

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

HIGH RIVER LIMITED PARTNERSHIP, )  
ICAHN PARTNERS LP, ICAHN )  
PARTNERS MASTER FUND, LP, )  
ICAHN PARTNERS MASTER )  
FUND II LP, and ICAHN PARTNERS )  
MASTER FUND, III, L.P. )

Plaintiffs, )

v. )

BEA SYSTEMS, INC. a Delaware )  
corporation, ALFRED S. CHUANG, )  
STEWART K.P. GROSS, DEAN O. )  
MORTON, WILLIAM H. JANEWAY, )  
GEORGE REYES, L. DALE )  
CRANDALL, RICHARD T. )  
SCHOLSBERG, III, BRUCE A. )  
PASTERNAK, ROBIN A. ABRAMS, )  
and KIRAN PATEL )

Defendants. )

Civil Action No. \_\_\_\_\_

COMPLAINT PURSUANT TO 8 DEL.C. §211 AND FOR BREACH OF FIDUCIARY DUTY

Plaintiffs High River Limited Partnership, Icahn Partners LP, Icahn Partners Master Fund LP, Icahn Partners Master Fund II LP, and Icahn Partners Master Fund III LP, (collectively, "Plaintiffs") by and through their attorneys, allege as follows on knowledge, information and belief:

I. Introduction

1. This is an action to compel the board of directors of BEA Systems, Inc. ("BEAS" or the "Company") to finally hold an annual meeting of stockholders at which they can be held responsible for their actions, including those actions relating to a stock-options scandal by which many of them personally profited from wrongfully granted or wrongfully accounted for options. It

also seeks to enjoin defendants from taking action—*action that Plaintiffs have reason to believe the Company might shortly launch*—to interfere with a full, fair, and free vote by the Company’s stockholders at the annual meeting. In particular, Plaintiffs have reason to believe that the Company is contemplating pursuing in the immediate future an illegal and inequitable scheme that could involve the sale of large blocks of stock to investors who are friendly to management. Plaintiffs believe that such a plan would be designed to, and have the effect of, defeating any proxy contest and entrenching the current scandal-ridden and compromised board.

2. Plaintiffs believe that these plans are currently underway even though the Company has not held an annual stockholders’ meeting since July 2006, has not filed any SEC financial reports since June 2006 and has still not announced an annual stockholders’ meeting date, all in violation of the law.

3. Since August 2006 a stock-options scandal has engulfed the Company, management and even the board of directors. Defendant, Alfred Chuang, the Company’s Chairman and Chief Executive Officer, has been publicly identified by the Company as a recipient of “mispriced” options, as have a number of unidentified “independent” directors. As with so many cases of “mispriced” options, the mispricing apparently only went one way. No options, it appears, were priced too high. None of the defendants was required to accept an option with an unduly high strike price. And, of course, none of the options seem to have been priced at the highest stock price of the relevant quarter. Rather—and not by coincidence—every option involved in the scandal appears to have been priced too low, usually by using very favorable pricing dates. And none—not one—of the defendants who received these mispriced options appears to have ever noticed how lucky he was in the timing of the option grant dates. From the Company’s extraordinarily opaque descriptions about what occurred (which are written largely in the passive voice at any critical point), one is led

to believe that the responsible defendants were probably shocked to learn that their amazing good fortune came not from luck but from deliberate wrongdoing.

4. The effect of the “mispricing” has been staggering. On October 10, 2007, the Company announced that it would have to take a charge against earnings of \$425 million, of which approximately \$250 million relates to mispriced stock options. That is a quarter of a billion dollars, all of which was lost on the individual defendants’ watch as stewards of the Company’s fortunes, and does not include the many millions of dollars that they pocketed but were forced to return.

5. The individual defendants know how bad their record looks. They know that the stockholders might not fully credit their tales of innocence and surprise. Indeed, the ones involved in pocketing the money know that there are grounds to remove them from office for cause. They have no incentive to want to face the stockholders until the scandal fades from view, and thus do not want to hold a stockholder meeting.

6. Those reasons for not wanting to hold a meeting increased in September 2007, when Plaintiffs and certain affiliates publicly announced that they might nominate directors to be elected at the Company’s 2007 stockholder meeting. Plaintiffs are affiliates of Carl C. Icahn, who has a reputation for initiating proxy fights against unresponsive and self-serving management (collectively Mr. Icahn, Plaintiffs and their various affiliates are referred to herein as the “Icahn Group”). Currently the Icahn Group beneficially owns almost 14% of the Company’s stock.

