

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

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Date Submitted: March 6, 2006

Date Decided: March 7, 2006

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Wilmington, DE 19899-0636

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

Dear Counsel:

I have reviewed the documents *in camera* provided to me in defendants' letters dated March 3, 2006, and March 6, 2006. Because I find that the plaintiffs have demonstrated good cause why the attorney-client privilege should not apply, I grant the plaintiffs' motion with regard to those documents. Mutuality of interest exists when a fiduciary (such as a corporate director) seeks legal advice in connection with actions taken or contemplated in his role as a fiduciary.¹ When defendants reincorporated the company in Delaware, negotiated the board policy,

¹ *In re Fuqua Industries, Inc.*, 2002 WL 991666, at *3 (Del. Ch. May 2, 2002).

and when they extended the poison pill in the face of a potential hostile acquirer, these were actions taken in defendants' role as fiduciaries. In none of these three instances were defendants seeking advice about this or any other litigation. Reviewing the list of factors from *Garner*² and related Delaware cases,³ I conclude that the factors weigh in plaintiffs' favor. Most significantly, I find that: (1) plaintiffs' claims are colorable, (2) the information is not available from other sources, and (3) the plaintiffs are not engaged in a fishing expedition. Based on these findings, I order the defendants to produce to plaintiffs unredacted copies of the documents provided for *in camera* inspection in defendants' March 3rd letter to this Court. I also order defendants to produce to plaintiffs the unredacted copies of defendants' responses to interrogatory nos. 17, 18 and 19 that were produced for *in camera* inspection by defendants' letter to the Court dated March 6, 2006.

I have also considered plaintiffs' motion to compel the deposition of Greg Baxter. I am granting this motion. Given the time constraints imposed on plaintiffs, I am also ordering defendants to produce Mr. Phillip for further deposition before March 31, 2006.


² *Garner v. Wolfinbarger*, 430 F.2d 1093, 1104 (5th Cir. 1970).

³ *See, e.g., Continental Ins. Co. v. Rutledge & Co.*, 1999 WL 66528, at *2 (Del. Ch. Jan. 26, 1999); *In re Freeport-McMoran Sulphur, Inc.*, 2005 WL 225040, at *3 (Del. Ch. Jan. 26, 2005).

Furthermore, I have reviewed defendants' motion to compel production of unredacted copies of documents produced by Hermes Assured Limited. I am ordering plaintiffs to produce unredacted copies to defendants.

Finally, after review of defendants' letter to the Court dated March 6, 2006, I am granting defendants permission to take the deposition of Sandy Easterbrook. Mr. Easterbrook's own words seem to indicate he has information that would be valuable to both sides.

Very truly yours,

A handwritten signature in cursive script that reads "William B. Chandler III". The signature is written in black ink and includes a horizontal line under the "III" at the end.

William B. Chandler III

WBCIII:wbg