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Case Number 250,2016

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THE JOSEPH PENAR FAMILY TRUST, by its Trustee Joseph Penar; THE WALDER FAMILY TRUST, by its Trustee, Cecile Donnamarie Newkirk; ALLEN COOPER, individually; SUE COOPER, individually; and THE ALLEN AND SUE COOPER TRUST, by its Trustees, Allen and Sue Cooper,	:	No. 250, 2016
Plaintiffs Below-Appellants,	:	Court Below: Court of Chancery of the State of Delaware
v.	:	C.A. No. 10441-VCG
JASEN ADAMS, DAVID HARTCORN, and BRIAN TOLLEFSON,	:	
Defendants Below-Appellees,	:	
and	:	
PREMIUM OF AMERICA, LLC, and PREMIUM HOLDING, LLC,	:	
Nominal Defendants Below-Appellees.	:	

OPENING BRIEF OF PLAINTIFFS BELOW-APPELLANTS

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NATURE OF PROCEEDINGS

Members of a Delaware limited liability company alleged in their Court of Chancery Complaint that the LLC's Board of Managers purported to liquidate the LLC by transferring the entity's assets to two managers' control and paying the members far less than the LLC's cash on hand, let alone the value of its assets. While agreeing that such a claim would be viable, the trial court in a Memorandum Opinion dated April 28, 2016 ("Opinion") dismissed the Complaint pursuant to Court of Chancery Rule 12(b)(6), holding that the pleaded facts did not sufficiently articulate the claim. The Complaint's allegations, however, delineate a three-month time window in which the interested transaction occurred; identify the members of the Board of Managers in that time period;[1] identify the managers who appropriated the LLC's assets for their personal benefit; and detail facts impugning the fairness of the liquidation distribution the entity's members received. These allegations are sufficient under Rule 12(b)(6) to allege a self-dealing claim. Plaintiffs appeal from the Court of Chancery's dismissal of their Complaint.

[1] When the Complaint was filed, Plaintiffs were, and the Complaint therefore is, uncertain as to whether one Board member, Lida Bray, participated in the approval of the self-dealing transaction. Ms. Bray's participation, or not, is immaterial to the claim.

SUMMARY OF ARGUMENT

The Complaint's allegations, and the inferences reasonably drawn from them, allege a claim that LLC managers Jasen Adams and David Hartcorn appropriated the entity's assets for far less than fair value, and that Board member Brian Tollefson accepted $100,000 for supporting them.

STATEMENT OF FACTS

A. Premium Of America, LLC Is Formed

Plaintiffs are members of Premium of America, LLC ("POA"), a Delaware limited liability company. POA was formed following the bankruptcy of Beneficial Assurance Ltd. and Premium Escrow Services, Inc. (together, "Beneficial"). SAC[2] ¶¶6, 8 (A35, A36). Beneficial had been in the business of purchasing policies insuring the lives of critically ill individuals, including persons with HIV/AIDS, and selling fractional shares of these policies to investors. *Id.* Investors contributed funds with which Beneficial paid the policy premiums and provided current cash to the insureds, and in return received a share of the policy proceeds upon an insured's death. SAC ¶9 (A36).

By the early 2000s, medical advances had happily increased life expectancies for many of Beneficial's insureds, making Beneficial's business model unsustainable. SAC ¶10 (*Id.*). Beneficial filed for bankruptcy, resulting in a 2003 reorganization plan whereby approximately 280 insurance policies Beneficial owned with a face value of approximately $189 million were transferred to the newly created POA, and Beneficial's creditors became the members of POA. SAC ¶¶10, 11 (A36-37).

[2] "SAC" refers to Plaintiffs' Second Amended Complaint.

POA's business model was to pay premiums on policies that had value; collect proceeds when insureds died; and distribute those proceeds to members, while maintaining reserves to pay premiums on remaining policies. SAC ¶11 (A37). At formation, POA estimated it could return $100 - $120 million to members over its first five years. *Id.*

B. Defendants Jasen Adams And David Hartcorn Take Control Of POA

POA brought a number of lawsuits asserting claims against agents who had sold insurance policies. SAC ¶12 (A37-38). Defendant David Hartcorn ("Hartcorn"), a financial advisor, was one such agent-defendant. He hired Defendant Jasen Adams ("Adams") as his counsel for that litigation. SAC ¶¶3-4, 12 (A35, A37-38). Adams ultimately defended more than 100 agents in similar lawsuits and thereby gained an intimate understanding of POA's business. *Id.*

