

FutureFuel Corp.
Form DEF 14A
June 08, 2011

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A

(RULE 14a-101)
INFORMATION REQUIRED IN PROXY STATEMENT
SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the Securities
Exchange Act of 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary proxy statement.

Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2)).

Definitive Proxy Statement.

Definitive Additional Materials.

Soliciting Material Pursuant to §240.14a-12.

FUTUREFUEL CORP.

(Name of Registrant as Specified in its Charter)

N/A

(Name of Person(s) Filing Proxy Statement, if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule

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0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration number, or the Form or Schedule and the date of its filing.

(1)Amount Previously Paid:

(2)Form, Schedule or Registration Statement No.:

(3)Filing Party:

(4)Date Filed:

8235 Forsyth Blvd. - 4th Floor
Clayton, Missouri 63105

NOTICE OF ANNUAL MEETING OF SHAREHOLDERS
TO BE HELD ON JULY 15, 2011

June 8, 2011

TO THE SHAREHOLDERS OF FUTUREFUEL CORP.

Notice is hereby given that the annual meeting of shareholders of FutureFuel Corp. will be held on Friday, July 15, 2011 at 8235 Forsyth, 4th Floor, Clayton, Missouri 63105 at 10:00 a.m. local time, for the following purposes:

- (1) to elect three directors: Lee E. Mikles, Thomas R. Evans, and Paul M. Manheim;
- (2) to ratify the appointment of RubinBrown LLP as our independent auditor for the year ending December 31, 2011;
- (3) to make an advisory vote on the compensation of our named executive officers;
- (4) to make an advisory vote on the frequency of an advisory vote on the compensation of our named executive officers; and
- (5) to transact such other business as may properly come before the meeting.

The record date for the determination of holders of our common stock entitled to notice of and to vote at the annual meeting of shareholders is June 1, 2011. Only shareholders of record at the close of business on the record date will be entitled to vote at the annual meeting or any adjournment thereof. It is important that your shares be represented at this meeting to help ensure the presence of a quorum.

By Order of the Board of Directors,
Douglas D. Hommert, Corporate Secretary

PLEASE SIGN AND RETURN THE ENCLOSED PROXY CARD AS PROMPTLY AS POSSIBLE, WHETHER YOU PLAN TO ATTEND THE MEETING OR NOT. YOU MAY WITHDRAW YOUR PROXY AT ANY TIME PRIOR TO THE MEETING, OR AT THE MEETING.

IMPORTANT NOTICE REGARDING AVAILABILITY OF PROXY MATERIALS FOR THE
SHAREHOLDER MEETING TO BE HELD ON JULY 15, 2011

This notice, the proxy statement attached to this notice, and our annual report to shareholders for the year ended December 31, 2010 are available free of charge on the "Investor Relations" page of our website at <http://ir.futurefuelcorporation.com/proxy.cfm>.

8235 FORSYTH BLVD., 4TH FLOOR
CLAYTON, MISSOURI 63105

PROXY STATEMENT

This Proxy Statement contains information relating to the 2011 Annual Meeting of Shareholders of FutureFuel Corp. (the “Company”, “we”, “us,” or “our”). Through this mailing, our board of directors is soliciting proxies for this annual meeting. Our Annual Report for the year ended December 31, 2010 is also enclosed with this Proxy Statement, as are proxy cards. These documents provide important information about our business, including audited financial statements.

Date, Time, and Place Information

Date, Time, and Place of the Meeting

The 2011 annual meeting of our shareholders will be held at our principal executive offices at 8235 Forsyth Blvd., 4th Floor, Clayton, Missouri 63105 on Friday, the 15th day of July, 2011 at 10:00 a.m., local time, subject to adjournments or postponements.

Approximate Date on Which this Proxy Statement Is First Sent to Security Holders

This Proxy Statement, the form of proxy included herein, and our Annual Report are first being sent or delivered to security holders on or around June 8, 2011.

Shareholder Proposals for the Next Annual Meeting

Any shareholder desiring to make a proposal to be acted upon at the 2012 annual meeting of our shareholders must present such proposal to us at our principal office set forth above by February 29, 2012 for the proposal to be considered for inclusion in our proxy statement for that annual meeting.

