IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

LITERARY PARTNERS, L.P., et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No.
	)	
TIME INCORPORATED, TW SUB INC., JAMES F. BERE, MICHAEL D. DINGMAN, EDWARD S. FINKELSTEIN, MATINA S. HORNER, DAVID T. KEARNS, GERALD M. LEVIN, HENRY LUCE III, JASON D. McMANUS, J. RICHARD MUNRO, N.J. NICHOLAS, JR., JOHN R. OPEL, DONALD S. PERKINS, and WARNER COMMUNICATIONS, INC.,	)	
	)	
Defendants.	)	

PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR A TEMPORARY RESTRAINING ORDER

MORRIS, JAMES, HITCHENS & WILLIAMS

P. Clarkson Collins, Jr.
Lewis H. Lazarus
Barbara MacDonald
222 Delaware Avenue
P.O. Box 2306
Wilmington, DE 19899
Attorneys for Plaintiffs

OF COUNSEL:

WILMER, CUTLER & PICKERING

Michael R. Klein
Richard W. Cass
Jane C. Sherburne
Thomas W. Jeffrey
Eric Markus
2445 M Street, N.W.
Washington, D.C. 20034-1420
(202) 663-6000

Dated: June 26, 1989

TABLE OF CONTENTS

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

LITERARY PARTNERS, L.P., et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No.
	)	
TIME INCORPORATED, TW SUB INC., JAMES F. BERE, MICHAEL D. DINGMAN, EDWARD S. FINKELSTEIN, MATINA S. HORNER, DAVID T. KEARNS, GERALD M. LEVIN, HENRY LUCE III, JASON D. McMANUS, J. RICHARD MUNRO, N.J. NICHOLAS, JR., JOHN R. OPEL, DONALD S. PERKINS, and WARNER COMMUNICATIONS, INC.,	)	
	)	
Defendants.	)	

PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR A TEMPORARY RESTRAINING ORDER

SUMMARY

Plaintiffs -- substantial shareholders of record of common stock of Time Incorporated ("Time") before, on, and since May 1, 1989 -- seek a temporary restraining order against the holding of Time's annual shareholder meeting, currently scheduled for June 30, 1989. Unless this meeting is postponed until such time as Time's shareholders are given full disclosure of the momentous events which have occurred since the defendants mailed their last substantive communication to stockholders on May 24, 1989, and an opportunity to propose alternate candidates for election to Time's board, defendants will have succeeded in subverting the process of corporate governance within Time and wrongfully obtaining the reelection of four directors.

Prior to June 16, 1989, plaintiffs had been promised by Times Directors that on June 23, 1989 there would be a chance to vote on several major issues bearing on the future of Time at the shareholder meeting. Those issues included: a proposed sale by merger of 62% of the voting equity of Time to Warner Communications, Inc. ("Warner"); the restructuring of the Time Board through the vote on the sale/merger, so that twelve Warner directors would fill half of the positions on an expanded Time Board; and the reelection of four directors, including three senior managers of Time. Time's directors promised that neither the proposed transaction with Warner nor the related restructuring and transfer of one half of Time's board of directors to Warner would be consummated without approval by the affirmative vote of a majority of the outstanding shares of Time Common Stock at the Annual Meeting. Collins Affidavit, Joint Proxy Statement, Ex. A, at 2, 9, 13.

On June 16, 1989, as part of its draconian response to a June 7, 1989, all-cash $175 tender offer announced by Paramount Communications, Inc. ("Paramount") for all Time shares, the Board of Directors of Time decided abruptly to change electoral course, but to persist on their transactional course. Formally rejecting Paramount's offer, the Board revised the sale by merger to Warner, and announced that the revised transaction with Warner and the appointment of twelve Warner directors to Time's Board would proceed without a vote. Time's board apparently determined that Time's shareholders would not, in light of Paramount's manifestly superior offer, vote in favor of the original or

revised Time/Warner transaction. A terse letter dated June 20 from Defendants J. Richard Munro, Chairman of the Board and Chief Executive Officer of Time ("Munro"), and N.J. Nicholas, Jr., President of Time ("Nicholas"), to Time stockholders baldly announced that Time's directors had rescheduled the annual meeting from June 23 to June 30 and that stockholders would not be asked "to consider and vote upon any form of merger between Time and [Warner] . . ." (emphasis added).

