IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STONINGTON PARTNERS, INC., et. al.,	)	
	)	C.A. No. 18524-NC
Plaintiff,	)	
	)	
v.	)	
	)	
LERNOUT & HAUSPIE SPEECH PRODUCTS, N.V., et al.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

Date Submitted: September 10,2002
Date Decided: October 23,2002

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JACOBS, VICE CHANCELLOR

Pending are two motions-one by a co-defendant and the other by the plaintiffs. This case, which asserts a claim of fraud, was removed from this Court to the United States District Court for the District of Delaware ("District Court"). The District Court entered *defaults,* but not *default judgments,* against three of the five defendants. Thereafter, the case was remanded to this Court, and the plaintiffs moved for the entry of default judgment against two of the defendants. The remaining defendant then moved for an order enlarging his time to answer, move, or otherwise plead. For the reasons discussed below, the motion for default judgment will be granted, and the motion to enlarge time will be denied.

I. FACTS

A. The Parties

The facts recited below are derived from the well-pled allegations of the complaint. The plaintiffs are Stonington Partners, Inc., the Stonington Capital Appreciation 1994 Fund, L.P., and Stonington Holdings, L.L.C. (collectively "Stonington").[1] Before May 5, 2000, Stonington owned approximately 96% of the issued and outstanding capital stock of the

[1] Stonington Partners, Inc., a Delaware corporation, is the management company that controls the Stonington Capital Appreciation 1994 Fund. Stonington Capital Appreciation 1994 Fund, L.P. is a Delaware limited partnership, and Stonington Holdings, L.L.C. is a Delaware limited liability company. All three plaintiff entities have their principal place of business in New York.

Dictaphone Corporation ("Dictaphone"), a Delaware corporation. Headquartered in Connecticut, Dictaphone develops, manufactures, markets, services, and supports integrated voice and data management systems and software.

The corporate defendant, Lemout & Hauspie Speech Products, N.V. ("L&H" or the "Company"), is a Belgian corporation having principal places of business in Ieper, Belgium and Burlington, Massachusetts. L&H is a developer, licensor, and provider of advanced speech recognition and language technologies, products, solutions, and services.

The three individual defendants involved in the pending motions are Jozef Lernout ("Lemout"), Pol Hauspie ("Hauspie"), and Nico Willaert ("Willaert"). Lemout and Hauspie are co-founders and directors of L&H, and until November 9, 2000, were managing directors and co-chairmen of L&H's board of directors. Willaert was L&H's vice-chairman, and until November 9, 2000, was a managing director. Both Willaert and Hauspie were directors of the Company until November 22, 2000.

B. Facts Relevant To The Underlying Claim

In May of 2000, Stonington sold their 96% interest in Dictaphone to L&H in exchange for $490 million of L&H stock. Thereafter, L&H acquired the remaining 4% stock interest in Dictaphone though a cash-out

merger of Dictaphone into a wholly owned subsidiary of L&H. In early November 2000, some six months after the merger, L&H announced that because of "accounting irregularities," it had restated its publicly-filed financial statements for the years 1998, 1999, and the first two quarters of 2000. That announcement, it is claimed, constituted an admission by L&H that those financial statements contained intentional misstatements and omissions of material facts. The effect of that restatement was to wipe out $373 million of revenues that L&H had publicly reported for the period January 1998 through June 2000.

Soon thereafter, on November 29, 2000, L&H filed for bankruptcy in the United States Bankruptcy Court for the District of Delaware, and at the same time, it commenced analogous proceedings in Belgium. The combined effect of these developments was to render essentially worthless the $490 million of L&H stock that Stonington had received in exchange for their Dictaphone stock six months before.

On November 27, 2000, Stonington commenced this action in this Court against L&H, Lemout, Hauspie, Willaert, and Gaston Bastiaens ("Bastiaens").[2] In this action, the plaintiffs, who claim that the defendants

[2] Bastiaens was the President and Chief Executive Officer of L&H until August 25, 2000. Although Bastiaens is a defendant in this action, he is not involved in the two pending motions because he has appeared and defended this action in a timely manner.

defrauded them, seek rescission of the transaction in which Stonington exchanged its Dictaphone stock for the now-worthless L&H stock. In addition, the plaintiffs seek other equitable relief and money damages. Stonington claims that these L&H executives deliberately misled Stonington to believe L&H was financially sound, thereby inducing Stonington to sell its Dictaphone stock to L&H.

