UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549-4561

DIVISION OF
CORPORATION FINANCE

March 17, 2010

William H. Aaronson
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017

Re: Comcast Corporation
Incoming letter dated January 14, 2010

Dear Mr. Aaronson:

This is in response to your letter dated January 14, 2010 concerning the shareholder proposal submitted to Comcast by the International Brotherhood of Electrical Workers Pension Benefit Fund. We also have received a letter on the proponent's behalf dated January 29, 2010. Our response is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in the correspondence. Copies of all of the correspondence also will be provided to the proponent.

In connection with this matter, your attention is directed to the enclosure, which sets forth a brief discussion of the Division's informal procedures regarding shareholder proposals.

Sincerely,

Heather L. Maples
Senior Special Counsel

Enclosures

cc: Greg A. Kinczewski
Vice President/General Counsel
The Marco Consulting Group
550 W. Washington Blvd., Suite 900
Chicago, IL 60661

March 17, 2010

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Comcast Corporation
Incoming letter dated January 14, 2010

The proposal urges the compensation committee of the board of directors to adopt a policy requiring that senior executives retain a significant percentage of shares acquired through equity compensation programs until two years following the termination of their employment and to report to stockholders regarding the policy.

There appears to be some basis for your view that Comcast may exclude the proposal under rules 14a-8(i)(2) and 14a-8(i)(6) because it may require Comcast to impose restrictions on transferability of shares already issued. It appears that this defect could be cured, however, if the proposal were revised to state that it applies only to compensation awards made in the future. Accordingly, unless the proponent provides Comcast with a proposal revised in this manner, within seven calendar days after receiving this letter, we will not recommend enforcement action to the Commission if Comcast omits the proposal from its proxy materials in reliance on rules 14a-8(i)(2) and 14a-8(i)(6).

Sincerely,

Matt S. McNair
Attorney-Adviser

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.

New York
Menlo Park
Washington DC
London
Paris
Madrid
Tokyo
Beijing
Hong Kong

Davis Polk

William H. Aaronson

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william.aaronson@davispolk.com

January 14, 2010

Re: ***Shareholder Proposal Submitted by IBEW Pension Benefit Fund***

Office of Chief Counsel
Division of Corporate Finance
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549
via email: shareholderproposals@sec.gov

Ladies and Gentlemen:

On behalf of our client, Comcast Corporation (the "**Company**"), we write to inform you of the Company's intention to exclude from its proxy statement and form of proxy for the Company's 2010 Annual Meeting of Shareholders (collectively, the "**2010 Proxy Materials**") a shareholder proposal (the "**Proposal**") and related supporting statement received from the International Brotherhood of Electrical Workers Pension Benefit Fund (the "**Proponent**").

We hereby respectfully request that the Staff of the Division of Corporation Finance (the "**Staff**") concur in our opinion that the Company may, for the reasons set forth below, properly exclude the aforementioned proposal from the 2010 Proxy Materials. The Company has advised us as to the factual matters set forth below.

Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (November 7, 2008), question C, we have submitted this letter and the related correspondence from the Proponent to the Commission via email to shareholderproposals@sec.gov. Also, in accordance with Rule 14a-8(j), a copy of this letter and its attachments is being mailed on this date to the Proponent informing it of the Company's intention to exclude the Proposal from the 2010 Proxy Materials. The Company plans to file its definitive proxy statement with the Securities and Exchange Commission (the "**SEC**") on or about April 9, 2010. Accordingly, we are submitting this letter not less than 80 days before the Company intends to file its definitive proxy statement.

I. INTRODUCTION

The Proposal, which is attached hereto as Exhibit A, requests that the Company's Compensation Committee "adopt a policy requiring the senior executives retain a significant percentage of shares acquired through equity compensation programs until two years following the termination of their employment (through retirement or otherwise), and to report to stockholders regarding the policy before Company [sic] 2011 annual meeting of stockholders," and recommends that "the Committee not adopt a percentage lower than 75% of net after-tax shares."

Comcast requests that the Staff of the SEC concur with its view that the Proposal may be properly omitted from its 2010 Proxy Materials pursuant to:

(a) Rule 14a-8(i)(2) because implementation of the Proposal would cause the Company to violate state law; and

(b) Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposal, which would cause the Company to violate Pennsylvania law.

II. REASONS FOR EXCLUSION

A. Implementation of the Proposal would result in violations of state law

Rule 14a-8(i)(2) permits a company to exclude a proposal from its proxy statement "if the proposal would, if implemented, cause the company to violate any state, federal or foreign law to which it is subject." The Company is incorporated under the laws of the Commonwealth of Pennsylvania and its equity award agreements with its senior executives are governed by Pennsylvania law.

