

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

LEO E. STRINE, JR.
CHANCELLOR

New Castle County Courthouse
Wilmington, Delaware 19801

Date Submitted: February 15, 2013
Date Decided: February 18, 2013

Carmella P. Keener, Esquire
Rosenthal, Monhait & Goddess, P.A.
919 N. Market St., Suite 1401
P.O. Box 1070
Wilmington, DE 19899

Stephen C. Norman, Esquire
Tyler J. Leavengood, Esquire
Potter Anderson & Corroon LLP
1313 N. Market St., 6th Floor
P.O. Box 951
Wilmington, DE 19899

RE: DeKalb County Pension Fund v. Page, C.A. No. 7694-CS

Dear Counsel:

DeKalb County Pension Fund (“DeKalb”), the plaintiff, has moved to reargue my decision to grant the motion of the defendants, Google’s board of directors, to stay DeKalb’s derivative action before this court in favor of a more advanced action before the United States District Court for the Northern District of California.¹ I deny DeKalb’s motion for the following reasons.

A party who seeks reargument under Delaware Court of Chancery Rule 59(f) must show either that the court has overlooked applicable legal precedent, or that it has misapprehended the law or facts in such a way as to affect the outcome of the case.² Here, I followed precedent in staying this action in favor of an identical action, filed in another court, that was further advanced, and where there was no apparent advantage to

¹ This action is *In re Google, Inc. S’holder Deriv. Litig.*, Case No. 11-cv-04248-PJH (N.D. Cal.).

² See, e.g., *Chrin v. Ibrix Inc.*, 2012 WL 6737780, at *2 (Del. Dec. 31, 2012).

the affected company and its stockholders in permitting a clash of forums.³ And, I did not misapprehend the law or facts. DeKalb claims that I ignored particularized allegations in its complaint that Google's board took no action to monitor the effects of Google's pharmacy advertising policies between 2005 and 2007, and that I overlooked its allegations as to the independence of Google's board. But I did not misapprehend DeKalb's allegations that Google's board failed to act. Instead, I found that they were not materially better than similar allegations in the federal complaint.⁴ Nor did I ignore DeKalb's allegations about the independence of the Google board. Rather, I found that the independence allegations in the two complaints were similar, and that the federal plaintiffs already had a real advantage in this respect, based on the prior motion practice.⁵

Finally, the plaintiffs have ignored my earlier encouragement to cooperate with the federal plaintiffs or to seek to intervene.⁶ Having failed to demonstrate to me that they are materially better positioned to protect Google and its stockholders than the federal plaintiffs, the plaintiffs put me in the position of generating excess costs for Google, and

³ See, e.g., *Teachers' Ret. Sys. of La. v. Scrushy*, 2004 WL 423122 (Del. Ch. Mar. 2, 2004) (staying a late-filed derivative complaint in favor of maintaining an orderly plan of litigation that had been established by the three courts with jurisdiction over the matter).

⁴ E.g., Tr. of Oral Arg. 30:4-5 ("I don't think anyone's addressed [the relevant issues] better or worse.").

⁵ E.g., *id.* 13:9-10 ("[Y]ou can't really get any better than my good federal colleague's decision on independence . . ."); see *In re Google, Inc. S'holder Deriv. Litig.*, 2012 WL 1611064, at *10 (N.D. Cal. May 8, 2012) (finding that four of the six outside directors on the then-nine person Google board were not independent of the three directors, Larry Page, Sergey Brin, and Eric Schmidt, who had majority voting control of the company).

⁶ Tr. of Oral Arg. 25:17-19 ("If DeKalb wants to make a move to the hoop . . . it should move to intervene.").

potentially conflicting rulings, without any accompanying benefit.⁷ The motion for reargument is therefore DENIED.

Very truly yours,

/s/ Leo E. Strine, Jr.

Chancellor

⁷ I applaud the Delaware plaintiffs' invocation of 8 *Del. C.* § 220 to obtain books and records. Contrary to what they claim, however, their use of the resulting documents has not led to a complaint that strikes me as materially different or, more important, stronger than that in the federal case.