If permitted to proceed, Time's shareholders will be asked to vote whether to reelect Munro, Nicholas, and two other incumbent directors. Yet Defendants have so violated their duties of fairness and candor that this election is a sham. By persisting with the original call for a meeting, with the record date of May 1, 1989, they effectively preclude a competing slate of nominations and disenfranchise a substantial number of current shareholders. By failing to prepare and distribute new proxy solicitation materials, Defendants continue to seek proxies in favor of the reelection of four defendant directors on the basis of the May 24, 1989 proxy materials and the one page June 20 letter. Those materials completely fail to inform Time shareholders about any of the momentous subsequent events including (i) the roles played by nominees in the current status of the "proposed" Time/Warner sale/merger,[1] the issuance of 11% of Time's equity to Warner, the rejection of Paramount's bid, and

---

[1] Although the letter's use of the term "proposed acquisition" suggests that the transaction is somehow contingent upon further action by the parties, in fact the Time Board is powerless to stop it unless this Court intervenes.

the truncated postponement of the shareholders meeting; and (ii) the impact of those decisions on the $2.5 billion premium now offered by Paramount over the value of the revised Time/Warner Merger. It is hard to imagine a more comprehensive and devastating failure to provide information material to any informed decision whether to vote for the four board members standing for reelection.

STATEMENT OF FACTS

Parties

Plaintiff Literary Partners, L.P. ("LP") is a limited partnership organized to acquire and hold shares of Time common stock (currently more than 600,000 shares) for its limited partners, including Robert M. Bass Group, Inc. and certain of its affiliates and associates.

Plaintiff Cablevision Media Investors, L.P. ("CMI") is a Delaware limited partnership, the sole general partner of which is CSC Investors Inc., a Delaware corporation with its principal place of business in New York. CMI owns 100 shares of Time and is a 41.6% general partner in U.S. Media Investors, L.P., a Delaware limited partnership that owns more than 1.2 million shares of Time.

Plaintiff A. Jerrold Perenchio is a citizen of the United States and a resident of California. Mr. Perenchio owns 100 shares of Time common stock directly and more than 500,000 shares indirectly, through a partnership known as U.S. Media Investors, L.P.

Defendant Time is a Delaware corporation which, on May 1, 1989, had approximately 57 million shares of common stock outstanding, held by approximately 14,500 shareholders of record. Time stock is listed and traded on the New York Stock Exchange ("NYSE"). Defendant TW Sub Inc., a Delaware corporation and a wholly-owned subsidiary of Time, was organized for the purposes of effectuating a merger between Time and Warner.

Defendants Munro, Nicholas, Gerald M. Levin, Donald S. Perkins, James F. Bere, Michael D. Dingman, Edward S. Finkelstein, Matina S. Horner, David T. Kearns, Henry Luce III, Jason D. McManus, and John R. Opel are Directors of the Company (collectively, the "Director Defendants"). Director Defendants Munro, Nicholas, Levin (the Vice-Chairman of the Board of Time), and Donald S. Perkins are part of a class of Time directors whose terms expire at Time's Annual Meeting, and who are all standing for reelection (collectively, the "Candidate Director Defendants").

Defendant Warner is a Delaware corporation with its principal executive offices located at 75 Rockefeller Plaza, New York, New York 10019. Warner stock also trades on the NYSE.

