

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

NEW JERSEY CARPENTERS ANNUITY :
FUND and NEW JERSEY CARPENTERS :
PENSION FUND, on behalf of :
themselves and all others :
similarly situated, :
:
Plaintiffs, :
:
vs. : Civil Action
:
SMITH INTERNATIONAL, INC., :
JOHN YEARWOOD, DOUGLAS L. :
ROCK, JAMES R. GIBBS, LOREN K. :
CARROLL, ROBERT KELLEY, DUANE :
C. RADTKE, LUIZ RODOLFO LANDIM :
MACHADO, and SCHLUMBERGER :
LIMITED (SCHLUMBERGER N.V.), :
:
Defendants. :

Civil Action
No. 5259-VCL

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Chancery Court Chambers
New Castle County Courthouse
Wilmington, Delaware
Friday, March 19, 2010
4:00 p.m.

- - -

BEFORE: HON. J. TRAVIS LASTER, Vice Chancellor.

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TELECONFERENCE

- - -

CHANCERY COURT REPORTERS
500 North King Street - Suite 11400
Wilmington, Delaware 19801-3759
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1 APPEARANCES:

2 SETH D. RIGRODSKY, ESQ.

3 BRIAN D. LONG, ESQ.

4 Rigrodsky & Long, P.A.

5 -and-

6 BENJAMIN Y. KAUFMAN, ESQ.

7 KENT A. BRONSON, ESQ.

8 of the New York Bar

9 Milberg LLP

10 for Plaintiffs the New Jersey

11 Carpenters Annuity Fund and New Jersey

12 Carpenters Pension Fund

13 GREGORY P. WILLIAMS, ESQ.

14 BLAKE ROHRBACHER, ESQ.

15 Richards, Layton & Finger, P.A.

16 -and-

17 RACHELLE SILVERBERG, ESQ.

18 of the New York Bar

19 Wachtell, Lipton, Rosen & Katz

20 For Defendants Smith International, Inc.,

21 Douglas L. Rock, Loren K. Carroll, Dod

22 A. Fraser, James R. Gibbs, Robert Kelley,

23 Luiz Rodolfo Landim Machado, John

24 Yearwood, and Duane C. Radtke

EDWARD P. WELCH, ESQ.

EDWARD B. MICHELETTI, ESQ.

Skadden, Arps, Slate, Meagher & Flom LLP

for Schlumberger Limited

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1 THE COURT: Travis Laster speaking.

2 MR. WELCH: Good afternoon, Your
3 Honor.

4 THE COURT: That sounds like
5 Mr. Welch.

6 MR. WELCH: It is, Your Honor, and my
7 partner, Ed Micheletti.

8 MR. WILLIAMS: Greg Williams from
9 Richards Layton on behalf of the Smith Industries,
10 both corporate and individual defendants. And my
11 co-counsel, Rachelle Silverberg from Wachtell, Lipton
12 is on the line and will speak on behalf of us.

13 MS. SILVERBERG: Good afternoon, Your
14 Honor.

15 THE COURT: Good afternoon. We have
16 somebody from the plaintiffs?

17 MR. RIGRODSKY: Seth Rigrodsky and
18 Brian Long. And with me on the phone is
19 Benjamin Kaufman and Kent Bronson of Milberg firm.
20 They have been admitted pro hac vice and will be
21 presenting for plaintiffs.

22 THE COURT: Thank you, everyone, for
23 getting on the line.

24 This is really for me to get some

1 information so that I can figure out what we need to
2 do in terms of scheduling on this motion to proceed in
3 a single jurisdiction. And I expect that the
4 defendants will be the ones who will have the answers
5 to this -- to the questions. Certainly, if the
6 plaintiffs have some input, that would be great.

7 The first thing I'm wondering is the
8 timing on the transaction. I tried to do some looking
9 in the public filings, and I saw you have a drop-dead
10 date that's pretty far off -- indeed next year -- but
11 I was curious as to what the status is in terms of
12 getting any necessary regulatory approvals, and where
13 we are in the disclosure process, and what the plan is
14 for any potential stockholders meeting.

