

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

STEAMFITTERS LOCAL UNION 447, :  
on Behalf of Itself and All :  
Other Similarly Situated :  
Shareholders of inVentiv :  
Health, Inc., :  
 :  
Plaintiff, :  
 :  
vs. : Civil Action :  
 : No. 5492-CC :  
 :  
R. BLANE WALTER, ERAN BROSHY, :  
TERRELL G. HERRING, MARK E. :  
JENNINGS, PER H.G. LOFBERG, A. :  
CLAYTON PERFALL, CRAIG SAXTON, :  
INVENTIV HEALTH, INC., THOMAS :  
H. LEE PARTNERS, L.P., :  
PAPILLON HOLDINGS, INC. AND :  
PAPILLON ACQUISITION, INC., :  
 :  
Defendants. :

- - -  
Via telephone  
New Castle County Courthouse  
Wilmington, Delaware  
Monday, June 21, 2010  
3:34 p.m.  
- - -

BEFORE: HON. WILLIAM B. CHANDLER, III, Chancellor.

- - -  
RULING ON MOTION TO EXPEDITE  
- - -

---

CHANCERY COURT REPORTERS  
500 North King Street - Suite 11400  
Wilmington, Delaware 19801-3759  
(302) 255-0525

## 1 APPEARANCES:

2 SIDNEY S. LIEBESMAN, ESQ.  
3 Labaton & Sucharow LLP  
4 for Plaintiff Steamfitters Local Union 449  
5 -and-

6 EDUARD KORSINSKY, ESQ.  
7 SHANNON L. HOPKINS, ESQ.  
8 of the New York Bar  
9 Levi & Korsinsky, LLP  
10 for Plaintiff Samuel Ramage

11 RAYMOND J. DiCAMILLO, ESQ.  
12 KEVIN M. GALLAGHER, ESQ.  
13 Richards, Layton & Finger, P.A.  
14 -and-

15 BRIAN P. MILLER, ESQ.  
16 of the Florida Bar  
17 Akerman Senterfitt  
18 for Defendants inVentive Health, Inc., Eran  
19 Broshy, Terrell G. Herring, Mark E. Jennings,  
20 Per G.H. Lofberg, A. Clayton Perfall, Craig  
21 Saxton and R. Blane Walter

22 KEVIN G. ABRAMS, ESQ.  
23 Abrams & Bayliss LLP  
24 -and-

JOHN D. DONOVAN, JR., ESQ.  
Of the Massachusetts Bar  
Ropes & Gray LLP  
for Defendants Thomas H. Lee Partners, L.P.,  
Papillon Holdings, Inc. and Papillon  
Acquisition, Inc.

18 - - -

1 THE COURT: Good afternoon, counsel.

2 MR. LIEBESMAN: Good afternoon, Your  
3 Honor.

4 THE COURT: I have the list of, I  
5 believe, everyone on the line. Most importantly I  
6 want to confirm that the court reporter is on the line  
7 with us.

8 (A brief discussion was held off the  
9 record.)

10 THE COURT: Thank you, Mr. Dawson, for  
11 being available. Thank you, counsel, for being  
12 available, as well.

13 I had the chance over the weekend to  
14 review the transcript of the argument from last week  
15 on the motion to expedite. In addition, I am sorry I  
16 imposed on your weekends, because I can tell that you  
17 were working, because I read the letter from  
18 Mr. DiCamillo and Mr. Abrams. And then,  
19 Mr. Liebesman, I got your letter in response to that.

20 Although I really wasn't inviting  
21 reargument, I didn't mind getting your letters, and I  
22 appreciate the effort that went into doing that,  
23 providing that extra help to me. And so what I wanted  
24 to do now is just give you the benefit of my thinking

1 on what we should do.

2           There really are, for purposes of the  
3 motion to expedite, I think, at least as I gather from  
4 the latest written submissions, two principal grounds  
5 for seeking expedited discovery and scheduling of a  
6 preliminary injunction hearing before the July 21 vote  
7 on this transaction. I recognize, Mr. Liebesman, you  
8 are not conceding anything, or you are not waiving  
9 anything or disclaiming anything.