The Original Time/Warner Transaction

On March 4, 1989, Time and Warner announced that the two companies had reached a sale/merger agreement ("the Original

Time/Warner Merger"). The terms of the Original Time/Warner Merger were spelled out in detail in a 151-page proxy statement and 99 pages of appendices, sent to Time shareholders on May 24, 1989. The May 24, 1989 joint proxy statement announced, among other things, that Time shareholders would be asked to vote on reelection of four Time directors, on the sale/merger agreement, and -- through the vote on the sale/merger agreement -- on the election of twelve Warner directors to fill half of the positions on the Board of the surviving corporation. The materials solicited shareholder proxies with respect to each of these issues. The proxy statement further revealed that Time's senior management stood to benefit extraordinarily under the proposal to merge with Warner.

The Paramount Tender Offer

On June 7, 1989, Paramount commenced a $175 per share all-cash, all-shares tender offer for Time. This price represented a premium of $49 (approximately 39%) over the closing price of $126 per share on June 6. The day after the Paramount offer was announced, Time stock gained $44 per share to close at $170. In the week that followed, Time stock rose to over $182 per share on the strength of the market's expectation that even higher bids might emerge. In the eyes of the market, and plaintiffs, Paramount's offer was thus manifestly superior for Time stockholders to the original Time/Warner transaction.

Paramount also indicated in a contemporaneous letter to Time, addressed to Defendant Munro, its willingness to negotiate with Time "all aspects" of its offer, including the price.

Time's Rejection of the
Tender Offer and Modification
of the Time/Warner Transaction

In response to the offer and invitation by Paramount, the Director Defendants could have -- and, indeed, should have -- begun negotiations with Paramount to determine whether a transaction with Paramount would have better served the interests of the Time stockholders than the Original Time/Warner Merger. They did not. Rather, the Director Defendants declared that Paramount's offer was inadequate and permitted Defendant Munro to declare "war" on Paramount on behalf of Time.

As a first step in this war, the Director Defendants announced that Time had abandoned the Original Time/Warner Merger and instead would acquire Warner (the "Revised Time/Warner Merger"). In this new transaction, the first step is a two-tier irrevocable $70 cash Time tender offer for 51% of Warner and the second step is the original merger with Warner. In nearly all respects the Revised Time/Warner transaction is similar to the original transaction; both the original and revised transaction would entrench and enrich senior Time and Warner management. The Revised Time/Warner Merger would dramatically change Time's balance sheet. Purchase accounting treatment would require Time to amortize billions of dollars in "goodwill" for years to come, and incur many billions in debt.

To eliminate a fundamental obstacle to the conclusion of the inferior Revised Time/Warner Merger the Directors decided to preclude any stockholder review of that transaction. On June 20, 1989, the Director Defendants sent a letter to all shareholders informing them of certain changes made on June 16, 1989 in the agenda for the June 23, 1989 annual meeting. The contrast between the May 24 and June 20 proxy soliciting communications documents is stark: Whereas the May 24, 1989 proxy statement provided over 250 pages of detail on the proposed transaction and other issues of corporate governance, the June 20 letter is one-page long and provides no hint of any of the significant developments that followed the issuance of the May 24 proxy, nor of the Director Defendants' role in those developments.

In effect, the Director Defendants have treated Time shareholder democracy much as some dictators have recently treated political democracy: that is, as a tool to be used sparingly and only to entrench those already in power. When a vote cannot be "won," use your powers cancel the vote. When a vote can be "won," use your powers to keep the electorate as uninformed as possible and, if necessary, twist the procedures so as to deny the opposition any effective voice.

Plaintiffs here seek to remedy those violations of fairness and candor. At a later date, perhaps on July 11, 1989, they hope to join others who also have filed suit seeking relief with respect to the substance of the Time/Warner transaction. On that other front, as part of their overall battle strategy, the Director Defendants sought to make Time as unattractive as

possible for Paramount by attempting to revise the Original Time/Warner Merger. Most important, however, the consummation of the Revised Transaction could deprive Time stockholders of over two and one-half billion dollars, which is the premium represented by the current $200 per share Paramount offer over the $150 imputed value of the Revised Time/Warner transaction.[2]

---

[2] This is calculated on the basis of the share exchange ratio used by the Defendants in the original Time/Warner transaction (1 share of Warner = .465 shares of Time), the $70 cash per Warner share to be paid in the new Time/Warner Transaction values Time's shares at approximately $150. We note that it was on the same day that the Director Defendants announced that Paramount's offer of $175 per Time share was inadequate, that they approved this transaction with its implied $150 per share value for Time.