15 MS. SILVERBERG: This is
16 Rachelle Silverberg, Your Honor, from
17 Wachtell, Lipton.

18 The preliminary proxy has not been
19 filed yet. The earliest that we expect it to be filed
20 would be the end of this month. Assuming that that
21 deadline is met, that there is no review by the SEC,
22 and that everything else happened at the earliest
23 possible date, the earliest time for a shareholder
24 meeting would be some time shortly after mid May.

1 But, again, we think that it's more likely that the
2 vote would be held somewhat after that. It could be
3 held some time in June and may actually be held
4 somewhat later than that.

5 THE COURT: That's very helpful.
6 Thank you.

7 Now, in terms of the Texas cases, I
8 notice that they're currently from -- they seem to be
9 assigned to multiple districts but all within
10 Harris County. Those of you who are defendants in
11 those actions, does that mean these are before a
12 single judge, who I can pick up the phone and talk to,
13 or are they currently before multiple judges?

14 MS. SILVERBERG: This is
15 Rachelle Silverberg, again. There are four cases that
16 have been filed in Harris County. Each of the four
17 cases is currently pending before a different state
18 court judge. The plaintiffs in each of the four cases
19 have filed motions to consolidate and for appointment
20 of lead plaintiff. Under the Texas rules, the judge
21 that has the first filed case will hear the motion to
22 consolidate, and that motion is currently scheduled to
23 be heard before that judge on March 26th. For the
24 Court's reference, the judge is

1 Judge Alexandra Smoots-Hogan.

2 THE COURT: All right. And you said
3 that she's scheduled to hear this on the 26th?

4 MS. SILVERBERG: Correct, Your Honor.

5 THE COURT: All right. Well, that's
6 all very helpful.

7 I will tell you that, as I've done in
8 another case, what I'm inclined to do, because I agree
9 that there is no reason for this to proceed in two
10 different jurisdictions, I think that, you know,
11 either court could deal with this. And it only makes
12 sense for this to get litigated in one place. So I do
13 plan to pick up the phone and call the Texas judge and
14 see what her feelings are so that she and I can see if
15 we can't avoid duplication of effort and having two
16 people looking at this at once.

17 In the meantime, I do -- I would like
18 some additional briefing on the motion to proceed in
19 one jurisdiction. And the issue I'm interested in is
20 actually the fault of Miss Silverberg's firm, but in a
21 good way, and that's that I've seen in Mr. Mirvis'
22 writings that there's legislative history on SLUSA
23 supporting the idea that the Delaware carveout to
24 SLUSA, pursuant to which this action proceeds in state

1 court, was intended to vest jurisdiction in the court
2 of the state of incorporation, as opposed to simply
3 generally.

4 So what I would like to have happen --
5 and since I understand that people have some
6 scheduling issues coming up because of holidays, so
7 I'm happy to have the parties work out what the timing
8 on this ought to be. But I'd like the defendants, who
9 moved for this single jurisdiction issue, to put in a
10 supplemental paper addressing how the legislative
11 history of SLUSA impacts this single forum argument.
12 Once that's in, the plaintiffs will be in a position
13 to respond to it, should they want to proceed here.

14 Obviously, if the plaintiffs
15 coordinated with their friends in Texas and everything
16 happens here or there, that moots the issue. But I
17 want the plaintiffs to be able to respond after that
18 supplementation is made, and then I'll be able to have
19 that and take that into account in terms of deciding
20 if for some reason the Texas judge and I aren't able
21 to figure out what makes sense -- although I certainly
22 hope we will -- I'll be able to take that into account
23 when deciding what I need to do about the case.

24 MR. KAUFMAN: This is Benjamin Kaufman

1 from Milberg for the plaintiffs.

