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**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

COURT OF CHANCERY COURTHOUSE
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GEORGETOWN, DELAWARE 19947

Submitted: February 8, 2006
Decided: February 9, 2006

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Re: *UniSuper Ltd., et al. v. News Corporation, et al.*
Civil Action No. 1699-N

Dear Counsel:

Before the Court are dueling motions: Defendants' motion to compel each of the thirteen named plaintiffs in this action to appear for deposition in either Delaware or New York, and plaintiffs' motion for a protective order limiting the number of plaintiffs' depositions that may be taken and permitting the depositions to occur outside the United States via videoconference. For the reasons that follow, I deny defendants' motion to compel and grant plaintiffs' motion for a

protective order. The form of order supplied by plaintiffs, as slightly modified, has been e-filed along with this letter decision.

I need not review the factual and legal background of this dispute. Suffice it to say that all that remains is a determination concerning whether a contractual agreement, allegedly entered into between defendants and plaintiffs, is binding and enforceable. In this regard, it is noteworthy that plaintiffs do not seek individualized damages or relief. Instead, plaintiffs seek equitable relief in the form of an opportunity for the shareholders of defendant News Corporation ("News Corp." or "the Company") to vote on the extension of the poison pill currently in place at the Company. This relief, if ordered by the Court, would inure to the benefit of all of News Corp.'s shareholders. For this reason, although this action is brought as an individual action, its relief will effectively operate in the same manner as though it were brought as a representative action. It follows that the action could have been brought by a single shareholder, rather than the thirteen shareholders named in the complaint.

Moreover, it appears that only one of the named plaintiff shareholders, CARE Super Pty Ltd, has firsthand knowledge regarding the negotiations with the defendants over the scope and terms of the alleged contractual obligation. The other shareholder plaintiffs learned about the agreement and negotiations from representatives of the Australian Council of Super Investors Inc. ("ACSI"). The

President of ACSI (Mr. O'Sullivan) and the then-Deputy Chairman of CARE Super Pty Ltd were the negotiators of the purported contractual obligation, along with Ian Phillip, General Counsel for News Corp.

Defendants seek to depose a Rule 30(b)(6) representative of each of the plaintiffs, and insist that those depositions occur either in Delaware or New York. Eleven of the thirteen plaintiffs reside overseas, with most of them in Australia. Recognizing the importance of O'Sullivan to the claims in this case, plaintiffs' counsel have arranged for O'Sullivan's deposition to take place in the United States on March 7, 2006. Plaintiffs have also offered to produce representatives of two additional plaintiffs—to be selected by the defendants—for depositions, but ask that these depositions be taken via videoconference if they are of non-U.S. plaintiffs. Defendants' motion to compel insists that they be allowed to take all thirteen plaintiffs' depositions in the United States.

I deny defendants' motion to compel for the following reasons: (1) Given that only two of the plaintiffs (ACSI and CARE) were actually involved in the negotiations of the alleged contractual agreement, the other plaintiffs are not in the position to provide more than recitations about what they were told by O'Sullivan and the CARE representative during those discussions. In light of this circumstance, and considering the significant burden that depositions of the non-U.S. plaintiffs would impose upon them, it would appear to me that depositions of

all thirteen plaintiffs, based on the present state of the record, would be unnecessary and should not be required; (2) Contrary to defendants' assertions, whether the plaintiffs' reliance on the alleged statements and representations resulting from the negotiations was "reasonable" is judicially determined by using an objective standard. *See Norman v. Paco Pharm Servs., Inc.*, 1991 WL 182447, at *2 (Del. Ch.). Although defendants may properly inquire at the permitted depositions into the reliance issue, the Court will make its own determination on that issue using an objective standard. Accordingly, it is unnecessary for defendants to depose all thirteen plaintiffs for the purpose of determining the reasonableness of plaintiffs' reliance on defendants' statements; (3) Although the plaintiffs selected Delaware as the forum to litigate this dispute, they did so as a result of defendants' decision to reincorporate from Australia to Delaware. Plaintiffs assert that their vote in favor of the reincorporation was the bargained-for consideration supporting the contractual agreement by defendants to afford shareholders a vote on any extension of News Corp.'s poison pill beyond a one-year period. Plaintiffs' action to enforce the alleged bilateral agreement thus had to be filed in Delaware, but plaintiffs' choice of forum was preordained by defendants' decision to reincorporate in Delaware. "The general principle that the plaintiff must come to the forum he has chosen loses force if he had no choice of forum to begin with." *In re Barrett Estate*, 1994 WL 274004, at *1 (Del. Ch.).