ARGUMENT

I. STANDARDS FOR THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER

The standards governing the issuance of a temporary restraining order to preserve the status quo are familiar and plainly met in this case. While the factors are the same as those for a preliminary injunction -- evaluation of success on the merits, irreparable injury and a balance of hardships favoring the moving party -- "as a practical matter, however, neither the evidentiary record nor the showing made on a temporary restraining order will be as well developed or as extensive as a motion for a preliminary injunction." Hecco Ventures v. Sea-land Corp., Del. Ch., C.A. No. 8486, Jacobs, V.C. (May 19, 1986) at 8.[3]

Once a plaintiff has shown a threat of irreparable injury, a temporary restraining order "ought ordinarily to issue" unless the court believes that the claim asserted on the merits is "frivolous or not truly litigable," that the balance of harms favors the defendant, or that the plaintiff is guilty of laches. Cottle v. Carr, Del. Ch., C.A. No. 9612, Allen, C. (Feb. 9, 1988) at 7.[4]

---

3 See also McFadden Holdings, Inc. v. John Blair & Co., Del. Ch., C.A. No. 8489, Jacobs, V.C. (May 27, 1986). Unreported decisions are collected alphabetically in plaintiffs' Appendix of Unreported Opinions filed herewith.

4 See also UIS, Inc. v. Walbro Corp., Del. Ch., C.A. No. 9323, Allen, C. (October 6, 1987).

It is clear that plaintiffs' showing here comports with the foregoing standards. Argument II shows that if the stockholders' meeting is not enjoined, irreparable harm will result to plaintiffs, indeed all Time non-management stockholders, with no palpable risk of harm if restraint is issued to allow for fuller consideration. Argument III establishes that even on the present less-than-fully developed record, plaintiffs have raised claims that are "colorable, litigable, or that raise questions deserving serious attention."[5]

---

5 Bass v. Evans, Ruling of the Court on Plaintiffs' Motion for a Temporary Restraining Order, Del. Ch., C.A. No. 9953, Jacobs, V.C., Transcript at 5 (June 10, 1988).

II. PLAINTIFFS WILL SUFFER IRREPARABLE INJURY UNLESS THE COURT RESTRAINS THE HOLDING OF THE TIME STOCKHOLDER MEETING THAT IS CALLED FOR JUNE 30, 1989

Unless a temporary restraining order issues here, defendant Time and the Director Defendants will, on June 30, proceed with the annual shareholders meeting and the sham election of directors. Defendants' manipulation of this meeting by their selective disclosures and agenda curtailments is irreparably harmful to shareholders because it forces shareholders action without adequate information and runs roughshod over well-established principles of corporate democracy that protect the interests of non-management shareholders. As this Court recently noted:

> The corporate election process, if it is to have any validity, must be conducted with scrupulous fairness and without any advantage being conferred or denied to any candidate or slate of candidates. In the interests of corporate democracy, those in charge of the election machinery of a corporation must be held to the highest standards of providing for and conducting corporate elections. The business judgment rule therefore does not confer any presumption of propriety on the acts of directors in postponing the annual meeting. Quite to the contrary. When the election machinery appears, at least facially, to have been manipulated those in charge of the election have the burden of persuasion to justify their actions.

Blasius Industries v. Atlas Corporation, Del. Ch., Cons. C.A. No. 9720, Allen, C. at 29 (July 25, 1988), quoting Aprahamian v. HBO & Company, Del. Ch., 531 A.2d 1204, 1206-07 (1987). There is no justification for Defendants to proceed with the shareholders' meeting on June 30, and the Court should protect plaintiffs from

the unlawful manipulation of the election process which will occur if defendants are allowed to proceed.