10           Those two grounds are, first, what I  
11 will call the relationships argument, the argument  
12 that the nature of certain business relationships  
13 between Mr. Broshy and Mr. Jennings and Mr. Perfall,  
14 who are directors on the board -- and Mr. Perfall and  
15 Mr. Jennings, of course, were the special committee  
16 members -- and Mr. Broshy, and his role at Providence  
17 Equity, and the relationships and connections with  
18 certain transactions that those folks are involved in,  
19 involving companies that Mr. Jennings works at, also  
20 involving connections or relationships with Goldman  
21 Sachs, which is performing advisory work, I guess, in  
22 some other cases or other transactions or deals that  
23 Mr. Broshy, Jennings and Perfall are involved in --  
24 that all of those relationships somehow have

1 influenced the special committee's decision, and the  
2 board of directors' decision, at inVentiv to recommend  
3 and approve this going-private transaction proposed by  
4 Thomas H. Lee, that is going to be voted on on  
5 July 21.

6           Now, that argument, as I thought about  
7 it over the weekend and as I looked and read the  
8 definitive proxy statement and as I looked again and  
9 read carefully the amended complaint in this matter --  
10 it seems to me the more I read it, that that is --  
11 although framed as a disclosure issue, it can be  
12 understood differently. And for my purposes, I think  
13 what it really is alleging is some type of conspiracy  
14 amongst certain directors on the board of inVentiv to  
15 recommend this transaction, perhaps because  
16 consideration was being given in other transactions  
17 that would compensate for whatever lack of  
18 consideration was being put on the table by Thomas H.  
19 Lee in this case.

20           And so the theory of this claim or  
21 this argument seems to be that this web of  
22 relationships between Broshy, Perfall, Jennings,  
23 related entities, and Goldman Sachs resulted in the  
24 inadequate offering price of \$26 a share in this case.

1 That is the claim or the theory.

2 I will say, in fairness to the  
3 defendants, it's very thinly pled and thinly alleged,  
4 but it's there. But to the extent that it is there, I  
5 think it gives rise to a claim of breach of loyalty.  
6 It's not a breach of due care on behalf of these  
7 directors that is being alleged. It's really a breach  
8 of the duty of loyalty. For that reason, there would  
9 be no impediment to this Court after the fact awarding  
10 monetary damages as a remedy, if that type of breach  
11 and that type of conduct is actually proven by a  
12 preponderance of the evidence and can be demonstrated.

13 So effectively, my decision is that  
14 there is no threat of irreparable harm, because there  
15 is the opportunity to remedy it after the fact. There  
16 is a complaint. It's alleged in the complaint. And  
17 if it's proven later, then there will be a way for the  
18 Court to see to it that those who were guilty of that  
19 conspiracy would pay damages in an amount sufficient  
20 to compensate the shareholders for the loss that they  
21 suffered.

22 So I don't believe there is a basis on  
23 which I would accelerate or direct that there be  
24 expedited proceedings based on that claim, which was

1 the one that Mr. Liebesman really argued to me  
2 principally the last time. Over the weekend and  
3 today, the argument has shifted a little bit -- or not  
4 shifted, but has grown -- to include the argument that  
5 the definitive proxy fails to include information  
6 regarding free cash flows at inVentiv that would  
7 enable stockholders to be able to better calculate  
8 whether the company has a brighter future as a going  
9 concern and they ought to vote against this  
10 transaction, or whether in fact the company is worth a  
11 lot more than the \$26 being offered by Thomas H. Lee,  
12 and they ought to therefore seek appraisal.

13           And it is true, of course, that  
14 disclosure claims are considered almost per se  
15 irreparable, and therefore, if there is a colorable  
16 claim of a disclosure violation, this Court will  
17 almost always order expedited proceedings, so that it  
18 might address that problem before the fact, and  
19 provide a meaningful remedy for it by ordering  
20 additional disclosure, if that is what the Court  
21 ultimately concludes is proper to do.

22           The difficulty here is that I have  
23 read the definitive proxy, and I have read the  
24 arguments of counsel about the disclosures that are in

1 it regarding Goldman Sachs' valuation methodologies.  
2 Having read those summaries of what Goldman Sachs did  
3 here, and its recommendation, I would agree with  
4 plaintiffs that free cash flow information would  
5 certainly add to the total mix of information that is  
6 available to stockholders in the definitive proxy  
7 about how Goldman Sachs came to its ultimate  
8 conclusion about this price, but I don't believe --  
9 and on this score, I guess I agree with the  
10 defendants -- that it would meaningfully alter the  
11 total mix of information that is available through the  
12 definitive proxy on that point.

13           The plaintiffs have argued to me that  
14 this really is required or is necessary in order to  
15 satisfy the holdings that this Court has issued in the  
16 past about the importance of free cash flow  
17 information in providing material information to  
18 shareholders, so that they can understand the value of  
19 their assets. And they point to Netsmart and the  
20 recent Maric decision by Vice Chancellor Strine. And  
21 there are other decisions by other members of the  
22 Court that hold to the same effect.

23           But this isn't a case where free cash  
24 flow estimates were deliberately removed or excised



1 from a proxy disclosure. Unlike in Maric, in this  
2 case no free cash flow estimates were actually  
3 provided to Goldman Sachs. The internal analyses that  
4 were approved by management for Goldman's use in this  
5 case didn't have a line item for free cash flow  
6 estimates, and so unlike the Maric decision, there was  
7 no deliberate excising of free cash flow numbers. And  
8 in addition, this isn't like Netsmart, where  
9 management undertook to disclose certain projections  
10 but then disclosed projections that were actually  
11 stale and not, therefore, meaningful. The proxy here  
12 gave management's projections that were actually used  
13 by Goldman, and those projections included net  
14 revenue, net income, EPS and EBITDA estimates for five  
15 years.

16           So based on all of that, there doesn't  
17 appear to me to be a colorable claim of a  
18 misrepresentation or omission of material information  
19 that would alter the total mix of information already  
20 available to the stockholders. And so for that  
21 reason, I am not convinced that there is a colorable  
22 claim of a disclosure violation that would warrant  
23 expedition based on the particular facts that were  
24 disclosed here, and that were used by Goldman Sachs in

1 arriving at its ultimate conclusions.

2           Now, having said all of that, and with  
3 due respect to Mr. Liebesman, who I know disagrees  
4 with me -- and I appreciate that, and respect his  
5 point of view, and can understand his point of view,  
6 frankly. And so I am quite willing, if Mr. Liebesman  
7 believes that I have erred and that there are truly  
8 reasons why in every case Delaware ought to require --  
9 even if management hasn't produced it to the  
10 investment advisor -- that Delaware law ought to  
11 require as a per se rule that free cash flow estimates  
12 going out into the future be provided, disclosed, I  
13 would be, in the interests of clarification of  
14 Delaware law, and in the interests of perhaps leading  
15 to the creation of a bright-line rule in disclosure,  
16 which I think would be a good thing in some ways -- I  
17 would be happy, Mr. Liebesman, to sign, today, an  
18 order certifying an interlocutory appeal to the  
19 Delaware Supreme Court on this question. I would even  
20 go so far as to include the other question or bases  
21 for your request for expedition, on the alleged  
22 conflict of interest and the interrelationships of the  
23 various directors of inVentiv that you raised.

24           So if that would be of interest to

1 you, I can tell you I would be willing to sign an  
2 order, and I would waive all of the time requirements  
3 under the Supreme Court's rule with respect to  
4 submission of argument on this point, and do that  
5 today because of the expedited nature of this matter.  
6 I realize you might want to think about that and not  
7 give me an instant answer, so I'm not trying to put  
8 you on the spot immediately. I'm just telegraphing to  
9 you what my predisposition is on it, should you  
10 conclude that you want to seek review of my ruling.

11 MR. LIEBESMAN: I appreciate that,  
12 Your Honor. I think that it is something that I  
13 should put some thought into, although I understand  
14 the time restriction and would factor that in and tell  
15 the Court that if I do not get back to Your Honor  
16 before the end of the day today, I will certainly be  
17 tomorrow morning.

18 THE COURT: That is fine with me,  
19 Mr. Liebesman. I appreciate that and understand it.  
20 So I won't do anything until I hear from you tomorrow,  
21 but for the time being, at least, I hope you  
22 understand my ruling, and that's my decision for  
23 today.

24 MR. LIEBESMAN: Okay. Thank you, Your

1 Honor.

2 THE COURT: Thank you, very much,  
3 counsel, for being available.

4 (Recess at 3:49 p.m.)

5 - - -

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

