure agreement containing a standstill.[16] Steel Partners stated that since the last time it was asked to agree to a standstill provision there had been no positive developments at Point Blank which would give it any comfort foregoing its ability to take action to protect its investment in the company. Steel Partners also expressed its disappointment with the shrinking revenues, higher cost margins, and declining profitability announced by the company during its earnings call reporting results for the first quarter of 2008. Given this poor performance, Steel Partners stated that the company was not in a position to ask one of its largest stockholders to agree to a standstill. Steel Partners also stated its belief that the purported strategic review being facilitated by Wachovia was an

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[15] Point Blank claims that "30 interested and highly sophisticated parties" have signed such agreements, and that as such it must follow that the standstill provision is reasonable and necessary to put all participants on a level playing field. *See* Notice of Annual Meeting of Stockholders, Point Blank Solutions, Inc. Schedule 14A, filed July 30, 2008 (Ex. C hereto). The company, however, fails to state whether the other participants in the strategic process have a significant investment in the company like Steel Partners. The company knew all along that Steel Partners would not agree to any provision in which it would give up its rights to seek board representation and be forced to sign away its rights to protect its investment in the company for an extended period of time.

[16] *See* Point Blank Solutions, Inc. Schedule 14A, filed May 23, 2008 (Ex. D hereto).

excuse to further delay the 2008 annual meeting and was solely intended to further entrench management.

ARGUMENT

I. POINT BLANK'S MOTION SHOULD BE REJECTED BECAUSE IT SEEKS TO UNDO A NEGOTIATED SETTLEMENT BETWEEN THE PARTIES

One of the issues presented by Point Blank's motion is whether Point Blank should be permitted to walk away from a settlement it negotiated with Steel Partners. It is the well-settled public policy of this State to encourage the voluntary settlement of litigation.[17] Failure to hold parties to the settlements they strike discourages settlements and thus is a result that should not be favored.[18]

Point Blank's motion should be rejected because it seeks to undo the negotiated settlement reflected in the Court's May 23 Order. Steel Partners had the right to seek an earlier date for the meeting and to have the Court impose such other conditions as might have been shown to be appropriate at trial, including, for example, the appointment of a Court-ordered inspector of elections to oversee the voting at the annual meeting. Steel

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[17] *See, e.g.*, *Sammons v. Doctors for Emergency Servs., P.A.*, 913 A.2d 519, 533 (Del. 2006) (explaining that "public policy favors compromise in settlement of disputes"); *Alexander v. Cahill*, 829 A.2d 117, 123 (Del. 2003) (same); *Capital Mgmt. Co. v. Brown*, 813 A.2d 1094, 1100 (Del. 2002) (same).

[18] *See, e.g.*, *Asten, Inc. v. Wangner Sys. Corp.*, 1999 Del. Ch. LEXIS 195, at *2 (Del. Ch. Sept. 23, 1999) (Delaware courts "generally encourage alternative methods of dispute resolution, and settlement agreements which result should be entered into with the expectation of finality; not with the belief that if the future does not unfold as expected the settlement agreement can be set aside."); *Flex-Foot, Inc. v. CRP, Inc.*, 238 F.3d 1362, 1369 (Fed. Cir. 2001) ("'[T]here is a compelling public interest and policy in upholding and enforcing settlement agreements voluntarily entered into' because enforcement of settlement agreements encourages parties to enter into them – thus fostering judicial economy.") (quoting *Hemstreet v. Spiegel, Inc.*, 851 F.2d 348, 350 (Fed. Cir. 1988).

Partners gave up its right to seek such relief in exchange for Point Blank's consent to entry of an Order compelling the meeting to be held on the date agreed to by the parties.

Additionally, the bases for delay presented by Point Blank in the motion – the identity of Steel Partners' nominees, the board's antagonism to Mr. Brooks (Point Blank's former Chairman and CEO), and the strategic process itself – were each known to and relied upon by Point Blank in earlier proceedings in this case,[19] and undoubtedly would have been heavily relied upon by Point Blank at trial. Had this case gone to trial, Steel Partners would have had an opportunity to take discovery of Point Blank on these purported bases and present evidence on them. By agreeing to settle this action, Point Blank succeeded in avoiding this discovery (as well as discovery as to other issues), but now wants to use these same bases as justification for its motion.

Steel Partners submits that the burden Point Blank must meet, and the factual evidence it must present, should be especially onerous before the Court will find "good cause" and permit Point Blank to avoid a settlement to which it agreed in order to avoid discovery and a trial. It will discourage stockholders from settling future Section 211 actions if Point Blank is permitted to settle this case, wait until less than a month before the agreed-upon meeting date before seeking more time, and rely in support of its motion on bases that were known to Point Blank at the time of settlement and would have been litigated at trial. Such a result, on the basis of the record Point Blank has put before this Court, should be disfavored as a matter of Delaware public policy.

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[19] *See, e.g.*, Answer at pp. 3-4 (Second Affirmative Defense) (noting both Steel Partners' purported conflict with Point Blank and Point Blank's ongoing search for strategic alternatives). Point Blank's allegations about Mr. Brooks' antagonistic posture toward the company were mentioned on at least one telephone conference with the Court.