A. Plaintiffs Will Suffer Irreparable Harm Even If The Election of Directors Is Later Nullified

In circumstances substantially similar to those present here, this Court has found that irreparable harm would result if an election of directors was permitted to go forward on the basis of an ill-advised and inadequately informed electorate. In American Pacific Corp. v. Super Food Services. Inc., Del. Ch., C.A. No. 7020, Longobardi, V.C. (Dec. 12, 1982), the Court found that a confusing proxy statement did not give stockholders a sufficient opportunity to judge the directors for whom they were being asked to vote. The Court asked and answered:

> [C]an it honestly be said that the stockholders had sufficient information before voting to fairly assess the fairness or business competence of the incumbent Board? I think not. Certainly this type of information could be crucial to a stockholder's vote on directors.

Id. at 6. The Court went on to find that the resulting harm would be sufficiently irreparable to warrant injunctive relief; simply voiding the election would not repair the ensuing confusion. As stated by the American Pacific court, "the effect of reversing any exercise of 'the will of the stockholders,' even for their own benefit, is to create an insurmountable obstacle of confusion and antipathy." Id. at 7.

Similarly, in Cooke v. Teleprompter Corporation, 334 F.Supp. 467 (S.D.N.Y. 1971) the Court, on plaintiff stockholders' motion for a preliminary injunction, found the existing material

for the solicitation of proxies previously sent out by management "incomplete, slanted and misleading in several respects." Under these circumstances the Court enjoined the meeting from proceeding as scheduled and ordered futher adjournment of the annual meeting, noting;

> A Court of Equity may, and should, postpone a shareholders meeting where the interests of justice would be served by allowing time for a shareholder to communicate to his fellow shareholders facts and circumstances which if known might result in a majority vote for a change in the Board of Directors.

434 F.Supp. at 473.

Plaintiffs here, like those in American Pacific and Cooke, would be irreparably harmed if the election goes forward; a subsequent nullification of the election will hopelessly bewilder shareholders who only will appreciate that "individuals they have supported were prevented from being reelected due to the actions of the Plaintiffs. The stigma which Plaintiffs would suffer in any subsequent proxy fight would be substantial and irreparable." Id. at 6.[6]

B. Plaintiffs Will Suffer Irreparable Harm If Defendants' Manipulation Of The Corporate Process Is Not Restrained

The Court of Chancery will not hesitate to intervene in corporate affairs to enjoin management's manipulation of the election process to thwart a shareholder vote. Thus, the Court has enjoined the issuance of stock for the primary purpose of

---

6 See also Packer et al. v. Yampol et al., Del. Ch., Slip Op., C.A. No. 8432, Jacobs, V.C. (Apr. 18, 1986).

diluting the voting power of certain control shares. Condec Corporation v. Lukenheimer Company, Del. Ch., 230 A.2d 769 (1967). In Aprahamian v. HBO & Company, Del. Ch., 531 A.2d 1204 (1987), the Court halted incumbent management from moving the date of an annual meeting when it learned that a dissident stockholder group appeared to have in hand proxies representing a majority of the outstanding shares. And, in Blasius Industries v. Atlas Corporation, Del. Ch., Cons. C.A. No. 9720, Allen, C. (July 25, 1988), the Court enjoined the action of the board of directors to increase the board's size to prevent a dissident stockholder from electing a majority of new directors. Central to the Court's intervention in each case is its most sensitive and protective regard for the free and effective exercise of voting rights upon which the legitimacy of directorial power rests. Blasius Industries v. Atlas Corp., supra at 21-23.

The actions of Defendants have operated to extinguish Plaintiffs' right to hold the Director Defendants accountable for placing their own interests before those of non-management shareholders. Well-settled precedent exists in this Court to enjoin a shareholder meeting when its timing and agenda have been manipulated to ensure an outcome favorable to management.

