



COURT OF CHANCERY
OF THE
STATE OF DELAWARE

LEO E. STRINE, JR.
VICE CHANCELLOR

New Castle County Courthouse
Wilmington, Delaware 19801

Date Submitted: January 11, 2010
Date Decided: February 3, 2010

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RE: TR Investors, LLC, et al. v. Arie Genger, C.A. No. 3994-VCS

Dear Counsel:

This letter addresses an issue raised by the Trump Group¹ and Genger's² competing orders implementing my December 9, 2009 memorandum opinion (the "Opinion"). In the Opinion, the parties were ordered to present a conforming final

¹ There are four named plaintiffs in this action: TR Investors, LLC, Glenclova Investment Co., New TR Equity I, LLC, and New TR Equity II, LLC (collectively, the "Trump Group").

² There are two named defendants in this action: Arie Genger and the company he built, Trans-Resources, Inc. (collectively, "Genger").

order within five days.³ On December 16, 2009, the parties submitted a proposed order on notice and asked the court to postpone entering the order pending ongoing discussions among the parties. In early January 2010, the parties submitted two competing forms of final order.⁴ I now settle on a final order after briefly clarifying the Opinion's award of attorneys' fees to the Trump Group.

The issue raised by the parties' competing orders is whether the Opinion's award of attorneys' fees to the Trump Group includes or excludes an earlier fee award. On March 4, 2009, I appointed a neutral IT expert to investigate the extent of Genger's document destruction, setting forth the protocol for this appointment in an order called the Stipulation And Confidentiality Order Governing The Exchange Of Certain Information (the "Protocol"). In relevant part, the Protocol provided that: "[a]ll reasonable expenses of the parties, the neutral consultant and the Special Master, including their reasonable attorneys' fees and technology consultants' fees, incurred in connection with the matters covered by this Stipulation and Order will be paid or reimbursed by Genger."⁵ That is the first award of attorneys' fees given to the Trump Group.

³ *TR Investors, LLC v. Genger*, 2009 WL 4696062, at *19 (Del. Ch. Dec. 9, 2009).

⁴ See Letter from Thomas J. Allingham II to the Honorable Leo E. Strine, Jr. (Jan. 8, 2010) at Exs. A-B; Letter from Brian C. Ralston to the Honorable Leo E. Strine, Jr. (Jan. 11, 2010).

⁵ *TR Investors, LLC v. Genger*, C.A. No. 3994-VCS, at ¶ 16 (Del. Ch. Mar. 4, 2009) (ORDER).

Over nine months later, after a trial was held on the contempt and spoliation issues, the Trump Group received a second award. After finding Genger liable for contempt and spoliation, I wrote the following in the Opinion: “because Genger’s misconduct has occasioned great expense, I award the Trump Group their reasonable attorneys’ fees and expenses related to the motions for contempt and spoliation.”⁶ The Opinion continues by suggesting an award of “\$750,000 to be reasonable in the first instance and in the hopes that the parties can live with that figure and avoid additional litigation costs.”⁷

The question then is whether the Opinion’s award of attorneys’ fees and the suggested \$750,000 amount includes the earlier award given in the Protocol. The Trump Group argues that the Opinion award and the Protocol award are exclusive of one another; that is, the \$750,000 amount suggested in the Opinion does not include those attorneys’ fees and expenses related to the Protocol. Genger, on the other hand, argues that the Opinion award includes the attorneys’ fees awarded in the Protocol; that is, the attorneys’ fees related to the Protocol should be included within, not added to, the \$750,000 amount.⁸

⁶ *TR Investors, LLC v. Genger*, 2009 WL 4696062, at *19 (Del. Ch. Dec. 9, 2009).

⁷ *Id.*

⁸ Notably, the parties’ disagreement applies only to attorneys’ fees, and not to expert expenses or expenses unrelated to the March 2009 order. That is, the parties agree that expert expenses relating to the March 2009 order, such as information technology consultant fees, are *not* included in the \$750,000 amount suggested in the Opinion. *See* Letter from Thomas J. Allingham II to the Honorable Leo E. Strine, Jr. (Jan. 8, 2010) at 2

I resolve this dispute by entering a final order that separates the attorneys' fees awarded in the Opinion from those awarded in the Protocol. That is, the \$750,000 amount suggested in the Opinion was intended to be exclusive of the earlier award, and therefore Genger must pay the Trump Group's attorneys' fees relating to the Opinion separately from the attorneys' fees relating to the Protocol. The basis for this separation is found in the language of the Protocol that requires Genger to pay all "reasonable expenses . . . incurred *in connection with the matters covered by this Stipulation and Order.*"⁹ On its face, this language distinguishes fees and expenses relating to the Protocol from any other fees and expenses (*e.g.*, fees and expenses related to trial). There is no language in the Opinion to disturb that straightforward reading of the Protocol, and there was no intent on my part to do so.

Of course, both the Protocol and the Opinion require that the fees and expenses claimed by the Trump Group be *reasonable*. Indeed, one reason I

("While the parties do agree that the December 9 award of 'expenses' includes the Plaintiff's expert's fees and expenses in addition to those provided for under the Protocol, the parties do not agree as to whether Plaintiff's attorney fees should receive like treatment."); *see also* Letter from Brian C. Ralston to the Honorable Leo E. Strine, Jr. (Jan. 11, 2010) at 2, 2 n.1 ("[W]e read the Court's December 9 order as suggesting the total amount of attorneys' fees that Mr. Genger should pay relating to Plaintiff's motions for contempt and spoliation – meaning that the \$750,000 is to be inclusive of any attorneys' fees incurred in connection with the Protocol. . . . In contrast, since the December 9 order did not expressly address Plaintiff's expert fees, we understand that Paragraph 16 of the Protocol, which obligates Mr. Genger to pay the reasonable expert fees incurred in matters related to the Protocol, is still in effect.").

⁹ *TR Investors, LLC v. Genger*, C.A. No. 3994-VCS, at ¶ 16 (Del. Ch. Mar. 4, 2009) (ORDER) (emphasis added).

suggested the \$750,000 figure in the Opinion was to engender such reasonableness. I trust that the Trump Group appreciates that an order not including attorneys' fees from the Protocol in the \$750,000 figure is not an invitation to re-characterize fees relating to the Opinion as fees relating to the Protocol in order to fit more under the \$750,000 "cap." The Protocol addressed a confined set of tasks and only permitted the reasonable costs of completing those tasks to be recouped.

A final Order Granting Motion for Contempt and Spoliation is entered contemporaneously with this letter.

Very truly yours,

/s/ Leo E. Strine, Jr.

Vice Chancellor

LESJr/eb