

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

STEPHEN P. LAMB
VICE CHANCELLOR

New Castle County Court House
500 N. King Street, Suite 11400
Wilmington, Delaware 19801

December 6, 2005

Alan J. Stone, Esquire
Morris, Nichols, Arsht & Tunnell
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899

Gregory P. Williams, Esquire
Richards, Layton & Finger
One Rodney Square
P.O. Box 551
Wilmington, DE 19899

***RE: Oliver Press Partners, LLC v. W. Patrick Decker, et al.
C.A. No. 1817-N***

Dear Counsel:

By their complaint, filed at the close of business on Friday, December 2, 2005, the plaintiffs present a facial challenge to the advance notice bylaw provision of MatrixOne, Inc., a Delaware corporation. In addition, the complaint claims that the board of directors of MatrixOne acted in breach of their fiduciary duty of loyalty in fixing the date for the 2005 Annual Meeting of Stockholders for December 22, 2005, alleging that they did so to deprive the plaintiffs of the opportunity to nominate an opposing slate of directors. According to the complaint, if the board had, instead, scheduled the meeting to take place in 2006, the plaintiffs would have had 10 days from the date of announcement of the date of the meeting to make board nominations. The plaintiffs learned of the December 22 meeting date no later than November 21, 2005, when MatrixOne filed its proxy statement with the SEC.

The plaintiffs ask the court to expedite the proceedings and to schedule a trial on the merits of their complaint in advance of the December 22, 2005 meeting date. In response to the defendants' counsel's opposing arguments, the plaintiffs suggest, alternatively, the possibility of a preliminary injunction hearing in the same time frame.

A skeletal recitation of the facts suffices for purposes of this letter. MatrixOne is a software company, headquartered in Massachusetts. On April 26, 2005, MatrixOne announced that it was conducting an internal investigation of its revenue accounting. That investigation delayed the filing of MatrixOne's 2005 Form 10-K until November 9, 2005. Similarly, its Form 10-Q for the period ending October 1, 2005 (due November 10, 2005) was not filed until November 15, 2005. On November 21, 2005, MatrixOne filed proxy material for its 2005 annual meeting, noticing the meeting for December 22, 2005. MatrixOne regularly holds its annual meeting in the first half of November.

The court will deny the pending motion to expedite for two interrelated reasons.

First, the plaintiffs delayed in filing their complaint and, as a result of their delay, there is an unreasonably short period of time remaining before December 22 to do all that would need to be done to resolve the plaintiffs' claims. This is perhaps more true of the plaintiffs' request for a trial on the merits, but it is also true of their modified request for a preliminary injunction proceeding. The plaintiffs waited from November 21 (a Monday) until the end of the day on December 2 (a Friday) to file this lawsuit. That delay wasted nearly half of the time potentially available to prepare, hear and decide this case before December 22. This extensive delay is unquestionably prejudicial to the defendants' ability to present their defense. Similarly, while this court (and counsel) can act quickly when circumstances warrant prompt action, the plaintiffs' delay in filing undoubtedly imposes additional burdens on the court and could prejudice the court's ability to adjudicate the matter fairly.

Second, while extraordinary speed is sometimes required, the plaintiffs have neither alleged in their complaint nor otherwise articulated a basis for concluding that they would be irreparably harmed by a denial of relief in advance of the December 22 meeting. On the contrary, it appears to the court that an adequate remedy could be fashioned after the fact. For example, if the plaintiffs succeed on the merits of their claim in advance of the 2006 annual meeting, the court could require, if the circumstances warranted such relief, that the class of directors

elected this year stand again for election next year.¹ Given the fact that the plaintiffs do not appear to have formed an intention to run a competing slate of directors until December 2, 2005, and waited until that date to begin this litigation, the court's ability to fashion such after-the-fact relief weighs against imposing the unreasonable burdens and extraordinary costs entailed by the expedition sought.

Finally, the court observes that there is no evidence of any recent extraordinary change of circumstances at MatrixOne justifying the plaintiffs' request for relief from the 120-day advance notice bylaw provisions they challenge.² On the contrary, all the complaint alleges in this regard is that MatrixOne's most recent Form 10-Q, filed November 15, 2005, reports disappointing results for the first quarter of the current fiscal year. Given the previously announced internal accounting investigation, this development adds little to the plaintiffs' equities.

For these reasons, the motion for expedited treatment is DENIED. IT IS SO ORDERED. The court directs the parties to confer upon and to submit a scheduling order designed to bring this matter to trial promptly.

/s/ Stephen P. Lamb
Vice Chancellor

¹ See, e.g., *Millenco L.P. v. meVC Draper Fisher Jurvetson Fund I, Inc.* 824 A.2d 11, 19 (Del. Ch. 2002) (ordering that a class of directors elected to three year terms by means of a false and misleading proxy statement should stand for reelection at the next meeting).

² Compare *Hubbard v. Hollywood Park Realty Enters., Inc.*, 1991 Del. Ch. LEXIS 9 (Del. Ch. Jan. 14, 1991) (because settlement appointing a dissident to the board would foreseeably generate controversy, duty existed to waive the advance notice bylaw for others to ensure a fair election contest).