In Schnell v. Chris-Craft Industries. Inc., 285 A.2d 437 (1971), the Delaware Supreme Court reversed this Court's failure to enjoin a shareholder meeting, the date of which had been changed under motives analogous to those here. The Delaware Supreme Court found the requisite irreparable harm when the Board's action was motivated by "inequitable purposes, contrary

to established principles of corporate democracy." Id. at 439. The Court then enjoined the shareholder meeting, the scheduling of which had been manipulated to obstruct the efforts of dissident shareholders to undertake a proxy contest against management.[7]

As in Schnell, Defendants here have manipulated the corporate process to preclude shareholder approval of any Time/Warner transaction and to eliminate the opportunity for non-management shareholders to challenge those actions. Under Schnell, Defendants' actions are sufficiently offensive to principles of corporate democracy to warrant enjoining their consummation.[8]

This Court's ruling in In Re Anderson, Clayton Shareholder's Litigation, Del. Ch., 519 A.2d 694 (1986) underscores the appropriateness of injunctive relief in this case. In Anderson, Clayton, plaintiffs sought to enjoin a special meeting at which shareholders were scheduled to vote on a complex recapitalization plan. The plaintiffs claimed that they were entitled to an opportunity to evaluate the recapitalization plan in light of a tender offer that was made only a few days before the scheduled shareholder meeting. The Court refused to

---

7 See also, Lerman v. Diagnostic Date, Inc., Del. Ch., 421 A.2d 906, 907, 914 (1980); Petty V. Penntech Papers, Inc., Del. Ch., 347 A.2d 140, 143 (1975).

8 The fact that the Director Defendants may have had the authority under Time's bylaws to change the meeting date is unavailing under the circumstances. Under Schnell and its progeny, "inequitable action does not become permissible just because it is legally possible." Id. at 439. See also Lerman v. Diagnostic Data, Inc., Del. Ch., 421 A.2d 906, 907 (1980).

enjoin the meeting. It did so, however, because it refused to assume that Anderson, Clayton's directors would not responsibly explore the tender offer -- an assumption that it felt could not be justified by the record, but one which cannot be avoided on the record before this Court.

Unlike the circumstances in Anderson, Clayton that gave the Court pause, in the instant case the facts support a conclusion that the Director Defendants standing for reelection are hell-bent on accomplishing the Warner transaction and plainly intend to use their power as directors to subvert the opportunities presented to shareholders by the Paramount bid. Even more compelling is the fact that, unlike the Anderson, Clayton litigants, Plaintiffs have no opportunity themselves to vote on the Time/Warner proposal. Rather, Plaintiffs are completely at the mercy of Defendants. Thus, under the Anderson, Clayton reasoning, injunctive relief is not premature but is necessary to interrupt the progression of events preordained to accomplish the Warner transaction with no accountability to shareholders.

Balanced against these irreparable harms which will befall Plaintiffs and the other non-management shareholders of Time should injunctive relief be denied, is the fact that a temporary restraining order will in no way harm Defendants except in the sense that the accountability such injunctive relief would ensure might provide them with a clear and irrefutable expression of shareholder dissatisfaction; simply voiding the election would not repair the ensuing confusion.

III. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS

A. The Director Defendants Have Breached Their Duties of Fairness and Candor in the Proxy Materials dated June 20, 1989, By Failing To Disclose Any Developments Regarding the Revised Time/Warner Transaction

The directors of a Delaware corporation owe to the stockholders whose approval is required or sought a stringent duty to disclose all information in their possession germane to the action in an atmosphere of complete candor. See e.g., Lynch v. Vickers Energy Corp., Del. Supr., 383 A.2d 278, 281 (1977). Accord Smith v. Van Gorkom, 488 A.2d 858, 890 (1985); In re Anderson, Clayton Shareholders Lit., Del. Ch., 519 A.2d 680, 689-90 (1986); Lacos Land Co. v. Arden Group. Inc., Del. Ch., 517 A.2d 271, 279 (1986). Completeness of disclosure, not adequacy, is required to satisfy the duty of candor. See Wacht v. Continental Hosts, Ltd., Del. Ch., C.A. No. 7954, Berger, V.C. (April 11, 1986). See also Lynch, 383 A.2d at 281.