II. POINT BLANK HAS FAILED TO DEMONSTRATE THE EXTRAORDINARY CIRCUMSTANCES NECESSARY TO ESTABLISH GOOD CAUSE FOR CONTINUING TO IGNORE THE CLEAR STATUTORY MANDATE OF SECTION 211

As demonstrated below, Point Blank's motion must also be denied because Point Blank cannot demonstrate the extraordinary circumstances necessary to establish good cause under Court of Chancery Rule 60(b) for continuing to ignore the clear statutory mandate of Section 211. As explained in Part C, the relief sought by Point Blank is inconsistent with the statutory mandate of Section 211 (itself discussed in Part B), and Point Blank has not cited a single example where a court affirmatively authorized a Delaware corporation to violate that statutory mandate by further delaying an already-late meeting.

The two authorities cited by Point Blank in its papers[20] certainly do not suffice, as they arise under a different legal framework than the one the Court faces here – the Court in those cases was declining to issue a preliminary injunction prohibiting a board from moving a meeting date where the company was not already subject to an Order issued pursuant to Section 211, where the postponements sought were far less than the three-month delay Point Blank seeks (and perhaps longer, given that the motion is conditioned on the completion of the strategic process), and where the directors involved were the elected boards of the corporations, unlike this case, where six of Point Blank's seven directors were appointed by management to their positions and have never faced a stockholder election.

A. The Governing Legal Standard

Point Blank has styled its motion as a "Motion to Postpone Annual Meeting of Stockholders," which in terms of the relief it seeks – a judicial decision modifying the terms of the Order entered by the Court on May 23 – appears to be a motion for relief from

[20] *See* Motion at 16-17.

judgment. Court of Chancery Rule 60(b) gives the Court "limited discretion" to reopen previously litigated cases, such as when there is newly discovered evidence that could not reasonably have been found prior to judgment.[21] Motions brought under Rule 60(b) "are not to be taken lightly or easily granted."[22] There are six enumerated grounds upon which a party moving for relief under Rule 60(b) can rely.[23] Of those grounds, the only one applicable to Point Blank's motion is subparagraph (b)(6), the catch-all provision, which states that the Court may grant relief from judgment for "any other reason justifying relief from the operation of the judgment."[24] A movant who seeks relief under Rule 60(b)(6) must show "extraordinary circumstances" in order to obtain that relief.[25] The "extraordinary circumstances" that would justify relief under Rule 60(b)(6) "only encompass circumstances that could not have been addressed using other procedural methods, constitute an 'extreme hardship,' or that 'manifest injustice' would occur if relief were not granted."[26] It is not a

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[21] *Jacobson v. Ronsdorf*, 2005 Del. Ch. LEXIS 154, at *2 (Oct. 13, 2005).

[22] *Epstein v. Matsushita Elec. Indus. Co.*, 785 A.2d 625, 635 (Del. 2001), *cert. denied*, 535 U.S. 1017 (2002).

[23] *See* Ct. Ch. R. 60(b).

[24] Ct. Ch. R. 60(b)(6).

[25] *Saito v. McCall*, 2004 Del. Ch. LEXIS 204, at *2 (Del. Ch. Aug. 18, 2004) ("In addition to this admonition that Rule 60(b) motions are not to be easily granted, motions brought under subparagraph (6) require an even stronger showing by the movant for relief to be granted than motions under the other five subparagraphs of the rule, namely the existence of extraordinary circumstances."). *See also Jewell v. Division of Social Services*, 401 A.2d 88, 90 (Del. 1979) (also stating the "extraordinary circumstances" burden).

[26] *Wolf v. Triangle Broad Co., LLC*, 2005 Del. Ch. LEXIS 111, at *2-3 (Del. Ch. July 18, 2005).

vehicle for second-guessing prior judgments or rulings, nor is it a vehicle for rearguing the same facts or getting a second bite at the proverbial apple.[27]

B. The Statutory Mandate Of Section 211

The policy and "central purpose" behind Section 211 of the DGCL "is that corporations should hold *annual* meetings,"[28] so that stockholders, the owners of the corporation, are assured "an annual opportunity for shareholders to review and pass upon director performance."[29] As a result, the statute provides relief to a stockholder who shows that a meeting for the election of directors has not been held for more than thirteen months.[30] As Chancellor Allen has explained:

> The obligation to hold an annual meeting at which directors are to be elected, either for one year or for staggered terms, as the charter may provide, is one of the very few mandatory features of Delaware corporation law. Delaware courts have long recognized the central role of annual meetings in the scheme of corporate governance. . . .
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> The critical importance of shareholder voting both to the theory and to the reality of corporate governance . . . may be thought to justify the mandatory nature of the obligation to

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[27] *In re U.S. Robotics Corp. Shareholders Litig.*, 1999 Del. Ch. LEXIS 46, at *39-40 (Del. Ch. Mar. 15, 1999). *See also Campbell v. Campbell*, 522 A.2d 1253, 1254 (Del. 1987) (concluding that a judgment "should not be revisited simply because there is a post judgment change in circumstances. Even the all-encompassing language of Rule 60(b)(6) does not contemplate that result."); *In re Estate of Melson*, 1999 Del. Ch. LEXIS 43, at *8-9 (Del. Ch. Mar. 10, 1999) (holding Rule 60(b)(6) does not provide a basis for relieving a party "of a deliberate choice made" by that party).