As more fully described in the opinion of Pepper Hamilton LLP (the "**Pepper Hamilton Opinion**") attached as Exhibit B, implementation of the Proposal would cause the Company to violate Pennsylvania law by imposing a new transfer restriction on previously issued and currently outstanding shares of common stock held by senior executives without their consent. The Proposal, by its plain terms, applies to any shares held by senior executives, including shares that have already been issued to senior executives. Under Pennsylvania law, new transfer restrictions may only be validly imposed on previously issued securities with the consent of the holders of those securities, either in the form of an agreement with respect to the transfer restriction or a vote in favor of the transfer restriction. Therefore, the Company believes that the Proposal may be properly omitted from the 2010 Proxy Materials pursuant to Rule 14a-8(i)(2) since implementation of the Proposal would result in a violation of Pennsylvania law.

The Staff has previously granted relief, under Rule 14a-8(i)(2), in respect of similar share retention proposals for companies incorporated in Delaware and Virginia. See JPMorgan Chase & Co. (Jan. 9, 2009) (concurring in the exclusion of a similar proposal for violating Delaware law); and NVR, Inc. (Feb. 17, 2009) (concurring in the exclusion of a similar proposal for violating Virginia law).

As more fully disclosed in the Pepper Hamilton Opinion, the Proposal may also be excluded pursuant to Rule 14a-8(i)(2) because it would, if implemented, cause the Company to violate Pennsylvania law by unilaterally breaching existing contracts between the Company and senior executives. Since these agreements do not contain the restriction on transfer included in the Proposal, implementation of the Proposal by the Company would result in their breach. It is well established that a shareholder proposal that if implemented would require a company to breach its existing contracts, in violation of state law, may be excluded under Rule 14a-8(i)(2). See Cendant Corporation (January 16, 2004) (proposal seeking to limit compensation paid to the company's CEO would require the company to violate an existing compensation agreement); Citigroup Inc. (Feb. 18, 2003) (proposal to abolish all stock option programs was excludable under Rule 14a-8(i)(2) because it may cause the company to breach existing contractual obligations); Sensar Corporation (May 14, 2001) (proposal seeking to rescind and re-grant, on modified terms, stock options already awarded to officers and directors would require the company to breach existing option agreements); International Business Machines Corporation (February 27, 2000) (proposal requesting that the board of directors attempt to terminate and renegotiate certain benefits provided for pursuant to IBM's contractual obligations to its CEO would cause the company to breach such contracts); Mobile Corporation (January 29, 1997) (proposal seeking a policy that no executive may exercise a stock option within six months of a workforce reduction would require the company to breach existing stock option agreements); and International Business Machines Corporation (December 15, 1995) (proposal to reduce the compensation of executive officers would result in unilateral modification of certain existing contracts).

B. The Company would lack the power or authority to implement the Proposal

Pursuant to Rule 14a-8(i)(6), a company may exclude a proposal from its proxy materials if the company lacks the power or authority to implement the proposal. As discussed above and in the Pepper Hamilton Opinion, the Proposal requests that the Board of Directors of Comcast take actions that are beyond its powers under Pennsylvania law and thus Comcast lacks the power or authority to implement the Proposal. See Legal Bulletin 14B, Section E ("Proposals that would result in the company breaching existing contractual obligations may be excludable under... rule 14a-8(i)(6) . . . because implementing the proposal . . . would not be within the power or authority of the company to implement").

On numerous occasions the Staff has permitted the exclusion under Rule 14a-8(i)(6) of proposals seeking action contrary to applicable state law. See PG&E Corp. (February 25, 2008) (permitting exclusion of a proposal that would violate Delaware law); The Gillette Company (March 10, 2003) (permitting exclusion of a proposal that would cause the company to breach an existing compensation arrangement); Sensar Corporation (May 14, 2001) (permitting the company to exclude a proposal that would cause the company to breach existing contractual obligations); and Whitman Corporation (February 15, 2000) (same).

C. The Proposal may be excluded even though it is cast in precatory terms

The Company notes that the Proposal is not saved from the applicable bases for exclusion simply because it is cast in precatory terms. Using a precatory format will only save a proposal from exclusion if the action that the proposal recommends the directors take can be lawfully implemented by directors. See, e.g., AT&T Inc. (Feb. 7, 2006) (permitting exclusion of a proposal requesting that the board adopt cumulative voting by adopting a bylaw or policy, rather than amending the certificate of incorporation). Because the policy called for in the Proposal would, if implemented, cause the Committee to violate Pennsylvania law and because the Company would lack the power or authority to implement the Proposal, it should be excluded pursuant to Rules 14a-8(i)(2) and 14a-8(i)(6).

