

2018-2019 Case Materials

Delaware High School Mock Trial Competition

February 22-23, 2017

Leonard L. Williams Justice Center (formerly New Castle
County Courthouse)

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**SPECIAL THANKS TO THE FOLLOWING INDIVIDUALS
WHO SERVED AS MEMBERS OF THE ORIGINAL CASE COMMITTEE**

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PRIMER ON DELAWARE CORPORATE LAW

I. What is A Corporation?

A corporation is a non-human entity. Instead, corporations exist both as a matter of common and statutory law. Delaware corporations are governed by statutes known as the Delaware General Corporation Law (the “DGCL”).

The most important feature of a corporation is that it exists entirely separate and apart from its owners. Virtually all the legal and tax advantages associated with corporations flow from this essential element. A corporation can acquire assets, enter into contracts, sue or be sued, pay taxes, and take tax deductions in its name, often without creating obligations on the part of individual owners.

Corporations must have at least one owner, but there is no upper limit. The owners are called shareholders or stockholders. The ownership interests of the shareholders in a corporation are divided into units called stock, shares, or shares of stock. The rules governing corporations, along with the advantages and disadvantages, apply equally to corporations owned by one or more than one shareholder. A corporation comes into existence when an incorporator files a charter or certificate of incorporation document in the state in which the incorporator is to be viewed as a “resident.” More than half of the Fortune 500 companies in the United States, for reasons too varied to discuss here, have elected to be incorporated in Delaware, even if they do not have a physical presence in the state.

The total number of shares a corporation may issue is unlimited. However, the corporation must issue at least one share of stock for each shareholder. If the corporation will have more than one shareholder, the corporation should issue shares to each stockholder in proportion to their ownership interests. The proportion of the ownership interest among more than one shareholder may vary from a fraction of one percent to a fraction over ninety-nine

percent, depending on the deal the shareholders make when they decide to go into business together.

For example, if you are the sole shareholder, it makes no difference whether you own one share or one million shares. In each case, you own 100% of the corporation. Likewise, if two people have decided to go into business on a sixty-forty basis, it makes no difference whether one owns six shares or six million and the other owns four shares or four million. In each case, their respective interests would be sixty-forty.

II. How Does a Corporation Conduct Business?

Shareholders: A corporation conducts business through a chain of authorized representatives. The shareholders are at the top of the chain. The shareholders, however, do not directly manage the business and affairs of the corporation. Instead, the shareholders meet at least once each year to elect a Board of Directors, which is charged with that obligation.

Directors: Corporations must have at least one director, but there is no upper limit. The directors' job is to make general business decisions for the corporation, including the decision to merge or sell the corporation. Their decisions are then implemented by corporate officers who are appointed by the Board of Directors. The directors owe two main duties (known as fiduciary duties) to the shareholders: (1) the duty of care; that is to act with care when making a decision on behalf of the corporation; and (2) the duty to act loyally and in the best interests of the corporation by putting the corporation's and its shareholders' interests above the directors' interests.

Officers: The officers may consist of the following: president (a.k.a. chief executive officer or CEO), treasurer, and secretary. The president is responsible for managing the corporation's daily operations. The treasurer manages the corporation's money, while the

secretary maintains the corporation's nonfinancial books and records. Corporations may also have one or more vice-presidents. A vice-president's duties may vary, depending on the corporation's needs. For example, the corporation may have vice-presidents for sales, marketing, operations, personnel, and so on.

III. Merger and Acquisitions: What is a Hostile Takeover?

As discussed above, the Board of Directors votes on important business decisions and recommends action to the corporation's shareholders. This includes whether or not a corporation should be sold or merged with another corporation. Sometimes, however, a company seeking to acquire another company may attempt a "hostile takeover."

A "takeover" is a transaction in which an acquirer seeks to gain control of a target company without the consent of the target's Board of Directors. Typically, it proceeds in two steps. The first is a "tender offer" in which the acquirer offers *directly* to the shareholders to purchase shares held by them at a specified price. If an acquirer can obtain more than 50% of the outstanding shares of the corporation through a tender offer, the acquirer can then typically vote its own board of directors into office. The second step occurs when this new board, consisting of the acquirer's nominees, causes the target company to "cash-out" the remaining shareholders through a merger or otherwise buy back the remaining stock—thereby eliminating the remaining shareholders who did not tender their shares in response to the tender offer. In the end, the acquirer now owns 100% of the target company.

A corporation, however, has defensive measures available to prevent this type of hostile takeover from happening. One of the defenses against takeover bids is a "poison pill."

IV. What is a Poison Pill and How Does it Work?

There are several variations of "poison pills" that can be implemented by a company that

thinks it may be the target of a takeover by a potential acquirer. Typically, a poison pill plan (also known as a shareholder rights plan) makes it prohibitively expensive for a hostile bidder to buy the target company. The Board of Directors first adopts a rights plan that typically contains both “flip-in” and “flip-over” rights.

Flip-in: A “flip-in” allows existing shareholders (except the acquirer) to buy more of the target company at a discount. By purchasing more shares cheaply (flip-in), shareholders dilute the shares held by the acquirer. As a result, the acquirer’s takeover attempt is made more difficult and prohibitively expensive.

Example of a flip-in: At Viant, a computer consulting firm, its board of directors adopted a poison pill plan. In the plan, Viant issued a dividend (a monetary pay back to the shareholder from the corporation’s profits) to all shareholders. For each share owned, the shareholder can purchase another share for \$0.001. This is activated if either of the following occurs:

- A person or group buys 15% or more of the common stock of Viant.
- A person or group announces its intention to acquire 15% or more of the common stock of Viant.

Of course, the group or person that triggers the above does not have the same right to buy shares at \$0.001. Most of the rest of the shareholders will buy these shares because they are getting new stock at an extremely steep discount. The result is that the hostile acquirer is substantially diluted and would now have to pay a lot more money to achieve his or her takeover goal.

Flip-over: A “flip-over” allows stockholders to buy the acquirer’s shares at a discounted price after the merger. A flip-over plan distributes rights to shareholders to purchase discounted shares of the acquirer’s holdings in the post-merger company (usually at 50 percent of fair market value). Such significant dilution of the equity holdings of the potential acquirer’s stake makes the merger prohibitively expensive. Unlike the flip-in, the flip-over is a right that takes place post-merger.

Example of a flip-over: This time Viant, instead of offering shares to its shareholders before the acquiring company gains control (flip-in), offers its shareholders the right to purchase shares in the company post-merger at a discounted price. Therefore, upon the merger, these shareholders can now purchase shares of the merged company thereby diluting the ownership interest of the acquirer.

At the end of the day, the conduct of the target company's Board of Directors in response to a takeover attempt must comply with their fiduciary duties to the shareholders. Shareholders may challenge the board's conduct in court if they believe a breach of fiduciary duty has occurred. This might occur, for example, where the Board has refused to "redeem" (or withdraw) the poison pill in the face of an offer that is very attractive to the stockholders of the company. Dissident shareholders can also mount a "proxy contest" to solicit support for a change of management directly from individual shareholders. This process, however, is expensive, cumbersome, and time consuming.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MID-EAST STEVEDORES SERVICES, INC.,)	
)	
Plaintiff,)	
)	
v.)	C. A. No. 18C-01 LH
)	
DELAWARE AUTO & MARINE)	
CORPORATION, PAT KENT, CHARLIE KENT,)	
PERRY WHITE, CLARKE KENT and LOIS)	
LANE,)	
)	
Defendants.)	

STATEMENT OF THE CASE¹

Delaware Auto & Marine Corporation (“DAM”) is a Delaware corporation that operates a marine cargo terminal in Wilmington, Delaware. The common stock of DAM is publicly-held and traded on the New York Stock Exchange. Forty percent (40%) of the stock is owned by DAM’s 65 year-old founder, Pat Kent (“Kent”), and the remaining 60% is widely dispersed among institutional and individual holders. Kent is one of five members of the board of directors of DAM. In recent years, the market price of DAM’s stock has remained flat because of a slow-down in shipping activity and because of steadily increasing costs, primarily union-related legacy and benefit expenses.

In January 2017, the board of directors of DAM perceived that DAM was vulnerable to a hostile takeover because of its low stock price. At the time, DAM’s shares traded at approximately \$10.50 per share and had traded in the \$10-\$12 range in the preceding year (2016). Accordingly, on the advice of counsel, DAM adopted what is known as a stockholder rights plan or “poison pill.” A poison pill is an anti-takeover device. It is created through the

¹ Teams are encouraged to review the Primer on Delaware Corporate Law included with the case materials prior to reading this Statement of the Case.

adoption of a board-approved rights plan in which “rights” are deemed to have been issued to the company’s stockholders. Once a poison pill is adopted, if a person or entity acquires more than 15% (or some other set percentage) of the target company’s stock without approval of the board of directors and without redemption (retirement) of the rights, each stockholder other than the acquiring person or entity is entitled to purchase (at nominal cost) two shares of stock for each share of stock currently held. The effect of “triggering” a poison pill is that it causes the acquiring person’s or entity’s shares to be massively diluted and therefore substantially less valuable. Essentially, there are just three ways to overcome a poison pill: (i) negotiate an acceptable sales price with the target’s board of directors, so that the board voluntarily redeems the rights and approves the acquisition, (ii) run a proxy contest to elect new directors who will withdraw the rights plan; or (iii) file a court action and request that the court order the board to redeem the poison pill. A court may order redemption of a rights plan if it (or the jury) concludes that the board’s refusal to redeem the poison pill constitutes a breach of the directors’ fiduciary duty to the stockholders.

Mid-East Stevedores Services, Inc. (“MESS”) is also in the business of owning and operating marine terminals. It is owned and controlled by Aladin, an independent republic located fifty miles off the coast of Oman. Although Aladin has a sound diplomatic and political relationship with the United States, it is believed by some to have ties to terrorist activity. In recent years, MESS has begun to expand its operation to ports around the world. It does not currently have any operations in the United States. In 2016, MESS purchased 1 share of DAM stock and is, therefore, a stockholder of DAM.

On August 1, 2017, MESS launched a hostile takeover of DAM by announcing that it had commenced an all-cash tender offer² for all of the common stock of DAM for \$16 per share. The announcement was quickly derided by Kent, who publicly opposed the offer. During the ensuing months, the board of directors of DAM refused to talk to or meet with the President of Aladin, who publicly invited DAM to engage in friendly negotiations with the hope of concluding a deal.

On September 1, 2017, MESS raised its offer to \$20 per share and announced that this was its final offer. Simultaneously, it filed a lawsuit in the Delaware Court of Chancery³ seeking an order requiring the board of directors to redeem the poison pill. Many stockholders of DAM, hoping to “cash in” on this premium offer, have contacted the board of directors of DAM, urging the board to relent and redeem the poison pill. In fact, stockholders holding more than 51% of the stock of DAM have tendered their shares. In addition to formally rejecting the “final” MESS offer, DAM has invoked a recently enacted Delaware anti-terrorism statute (8 *Del. C.* § 206) in support of its refusal to even consider negotiating with MESS.

On September 21, 2017, the Delaware Court of Chancery issued a preliminary ruling in the case resolving certain questions as to the burden of proof at trial. A copy of that decision is attached as part of these case materials.

² A tender offer is a public bid for all the shares of a company at a specified price. All tender offers are subject to federal securities laws and regulations. As a practical matter, a tender offeror cannot “take down” (*i.e.*, accept) tendered shares when the target company has a poison pill in place, because it will be deemed to have triggered the pill.

³ The Delaware Court of Chancery is widely recognized as the nation’s preeminent court for deciding disputes involving corporate law. This unique role stems in part from the fact that thousands of corporations are incorporated in the State of Delaware, including more than half of the Fortune 500 companies.