[28] *MFC Bancorp, Ltd. v. Equidyne Corp.*, 844 A.2d 1015, 1021 (Del. Ch. 2003) (emphasis present in original). *See also* 8 DEL. C. § 211(b); *Tweedy Brown & Knapp v. Cambridge Fund, Inc.*, 318 A.2d 635, 636 (Del. Ch. 1974).

[29] *Walsh v. Search Exploration, Inc.*, 1990 Del. Ch. LEXIS 132, at *5-6 (Del. Ch. Aug. 31, 1990).

[30] 8 DEL. C. § 211(b); *see, e.g., Coaxial Commc'ns, Inc. v. CNA Fin Corp.*, 367 A.2d 994, 998 (Del. 1976).

> call and hold an annual meeting. The annual election of directors is a structured occasion that necessarily focuses attention on corporate performance. Knowing that such an occasion is necessarily to be faced annually may itself have a marginally beneficial effect on managerial attention and performance.
>
> Certainly, the annual meeting may in some instances be a bother to management, or even, though rarely, a strain, but in all events it provides a certain discipline and an occasion for interaction and participation of a kind. *Whether it is welcome or resented by management, however, is in the end, irrelevant under Section 211(b) and (c) of the DGCL and similar statutes in other jurisdictions*.[31]

Neither the size of the stockholdings nor the stockholder's views of existing management are obstacles to the statutory right to request judicial aid where a company fails to comply with the requirement of an annual meeting or the statutory alternatives.[32] The Delaware Supreme Court itself has observed that Section 211(c) provides "evidence of the importance placed upon shareholder suffrage."[33] As a result, the right to a meeting, once the basic statutory requirements are met, is "virtually absolute."[34]

To make meaningful the statutory mandate that Delaware corporations must hold annual meetings to elect directors, Section 211(c) of the DGCL empowers this Court to "summarily order" an annual stockholders meeting "if no meeting is held within 13 months

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[31] *Hoschett v. TSI Int'l Software*, 683 A.2d 43, 44-45 (Del. Ch. 1996) (footnote and internal citations omitted, emphasis and paragraph breaks added).

[32] *Coaxial Commc'ns*, 367 A.2d at 998.

[33] *Id.*

[34] *Id.*; *see also Speiser v. Baker*, 525 A.2d 1001, 1005-06 (Del. Ch. 1987) (quoting *Coaxial Commc'ns* and stating "In the light of the compulsory nature of the requirement for an annual meeting[,] it would require a powerful equity for this court to fail to act when a shareholder satisfies the statutory elements of a claim under Section 211(c).")

of the last annual meeting."[35] In setting that annual meeting date, the Court has discretion to consider various factors in reaching its decision, but the Court has stated that the outer limit of its discretion in setting that meeting date is approximately 90 days from entry of the order setting the meeting.[36]

C. The Relief Point Blank Seeks Is Inconsistent With The Statutory Mandate Of Section 211

In its motion, Point Blank ignores the forceful language of Section 211, and its burden under Chancery Rule 60(b)(6), and instead selectively quotes various cases arising under Section 211 to argue the proposition that the Court has unfettered discretion under Section 211 to further delay the annual meeting. The cases on which Point Blank relies deal with the question of how the Court exercises its discretion under Section 211 in setting a meeting date in the first place, and do not address the issue of a company's attempt to further delay a meeting date set forth in an Order entered by the Court and to which the company had stipulated in order to avoid a trial. Indeed, in its papers, Point Blank fails to identify even one single example where this Court, or any other court, affirmatively authorized a Delaware corporation to violate the statutory mandate of Section 211 of the Delaware General Corporation Law by ordering a further delay of an already-late meeting.

As a result, Point Blank's effort to invoke the Court's "discretion" is, at best, disingenuous. The Court has always possessed the authority to modify its own orders for good cause shown, which finds expression in, for example, Rule 60(b)(6). But as the case law applying Rule 60(b)(6) demonstrates, the notion of "good cause" and the exercise of the

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[35] *Giuricich v. Emtrol Corp.*, 449 A.2d 232, 239 n.14 (Del. 1982).

[36] *Newcastle Partners*, 887 A.2d at 979 n.5 (stating that the Court was "not aware of any authority in this Court that has allowed or ordered setting of a meeting more than 90 days post [judgment]" and citing cases).

Court's discretion are not, as Point Blank would have it, simply a matter of whether the Court thinks a particular outcome is better on balance than the alternative. This is particularly true when an applicant such as Point Blank is seeking to have the Court issue an order that permits further delay in a matter of fundamental importance to the corporate governance system created by the DGCL. It is for that reason, then, that it is incumbent on the party seeking relief to make a very strong showing before the Court will act, and the fact that the Order in this case includes the phrase "good cause" was not intended to, and does not, create a more lenient standard of judicial discretion for altering Orders pursuant to Section 211 of the DGCL.

Point Blank's application is also inconsistent with Section 211 because the meeting date to which Point Blank stipulated to avoid a trial is at the outside of the longest period the Court would have permitted if all of the arguments asserted in the motion had been made by Point Blank at trial. As the Court explained in *Newcastle Partners*, in rejecting a corporation's efforts to further delay an annual meeting which had not been held for 18 months, "there is no authority in this Court that has allowed or ordered setting of a meeting more than 90 days post [judgment]."[37] Here, the August 19 meeting date is 88 days from when the Order was entered by the Court on May 23.