Lemout, Hauspie, and Willaert were served with process on December 6, 2000. Although the fourth defendant, Bastiaens, appeared and defended the case in conformity with this Court's rules, Hauspie, Willaert, and Lemout made no effort to appear or otherwise defend until after Stonington had moved for the entry of default judgment in this Court. One month later, this case-insofar as it proceeded against L&H-was automatically stayed under Section 362 of the United States Bankruptcy Code. [3]

On January 11,200 1, defendant Bastiaens removed this action to the District Court. Lemout, Hauspie, and Willaert did not participate in the removal, nor did they appear or otherwise defend themselves in that court. As a result, the District Court Clerk on April 12,200 1 entered defaults against Lemout, Hauspie, and Willaert under Rule 55(a) of the Federal Rules

[3] 11 U.S.C. § 362.

of Civil Procedure ("F.R.C.P.").[4] On September 14, 2001, after further proceedings, the District Court entered an order remanding the case to this Court. At the time of the remand, Stonington had not yet formally moved for the entry of default judgments in the District Court.

On October 30, 2001—six months after entry of the default against him, and eleven months after this action was filed-Lemout moved for an enlargement of time to answer or otherwise respond to the complaint. Not until January 11, 2002 did Hauspie or Willaert enter an appearance in this action, for the purpose of resisting Stonington's motion for the entry of default judgment against them.

II. THE CONTENTIONS AND ISSUES

A. The Relevant Motion And Analytical Framework

Typically, a judicial opinion recites the parties' contentions and thereafter proceeds to identify and then resolve the issues that those

[4] Defaults, not default judgments, were entered. In federal court, the entry of a default is a prerequisite to obtaining a default judgment- F.R.C.P. 55(a); 1 OA WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE, $2682 (2001). Under F.R.C.P. 55(a), the Clerk may enter a default against a party against whom a judgment for relief is sought and where that party has failed to plead or otherwise defend. Under Rule 55(b)(2), the court may enter a default judgment where a party entitled to a judgment has applied for it. Rule 55(b) governs the entry of default judgments in this Court. While our Rule 55(b) is very similar to the counterpart Federal Rule, it does not require or provide for the antecedent entry of a default.

contentions generate. In this case, however, a preliminary analysis is required because to some extent the two pending motions overlap. As a result, certain of the parties' contentions are made irrelevant and need not be considered. Thus, in this Section II.A, the Court will first identify the irrelevant contentions that need not be considered. Thereafter, in Sections II.B and II.C, respectively, the Court will recite the contentions that are relevant and summarize the issues that flow therefrom.

The two pending motions are: (i) the plaintiffs' motion for entry of default judgment against defendants Hauspie and Willaert under Rule 55(b),[5] and (ii) defendant Lemout's motion to enlarge his time to answer or otherwise respond to the complaint under Rule 6(b).[6] Of these two motions, the only one that is analytically relevant is the plaintiffs' motion for entry of default judgment. Lemout's motion to enlarge time adds nothing to what would otherwise be considered in analyzing the default judgment motion because Lemout's enlargement motion merely seeks the relief that would automatically flow if the Court declines to enter a default judgment

[5] Rule 55(b) provides that when a party against whom relief is sought has failed to appear, judgment may be entered against the absent party. The party entitled to the default must apply to the Court for such relief.

[6] Rule 6(b) allows the Court to expand the time within which an act required by the Rules or Court may be done. Once the original prescribed time period has expired, the Court, upon motion, may permit the act to be done where the party's failure to act was the result of excusable neglect.

against him. Indeed, Lemout's motion is essentially a collection of arguments, styled as a "motion to enlarge time," setting forth reasons why a default judgment should not be entered against him. Accordingly, Lemout's arguments will be addressed within the analytical framework of the plaintiffs' motion for default judgment. The considerations that govern both motions are identical and, moreover, the plaintiffs intend to move for default judgment against Lemout if his motion to enlarge time is denied.[7]

In opposing the plaintiffs' motion for default judgment, Hauspie and Willaert urge that the defaults entered against them in the District Court should be vacated. I find that exercise to be unnecessary because, in the federal system, the entry a of default has no *res judicata* or other preclusive fact-determining effect.[8] The only effect of a clerk-entered default in a federal court is that it gives an adverse party standing to move for a default judgment[9]-a motion that, if granted, may be undone through the vehicle of a motion to vacate the entry of the default."