Plaintiff's Case: MESS intends to argue and/or prove at trial that: (i) the defendants have failed to carry their burden of proving (a) Aladin has material ties to international terrorism, and (b) the proposed business combination poses a threat to national security; and (ii) the board of directors of DAM has breached its fiduciary duties owed to the stockholders by refusing to redeem the poison pill so that MESS can “take down” (take possession of) the shares and acquire DAM in a second-step merger.

Witnesses:

- Devereux Terry -- President of MESS
- Erin Sussex -- Retired Employee and Stockholder of DAM
- Sammy Rodney, CPA -- Accounting Expert

Defendants' case: Defendants intend to prove at trial that: (i) Aladin has “material ties” to international terrorism; (ii) the proposed business combination poses a material threat to national security; and will argue that (iii) MESS has failed to prove that the DAM board has breached its fiduciary duties by refusing to consider the MESS acquisition proposal.

Witnesses:

- Pat Kent -- Founder of DAM
- Chris Read -- Terrorism Expert
- Jamie Newcastle -- Head of Security for DAM

STIPULATIONS

In addition to the stipulated facts in the Court's order of September 27, 2017, both sides stipulate to the following:

1. All exhibits included in the case are authentic and accurate in all respects. The court shall not entertain objections to the authenticity of the exhibits.
2. The signatures on the witness statements are omitted due to electronic delivery of the case.
3. Whenever a rule of evidence requires that reasonable notice be given, it has been given.
4. Expert witnesses must be qualified during direct examination, but should not be formally tendered to the Court. If a party fails to properly qualify an expert, the opposing party may object to that expert giving opinion testimony. The objection must be raised before any expert opinion testimony is given. On proper objection, the party offering the expert must qualify him or her.
5. Each of the witnesses has read the Primer and is familiar with its contents.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MID-EAST STEVEDORES SERVICES, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
DELAWARE AUTO & MARINE)	C.A. No. 18C-01 LH
CORPORATION, PAT KENT, CHARLIE)	
KENT, PERRY WHITE, CLARKE KENT and)	
LOIS LANE,)	
)	
Defendants.)	

COMPLAINT

Plaintiff Mid-East Stevedores Services, Inc. (“MESS”), by and through its undersigned attorneys, for its complaint against defendants Delaware Auto & Marine Corporation (“DAM” or the “Company”) and the individual members of its Board of Directors (the “Board”), alleges as follows:

Summary of Action

1. This is an action by MESS, a stockholder of DAM, to rectify an ongoing breach of fiduciary duty by the members of the board of directors of DAM. MESS has commenced a tender offer for all of the outstanding common stock of DAM. The current offering price of \$20 per share represents a substantial premium over the market price of DAM’s stock, and stockholders holding more than 51% of the stock of DAM have already tendered their shares. Despite overwhelming stockholder support for the offer, the Board of DAM has refused to withdraw DAM’s stockholder rights plan (i.e. “poison pill”) to allow the offer to proceed. Moreover, the Board has improperly invoked Delaware’s recently-enacted anti-terrorism statute (8 *Del. C.* § 206) in further support of its unjustified refusal to allow the offer to proceed. The

Board's refusal to withdraw the poison pill constitutes a breach of fiduciary duty and its reliance upon Section 206 is wholly unjustified and unlawful. Accordingly, MESS seeks declaratory and injunctive relief to remove these impediments so that it may acquire DAM.

The Parties

2. MESS is a corporation organized under the laws of Aladin. MESS is engaged in the business of owning and operating marine terminals. The President of MESS is Devereux Terry, an Ivy League graduate, who attended boarding school in Delaware.

3. DAM is a Delaware corporation. DAM owns and operates a marine cargo terminal in Wilmington, Delaware. The common stock of DAM is publicly-held and traded on the New York Stock Exchange.

4. Defendant Pat Kent ("Pat" or "Kent") is the founder of DAM and the Chairman of the Board. Kent owns 40% of the outstanding common stock of DAM.

5. The other four individual defendants, Charlie Kent, Clarke Kent, Perry White, and Lois Lane, are directors of DAM. Charlie Kent is Pat's brother and Clarke Kent is Pat's son. Each owns just a few shares of DAM, and is beholden to defendant Pat.

BACKGROUND TO THE OFFER

6. In recent years, DAM's business has struggled as a result of a slow-down in shipping activity on the Delaware River and because of steadily increasing costs, primarily union-related legacy and benefit expenses.

7. On information and belief, in January 2017, the Board believed that DAM was vulnerable to a takeover because of its languishing stock price. In 2016, DAM's stock traded in the \$10-12 range; currently, it is trading at approximately \$10.50 per share. Accordingly, DAM

adopted a stockholder rights plan (or “poison pill”), purportedly to protect itself from unfair and/or coercive hostile offers.

8. Under the poison pill adopted by DAM, if MESS or any such “interested stockholder” acquires more than 15% of DAM’s outstanding common stock, then a “flip-in” provision is triggered and each stockholder of DAM other than MESS has the right to acquire (at the prevailing market price) two shares of stock for each share held. Of course, a triggering of the flip-in provision of the poison pill would cause MESS’s interest in DAM to be massively diluted and thus considerably less valuable.

9. Although courts and scholars alike have recognized the utility of a poison pill to deter low-ball and coercive offers,⁴ a board of directors cannot indefinitely employ a poison pill to block a non-coercive offer that presents superior value to the stockholders. Such an abuse of a poison pill is occurring here, as MESS’s offer (described below) is non-coercive and presents value that is far superior to the current market value of DAM.

MESS’s Offer

10. On August 1, 2017, MESS commenced a tender offer for all the common stock of DAM at \$16 per share. Simply put, MESS will pay cash for *all* DAM stock that is tendered. At the time MESS announced its offer, DAM’s stock was trading at just \$10.50 per share.

11. In response to MESS’s offer, DAM’s founder, defendant Pat, made public statements to the effect that he would *never* sell DAM. Moreover, for the past few months, MESS repeatedly has attempted to engage DAM in discussions with a view towards negotiating

⁴ A coercive offer is one that is made for less than all of the shares of corporation, such that stockholders who do not tender risk having to accept a lower price in a second step merger. Stockholders are thus “coerced” into selling for fear that they will lose out on the higher price offered in the tender offer if they do not tender.

a friendly acquisition. The Board has refused to meet with, or speak to, any representative of MESS.

12. On September 1, 2017, MESS raised its offer to \$20 per share. This is MESS's final offer. It represents a premium of 90% over the market price of DAM's stock prior to the announcement of the offer.

13. As evidence of just how good MESS's offer is, stockholders holding more than 51% of the stock of DAM have tendered their shares. When considering the fact that defendant Pat holds 40% of the stock, stockholder support of MESS's offer is remarkable, as a vast majority of the disinterested stockholders want to sell their shares to MESS.

14. Despite overwhelming support for the offer, the Board has urged stockholders not to tender their shares and has resisted all attempts by MESS to negotiate a friendly deal.

DAM's Invocation of Section 206

15. In addition to rejecting the offer, the Board has invoked Delaware's recently-enacted anti-terrorism statute (8 *Del. C.* § 206) in support of its opposition to MESS's offer. Section 206 provides as follows:

Section 1. A corporation may refuse to enter into a business combination (1) with any person that is controlled by or under common control with a foreign state with material ties to international terrorism or (2) that would pose a threat to national security. "Business combination," "controlled by," "person" and "under common control with" shall have the meanings as defined in § 203 of this Chapter."

Section 2. For purposes of this section the term "international terrorism" means activities that

(A) appear to be intended –

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination or kidnapping; and

(B) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum.

16. As will be demonstrated at trial, although MESS is owned and controlled by Aladin, Aladin does not have material ties to international terrorism. Indeed, Aladin possesses a sound diplomatic and political relationship with the United States and it vigorously enforces laws and policies designed to fight and eradicate terrorism.

17. Moreover, the acquisition of DAM by MESS will not “pose a threat to national security” within the meaning of Section 206. MESS employs state-of-the-art security at its facilities and boasts an exemplary safety record. If MESS was to acquire DAM, it intends to upgrade security and anti-terrorism measures at the Wilmington facility by, among other things, installing x-ray and radioactive detection devices.

Count I
(Breach of Fiduciary Duty)

18. Plaintiff repeats and realleges the allegations in paragraphs 1 through 17 above as if fully set forth herein.

19. The individual director defendants owe fiduciary duties of care, loyalty and good faith to the stockholders of DAM.

20. The director defendants have breached those duties by refusing to withdraw DAM’s poison pill so that MESS may acquire the tendered shares and thereby gain control of the Company. There is no justification for the defendants’ refusal to allow the offer to proceed

because the offer is non-coercive and presents economic value to the stockholders substantially in excess of the market price of the Company's stock.

21. Accordingly, MESS is entitled to preliminary, permanent, and mandatory injunctive relief requiring the Board to remove the poison pill and any other impediments to the offer.

22. MESS has no adequate remedy at law.

Count II
(Declaratory Relief Relating To Section 206)

23. Plaintiff repeats and realleges paragraphs 1 through 22 as if fully set forth herein.

24. As noted, the Board purportedly invoked Section 206 as a basis to refuse to enter into a business combination with MESS. DAM's reliance on Section 206 is improper and unjustifiable because: i) Aladin does not have material ties to international terrorism, and ii) a business combination with MESS would not pose a threat to national security.

25. Accordingly, MESS is entitled to a declaration that DAM cannot avail itself of Section 206 because the requirements of the statute have not been satisfied.

26. MESS has no adequate remedy at law, and DAM's unlawful invocation of Section 206 presents an actual case or controversy that is ripe for judicial review.

WHEREFORE, Plaintiff Mid-East Stevedores Services, Inc. respectfully requests that the Court enter an order:

A. requiring defendants to withdraw the rights plan so that MESS's offer may proceed;

B. declaring that the requirements of Section 206 have not been satisfied and that, therefore, defendant DAM may not avail itself of Section 206;

C. awarding plaintiff its costs and attorneys' fees incurred in connection with this action; and

D. granting such other and further relief as the Court may deem just and proper.

MILFORD & DOVER, LLP

/s/ Dale Dover

Attorneys for Mid-East
Stevedores Services, Inc.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MID-EAST STEVEDORES SERVICES, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
DELAWARE AUTO & MARINE)	C.A. No. 18C-01 LH
CORPORATION, PAT KENT, CHARLIE KENT,)	
PERRY WHITE, CLARKE KENT and LOIS)	
LANE,)	
)	
Defendants.)	

ANSWER

Defendants Delaware Auto & Marine Corporation (the “Company”), Pat Kent (“Kent”), Charlie Kent, Clarke Kent, Perry White and Lois Lane, by and through their undersigned attorneys, answer the Complaint, as follows:

1. Defendants admit that Mid-East Stevedores Services, Inc. (“MESS”) is a stockholder of the Company, that MESS has commenced a tender offer for all of the common stock of the Company, that the current offering price is \$20 per share, that stockholders holding more than 51% of the stock of the Company have tendered their shares, that the Board of Directors of the Company (the “Board”) has refused to withdraw the Company’s rights plan, and that the Company has invoked the provisions of 8 *Del. C.* § 206; the remaining allegations of paragraph 1 are denied.

2. Defendants are without knowledge or information sufficient to form a basis to admit or deny the allegations contained in paragraph 2.

3. Admitted.

4. Admitted.

5. Defendants admit that the other four individual defendants are directors of the Company, and that each owns a few shares of the Company's stock, and deny that such directors are beholden to defendant Kent.

6. Defendants admit that there has been a slow-down in shipping activity on the Delaware River, and that some business costs have been increasing, but deny that the Company's business has "struggled."

7. Admitted.

8. Defendants admit the first sentence of paragraph 8, and deny the second sentence as alleged.

9. The first sentence of paragraph 9 states a legal conclusion as to which no response is required; to the extent a response is required, defendants deny the first sentence of paragraph 9. Defendants deny the second sentence of paragraph 9.

10. Admitted.

11. Denied.

12. Defendants admit the first sentence of paragraph 12 and are without knowledge or information sufficient to form a basis to admit or deny the remainder of paragraph 12.

13. Defendants admit that stockholders holding more than 51% of the stock of the Company have tendered their shares, and deny the remainder of paragraph 13.

14. Denied, except admitted that the Board has urged stockholders not to tender their shares.

15. Defendants admit that the Board has invoked the provisions of 8 *Del.C.* § 206 and refer the Court to that statute for its full and accurate terms.

16. Denied.

17. Denied.

18. Defendants repeat and reallege their answers to paragraphs 1 through 17 above as if fully set forth herein.

19. Paragraph 19 states a legal conclusion as to which no response is required; to the extent a response is required, denied.

20. Denied.

21. Denied.

22. Paragraph 22 states a legal conclusion as to which no response is required; to the extent a response is required, denied.

23. Defendants repeat and reallege their answers to paragraphs 1 through 22 above as if fully set forth herein.

24. Denied.

25. Denied.

26. Paragraph 26 states a legal conclusion as to which no response is required, to the extent a response is required, denied.

ADDITIONAL DEFENSES

FIRST ADDITIONAL DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND ADDITIONAL DEFENSE

The Board properly invoked the provisions of 8 *Del. C.* § 206 because: i) Aladin has material ties to international terrorism; and ii) a business combination with MESS would pose a threat to national security. Accordingly, the Company is legally entitled to decline any and all invitations by MESS to enter into a business combination.

WHEREFORE, defendants respectfully request that the Court enter an order:

- A. dismissing the Complaint with prejudice;
- B. awarding defendants their attorneys' fees, costs, and expenses in defending this action; and
- C. granting such other and further relief as the Court deems just and proper.

THE BEDFORD LAW FIRM

By: /s/ Gunner Bedford
Attorneys for Defendants

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

Mid-East Stevedores Services, Inc.,)
)
Plaintiff,)
)
v.) Civil Action No. 18C-01 LH
)
Delaware Auto & Marine Corporation, et al.,)
)
Defendants.)

OPINION

Submitted: September 17, 2017

Decided: September 21, 2017

Delaware Auto & Marine Corporation (“DAM”) is a Delaware corporation that operates a marine cargo terminal in Wilmington, Delaware. The individual defendants are the members of DAM’s Board of Directors. Plaintiff Mid-East Stevedores Services, Inc. (“MESS”) is in the same business, but it does not yet have any operations in the United States. MESS commenced a cash tender offer on August 1, 2017 for all of the common stock of DAM at a price of \$16.00 per share. The members of the board of directors of DAM have refused to recommend either that offer, or a subsequent \$20.00 per share offer from MESS. On September 1, 2017, MESS filed this lawsuit alleging that the members of the board of directors of DAM had breached their fiduciary duties and seeking an order requiring them to redeem the company’s stockholder rights plan. The matter has been scheduled to go to trial beginning on February 23, 2019.⁵ In the course of the pre-trial proceedings, a question has been raised about the manner in which the burden of proof on certain questions will be allocated at trial. This decision resolves that question.

⁵ Plaintiff also challenged the constitutionality of 8 *Del. C.* § 206. Pursuant to Supreme Court Rule 41, I certified that question of law to the Delaware Supreme Court. The Supreme Court resolved that question through an expedited appeal and issued a decision on September 12, 2017 upholding the constitutionality of the statute.

In rejecting the MESS offer, DAM has relied upon a recently enacted Delaware statute. Section 206 of the General Corporation Law was enacted earlier this year and provides as follows:

Section 1. A corporation may refuse to enter into a business combination (1) with any person that is controlled by or under common control with a foreign state with material ties to international terrorism or (2) that would pose a threat to national security. “Business combination,’ ‘controlled by,’ ‘person’ and ‘under common control with’ shall have the meanings as defined in § 203 of this Chapter.”

Section 2. For purposes of this section the term “international terrorism” means activities that –

- (A) appear to be intended –
 - (i) to intimidate or coerce a civilian population;
 - (ii) to influence the policy of a government by intimidation or coercion; or
 - (iii) to affect the conduct of a government by mass destruction, assassination or kidnapping; and
- (B) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum.

The parties have stipulated to the following statements of fact and, therefore, I will presume at trial, and will advise the jury, that the following facts are conclusively established:

- (1) MESS is “controlled” by Aladin within the meaning of 8 *Del. C.* § 203;
- (2) the proposed transaction between MESS and DAM would be a “business combination” within the meaning of 8 *Del. C.* § 203; and
- (3) MESS is a “person” within the meaning of 8 *Del. C.* § 203.

The following questions remain for resolution at trial:

- (1) whether defendants have breached their fiduciary duty;
- (2) whether Aladin has material ties to international terrorism; and
- (3) whether the proposed business combination would pose a threat to national security.

Not surprisingly, each side has argued fervently that their opponents should be required to bear the burden of proof on the last two of these questions.⁶

In making the decision not to accept the proposed offer, the members of the board of directors of DAM relied upon the statute, which gives a corporation the power to decline to enter into a business combination under specified circumstances. Presumably, defendants gathered information pertinent to that decision before relying on the power granted by that statute to decline to enter into the proposed transaction. Having availed themselves of that authority, the defendants should be required to establish facts sufficient to demonstrate why they should be entitled to rely on what is akin to a statutory form of an affirmative defense. Therefore, defendants will bear the burden of proof at trial on the questions of (1) whether Aladin has material ties to international terrorism, and (2) whether the proposed business combination would pose a threat to national security.

Finally, 10 *Del. C.* § 369 provides that “[w]hen matters of fact, proper to be tried by a jury, arise in any cause depending in Chancery, the Court of Chancery may order such facts to trial by issues at the Bar of the Superior Court.” I have concluded that the questions involving international terrorism and national security should be tried by a jury. However, the fiduciary duty questions are issues that ordinarily would be decided by me. Although I could bifurcate the proceedings by deciding some questions of fact myself and having a jury decide others, I am going to exercise my discretion to empanel a special jury to decide all of the questions of fact.

⁶ The parties have stipulated that as is customary, plaintiff has the burden of proof in showing that there has been a breach of fiduciary duty.

However, the jury shall not be asked to fashion the appropriate remedy. These questions, including the question of whether there is an adequate remedy at law, will be addressed by the Court after the jury makes its factual findings as set forth in the verdict sheet.

IT IS SO ORDERED.

/s/ Loockerman Henlopen

Chancellor

Dated: September 21, 2017

PLAINTIFF’S WITNESS STATEMENT OF DEVEREUX TERRY

1 My name is Devereux Terry. I am the President of Mid-East Stevedores Services, Inc.
2 (“MESS”). MESS is a Delaware corporation, but 100% of the common stock of MESS is owned
3 by the republic of Aladin.

4 Aladin is a 675 square mile island located in the Arabian Sea, fifty miles off the coast of
5 Oman. For many years, Aladin was a part of the British Empire, until it achieved independence
6 in 1947 and became governed as the republic of Aladin.

7 I was born in Aladin and went to school there until I was 14. Although my father grew up
8 in Aladin, my mother is from England and was educated there and in the United States. My
9 mother really wanted me to go to school in the United States, so she and my father sent me to
10 boarding school in Delaware.

11 I didn’t know it at the time, but one reason my mother wanted me to go away to school
12 was because she knew she had a terminal illness. Five weeks after I arrived in Delaware, my
13 mother died.

14 My father was devastated by my mother’s death. While he was very vulnerable, he met
15 and married a woman who was after his money and they had one child, Drew. When Drew was a
16 baby, my father realized that his wife did not love him, asked her for a divorce and gave her a
17 multi-million dollar settlement. Drew’s mother left Aladin and vowed that my father would
18 never be allowed to see Drew again.

19 Although I have not seen Drew since he was a baby, I am aware of his upbringing from
20 the many news accounts about his exploits. Apparently, he and his mother have lived all over the
21 Middle East and Europe. At some point, he became involved with terrorist organizations. He has
22 personally taken responsibility for some of the most heinous terrorist activities ever
23 perpetrated—taking hundreds of innocent lives.

Plaintiff's Witness Statement - Devereux Terry (Cont'd)

24 My first year at boarding school was difficult enough after my mother's death, and I also
25 had the problem that not all of my fellow students were welcoming of foreigners. Fortunately, I
26 got to know my classmate Reese Blackbird well and my visits to his family home in the chateau
27 country outside of Wilmington, Delaware. Reese and his family made the school holidays
28 bearable when I could not travel all the way back to Aladin.

29 By my second year at boarding school, I had become well enough settled that I was
30 chosen by my fellow students to be a member of the school Honor Council. The Honor Council
31 had the responsibility of enforcing the school's Honor Code.

32 One of the other students at the boarding school was Chris Read. Chris was one of the
33 students who were not very kind to me when I arrived at the school. He/she seemed to think that
34 only people who grew up in the U.S. should be allowed to attend our boarding school. Chris got
35 high grades and was the captain of the basketball and tennis teams. Chris was applying to several
36 Ivy League colleges, but because he/she was at our school on a scholarship, he/she was going to
37 need a full scholarship and expenses to be able to attend any of them.

38 In the fall of his/her senior year, Chris was accused of cheating. His/her case came before
39 the Honor Council and I sat on the panel that heard his/her case. The night before the hearing, the
40 student who was going to testify against Chris suddenly withdrew from school and left the
41 campus. Although we still had the original witness statement and other supporting evidence, the
42 Honor Council's procedures required that we dismiss the case. I was told by another student that
43 the Ivy League college that was Chris's first choice (Harvard University) learned about the
44 allegations, and that was the basis for the denial of his/her application for admission.

Plaintiff's Witness Statement - Devereux Terry (Cont'd)

45 I ended up attending Harvard. I have been told by fellow boarding school alums that
46 Chris believes that I told Harvard about the allegations against Chris so that I would not have any
47 competition for the single slot they allot for an incoming freshman from our school. Of course, I
48 had nothing whatsoever to do with that report. I did not see Chris after graduation, although I
49 knew that he/she went to college and I heard a rumor that after graduation, he/she went to work
50 for one of the intelligence agencies.

51 After I graduated from college, I decided to spend a few more years in the U.S. before
52 returning to Aladin. Reese and I had remained close, and I continued to visit his family's house
53 in Delaware. On one of those visits, Reese's father told us that he was convinced that the house
54 next door was now being used as a safe house for one of the intelligence agencies. We did not
55 take that seriously, because we never thought that the suburbs of Wilmington, Delaware would
56 be well suited for a safe house, so we did not give his comment much thought. However, one
57 night Reese and I were out walking his dog, and saw Chris in the passenger seat of a car pulling
58 into that driveway. That was when I remembered the rumors about where Chris had gone to
59 work after graduation.

60 I am not proud of admitting this, but I must confess that my memories of how unkind
61 Chris had been to me in boarding school were still painful and Reese and I decided to try to play
62 a trick on him/her. For the next week, I made sure I had lots of conversations using Reese's
63 phone, and pretended that I was talking to someone about my "hatred" of the United States and
64 its allies and my hope that someday terrorists would take action against the U.S. The whole
65 episode was very childish, but Reese and I thought it would be funny if Chris went to his/her

Plaintiff's Witness Statement - Devereux Terry (Cont'd)

66 employers with his/her suspicions about me and then got in trouble when Chris's superiors found
67 out that few Americans are as Americanized as I am.

68 I got my M.B.A. and was ready to return to Aladin. My father was the President of
69 MESS, so I went to work for him. Over the years, MESS has prospered and grown, but our
70 operations were concentrated in the Middle East and Europe. I took on greater levels of
71 responsibility at MESS, and eventually took over the presidency from my father. I had always
72 been interested in expanding our operations into the United States, but I knew I would have to
73 make monthly trips to the U.S. if that happened, and I was reluctant to be that far away from my
74 father. Last year, when my father learned about Drew's latest atrocity, he was so upset that he
75 suffered a fatal heart attack.

76 After my father's death, I decided to pursue the possibility of a U.S. presence. MESS has
77 the good fortune of having the backing of the government of Aladin, so we don't always
78 experience the same problems as some of our competitors, who have to deal with public
79 stockholders and who must borrow money from commercial banks.

80 I had been aware for many years of Delaware Auto & Marine Corporation ("DAM") and
81 routinely followed its trading activity. In early 2017, I felt that the market trading price
82 undervalued the company and thought it would be a good investment and would complement
83 MESS's operations.

84 I asked our lawyers to prepare the necessary papers to allow us to acquire DAM. On
85 August 1, 2017, MESS commenced an all cash offer for all of the common stock of DAM at a

Plaintiff's Witness Statement - Devereux Terry (Cont'd)

86 price of \$16 per share. Unlike most other potential acquirers, we didn't have to include any
87 financing conditions because the offer was all cash, all up front. The same day, I sent a letter to
88 Pat Kent, asking if we could meet to discuss our offer.

89 To my great surprise, he/she never responded to any of my overtures. Despite his/her
90 silence, my advisors and I continued to pursue such due diligence as we could without his/her
91 cooperation and, ultimately, we raised our offer to \$20 per share, which we said was our final
92 offer. The premium we have offered to DAM stockholders is so attractive that I can't believe that
93 the board won't allow the stockholders to make their own decision on whether they want to
94 accept it.

95 In light of the fact that DAM's board of directors had adopted a poison pill, we knew that
96 we would need to get court assistance to help us go through with the acquisition, if the board was
97 not willing to negotiate a deal with us. Therefore, on September 1, 2017, we filed this lawsuit in
98 the Court of Chancery, seeking an order requiring the board of directors to redeem the poison
99 pill.

100 As part of its response, DAM has claimed that Aladin has ties to terrorists and that I am
101 secretly working with my estranged brother Drew to promote terrorist activities. Nothing could
102 be further from the truth. The last time I saw Drew was when he was just learning how to walk.
103 After his mother took as much money as she could from my father in their divorce, neither she
104 nor Drew ever returned to Aladin.

105 The suggestion that Drew is somehow tied to the prime minister of Aladin is just as
106 ridiculous. One of the consequences of the fact that Aladin is an island is that it is very expensive
107 to live and do business there, because of the obviously increased costs of

Plaintiff's Witness Statement - Devereux Terry (Cont'd)

108 transportation. The only way that the residents of the republic have managed to establish and
109 maintain high standards of living is because of the fact that the government goes to great lengths
110 to promote the stability of its government and its commitment to capitalism. The last thing that
111 anyone tied to the government would want to do is create the impression of Aladin having ties to
112 anyone associated with terrorism.

113 I have reviewed this statement this 8th day of May 2018. It is true and correct and I have
114 nothing further to add.

115 /s/ _____
116 Devereux Terry

PLAINTIFF'S WITNESS STATEMENT – SAMMY RODNEY

1 My name is Sammy Rodney. I am a member of the Deloitte Ernst KPMG Coopers, LLP
2 accounting firm (otherwise known as the “Big One”). I am a Certified Public Accountant, and I
3 have testified as an expert witness in numerous valuation matters. One of my previous cases
4 involved a sale of Kim Woolley’s chicken farm (Woolley’s Chickens) to Edgar Townsend. I’ll
5 never forget the smell of those hen houses when I did my own site visit. I could smell ‘em the
6 minute I entered Sussex County. I now understand that Kim has a bad case of “seller’s remorse,”
7 but all I can say is “I call them like I see them.”

8 I have been retained by the plaintiff in this case to consider whether, in my expert
9 opinion, it is unlikely in the coming years that DAM’s market price (\$10.50 per share prior to the
10 initial tender offer, and in the range of \$10-\$12 during the year preceding the tender offer) will
11 ever approach the current MESS offering price of \$20 per share.

12 In my expert opinion, there’s *no* way that the historically weak market price of DAM
13 stock will *ever* approach the *very* generous price offered by MESS.

14 The basis for my opinion is three-fold. First, as the Stock Price History (Exhibit 3)
15 demonstrates, there was a dramatic (\$22 per share to \$12 per share) drop in the value of DAM
16 stock after Danielle Steel’s novel, “Hotel Vendome” was published in 2011. The stock has never
17 rebounded. Instead, it inched up to a high of \$13 per share in 2012, followed by a steady decline,
18 to a low of \$10 per share in 2015 and 2016.

19 Second, after the first tender offer of \$16 per share was announced, the market price of
20 DAM stock only moved 50¢ -- from \$10.50 to \$11.00! And, when the already-generous \$16
21 offer was increased by \$4 in the face of *silence* from DAM and its so-called “board of directors,”
22 the market price moved up only another 50¢ -- to \$11.50! In my opinion, this pathetic market

Plaintiff's Witness Statement – Sammy Rodney (Cont'd)

23 reaction to the tender offer is significant and reflects how little confidence the market has in
24 DAM's potential.

25 Third, my Valuation Analysis (Exhibit 2) shows that even MESS's \$16 per share offer
26 was more than fair to DAM's shareholders when the per share sale prices of companies in
27 comparable lines of business are considered. For instance, California Port, Inc. sold three years
28 ago for \$14 per share and Florida Port, Inc. sold two years ago for \$12 per share – a clear
29 downward trend for maritime shipping businesses. It's true that Texas Port, Inc. sold last year for
30 \$25 per share after its shipping lanes were dredged, but that company is handling a highly
31 specialized commodity (those authentic Texas Hold'em cards), and I believe that to be the reason
32 for the higher sale price. Conversely, *air* transport businesses have continued to outstrip the
33 maritime businesses in value. Witness the sale of Eastern Air Transport, Inc. in 2014 for \$20 per
34 share and the sale of Western Air Transport, Inc. a year later for \$25 per share. I know that
35 Southern Air Transport, Inc. sold last year for only \$18 per share, but I can only assume that the
36 company got some bad advice and was sold on the cheap.

37 And now MESS has *increased* its offer to \$20 per share for the stock of DAM!

38 How can *anyone* realistically believe that *this* Company is going to do anything other
39 than just die on the vine? As Gordon Gekko said in the movie *Wall Street* when describing a
40 “dog” company, “if [DAM] ran a funeral parlor nobody would die.” Pat Kent may have his/her
41 “Business Plan,” but it's hardly worth the paper it's printed on. I can't imagine anything that's
42 more pie-in-the-sky! Pat is wildly enthusiastic about the hoped-for dredging of the shipping
43 lanes. But doesn't the prospect of bigger ships bring with it the prospect of bigger shipping
44 disasters? Massive oil spills? And how could the “Plan” be more speculative, when the dredging

Plaintiff's Witness Statement – Sammy Rodney (Cont'd)

45 would require cooperation on the part of the Army Corps of Engineers, funding, and regulatory
46 approvals, and when the retrofitting of the Company's facilities at the Port of Wilmington would
47 require funding, approvals, and more employees? I've heard from more than one reliable source
48 that Pat already has been turned down for funding. I've also reviewed stock analyst reporting,
49 including from Zacks Investment Research, that indicate clearly that DAM's strategic plans are
50 bigger than its financial britches can handle. Moreover, even if Pat's "Plan" could ever be even
51 partially successful, he's/she's suggesting a ten-year rollout of the Plan, by the end of which
52 he'll/she'll be old and grey!

53 What a wonderful opportunity all of DAM's stockholders (including founder Pat Kent)
54 now have – to take the money and run! And the Company's retirees can now sleep peacefully,
55 knowing that healthcare and other benefits will be secured!

56 And I'm no "terrorism" expert, but come on! Some loser Osama Bin Laden wanna-be,
57 who has had nothing to do with the family of the President of Aladin, should stand in the way of
58 this great acquisition? It just isn't right. It just isn't the American way!

59 Besides, I've visited Aladin in performing accounting services for MESS. Contrary to the
60 testimony of Chris Read, my commercial airline flights were never limited to takeoffs and
61 landings during daylight hours in Aladin. And, in reviewing the financial records of MESS, I
62 never saw any evidence of any payments to terrorists!

63 Finally, it's my pleasure to serve as an expert witness in this case. My charge for doing so
64 (and for preparing the Stock Price History and the Valuation Analysis) is \$500,000 no matter the
65 outcome of the case. Companies like MESS are willing to pay my fees for the work I do because

Plaintiff's Witness Statement – Sammy Rodney (Cont'd)

66 I'm worth it—plain and simple. The fee I receive here will represent about half of my gross
67 income for the year.

68 I have reviewed this statement this 8th day of May 2018. It is true and correct and I have
69 nothing further to add.

70 /s/ _____

71 Sammy Rodney

PLAINTIFF WITNESS STATEMENT OF ERIN SUSSEX

1 My name is Erin Sussex. I am 59 years old and live in Wilmington, Delaware. I am
2 single; my long-time companion (Lee) passed away two years ago. I have eight grandchildren.

3 I graduated from Wilmington High School in 1976. After graduation, with the help of my
4 father, I got a job at the Port of Wilmington as an employee of Delaware Auto & Marine
5 Corporation (“DAM” or the “Company”), where I have been employed for the past 50 years. I
6 retired six months ago. Several of my children now work at DAM. I could have stayed on longer,
7 but I felt as if I had enough money to make it through my retirement years. After all, I figured it
8 was time to live a little and to start scratching some things off my “bucket list” if you know what
9 I mean.

10 When I first started working at DAM, I was an office worker and did pretty much
11 whatever my boss told me to do. I did a lot of errands and clerical work, but I yearned to work
12 out on the docks where it looked more interesting loading and unloading cargo from ships
13 around the world. Eventually, I was able to join the dock workers union and started to make
14 pretty good money, about \$6.00 per hour when I first joined. When I retired I was making about
15 \$75 per hour.

16 Let me tell you a little about the Port of Wilmington. The port is a full service port that
17 handles over 400 vessels per year. The Delaware River is one of the busiest waterways in the
18 United States for international shipping. The port occupies approximately 300 acres of land and
19 has almost a half-dozen warehouses, two of which are temperature controlled. The port sits
20 approximately 3 1/2 miles from downtown Wilmington, Delaware, and has easy access to rail
21 lines and Interstate 95. The port is a deep-water port and can handle large cargo ships; the
22 limiting factor, however, is the depth of the Delaware River. It is not deep enough to

Plaintiff's Witness Statement - Erin Sussex (Cont'd)

23 accommodate "super-class" cargo ships. There has been talk of dredging the River to permit
24 access to the port by this super-class of ships, but I don't know where that stands now.

25 My title was "warehouse foreman." As a warehouse foreman, I directed the storage of
26 off-loaded cargo into warehouses if storage is required before it is picked up by trucks or rail for
27 delivery. Most off-loaded cargo is shipped within hours or a day or two of delivery, but
28 sometimes we need to warehouse cargo until it can be trucked to another location. At the Port of
29 Wilmington, we import fruit from South America, automobiles from Europe, and occasionally
30 shipments from the Far East of consumer products, which can include anything from sneakers to
31 household electrical products, such as TVs, DVD players and indoor fans. Last year we got a
32 whole boat load of Texas Hold'em cards—we're hoping to steal some of that business from the
33 Port of Texas.

34 Ever since I started working for DAM, I invested in the stock of the Company whenever I
35 had a few extra dollars. Some years I only invested \$100 a year, but other years I sank almost
36 \$1,000 into DAM stock.

37 I knew it was a good Company, as I occasionally would run into Pat Kent on the docks
38 and we would chat. Good person, that Pat, down to earth and someone whom I knew I could
39 trust. Pat was always looking out for us, even though we carried a union card. Pat took great
40 pride in the Company, and he/she once told me that he/she looked after it like it was one of
41 his/her children. He/she also once told me that he/she would never sell DAM, no matter what the
42 price.

43 Although I like Pat as a person, I think the board of directors is breaching its fiduciary
44 duty to the stockholders by stonewalling on this MESS takeover. Who are they to say the

Plaintiff's Witness Statement - Erin Sussex (Cont'd)

45 stockholders should be denied the opportunity to obtain a premium for their stock? My stock in
46 DAM represents 90% of my life savings. At \$20 per share (the amount of the MESS offer), I
47 stand to make almost \$150,000 over the market price of my DAM stock. With that money, I
48 could retire comfortably and might still have some left to help with my grandchildren.

49 There is another reason I need the money. My granddaughter suffers from a rare genetic
50 disease that has stunted her growth. There is an experimental drug that her doctors believe may
51 enable her to grow another 3" - 5" above what the doctors believe will be her maximum height of
52 four feet (without the drug). This drug is extraordinarily expensive, costing about \$10,000 per
53 year, and she will need to take it for 2 - 3 years until she stops growing. Because it is considered
54 an "experimental" drug, her parents' insurance company won't pay for the prescription and her
55 parents cannot otherwise afford it. (They both work at DAM too.) What a wonderful gift to a
56 child in need; if only I had the money.

57 I don't buy the notion that selling the Company to MESS presents a security concern. I
58 worked for DAM for 50 years and we never had a security-related problem. Well, almost never.
59 There were a couple of times when some kids jumped the fence, broke into a warehouse and
60 stole some sneakers. But then we got security dogs, which sleep in the warehouses. That did the
61 trick.

62 The only other security incident I recall is getting a nasty case of fire ants that must have
63 come in on a shipment of bananas from South America. The bananas sat in the warehouse for a
64 day or two, and the next thing we knew the warehouse was teeming with fire ants. Customs
65 agents and bioterrorism authorities were called in to handle the problem.

Plaintiff's Witness Statement - Erin Sussex (Cont'd)

66 I should also mention that DAM now requires that every employee carry an identification
67 card which has our picture on it and which provides electronic access to the yard and
68 warehouses. This system has worked well and seems to prevent unauthorized persons from
69 entering the premises. I will admit that employees sometimes lose their cards and then borrow
70 their friend's cards to gain access. Additionally, on occasion, I have used my kids' identification
71 cards to visit old friends at DAM since I retired. But there can be nothing wrong with that,
72 everybody there knows me and I would never do anything that poses a security risk.

73 I know Jamie Newcastle, who I understand is a witness for the defendants. I have known
74 Jamie for a long time and, frankly, I was shocked when Jamie was appointed head-of-security at
75 DAM. Back in the old days pilfering was a bit of a problem. It doesn't happen anymore, thanks
76 to Jamie, or at least that's what Jamie would have us believe. The funny thing is, a couple of
77 years ago, we had a bunch of new Sony TVs sitting in the warehouse for a few days. I later went
78 over to Jamie's house for a Super Bowl party, and there sitting in the family room is the same
79 make and model. I asked Jamie where the TV came from; Jamie tells me "Sears." I happened to
80 be in Sears a few days later, and, curious to see how much Jamie paid, I asked the salesman to
81 see that model, and he tells me, "not in stock; hasn't shipped yet." I think we all know where
82 Jamie got the TV. I never said anything because I did not feel comfortable squealing on a fellow
83 dock worker.

84 Lastly, when I first heard about the MESS proposal, I e-mailed Pat Kent, thinking that, as
85 a long-time employee, Pat would level with me about whether the offer was serious or not and
86 whether the board would consider selling the Company. Pat did not reply, but Pat's assistant sent
87 me a reply, which is attached as Exhibit 6.

Plaintiff's Witness Statement - Erin Sussex (Cont'd)

88 I have reviewed this statement this 8th day of May 2018. It is true and correct and I have
89 nothing further to add.

90 /s/ _____

91 Erin Sussex

DEFENSE WITNESS STATEMENT OF PAT KENT

1 My name is Pat Kent. I am 65 years old and am the founder of Delaware Auto & Marine
2 Corporation. I fondly refer to the Company as “DAM.”

3 I started DAM more than 50 years ago – in 1965 – when I barely had two nickels to rub
4 together. The Company began as a small marine cargo operation at the Port of Wilmington,
5 trying to build on the rich history of shipping and shipbuilding in the Wilmington area. And it
6 made all the difference that the U.S. military was involved in the Vietnam conflict and needed
7 some extra civilian “shipping” help! Boy, was I grateful for that good old American support!

8 Before we knew it, the business was thriving. We thought about expanding to the ports of
9 New York City, Baltimore, and Newport News, Virginia but it would have been too much for me
10 to handle; admittedly, I am a “micromanager.” But we always operated as a family, with most of
11 our employees becoming owners of the business. In 1995, we “went public,” with our initial
12 public offering of stock. The IPO was very successful, with the stock selling for \$5.00 per share,
13 and the stock has actively traded on the New York Stock Exchange ever since. From 1995
14 through 2010, we saw a wonderful, steady increase in the value of the stock – from \$5.00 per
15 share to a high of \$22.00 per share!

16 I’ve always been President and Chief Executive Officer of DAM. I own 40% of the
17 Company’s stock, and the other 60% is owned by many institutional and individual investors. In
18 fact, I’m proud to say that many of our first employees are still stockholders!

19 DAM has a board of directors with five members – four directors in addition to myself. I
20 serve as chairperson of the board. Three of our five directors, Charlie Kent (my brother), Perry
21 White (my cousin), and Lois Lane (my accountant), have no affiliation with the Company
22 whatsoever other than serving as directors. The other director is Clarke Kent, my son. The whole
23 board is so terrific. I can’t imagine a group more committed to the best interests of the Company

Defense Witness Statement - Pat Kent (Cont'd)

24 and its stockholders. The thought that I could influence how they would vote on matters affecting
25 DAM is utterly preposterous.

26 It is a fact that, in the last few years, DAM's stock price hasn't been what it *should* be –
27 and certainly hasn't been what it *could* be. We've seen some stiff competition from air
28 transportation of cargo since Danielle Steel's novel, "Hotel Vendome" was published in 2011,
29 and we've been facing higher retiree and other costs. Need to be sure that we take care of the
30 family!

31 In January of last year, the other directors and I were concerned that the Company, with
32 its temporarily-low stock price, might be ripe for the picking by someone who wouldn't care
33 about what I – we – had built over the many years. So, with our lawyers' advice, we put in place
34 a "poison pill" for everyone's benefit.

35 About eight months later, in August of last year, sure enough, Mid-East Stevedores came
36 after us! Now, I've got nothing against foreign companies or foreign countries, but MESS is a
37 foreign company owned by a foreign country! And, from what I'm told, the brother of the
38 company's president is a known terrorist!

39 So MESS launched in our direction its \$16 per share "tender offer." Well, it may have
40 been an offer, but it wasn't tender. They wanted to hijack our company – our family of more than
41 40 years – for some measly extra few bucks above what the stock had been trading at! How
42 could the board justify giving up all that we had worked for, and when the Company still has
43 such a bright future? And sell the Company to a terrorist-harboring country? Never! Every
44 American should be outraged by this.

45 MESS then raised its offer to \$20 per share, saying that this is its "final offer." First of

Defense Witness Statement - Pat Kent (Cont'd)

46 all, I don't believe that this is the final offer! I mean, how in the world can that group be trusted?
47 But, more importantly, this Company is *not for sale*. The board of directors has never put it up
48 for sale, and our best days are to come. In fact, I see them on the horizon now and I have a
49 Business Plan (Exhibit 1) to move us from "good to great"! (Dredging of the shipping lanes of
50 the Delaware River will allow for bigger and better ships to visit our key port, and I heard
51 recently from someone who had heard that the Army Corps of Engineers is really enthusiastic
52 about the dredging project!) It is true, by the way, that I haven't yet had any luck in putting out
53 "feelers" for funding to support the Business Plan, but I'm sure that the funding will come
54 through. In fact, one of my banker friends told me that he just needed to get beyond some "bad
55 loan" write-offs from other customers this year and he could then talk with me again about what
56 I have in mind. The bottom line: My company is my only focus and I care about it deeply. For
57 MESS, we would be just one of many ports, and I have grave concerns that they want us for the
58 wrong reasons.

59 I know that Erin Sussex and some other stockholders (those who own just over one-half
60 of the stock that I don't own) think that the time may be right to sell out. And I think the world of
61 Erin! But how can we be assured that *new* owners would take care of our treasured long-time
62 employees? And how do we know that even the \$20 per share would *begin* to truly represent the
63 long-term potential of our beloved Company? If it's a fight that MESS wants, it's a fight that
64 they'll get! I'm sticking a flag in what I've built here and I'm going to defend it come what may.

65 Finally, I wouldn't believe anything that this smooth-talking "expert" Sammy Rodney
66 has to say. My long-time friend, Kim Woolley, hired Sammy years ago to help sell Kim's
67 business. To say that Sammy committed malpractice with the so-called "valuation" of that

Defense Witness Statement - Pat Kent (Cont'd)

68 business would be an understatement! Kim tells me that Sammy so under-valued that business
69 that it may as well have been put up for a “fire sale.” And then Sammy added insult to injury by
70 charging Kim about \$1 million for the “expert” help. Of course Kim couldn’t *prove* that Sammy
71 did anything wrong since, according to Kim, Sammy had already shredded all of the work papers
72 and deleted all of the e-mails to and from the buyer of the business! And, I think I heard
73 somewhere that the buyer was Sammy’s brother-in-law, Edgar Townsend.

74 I have reviewed this statement this 8th day of May 2018. It is true and correct and I have
75 nothing further to add.

76 /s/ _____

77 Pat Kent

DEFENDANT'S WITNESS STATEMENT OF CHRIS READ

1 My name is Chris Read. I am a managing director of CH Enterprises, Inc. CH
2 Enterprises, Inc. provides consulting services concerning issues of national security.

3 I received my B.A. in international relations, with minors in German and Arabic from the
4 University of Massachusetts. After college, I was recruited by the External Defense Agency. The
5 External Defense Agency is an intelligence gathering department of the United States
6 government which has authority to operate both within and outside the borders of the United
7 States. Due to my language skills, I was given an undercover position with the agency. I went to
8 the EDA training school at Camp Harrington to receive specialized training for that work. My
9 official cover was as an employee of the United States Department of State. I am able to disclose
10 publicly the fact that I formerly served in an undercover capacity because I was publicly named
11 by a reporter who had learned my identity from a White House staffer. I guess my husband/wife
12 shouldn't have written that Op. Ed. piece endorsing the President's opponent in the upcoming
13 election. Once I retired from the EDA, I formed CH Enterprises, Inc.

14 In my twenty years with the EDA, I spent most of my time living and working in Europe
15 and the Middle East. My assignments were to develop as much intelligence as possible about
16 possible terrorist activities targeted at the United States and its allies.

17 I have first-hand knowledge of the psychological and physical impact of terrorist activity.
18 Several years ago, I was involved in an operation in Germany. One of my colleagues and I had
19 made contact with an ex-girlfriend of a member of a terrorist organization. Through the
20 information we were able to gather from her, we were very hopeful that we could discover not
21 only the names of other members of that organization, but also the identities of those financing
22 their operations. My colleague, Ken Miller, had attended Camp Harrington with me and we had
23 worked closely together for many years. We had become such close friends that on the rare times

Defense Witness Statement –Chris Read (Cont'd)

24 when we were able to go on vacation, we usually went together.

25 On one particular morning, I was supposed to meet Ken for breakfast and we were going
26 to drive together to a meeting with our informant. However, when Ken got up that morning, he
27 realized that his car battery was dead, so rather than driving to meet me, he took public
28 transportation to my apartment. It was a very cold morning, and Ken offered to go out to warm
29 up the car while I finished getting ready. I have always regretted that I accepted his offer. Inside
30 the apartment, I heard a terrible explosion and ran outside to see that my car had exploded, with
31 Ken inside. Eyewitnesses who were down the street said that he got in the car, closed the door
32 and seconds later, the explosion occurred.

33 The subsequent forensic analysis determined that the car bomb was set to explode when
34 the ignition was turned on. Clearly, the bomb was intended for me, since I live alone and no one
35 would have expected that anyone else would have started the car. I had already planned to make
36 the prevention of terrorism my career, but I vowed then to spend the rest of my life tracking
37 down and helping to stop terrorists.

38 I have also lived in various countries in the world where terrorism is a daily occurrence.
39 More than once, I have been nearby when suicide bombers have exploded their devices on buses
40 or in public meeting places. I have been fortunate enough only to suffer minor physical injuries
41 on those occasions.

42 In recent years, I have become increasingly worried about the possibility that terrorists
43 will be able to undertake activities in the United States. One of the great joys about retiring from
44 the EDA and moving back to the United States has been the ability to observe people who are
45 able to go about their daily lives without having to worry about whether they are about to

Defense Witness Statement –Chris Read (Cont’d)

46 become victims of terrorist attacks. I am doing everything I can to make sure that nothing
47 happens to change that way of life.

48 During the course of my activities, I have become aware of facts that show that the so-
49 called republic of Aladin has close ties to known terrorists. I have relied upon information from
50 confidential sources and our own intelligence data in reaching my conclusions regarding
51 Aladin’s ties to terrorism. Intelligence analysts like me typically rely on this kind of information
52 in assessing security risks generally and terrorist activities specifically.

53 I have flown into Aladin’s national airport on many occasions. Aladin’s national airport
54 only allows commercial and general aviation takeoffs and landings during daylight hours. The
55 articulated reason is for safety, since the runway ends in the Arabian Sea. (Attached as Exhibit 7
56 is a satellite photo of the airport that I directed to be taken in advance of a reconnaissance
57 mission.) As you can see from the photo, however, the runway is plenty long. Any competent
58 commercial pilot could negotiate this runway day or night. During the course of the mission that
59 I led in late 2016 (recently declassified for Senate intelligence hearings), I was able to access
60 airport take-off and landing logs, leases and other official records, all of which were kept under
61 lock and key in the airport’s heavily guarded business office. These records reflected the
62 occupancy of various airport facilities and the flight traffic patterns at the airport. Now that the
63 mission has been declassified, I was able to secure (during pretty intense interrogation relating to
64 another matter utilizing only approved and authorized EDA techniques) a certification from the
65 records custodian of the airport that the records I reviewed exist, that they were genuine, that
66 they were made at or near the time of the events recorded therein, and that they were maintained
67 in the ordinary course of the airport’s business and made as part of the airport’s regular practice.

Defense Witness Statement –Chris Read (Cont’d)

68 Needless to say, the custodian was none too happy to learn that we had been snooping around his
69 records but eventually he knew and understood what he had to do. What can I say, I’m a spy and
70 my mission was a matter of national security. Based on my review of the airport records, I
71 learned that one of the hangars at the airport is devoted exclusively to aircraft owned by entities
72 that are well-known in the intelligence community and by me personally to be associated with
73 terrorist organizations. I also discovered that those aircraft are allowed to use the airport facilities
74 for night operations even though other aircraft of similar sizes were restricted to day time
75 operations. Although I do not have the records themselves (for obvious reasons), I do have the
76 certification from the records custodian. (See Exhibit 8.)

77 The common stock of Aladin’s largest commercial bank is 21% owned by Aladin itself.
78 One of the vice-presidents of that bank, who has been a trusted and past proven reliable source of
79 mine for the last twenty-three years, has shown me records indicating that millions of dollars are
80 on deposit with that bank in the name of known terrorist entities. Needless to say, in my line of
81 work, we regularly rely upon information from reliable confidential informants to assess and
82 reach conclusions about threats to national security. (See Exhibit 8.)

83 Property records in Aladin, which reflect both ownership information and property
84 descriptions, are publicly available and I learned through my examination of those records that
85 the prime minister of Aladin owns a retreat at the southern tip of the island, to which private
86 access is available through use of a private airstrip or a protected inlet. During one of my
87 reconnaissance missions, I observed directly and was able to take a picture of the prime minister
88 at that retreat in the company of Drew Terry, an admitted terrorist. My copy of that photograph
89 was stored on my camera phone. After taking the picture, I realized that I should leave the

Defense Witness Statement –Chris Read (Cont'd)

90 country right away, and I returned to the United States via London. My flight to the U.S. was on
91 August 11, 2016, right after the authorities uncovered a plot to explode devices on transatlantic
92 flights. As a result of the plot, the airlines required all passengers to place all carryon items in
93 plastic and put them through checked luggage. When I went to the luggage carousel in New
94 York, I was never able to find my phone, and I presume it must have been stolen (as were the
95 possessions of many other passengers that day).

96 The prime minister of Aladin has always publicly proclaimed his distaste for terrorist
97 activities and has always claimed that the country of Aladin will not tolerate or support any
98 terrorists or organizations with ties to terrorism. In particular, he has gone out of his way to
99 condemn publicly Drew Terry. When asked about Drew Terry by reporters, he has always stated
100 that they have never met. He reaffirmed this just last month, well after the time that I took the
101 photograph of him with Drew Terry. Needless to say, the prime minister's public statements
102 simply were not true.

103 Drew Terry was born in Aladin. However, his mother and he moved out of that country
104 when he was very young, and he was raised in various countries around the world. He is rumored
105 to speak a dozen languages. When he was a young man, he became involved with various
106 terrorist organizations. He often works alone and undertakes operations that permit him to blend
107 into his surroundings and escape after he commits his atrocities. When I left EDA, he had been
108 linked to nineteen different terrorist incidents. The official casualty list from his activities was
109 413 dead and 973 injured. Since I left EDA, there have been several other incidents involving
110 him, with similarly devastating results.

111 Drew Terry is the youngest brother of Devereux Terry, the President of MESS. I am

Defense Witness Statement –Chris Read (Cont’d)

112 aware that “Dev” claims that he/she has not seen Drew in many years and that Dev claims to
113 have no ties to international terrorism, but I am aware of facts to the contrary. Indeed, I have
114 known for twenty years that he/she harbors a deep hatred of the United States and its allies.

115 I first met Dev when we attended the same Delaware boarding school. Dev was very
116 aloof from the other students, and made it clear that he/she would much rather be sailing around
117 the world on one of his/her father’s yachts than “stuck,” as he/she put it, in Delaware with those
118 of us who were not as sophisticated as he/she. Dev was very envious of my academic and athletic
119 success at school, since his/her father’s money was not able to buy those achievements for
120 him/her.

121 One of our classmates at school was Taylor Nicholson. Somehow, Dev figured out that
122 Taylor’s father was employed by a close friend of Dev’s family. During our senior year, Dev
123 went to Taylor and told him that unless he agreed to file a complaint with the Honor Council
124 about me, he/she would make sure that Taylor’s father got fired from his job. Under that duress,
125 Taylor filed a complaint, saying that I had cheated on an exam. The pressure of that lie
126 eventually got to Taylor, and he quit school, refusing to perjure himself at the Honor Council
127 hearing.

128 I had originally intended to apply to Harvard where Dev ended up attending, but once I
129 realized why Dev had orchestrated the whole ploy, I withdrew my application, not wanting to
130 have to run into Dev at college.

131 In the course of one of my assignments for the EDA, I had occasion to accompany a
132 defector to an agency owned house for a debriefing session. By coincidence, the house was
133 located next door to a house owned by one of my former boarding school classmates. As part of

DEFENSE WITNESS STATEMENT OF JAMIE NEWCASTLE

1 My name is Jamie Newcastle. I am 46 years old and am Head of Security at Delaware
2 Auto & Marine Corporation (“DAM”). Starting out as a fork-lift operator, I worked my way up
3 through the ranks at DAM and eventually decided that I wanted to work for security at DAM. In
4 2014, I was appointed Head of Security in Wilmington after receiving a degree in criminal
5 justice from Rodney College, which I attended at night.

6 Let me give you a little background about my Port. In 2016, more than a thousand
7 commercial vessels entered or left the mouth of the Delaware Bay heading to or returning from
8 foreign nations. More than four hundred vessels were unloaded or loaded at our Port carrying an
9 import/export tonnage in excess of 4 million tons. In addition, we have berthed passenger vessels
10 such as the MV Twin Capes and other vessels of the Cape May – Lewes Ferry fleet, each of
11 which carries up to 100 vehicles and 1000 passengers. We have also hosted tall ship regattas,
12 provided a temporary home to Delaware’s tall ship (the Kalmar Nykel), and acted as host to
13 naval vessels from this country and abroad. Suffice it to say, we are a very busy Port; security is
14 and has to be a top priority for us. When I think of what happened when those terrorists blew a
15 hole in the USS Cole while docked at the Port of Aden in Yemen I just cringe. I also get very
16 angry.

17 I don’t know much about foreign policy or this country called Aladin, but I do know
18 about port security, and in my opinion MESS’s acquisition proposal presents a “clear and present
19 danger” to the United States. By the way, I like Tom Clancy novels and have read all of them.

20 Security at the Port of Wilmington is comparable to security at the other East Coast ports.
21 Our first line of defense is the Coast Guard. To my knowledge, however, the Coast Guard only
22 does random checks of vessels entering and leaving the mouth of the Delaware Bay in Southern
23 Delaware. As I mentioned, in 2016, more than a thousand commercial vessels entered or left the

Defense Witness Statement - Jamie Newcastle (Cont'd)

24 mouth of the Delaware Bay headed to or returning from foreign nations. Obviously, that's a lot
25 of ships. There are Coast Guard stations located at or near Cape May, New Jersey and Lewes,
26 Delaware. On average, there are just two Coast Guard vessels devoted to making random checks
27 of vessels entering and leaving Delaware Bay.

28 In 2016, only one out of every twenty vessels passing through was randomly checked and
29 inspected by the Coast Guard. This means that a vessel loaded with contraband stands only a 5%
30 chance of being stopped; the chances that the Coast Guard would actually discover an illegal
31 substance, device, or other contraband in the course of a spot check are probably well below
32 50%.

33 Once a vessel arrives in the Port of Wilmington, we also conduct random, visual
34 inspections of the cargo-holds and containers. Typically, we inspect two to three arriving vessels
35 per week and, in each instance, we usually check four to five containers on each of those vessels.
36 Containers are those big boxes you see stacked on cargo ships and then carried by rail or trucks.

37 I have been told that if MESS acquires DAM, it has promised to install a scanning device
38 that is currently under review by the Homeland Security Department. That device works as
39 follows: either a truck or a cargo container passes through a garage-like gamma ray detector,
40 which produces an image (similar to an x-ray) of what is inside the container; video cameras and
41 an optical character recognition device capture the numbers on the container; a radiation monitor
42 then scans the container. All of this data is then displayed on a computer screen and stored for
43 later use. And, by the way, this device would cost over \$100 million to install and operate. Even
44 if MESS employed this state-of-the-art scanning system, it is my opinion that such a system
45 would not prevent hazardous materials or weapons from being off-loaded in Wilmington. This is

Defense Witness Statement - Jamie Newcastle (Cont'd)

46 particularly so if the operation of the scanning device isn't really looking for dangerous cargo.
47 Currently, there is no such system for x-raying containers at the port. We do have dogs at the
48 port that are trained to sniff out explosives, drugs and other contraband.