Consequently, I am not persuaded by defendants' argument that plaintiffs' "choice of forum" requires them to come to Delaware for depositions. Accordingly, for all of these reasons, I deny defendants' motion to compel and grant plaintiffs' motion for a protective order. An order will be entered granting defendants' permission to take Rule 30(b)(6) depositions of no more than two plaintiffs, in addition to the deposition of Michael O'Sullivan.

I also agree with the plaintiffs' application that defendants be required to take depositions of non-U.S. plaintiffs (other than the depositions of O'Sullivan) via videoconference. Rule 30(b)(7) of the Court of Chancery Rules expressly provides that "the Court may upon motion order that a deposition be taken by telephone or other remote electronic means." Considering all the circumstances, I view such a procedure particularly appropriate here, where the non-U.S. plaintiffs would have to incur significant time and expense to travel to the United States for their depositions. I note that a flight from Melbourne, Australia to New York lasts over twenty hours, involves a sixteen-hour time change, and costs over $2,000 roundtrip coach class ticket. In addition, given that the duration and scope of the plaintiffs' deposition will be narrow since they have only limited discoverable information, it seems unnecessarily burdensome and unfair to require the depositions to be taken in person in Delaware or New York. *See Chang v. Chang*, 1992 WL 236944, at *1 (Del. Ch.) (declining to require plaintiff to travel from

Oregon to Delaware for a live deposition, where the information sought by defendant could be elicited via telephone deposition or written discovery); *Normande v. Grippo*, 2002 WL 59427, at *2 (S.D.N.Y.) (granting plaintiff's application to have her deposition taken by telephone, given the significant time, expense, and inconvenience of requiring her to travel from Brazil to New York); *In re Central Gulf Lines, Inc.*, 1999 WL 1124789, at *1 (E.D.L.A.) (directing that depositions be conducted by videoconference in lieu of requiring deponents to travel from Hong Kong to Louisiana). I note that the comparable Rule 30(b)(7) of the Federal Rules of Civil Procedure have been interpreted to require a party opposing a telephonic or other electronic deposition to bear the burden of establishing why the deposition should *not* be conducted by those means. *See*, *e.g.*, *Laughlin v. Occidental Chem. Corp.*, 2005 WL 1459527, at *1 (E.D. Pa.) (*citing Moore, et al.*, *Moore's Federal Practice*, § 3024 (3rd ed. 1999)). Defendants have made no showing that a videoconference deposition would prejudice them in any way. Accordingly, I grant plaintiffs' application to require that the depositions of non-U.S. plaintiffs (other than O'Sullivan) occur via videoconference. If defendants learn information during the depositions permitted under this decision that gives reason to believe additional depositions of other plaintiffs are necessary in order for defendants to defend against the plaintiffs' claims, they may make application to this Court and demonstrate the grounds for additional depositions.

This condition, however, is also contingent upon defendants' agreement to have defendants Rupert Murdoch (who resides in the United States) and Ian Phillip and Lachlan Murdoch (who reside in Australia) appear for depositions in the United States. Plaintiffs will limit their depositions to these three individuals, but likewise may make application to expand the number of defendants for deposition if good cause can be shown therefor. I also ask that the parties agree with respect to producing legal advice either side received in connection with the purported contractual negotiations between O'Sullivan and Phillip. Finally, I have entered a form of Scheduling Order that closely tracks the plaintiffs' form of Scheduling Order.

IT IS SO ORDERED.

Very truly yours,

William B. Chandler III

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