III. CONCLUSION

We have concluded that Comcast may properly omit the Proposal from the 2010 Proxy Materials pursuant to (A) Rule 14a-8(i)(2) because implementation of the Proposal would result in violations of Pennsylvania law; and (B) Rule 14a-8(i)(6) because Comcast's Board of Directors lacks the power or authority to implement a proposal that would result in a violation of Pennsylvania law.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Should you disagree with the conclusions set forth herein, we respectfully request the opportunity to confer with you prior to the determination of the Staff's final position. Please do not hesitate to call me at (212) 450-4397 or Arthur Block, the Company's Senior Vice President, General Counsel and Secretary, at (215) 286-7564, if we may be of any further assistance in this matter.

Very truly yours,

William H. Aaronson

William H. Aaronson

cc: Lindell K. Lee
International Brotherhood of Electrical Workers

Arthur R. Block
Comcast Corporation

EXHIBIT A

TRUST FOR THE
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS'
PENSION BENEFIT FUND

900 Seventh Street, NW • Washington, DC 20001 • (202) 833-7000

November 23, 2009

VIA FACSIMILE (215-286-4780) AND CERTIFIED MAIL

Mr. Arthur R. Block
Senior Vice President, General Counsel and Secretary
Comcast Corporation
One Comcast Center
Philadelphia, PA 19103

Dear Mr. Block:

On behalf of the Board of Trustees of the International Brotherhood of Electrical Workers Pension Benefit Fund (IBEW PBF) ("Fund"), I hereby submit the enclosed shareholder proposal for inclusion in the Comcast Corporation ("Company") proxy statement to be circulated to Corporation Shareholders in conjunction with the next Annual Meeting of Shareholders in 2010.

The proposal relates to **"Holding Equity Into Retirement"** and is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission's Proxy Guidelines.

The Fund is a beneficial holder of Comcast Corporation common stock valued at more than $2,000 and has held the requisite number of shares, required under Rule 14a-8(a)(1) for more than a year. The Fund intends to hold the shares through the date of the company's 2010 Annual Meeting of Shareholders. The record holder of the stock will provide the appropriate verification of the Fund's beneficial ownership by separate letter.

Should you decide to adopt the provisions of the proposal as corporate policy, we will ask that the proposal be withdrawn from consideration at the annual meeting.

Either the undersigned or a designated representative will present the proposal for consideration at the Annual Meeting of the Shareholders.

Sincerely yours,

Lindell K. Lee

Lindell K. Lee
Trustee

LKL:daw
Enclosure

Form 972

Resolved, that stockholders of Comcast Corporation ("Company") urge the Compensation Committee of the Board of Directors (the "Committee") to adopt a policy requiring that senior executives retain a significant percentage of shares acquired through equity compensation programs until two years following the termination of their employment (through retirement or otherwise), and to report to stockholders regarding the policy before Company 2011 annual meeting of stockholders. The stockholders recommend that the Committee not adopt a percentage lower than 75% of net after-tax shares. The policy should address the permissibility of transactions such as hedging transactions which are not sales but reduce the risk of loss to the executive.

SUPPORTING STATEMENT

Equity-based compensation is an important component of senior executive compensation at Company.

Requiring senior executives to hold a significant portion of shares obtained through compensation plans after the termination of employment would focus them on Company long-term success and would better align their interests with those of Company stockholders. In the context of the current financial climate, we believe it is imperative that companies reshape their compensation policies and practices to discourage excessive risk-taking and promote long-term, sustainable value creation. A 2002 report by a commission of The Conference Board endorsed the idea of a holding requirement, stating that the long-term focus promoted thereby "may help prevent companies from artificially propping up stock prices over the short-term to cash out options and making other potentially negative short-term decisions."

The Company has established stock ownership guidelines for executive officers. The Chief Executive Officer ("CEO") is required to maintain ownership of shares equal to at least five times base salary and other Named Executive Officers ("NEO") are required to own stock in amounts ranging from one and one-half to three times base salary.

We believe this policy does not go far enough to ensure that equity compensation builds executive ownership. We also view a retention requirement approach as superior to a stock ownership guideline because a guideline loses effectiveness once it has been satisfied.

We urge stockholders to vote for this proposal.

