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Re: *In re infoUSA, Inc. Shareholders Litigation*
Consol. Civil Action No. 1956-CC

Dear Counsel:

Before me are the motion to stay of the Special Litigation Committee ("SLC") of the Board of Directors of nominal defendant infoUSA and several other motions regarding discovery. For reasons I explain below, I hereby grant the SLC's motion and stay this action until June 30, 2008. Consequently, the other pending motions are held in abeyance until then.

The long, sordid history of this case has been detailed elsewhere, and in its most recent chapter I determined that plaintiffs' amended complaint alleging waste

and breach of fiduciary duties was sufficient to withstand defendants' motion to dismiss.[1] Since that time, the vast leviathan of discovery in cases such as these has sprung to life, and the quibbles and disputes attendant to such a process have likewise arisen. On December 24, 2007, in response to the derivative litigation in this Court and an informal investigation by the Securities and Exchange Commission, the infoUSA board decided to form a special committee to review and analyze the facts and circumstances surrounding the claims raised in plaintiffs' amended complaint. About a month later, the SLC's authority was broadened to include the SEC investigation.

The SLC is a five-member committee that includes two directors the Court previously determined were disinterested[2] and three newly appointed members of the Company's board. The SLC has retained as counsel the firms of Covington & Burling LLP and Bouchard Margules & Friedlander, P.A., both of which are familiar with representing special committees. On January 30, 2007, the SLC moved to stay this case for 150 days to allow it to investigate the claims and issues and to determine what action is in the best interests of the Company's shareholders.

Plaintiffs oppose the stay. They argue that the SLC was formed "too late" to now obtain a stay in this case. Even if the SLC were properly formed, plaintiffs contend, a stay should still be denied because the SLC is advisory, because the SLC has not acted independently, and because the SLC's members are not independent.

It is well established that even in cases where demand is excused, a committee of disinterested directors may properly act for the board in the context of derivative litigation.[3] Over twenty years ago, Chancellor Brown explained the importance of staying such litigation when a corporation forms an SLC:

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[1] *See In re infoUSA S'holders Litig.*, C.A. No. 1956-CC, 2007 WL 3325921 (Del. Ch. Aug. 13, 2007).

[2] *See id.*

[3] *See Zapata Corp. v. Maldonado*, 430 A.2d 779 (Del. 1981); 1 EDWARD P. WELCH, ANDREW J. TUREZYN, AND ROBERT S. SAUNDERS, FOLK ON THE DELAWARE GENERAL CORPORATION LAW § 41.9 (5th ed. 2007 supp.); *see also Kaufman v. Computer Assocs. Int'l, Inc.*, C.A. No. 699-N, 2005 WL 3470589, at *3 (Del. Ch. Dec. 13, 2005) ("A special litigation committee formed in accordance with the landmark decision in *Zapata Corp. v. Maldonado* has broad powers to control litigation filed nominally on behalf of a corporation. Once such a committee is formed and takes control of a derivative litigation, the committee typically moves for a stay of all proceedings to allow it to complete its investigation promptly and without undue interference." (footnotes omitted)).

> If *Zapata* is to be meaningful, then it would seem that such an independent committee, once appointed, should be afforded a reasonable time to carry out its function. It would likewise seem reasonable to hold normal discovery and other matters in abeyance during this interval. If a derivative plaintiff were to be permitted to depose corporate officers and directors and to demand the production of corporate documents, etc. at the same time that a duly authorized litigation committee was investigating whether or not it would be in the best interests of the corporation to permit the suit to go forward, the very justification for the creating of the litigation committee in the first place might well be subverted.[4]

Thus, this Court has routinely granted reasonable stays to allow SLCs to complete their investigations.[5]

Plaintiffs have not convinced me that this case presents an exception to the general rule. Plaintiffs' first argument—that the committee was somehow formed "too late"—misses the mark. The fact that I have already determined demand is excused demonstrates why the board *must* act by means of a committee; it does not in any way explain why it cannot act through an SLC. The Supreme Court has explicitly noted that "even in a demand-excused case, a board has the power to appoint a committee of one or more independent disinterested directors to determine whether the derivative action should be pursued or dismissal sought."[6] Indeed, this Court has previously granted an SLC's motion to stay *after* determining that demand is excused.[7]