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[7] Thus, the Court addresses Lernout's arguments as if the plaintiffs had already moved for the entry of a default judgment against him.

[8] *Tomai-Minogue v. State Farm Mut. Auto. Ins. Co., 770* F.2d 1228, 1233 & n.7 *(4th* Cir. 1985).

[9] *United States v. Di Mucci, 879* F.2d 1488 (7th Cir. 1989).

[10] Because the default is a prerequisite to a default judgment in the federal courts, the effect of vacating the default is to prevent the entry of a default judgment. In cases where relief from a default is being sought, the U.S. Court of Appeals for the Third Circuit has applied the same three-part test that governs the entitlement to relief from a default judgment. *Famese v. Bagnasco, 687* F.2d 761 (3d Cir. 1982).

Although Hauspie and Willaert have not fornnally moved to vacate the defaults, that in essence is what they seek in their responses to Stonington's default judgment motion. In this Court, however, it is unnecessary to decide whether the District Court defaults should be vacated, because Rule 55 neither requires nor provides for the separate entry of a default. In this Court, the default process is accomplished by a single procedural step, namely, a motion for entry of default judgment. Accordingly, to the extent that they are relevant,[11] the arguments advanced by Hauspie and Willaert will also be addressed within the framework of the plaintiffs' motion for the entry of a default judgment.

The applicable principle that governs the entry of a default judgment is easily stated. A default judgment may be entered when a party against whom a judgment is sought has failed to appear, plead, or otherwise defend, where the party entitled to the default judgment applies for it.[12]

Having established the relevant analytical framework, the Court will next summarize the parties' contentions.

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[11] Certain arguments advanced by Hauspie, Willaert, and Lemout are irrelevant because they attack the subject matter jurisdiction of the District Court to enter the default, and urge that the default should not be given "full faith and credit." Because the case has been remanded to this Court, which will be determining the default judgment issue de ***novo,*** those jurisdictional and full faith and credit issues drop out of the analysis.

[12] Ch. Ct. R. 55(b).

B. The Parties' Contentions

In support of their motion for default judgment against Hauspie and Willaert, and in response to Lemout's motion to enlarge time, the plaintiffs urge that default judgment against all three defendants is warranted because they have failed to appear or otherwise defend. Hauspie and Willaert respond that no default judgment should be entered because they have established the grounds to vacate any default judgment entered against them. Lemout separately argues that, because he has satisfied those same criteria, his time to answer or otherwise respond should be enlarged.

Hauspie, Willaert, and Lemout all contend that no default judgment can be entered against them because the complaint fails to state a claim upon which judgment could be granted. Specifically, they argue that the complaint's allegations neither state a cognizable legal claim for fraud against them, nor satisfy the Rule 9(b) particularity requirement for pleading fraud. The defendants also argue that they cannot be the subject of an order granting the relief being requested (rescission and rescissory damages) because only L&H received the Dictaphone stock and was a party to the merger transaction under attack. Stonington contends that the complaint states a cognizable fraud claim against Hauspie, Willaert, and Lemout that is amply sufficient to support a grant of relief.

Hauspie and Willaert next point out that there are multiple defendants, in particular Bastiaens, who have not defaulted. Hauspie and Willaert insist that if this Court were to enter a default judgment against them, but later were to exonerate Bastiaens, conflicting rulings would result: some defendants would be found liable while others, who are charged with the same illegal conduct, would not. Lastly, Hauspie and Willaert contend that this Court should not enter a default judgment because (i) the judgment would not be enforceable in Belgium, and (ii) the notice of this lawsuit that was originally given to them was not properly translated into Flemish, Dutch, or any other official language of Belgium.

C. The Issues

The contentions recited above generate five issues that are decided in this Opinion. The first is whether the plaintiffs have made, ***prima facie, the*** showing required for the entry of a default judgment. The second is whether the complaint states a cognizable claim for fraud against Hauspie, Willaert, and Lemout. The third issue is whether any relief could be granted against those defendants even if a cognizable fraud claim is stated. The fourth issue is whether default judgment against Hauspie and Willaert should not be entered because other defendants who have not defaulted have been joined. The fifth issue is whether the Court should decline to enter a default

judgment against Hauspie and Willaert on either of the grounds that the judgment would not be enforceable in Belgium or that the process originally mailed to them was not properly translated.

III. ANALYSIS

A. The Plaintiffs Have Satisfied The Criteria For Entry Of A Default Judgment Against Lernout, Hauspie, And Willaert

The Court first considers the issue of whether the plaintiffs have satisfied the test for the entry of default judgment against Hauspie, Willaert, and Lemout. As previously stated, a default judgment can be entered against a party who has failed to appear, plead, or otherwise defend.[13]

It is undisputed that Hauspie, Willaert, and Lemout failed to answer within the required twenty-day period. Stonington filed its complaint on November 27, 2000 and the defendants were served on December 6, 2000. Hauspie, Willaert, and Lemout have never answered or responded to the complaint. Lemout made no effort to respond until October 30, 2001— almost eleven months later-and Hauspie and Willaert made no such effort until January 11, 2002—over one year later. For this reason, Stonington has established, *prima facie,* their entitlement to default judgment against

[13] Ch. Ct. R. 12(a).

Hauspie and Willaert (and also against Lemout after Stonington formally moves for that relief).[14]

The Court will next consider the defendants' proffered reasons why, despite their indisputable default, no default judgment should be entered against them.

B. The Defendants' Arguments Opposing The Entry Of Default Judgment

1. The Defense Couched as a Motion to Vacate Default Judgment

Hauspie, Willaert, and Lemout contend that even if the plaintiffs have shown, *prima facie,* their entitlement to a default judgment, that relief must be denied because they (the defendants) have made an equally strong showing that would compel vacating any default judgment. To vacate a default judgment, the moving party must show that (a) there exists a justification under Rule 60(b) for granting relief from the judgment/ (b) the result may be different from what it would be if the default were allowed to

[14] To obtain a default judgment, the party must apply to the Court for that relief. Ch. Ct. R. 55(b). Thus, at this point a default judgment can only be entered against Hauspie and Willaert. To obtain such a judgment against Lemout, Stonington must make an appropriate motion.

[15] Rule 60(b) states:

> On motion and upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, or excusable neglect . . . .

stand, and (c) the opposing party will not suffer substantial prejudice if the default is set aside. Because the denial of Lemout's motion to enlarge time would enable the plaintiffs to obtain a default judgment against him, these criteria apply equally to Lemout's motion. For the reasons next discussed, none of these criteria for setting aside a default judgment has been satisfied.

a. *Excusable Neglect*

Rule 60(b)(1) requires that there be a showing of "excusable neglect" by the party seeking to vacate a default judgment. Excusable neglect has been defined in terms of how a reasonably prudent person would act under the circumstances.[16] Reasonably prudent persons are expected to take part in court proceedings in which they are parties, and to respond appropriately within the time periods required by law.[17] The defendants here proffer various reasons why their failure to respond to the complaint should be excused. I find, however, that none of the defendants' arguments excuse their prolonged willful neglect of this lawsuit, and that to hold otherwise would make a mockery of this Court's processes.

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[16] *See Brannon v. Lamaina,* 1993 Del. LEXIS 59, at *3 (Del. Feb. 9, 1993).
[17] *See id.*

i. Hauspie's and Willaert's Excuses

Hauspie and Willaert seek to excuse their conduct on several grounds. First, they claim that, as citizens and residents of Belgium who have no presence in Delaware, they had no ready access to legal counsel in the United States. This argument is unsupported by the record. These defendants participated in a November 2001 board meeting of L&H where the board discussed the Company's pending bankruptcy filing in the United States and voted to hire legal counsel. Present at that meeting were lawyers from the New York firm of Milbank, Tweed, Hadley & McCloy and from the Boston firm of Brown, Rudnick, Freed & Gesmer. Thereafter, L&H retained three American law firms to represent it. Hauspie and Willaert make no effort to explain their lengthy delay in retaining a lawyer, even though the company that they managed was able to do that immediately. Having been intimately involved in retaining counsel for L&H, Hauspie and Willaert cam-rot credibly deny that they were equally capable of selecting counsel to enter an appearance on their behalf at the same time.

Equally dubious is Hauspie's and Willaert's excuse that they were unfamiliar with the American legal system. At the December 2001 L&H board meeting at which the American lawyers were present, the participants discussed the Company's pending bankruptcy. Hauspie and Willaert are

sophisticated businessmen who operated a large company with global operations. Given the considerable legal resources to which they had ready access, Hauspie and Willaert cannot credibly seek to excuse their disregard of this lawsuit on the ground that they were ignorant of their obligation to respond to the complaint. If in fact they were ignorant, it is because they deliberately chose not to seek the advice of American counsel who were readily accessible.

Hauspie and Willaert next argue that they were being forced to deal with many lawsuits in the United States and Belgium at the same time. Even if that is true, it does not excuse their failure to respond to this specific lawsuit. Hauspie and Willaert had the resources to retain law firrns that were fully capable of fielding multiple litigations. Those defendants had to be aware that serious charges with serious consequences were being leveled against them. Choosing to ignore this lawsuit is not a response that a prudent person would make, and it therefore cannot constitute excusable neglect.‘*

Hauspie and Willaert also claim that they could not hire counsel because for several months they were in jail and unable to leave Belgium. That argument glosses over the fact that before those defendants were

[18] *See* ***Brannon*** at *3.

incarcerated, they had ample time and opportunity to retain counsel. Indeed, they could have hired a lawyer even while they were in jail. The proof is that Bastiaens was incarcerated at the sarne time, yet he somehow managed to retain counsel and defend himself in accordance with the rules of this Court. Hauspie and Willaert have not shown that they were situated any differently.

ii. Lemout's Excuses

Like Hauspie and Willaert, Lemout seeks to excuse his failure to respond to the complaint on the basis that he was unable to retain counsel. Lemout echoes the same hardship arguments (with particular emphasis upon his having been incarcerated) as those advanced by Hauspie and Willaert. Having been rejected when made by Hauspie and Willaert, these arguments fare no better when advanced by Lemout, who was similarly situated.

Lemout claims that he was unable to hire a lawyer because a problem with his D&O liability insurance coverage caused the carrier to delay granting approval. This argument lacks credibility. Almost one year passed before Lemout even filed a notice of appearance in this action. Yet Bastiaens-who had the same insurance carrier as Lemout-was somehow able to file a notice of appearance and defend himself within the time prescribed by this Court's rules.

Lastly, Lemout claims that after he retained a law firm to represent him, a conflict of interest arose within his counsel's firm that resulted in another delay. That excuse is not plausible either. Lemout is a sophisticated businessman. He was the co-chairman and chief executive of a multinational multibillion-dollar corporation which had dealings with American law firms. It therefore strains credulity for Lemout to suggest that he could not find a single unconflicted American attorney or firm to defend him."

Because none of Lemout's arguments suffices to excuse his behavior or to entitle him to relief from a default judgment, *a fortiori*, they do not entitle him to an enlargement of time under Rule 6(b).

b. *The Possibility of a Different Result*

The second criterion that the Court must assess in deciding whether to set aside a default judgment is whether the result may be different if the judgment were vacated." Specifically in this case, that means that the

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[19] No more credible is Lemout's claim that he was unable to meet with counsel.