EXHIBIT B

Pepper Hamilton LLP
Attorneys at Law

3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103-2799
215.981.4000
Fax 215.981.4750

January 14, 2010

Comcast Corporation
One Comcast Center
Philadelphia, PA 19103-2838

Re: Shareholder Proposal Submitted by IBEW Pension Benefit Fund

Ladies and Gentlemen:

We have acted as special Pennsylvania counsel to Comcast Corporation, a Pennsylvania corporation (the "Company"), in connection with a proposal (the "Proposal") and related supporting statement (the "Supporting Statement") submitted by the International Brotherhood of Electrical Workers Pension Benefit Fund (the "Proponent") that the Proponent intends to have included in the Company's proxy statement and form of proxy for the Company's 2010 Annual Meeting of the Shareholders (collectively, the "2010 Proxy Materials"). In connection with the Proposal, you have requested our opinion as to certain matters under the Business Corporation Law of the Commonwealth of Pennsylvania (the "BCL") and as to Pennsylvania law in effect as of the date hereof, which law is subject to change with possible retroactive effect.

For the purpose of rendering this opinion, our examination of documents relating to the Company has been limited to the examination of originals or copies of the following:

1. The Amended and Restated Articles of Incorporation of the Company, dated and filed in the office of the Secretary of the Commonwealth of Pennsylvania as of August 5, 2009, issued by the Secretary of the Commonwealth of Pennsylvania on January 12, 2010 (the "Charter")

2. The Bylaws of the Company, as amended (the "Bylaws");

3. The Company's (i) 2002 Stock Option Plan, (ii) 2003 Stock Option Plan, and (iii) 2002 Restricted Stock Plan (collectively the "Equity Incentive Plans");

4. The stock option grants and restricted stock unit awards issued to each named executive officer ("NEO") under the Equity Incentive Plans for the period beginning on January 1, 2005 and ending on the date of this letter; and

5. The Proposal and the Supporting Statement.

For purposes of this opinion, we have not reviewed any documents other than the documents listed above and we have not reviewed any document that is referred to in or incorporated by reference into any of such document. We have assumed that there exists no provision in any document that we have not reviewed that is inconsistent with the aforementioned documents and the opinions stated herein. We have conducted no independent factual investigation of our own but rather have relied solely upon the foregoing documents (without any other investigation to determine if such reliance is reasonable), the statements and information set forth therein, and the additional matters recited or assumed herein, all of which we have assumed to be true, complete and accurate. With respect to all documents, examined by us, we have assumed that (i) documents examined by us are executed by all necessary parties and all signatures on documents examined by us are genuine, (ii) all documents submitted to us as originals are authentic, and (iii) all documents submitted to us as copies conform with the originals of those documents.

This opinion letter is limited to the laws of the Commonwealth of Pennsylvania (excluding the securities and blue sky laws of the Commonwealth of Pennsylvania), and we have not considered and express no opinion on the laws of any other jurisdiction, including any international laws, non-United States laws, federal bankruptcy and other federal laws and rules and regulations relating thereto. Our opinions are rendered only with respect to the laws of the Commonwealth of Pennsylvania and rules, regulations and orders thereunder that are currently in effect.

THE PROPOSAL

The Proponent requests that the following resolution be included in the Company's 2010 Proxy Materials:

> Resolved, that stockholders of Comcast Corporation ("Company") urge the Compensation Committee of the Board of Directors (the "Committee") to adopt a policy requiring that senior executives retain a significant percentage of shares acquired through equity compensation programs until two years following the termination of their employment (through retirement or otherwise), and to report to stockholders regarding the policy before Company 2011 annual meeting of stockholders. The stockholders recommend that the Committee not adopt a percentage lower than 75% of net after-tax shares. The policy should address the permissibility of transactions such as hedging transactions which are not sales but reduce the risk of loss to the executive.

The Proposal also contains a Supporting Statement, which reads, in relevant part, as follows:

> Equity-based compensation is an important component of senior executive compensation at Company.
>
> Requiring senior executives to hold a significant portion of shares obtained through compensation plans after the termination of employment would focus them on Company long-term success and would better align their interests with those of Company stockholders. In the context of the current financial climate, we believe it is imperative that companies reshape their compensation policies and practices to discourage excessive risk-taking and promote long-term, sustainable value creation. A 2002 report by a commission of The Conference Board endorsed the idea of a holding requirement, stating that the long-term focus promoted thereby "may help prevent companies from artificially propping up stock prices over the short-term to cash out options and making other potentially negative short-term decisions."
>
> The Company has established stock ownership guidelines for executive officers. The Chief Executive Officer ("CEO") is required to maintain ownership of shares equal to at least five times base salary and other Named Executive Officers ("NEO") are required to own stock in amounts ranging from one and one-half to three times base salary.
>
> We believe this policy does not go far enough to ensure that equity compensation builds executive ownership. We also view a retention requirement approach as superior to a stock ownership guideline because a guideline loses effectiveness once it has been satisfied.
>
> We urge stockholders to vote for this proposal.