In 2011, Adams and Hartcorn – POA's two former adversaries – formed Save POA LLC ("Save POA") as a vehicle to obtain control of POA. SAC ¶13 (A38). Save POA commenced a proxy solicitation seeking appointment of a new POA Board of Managers. *Id.* In June 2011, as part of its defensive strategy, POA created Premium Holding, LLC ("PH"), a Delaware limited liability company. SAC ¶¶7, 14 (A35, A38). POA

transferred all of its assets to PH. SAC ¶14 (A38). POA was the sole member of PH. *Id.*

In December 2011, two POA members affiliated with Save POA filed an action in the Court of Chancery seeking, among other things, to require POA to hold an annual meeting of members. SAC ¶15 (A38). In February 2012, POA's incumbent management sued Save POA in federal court in Maryland, alleging violations of federal securities law. SAC ¶17 (A38-39). The Maryland District Court dismissed the suit, and the Fourth Circuit affirmed in April 2013. *Id.* The Court of Chancery then entered judgment in favor of Save POA in the suit it had filed, after which POA's incumbent management resigned. SAC ¶18 (A39). The Save POA slate, composed of Ralph Cyr, James Pannella (then a friend of Hartcorn), Lida Bray, Michael Weber, and Robert Knight, became the new POA Board of Managers in May 2013; Pannella served as President. SAC ¶¶18, 21, 24 (A39, A39-40, A40).

Thereafter, Adams and Hartcorn, through threats and/or persuasion caused Knight, Cyr, and Weber to resign from the POA Board. Adams, Hartcorn, and Defendant Brian Tollefson ("Tollefson") replaced them on the Board. Tollefson is a lawyer and close personal friend of Adams; he joined the POA Board in or about May 2013. SAC ¶¶5, 19 (A35, A39). At

Adams' and Hartcorn's suggestion, the POA Board hired PaniAgua LLC, a company Adams and Hartcorn had formed and owned, to manage POA at a cost of $300,000 per year. SAC ¶¶3, 4, 20 (A35, A35, A39).

C. Independent Directors Rebuff Adams' And Hartcorn's Initial Attempt To Obtain POA's Assets For The Unfair Price Of $8.75 Million

In June 2013, Adams and Hartcorn informed Pannella – POA's chief executive officer – that a company they claimed to have formed in Nevada, TYRSS LLC ("TYRSS"), and of which they were members, would make an offer to purchase POA or its assets (the "TYRSS Proposal"). SAC ¶¶3, 4, 21 (A35, A35, A39-40). The TYRSS Proposal contemplated that POA members would receive an aggregate distribution of approximately $8.75 million in cash, and the Board members who approved it would be paid $400,000 in "Board Member Termination Fees." SAC ¶¶21-22 (A39-40).

At the time of the TYRSS Proposal, POA had cash on hand of at least $11.6 million – almost $3 million more than the TYRSS Proposal -- plus remaining life insurance policies with a total face value of tens of millions of dollars. SAC ¶24 (A40). POA's current liabilities were only approximately $365,000, and it had no leases or employees. SAC ¶25 (A40). Any insurance policies deemed unlikely to produce value in excess of the premium payments necessary to keep them in force could be abandoned. *Id.*

Pannella objected to the TYRSS Proposal as grossly inadequate. SAC ¶24 (A40). He also objected to the TYRSS Proposal's "Board Member Termination Fees" as an apparent bribe to induce POA Board members to vote in favor of the self-dealing transaction. SAC ¶26 (A40-41).

Pannella worked with POA's then-accountants, Varanko & Black ("V&B"), to estimate POA's future distributions to members. They concluded that POA could make at least approximately $20 million in distributions over ten years if POA remained in business, with an additional payment of at least approximately $14 million at the conclusion of POA's business. SAC ¶27 (A41). Pannella conveyed V&B's conclusions to Adams, Hartcorn and Tollefson, who rejected them without analysis. Board member Cyr supported Pannella. As a result, the TYRSS Proposal was never formally presented to the POA membership. SAC ¶¶28, 29 (A41). At a meeting of POA members on June 19, 2013, Adams, Hartcorn and Tollefson did not dispute Pannella's assertion that he would marshall POA's assets for the members' current and future benefit. SAC ¶29 (A41).