In addition to any other applicable requirements, for business properly to be brought before an annual meeting by a shareholder (including business not to be considered for inclusion in our proxy statement), our bylaws provide that the shareholder must have given timely notice thereof in proper written form to our corporate secretary. To be timely, a shareholder’s notice must be delivered to or mailed and received at our principal office not less than 30 days nor more than 60 days prior to the annual meeting; provided, however, that in the event that less than 40 days’ notice or prior public disclosure of the date of the annual meeting is given or made to shareholders, notice by the shareholder to be timely must be received not later than the close of business on the 20th day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure was made. To be in proper written form, a shareholder’s notice to our corporate secretary must set forth in writing as to each matter the shareholder proposes to bring before the annual meeting: (i) a brief description of the business desired to be brought before the annual meeting and the reason for conducting such business at the annual meeting; (ii) the name and address, as they appear on our books, of the shareholder proposing such business; (iii) the class and number of shares of our stock which are beneficially owned by the shareholder; and (iv) any material interest of the shareholder in such business.

Shareholder nominations for director must comply with the notice and informational requirements described above for other shareholder proposals, as well as additional information that would be required under applicable United States Securities and Exchange Commission (“SEC”) proxy rules and the policies of the nominating/corporate governance committee of our board, particularly appendices A, B, and C of our nominating/corporate governance committee

charter. A copy of our nominating/corporate governance committee charter may be found on our internet web site at <http://ir.futurefuelcorporation.com/governance.cfm>. In addition, a copy may be obtained free of charge through a written request to us at our principal office set forth above, attention corporate secretary.

Matters to Be Voted Upon

The following matters are to be voted upon at the 2011 annual meeting of our shareholders.

PROPOSAL ONE - ELECTION OF DIRECTORS

Our board has nominated three persons for election to our board at the 2011 annual meeting of our shareholders: Lee E. Mikles, Thomas R. Evans, and Paul M. Manheim, each as a Class B director. Prior to co-founding us and becoming our president and chief executive officer, Mr. Mikles was a registered investment advisor for over two decades. He bore the responsibility of Mikles/Miller Management, Inc., and brings an understanding of the intricate financial complexities of hundreds of organizations analyzed and researched for investment potential for his company's investment portfolio. Additionally, Mr. Mikles has served on multiple boards of public companies where he most frequently serves on or heads the audit committee. He brings an extensive understanding of board issues and responsibilities to us.

Mr. Evans currently is the chief executive officer of Bankrate.com and has served in the chief executive position in numerous public and private companies with responsibility for financial reporting, strategy, and the development of multiple complex organizations. He brings a wealth of experience to our board.

Mr. Manheim is currently a consultant to and a corporate director of HAL Real Estate Investments Inc., which develops and owns a portfolio of real estate in the Pacific northwest consisting of multi-family, office, and mixed-use assets. He was the president and chief executive officer of HAL Real Estate Investments Inc. until September 2005. Mr. Manheim has also served as a director of several public and private companies, and is a chartered accountant. He brings a wealth of experience, especially in the accounting arena, to our board.

Under our certificate of incorporation, our directors are divided into three classes, which serve for staggered three-year terms. Mr. Mikles was originally elected as a director on August 22, 2005, Mr. Evans was originally elected as a director on May 24, 2006, and Mr. Manheim was originally appointed as a director on April 5, 2011. All three are standing for re-election. Each of these nominees has agreed, if elected at the 2011 annual meeting of our shareholders, to serve as a Class B member of our board for a three-year term expiring in 2014.

The persons named as attorneys-in-fact in the accompanying shareholder proxy card will vote for the election of the nominees listed above as director, unless authority to so vote is withheld. Although our board expects that the nominees will be available for election, in the event a vacancy in the slate of nominees occurs, shares of our common stock represented by proxies will be voted for the election of a substitute nominee selected by the persons named as attorneys-in-fact in the accompanying shareholder proxy card.

The name of the nominees for election and the other continuing members of our board, and certain other information with respect to such persons, are set forth below.

Nominee For Election as a Class B Director
For the Three-Year Term Expiring in 2014

Name, Age, and Positions with the Company	Director of the Company Since
Lee E. Mikles, 55. Mr. Mikles has been our chief executive officer and president and a member of our board since inception. In addition, he served as our principal financial officer before our acquisition of FutureFuel Chemical Company and thereafter through January 31, 2008.	2005

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Thomas R. Evans, 56. Mr. Evans has been a member of our board since May 24, 2006.	2006
Paul Manheim, 62. Mr. Manheim has been a member of our board since April 5, 2011.	2011