DISCUSSION

You have asked for our opinion as to whether the Proposal, if adopted by the shareholders and implemented by the Company's Board of Directors (the "Board"), would be valid under Pennsylvania law. For the reasons set forth below, in our opinion, the Proposal, if adopted and implemented, would violate both the BCL and applicable Pennsylvania law with respect to existing contractual agreements.

I. Implementation of the Proposal Would Violate Pennsylvania Law

A. Implementation of the Proposal Would Violate Section 1529(a) of the BCL

The Proposal, if implemented would require the Company's Board of Directors (the "Board") to adopt a policy that senior executives must retain a significant percentage of shares acquired through the Equity Incentive Plans until two years following the termination of their employment. If the Proposal were implemented, senior executives would be prevented from disposing of at least some of their shares of Company stock for a period of time. A provision which prevents or establishes preconditions for dispositions by stockholders of their stock is known as a transfer restriction.

Under Section 1529(a) of the BCL, "the transfer of securities of a business corporation may be regulated by any provisions of the bylaws that are not inconsistent with 13 Pa.C.S. Div. 8 (relating to investment securities) and other provisions of law." 15 Pa.C.S. § 1529(a) (2009). None of Pennsylvania law, the Bylaws, the Charter or other agreements to which the senior executives are party contain any restrictions on transfer of the nature contemplated by the Proposal. Section 8204 of Title 13 of the Pennsylvania Consolidated Statutes ("PaCS 8204")[1] provides:

> "A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless: (1) the security is certificated and the restriction is noted conspicuously on the security certificate; or (2) the security is uncertificated and the registered owner has been notified of the restriction." 13 Pa.C.S. § 8204 (2009).

With respect to the transfer of shares, Section 5.2 of the Bylaws states that:

> "*Transfer of Shares*. Transfer of shares shall be made on the books of the Corporation as required by law. A transfer of shares represented by a share certificate shall be made only upon

[1] Title 13 of the Pennsylvania Consolidated Statutes is the Commercial Code of the Commonwealth of Pennsylvania.

> surrender of the share certificate, duly endorsed or with duly executed stock powers attached and otherwise in proper form for transfer, which certificate shall be canceled at the time of the transfer."

At the time that previously issued shares of the Company's stock under the Equity Incentive Plans were granted to its senior executives, such senior executives did not have any knowledge of any potential restriction on transfer of the nature contemplated in the Proposal. Further, if certificated, such certificates do not contain any notation of any restriction on transfer of the nature contemplated in the Proposal and, if uncertificated, the senior executives were not notified at the time of issuance of any restriction on transfer of the nature contemplated in the Proposal. By implementing the Proposal, the Company would impermissibly violate Pennsylvania law because such implementation would violate Section 1529(a) of the BCL in that it would impose restrictions on transfer not provided by law, the Bylaws, the Charter or any other agreement. Applying PaCS 8204, restrictions (1) not noted conspicuously on the security certificate and of which the senior executives did not have knowledge and were not notified of and (2) not contained in the Bylaws, Charter or any other agreement would be imposed on senior executives.

Additionally, Pennsylvania courts have stated that Section 1529(f) of the BCL distinguishes between transferees with actual knowledge and transferees without actual knowledge of a transfer restriction. *See* 15 Pa.C.S. § 1529(f) (2009); *Pence v. Petty, Verker and Verker*, 2001 Phila. Ct. Com. Pl. LEXIS 48 (2001). According to the court in *Pence*, "to enforce a transfer restriction against a transferee without actual knowledge of the restriction at the time of transfer, (1) the transfer restriction must be in writing, (2) the transfer must be permitted by Section 1529 of the BCL and (3) it must be noted conspicuously on the face of the security." *Id.* at 6. As noted above, the senior executives had no actual knowledge of the transfer restriction at the time of transfer, the Proposal is in contravention of Section 1529 of the BCL as it would impose restrictions on transfer not provided by Pennsylvania law, the By-Laws, the Charter or any other agreement, and such restrictions were not noted conspicuously on the security certificate at the time of grant. Accordingly, the Proposal would not satisfy the test laid out in *Pence* and in Section 1529(f) of the BCL.

In summary, Section 1529(a) of the BCL provides that shares are transferable in the manner provided by law and in the by-laws and, thus, any restriction on transfer contrary to law and the by-laws is impermissible. By imposing restrictions on the transfer of shares of the Company's stock by a method that is not authorized under Section 1529(a) of the BCL, Pennsylvania law or the Bylaws, implementation of the Proposal would cause the Company to violate Pennsylvania law.