D. Defendants Remove Pannella And Seize POA's Assets For Even Less, Only $7 Million

In August 2013, Adams, Hartcorn, and Tollefson retaliated against Pannella for his opposition to the TYRSS Proposal and his advocacy for greater value to POA's members. They purported to remove him both as

President of POA and as Chairman and a member of the POA Board. SAC ¶30 (A42). Each of them signed resolutions purporting to remove Pannella from the Board, although no provision of POA's Operating Agreement permitted his removal. *Id.* Cyr resigned from the Board contemporaneously. *Id.* As a result, by late August 2013, the members of the Boards of POA and PH were Adams, Hartcorn, Tollefson, and Bray. SAC ¶31 (A42). Subsequently, Adams, Hartcorn, and Tollefson arranged a $100,000 payment to Bray for her resignation from both Boards. *Id.*

With Pannella and Cyr out of the way, Adams and Hartcorn were able to effect a transaction in which they appropriated POA's assets and POA's members received a distribution that totaled even less than the $8.75 million amount Pannella and Cyr had rejected as unfair. In mid-October 2013, POA's members received an undated, unsigned letter on POA stationery from "The Board of Managers" (the "Letter," Ex. A to the SAC, A65-66), stating that POA was making a "final distribution" to its members totaling $7,015,000 and winding up operations. SAC ¶¶1, 33, 40 and Ex. A (A32, A42-43, A44, A65-66). Along with the Letter, each member received a check from POA with the member's portion of this "final distribution." SAC ¶33 (A42-43). Contrary to the estimates of POA's accountants (V&B) of which Adams, Hartcorn and Tollefson had been informed (SAC ¶¶27, 28

(A41)), the Letter stated that POA had obtained "an independent valuation in the range of $3.4 million to $3.8 million" in December 2012, and that "according to the Company's advisors," POA's portfolio had a negative value. SAC ¶34 and Ex. A (A43, A65-66).

Defendants thus had implemented some form of the TYRSS Proposal, distributing a portion of POA's cash and taking the remaining assets of POA/PH for themselves. SAC ¶¶1, 33, 40, 49, 60 (A32, A42-43, A44, A46-47, A48). Tollefson received a $100,000 payment after the transaction was implemented, as a reward for his support. SAC ¶33 (A42-43).

The purported "final distribution" of slightly more than $7 million could not possibly have represented fair value for POA's assets. Only months earlier, independent Board members Cyr and Pannella had rejected as inadequate an aggregate distribution almost $1.75 million larger. POA had approximately $11.5 million in cash, and few liabilities, and V&B had estimated that POA could make distributions of $20 million over ten years and a terminal payment of $14 million. SAC ¶¶25, 27, 40 (A40, A41, A44). Even if these payments were discounted to present value as of late 2013, POA's assets were worth far more than $7 million at that time. SAC ¶40 (A44).

ARGUMENT

THE COMPLAINT SUFFICIENTLY DESCRIBES A SELF-DEALING TRANSACTION TO ARTICULATE A CLAIM FOR RELIEF

A. Question Presented

Whether, under the standards of Court of Chancery Rule 12(b)(6), the Complaint alleges facts sufficient to plead a claim of self-dealing at an unfair price. The parties briefed this issue in the Court of Chancery, which decided it in favor of defendants, making the issue ripe for appeal. *See*, Plaintiffs' Brief in Opposition to Defendants' Motions to Dismiss. (A67 at A82-102).

B. Standard And Scope Of Review

Whether or not a complaint states a claim is a question of law. *Solomon v. Pathe Commun. Corp.*, 672 A.2d 35, 38 (Del. 1996). This Court's review of this issue is *de novo* and plenary. *Id.*; *Malpiede v. Townson*, 780 A.2d 1075, 1082 (Del. 2001).

C. Merits Of The Argument

1. Rule 12(b)(6) Standards

Court of Chancery Rule 8(a) requires only that a pleading contain "a short and plain statement of the claim showing that the pleader is entitled to relief." A complaint need only give general notice of the claim asserted.

Malpiede, 780 A.2d at 1083; *Rabkin v. Philip A. Hunt Chem. Corp.*, 498 A.2d 1099, 1104 (Del. 1985); *see* Court of Chancery Rule 8(e). In considering a Rule 12(b)(6) motion to dismiss, the Court must assume the truth of all well-pleaded allegations in the complaint and give the plaintiff the benefit of all reasonable inferences that may be drawn from those allegations. *Malpiede*, 780 A.2d at 1082-1083; *Solomon*, 672 A.2d at 38. A complaint states a claim unless it is reasonably certain that the plaintiff "could prevail on no set of facts that can be inferred from the pleadings." *Solomon*, 672 A.2d at 38.

