

MOTION INFORMATION STATEMENT

Docket Number(s): Not yet assigned; District Court  
Docket No. 06-cv-6420

EMERGENCY Motion for: Modification of Temporary Restraints  
and Immediate Temporary Remand to District Court

Caption [use short title]

Robert Ladd, et al.,  
Defendants-Appellants,

vs.

Delcath Systems, Inc.,  
Plaintiff-Appellee.

Set forth below precise, complete statement of relief sought:  
Appellants move for an emergency order (i) modifying interim restraints entered by the District Court against Appellants by permitting Appellants to deliver written shareholder consents they have collected to Appellee or its registered agent pursuant to Delaware General Corporation Law Section 228(c) by September 25, 2006, thereby preserving the legal viability of the shareholder vote pending the completion of further proceedings in this Court and in the District Court on remand, and (ii) temporarily remanding this case to the District Court for a plenary hearing on Appellee's application for entry of a preliminary injunction, to be immediately followed by further appellate proceedings in this Court should the District Court grant the application in whole or in part.

MOVING PARTY: Robert Ladd, Laddcap Value Partners LP, Laddcap Value Advisors LLC and Laddcap Value Associates LLC.

☐ Plaintiff ☐ Defendant  
☒ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY:

[name of attorney, with firm, address, phone number and e-mail]

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OPPOSING PARTY: Delcath Systems, Inc.

OPPOSING ATTORNEY:

[name of attorney, with firm, address, phone number and e-mail]

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Court-Judge/Agency appealed from: United States District Court for the Southern District of New York, Hon. Loretta A. Preska, U.S.D.J.

Please check appropriate boxes:

Has consent of opposing counsel:

A. been sought? ☐ Yes ☒ No  
B. been obtained? ☐ Yes ☒ No.

Is oral argument requested: ☒ Yes ☐ No  
(requests for oral argument will not necessarily be granted)

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS  
AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☒ Yes ☐ No

Has this relief been previously sought  
in this Court? ☐ Yes ☒ No

Requested return date and explanation of emergency:

Requested return date: Monday, September 25, 2006

Has **argument** date of appeal been set? ☐ Yes ☒ No

Appellants are in the process of conducting a shareholder consent solicitation campaign to unseat the current board of directors of Appellee, a publicly-traded company that is organized under Delaware law. Under Delaware law, this process must be completed by September 25, 2006. Accordingly, the window of time within which this Court can provide meaningful relief to Appellants from an Order entered by the District Court on September 20, 2006 is extremely limited. The District Court's September 20, 2006 Order extended a TRO which prohibits Appellants from delivering written shareholder consents in its possession to Appellee's registered agent. Under § 228(c) of the Delaware General Corporation Law, if Appellants fail to deliver the consents by the close of business on September 25, 2006 -- less than four days from the date of this motion -- the written consents will become null and void, and the shareholder vote will be rendered a nullity. Once the statutory deadline passes, no Court has the power to undo that result under Delaware law. Accordingly, emergency relief is necessary to prevent the irretrievable loss of the shareholders' decision in this election and to preserve that decision for the benefit of whichever party proves to be the winner in the consent solicitation campaign.

If yes, enter date \_\_\_\_\_

Signature of Moving  
Attorney:

Date: September 21, 2006

Has **service** been effected?  
[Attach proof of service]

☒ Yes ☐ No

**ORDER**

**IT IS HEREBY ORDERED THAT** the motion is **GRANTED** **DENIED**.

**FOR THE COURT:**

ROSEANN B. MacKECHNIE, Clerk of the Court

Date: \_\_\_\_\_

By: \_\_\_\_\_

Form T-1080 (Revised 10/31/02).