7. Defendants’ desire to avoid a stockholder meeting increased to new heights several weeks after the Icahn Group made its announcement. The Icahn Group previously had announced that it believed that the Company should be sold. On October 11, 2007, Oracle Corporation made an offer to buy the Company at a price of \$17 per share, a 25% premium over the stock price (which

had already run up after the Icahn Group made its announcement). Plaintiffs now have reason to believe that Oracle had made a series of bids for the Company over an unknown period of time, none of which were accepted and none of which were disclosed to the public. This time Oracle made its bid public on October 12<sup>th</sup>, presumably so the board could not simply ignore it as they apparently had done in the past.

8. The Icahn Group welcomed Oracle's bid, although it also publicly said that it thought a higher price could be obtained. On October 25, 2007, BEAS publicly announced that it would only accept a bid of \$21 per share or greater. In making this ill-conceived proclamation, the Company rejected the idea of allowing the shareholders to decide on what bid would be acceptable.

9. It appears that the Company's management wants neither a bid much less the prospect that nominees of the Icahn Group sit around the board table with them. Plaintiffs have reason to believe that to fend off such unwanted oversight, the Company will place new blocks of stock in friendly hands before any stockholders' meeting can be scheduled or to conduct a "strategic transaction" that would entrench management in place.

10. Accordingly, Plaintiffs come to this Court to seek (1) an order pursuant to § 211 of the Delaware General Corporation Law (the "DGCL") requiring the Company to hold an annual meeting of stockholders by November 30, 2007, with a record date as of the day of this Complaint; and (2) temporary, preliminary and permanent relief barring the defendants from taking any action that would prevent a full, fair and free vote by the stockholders at that meeting.

## II. The Parties.

11 Each of the Plaintiffs holds 1,000 shares of record of BEAS, as well as other shares that are listed on the Forms 13D filed with the SEC by the Icahn Group. Plaintiffs seek a

stockholder election for the Company and have already officially indicated that they might nominate candidates for election.

12. Defendant BEAS is a Delaware corporation whose stock trades on the NASDAQ (under the symbol "BEAS"). The Company publicly states that it is a world leader in enterprise infrastructure software. Plaintiffs believe that BEAS should be sold to a larger and more integrated firm and that the future of the Company should be determined by its stockholders without any attempt by management or the directors to alter the composition of the shareholder body.

13. The individual defendants are the Company's directors. As noted, many of them personally profited from the Company's accounting scandal (or at least did so until they were forced to agree to restitutionary measures).

### III. Other Substantive Allegations.

14. The last meeting of the Company's stockholders was held on July 19, 2006 and the Company has not announced either a meeting date or a record date for the 2007 meeting. Since more than 13 months have passed since the last annual meeting, and since no date was designated within the 13 month period, as record and beneficial holders of the stock of BEAS the plaintiffs have standing to request that the Court order a meeting be promptly held. The Company has announced that it should be able to file its long-overdue SEC financial reports in the near future, and thus has no valid excuse for opposing the holding of a prompt meeting.

15. In addition, Plaintiffs have reason to believe that the Company is actively considering and in the process of implementing a scheme that would involve the Company issuing new shares to stockholders who are management-friendly. Plaintiffs believe that the

Company could start such a scheme at any time, and might place stock into management-friendly hands in the immediate future.

16. There is no compelling justification for such a scheme, nor is it reasonable in relation to the threats currently posed to the Company. Plaintiffs' potential nominees pose no threat to the Company itself, only to its entrenched and scandal-ridden board, and there is no legitimate basis for the Company to take action to protect the incumbency of its directors. Nor does the presence of the Oracle bid justify action by the board that would have the effect—and almost certainly the intent—of interfering with a legitimate stockholder election challenge. The scheme is illegal and inequitable, and expending any resources in pursuing it constitutes a breach of fiduciary duty by the BEAS board of directors. Each of the individual defendants who participates in or supports the scheme in any way is in breach of his or her fiduciary duties to the Company and its stockholders.

17. Plaintiffs have no adequate remedy at law. In addition, they have a statutory right under § 211(c) to the calling of a prompt stockholder meeting.

