

Hershey Shareholders Allege Company Uses Cocoa Produced Through Unlawful Child Labor in Africa

Public pension fund seeks court order to inspect Hersey’s books; shareholders claim board has long known of company’s dealings with suppliers utilizing illegal child labor in Ghana and the Ivory Coast and committing human trafficking violations; suit filed by Grant & Eisenhofer in Delaware Chancery Court.

WILMINGTON, DE (November 1, 2012) – A public pension fund has filed suit today against **Hershey Company** (NYSE: HSY) to inspect the company’s books and records, contending that the Pennsylvania-based confectioner uses cocoa produced as a result of unlawful child and forced labor in the West African countries of Ghana and the Ivory Coast.

The demand to inspect Hershey’s corporate records was made by **Louisiana Municipal Police Employees’ Retirement System**, and comes one day after Halloween, when candy sales and chocolate consumption are at their highest levels, particularly among children. The court filing marks the beginning of what could be a major shareholder challenge to the business practices of Hershey, the largest chocolate producer in North America. The company sells chocolate in some 70 countries worldwide with over \$6.8 billion in net sales in the past fiscal year.

LAMPERS is represented by noted shareholder and corporate governance law firm **Grant & Eisenhofer**. The firm filed the complaint in Delaware’s Chancery Court.

In seeking a court order compelling Hershey to make its corporate records open to shareholder inspection, LAMPERS maintains that the company’s board has long known about the use of “tainted cocoa,” yet has persisted in using ingredients from suppliers in West Africa, where illegal child labor practices are rampant, including the use of children under 10 to harvest cocoa in the field. Shareholders contend that the board has consistently permitted Hershey to engage in unlawful acts in violation of its certificate of incorporation under Delaware law, and consequently has breached its fiduciary duties.

“That one of the world’s leading confectioners — whose primary market is children — could exploit child laborers to meet its bottom line is an outrage,” said Grant & Eisenhofer co-managing director **Jay Eisenhofer**, who is counsel to LAMPERS. “Rather than open its records to scrutiny, Hershey over the past decade has thrown up multiple roadblocks to reasonable examination of its conduct regarding serious questions about illegal child slave labor and trafficking in its supply chain.”

Mr. Eisenhofer added, “Speaking as a father whose children just returned from trick-or-treating with a cornucopia of candy, much of it made by Hershey, it’s a shock to the conscience that Hershey would be less than forthcoming about the use of illegal child labor in bringing its products to market. Shareholders believe such conduct is not what Milton Hershey and his wife, who were well-known for philanthropy for disadvantaged children, would envision for the company.

Reports of Abusive Child Labor Practices in West Africa

The complaint notes that as far back as 2001, reports on the systemic use of child labor, forced labor and human trafficking on cocoa farms in West Africa raised awareness of the U.S. House of Representatives to the problem. The House passed a proposed amendment to the FDA and Related Agencies Appropriations Act that would require “slave-free” labeling for cocoa products.

Before the Amendment was presented for a Senate vote, major cocoa producers — including Hershey — promised to correct these human rights abuses without need for legislation. Later that year, Hershey and the companies signed the Harkin-Engel Protocol, a compact to eliminate illegal child labor in high cocoa producing countries in West Africa.

The complaint notes that despite the adoption of the Protocol in 2001, numerous reports have revealed that its signatories have failed to comply with their obligations and that forced labor and illegal child labor remain prevalent within the industry.

Shareholders point to one study on West African child labor, conducted by Tulane University Law School through a grant from the U.S. Department of Labor, that found in 2011 that a majority of cocoa farmers and related suppliers in Ghana and the Ivory Coast employing children are having them engage in hazardous illegal work conditions. The study determined in 2010 that there was substantial evidence that West African countries violate human trafficking laws. The Ivory Coast and Ghana were both mentioned as destinations for trafficked children.

Hershey's Commitment to Children in Question

Grant & Eisenhofer's complaint details Hershey's tacit support of child labor law violations in some West African countries — despite the company branding itself as a protector of disadvantaged children, thereby continuing founder Milton Hershey's century-old legacy of commitment to consumers, communities and children.

