



IN THE SUPREME COURT OF THE STATE OF DELAWARE

CA, Inc., a Delaware Corporation,)
) No. 329, 2008
 Petitioner Below,)
 Appellant,) Certification of Questions of
) Law from the United States
 v.) Securities and Exchange
) Commission
 AFSCME Employees Pension Plan,)
)
 Respondent Below,)
 Appellee.)

Submitted: June 30, 2008
Decided: July 1, 2008

Before **STEELE**, Chief Justice, **HOLLAND, BERGER, JACOBS** and **RIDGELY**, Justices, constituting the court *en banc*.

ORDER

This 1st day of July 2008, it appears to the Court that:

1. Pursuant to Supreme Court Rule 41, as amended May 15, 2007, the Securities and Exchange Commission has certified the following two questions of law that have arisen in the course of a March 13, 2008 shareholder proposal for inclusion in a Delaware corporation's, CA, Inc. ("CA"), proxy materials for the corporation's annual meeting of shareholders to be held on September 9, 2008:

- (I) Is the AFSCME Proposal a proper subject for action by shareholders as a matter of Delaware Law?
- (II) Would the AFSCME Proposal, if adopted, cause CA to violate any Delaware law to which it is subject?

2. The proposal seeks to amend CA's bylaws to require the company to reimburse the reasonable expenses incurred by a stockholder or group of stockholders in running a short slate of director nominees for election, provided that at least one nominee on the short slate was elected to the board of directors (the "AFSCME Proposal").

3. CA asserts that the shareholder proposal may be excluded from its 2008 proxy materials in reliance on the following bases for exclusion provided by Exchange Act Rule 14a-8 (17 C.F.R. §240.14a-8):

Rule 14a-8(i)(1) on the ground that the proposal is an improper subject for shareholder action under Delaware law.

Rule 14a-8(i)(2) on the ground that the proposal, if adopted, would cause CA to violate Delaware law.

4. The following facts are undisputed:

(a) CA is incorporated in Delaware.

(b) The bylaw amendment set forth in the AFSCME Proposal reads

as follows:

"RESOLVED, that pursuant to section 109 of the Delaware General Corporation Law and Article IX of the bylaws of CA, Inc., stockholders of CA hereby amend the bylaws to add the following Section 14 to Article II:

'The board of directors shall cause the corporation to reimburse a stockholder or group of stockholders (together, the "Nominator") for reasonable expenses ("Expenses") incurred in connection with nominating one or more candidates in a contested election of directors, including, without limitation,

printing, mailing, legal, solicitation, travel, advertising and public relations expenses, so long as (a) the election of fewer than 50% of the directors to be elected is contested in the election, (b) one or more candidates nominated by the Nominator are elected to the corporation's board of directors, (c) stockholders are not permitted to cumulate their votes for directors, and (d) the election occurred, and the Expenses were incurred, after this bylaw's adoption. The amount paid to a Nominator under this bylaw in respect of a contested election shall not exceed the amount expended by the corporation in connection with such election."

(c) CA's 2008 annual meeting of shareholders is scheduled to be held on September 9, 2008. CA intends to file its definitive proxy materials on or about July 17, 2008.

5. Under the circumstances as described in the certification, the Court agrees that there are important and urgent reasons for an immediate determination of the questions certified.¹

NOW, THEREFORE, pursuant to Supreme Court Rule 41, as amended May 25, 2007, it is HEREBY ORDERED that:

A. The questions certified by the Securities and Exchange Commission are ACCEPTED.

B. CA shall be considered the appellant and AFSCME shall be considered the appellee.

¹ See Del. Supr. Ct. R. 41 (b)(iii) (providing reasons to accept certification, *i.e.*, unsettled questions relating to a state statute).

C. Counsel shall file simultaneous briefs, not to exceed 50 pages, on or before Monday, July 7, 2008 at the close of business.

D. Oral Argument shall be held on Wednesday, July 9, 2008 at 10 a.m. in Dover.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice