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Leading Corporate Governance Expert Lucian Bebchuk Files Suit Against CA, Inc. Over Proposed Bylaw on Poison Pill Use

First test case on the validity of bylaws limiting corporate use of poison pills; Noted shareholder law firm Grant & Eisenhofer takes Bebchuk case to Delaware Chancery Court

WILMINGTON, DE (May 11, 2006) – In a case just filed in Delaware Chancery Court, leading corporate governance expert **Lucian Bebchuk** is challenging **CA Corporation's** assertion in an SEC submission that Bebchuk's pill-limiting bylaw proposal is illegal under Delaware law.

According to Bebchuk, CA (formerly Computer Associates) is trying to use this illegality assertion to exclude his proposal from the corporate ballot. Bebchuk is seeking a declaratory judgment that his proposal is valid under Delaware law and an order compelling the giant IT software provider to withdraw its SEC submission containing the illegality assertion. The suit is expected to resolve long-standing questions concerning the scope of shareholder power to adopt bylaws in general and in particular, bylaws limiting board adoption of poison pills.

Professor Bebchuk is represented by noted securities and corporate governance law firm **Grant & Eisenhofer**, which recently won a settlement with **News Corp.** in reining in the media giant's use of an extended poison pill provision without shareholder approval. That case was brought on behalf of a group of institutional investors in the U.S., Europe and Australia. Grant & Eisenhofer has secured other major governance wins for shareholders of **Health South** (board independence), **Siebel Systems** (on stock option grants) and **Lone Star Steakhouse** (option repricings and other structural changes). In taking on Prof. Bebchuk's case, Grant & Eisenhofer aims to advance shareholders' ability to improve the governance of public companies.

In recent months, Bebchuk, has submitted proposed by-law amendments for a shareholder vote in a number of major companies. Widely regarded as one of the country's preeminent authorities on corporate governance, Bebchuk is the William J. Friedman and Alicia Townsend Friedman Professor of Law, Economics, and Finance, and Director of the Program on Corporate Governance at Harvard Law School.

Professor Bebchuk's proposals have already had a major impact. In recent months, companies such as **American International Group (AIG)** and **Time Warner** agreed to amend their bylaws in response to his proposals. And in the two votes that took place at companies that did not amend their by-laws, Bebchuk's proposals obtained about one third of the votes at **Chevron** and **General Dynamics** – an unusually large show of support for novel and binding stockholder proposals.

As part of his initiative, Prof. Bebchuk developed a by-law provision – a "poison pill antidote" – that is designed to limit the potential costs to shareholders that could result from an indefinite use of a poison pill takeover defense. A poison pill antidote prevents boards from maintaining indefinitely a pill not approved by shareholders without periodic determination that doing so would be desirable. Furthermore, a poison pill antidote requires that decisions to extend the life of a pill must be made by a supermajority of the directors or even unanimously. Martin Lipton, the creator of the poison pill defense, recently issued (together with his law partner Mark Gordon) a forceful critique of Bebchuk's proposed bylaws.

In response to Professor Bebchuk's submission of poison pill antidote proposals, **Bristol-Myers Squibb** agreed to amend its by-laws to incorporate such an arrangement, and Halliburton placed the proposal on the ballot for its coming annual meeting. However, CA Corporation decided to act quite differently. CA, which is incorporated in Delaware, notified the SEC and Bebchuk that it plans to exclude Bebchuk's proposed bylaw from its 2006 proxy statement based solely on its assertion that the proposed bylaw is impermissible under Delaware law. Bebchuk filed his suit to prevent CA from using this assertion to exclude his proposal.

"In our opinion, CA's contention of illegality under Delaware law is incorrect," said **Jay Eisenhofer** of Grant & Eisenhofer. "Unfortunately, shareholders have not in the past challenged corporate contentions concerning the illegality of shareholder-proposed bylaws. Although this important issue has for years been intensively discussed among corporate governance commentators and law reviews, the issue does not appear to have previously been litigated. We hope that this test case will contribute to improving corporate governance by making shareholders' rights clear."

"I believe that shareholder adoption of the proposed by-law would be permitted under the Delaware statutory provision that gives shareholders plenary power to amend the by-laws," said **Jeffery Gordon**, the Alfred W. Bressler Professor of Law at Columbia Law School, who has written about the validity of by-law provisions under Delaware corporate law.

"It is unfortunate that CA is trying to preclude shareholders from voting on my proposal," said Lucian Bebchuk. "I hope that the resolution of this case will prevent CA from doing so and will make clear that shareholders have the right to adopt bylaw provisions such as the one I proposed."

Please let us know if you would like a copy of the complaint or would like further detail.

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New York and Wilmington-based **Grant & Eisenhofer** represents institutional investors and shareholders nationally in securities class actions, corporate governance actions and derivative litigation; the firm is currently lead counsel in securities class actions against Global Crossing, Tyco, Parmalat, Refco, Marsh & McLennan and others. The firm has recovered more than \$2 billion for shareholders in the last five years and was named one of the Top 5 firms for shareholder recovery in 2005 by Institutional Shareholder Services. Also in 2005, Grant & Eisenhofer published the *Shareholder Activism Handbook*, a practical guide for shareholders on corporate governance matters authored by Jay Eisenhofer and Michael Barry. For more, go to <http://www.gelaw.com>.