[20] *See Fingerhut Corp. v. Ackra Direct Mktg. Corp., 86* F.3d 852, 857 (8th Cir. 1996); see *also Pretzel & Stouffer v. Imperial Adjusters, 28* F.3d 42, 46 (7th Cir. 1994); *Equal Employment Opportunity Comm'n v. Mike Smith Pontiac GMC, 896* F.2d 524, *527-29* (1 lth Cir. 1990); *Taylor v. Boston Tauton Transp. Co., 720* F.2d 731,733 (1st *Cir. 1983); Cessna Fin. Corp. v. Bielenberg Masonry Contracting, Inc.,* 715 F.2d 442 (10th Cir. *1983); Central Operating Co. v. Utility Workers of Am., 49* 1 F.2d 245,252 (4th Cir. 1974).

moving parties must show that they have a meritorious defense to the underlying fraud claim.[21]

To establish a meritorious defense, the party opposing a motion for default judgment must show facts that establish a defense to the well-pled allegations in the complaint.[22] Thus, the complaint here must allege facts that state a legally sufficient claim for fraud, ***i.e.*** one that is capable of withstanding a motion to dismiss under Rule 12(b)(6).[23] I conclude that the complaint here adequately alleges that Hauspie, Willaert, and Lemout, as executives of L&H: (1) made false representations; (2) with knowledge that those representations were false; (3) with intent to induce the plaintiffs to act or refrain from acting; (4) that caused the plaintiffs to act in justifiable reliance upon the representation; and (5) that resulted in damage to the plaintiffs.

Hauspie, Willaert, and Lemout contend that they have a meritorious defense, namely, that the complaint fails to state a claim against them, because it does not specifically name them as individual defendants, but refers only to unnamed "L&H executives." Accordingly, they argue, the

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[21] *Williams v. Delcollo Elec. Inc.*, 576 A.2d 683, 686-87 (Del. Super. 1989).

[22] *Int'l Bhd. Of Elec. Workers, Local Union No. 313 v. Skaggs*, 130 F.R.D. 526, 529 (D. Del. 1990); *see also Famese v. Bagnasco*, 687 F.2d 761,764 (3d Cir. 1982).

[23] *Zirn v. VLI Corp.*, 681 A.2d 1050, 1060-61 (Del. 1996).

complaint is legally inadequate to support a default judgment against them. The Court cannot agree for several reasons.

First, the complaint alleges that Hauspie, Willaert, and Lemout-who, together with Bastiaens, are the only persons named as individual defendants-were senior L&H executives. L&H, in turn, is charged with having defrauded the plaintiffs.[24] The record also establishes that Hauspie and Willaert signed the Merger Agreement, and Lemout and Hauspie signed the Agreement of Limited Liability Company Holdings. Both documents are alleged to have contained fraudulent misrepresentations that induced Stonington to enter into the transaction. Although the complaint is less than artfully drawn, it does sufficiently identify these three defendants as the "L&H executives" who, through their control of L&H, committed the alleged acts of fraud.

The defendants also argue that even if the complaint is found to state a cognizable fraud claim, that claim is not alleged with the particularity required by Rule 9(b). Having failed to respond to the complaint at all, it is inappropriate to allow Hauspie, Willaert, and Lemout to now challenge the complaint on Rule 9(b) grounds. Lemout waited almost eleven months, and

[24] Paragraphs 10, 11, 12 of the complaint set forth the various executive and director positions occupied by Lemout, Hauspie, and Willaert.

Hauspie and Willaert waited more than one year, before even entering an appearance in this case. Given their lengthy and inexcusable delay, these defendants must be deemed to have waived any defense based on Rule 9(b).[25]

The Court therefore concludes that Hauspie, Willaert, and Lemout have not established the possibility of a different result were this Court to decide not to enter judgment against them.

c. Substantial Prejudice

The third criterion for vacating a default judgment is that it will not cause substantial prejudice to the plaintiffs. Although "substantial prejudice" has not been explicitly defmed in Delaware case law, at least one federal court has held that substantial prejudice may exist where circumstances have changed so as to impair the plaintiffs ability to litigate its claim.[26]

Lemout failed to appear in this action for almost eleven months after it was filed. Hauspie and Willaert waited over a year before they appeared. Meanwhile, Stonington expended time, effort, and money in an attempt to

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[25] Ch. Ct. R. 12(h)(2).
[26] *Accu- Weather v. Reuters, 779* F. Supp. 801, 802 (M.D. Pa. 1991).

prosecute this action. Only when faced with the prospect of having a default judgment entered against them did Hauspie, Willaert, and Lemout respond.