2 On the coordination issue, I would
3 like the Court to know -- and I spoke to
4 Miss Silverberg early this morning -- that we reached
5 out to all four of the plaintiffs' counsel in the
6 Texas actions. They have not yet, as far as I
7 understand it, aligned themselves in any kind of
8 leadership structure. But each one of them agreed
9 that, if there becomes a situation in which we have
10 parallel litigation going forward in two
11 jurisdictions -- that is, Delaware and Texas -- we all
12 agree that we will coordinate discovery. Everybody
13 has agreed to that.

14 I also agreed with them that, after we
15 had this conference call with Your Honor today, I
16 would call them early next week and have further
17 discussions with them about possible coordination.

18 THE COURT: Excellent. I'm very glad
19 you're doing that. And I appreciate you making that
20 effort. I'm perfectly amenable to having the Texas
21 folks come here and participate all together as part
22 of an organizational structure here. I'm willing to
23 have you all coordinate.

24 What I don't think should happen --

1 and this is why I want to pick up the phone and call
2 my colleague -- is I don't think that we need to have
3 two courts expending resources. I mean, if we end up,
4 we end up. But I hope that something rational can be
5 worked out so that everybody isn't put in that
6 position.

7 I should also say, for the benefit of
8 everyone, and, if you are ending up talking to the
9 Texas counsel that, in terms of proceedings here, I do
10 think the Rigrotsky & Long firm needs to be involved
11 in a meaningful way. And if anyone tries to use the
12 decision that I wrote in another case against them in
13 terms of jockeying for position, you can put into the
14 record that my view is that that was an oversight in a
15 particular case. And in my view -- although I haven't
16 seen the record yet -- but my preliminary view is that
17 there wasn't enough involvement by Delaware counsel in
18 that case, and that it should have no reflection on my
19 view as to whether they can proceed appropriately in
20 this matter.

21 MR. RIGRODSKY: Thank you, Your Honor.

22 THE COURT: All right.

23 With that, what I would like to do is
24 to have the parties agree on a schedule that gets me

1 this information on the SLUSA question promptly. And
2 assuming that, you know, people can work this out, I
3 would hope to have that both in terms of the
4 supplementation from the defendants and then a
5 response from the plaintiffs in about, you know, ten
6 days or so. Now, there's no magic to that. If you
7 can do it a little bit faster, that's great. If you
8 need a little extra time, that's great, too. But
9 that's what I would like to have happen.

10 In the meantime, as I say, I'm going
11 to pick up the phone -- I will certainly, to the
12 extent that I do, am able to reach my colleague in
13 Texas. If we are able to work something out, I will
14 obviously get everybody on the phone and let you know.

15 Does anyone have any questions of me?

16 MR. KAUFMAN: This is
17 Benjamin Kaufman, again, of Milberg. Miss Silverberg
18 and I earlier today discussed a briefing schedule. We
19 were unaware obviously of Your Honor's desire to have
20 the SLUSA issue briefed. I don't know if the ten days
21 is going to be enough because of the intervening
22 Passover holiday. But I think we'll be able to work
23 it out. It may be more than ten days.

24 THE COURT: Again, that's fine. I

1 just don't want this to linger, because it's something
2 that I want to be able to take into account, if I have
3 to decide whether this action should proceed or not,
4 vis-a-vis Texas. Hopefully we won't get there and we
5 won't have any problem.

6 So if you guys need to take some more
7 time, that's perfectly fine with me. I just don't
8 want this to sit out there and not be resolved.

9 MS. SILVERBERG: This is Rachelle. We
10 will confer with plaintiffs' counsel and get you
11 something promptly on this.

12 THE COURT: Wonderful.

13 Again, I appreciate everyone getting
14 on the phone on a Friday afternoon when the NCAAs are
15 on. Thank you for doing it so promptly. And the
16 information that you provided is very helpful to me.

17 MR. WELCH: Thank you, Your Honor.

18 THE COURT: Have a good day.

19 (Teleconference adjourned at
20 4:13 p.m.)

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