2. The Complaint's Allegations, And Inferences That May Be Reasonably Drawn From Them, Describe Bad Faith Conduct Sufficiently To Entitle Plaintiffs To Relief

The Complaint's first sentence alleges the essence of plaintiffs' claims of breach of fiduciary duty and breach of contract:[3]

> Defendants Jasen Adams . . . David Hartcorn . . . and Brian Tollefson . . ., who at the time of the challenged transaction constituted the board of managers of [POA], appropriated for their personal benefit the assets of POA and/or its wholly owned subsidiary, [PH], paying POA's members only a fraction of what those assets were worth.

SAC ¶1 (A32-33).

The Opinion acknowledged that such claims are viable:

[3] Plaintiffs alleged these claims both derivatively (A43-47) and directly (A47-51).

> The Plaintiffs argue, and I agree, that a transfer of assets by the Premium board to individual managers at a manifestly unfair price would not be an action done on behalf of Premium in good faith.

Opinion (Ex. 1 hereto) at 13.[4]

The Opinion, however, concluded that the pleaded facts were insufficient to support this claim. The Complaint, according to the Opinion at 18:

> fails to describe, among other facts, the Presumed Transaction itself, to whom Premium's assets were transferred, the details of that transfer, the liabilities of Premium that were discharged before distribution of the remaining assets, and the liability reserves maintained by Premium.

The Opinion's following sentence says that the Complaint's allegations do not support an inference that the $7 million liquidating distribution POA's members received represented unfair value for their interests in POA. Opinion at 18-19. Elsewhere the Opinion suggests that the Complaint does not sufficiently allege who comprised the members of POA's Board at relevant times. Opinion at 4 n.8, 8 n.31, 13, 19 n.64.[5] As Plaintiffs will

[4] The Opinion uses the term "Premium" to refer to POA and PH collectively. Opinion at 12, n.54.

[5] The Opinion at one point reads the Complaint to assert that Adams, Hartcorn and Tollefson were Board members "at the time of the challenged transaction" (Opinion at 3), but elsewhere suggests that fact was not clearly alleged. Opinion at 4 n.8, 8 n.31, 13, 19 n.64. The Opinion also characterizes as "unexplained" "Why the Plaintiffs chose not to seek documents under 6 *Del. C.* §18-305 . . . ." Opinion at 17. Plaintiffs' counsel, however, twice forthrightly stated at oral argument that Plaintiffs' counsel believed they

show below, the Complaint's allegations, and the reasonable inferences that may be drawn from those allegations, more than sufficiently articulate claims for relief.[6]

(a) Board Composition

The Complaint establishes that Pannella and Cyr had rebuffed the $8.75 million TYRSS Proposal by no later than June 19, 2013, SAC ¶29 (A41); that in August 2013, Adams, Hartcorn and Tollefson purported to remove Pannella from the Board, SAC ¶30 (A42); and that Cyr resigned on or about August 6, 2013. *Id.* The Complaint then alleges that "By the latter part of August 2013, the Boards of POA and PH consisted of Adams, Hartcorn, Tollefson and Bray. Sometime later, Bray resigned from the Boards. On information and belief, she did so after being paid $100,000 at Adams, Hartcorn and Tollefson's instigation." SAC ¶31 (A42). The Complaint further alleges that "Defendants [i.e. Adams, Hartcorn and Tollefson] effected a self-dealing transaction, appropriating the assets of POA and PH for Adams and Hartcorn for far less than the fair value of those assets" and that Tollefson received $100,000 for approving it. SAC ¶40

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had sufficient information "to plead a clearly self-dealing transaction that we think clearly occurred in the August/September/October 2013 timeframe and that we knew who the Board was who had approved it." Transcript at 50, 59-60 (A153, A162-163).

[6] The Opinion does not distinguish as to adequacy of pleading between direct or derivative or between fiduciary or contract claims. This brief therefore addresses the Opinion's holding without regard to those separate claims.

(A44). Finally, the Complaint says that POA's members received notice of the transaction in October 2013. SAC ¶33 (A42-43).