Continuing Directors

Name, Age, and Positions with the Company	Class	Term Expiring	Director of the Company Since
Paul A. Novelly, 67. Mr. Novelly has been the executive chairman of our board since inception.	C	2012	2005
Edwin A. Levy, 74. Mr. Levy has been a member of our board since November 26, 2005.	A	2013	2005
Paul G. Lorenzini, 71. Mr. Lorenzini has been a member of our board since January 8, 2007 and our chief operating officer since April 21, 2008.	C	2012	2007
Donald C. Bedell, 70. Mr. Bedell has been a member of our board since February 26, 2008.	A	2013	2008
Richard L. Knowlton, 78. Mr. Knowlton has been a member of our board since January 8, 2007.	C	2012	2007

OUR BOARD RECOMMENDS THAT SHAREHOLDERS VOTE FOR EACH OF THE NOMINEES FOR ELECTION AS DIRECTOR.

PROPOSAL TWO - RATIFICATION OF INDEPENDENT PUBLIC ACCOUNTANT

RubinBrown LLP was our independent auditor for the fiscal years ending December 31, 2008, 2009, and 2010. On March 10, 2011, the audit committee of our board took action to approve the retention of the accounting firm of RubinBrown LLP as the independent auditor for us for the fiscal year ending December 31, 2011. Our board subsequently approved the actions of the audit committee but made the decision to seek shareholder ratification of the appointment of RubinBrown LLP as our independent auditor for the fiscal year ended December 31, 2011. A representative from the firm is expected to be present at the 2011 annual meeting of our shareholders and will have an opportunity to make a statement if he desires to do so and will be available to respond to shareholder questions. Additional information regarding our independent auditor is set forth under the caption "Independent Public Accountants" beginning at page 25 below. If our shareholders do not ratify the appointment of RubinBrown LLP, our board will consider the selection of other auditors.

In light of the foregoing, we ask our shareholders to vote on the following resolution at the 2011 annual meeting of our shareholders.

RESOLVED, that the shareholders of the Company ratify the selection of RubinBrown LLP as the Company's independent auditor for the fiscal year ended December 31, 2011.

OUR BOARD RECOMMENDS THAT SHAREHOLDERS VOTE FOR THIS PROPOSAL.

PROPOSAL THREE – ADVISORY VOTE ON COMPENSATION OF OUR NAMED EXECUTIVE OFFICERS

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act") requires that we provide our shareholders with the opportunity to vote to approve, on a nonbinding, advisory basis, the compensation of our named executive officers as disclosed in this Proxy Statement, including the Compensation Discussion and

Analysis beginning at page18 below and the tabular disclosure regarding the compensation of our named executive officers and the accompanying narrative.

This proposal (often referred to as a “say-on-pay” proposal), gives our shareholders the opportunity to endorse, or not endorse, the compensation of our named executive officers. The vote on the proposal is not intended to address any specific element of executive compensation. Further, the vote is advisory, which means that it is not binding on the Company, our board, or the compensation committee of our board. We expect, however, that our compensation committee will take into account the outcome of the vote when considering future executive compensation decisions.

As discussed in more detail under Compensation of Directors and Executive Officers beginning at page 18 below, we seek to offer a compensation structure designed to compare favorably with our competitive peer group while taking into account the experience and responsibilities of the particular executive officer and to provide compensation incentives that promote the enhancement of shareholder value, and the total executive compensation opportunity for our executive officers is intended to create a compensation program that maximizes executive talent and rewards a high level of performance.

In light of the foregoing, we ask our shareholders to vote on the following resolution at the 2011 annual meeting of our shareholders.

RESOLVED, that the shareholders of the Company approve, on an advisory basis, the compensation of the named executive officers, as disclosed in the Company's Proxy Statement for the 2011 Annual Meeting of Shareholders pursuant to the compensation disclosure rules of the Securities and Exchange Commission, including the Compensation Discussion and Analysis, the 2010 Summary Compensation Table, and the other related tables and narrative disclosure.

OUR BOARD RECOMMENDS THAT SHAREHOLDERS VOTE FOR THIS PROPOSAL.

PROPOSAL FOUR – ADVISORY VOTE ON THE FREQUENCY OF AN ADVISORY VOTE ON COMPENSATION OF OUR NAMED EXECUTIVE OFFICERS

The Dodd-Frank Act also requires that shareholders be given the opportunity to vote, on a non-binding, advisory basis, as to how frequently the Company should seek future “say on pay” advisory votes on the compensation of our named executive officers. More specifically, we are asking whether our shareholders would prefer that the “say on pay” advisory vote occur every year, every two years, or every three years. (Shareholders also may, if they wish, abstain from casting a vote on this proposal.)

