



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. \_\_\_\_\_

TROY CORPORATION, a Delaware )  
corporation, )

Defendant. )

**COMPLAINT**

Plaintiffs Richard W. Schoon and William J. Bohnen, by and through their undersigned counsel, upon knowledge as to themselves and their own actions and upon information and belief as to all other matters, allege for their complaint as follows:

**Nature of the Action**

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.

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.

### **The Parties and Relevant Non-Parties**

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

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

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

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.

### **Background**

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.

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").

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.

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.

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.

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.

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.

**Mr. Schoon's And Mr. Bohnen's Right To Receive Advancements**

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

15. Paragraph EIGHTH, Section 9 of Troy's Charter,<sup>1</sup> 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.

16. Article VIII, Section 9 of Troy's Bylaws,<sup>2</sup> 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.

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<sup>1</sup> 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.

<sup>2</sup> 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.”

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.”

**Mr. Schoon And Mr. Bohnen Are Entitled  
To Advancements For The Fiduciary Duty Action**

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.

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.

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.

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.

**Mr. Schoon and Mr. Bohnen Are Entitled to Advancements For The Expenses Incurred in the 220 Action Related to the Fiduciary Duty Action**

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

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."

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."

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.”

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.”

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.”

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.

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.”

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.”

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.”

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.

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.



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.

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.

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.

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.”

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.

#### **Troy Fails to Advance Funds**

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

**Mr. Schoon and Mr. Bohnen Are Entitled to Indemnification  
for Their Costs and Expenses in Pursuing this Action**

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.”

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.

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.

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.

**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.

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

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

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

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.

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.

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.

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.

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.

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.

## 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.

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

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

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

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.

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

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.

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.

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.

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.

### **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.

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.



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.

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

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.

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.

WHEREFORE, Mr. Schoon and Mr. Bohnen respectfully request that this Court enter an order:

a. Declaring that Troy must provide advancements for Mr. Schoon and Mr. Bohnen for all of the legal expenses, including attorneys' fees, that they have incurred, are incurring and will incur in connection with the Fiduciary Duty Action, including all the legal fees and expenses incurred in the 220 Action related to the Fiduciary Duty Action.

b. Ordering Troy to pay advances to Mr. Schoon and Mr. Bohnen in the amount of \$526,135.72.

c. Ordering Troy to pay advances to Mr. Schoon and Mr. Bohnen on an ongoing basis for expenses incurred in the Fiduciary Duty Action.

d. Ordering Troy to pay pre-judgment interest on all advancements incurred to date, beginning from the date such advancements became due.

e. Ordering Troy to pay post-judgment interest on all advancements due from the date of this Court's order.

f. Declaring that Troy must provide indemnification for Mr. Schoon and Mr. Bohnen for all legal expenses, including attorneys' fees, which they have incurred in prosecuting this action for advancements.

g. Ordering Troy to pay attorneys' fees and costs incurred in this action for advancements to Mr. Schoon and Mr. Bohnen.

h. Establishing procedures to ensure prompt payment of advancements going forward.

i. Granting Mr. Schoon and Mr. Bohnen such other and further relief as the Court deems just and proper.

/s/ J. Travis Laster

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Dated: August 22, 2006