Additionally, the relief sought by Point Blank's motion is also inconsistent with the statutory mandate of Section 211 because it will, if granted, effectively be granting Point Blank an indefinite extension of time to hold the annual meeting. While it is true that Point

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[37] *Newcastle Partners*, 887 A.2d at 979 n.5 (citing *Walsh v. Search Exploration, Inc.*, 1990 Del. Ch. LEXIS 132, at *11 (Del. Ch. Aug. 31, 1990) (90 days); *Hecco Ventures v. Texas Amer. Energy Corp.*, 1986 Del. Ch. LEXIS 435, at *5 (Del. Ch. July 7, 1986) (two months); *Shay v. Morlan Int'l, Inc.*, 1983 Del. Ch. LEXIS 405, at *11 (Del. Ch. July 29,

Blank purports to be requesting only a three month delay in its motion, Point Blank does not offer the Court any assurances that the strategic process will be complete within three months, just the suggestion that "it remains quite possible" that a potential transaction of undefined type, size, or scope might emerge at some point in the future.[38] Even director Suzanne Hopgood, in her unsworn declaration, is careful to say only that she does not believe that the strategic process can be completed by August 19 and that an extension "should" put the board in a "better position" to maybe have something done by mid-November.[39] There is no factual basis on which this Court can properly conclude that Point Blank will not be back before the Court before November 19 seeking yet another extension and relying upon the same bases it asserts in the motion. An indefinite extension, on the basis of allegations known to and relied upon by Point Blank at the time it stipulated to the August 19 meeting, is contrary to the purpose and spirit of both Section 211 and federal law, and should be rejected.

1983) (70 days)). The Court in *Newcastle Partners* set the meeting date to occur exactly 90 days from the date of trial. 887 A.2d at 975.

[38] Motion at 13.

[39] *See* Declaration of Suzanne Hopgood ("Hopgood Decl.") ¶¶ 26-30. Ms. Hopgood's declaration, like the motion itself, relies upon rank hearsay and speculation for assertions regarding what unidentified stockholders allegedly have said regarding the strategic process and Steel Partners. Such assertions may not be considered on a request for relief from judgment under Rule 60(b). *See, e.g.*, *Joseph v. Shell Oil Co.*, 1985 Del. Ch. LEXIS 462 (Del. Ch. June 6, 1985) (refusing to consider evidence offered by Rule 60(b) applicant where the evidence was at most "pure speculation" and inadmissible hearsay); *see also Simpson v. Univ. of Colo.*, 2007 U.S. Dist. LEXIS 30106, at *15-18 (D. Colo. Apr. 24, 2007) (denying a 60(b) motion because the new evidence on which it was based was hearsay); *Kettenbach v. Demoulas*, 901 F. Supp. 486, 497 (D. Mass. 1995) (explaining that a Rule 60(b)(2) motion requires showing that newly discovered evidence would be admissible).

The Court's opinion in *Newcastle Partners* on the motion for relief from judgment is instructive on this point. The motion filed by the company sought an additional five-week extension of the annual meeting beyond the 90-day outer limit ordered by the Court after trial, from November 17, 2005 to December 31, 2005, subject to the company's ability to get its audited financials completed so that it could solicit proxies for the meeting.[40] The Court rejected the argument. The motion on its face only sought a delay until December 31, 2005, "subject to Vesta's ability to comply with the federal securities laws," but the Court accurately noted that, in reality, "[t]he issue presented in this case, in its most simple form, is whether a shareholder meeting will happen on November 17, 2005, or will be indefinitely delayed."[41] The Court also noted that "[n]one of Vesta's shareholders have had the opportunity to vote their shares in 18 months, and Vesta cannot provide reliable guidance on when the audited financial statements required to prepare an annual report may become available."[42]

Here, Point Blank's argument is similar. Although Point Blank purports to be seeking only an additional three-month delay, what Point Blank is really seeking is an additional three month delay *subject to* Point Blank's ability to complete the strategic process, just as the defendant sought in *Newcastle Partners*. Point Blank cannot seriously contend that if this Court grants the three-month extension, and if the strategic process is still

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[40] *See* Motion for Relief from Judgment Pursuant to Court of Chancery Rule 60(b) and for an Interim Stay Pursuant to Court of Chancery Rule 62(a) at ¶ 13 and Wherefore clause, *Newcastle Partners, L.P. v. Vesta Insur. Grp., Inc.*, C.A. No. 1485-N (Ex. E hereto).

[41] *Newcastle Partners*, 887 A.2d at 982.

