



COURT OF CHANCERY
OF THE
STATE OF DELAWARE

JOHN W. NOBLE
VICE CHANCELLOR

417 SOUTH STATE STREET
DOVER, DELAWARE 19901
TELEPHONE: (302) 739-4397
FACSIMILE: (302) 739-6179

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Jon E. Abramczyk, Esquire
Christopher P. Quinn, Esquire
Morris, Nichols, Arsht & Tunnell LLP
1201 North Market Street
Wilmington, DE 19801

Richard M. Beck, Jr., Esquire
Sean M. Brennecke, Esquire
Klehr Harrison Harvey Branzburg LLP
919 Market Street, Suite 1000
Wilmington, DE 19801

Re: *Caspian Select Credit Master Fund Ltd. v. Key Plastics Corporation*
C.A. No. 8625-VCN
Date Submitted: May 22, 2014

Dear Counsel:

Following the Court's decision that Plaintiff Caspian Select Credit Master Fund Ltd. ("Caspian") had demonstrated a proper purpose to inspect certain books and records of Defendant Key Plastics Corporation ("Key Plastics") under 8 *Del. C.* § 220, everyone, the Court included, believed that the parties could work out an appropriate scope for the inspection.¹ Unfortunately, despite the good faith and

¹ *Caspian Select Credit Master Fund Ltd. v. Key Plastics Corp.*, 2014 WL 686308, at *5 (Del. Ch. Feb. 24, 2014).

partially successful efforts of the parties,² that optimism was not fully warranted. The Court thus turns to the lingering debate about the proper scope.

Caspian's purpose is to investigate possible waste and wrongdoing linked to a loan made to Key Plastics by its controlling shareholder. The interest rate for the affiliate's loan sparked an understandable curiosity from Caspian, the only minority shareholder in Key Plastics. Because the inference of improper self-dealing is reasonable, although by no means the only rational inference, one way of assessing the propriety of the interest rate is to review the various financing options, if any, and the efforts to develop options for financing. The documents identified by Caspian are reasonably related to that objective and may be placed in four categories.

1. Communications between Key Plastics and Wayzata relating to the amendments to the Wayzate Exit Facility or decisions to seek, or not to seek, alternative financing.³

² The Court will include the items upon which the parties have agreed in the order implementing the conclusions set forth in this letter opinion.

³ These documents generally fall within Request 1. Capitalized terms not defined herein are consistent with definitions in the Court's opinion of February 24, 2014.

2. Documents relating to communications with potential lenders.⁴
3. All documents regarding the origination of the CapitalSource Loan, including communications with CapitalSource.⁵
4. All business plans, projections, and pro forma financial statements shown to potential lenders.⁶

The documents, as generally described, fall within the range of documents that are properly subject to inspection to carry out the appropriate purposes that Caspian has identified. The difficulty comes from the manner in which the particular set of documents is described. A plaintiff's use of broadly-inclusive adjectives—such as “all”—conjures up concerns on the part of a defendant that, in the context of records held by any corporate business, striving to reach that marker would be burdensome and, probably, impossible. As with any search for documents, whether in the context of a Section 220 proceeding or discovery under Court of Chancery Rule 34, absolute, literal compliance can often not be achieved;

⁴ These documents are covered by Requests 3 and 9.

⁵ The source for this collection is Request 7. CapitalSource was an alternative source of financing.

⁶ These documents are covered by Request 11.

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in this instance, a credible showing of the reasonableness of the retrieval effort becomes necessary.

An example of this appears with respect to documents pertaining to Key Plastics' efforts to borrow funds. The parties debate whether the scope of the documents—business plans, for example—should be those in fact provided to potential lenders or those that in fact were actually used in connection with the financing process. The goal of the inspection is to find out what efforts—in good faith or otherwise—Key Plastics undertook. That purpose is best served by inspection of what Key Plastics did in its efforts to borrow funds, *i.e.*, what documents were provided to potential lenders. What was “used” creates a line that likely is not readily applied.

Accompanying this letter opinion is an order implementing this decision.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K