WHEREFORE, plaintiffs respectfully request that this Court enter an order:

- a. Summarily ordering the Company to hold an annual meeting of stockholders by no later than November 30, 2007, with a record date of the date of this Complaint;
- b. Requiring the election of directors at the annual meeting of stockholders to be accomplished by written ballot pursuant to 8 *Del. C.* § 211(e); and
- c. Temporarily, preliminarily and permanently enjoining defendants and all those acting in concert with them from taking any action to (1) issue shares of the Company's stock, (2) to sell any material assets of the Company, (3) interfere with a proper sale of the Company, or

(4) take any other action that would have the effect of interfering with a full, fair and free vote by the Company's shareholders at the annual meeting without first obtaining approval by the Company's shareholders; and

d. Granting them such other relief, including reasonable attorneys' fees and costs, as this Court shall deem appropriate.

ASHBY & GEDDES

/s/ Stephen E. Jenkins

Lawrence C. Ashby (I.D. No. 468)  
Stephen E. Jenkins (I.D. No. 2152)  
Catherine A. Strickler (I.D. No. 4310)  
500 Delaware Avenue  
P.O. Box 1150  
Wilmington, DE 19899  
(302) 654-1888


Dated: October 26, 2007

*Attorneys for Plaintiffs*

**VERIFICATION**

STATE OF NEW YORK    )  
                                  ) ss:  
NEW YORK COUNTY    )

I, Keith A. Meister, am Managing Director of plaintiffs Icahn Partners LP and am authorized to make this verification on its behalf. I state under oath that I have read the foregoing Complaint, that the matter contained therein is true insofar as it concerns the act and deed of plaintiffs, and that so far as it relates to the act and deed of any other person it is believed by me to be true.

  
\_\_\_\_\_  
Name: Keith A. Meister  
Title: Managing Director, Icahn Partners LP

SUBSCRIBED TO AND SWORN  
before me this 26th day of October, 2007

  
\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**Dolores Toomey**  
Notary Public, State of New York  
No. 41-4771811  
Qualified in Queens County  
Commission Expires May 31, 2010



**SUPPLEMENTAL INFORMATION PURSUANT TO RULE 3(a)  
OF THE RULES OF THE COURT OF CHANCERY**

The information contained herein is for the use by the Court for statistical and administrative purposes only. Nothing stated herein shall be deemed an admission by or binding upon any party.

1. Caption of Case: HIGH RIVER LIMITED PARTNERSHIP, ICAHN PARTNERS LP, ICAHN PARTNERS MASTER FUND, LP, ICAHN PARTNERS MASTER FUND II LP, and ICAHN PARTNERS MASTER FUND, III, L.P. v. BEA SYSTEMS, INC. a Delaware corporation, ALFRED S. CHUANG, STEWART K.P. GROSS, DEAN O. MORTON, WILLIAM H. JANEWAY, GEORGE REYES, L. DALE CRANDALL, RICHARD T. SCHOLSBERG, III, BRUCE A. PASTERNAK, ROBIN A. ABRAMS, and KIRAN PATEL.

2. Date Filed: October 26, 2007

3. Name and Address of Counsel for Plaintiff(s):  
ASHBY & GEDDES  
Lawrence C. Ashby (I.D. #468)  
Stephen E. Jenkins (I.D. #2152)  
Catherine A. Strickler (I.D. #4310)  
500 Delaware Avenue, 8<sup>th</sup> Floor  
Wilmington, DE 19801

4. Short Statement and Nature of Claim Asserted:

Complaint pursuant to 8 *Del. C.* § 211 to compel an annual meeting and for breach of fiduciary duty

5. Substantive Field of Law Involved (Check One):

<input type="checkbox"/> Administrative Law	<input type="checkbox"/> Trade secrets/
<input type="checkbox"/> Commercial Law	trade mark/or other
<input type="checkbox"/> Constitutional Law	intellectual property
<input checked="" type="checkbox"/> Corporation Law	<input type="checkbox"/> Trusts
<input type="checkbox"/> Guardianships	<input type="checkbox"/> Wills and Estates
<input type="checkbox"/> Labor Law	<input type="checkbox"/> Zoning
<input type="checkbox"/> Real Property	<input type="checkbox"/> Other

6. Related Case(s):

7. Basis of court's jurisdiction (including the citation of any statute conferring jurisdiction):

8 *Del. C.* § 211

8. If the complaint seeks preliminary equitable relief, state the specific preliminary relief sought:

Enjoining defendants from taking any action to issue or repurchase shares of the Company's stock, sell any material assets of the Company, interfere with a proper sale of the Company, or take any other action that would interfere with the stockholder franchise at the annual meeting.

9. If the complaint seeks summary or expedited proceedings, check here X.

/s/ *Stephen E. Jenkins (I.D. #4310)*

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Signature of Attorney of Record