B. **Restrictions on Transfer of Stock May Not Be Imposed Retroactively Without The Consent of The Stockholder.**

Implementation of the Proposal would violate the BCL in another respect. Shares of the Company's stock have previously been issued to and are currently outstanding and held by senior executives of the Company. As provided in Section 1529(b) of the BCL,

> "A restriction on the transfer or registration of transfer of securities of a business corporation may be imposed by the bylaws or by an agreement among any number of securityholders or among them and the corporation. A restriction so imposed shall not be binding with respect to securities issued prior to the adoption of the restriction unless the holders of the securities are parties to the agreement or voted in favor of the restriction." 15 Pa.C.S. § 1529(b) (2009).

As indicated above, the Proposal would require the restriction contemplated thereby to be imposed, by unilateral action of the Board and without the consent of the holders of the shares, on previously issued and currently outstanding shares of common stock. However, Section 1529(b) of the BCL provides that the Board may not validly impose any such transfer restriction on previously issued and currently outstanding shares unless the holder of those shares has consented to or voted in favor of the restriction. Accordingly, it is our opinion that the Proposal, if implemented, would require the Board to adopt a policy that would violate Section 1529(b) of the BCL and that the implementation of the Proposal would therefore cause the Company to violate Pennsylvania law.[2]

C. **Implementation of the Proposal Would Violate Pennsylvania Law by Requiring the Company to Unilaterally Breach Existing Contracts**

By implementing the Proposal, the Company would impermissibly violate Pennsylvania law because such implementation would breach existing contracts with senior management.

Generally, the shares of the Company's common stock acquired by senior executives of the Company were acquired pursuant to the terms of the Equity Incentive Plans,

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[2] This is consistent with other state laws that provide that a restriction on transfer is not valid if it purports to affect securities issued before its adoption without the consent of the holder. *See* 8 Delaware General Corporate Law §202(b).

which are the Company's plans for issuing stock options, stock appreciation rights, and stock awards to its employees, including senior executives. The terms of the Equity Incentive Plans and the award agreements issued to the NEOs under the Equity Incentive Plans since January 1, 2005 impose no restrictions on transfer of shares by senior executives, other than a requirement that awards of stock or other securities generally may not be transferred prior to vesting. The Equity Incentive Plans clearly provide that once awards become vested and are exercised, senior executives receive freely transferable shares. The unilateral transfer restriction called for by the Proposal would violate these basic contractual terms of the Equity Incentive Plans.

It is hornbook law that where an employee is engaged to perform a certain job for a certain term, the employer is contractually bound to make such employment available and to adhere to the terms of the employment contract. As one commentator has noted:

> [w]hen an employee has been employed for a definite time under an express contract stipulating the payment of a stated compensation, the employer has no power arbitrarily to reduce that compensation during the term of the employment.

Sufficiency of Notice of Modification in Terms of Compensation of At-Will Employee Who Continues Performance to Bind Employee, 69 A.L.R. 4^{th} 1145, 1146 (1989). Pennsylvania courts are in accord with this proposition. *See e.g. Baltica-Skandinavia Ins. Co. v. Booth, Potter, Seal & Co.*, 1988 U.S. Dist. LEXIS 9051 (E.D. Pa. 1988) ("the ordinary presumption in contract law [is] that a party may not unilaterally change material terms of a contract").

