UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

BRUNSWICK TECHNOLOGIES, INC.,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	**Civil No. 00-124-P-H**
	)	
VETROTEX CERTAINTEED CORP.	)	
d/b/a VETROTEX AMERICA,	)	
VA ACQUISITION CORP.,	)	
CERTAINTEED CORP., and	)	
COMPAGNIE de SAINT-GOBAIN,	)	
	)	
DEFENDANTS	)	

ORDER ON REQUESTS FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

After a hearing held on May 1, 2000, the requests for a temporary restraining order and preliminary injunction seeking a 30-day cooling off period in this hostile tender offer are **DENIED**.

FACTS

The plaintiff Brunswick Technologies, Inc. ("Brunswick"), is the object of a hostile tender offer by Compagnie de Saint-Gobain ("Saint-Gobain") and its related companies.[1] Through a subsidiary, Vetrotex CertainTeed Corp. ("Vetrotex"), Saint-Gobain has owned about 14% of Brunswick since Brunswick went public in

[1] Saint-Gobain, a French corporation, is a publicly-owned holding company. CertainTeed Corporation is an indirect wholly-owned Delaware subsidiary of Saint-Gobain and manufactures building materials. Vetrotex CertainTeed Corporation is a wholly-owned Delaware subsidiary of CertainTeed and manufactures fiber glass reinforcement products. VA Acquisition Corporation is an indirect Maine wholly-owned subsidiary of CertainTeed Corp. and is offering to purchase Brunswick's outstanding common stock.

February of 1997 (before that date and since 1993, Vetrotex owned 20% of Brunswick, then a privately held company). In February of 1997, Vetrotex made the required Securities and Exchange Commission ("SEC") filing, Schedule 13D,[2] and stated that it owned Brunswick stock solely for investment purposes (*i.e.*, not to control Brunswick). Brunswick maintains that this filing should have been amended in (1) October of 1999 or (2) December of 1999, and at least by (3) March 30, 2000. On those dates respectively, Saint-Gobain management (1) expressed interest in moving its business "downstream" and the possibility of partnership with Brunswick; (2) reduced the supply of fiberglass it sold to Brunswick by one-half; and (3) said that although Saint-Gobain could not make a firm offer, it was interested in buying outstanding shares of Brunswick at $7 per share. Thereafter, on April 10, 2000, Saint-Gobain made an offer of "up to $7.75 per share." It filed an amended Schedule 13D on April 14, 2000, and another amendment on April 17.

LAW

I do not decide whether Saint-Gobain defaulted on its obligation to amend its SEC filings promptly by not filing before April 14, 2000. Under existing precedents of the First Circuit construing the Williams Act as it affects tender offers, the only injunctive relief Brunswick Technologies, Inc. can get for an inaccurate filing is an order to file an accurate amendment. "Curing any alleged defects precludes a showing of irreparable harm." Hibernia Savings Bank v. Ballarino, 891 F.2d 370, 373 (1st Cir. 1989). But here Brunswick does not claim

[2] Section 13(d) of the Securities and Exchange Act of 1934, as added by section 2 of the Williams Act, 82 Stat. 454, 15 U.S.C. § 78m(d)(1999).

that the amended filings are incorrect; thus, an accurate amendment is already on file. There is no right to a "cooling off period" in addition. Therefore, regardless of whether Saint-Gobain did violate SEC regulations and regardless of whether Brunswick has any cause of action as a result, Brunswick has no right to a court-ordered 30-day cooling off period. In legal terminology, as the Supreme Court has said in Rondeau and the First Circuit has confirmed, succeeding on the merits of a claim is not enough for injunctive relief in a Williams Act tender offer case. The plaintiff must show irreparable injury and meet the other requirements for a preliminary injunction (balancing of the harms and no adverse effect on the public interest) as well. Rondeau v. Mosinee Paper Corp., 422 U.S. 49, 57-58 (1975); Hibernia, 891 F.2d at 372-73. Brunswick has not done so here, where the corrective amendments have been filed and Saint-Gobain has not yet increased its stock ownership. Grimnes Aff. at ¶¶ 9, 24, 26.[3] As the Supreme Court has said, "[t]he purpose of the Williams Act is to insure that public shareholders who are confronted by a cash tender offer for their stock will not be required to respond without adequate information regarding the qualifications and intentions of the offering party." Rondeau, 422 U.S. at 58. That information is now available.

The other two violations Brunswick challenges grow out of the tender offer itself. The offer started April 20, 2000. Under SEC regulations, Saint-Gobain was required to deliver the offer to Brunswick that day. 17 C.F.R. § 240.14d-3(a) (2000).

[3] Brunswick's claim of inadequate time to evaluate the tender offer is weak. By Brunswick's own account, Saint-Gobain has been showing growing interest since October of 1999, crystalizing into a likely offer by March 30, 2000. Thus, Brunswick has had more time to prepare a response than if Saint-Gobain had made its tender offer and gone public at an earlier point.

Because of an inadvertent lapse, hand delivery occurred the next day. As a result of the lapse, Saint-Gobain consulted SEC staff and was advised to extend the length of the offer by one day and to issue a press release to that effect. It did so. Brunswick claims that the lapse cannot be so easily cured and that Saint-Gobain must start its tender offer anew. It also claims that Saint-Gobain is doubly wrong because it did not say publicly why it made the one-day extension. Once again, however, whatever violation there was, it does not support a court-ordered "cooling off" period. The one-day extension recognizing the one-day delay adequately serves the purposes of the Williams Act.[4]

The state law claims may support a damage recovery (I express no view at this time), if proven, but do not support injunctive relief.

CONCLUSION

For these reasons, Brunswick Technologies, Inc.'s requests for a temporary restraining order and preliminary injunction are **DENIED**.

SO ORDERED.

DATED THIS 2ND DAY OF MAY, 2000.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE

[4] At oral argument, Brunswick's lawyer argued that the delay was really one and one-half or two days because Brunswick was entitled to receive the document on April 20, 2000 as soon as "practicable"—i.e., by about 9:00 a.m.—and did not receive it until after 3:00 p.m. on April 21, 2000. The relief Brunswick has requested, however, is a 30-day cooling off period, not an extra half-day extension on the tender offer.

U.S. District Court
District of Maine (Portland)
CIVIL DOCKET FOR CASE #: 00-CV-124

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v.	
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VA ACQUISTION CORP defendant	(see above)
CERTAINTEED CORP defendant	(see above)
COMPAGNIE DE SAINT GOBAIN defendant	(see above)