

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

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: September 8, 2005

Decided: September 9, 2005

Adam I. Frenz
Harvey I. Houtkin
160 Summit Avenue
Montvale, NJ 07645

Paul D. Brown
Greenberg Traurig, LLP
The Brandywine Building
1000 West Street, Suite 1540
Wilmington, DE 19801

Re: *Frenz, et al. v. Gencor Indus., Inc.*
Civil Action No. 1204-N

Gentlemen:

I deny plaintiffs' emergency motion to temporarily enjoin the September 12, 2005 annual shareholders' meeting of Gencor Industries, Inc. ("Gencor") or, in the alternative, amend proxy materials to include Mr. Houtkin as a nominee for independent director, for the reasons stated below.

Either request of the motion exceeds the scope of an action brought under 8 *Del. C.* § 211 ("Section 211"). Section 211 allows for, among other things, the Court of Chancery to set an annual meeting if, for certain reasons, such a meeting has not occurred. Postponement of an annual meeting or, alternatively, amendment of a company's proxy statement to nominate an independent director, are both outside the scope of Section 211. Plaintiffs' motion does not make reference to other statutory authority; therefore, the Court cannot grant either request.

Further, the motion fails to sufficiently allege the elements requisite for injunctive relief. In order to grant injunctive relief, the Court must find irreparable harm threatened, and a high likelihood of success on the merits. I will reserve

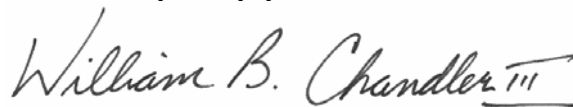
judgment in respect to the first prong, as plaintiffs clearly fail to satisfy the second prong. Plaintiffs could allege (although fail to clearly do so) that interference with a shareholder's right to nominate an independent director constitutes an irreparable harm. Nonetheless, plaintiffs fail to successfully allege a high likelihood of success on the merits—that Gencor is responsible for the deprivation of such rights.

Gencor has adhered to the Order of the Court and, therefore, is not responsible for plaintiffs' failure to nominate Mr. Houtkin. Besides setting a time and place for the annual meeting, the Court instructed Gencor to inform plaintiffs of any specific deadlines for making nominations to the Board. Gencor communicated to plaintiffs on multiple occasions the fact that Gencor's proxy statement was to be mailed twenty days prior to the annual meeting, including in filings before the Court. But plaintiffs request more: earlier notice of the rejection of Mr. Houtkin's nomination and later explanation of such rejection. Such communications were not required by any order of the Court. Finally, plaintiffs had ample opportunity to make a separate nomination by preparing their own proxy statement, perhaps only as an insurance policy; plaintiffs chose not to take such anticipatory measures, and must now suffer the consequences.

The Court need not address certain proxy issues raised by plaintiffs, including the request that the Court alter Gencor's proxy materials. For the reasons set forth above, plaintiffs' motion is denied.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in cursive script that reads "William B. Chandler III". The signature is written in black ink and includes a horizontal line at the end.

William B. Chandler III

WBCIII:bsr