In Pennsylvania, courts have routinely held an employer liable for its unilateral amendment to an employment contract with an employee. In *Sullivan v. Chartwell Investment Partners*, 873 A.2d 710, 715 (Pa. Super. 2005), in order to prevent an employee from leaving his employment, the employer agreed that such employee's compensation for 2001 would not be less than his compensation for 2000. Soon thereafter, the employer gave the employee notice of termination but promised to provide him with severance. *Id.* After the employee's termination, the employer failed to provide him with severance, and his compensation for 2001 fell below his level of compensation for 2000. *Id.* Rejecting the argument that the employee's at-will status rendered him unable to establish a contractual right to compensation, the court reasoned that "[the employee]'s status as an at-will employee is irrelevant to whether a contract existed to provide compensation during the term of his employment." *Id.* at 716. The court held that the plaintiff's allegations that there existed a contractually guaranteed level of compensation, the employer's conduct of "unilaterally alter[ing] [the plaintiff's] compensation scheme" and the failure of the employer to pay such contractually guaranteed sum sufficiently pled the three elements of a breach of contract claim. *Id.* at 717; *see also Creamer v. AIM Telephones, Inc.*, 1993 U.S. Dist. LEXIS 12363 (E.D. Pa. 1993) (applying Pennsylvania contract law and holding employer liable for breach of contract where employer unilaterally reduced employee's compensation during the term of a valid employment agreement); *Steinberg v. 7-Up Bottling Co.*, 431 Pa. Super. 333, 337 (1994) (affirming award of 6 months' salary to employee for employer's breach of his employment contract); *Dorn v. Stanhope Steel, Inc.*, 368 Pa. Super. 557 (1987) (holding employer liable for breaching employment contract); *see generally Delavau, Inc. v. Eastern America Transport & Warehousing, Inc.*, 810 A.2d 672, 681 (Pa. Super. 2002) ("once a contract has been formed, its terms may be modified only if both parties agree to the modification and the modification is founded upon valid consideration"); *Corson v. Corson's, Inc.*, 434 A.2d 1269, 1271 (Pa. Super. 1981) ("[i]t is fundamental that a contract be modified only by the assent of both parties, and only if the modification is founded upon valid consideration"); *Wilcox v. Regester*, 207 A.2d 817, 821 (Pa. Super. 1965) ("[a]n agreement may be modified with the assent of both contracting parties if the modification is supported by consideration"). Moreover, the Proposal, if implemented, would require the Company to eliminate "possible severance pay," which would further subject the Company to liability under Pennsylvania law. *See e.g. Bayne v Proctor & Gamble Distributing Co.*, 87 Pa Super. 195 (1926) (affirming finding of liability against an employer for refusing to pay former employee amounts due under valid severance agreement).

Furthermore, if the Proposal is implemented and the Company is thereby forced to breach existing contractual arrangements with NEOs and senior management, the Company would be in violation of the Pennsylvania Wage Payment and Collection Law (the "WPCL"). *See* 43 Pa. Stat. Ann. §§ 260.1 to 260.45. The WPCL does not create a right to wages or benefits, but instead provides a statutory remedy where an employer breaches a contractual right to wages that have been earned. *Harding v. Duquesne Light Co.*, 882 F.Supp. 422 (W.D. Pa. 1995). The WPCL protections extend to all Pennsylvania based employees. *Killian v.McCulloch*, 873 F.Supp. 938 (E.D. Pa. 1995), aff'd, 82 F.3d 406 (3d Cir. 1996). The purpose of the WPCL is to remove a portion of the obstacles faced by employees in litigation and to make the employee whole for wages wrongfully withheld by the employer. *Obeneder v. Link ComputerCorp.*, 449 Pa.Super. 528, 674 A.2d 720 (1996), aff'd, 548 Pa. 201, 696 A.2d 148 (1997).

The Proposal seeks to change the rules applicable to stock awards issued and issuable to NEOs under the Equity Incentive Plans. The stock awards are governed by existing contractual arrangements with the NEOs and by the terms of the Equity Incentive Plans. To the extent the Proposal would cancel or modify these arrangements, it would cause the Company to unilaterally breach the terms of the stock awards and the Equity Incentive Plans, neither of which give the Company the power to unilaterally change the terms of stock awards so as to change the rights granted thereunder with respect to the underlying stock. Accordingly, any such unilateral action by the Company would constitute a breach of its existing contractual arrangements and would therefore subject the Company to liability under Pennsylvania law.

D. The Proposal Mandates Action on Matters that, Under Pennsylvania Law, Fall Within the Powers of a Company's Board of Directors

As a general matter, the directors of a Pennsylvania corporation are vested with the power and authority to manage the business and affairs of the corporation. Section 1721(a) of the BCL provides, in relevant part, as follows:

> Unless otherwise provided by statute or in a bylaw adopted by the shareholders, all powers enumerated in Section 1502 (relating to general powers) and elsewhere in this subpart or otherwise vested by law in a business corporation shall be exercised by or under the authority of, and the business and affairs of every business corporation shall be managed under the direction of, a board of directors.

15 Pa. C.S. § 1721(a). Section 1721(a) expressly provides that if there is to be any deviation from the general mandate that the board of directors manage the business and affairs of the corporation, such mandate must be provided in the BCL or the bylaws of the corporation. Article 3 of the Company's Bylaws clearly states that except as otherwise provided by law, by the Restated Articles of Incorporation or by the Bylaws, "all powers of the Corporation shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed under the direction of, the Board of Directors." The Company's Restated Articles of Incorporation are silent on this issue. For these reasons, the discretion to grant equity incentives to the Company's senior executives rests with the Board.