[42] 887 A.2d at 981. The Court's decision was both well-grounded in the law and prescient, as the company ultimately did not have its audited financials ready until the middle of 2006. *See* Vesta Insur. Grp. Inc. Form 8-K/A, filed June 1, 2006 (Ex. F hereto).

ongoing at the end of those three months – which Point Blank itself suggests is a definite possibility (as noted above) – that it will not be returning to this Court seeking yet another additional delay, relying upon the same bases as it does now, and imploring the Court to grant the relief for the same reasons it would be granting them now. A request for such an indefinite delay is contrary to the strong statutory mandate of Section 211, as the Court noted in *Newcastle Partners*, and should be rejected here for the same reasons. That Point Blank will be seeking its indefinite delay through a series of three-month extensions, each of which relies on the strategic process, does not change the result. As the Court stated in *Newcastle Partners*, "[f]ew circumstances could be more consistent with the federal law's purpose of protecting the shareholders' franchise than this court's Order directing that Vesta's shareholders be allowed to vote and, if they choose, to replace one or more of the directors standing for reelection."[43]

D. Point Blank's Cases Do Not Provide Authority For The Court Ordering The Further Delay Of A Meeting That Is Already Late Under Section 211 Of The DGCL

As noted above, Point Blank has not cited the Court to any authority where a court actually ordered the further delay of an already-late meeting for a corporation in violation of its obligation under Section 211. The two authorities Point Blank does cite in its papers – *MAI Basic Four, Inc. v. Prime Computer, Inc.*[44] and *Huffington v. Enstar Corp.*[45] – certainly do not suffice, as they arise under a dissimilar legal framework to a Section 211 case. In those cases, as explained below, the Court merely declined to issue a preliminary injunction

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[43] 887 A.2d at 981.

[44] 1989 Del. Ch. LEXIS 69 (Del. Ch. June 13, 1989).

[45] 1984 Del. Ch. LEXIS 492 (Del. Ch. Apr. 25, 1984).

that would have prohibited boards from moving annual meetings, where the companies were apparently not already subject to an Order issued pursuant to Section 211, where the postponements sought were far less than the three-month (and potentially indefinite) delay Point Blank seeks, and where the directors involved were the elected boards of the corporations, unlike Point Blank's directors, six of whom were appointed by management to their positions and have never faced a stockholder election. Point Blank's assertion[46] that these cases support its position that the annual meeting should be postponed pending completion of Point Blank's search for strategic alternatives simply does not wash.

1. MAI Basic Four, Inc. v. Prime Computer, Inc.

In *MAI Basic Four*, the plaintiffs (MAI Basic Four, Inc. and Choice Corp.), unlike Steel Partners here, took a series of actions obviously designed to force the stockholders of Prime Computer, Inc. ("Prime") to accept a coercive tender offer.[47] The plaintiffs had commenced an all-cash all-shares tender offer for $20 per share of Prime.[48] After Prime set a date for its annual meeting, the plaintiffs announced they would seek to remove Prime's directors and "replace them with nominees *committed* to a sale of Prime to" the plaintiffs.[49] The directors of Prime then postponed the annual meeting for approximately one month in order to solicit third-party offers, and also announced that they were dismantling Prime's

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[46] Motion at 16-17.

[47] 1989 Del. Ch. LEXIS 69, at *1-2.

[48] *Id*. at *1.

[49] *Id*. at *2 (emphasis added). By contrast, Steel Partners' nominees are not committed in such a fashion.

defensive mechanisms so that nothing would prevent the plaintiffs from buying Prime for $20 per share.[50]

Just two weeks before the scheduled meeting, however, the plaintiffs withdrew their all-cash, all-shares tender offer and replaced it with an offer of $19.50 cash for 75% of Prime's shares with "junk paper" for the remaining 25% in a second-step squeeze-out merger.[51] The offer thus not only declined from a value of $1.3 billion to $975 million plus junk paper, but was "the type of coercive tender offer which has been consistently criticized by the courts of Delaware."[52] In response, the directors postponed the annual meeting for approximately six weeks, in order to be able to evaluate the offer and determine an appropriate response.[53] The plaintiffs then filed suit seeking an injunction compelling the director to hold the meeting as originally scheduled, which would be only a few days from the time the action was brought.[54] The Court declined to issue the injunction, however, indicating that the six-week delay was proper in order to permit stockholders to "evaluate the new and much less attractive offer of [the plaintiffs] and in order to give the directors of Prime reasonable time to find alternatives" to the plaintiffs' coercive tender offer.[55]

Unlike the corporation in *MAI Basic Four*, Point Blank here has been in default of its obligation to hold an annual meeting for nearly 26 months, having last elected directors 39

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[50] *Id*.

[51] *Id*.

[52] *Id*.

[53] *Id*. at *3.

[54] *Id*. at *1.

[55] *Id*. at *3.

months ago. As a result, there are statutory imperatives present here under Section 211 that do not appear to have been at issue in *MAI Basic Four*, where the plaintiffs were seeking a mandatory injunction. Also, unlike the stockholders of Prime, the stockholders of Point Blank do not face any pending tender offer, much less a coercive one. Unlike the directors of Prime, who were faced with a new, highly-coercive tender offer on the eve of the annual meeting, the directors of Point Blank have had adequate time to prepare any information they might feel stockholders need to make an informed decisions. Finally, the directors of Prime, confronted with an actual, coercive tender offer, were permitted to delay the annual meeting for only six weeks in order to explore alternatives. Here, even though the directors of Point Blank do not face any tender offer, much less a coercive one, they have already been permitted more than three months to explore alternatives (in addition to the time between the postponed April 22, 2008 meeting and the May 23 Order), and cannot even guarantee that an additional three months will produce any different results. To allow Point Blank more than six months to consider alternative transactions after more than three years have passed without an annual meeting, when a board facing a coercive tender offer required less than two months, goes far beyond the bounds of equity.