The complaint alleges that Hershey has steadfastly refused to disclose the names of its cocoa suppliers, although its 2011 Corporate Social Responsibility Report includes Ghana and the Ivory Coast as "Major Sourcing Countries." In 2006, a separate shareholder group requested that management report on all sources of cocoa purchased, but Hershey declined to disclose information on its suppliers. According to the complaint, two years later, the board acknowledged that problems continued, noting that instances of illegal child trafficking had been found in its supply chain.

Plaintiffs argue that the Harkin-Engel Protocol has done little to eliminate child labor law violations from the West African cocoa trade. Hershey and other signatories swore commitment to implementing industry-wide standards by 2005 that cocoa products would be produced without illegal child labor. However, the company now claims it will take until 2020 to honor its obligations, announcing earlier this month that it will require eight more years to make headway in solving the problems of child labor and human trafficking on West African cocoa farms.

Hershey has previously conceded its difficulty in determining whether its suppliers are making illegal use of children, maintaining in its CSR Report that "many cocoa-growing communities are located in remote and often difficult-to-access areas." According to the complaint, Hershey has contended that West African children are often involved in daily farming activities, which are difficult to monitor.

Mr. Eisenhofer stated, "Hershey's own report essentially admits that many children continue to work on these cocoa farms. And yet the company turns a blind eye on studies showing that an estimated two million children work illegally for long hours, improperly supervised, with dangerous tools on these farms. Reports indicate that many of the farms are not family operations, but rather large plantation-like operations, and that many of the children working the cocoa harvest are victims of human trafficking."

In the complaint, Grant & Eisenhofer argues that Hershey's continued delays in certifying its products as slave-free has resulted in an erosion of the company's reputation. This past August, a group of 65 retailers sent a letter to Hershey's board voicing concerns over the company's inadequate efforts to address child and slave labor practices within their supply chain. Shareholders contend that Hershey's conduct is beginning to harm its business relationships, which could ultimately cost the company millions in profits.

Hershey Denies Latest Shareholder Requests

Grant & Eisenhofer issued its initial demand letter to Hershey on behalf of shareholders earlier this month, requesting that the company allow inspection of the minutes of any board meeting during which there was discussion of unlawful labor or trafficking in the company's supply chain, as well as

compliance with the Harkin-Engel Protocol. The law firm also requested a complete list of suppliers from which Hershey has purchased cocoa over the past 10 years.

The complaint states that Hershey denied the requests. The company replied in an Oct. 12 letter that the demand was based on speculative assertions, and that the company does not “directly purchase any cocoa beans from West African farms,” but that the “overwhelmingly vast majority of the cocoa materials purchased by Hershey . . . are processed cocoa products such as cocoa liquor, cocoa butter and cocoa powder which are purchased from large multi-national companies.” The company further tried to deflect accountability by arguing that the cocoa beans it purchases from West Africa come through third party suppliers. Hershey continues to claim that it is doing its part to address potential human rights violations by committing to use only independently “certified” cocoa by 2020.

Mr. Eisenhofer challenged Hershey’s justifications for refusing to allow inspection of the corporate records. “Astonishingly, Hershey’s board continues to pass the buck,” he said. “That Hershey buys most of its cocoa products from other suppliers doesn’t change the obligation it undertook in 2001 to certify that its products weren’t made by slave labor. The argument that Hershey’s records cannot be made available because the company doesn’t directly purchase beans from West African farms is absurd. Even indirect purchases of cocoa products support farms operating illegally on the backs of child labor.”

He continued, “The fact that Hershey cannot commit to using ‘certified’ cocoa until 2020 — 19 years after signing the Harkin-Engel Protocol — is tantamount to an admission that it currently doesn’t use ‘certified’ cocoa, and is in violation of the law. We hope the court will grant our request to inspect books and records, so we can move to determine whether the board breached its fiduciary duties, and the extent to which the company is violating international child labor, forced labor and human trafficking laws and safeguards.”

The case caption is: *Louisiana Municipal Police Employees’ Retirement System v. Hershey Co.*

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Note: Grant & Eisenhofer P.A. represents institutional investors and shareholders internationally in securities class actions, corporate governance actions and derivative litigation. The firm has recovered more than \$13 billion for shareholders in the last five years and has consistently been cited by RiskMetrics for securing among the highest average investor recovery in securities class actions. Grant & Eisenhofer has been named one of the country’s top plaintiffs’ law firms by The National Law Journal for the past eight years. For more about Grant & Eisenhofer, visit www.gelaw.com.

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