49 Over the years there have been a couple of potential security breaches at the port. A
50 couple of years ago, when I was still a fork-lift operator, I accidentally dropped a pallet of VCRs
51 and Sony TVs. In cleaning up the broken crates we discovered a stash of Russian-made pistols.
52 All of the TVs and VCRs had to be thrown out. What a shame—I love Sony products (I'm a
53 proud owner of a Sony myself). An investigation revealed that they likely had been placed in the
54 container when the vessel was loaded in Hong Kong.

55 Then there was the time in the late 2000s when the dogs sniffed out an unmarked box of
56 dynamite in one of the warehouses. We called the bomb squad in, and they disposed of it. There
57 were rumors that it may have been brought into the warehouse by one of our own dock workers,
58 but the source was never determined, as far as I know.

59 These kinds of incidents (and my criminal justice training) lead me to believe that every
60 container coming into the port is a potential "Trojan horse." Terrorists could hide a dirty bomb in
61 a cargo container and, the next thing you know, it could be headed for a major U.S. port. Like I
62 said, the chances of detecting it before entry to the port are pretty slim.

63 Despite my best efforts, employees at DAM tend to overlook and often ignore security
64 measures. No one thinks that a breach will occur on their watch, and some employees are just
65 downright careless. Sadly, too much time has passed since 9/11 and we have let our guard down.
66 Take Erin Sussex's kid, for example. I don't know how many times I have reprimanded young
67 Sussex for allowing others to use his/her identification card.

Defense Witness Statement - Jamie Newcastle (Cont'd)

68 I have worked hard to maintain the best possible security at the port. Thanks to my
69 efforts, DAM has received very favorable comments from a consultant retained to evaluate and
70 recommend security at the port. The consultant's report is attached as Exhibit 5. Suffice it to say,
71 security is a top priority at DAM. Given MESS'S alleged ties to terrorism, I have little doubt that
72 security will no longer be a top priority at the Port of Wilmington should MESS succeed in its
73 takeover battle.

74 There is one last thing I should say about the MESS acquisition proposal. Because of the
75 big stink about security issues, MESS has made a point of saying that it intends to have
76 federally-trained security workers at DAM, like the TSA employees at airports. That does not sit
77 well with me; why should it, it basically means I'm out of a job if the Company is acquired.

78 I have reviewed this statement this 8th day of May 2018. It is true and correct and I have
79 nothing further to add.

80 /s/ _____

81 Jamie Newcastle

EXHIBIT 1

BUSINESS PLAN DELAWARE AUTO & MARINE CORPORATION

- I. Goal:** Move Delaware Auto & Marine Corporation from “Good” to “Great”!
- II. Time Period:** 2017 to 2027
- III. Action Steps**
 - A. Support dredging of shipping lanes in Delaware River
 - 1. Secure participation of Army Corps of Engineers
 - 2. Obtain approvals from Delaware and New Jersey authorities
 - 3. Initiate and complete dredging
 - B. Retrofit facilities at Port of Wilmington to accommodate larger ships
 - 1. Secure funding from banks and/or venture capitalists (approximately \$100 million)
 - 2. Obtain zoning and environmental approvals from state and local authorities for berth reconstruction
 - 3. Initiate and complete reconstruction
 - C. Hire additional employees
 - 1. Secure funding
 - 2. Identify prospective hires
 - 3. Hire employees

EXHIBIT 2

**DELOITTE ERNST KPMG COOPERS, LLP
VALUATION ANALYSIS
SALE OF COMPANIES
IN COMPARABLE LINES OF BUSINESS**

<u>Company</u>	<u>Year of Sale</u>	<u>Price Per Share</u>
California Port, Inc.	2014	\$14.00
Florida Port, Inc.	2015	\$12.00
Texas Port, Inc.	2016	\$25.00
Eastern Air Transport, Inc.	2014	\$20.00
Western Air Transport, Inc.	2015	\$25.00
Southern Air Transport, Inc.	2016	\$18.00

EXHIBIT 3

STOCK PRICE HISTORY DELAWARE AUTO & MARINE CORPORATION 1995 TO DATE

<u>DATE</u>	<u>PRICE PER SHARE</u> ⁷
[Jan. 2, 1995	\$5.00 per share at time of IPO]
1996	\$5.00 - \$6.00
1997	\$6.00 - \$7.00
1998	\$7.00 - \$8.00
1999	\$8.00 - \$9.00
2000	\$9.00 - \$10.00
2001	\$10.00 - \$11.00
2002	\$11.00 - \$12.00
2003	\$12.00 - \$13.00
2004	\$13.00 - \$14.00
2005	\$14.00 - \$15.00
2006	\$15.00- \$16.00
2007	\$16.00 - \$17.00
2008	\$17.00 - \$18.00
2009	\$18.00 - \$19.00
2010	\$20.00 - \$22.00
2011	\$12.00 - \$20.00 (drop to \$12.00 after Danielle Steel's novel, "Hotel Vendome" is published)
2012	\$12.00 - \$13.00 (slighter, slower rise)
2013	\$11.00 - \$12.00 (slighter, slower rise)
2014	\$10.50 - \$11.50 (slighter, slower rise)
2015	\$10.00 - \$12.00 (slighter, slower rise)
2016	\$10.00 - \$12.00 (slighter, slower rise)
July 31, 2017	\$10.50
[Aug. 1, 2017	Mid-East announces \$16 per share tender offer]
Aug. 2, 2017	\$11.00
[Sept. 1, 2017	Mid-East raises offer to \$20 per share]
Sept. 2, 2017	\$11.50

⁷ As traded on the New York Stock Exchange.

EXHIBIT 4

External Defense Agency

FILE # 142876-OFG2

Security Measures - Wilmington Safe House

CONFIDENTIAL

THE FOLLOWING TELEPHONE CALL WAS MADE BY DEVEREUX TERRY TO TELEPHONE NUMBER [REDACTED] AT APPROXIMATELY 10:37 P.M. ON OCTOBER 14, 1998, FROM A PRIVATE TELEPHONE AT THE HOME OF JOHN AND LAURA BLACKBIRD IN WILMINGTON, DE.

TERRY: Hello [unintelligible] - It's Dev - how are you?

UNKNOWN: I'm doing well, my friend. It's good to hear from you.

TERRY: Yeah, I'm sorry it's been so long - things have been pretty busy at work. I'm actually thinking of heading back to Aladin soon. I miss my father...and my country.

UNKNOWN: How is your family?

TERRY: My father is doing alright, and is getting used to being a bachelor again. He still misses my mother. I still miss her too.

UNKNOWN: Of course you do. I know you're still emotional. It must be hard to know that she sent you away so you wouldn't have to see her in the last few weeks of her life! [unintelligible] but I know that I wouldn't have been able to forgive her for that.

TERRY: I know, I know - but she was my mother! The one thing that really burns me up is that she sent me to a western country at all. And the US - could it get any worse? The one country in the world that throws its weight around like a bull in a china shop - only they should know better. They know what it is to be under the thumb of another country, and they fought their way out of it. This country looks at us and thinks only how best to exploit us. Well the tides are turning, my friend. I've been paying attention to the news lately, and all around the world you can see organizations begin to stand up to them. I wouldn't be surprised if someone decided it was time to attack right at the heart of the enemy, here in the U.S.

UNKNOWN: Do you really think so? That someone will attack the U.S.?

TERRY: Well, I'm not going to say that I have any solid information, but it certainly would bring me great pleasure if it did happen. I've lived here since I was 14, and each day the hatred grows. It's becoming close to unbearable.

UNKNOWN: Then why are you still staying? Why don't you go back to Aladin?

TERRY: I'm thinking of doing that, but as much as I hate this country, I still need to learn more about it. If I am going to run my father's company after him, I need to know the available markets and need to be able to [unintelligible - static bursts - 30 seconds]

UNKNOWN: ...then you won't be going back any time soon?

TERRY: I really just don't know. I haven't talked to my father much about it, but I know he wants me to come back eventually.

UNKNOWN: How does he feel about you being in the U.S.?

TERRY: He's always been so misguided about American foreign relations - he only sees them as trying to help, not as being a destructive force. Sometimes it's tough to talk to him about it. Anyway, I'm coming to see you next week, if that is ok.

UNKNOWN: Sounds good. I'll [unintelligible] talking to you.

TERRY: okay, bye.

END OF CALL

EXHIBIT 5

SEAFORD SECURITY CONSULTANTS, LLC

TO: Jamie Newcastle, Head of Security
FROM: Seaford Security Consultants, LLC
RE: Evaluation and Recommendations For Delaware Auto & Marine Corporation
DATE: July 2016

It was our pleasure to assist you in evaluating security measures at Delaware Auto & Marine Corporation (“DAM”). As you know, Seaford Security Consultants, LLC (“SSC”) is a worldwide provider of consulting services specializing in port and maritime security. At your request, our industry experts conducted a thorough review of DAM’s security measures and are pleased to provide you with this report.

Set forth below in Section I are specific criteria that we believe are essential to the provision of minimum security measures at all international ports-of-call. In Section II of this report, we have made certain recommendations that we believe will help DAM improve security measures. Finally, in Section III of this report, we have ranked DAM among its peer group of marine cargo terminal operators.

Section I.

A. Human Resources

1. Does terminal maintain full-time security force? Yes
2. Is security force experienced and trained in criminal justice? Yes
3. Is there a defined chain-of-command? Yes
4. Is there an auditing system in place to identify security breaches among security personnel? No

5. Is security force compensated competitively? Yes.

B. Facilities

1. Are the premises adequately fenced, making entry difficult absent major breach? Yes.

2. Is access to and from premises electronically recorded? Yes (by i.d. card and 24 hour surveillance).

3. Are the premises adequately lighted? Yes.

4. Are warehouses locked when not in use? Yes

5. Is all equipment inventoried? Yes.

6. Is use of employee i.d. card strictly enforced? No.

C. Security Equipment

1. Does facility employ x-ray scanning of off-loaded cargo? No.

2. Does facility check for radioactive substances? Random checks only

3. Does facility maintain temperature-controlled warehouses? Yes.

4. Does facility maintain sufficient equipment and personnel to inventory all off-loaded cargo? Yes.

5. Does facility maintain 24-hour surveillance and backup? Yes.

6. Does facility comply with U.S.D.A. regulations concerning imports? Yes.

D. Security Operations

1. Are the premises aggressively patrolled to provide a visible deterrent? Yes.

2. Is there adequate security training for security personnel? Yes

3. Is there a direct line of communication with local and state emergency authorities? Yes.

4. Are there fire fighting and EMT services on site? Yes, but limited.

Section II – Recommendations

Overall, security measures at DAM are rated good to very good. In order to make DAM first-rate in terms of security and anti-terrorism measures, however, we recommend that DAM undertake the following: (i) Improper use of employee identification cards (mandatory): Based on interviews with employees at DAM, it appears that some employees have engaged in the practice of lending i.d. card to fellow employees and/or family members. This practice presents obvious and serious security risks and should not be tolerated. Employees engaging in this practice should be disciplined. (ii) Auditing system for security force – (optional): DAM should consider implementing an auditing system to ensure that security guards and personnel are not involved in activities that could lead to security breaches. We would be happy to discuss with you how such an auditing system can be implemented. (iii) Investment in X-ray equipment (optional): Although not currently required by state or federal law, x-ray equipment designed to detect device metal objects is currently being deployed in ports around the world. A number of ports have also begun to deploy devices that can detect radioactivity in containers off-loaded from vessels. These devices require significant capital expenditure but provide state-of-the-art security.