2. Huffington v. Enstar Corp.

Huffington v. Enstar Corp. is also easily distinguished from the matter under consideration. Unlike this case, *Huffington* was an action seeking an injunction requiring the defendant, Enstar, to reinstate a stockholder meeting for the date originally scheduled,[56] rather than an action involving a request to further delay an annual meeting for a company already subject to an Order issued pursuant to Section 211. Because of this, the plaintiffs'

[56] 1984 Del. Ch. LEXIS 492, at *1.

claims were analyzed under the principles of *Schnell v. Chris-Craft Industries* and *Lerman v. Diagnostic Data*, rather than Section 211.[57] Also, after careful consideration by a committee of outside directors, Enstar's board postponed the meeting for only 28 days in order to sell the company – not for some potentially indefinite period of time (and at least six months), as Point Blank wishes to do.[58]

In fact, *Huffington* contradicts several of the assertions underlying Point Blank's motion. For example, although the *Huffington* court determined that the 28-day delay would not be inequitable under the circumstances there, it recognized that the plaintiffs were "entitled to their right to the proxy contest in spite of the fact that their actions might be viewed as completely selfish[.]"[59] This contradicts the arguments made by Point Blank that a stockholder's alleged self-interest somehow merits further postponement of the meeting. Also, the plaintiffs in *Huffington* urged the Court to assume that Enstar's board would breach its fiduciary duties and not conclude a sale in the best interest of the stockholders, but the Court rejected this as inappropriate speculation unsupported by actual evidence.[60] Here, like the plaintiffs in *Huffington*, the Point Blank board wants the Court to assume, without any basis for doing so, that Steel Partners' nominees, if elected, would breach their fiduciary duties by advancing Steel Partners' interests to the detriment of Point Blank's other

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[57] *Id*. at *4-6.

[58] *Id*. at *4.

[59] *Id*. at *8.

[60] *Id*. at *9.

stockholders.[61] This argument was rejected in *Huffington*, and should be rejected here for the same reasons.

Finally, like Point Blank, the plaintiffs in *Huffington* argued that they would conduct a sale better than Enstar's board would, but the Court refused to assume that the plaintiffs "would conduct a more beneficial sale than the Defendants, the *elected* management" of the corporation.[62] The Court reached a similar conclusion in *Aprahamian v. HBO & Co.*, when it rejected a company's argument that a stockholders' meeting should be delayed because the incumbent board was "better qualified to oversee the transaction necessary to enhance the value of the corporation."[63] Similarly, Point Blank has made no showing, based on actual, admissible evidence, that would permit this Court to conclude that the current directors of Point Blank, only one of whom was elected by stockholders (and even that one was elected 39 months ago), are any better qualified to explore strategic alternatives than a board properly elected by the stockholders at a meeting on August 19 – a board which might, or which might not, include Steel Partners' nominees, depending on how the entire body of Point Blank stockholders votes.

E. Point Blank's Claim That This Court Should Assume That Steel Partners' Nominees, If Elected, Will Be Unable To Discharge Their Fiduciary Duties In Evaluating Any Proposed Strategic Transaction Lacks Any Basis Under Delaware Law

Another argument made by Point Blank is that delay is proper because all of the directors nominated by Steel Partners, including those not employed by Steel Partners (or a

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61 Motion at 17-18.

62 *Id*. at *9 (emphasis added).

63 531 A.2d 1204, 1207 (Del. Ch. 1987).

subsidiary of Steel Partners), will be beholden to Steel Partners and incapable of discharging their fiduciary duties and acting in the best interest of all of Point Blank's stockholders.[64]

However, it is well-settled that the Court will not assume that a director lacks independence merely because he or she was nominated or elected by a particular constituency, even one with significant voting power.[65] Indeed, the Delaware Supreme Court has wryly observed that this is the "usual way a person becomes a corporate director."[66] Therefore, the "mere fact that a controlling stockholder elects a director does not render that director non-independent."[67] It is, instead, "the care, attention and sense of individual responsibility to the performance of one's duties, not the method of election, that generally touches on independence."[68] Here, Point Blank is unable to explain how directors who would be elected by a majority of stockholders at the annual meeting on August 19 would be any less independent than the incumbent directors of Point Blank, all but one of whom owe their positions to management and have never faced election. This Court cannot assume, and there is no legitimate basis presented in Point Blank's motion for this Court to find, that Steel Partners' nominees would be unable to discharge their fiduciary duties on behalf of all of Point Blank's stockholders solely because they were nominated by Steel Partners.

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[64] Motion at 3-4 n.1 (suggesting it "is simply not realistic" to assume that Steel Partners' nominees, if elected, would not negatively affect the strategic process).

[65] *See Aronson v. Lewis*, 473 A.2d 805, 816 (Del. 1984); *In re Gaylord Container Corp. S'holders Litig.*, 753 A.2d 462, 465 (Del. Ch. 2000).

[66] *Aronson*, 473 A.2d at 816.

[67] *Gaylord*, 753 A.2d at 465.

[68] *Aronson*, 473 A.2d at 816.

F. Point Blank's Speculation Regarding Mr. Brooks' Motivations Are Improper And Insufficient Under Delaware Law

Point Blank also argues in favor of further delay on the basis of the current board's antagonistic posture to Mr. Brooks.[69] Point Blank's argument lacks merit both factually and legally.