A board's fiduciary duty to disclose all germane information applies both to corporate transactions and matters of corporate governance. Stroud v. Milliken Enterprises. Inc., Del. Supr., 552 A.2d 476, 480 (1989). Moreover, a board's decisions with respect to complete disclosure of germane information are not protected by the business judgment rule -- the good faith of the board plays no role in an analysis of whether it discharged its duty of candor. In re Anderson, Clayton, 519 A.2d at 675.

In determining whether a defendant has met his or her obligation to disclose all germane information, Delaware courts

look to the materiality standard applied by the federal courts with respect to disclosure issues under federal securities laws:

> An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. This standard is fully consistent with [Mills v. Electric Auto-Lite Co., 296 U.S. 375, 90 S. Ct. 616, 24 L.Ed.2d 593 (1970)] general description of materiality as a requirement that "the defect have a significant propensity to affect the voting process." It does not require proof of a substantial likelihood that disclosure of the omitted fact would have caused the reasonable investor to change his vote. What the standard does contemplate is a showing of a substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable shareholder. Put another way, there must be a substantial likelihood that the omitted fact would have been viewed by the reasonable investor as having altered the "total mix" of information made available.

TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976) quoted in Rosenblatt v. Getty Oil Co., Del. Supr., 493 A.2d 929, 944 (1985); see also Bershad v. Curtiss-Wright Corp., Del. Supr., 535 A.2d 840, 846 (1987); Smith v. Van Gorkom, Del. Supr., 488 A.2d 858, 890 (1985); Lacos Land, 517 A.2d at 279.

The Director Defendants of Time have attempted to twist Time's corporate machinery to their own devices and have failed completely to disclose material information to its shareholders. As noted above, by persisting with the original call for a meeting with a record date of May 1, 1989, the Director Defendants have effectively precluded a competing slate of nominations and have disenfranchised a substantial number of

current shareholders. Like in Schnell, supra, where the Delaware Supreme Court struck down an attempt to advance a stockholder meeting, the Director Defendants' "adjournment" of the June 23 shareholder meeting in order to maintain the May 1 record date was intended for an inequitable purpose, "contrary to the principles of corporate democracy." Id. at 439.

In addition, the Director Defendants' recent communications with shareholders fall woefully short of the complete disclosure of material facts mandated by Delaware law. As noted above, in response to the Paramount tender offer, the Director Defendants chose to declare war and, on June 20, sent proxy materials to all shareholders. Although the June 20 letter is, perhaps, most notable for its attempt to withdraw a fundamental corporate decision from Time's stockholders, it is also notable for rendering impossible that the only major decision it purports to leave to stockholders -- the reelection of the four Candidate Director Defendants -- will be the product of an informed "electorate."

In most duty of candor cases, there has been some disclosure to shareholders and the case turns on whether that disclosure of material facts has been "complete." In this case, however, there has been absolutely no disclosure to shareholders of the developments that occurred after the issuance of the joint proxy statement but prior to the June 20 letter pertinent to the vote on the Candidate Director Defendants. Indeed, one can read the letter and not realize the fact that the "proposed acquisition," as the June 20 proxy materials described it, is

going to occur -- absent court intervention -- because the Time Board signed away any ability to stop it. In addition, the letter does not explain or even mention:

1. the role played by each of the Candidate Director Defendants in Time's rejection of Paramount's all-cash $175 offer for all shares of Time and accompanying letter to Time offering to negotiate all terms of Paramount's offer;
2. the role played by each of the Candidate Director Defendants in deciding to attempt a two-tiered acquisition of Warner without shareholders, approval and to implement a lock-up share exchange with Warner in the face of the Paramount bid;
3. whether the Candidate Director Defendants urged, opposed or stood mute when the other directors abrogated their fiduciary duties by entering into the revised Time/Warner transaction on terms that deprived them of any discretion; and
4. the role played by the Candidate Director Defendants in manipulating the annual meeting dates, agenda, and record date and in other facets of the current plan to expand the Time Board to twenty-four directors and fill twelve of those seats with Warner directors to be appointed by Time directors.