These allegations make clear that the challenged transaction occurred between August and October 2013[7]; that Adams, Hartcorn and Tollefson were on the Board during that time[8], and that they approved the transfer of POA's assets for the benefit of Adams and Hartcorn. The Complaint does not state whether or not Bray was on the Board at the time of the challenged transaction. Bray's participation, or lack of it, however, is inconsequential to the claims against Adams, Hartcorn and Tollefson. Either way, the transaction was approved by two interested directors (Adams and Hartcorn) and a third who was the beneficiary of their largesse (Tollefson). When Bray left the Board is immaterial for purposes of determining whether or not self-dealing occurred.

(b) Transaction Details

The Opinion notes that the SAC does not describe the details of the self-dealing transaction. Opinion at 18. The Complaint, however, repeatedly alleges that Adams and Hartcorn appropriated POA's assets for

[7] The Opinion inaccurately reads the Complaint to assert that the challenged transaction occurred "between June and October 2013." Opinion at 4, n.8.
[8] *See* fn. 1, *supra*.

their personal benefit. SAC ¶¶1, 33, 37[9], 40[10], 42, 46, 48, 49, 60[11], 72, 73 (A32, A42-43, A43, A44, A45, A45-46, A46, A46-47, A48, A50-51, A51).

Other allegations support the assertions of self-dealing and duplicity:

1. In June 2013, Adams and Hartcorn advanced the TRYSS Proposal designed to give them control over POA's assets while its members received a total of $8.75 million. SAC ¶21 (A39-40).
2. The TYRSS Proposal included $400,000 in "Board Member Termination Fees" payable to Board members who voted in favor of the TYRSS Proposal (SAC ¶22 (A40)), which Pannella regarded as a bribe. SAC ¶26 (A40-41).
3. Adams and Hartcorn misrepresented the existence of TYRSS. SAC ¶23 (A40).
4. After Pannella led the effort to rebuff the TYRSS Proposal as inadequate, Defendants purported to remove Pannella from the Board even though they lacked authority to do so. SAC ¶30 (A42).

[9] "Adams and Hartcorn benefitted from the challenged transaction."
[10] "Defendants effected a self-dealing transaction, appropriating the assets of POA and PH for Adams and Hartcorn for far less than the fair value of those assets."
[11] "Defendants breached their fiduciary duties to plaintiffs and the members of the Class by appropriating POA's assets for the benefit of Adams and Hartcorn . . . ."

5. The October 2013 Letter POA members received from "The Board of Managers" (i.e. at least Adams, and Hartcorn)[12] referred to a December 2012 "independent valuation in the range of $3.4 million to $3.8 million" and said that "according to Company's advisors, the portfolio as a whole has a net value of negative $300,000." (A66). This representation was at least misleading because it failed to say anything about V&B's assessment which Pannella had communicated to Adams and Hartcorn (SAC ¶28, (A41)), who were at least part of "The Board of Managers" on whose behalf the Letter was assertedly sent.

These allegations demonstrate that almost immediately from the time the Save POA slate took office, Adams and Hartcorn sought to obtain personal benefit from POA.[13] They offered their Board colleagues handsome compensation to support the TYRSS Proposal; pushed Pannella aside for objecting to it; effected a transaction such as they had been seeking; and sought to justify it to POA members with a communication that

[12] Tollefson claims he resigned from the POA Board in September 2013. *See* A73-74, n. 1.

[13] At the suggestion of Adams and Hartcorn, POA retained an entity they owned to provide executive functions for $300,000 per year. SAC ¶20 (A39).

was misleading at best. This panoply of alleged facts more than reasonably demonstrates self-dealing.

The Complaint, to be sure, does not describe the legal structure of the transaction. As a matter of business entity law, the transaction could have been structured in several ways. For example: POA and/or PH could have sold the assets to an entity Adams and Hartcorn controlled, like the purported TYRSS; POA could have sold Adams and Hartcorn the membership interest in PH; or PH could have merged with an entity Adams and Hartcorn controlled. The transaction structure they chose, however, is irrelevant to the claim. For purposes of pleading a claim, the outcome – i.e., that Adams and Hartcorn obtained POA's assets – matters; the mechanism that achieved the result does not.

"A complaint in a civil action need only give defendant fair notice of a claim and is to be liberally construed." *Michelson v. Duncan*, 407 A.2d 211, 217 (Del. 1979). "[E]ven vague allegations are 'well-pleaded' if they give the opposing party notice of the claim. . . ." *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896-97 (Del. 2002). Details are unnecessary so long as the defendant receives adequate notice of the theory of the case. *Id.* This Complaint surely allowed Defendants to understand that this case challenged a transaction in which Adams and Hartcorn obtained POA's assets, and

Tollefson accepted a payment for supporting them. The Opinion declined to see a forest, merely because the Complaint did not say whether the trees were oaks, birches, pines or maples.