As a matter of law, the problem with Point Blank's argument is that Delaware law is clear that minority stockholders like Mr. Brooks owe no fiduciary duties to the corporation or its stockholders in deciding whether and how to vote their shares – including on such issues as whether to support management's preferred slate of directors and whether to approve a transaction favored by management.[70] They are free to vote their shares in their own interest, whatever they determine that interest to be, and "[i]t is not objectionable that their motives may be for personal profit, or determined by whim or caprice, so long as they violate no duty owed other shareholders."[71] The Delaware Supreme Court has explained that this right permits stockholders even to vote contrary to what others may believe to be the best interests of the corporation or its other stockholders:

> At a stockholders' meeting, each stockholder represents himself and his own interests solely and in no sense acts as a trustee or representative of others, and his right to vote upon a measure coming before the meeting is not in any way affected by the fact that he has a personal interest therein different or separate from that of the other stockholders, or by the fact that he is related to interested persons. *He may vote contrary to what other stockholders deem to be the best interest of the corporation, or even detrimental to it.* This is equally true of a stockholder who is also a director voting as a stockholder."

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69 Motion at 4, 13-14.

70 *Bershad v. Curtiss-Wright Corp.*, 535 A.2d 840, 845 (Del. 1987).

71 *Id*.

> In sum, for more than fifty years our Courts have held, consistent with the general law on the subject, that a stockholder in a Delaware corporation has a right to vote his shares in his own interest, including the expectation of personal profit, limited, of course, by any duty he owes to other stockholders.[72]

Point Blank's argument also fails as a factual matter. First, Point Blank's argument is based on bad math. In suggesting that Steel Partners "with Brooks' support, could win the proxy contest," Point Blank fails to recognize that even if Mr. Brooks chooses to vote in favor of Steel Partners' nominees, Steel Partners cannot win any proxy contest without also securing votes from other stockholders of Point Blank, the very stockholders in whose interest the Point Blank board claims to be acting.[73] Second, Point Blank's purported concerns about Mr. Brooks' motivations for voting against the current board's nominees will also be present in connection with any vote the stockholders would be asked to take in connection with a strategic transaction proposed by the Point Blank board, so even if the Point Blank board concludes such a transaction there is still the issue of getting such a transaction approved by the stockholders. Any concerns about Mr. Brooks' motivations should be equally present at that time, and yet Point Blank, by its silence, seems only to

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[72] *Tanzer v. Int'l General Indus., Inc.*, 379 A.2d 1121, 1124 (Del. 1977) (quoting William Meade Fletcher, FLETCHER'S CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 2031 (Perm. Ed.)) (emphasis added).

[73] Borrowing the numbers used in Point Blank's motion, Mr. Brooks owns or controls the voting on approximately 29% of Point Blank's shares. Even if Mr. Brooks votes for Steel Partners' nominees, Steel Partners would still need to convince approximately 12% of Point Blank's other stockholders to vote for its nominees (after its own approximately 9.6% stake is counted).

believe that Mr. Brooks' motivations matter in connection with a stockholder vote on electing directors, not a stockholder vote on a potential strategic transaction.[74]

G. Point Blank's Argument That It Needs Additional Time In Order To Make Sure That Stockholders Receive Full And Fair Information Necessary To Cast An Informed Vote Is Without Merit

On page 17 of its motion, Point Blank makes perhaps its most ironic (and specious) argument, that an additional three month delay in the stockholder meeting is necessary so that stockholders will receive full and fair information needed to cast an informed vote when they elect directors.[75] According to Point Blank, it would "substantially undermine the stockholder franchise" if the stockholders are forced to vote while the current board is allegedly unable to explain "the Company's side" because of confidentiality restrictions with potential investors in the strategic process.[76] Point Blank even goes so far as to claim that Steel Partners is trying to "ensur[e] that the voters effectively could hear only one side of the story."[77] This argument is complete and utter nonsense.

First, the August 19 date was picked by Point Blank, so it is difficult to see how the choice of this meeting date is part of some plan by Steel Partners to prevent stockholders from being fully informed. It would be a neat trick, indeed, if Steel Partners successfully

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[74] Unless, of course, Point Blank's board is attempting to structure a major strategic transaction in order to avoid a stockholder vote. In that situation, it would be easy to see why Point Blank is not concerned about Mr. Brooks' ability to influence a stockholder vote on a strategic transaction, although it might raise other issues concerning the current board's discharge of its fiduciary duties. In any event, that is merely speculation, at least at this point in time.

[75] Motion at 17.

[76] *Id.*

[77] *Id.*

maneuvered Point Blank into choosing the August 19 date for its annual meeting without the board knowing that the date was really Steel Partners' idea.[78]

Second, there is absolutely nothing preventing the Point Blank board from sending out its so-called "side" of whatever story it thinks needs to be told. Point Blank's financials have been up-to-date for months now, and its preliminary proxy materials were cleared by the SEC in the Spring, so there is no legal impediment whatsoever to Point Blank's current board communicating with stockholders and making its pitch for why it believes its nominees should be elected.