After careful consideration, our board has determined that an advisory vote on executive compensation that occurs every third year is the most appropriate alternative for us, and our board therefor recommends that you vote for a “say on pay” advisory vote every three years. Our board believes that an advisory vote on executive compensation every three years more closely aligns the vote with the principles of our executive compensation program, which focuses on long-term stockholder value rather than short-term goals. Accordingly, we believe stockholder feedback would be more useful if our compensation program and management's performance is judged over an extended period of time. Moreover, an advisory vote every three years will be the most effective timeframe for us to respond to stockholder feedback and the vote results, and implement any appropriate adjustments to our executive compensation policies in light of the vote. A three-year interval would also allow stockholders to see and evaluate our actions in response to the vote. We also recognize, however, that our shareholders may have different views as to the best approach for us, and we look forward to hearing from our shareholders as to their preferences on the frequency of the “say on pay” advisory vote.

Our board anticipates that the alternative that receives the highest number of votes will be the frequency for the advisory vote on our executive compensation in the future. Because the vote on the frequency of the “say on pay” advisory vote also is advisory, it is not binding on our board or the Company in any way. We expect, however, that our board and our compensation committee will take the outcome of the vote into account when considering the frequency of future advisory votes on executive compensation.

Shareholders may cast a vote on the preferred voting frequency by selecting the option of one year, two years, or three years (or abstain) when voting in response to the following resolution.

RESOLVED, that the shareholders of the Company determine, on an advisory basis, whether the preferred frequency of an advisory vote on the executive compensation of the Company's named executive officers as set forth in the Company's proxy statement should be every year, every two years, or every three years.

OUR BOARD RECOMMENDS THAT YOU VOTE FOR THE OPTION OF EVERY THIRD YEAR ON THIS PROPOSAL.

Revocability of Proxy

Execution and return of a proxy card will not in any way affect a shareholder's right to attend and to vote in person at the 2011 annual meeting of our shareholders. Any proxy may be revoked by the shareholder giving it, at any time prior to its being voted, by: (i) filing a notice of revocation with our corporate secretary at 8235 Forsyth Blvd., 4th Floor, Clayton, Missouri 63105; (ii) executing and delivering a duly executed proxy bearing a later date; or (iii) attending the 2011 annual meeting of our shareholders and voting in person. A notice of revocation need not be on any specific form. Attendance at the 2011 annual meeting of our shareholders will not by itself constitute revocation of a proxy.

Dissenters Rights of Appraisal

There are no rights of appraisal or similar rights of dissenters with respect to any matter to be acted upon at the 2011 annual meeting of our shareholders.

Persons Making the Solicitation

The solicitation in this Proxy Statement is being made by us. We will solicit proxies by mail or by telephone, and our directors, officers, and employees also may solicit proxies, without additional compensation, on our behalf. We will not be using any specially engaged employees or paid solicitors. All expenses incurred in this solicitation will be paid by us. Banks, brokerage houses, and other institutions, nominees, and fiduciaries will be requested to forward the proxy materials to beneficial owners and to obtain authorization for the execution of proxies.

None of our directors has informed us in writing that he intends to oppose any action intended to be taken by us at the 2011 annual meeting of our shareholders.

Interest of Certain Persons in Matters to be Acted Upon

None of our directors, executive officers, the nominees for director, or any of their associates has any substantial interest, direct or indirect, by security holdings or otherwise, in any matter to be acted upon at the 2011 annual meeting of our shareholders.

Voting Securities and Principal Holders Thereof

Voting Securities

We only have one class of voting stock outstanding, and that is our common stock. As of May 24, 2011, there were outstanding 39,983,849 shares of our common stock. Each share of our common stock issued and outstanding on the record date is entitled to one vote on each proposal at the 2011 annual meeting of our shareholders.

Record Date

Our board has fixed the close of business on June 1, 2011 as the record date for the determination of our shareholders entitled to receive notice of, and to vote at, the 2011 annual meeting of our shareholders. Accordingly, only holders of record of shares of our common stock at the close of business on the record date are entitled to notice of the 2011 annual meeting of our shareholders and to attend and vote at such meeting.

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Cumulative Voting Rights

Holders of our common stock do not have cumulative voting rights.

Security Ownership of Certain Beneficial Owners

The following table sets forth the number and percentage of shares of our common stock owned by all persons known by us to be the beneficial owners of more than 5% of our shares of common stock as of May 24, 2011.

