

COMMITTEE OF CONCERNED SHAREHOLDERS

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VIA EMAIL

November 18, 2003

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

Re: File No. S7-19-03 (“Security Holder Director Nominations”)
Letter of Comment of Howard L. Boigon dated November 14, 2003
Letter of Comment of Wachtell, Lipton, Rosen and Katz dated November 14, 2003

Dear Mr. Katz:

On August 1, 2002, the Committee of Concerned Shareholders and James McRitchie, Editor of CorpGov.Net, jointly filed Petition for Rulemaking (SEC File No. 4-461)(“Petition”) with the Securities and Exchange Commission (“SEC”). The Petition seeks “equal access” to the corporate ballot for ALL Shareholders by using the Shareholder Proposal procedure.

On or about November 14, 2003, Howard L. Boigon (“Boigon”), Vice President - General Counsel of Westport Resources Corporation, and Wachtell, Lipton, Rosen & Katz (“Wachtell”), filed separate letters of comment with respect to S7-19-03. This letter is written to comment upon some of the statements in those letters.

Each letter supports the status quo --- Shareholders do not have a realistic opportunity to nominate and cause the election of truly independent Directors in an effort to secure Director accountability. Each assumes that there are Shareholders lurking in the shadows who will engage in proxy contests regardless of how well Directors perform their duties. They further assume that Shareholders do not have the ability to determine what is in their own best financial interests. Neither letter discloses that their opinions/comments are far from objective --- as attorneys, the writers are financially dependent on Managements and Directors whose interests could be negatively impacted if the existing corporate governance system were modified as set forth in S7-19-03 and/or as suggested in the Petition.

Boigon Letter

Essentially, Boigon's letter sets forth so many vague and ambiguous terms that it raises more questions than it purports to answer.

It recommends an "independent governance committee" as the "best way to select qualified board members." There is no definition of "independent" or why such is the "best way."

There is a concern that "Shareholder nominees will inevitably represent the special interests of the shareholders that nominate them ..." "Special interests" are not defined. Boigon implicitly assumes that incumbent Managements and Directors, who select Director candidates, have no "special interests" to perpetuate their own rule and/or are not Shareholders.

Recent financial reforms have not provided Shareholders with an effective means by which to seek accountability from Directors.

Proxy contests "could dissuade qualified individuals from serving as corporate directors." The implication is that Director-candidates, not anointed by Management, are not "qualified." Persons who could be so easily intimidated should not serve as Directors. Further, the comments incorrectly imply that the pool of potential Director-candidates is extremely limited.

We are informed that the proposed rule "could produce unintended consequences," but are not informed of what they could be. Such a generic argument could be employed in all circumstances to defeat progress and democratic values. Our Founding Fathers probably heard similar statements.

Wachtell Letter

Wachtell dramatically concludes, without logical support, that the unintended consequences "will have such an adverse impact on public companies as to threaten serious harm to the nation's economic well-being." Could it also result in the end of Western Civilization, as we know it? Again, our Founding Fathers probably heard and, fortunate for us, ignored similar prognostications of doom and gloom.

Wachtell claims, "The advocates of the proposed election contest rules have not demonstrated any benefit that would result from increasing the frequency of election contests or the frequency with which dissident directors are elected to public boards." Contests do not occur in a vacuum. Contests would be unlikely to occur where Directors and/or Managements act fairly and competently. Further, as we have previously stated, in substance, the proposed rules are a sham upon the investing public as they are so restrictive. The proposed rule, in its present form, would convey no benefit to Shareholders. Thus, Wachtell ingenuously asks for a demonstration of that which cannot be demonstrated.

Wachtell states, in substance, ownership of a corporation is not sufficient to entitle Shareholders with “more voice or more control.” Wachtell contends that ownership of corporate stock differs greatly from ownership of other property, because there are so many “corporate constituencies.” Thus, since there are so many “corporate constituencies,” the status quo should remain in effect. Wachtell, then, leaps to the conclusion that Shareholders want “to control all aspects of a company’s operation.” However, Shareholders “elected” a Board of Directors, which owe a fiduciary duty to the Shareholders, and select and terminate Management, which controls day-to-day operations. Wachtell need not fear that Shareholders would attempt to become supervisors of day-to-day operations.

Wachtell claims that Shareholders’ ability to seek accountability by replacing errant Directors would cause “destabilization.” It appears that the USA is able to survive such alleged “destabilization” every four years, but corporations are unable to do so. “Vice Chancellor Leo E. Stine of the Delaware Chancery Court ... [stated] ‘Roosevelt and Lincoln stood for election’ when the United States was at war.” (NYT, 11/18/03, “Investor Seeks a HeathSouth Meeting”)

Wachtell hauls out the corporate litany of purported problems, e.g., “special interests,” “balkanized board” destroying “collegially.” We are lectured that there are “many avenues now existing for shareholders to make their views known to executives.” However, the fact is that executives do not respond and there is nothing that Shareholders can do about it. We are told that it will become “harder to recruit top director candidates.” We are not informed how to recognize a “top director candidate.” Enron, WorldCom, Adelphia and others once bragged to the investing public of their “top directors.”

Wachtell informs us that Directors may ignore Shareholders as, “The board has a fiduciary duty to make its own determination as opposed to complying automatically with the results of the shareholder vote.” In order words, it is Wachtell’s understanding that the Board of Directors owes a fiduciary duty to Shareholders, but, in exercising that fiduciary duty, the Board of Directors should ignore the Shareholders and do what it sees fit to do. (One must wonder whether Wachtell feels that it can do the same when exercising its fiduciary duties to its clients.)

Wachtell argues that the SEC lacks legal authority to treat Shareholders holding a certain percentage of stock differently than Shareholders holding less. However, one might wonder why that argument, if it is legitimate, has not been used to eliminate all Shareholder rights under SEC Rule 14a-8 (Shareholder Proposals that require ownership of \$2,000 of stock for one year).

Wachtell claims that the SEC’s jurisdiction is limited to “disclosure and process-oriented rules.” Substantially all states allow all Shareholders of record to nominate Director-candidates. The SEC’s mandate to protect investors should require that Director-candidacies be disclosed in detail in a proxy statement and that the process through which

an election is conducted be fair, e.g., the names of outsider nominated Director-candidates appear on the corporate ballot.

Conclusion

The aforesaid comments, by legal counsel who are well paid to protect the status quo, are devoid of merit and should be treated accordingly.

Very truly your,

Les Greenberg, Chairman
Committee of Concerned Shareholders

LG:ms