Section III – Company Rankings (based on technology employed and fewest numbers of security breaches/ incidents per container ship).

1. Honk Kong Voyages, Ltd. (employs x-ray and radioactive detection devices at all ports)
2. Mid-East Stevedores Services, Inc. (employs x-ray and radioactive detection devices at all ports).
3. Uruguay Unloaders (employs radioactive detection devices only).
4. Stanley Stevedores

5. Delaware Auto & Marine Corporation
6. California Port, Inc.
7. Magellan Marine Services
8. Florida Port, Inc.
9. Brehm Dockworkers GmbH
10. Cargo Carriers Corp.

EXHIBIT 6

MESSAGE

FROM: CLewes@DelawareAutoMarine.com
SENT: September 6, 2017 @ 11:45 a.m.
TO: E.Sussex@gmail.com
CC: Kent, Pat

Dear Erin:

Mr./Ms. Kent asked me to respond to your message. As you can imagine, Pat is very busy right now, but asked me to tell you that "it's not happening." Perry White and Lois Lane are among Pat's closest friends and he/she intends to make sure that they will act appropriately to dispose of Aladin's scandalous offer.

FROM: E.Sussex@gmail.com
SENT: September 4, 2017 @ 10:23 A.M.
TO: PKent@DelawareAutoMarine.com
SUBJECT: Mid-East Stevedores Announcement

Dear Pat,

I just heard about this. Is this true? What does it mean for us? I don't know how you feel, but it sure would be nice to cash out at that price (if it's for real)!

EXHIBIT 7



EXHIBIT 8

Certification of Records Custodian – Aladin International Airport

I, Albert Stiftel, do depose and say, under penalty of perjury, that:

1. I am general manager of Aladin International Airport (the “airport”) and have held that position for fifteen years. In that capacity, I am the custodian of all records maintained by the airport.
2. For as long as I have been affiliated with the airport we have maintained take-off and landing logs, hangar leases and other records related to the official operation of the airport.
3. The records that Chris Read described to me that he reviewed during his spy mission in my airport in late 2016 were genuine, were made at or near the time of the events recorded therein, and were maintained in the ordinary course of the airport’s business activity and made as part of the airport’s regular practice.
4. The records Chris Read reviewed do reveal the owners of aircraft using our hangars at the airport and do indicate that several of these aircraft were permitted to take-off from and land in the airport during nighttime hours. I cannot and will not say whether these entities are associated with terrorist organizations.
5. I have reviewed this Certification and it is true and accurate to the best of my knowledge and belief.

Albert Stiftel

SWORN TO AND SUBSCRIBED BEFORE ME, A NOTARY PUBLIC OF THE COMMONWEALTH OF VIRGINIA, AT LANGLEY, FAIRFAX COUNTY, VIRGINIA, THIS 10TH DAY OF NOVEMBER, 2017.

George Mason, IV

My commission expires on November 10, 2021.

8 DELAWARE CODE § 206

Section 1. A corporation may refuse to enter into a business combination (1) with any person that is controlled by or under common control with a foreign state with material ties to international terrorism or (2) that would pose a threat to national security. “Business combination,” “controlled by,” “person” and “under common control with” shall have the meanings as defined in § 203 of this Chapter.

Section 2. For purposes of this section the term “international terrorism” means activities that –

(A) appear to be intended –

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination or kidnapping; and

(B) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum.

Section 3. This Act is effective July 1, 2017.

Synopsis: Some states have statutes allowing members of boards of directors to consider the interests of employees and other non-stockholder constituencies when considering whether to enter into a business combination. The General Assembly has decided to adopt a limited version of such a statute, which is intended to give the members of a board the ability to take into account interests of national security when considering a proposed business combination.

JURY INSTRUCTIONS

(THESE ARE NOT TO BE READ IN OPEN COURT BY THE PRESIDING JUDGE)

Now that you have heard the evidence and the arguments of counsel, it is my duty to instruct you about the law governing this case. Although you as jurors are the sole judges of the facts, you must follow the law stated in my instructions and apply the law to the facts as you find them from the evidence. You must not single out one instruction alone as stating the law, but must consider the instructions as a whole.

Nor are you to be concerned with the wisdom of any rule of law that I give you. Regardless of any opinion you may have about what the law ought to be, it would be a violation of your sworn duty to base a verdict on any view of the law other than what I give you in these instructions. It would also be a violation of your sworn duty, as judges of the facts, to base a verdict on anything but the evidence in the case.

Justice through trial by jury always depends on the willingness of each juror to do two things: first, to seek the truth about the facts from the same evidence presented to all the jurors; and, second, to arrive at a verdict by applying the same rules of law as explained by the judge.

You should consider only the evidence in the case. Evidence includes the witnesses' sworn testimony and the items admitted into evidence. You are allowed to draw reasonable conclusions from the testimony and exhibits, if you think those conclusions are justified in light of common experience. In other words, use your common sense to reach conclusions based on evidence.

You have been chosen and sworn as jurors in this case to decide issues of fact. You must perform these duties without bias for or against any of the parties. The law does not allow you to be influenced by sympathy, prejudice, or public opinion. All the parties and the public expect

that you will carefully and impartially consider all the evidence in the case, follow the law, and reach a just verdict, regardless of the consequences.

In a civil case such as this one, whichever party bears the burden of proof on an issue must carry that burden with proof that establishes each element of the claim or defense by a preponderance of the evidence. As I will explain in a moment, in this case, each party must carry the burden of proof on a particular issue. Proof by a preponderance of the evidence means proof that something is more likely than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence on any particular point is evenly balanced, the party having the burden of proof has not proven that point by a preponderance of the evidence, and you must find against the party on that point.

In deciding whether any fact has been proved by a preponderance of the evidence, you may, unless I tell you otherwise, consider the testimony of all witnesses regardless of who called them, and all exhibits received into evidence regardless of who produced them.

Generally speaking, there are two types of evidence from which a jury may properly find the facts. One is direct evidence - - such as the testimony of any eyewitness. The other is indirect or circumstantial evidence - - circumstances pointing to certain facts. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts from all the evidence in the case: Both direct and circumstantial.

If you find that a witness made an earlier sworn statement that conflicts with the witness's trial testimony, you may consider that contradiction in deciding how much of the trial testimony, if any, to believe. You may consider whether the witness purposely made a false statement or whether it was an innocent mistake; whether the inconsistency concerns an

important fact or a small detail; whether the witness had an explanation for the inconsistency; and whether that explanation made sense to you.

Your duty is to decide, based on all the evidence and your own good judgment, whether the earlier statement was inconsistent; and if so, how much weight to give to the inconsistent statement in deciding whether to believe the earlier statement or the witness's trial testimony.

A witness may be discredited by evidence contradicting what that witness said, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

It's up to you to determine whether a witness has been discredited, and if so, to give the testimony of that witness whatever weight that you think it deserves.

You are the sole judges of each witness's credibility. That includes the parties. You should consider each witness's means of knowledge; strength or memory; opportunity to observe; how reasonable or unreasonable the testimony is; whether it is consistent or inconsistent; whether it has been contradicted; the witnesses' biases, prejudices, or interest; the witnesses' manner or demeanor on the witness stand; and all circumstances that, according to the evidence, could affect the credibility of the testimony.

If you find the testimony to be contradictory, you must try to reconcile it, if reasonably possible, so as to make one harmonious story of it all. But if you can't do this, then it is your duty and privilege to believe the testimony that, in your judgment, is most believable and disregard any testimony that, in your judgment, is not believable.

Expert testimony is testimony from a person who has a special skill or knowledge in some science, profession, or business. This skill or knowledge is not common to the average person but has been acquired by the expert through special study or experience.

The plaintiff's claim is that the individual defendants violated what is called a "fiduciary" duty or obligation that they owed to their stockholders. A fiduciary relationship exists in corporations. The stockholders place special trust and confidence in another person – the individual directors – to exercise discretion or expertise in acting for the stockholder and the fiduciary knowingly accepts that trust and confidence and thereafter undertakes to act on behalf of the stockholder by fulfilling that duty to the stockholders of the corporation. In order to recover on this claim, the plaintiff must prove by a preponderance of the evidence that the individual defendants violated that fiduciary duty by (1) failing to act on an informed basis; (2) failing to act in good faith; (3) failing to take action in the honest belief that it was in the best interest of the corporation; and/or (4) putting their own pecuniary interests ahead of the stockholders. If you find that the plaintiff has not met its burden of proving that the individual defendants violated their fiduciary duty, then your answer to Question 1 on the Verdict Sheet should be no and you should return to the courtroom and not answer Questions 2 *or* 3 on the Verdict Sheet.

If, however, you find that the individual defendants have breached their fiduciary duty, then you must determine whether the defendants' actions were justified and you must answer Questions 2 and 3 on the Verdict Sheet. Delaware law provides:

Section 1. A corporation may refuse to enter into a business combination (1) with any person that is controlled by or under common control with a foreign state with material ties to international terrorism or (2) that would pose a threat to national security.

Section 2. For purposes of this section the term "international terrorism" means activities that –

- (A) appear to be intended –
 - (i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination or kidnapping; and

(B) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum.

It has been determined that: (1) MESS is controlled by Aladin; (2) the proposed transaction between MESS and DAM is a business combination within the meaning of the law; and (3) MESS is a person within the meaning of the above statute. What you must determine is whether the defendants have proven by a preponderance of the evidence that Aladin has material ties to terrorism or that the proposed business combination poses a threat to national security. If you find that the defendants have proven either of these points, then it may, without regard to the alleged breach of their fiduciary duties, refuse to accept MESS's offer. If you find that the defendants have proven that Aladin has material ties to terrorism, you need to answer Question 2 on the Verdict Sheet yes. If you find that the proposed business combination poses a threat to national security, then you need to answer Question 3 yes. If you answer Questions 2 or 3 yes, your verdict will be for the defendants. If you find that these points have not been proven by a preponderance of the evidence, then answer both Questions 2 and 3 no and your verdict is for the plaintiff.

I have read a number of instructions to you. The fact that some particular point may be covered in the instructions more than some other point should not be regarded as meaning that I intended to emphasize that point. You should consider these instructions as a whole, and you

should not choose any one or more instructions and disregard the others. You must follow all the instructions that I have given you.

Nothing I have said since the trial began should be taken as an opinion about the outcome of the case. You should understand that no favoritism or partisan meaning was intended in any ruling I made during the trial or by these instructions. Further, you must not view these instructions as an opinion about the facts. You are the judges of the facts, not me.

How you conduct your deliberations is up to you. But I would like to suggest that you discuss the issues fully, with each of you having a fair opportunity to express your views, before committing to a particular position. You have a duty to consult with one another with an open mind and to deliberate with a view to reaching a verdict. Each of you should decide the case for yourself, but only after impartially considering the evidence with your fellow jurors. You should not surrender your own opinion or defer to the opinions of your fellow jurors for the mere purpose of returning a verdict, but you should not hesitate to re-examine your own view and change your opinion if you are persuaded by another view.

I have provided you with the verdict sheet to guide you in your deliberations. Please follow the instructions on the sheet and answer the questions based on the evidence.

Your verdict must be unanimous.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MID-EAST STEVEDORES SERVICES, INC.,)
)
Plaintiff,)
)
v.)
)
DELAWARE AUTO & MARINE)
CORPORATION, et al.,)
)
Defendants.)

C. A. No. 18C-01 LH

VERDICT SHEET

1. Do you find that the individual Defendants breached their fiduciary duty?

Yes _____ No _____

If you answer Question 1 no, return to the Courtroom. If you answered Question 1 yes, proceed to Question 2 and Question 3.

2. Do you find that Aladin has material ties to international terrorism?

Yes _____ No _____

3. Do you find that the proposed business combination would pose a threat to national security?

Yes _____ No _____