Name and Address of Beneficial Owner	Amount of Ownership	Percent of Common Stock
Paul A. Novelly, 8235 Forsyth Blvd., 4th Floor, Clayton, MO 63105(a)	17,560,100	43.9%
Lee E. Mikles, 1486 E. Valley Road, Santa Barbara, CA 93108(b)	2,313,350	5.8%
SOF Investments, L.P., 645 5th Avenue, 21st Floor, New York, NY 10022(c)	3,600,000	9.0%
Revelation Special Situations Fund Ltd., Canon's Court, 22 Victoria Street, Hamilton, Bermuda DO HM 11(d)	5,975,114	14.9%
David M. Knott, 485 Underhill Blvd., Suite 205, Syosset, New York 11791-3419(e)	2,204,380	5.5%

- (a) Includes 16,835,100 shares of common stock held by St. Albans Global Management, Limited Partnership, LLLP, 625,000 shares of common stock held by Apex Holding Co., and 100,000 shares of common stock held by Mr. Novelly. Mr. Novelly is the chief executive officer of both of these entities and thereby has voting and investment power over such shares, but he disclaims beneficial ownership except to the extent of a minor pecuniary interest.
- (b) Includes 2,047,100 shares of common stock held by the Lee E. Mikles Revocable Trust dated March 26, 1996, 5,000 shares held by Mr. Mikles' IRA account, and 25,000 shares held by an SEP. Also includes 120,000 shares of common stock held by the Lee E. Mikles Gift Trust dated October 6, 1999, as to which Mr. Mikles is the settlor of the trust, but is not a trustee or a beneficiary. Mr. Mikles disclaims beneficial ownership of the shares owned by the Lee E. Mikles Gift Trust. Also includes 27,500 shares held by the Alison L. Mikles Irrevocable Trust. Miss Mikles is the minor child of Mr. Mikles and lives in Mr. Mikles' household. However, Mr. Mikles is not the trustee or beneficiary of such trust and disclaims beneficial ownership. Also includes 88,750 shares of common stock held by Lori Mikles, the spouse of Mr. Mikles. Mr. Mikles disclaims beneficial ownership thereof.
- (c) Based solely upon a review of a Schedule 13G filed on February 14, 2008, we understand that SOF Investments, L.P. is the record and direct beneficial owner of 1,800,000 shares of common stock listed above, MSD Capital, L.P. is the general partner of SOF Investments, L.P. and may be deemed to indirectly beneficially own securities owned by SOF Investments, L.P., and MSD Capital Management LLC is the general partner of MSD Capital, L.P. Except as set forth in this footnote, we have no knowledge as to the beneficial owners of these entities. In addition, we are aware that, on or around June 7, 2010, SOF Investments, L.P. exercised warrants and acquired an additional 1,800,000 shares of our common stock.
- (d) Formerly known as Osmium Special Situations Fund Ltd. Based solely on Amendment No. 4 to Schedule 13D filed with the SEC on February 7, 2011 and Form 4s filed with the SEC thereafter. Mr. Chris Kuchanny, as chairman and chief executive officer of Revelation Special Situations Fund Ltd., may, by virtue of such position, be deemed to have beneficial ownership of such shares and warrants. Mr. Kuchanny disclaims beneficial

ownership other than the portion of such shares which relates to his individual economic interest in Revelation Special Situations Fund Ltd. Except as set forth in this footnote, we have no knowledge as to the beneficial owners of Revelation Special Situation Funds Ltd.

(e) Based solely on Form 3 and Form 4s filed with the SEC. Knott Partners, L.P. beneficially owns 895,900 shares of common stock. Shoshone Partners, L.P. beneficially owns 236,630 shares of common stock. Mulsanne Partners, L.P. beneficially owns 178,400 shares of common stock. Knott Partners Offshore Master Fund, L.P. beneficially owns 824,150 shares of common stock. 69,300 shares of common stock are held in accounts managed by Dorset Management Corporation. David M. Knott is the managing member of Knott Partners Management, LLC, a general partner of Knott Partners, L.P. and the sole director of Dorset Management Corporation. Knott Partners Management, LLC is: (i) the sole general partner of Shoshone Partners, L.P., Knott Partners Offshore Master Fund, L.P. and Mulsanne Partners, L.P.; and (ii) the managing general partner of Knott Partners, L.P. As a result of Mr. Knott's interests in Knott Partners Management, LLC and in Dorset Management Corporation, Mr. Knott has investment discretion and control of the securities described above. Mr. Knott may be deemed to beneficially own an indirect pecuniary interest in the securities described above as a result of its performance-related fee. Except with respect to Knott Partners, L.P., Knott Partners Offshore Master Fund, L.P. and Shoshone Partners, L.P., in which Mr. Knott owns a beneficial interest, Mr. Knott disclaims beneficial ownership therein except to the extent ultimately realized. Each of Knott Partners, L.P., Knott Partners Offshore Master Fund, L.P., Shoshone Partners, L.P., Mulsanne Partners, L.P. and each of the managed accounts disclaims beneficial ownership of securities reported as owned by any other party. Except as set forth in this footnote, we have no knowledge as to the beneficial owners of these entities. On February 9, 2011, Mr. Knott filed with the SEC a Form 13G/A wherein he did not disclose the ownership of Mulsanne Partners, L.P.