Although the Director Defendants apparently saw no need to inform the shareholders, it cannot possibly be denied that the

developments were not just material; they were momentous. The events and actions described above caused Time stock to rocket $44 per share (after Paramount announced its bid), increasing the value of Time stock by approximately $2.5 billion, and then plummet $30 per share (after Time announced it was going to pursue acquiring Warner), costing Time shareholders $1.7 billion. Currently, with Paramount bidding $200 per share, these actions could cost Times shareholders well over $2.5 billion. In light of the material information not disclosed to Time shareholders, the Director Defendants clearly breached their duty of candor.

As Delaware's highest court recently stated in a case that is strikingly analogous on its facts to this one, the law relative to control contests "requires [of directors] the most scrupulous adherence to ordinary standards of fairness in the interest of promoting the highest values reasonably attainable for the stockholders' benefit." Mills Acquisition Co. v. Macmillan, Inc., Del. Supr., Nos. 415 & 416, Moore, J., slip op. at 4 (May 3, 1989), citing Revlon. Inc. v. MacAndrews & Forbes Holdings. Inc., Del. Supr., 506 A.2d 173 (1986).

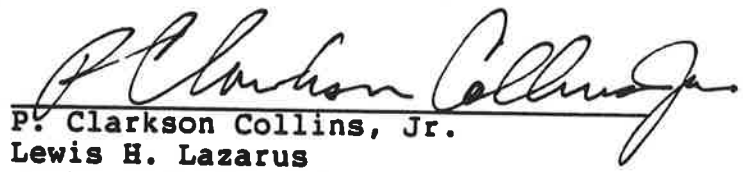
The Defendant Directors, finding themselves in a control contest, impermissibly have "acted out of a sole or primary desire to perpetuate themselves in office.," Macmillan, slip op. at 61, citing Unocal v. Mesa Petroleum Co., Del. Supr., 493 A.2d 946, 955 (1985). They have used the corporate machinery to obstruct the legitimate efforts of dissident stockholders in the exercise of their rights to undertake a proxy contest against

management, contrary to the plain command of Delaware law. Schnell v. Chris-Craft Industries, Inc., Del. Supr. 285 A.2d 437, 439 (1971). Such conduct warrants the restraint of postponing the Annual Meeting until such time as the stockholders may be fully informed of all material events germane to deciding how to vote in the election of the Candidate Director Defendants.

CONCLUSION

The Director Defendants, who are entrusted with the management of billions of dollars of assets which they do not own, derive their office and legitimacy solely through the consent of a fully informed electorate of beneficiaries. See Blasius Industries v. Atlas Corp., supra, slip op. at 21-23. Where, as here, the Defendant Directors seek to protect and implement a transaction which will entrench and enrich them while costing the stockholders over $2.5 billion in lost premiums from the competing Paramount offer, the legitimacy of their conduct must withstand the most searching scrutiny. To allow the will of the majority, as expressed only through the election process, to be thwarted or unfairly manipulated is a harm which is irreparable and should be enjoined by a court of equity.

MORRIS, JAMES, HITCHENS & WILLIAMS



P. Clarkson Collins, Jr.
Lewis H. Lazarus
Barbara MacDonald
222 Delaware Avenue
P.O. Box 2306
Wilmington, DE 19899
Attorneys for Plaintiffs

OF COUNSEL:

WILMER, CUTLER & PICKERING
Michael R. Klein
Richard W. Cass
Jane C. Sherburne
Thomas W. Jeffrey
Eric Markus
2445 M Street, N.W.
Washington, D.C. 20034-1420
(202) 663-6000

Dated: June 26, 1989