Second, plaintiffs express concern that the board resolution empowering the SLC created merely an advisory committee with little or no actual power. I do not

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[4] *Abbey v. Computer & Commc'ns Tech. Corp.*, 457 A.2d 368, 375 (Del. Ch. 1983).
[5] *E.g.*, *Charal Inv. Co., Inc. v. Rockefeller*, C.A. No. 14397, 1995 WL 684869 (Del. Ch. Nov. 7, 1995).
[6] *Aronson v. Lewis*, 473 A.2d 805, 813 (Del. 1984), *overruled on other grounds by Brehm v. Eisner*, 746 A.2d 244 (Del. 2000).
[7] *Compare Katell v. Morgan Stanley Group, Inc.*, C.A. No. 12343, 1993 WL 205033, at *1 (Del. Ch. June 8, 1993) (determining that plaintiffs alleged demand futility and were excused from making demand on the board), *with Katell v. Morgan Stanley Group, Inc.*, C.A. No. 12343, 1993 WL 390525 at *4 (Del. Ch. Sept. 27, 1993) (granting SLC's motion to stay proceedings).

read the resolution to do so. The resolution affirms "that the SLC shall have the authority to investigate, review, and analyze the facts and circumstances that are the subject of the Derivative Litigation, as well as any additional facts and circumstances that may be at issue in any related governmental inquiry, investigation, or proceeding . . . ." The resolution further grants the SLC "full and exclusive authority to consider and determine whether or not the prosecution of the claims asserted in the Derivative Litigation . . . is in the best interests of the Company and its shareholders, and to further consider and determine what action should be taken on behalf of the Company with respect to the Derivative Litigation and any related governmental inquiry, investigation, or proceeding . . . ." This language is mandatory and vests the SLC with the "full and exclusive authority" to investigate the pending claims and to "determine" what course of action the Company should take. I am confident, therefore, that the SLC has the authority it needs to conduct its investigation and that the Company knows how unpleasant a forum this Court will become if it tries to impede or interfere with the SLC's work.

Finally, plaintiffs' challenge to the independence of the SLC is not appropriately considered at this time. Plaintiffs' allegations with respect to the independence of the committee's members and actions do not amount to the highly unusual circumstances present in *Biondi v. Scrushy*[8] and, therefore, I agree with Vice Chancellor Strine that "judicial economy is served by permitting [the independence] issue to be addressed after the committee has issued its report, because the court may then consider questions of committee independence at the same time it examines the reasonableness of the bases for the committee's conclusion."[9] I reiterate Vice Chancellor Lamb's admonition that "both the independence of the SLC and the good faith of its inquiry [will] be the subject of close scrutiny if the investigation result[s] in a recommendation that the litigation be dismissed."[10]

Consequently, as this Court "almost invariably" does, I hereby grant the SLC's motion to stay.[11] The SLC appears to have been properly formed, and the fact that it was formed after demand was excused does not render its formation "too late." Moreover, the SLC has been given adequate authority and power by the Company's board to conduct its investigation and determine what course of action is in the best interests of the shareholders. Because at present there are no

[8] 820 A.2d 1148 (Del. Ch. 2003).
[9] *Id.* at 1164.
[10] *Sutherland v. Sutherland*, C.A. No. 2399-VCL, 2008 WL 571253, at *1 (Del. Ch. Feb. 14, 2008).
[11] *Biondi*, 820 A.2d at 1164.

"undisputed facts [that] will make it impossible for the court later to accept a decision of the special litigation committee to terminate the derivative litigation,"[12] the Court will defer its evaluation of the SLC's independence until the time the SLC moves to dismiss—should it ever do so. Moreover, because I am granting this stay, I need not rule on the pending discovery motions.

IT IS SO ORDERED.

Very truly yours,

William B. Chandler III

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[12] *Id.* at 1165.