(c) Fair Value

What the Opinion seems to find most lacking in the Complaint is facts to support the allegation that POA members did not receive fair value for their aggregate membership interest. Indeed, the Opinion says:

> The inference that the Plaintiffs ask me to draw – that, because the Premium Board rejected the TYRSS Proposal in June 2013 (which would have resulted in an aggregate distribution of $8.75 million), because an estimate prepared by Premium's then accountants estimated a significantly higher value for Premium's assets, and because Premium ultimately distributed only about $7 million following its October 2013 liquidation, therefore assets must have been diverted in bad faith to Board members – is unsustainable.

Opinion at 18-19.

This reading of the Complaint ignores specific allegations which lead ineluctably to a well-pleaded conclusion of unfair value:

1. In June 2013, POA had cash on hand of at least $11.6 million. SAC ¶24 (A40).
2. At the same time, POA had remaining life insurance policies with a face value of tens of millions of dollars. *Id.*

3. "In June of 2013, POA could have distributed a significant portion of the $11.6 million cash to its members, while retaining sufficient funds to pay premiums on policies it still held." SAC ¶25 (A40).
4. At that time, POA had approximately $365,000 in current obligations and it had no leases or employees. *Id.*
5. POA could have abandoned any insurance policy on which the premium payments were deemed to exceed the expected payoff. *Id.*[14]
6. Pannella and financial professionals developed an analysis concluding that POA could make at least approximately $20 million in distributions to members over ten years with an additional payment of at least $14 million at the conclusion of its business. SAC ¶27 (A41).
7. Pannella so strongly believed the TYRSS Proposal was inadequate that he rejected the personal opportunity to receive a $100,000 payment. SAC ¶¶26, 29 (A40-41).
8. Cyr concurred in Pannella's assessment, thereby also foregoing a personal $100,000 payment. SAC ¶¶26, 29 (*Id.*)

[14] The allegations in SAC ¶25 (A40) demonstrate that the Opinion is mistaken in suggesting the Complaint failed to address POA's liabilities and reserves. Opinion at 18.

9. The aggregate distribution in the implemented transaction was even less than the TYRSS Proposal contemplated. Compare SAC ¶21 (A39-40) and Letter at A66.

10. As of October 2013, the discounted present value of POA's expected distributions to POA's members, based on cash on hand plus the V&B analysis, far exceeded the aggregate liquidation distribution POA's members received. SAC ¶40 (A44).

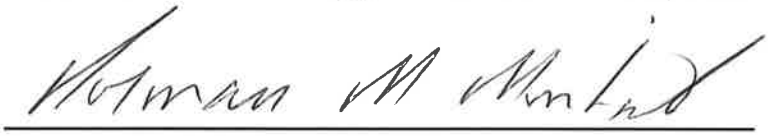
The conclusion that these facts taken together could not possibly lead (*see Solomon*, 672 A.2d at 38) to a finding of unfair price is mistaken. For example, the fact that independent Board members eschewed personal profit to reject as inadequate the TYRSS Proposal (which offered to pay POA members more than they ultimately received), is a well-pleaded fact demonstrating unfairness. So is the allegation that Pannella and Cyr based their rejection of the TYRSS proposal on an analysis that POA's own accounting professionals had performed. Because the V&B analysis of assets, plus cash on hand, supported an October 2013 present value well exceeding the liquidation distribution (SAC ¶40 (A44)), the Complaint's allegations directly attack the fairness of the liquidating distribution POA

members received. This pleading of unfair value was not merely adequate, but compelling.

CONCLUSION

Plaintiffs' Complaint satisfies the Court of Chancery Rule 12(b)(6) standard to allege a claim that defendants did not act in good faith in approving the transfer of assets to Adams and Hartcorn. The Court of Chancery's conclusion to the contrary was mistaken. Its decision should be reversed, and the case remanded to the Court of Chancery for further proceedings.

ROSENTHAL MONHAIT & GODDESS, P.A.



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June 29, 2016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of June, 2016, a copy of the foregoing **Opening Brief Of Plaintiffs-Below Appellants** was served electronically through *LexisNexis File & ServeXpress* upon:

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