COURT OF CHANCERY
OF THE
STATE OF DELAWARE

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500 N. King Street, Suite 11400
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Submitted: February 16, 2006
Decided: March 22, 2006

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RE: James Forsythe and Alan Tesche v. CIBC Employee Private Equity Fund (U.S.) I, L.P. and ESC Fund Management Co. (U.S.) C.A. No. 657-N

Dear Counsel:

As discussed in the court's previous opinions,[1] this case involves a demand by the plaintiffs, James Forsythe and Alan Tesche, unitholders in a Delaware limited partnership ("the Fund"), to inspect the books and records of the Fund under 6 *Del. C.* § 17-305. On April 1, 2005, the court held a one-day trial and, on July 7, 2005, issued a memorandum opinion granting in part and denying in part

[1] *Forsythe v. CIBC Private Equity Fund I, L.P.*, 2005 Del. Ch. LEXIS 104 (Del. Ch. July 7, 2005); *Forsythe v. CIBC Private Equity Fund I, L.P.*, C.A. No. 657-N (Del. Ch. July 28, 2005). This opinion adopts the terms defined in those earlier opinions, by reference.

the relief requested. The plaintiffs moved for reargument and, on July 28, 2005, the court granted that motion on the narrow issue of whether the defendants were required to produce unredacted minutes of meetings including the Fund's Investment Advisor and its Special Limited Partner. Rather than require such a complete production, the court directed the defendants to review the full minutes of the meetings in question and to prepare a log, within 30 days of the letter opinion, identifying each of the redactions made to the minutes. This redaction log was to describe in general terms the nature of the material redacted and to state the basis on which the material was withheld. On August 29, 2005, the defendants produced a redaction log that purportedly met these requirements.

After reviewing this log, the plaintiffs promptly advised the defendants of their belief that many of the items redacted from the minutes were "directly relevant" to categories of their demand letter upheld by the court and asked for a more detailed explanation for the redactions. Following a "meet and confer" conference call, at which a number of other issues were resolved, the plaintiffs filed a motion, styled as a "Motion to Compel Un-Redacted Versions of Previously Produced Documents," in which they complain that the redaction log produced is inadequate in its generality and ask that the court either review the minutes *in camera* or order them produced in unredacted form.

The defendants oppose this motion largely on procedural grounds. They argue the court lacks jurisdiction to entertain such a motion since a final judgment was entered no later than the date of the court's July 28 ruling on the motion for reargument and the time to appeal has long since expired. As this argument goes, the plaintiffs had only two options when the Fund complied with the court's July 28 order–namely, either file an appeal or file a motion seeking relief from this court's order under Court of Chancery Rule 60(b), or reargument under Rule 59, within the time periods provided under those rules. The defendants believe that any other motion fails for improper form, and that the plaintiffs' motion should therefore be dismissed. The defendants also argue, on the merits, that the plaintiffs have no right to the requested information in accordance with the court's previous rulings.

As a threshold matter, the court observes that the procedural posture of this matter was a foreseeable, but unforeseen, consequence of the court's July 28 order requiring the production of a redaction log. Obviously, the purpose of such a log is to provide a basis on which the plaintiffs (and the court) can judge the justification for decisions made by the defendants to redact information from the production. The court stated in its July 28 decision it was "satisfied that some additional explanation should be given of the reasons for the heavy redaction of the minutes

of meetings at issue."[2] Clearly, that order contemplated the possibility that, once the log was given to the plaintiffs, there could be further proceedings concerning the sufficiency of the explanations given for the redactions. In the circumstances, it would be anomalous to conclude that the court was ousted of jurisdiction to entertain a further application for relief on the very day that the redaction log was provided to the plaintiffs in accordance with that order. That order, although it does not expressly so state, obviously implied that this court retained jurisdiction and that further proceedings were available if the redaction log demonstrated a basis to broaden the scope of final relief. The court's authority to order such relief is inherent in its power under Rule 59(f) to issue final orders and judgments pursuant to reargument.

This court, moreover, retains inherent authority to enforce its decisions, even in the absence of specific authorization by rule. In *Cebenka v. Upjohn Co.,*[3] for example, the Delaware Supreme Court upheld sanctions imposed by the Superior Court for the violation of a pretrial order under Superior Court Rule 16 relying on the universal principle that a court has "inherent authority" to compel compliance

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[2] *Forsythe*, C.A. No. 657-N (Del. Ch. July 28, 2005).
[3] 559 A.2d 1219 (Del. 1989).

with its own orders.[4] Similarly, in *Bartlett v. General Motors Corp.*,[5] this court upheld the use of a stock attachment statute to enforce a judgment entered under 13 *Del. C.* § 1531, a statute detailing the disbursement of funds in divorce.[6] Just as the court did in *Cebenka*, the *Bartlett* court relied on the inherent authority of the court to enforce its own judgments.

The court in this case can enforce its judgment based on the same inherent power. Of course, the plaintiffs' right to seek such relief is not temporally unbounded. Had the plaintiffs delayed unduly in bringing the instant motion, they would have been barred in equity. As it is, the plaintiffs brought their motion shortly after the negotiations between the parties foundered. The defendants have not argued prejudice as a result of this moderate delay. The plaintiffs' motion is, therefore, both timely and within the court's jurisdiction.

CIBC nonetheless resists the plaintiffs' request for the unredacted minutes, principally on the basis of a mistaken belief that the court limited its previous orders to documents responsive only to categories 1 and 11 of the plaintiffs' 17 category demand. In fact, nothing in the court's opinion of July 7 or its opinion of July 28 suggests such a limitation. Rather, the first of those decisions mistakenly

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[4] *Id.* at 1225.
[5] 127 A.2d 470 (Del. Ch. 1956).
[6] *Id.* at 132.

omitted any discussion of the unredacted minutes requested by category 10 of the demand, an oversight that was remedied by the court's subsequent letter ordering the production of a redaction log.

Having reviewed the plaintiffs' demand, and the descriptions of redacted material provided by the parties, the court believes that substantial parts of the currently redacted documents are encompassed by the plaintiffs' demand. Thus, as a general matter, the defendants shall produce unredacted versions of minutes that relate to demands contained in any request other than those contained in paragraphs 4, 14, and 16 of the demand, which were withdrawn at trial.[7] For example, discussion of the Trimaran investment mix, redacted from the minutes of the April 27, 2001 advisory board meeting, is required by paragraph 12, even if not independently required by paragraph 10. Similarly, CIBC is required to produce unredacted copies of its "review of carrying fee methodology," discussed at the same April 27 meeting, on the basis of paragraph 8. In sum, the court emphasizes that the plaintiffs' demand as to the investment adviser minutes, although not without limits, is wide-ranging, and those minutes should be produced in unredacted form accordingly.

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[7] *Forsythe*, 2005 Del. Ch. LEXIS at n.19.

For the foregoing reasons, the plaintiffs' motion is GRANTED. IT IS SO ORDERED.

/s/ Stephen P. Lamb
Vice Chancellor