Third, Point Blank's claim that confidentiality agreements entered into with potential investors as part of the strategic process supposedly impede its ability to disclose information to the stockholders defies both common sense and common experience. The Court has itself undoubtedly seen many proxy statements describing mergers, buyouts, and other strategic transactions where lengthy descriptions are given of the activities undertaken by a board or special committee in connection with those transactions, including, for example, descriptions of the number of potential investors contacted, how many executed confidentiality agreements, how many submitted bids, the range of bids, and so on, all without, as is typically the case, there being any disclosure of the identities of the bidders.

In fact, Point Blank's own SEC filings demonstrate the utter lack of merit in Point Blank's argument, because Point Blank has communicated with stockholders at least twice in the past week, including communications concerning the strategic process. On July 30,

[78] Nor can Point Blank rely upon Steel Partners' opposition to the motion as support for its claim that Steel Partners is trying to "ensur[e]" that stockholders do not receive full information, as Point Blank filed the motion and made the claim without engaging in dialogue with Steel Partners (or its counsel) and determining Steel Partners' position.

2008, Point Blank issued a Notice of Annual Meeting of Stockholders (filed as a Schedule 14A with the SEC) in which it disclosed the following information:

> Since the April 8 decision, the Board of Directors, management and Wachovia Securities have undertaken an active and aggressive strategic process that has included contacting nearly 90 potential strategic parties (over 30 of whom have signed confidentiality agreements, and all of the confidentiality agreements included "standstill" provisions), and engaging in extensive diligence and other discussions with certain interested parties. Although the process has been significantly slowed by delays in the awarding of body armor contracts by the U.S. Government during this period, the process is currently continuing. The Company encouraged Steel Partners to participate in the process, but Steel Partners would not sign the confidentiality agreement containing the same "standstill" terms agreed to by the more than 30 other parties and therefore Steel Partners elected not to participate.
>
> Though many bidders have been deterred by the delays in Government contract awards, the Company is currently either in the midst of discussions with, or awaiting a response from, certain parties that have expressed continuing interest in a transaction with the Company. It remains quite possible that a viable transaction could emerge from this process if it is allowed to reach fruition.[79]

Point Blank followed that submission with an equally lengthy communication to the stockholders in which it attempts to explain in detail why it believes its nominees should be elected rather than Steel Partners', even to the point of repeating many of the same meritless arguments concerning both Steel Partners and Mr. Brooks that it made in its motion.[80] Point Blank's communications barrage to the stockholders continued yesterday, August 4, 2008, when it distributed a detailed PowerPoint presentation regarding the meeting, once again

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[79] *See* Notice of Annual Meeting of Stockholders, Point Blank Solutions, Inc. Schedule 14A, filed July 30, 2008 (Ex. G hereto).

[80] *See* July 30, 2008 Letter from William Campbell, Chairman of the Board of Directors, Point Blank Solutions, Inc. Schedule 14A, filed July 30, 2008 (Ex. C hereto).

presenting its arguments for why it believes Point Blank's nominees should be elected over Steel Partners'.[81] Point Blank's claim that it is somehow unable to communicate fully with stockholders, and that more time is needed for it to do so, is plainly false.[82]

H. Further Extension Of The Meeting Date Will Harm Steel Partners

To date, Point Blank's maneuvering with respect to the date of the annual meeting has forced Steel Partners twice to undertake the effort and expense of preparing and mailing proxy materials to stockholders and preparing for the actual meeting itself. Point Blank now seeks to delay the annual meeting again and, if the Court grants the relief sought, force Steel Partners to undertake yet another series of communications for yet another meeting, with no assurances that there will not a fourth, fifth, or even sixth round, depending on what happens with the strategic process. Steel Partners should not be forced to repeat these proxy solicitation efforts again and again, as if it were Bill Murray stuck in a Point Blank-specific version of the movie *Groundhog Day*.[83]

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[81] *See* Point Blank Solutions, Inc. Schedule 14A, filed August 5, 2008 (Ex. H hereto).

[82] Point Blank's reliance on the Court's opinion in *Topps* is meritless, as the factual scenarios could hardly be further apart. In *Topps*, the Court's concern about full and fair disclosure of information to stockholders stemmed from the fact that the target corporation (Topps) was publicly disparaging Upper Deck's bid while at the same time using the standstill agreement to prevent Upper Deck from being able to respond. *In re Topps Co. S'holders Litig.*, 926 A.2d 58, 92 (Del. Ch. 2007). Here, there is no evidence in the record to support Point Blank's unsubstantiated claim that there is an information imbalance (indeed, the potshots Point Blank takes against Steel Partners in the proxy statement filed on July 30 demonstrates that Point Blank is having no trouble getting its story out), and certainly no evidence in the record to suggest that any such information imbalance is due to any inequitable action by Steel Partners.

[83] GROUNDHOG DAY (Columbia Pictures 1993).

CONCLUSION

For all of the foregoing reasons, Steel Partners respectfully submits that Point Blank has failed to establish any circumstances, extraordinary or otherwise, that would establish good cause and entitle Point Blank to an Order from this Court extending the annual meeting date beyond the outer limits permitted by Section 211 of the DGCL. Point Blank is capable of having a meeting, and is already vigorously making its case to the stockholders ahead of the August 19 meeting date. The stockholders have been deprived of their voice for 39 months; it is high time for them to be heard and have their say.

Respectfully submitted,

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