Section 1721(a) sets forth the overall approach taken by the BCL with regard to the separate and distinct roles of the shareholders of the corporation, on the one hand, and the board of directors or managers of the corporation, on the other hand. Case law in Pennsylvania supports the proposition that the directors, and not the shareholders, manage the business and affairs of the corporation. *See Enterra Corporation v. SGS Associates*, 600 F. Supp 678, 685 (E.D. Pa. 1985) (applying Pennsylvania law and stating that, "[i]t is the directors, and not the shareholders, who must manage the business affairs of the corporation, and the directors of a corporation 'have the power to bind [the corporation] by any contract which is within its express or implied powers, and which in their judgment is necessary or proper in order to carry out the objectives for which the corporation was created... without consulting with or obtaining the consent of the stockholders.'"). The Pennsylvania Supreme Court has echoed this sentiment; *see Cuker v. Mikalaurskas*, 692 A.2d 1042, 611 (Pa. 1997) (stating that pursuant to 15 Pa. C. S. §

1721 "decisions regarding litigation by or on behalf of a corporation... are business decisions as much of any other financial decisions... [a]s such they are within the province of the board of directors").

Furthermore, Section 1502(16) provides that a corporation shall have the power:

> To elect or appoint and remove officers, employees and agents of the corporation, define their duties, fix their compensation and the compensation of directors, to lend any of the foregoing money and credit and to pay bonuses or other additional compensation to any of the foregoing for past services.

15 Pa. C. S. § 1502. Section 1502(c) specifically delegates the power to fix employee compensation to the board of directors pursuant to Section 1721. Accordingly, under Pennsylvania law, the board of directors sets the compensation policies for officers, employees and agents of the corporation, not the shareholders.

In Pennsylvania, directors stand in a fiduciary relation solely to the corporation as an entity, not to any particular constituency. *See* 15 Pa. C.S. § 1717; *see also Fidelity Federal Savings and Loan Ass'n v. Felicetti*, 830 F. Supp. 262, 269 (E.D. Pa. 1993) (applying Pennsylvania law and stating that the "nature of the relationship between the directors and the corporation requires that the directors devote themselves to the affairs of the corporation with a view toward promoting the best interests of the corporation"). Section 1715(b) provides that, when considering the best interests of the corporation, the directors are not required to regard any corporate interest or the interests of any particular group affected by such action as a dominant or controlling interest or factor. *See* 15 Pa. C.S. § 1715(b). That subsection also makes clear that the consideration of interests or factors in the manner described in Section 1715 shall not constitute a violation of Section 1712. Thus, the BCL expressly negates the rule that exists in some jurisdictions that the interests of shareholders must, in certain circumstances, be considered paramount to the interests of other constituencies. *See AMP Inc. v. Allied Signal Corp.*, 1998 WL 778348 (E.D. Pa. 1998) (stating that "[t]he directors of a Pennsylvania corporation owe a fiduciary duty solely to the corporation and must act according to the corporation's best interest").

If the Proposal is adopted by the Company's shareholders and implemented by the Board, the Board would be required to unilaterally impose transfer restrictions, not contemplated under the terms of the stock awards or the Equity Incentive Plans, on the Company's NEOs and other senior executives. The decision to arbitrarily impose these transfer restrictions is unrelated to the Board's independent business judgment as to whether such restrictions are in the best interests of the Company. Accordingly, the Proposal, if implemented, would mandate that the

Board disregard its fiduciary duties in accordance with its assessment of the Company's best interests, as specifically mandated by Sections 1502(16) and 1721(a) of the BCL.

CONCLUSION

Based on our examination of the foregoing documents, and subject to the assumptions and other qualifications herein set forth, we are of the opinion that:

A. the Proposal, if adopted by the shareholders and implemented by the Board, would be invalid under the BCL and its implementation would cause the Company to violate Pennsylvania law; and

B. the implementation of the Proposal would cause the Company to breach existing contracts with senior management, thereby violating Pennsylvania law.

This opinion is furnished to you solely for your benefit in connection with the Proposal, and except as set forth in the next sentence, is not to be used, circulated, quoted or otherwise referred to for any other purpose or relied upon by any other person without our express written permission. We hereby consent to your furnishing a copy of this opinion to the Staff of the Securities and Exchange Commission in connection with a no-action request with respect to the Proposal. This opinion speaks only as of the date hereof and is based on our understandings and assumptions as to present facts, and on our review of the above-referenced documents and the application of Pennsylvania law as the same exist as of the date hereof, and we undertake no obligation to update or supplement this opinion after the date hereof for the benefit of any person or entity with respect to any facts or circumstances that may hereafter come to our attention or any changes in facts or law that may hereafter occur or take effect.

Very truly yours,

Pepper Hamilton LLP

PEPPER HAMILTON LLP