Security Ownership of Management

The following table sets forth information, as of May 24, 2011, regarding the beneficial ownership of our common stock by each of our directors and executive officers and the executive officers of FutureFuel Chemical Company. Unless otherwise indicated, we believe that all persons named in the table below have sole voting and investment power with respect to all shares of common stock beneficially owned by them and none of such shares have been pledged as security.

Name of Beneficial Owner	Amount of Ownership	Percent of Common Stock
Paul A. Novelly(a)	17,560,100	43.9%
Lee E. Mikles(b)	2,313,350	5.8%
Paul G. Lorenzini(c)	656,000	1.6%
Edwin A. Levy(d)	274,550	0.7%
Douglas D. Hommert(e)	260,000	0.7%
Richard L. Knowlton	160,000	0.4%
Thomas R. Evans	30,000	0.1%
Donald C. Bedell(f)	22,900	0.1%
Sam Dortch(g)	34,816	0.1%
David Baker	7,150	0.0%
Gary Hess	10,100	0.0%
Christopher Schmitt	500	0.0%
Paul M. Manheim	-	0.0%
All directors and executive officers	21,329,466	53.3%

- (a) Includes 16,835,100 shares of common stock held by St. Albans Global Management, Limited Partnership, LLLP, 625,000 shares of common stock held by Apex Holding Co., and 100,000 shares of common stock held by Mr. Novelly. Mr. Novelly is the chief executive officer of both of these entities and thereby has voting and investment power over such shares, but he disclaims beneficial ownership except to the extent of a minor pecuniary interest.
- (b) Includes 2,047,100 shares of common stock held by the Lee E. Mikles Revocable Trust dated March 26, 1996, 5,000 shares held by Mr. Mikles' IRA account, and 25,000 shares held by an SEP. Also includes 120,000 shares of common stock held by the Lee E. Mikles Gift Trust dated October 6, 1999, as to which Mr. Mikles is the settlor of the trust, but is not a trustee or a beneficiary. Mr. Mikles disclaims beneficial ownership of the shares owned by the Lee E. Mikles Gift Trust. Also includes 27,500 shares held by the Alison L. Mikles Irrevocable Trust. Miss Mikles is the minor child of Mr. Mikles and lives in Mr. Mikles' household. However, Mr. Mikles is not the trustee or beneficiary of such trust and disclaims beneficial ownership. Also includes 88,750 shares of common stock held by Lori Mikles, the spouse of Mr. Mikles. Mr. Mikles disclaims beneficial ownership thereof.
- (c) Includes 55,000 shares of common stock owned by Mr. Lorenzini's spouse; Mr. Lorenzini disclaims beneficial ownership thereof. Includes 5,000 shares owned by the Lorenzini Friends and Family Gift Trust, a trust established by Mr. Lorenzini and his spouse, as to which Mr. Lorenzini and his spouse are the trustees but not the beneficiaries; Mr. Lorenzini disclaims any beneficial interest in the shares of our common stock held by this trust.
- (d) Does not included 525 shares of our common stock owned by The Edwin A. Levy Charitable Foundation, Inc., a New York not-for-profit corporation as to which Mr. Levy is a founder and director but not a beneficiary. Mr. Levy disclaims beneficial ownership of shares owned by the Foundation.

(e) Includes 250,000 shares of common stock held by the Douglas D. Hommert Revocable Trust, which is a trust established by Mr. Hommert for the benefit of his descendants, of which Mr. Hommert is the trustee. Also includes 10,000 shares held by a trust established for Mr. Hommert's spouse; Mr. Hommert disclaims beneficial ownership thereof.