This litigation has dragged on because of the defendants' willful neglect. To allow the defendants to defend as if no default had ever occurred would substantially prejudice the plaintiffs, who will have to incur even more legal fees and expend even more time to hold these contumacious defendants accountable. Equally, if not more importantly, the plaintiffs would be prejudiced by the defendants' ongoing legal fees, which would further deplete the limited D&O coverage that may be the only source of funds available to respond to any damages award in this case.

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For these reasons, I conclude that the defendants have not satisfied the criteria for vacating any default judgment entered against them. Having determined that, the Court next turns to the defendants' remaining arguments.

2. <u>The Defendants' Remaining Arguments</u>

a. The Defense That The Defendants Cannot Be Held Individually Liable

Shifting gears, Hauspie, Willaert, and Lemout urge that, even if the complaint states a cognizable fraud claim, the claim is essentially one made against the corporation for which they as individuals cannot be held liable.

The Court cannot agree. The record shows that, in their executive capacities, Hauspie and Willaert signed the Merger Agreement, and Lemout and Hauspie signed the Agreement of Limited Liability Company Holdings. In this manner, these defendants are charged with having intentionally caused L&H to misrepresent its financial condition to Stonington. For having committed that tortious conduct and having acted in bad faith on behalf of L&H, Hauspie, Willaert, and Lemout may be held individually responsible and liable. [27]

Lastly, the defendants argue that no default judgment can be entered against them because they are incapable of furnishing the relief sought by Stonington. Because Lemout, Hauspie, and Willaert were not parties to the transaction agreements in their individual capacities, they contend that they are incapable of rescinding the transaction and therefore cannot be held liable for contract damages. That argument misses the mark. As previously discussed, in certain circumstances corporate executives may be held individually liable for tortious conduct they commit in their executive

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[27] Corporate officers are liable for their tortious conduct even if they were acting officially for the corporation *in committing the* tort. *T. V. Spano Bldg. Corp. v. Wilson,* 584 A.2d 523,530 (Del. Super. 1990). A corporate officer can be held personally liable for the torts he commits and cannot shield himself behind a corporation when he is a participant. *Brandywine Mushroom Co. v. Hockessin Mushroom Prods., 682* F. Supp. *1307,* 1314 (D. Del. 1988) (citing *Donsco, Inc. v. Casper Corp., 587* F.2d 602,606 (3d Cir. 1978)); see *also* RESTATEMENT (SECOND) OF AGENCY §§ 343,344.

capacity.[28] Therefore, even if (by reason of the bankruptcy) rescission is not available, monetary relief could still be awarded against the defendants in their individual capacities.

b. *The "'Potential Conflicting Result" Defense*

Hauspie and Willaert also contend that this Court should not enter a default against them because there are other defendants against whom the claims will almost certainly be dismissed. Specifically, Hauspie and Willaert seek shelter in the fact that Bastiaens has actively defended himself in the very case that they chose until now not to defend.

It is undoubtedly true that conflict would result if Hauspie and Willaert were found liable, but Bastiaens were exonerated. But that truism is of no help to Hauspie and Willaert because, as a matter of policy, their willful disregard of this Court's processes cannot be tolerated. To rule in their favor on this basis would create a pernicious incentive-encouraging defendants to ignore lawsuits against them for months or even years, and then, when a default judgment is sought, allowing those defendants to claim entitlement to the right to defend with no adverse consequences. The very statement of this argument provides its own refutation.

[28] *Id.*

c. The Defense That a Default Judgment Would Be Unenforceable in Belgium

Lastly, Hauspie and Willaert argue that no default judgment should be entered against them because any such a judgment would be unenforceable in Belgium, there being no treaty that authorizes the enforcement of an American judgment in that country.[29]

That argument cannot forestall the entry of default judgment. This Court has subject matter jurisdiction over the claims being asserted here. A judgment by this Court would be enforceable against the defendants within the United States and in whatever other countries recognize the judgment. Because the judgment would be enforceable in other jurisdictions, the assertion that Belgium would not enforce the default judgment, cannot justify refusing to enter any judgment at all.

[29] Hauspie and Willaert also contend that the notice they received was defective because it was improperly translated into their language. Given their unexcused failure to answer the complaint in a timely manner, this defense of defective process has been waived. Ch. Ct. R. 12(h)(l).

For the reasons discussed, plaintiffs' motion for the entry of default