

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THE AMALGAMATED BANK, as	§	
Trustee for the LongView LargeCap	§	No. 67, 2013
500 Index Fund, LongView	§	
LargeCap 500 Index VEBA Fund,	§	Court Below–Court of
LongView Quantitative LargeCap	§	Chancery of the State of
Fund, and LongView Quantitative	§	Delaware
LargeCap VEBA Fund, and CITY	§	
OF ROSEVILLE EMPLOYEES’	§	Consolidated C.A. No. 8145-VCN
RETIREMENT SYSTEM,	§	
	§	
Intervenors Below,	§	
Appellants,	§	
	§	
v.	§	
	§	
DAUPHIN COUNTY EMPLOYEES	§	
RETIREMENT FUND,	§	
JACKSONVILLE POLICE AND	§	
FIRE PENSION FUND, and	§	
STATE-BOSTON RETIREMENT	§	
SYSTEM,	§	
	§	
Plaintiffs Below,	§	
Appellees.	§	

Submitted: February 15, 2013

Decided: February 26, 2013

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 26th day of February 2013, it appears to the Court that:

(1) In December 2012, Freeport-McMoRan Copper & Gold Inc. (“Freeport”) agreed to acquire McMoRan Exploration Co. (“MMR”) and Plains

Exploration & Production Co. (“PXP”). Shareholders of all three companies have challenged the transactions, which are scheduled to close in the second quarter of 2013. Freeport shareholders have filed ten derivative actions in the Court of Chancery (“the Freeport actions”).

(2) In January 2013, several shareholder plaintiffs in the Freeport actions (“Plaintiffs”)¹ moved to consolidate and to expedite the cases, and moved for the appointment of lead plaintiffs and lead counsel (“the Motions”). On January 14, 2013, the Court of Chancery held a hearing on the Motions.

(3) By letter dated January 15, 2013, Freeport shareholders not involved in filing the Freeport actions (“Potential Plaintiffs”)² informed the Court of Chancery that they had made “books and records demands” under Title 8, Section 220 of the Delaware Code.³ The Potential Plaintiffs asked the court to postpone any decision on the Motions until they had completed their inspection and determined whether to file a derivative complaint. The Plaintiffs opposed the Potential Plaintiffs’ request for a postponement.

¹ The movant shareholders (Dauphin County Employee Retirement Fund, Jacksonville Police and Fire Pension Fund, and State-Boston Retirement System) are the appellees in this appeal.

² These shareholders (The Amalgamated Bank, as Trustee for the LongView LargeCap 500 Index Fund, LongView LargeCap 500 Index VEBA Fund, LongView Quantitative LargeCap Fund, and LongView Quantitative LargeCap VEBA Fund and City of Roseville Employees’ Retirement System) are the appellants in this appeal.

³ See DEL. CODE ANN. tit. 8, § 220 (Supp. 2013) (governing right to inspection of books and records).

(4) By letter opinion dated January 25, 2013, the Court of Chancery ruled on the Motions, consolidating the Freeport actions and appointing the Plaintiffs as lead plaintiffs and the Plaintiffs' counsel as lead counsel.⁴ The Court of Chancery denied the Potential Plaintiffs' request for a postponement.⁵

(5) On February 4, 2013, the Potential Plaintiffs moved to intervene to pursue an interlocutory appeal from the January 25, 2013 letter opinion and order, and applied for certification of their appeal. The Plaintiffs filed answers opposing the motion and application. By letter opinion dated February 14, 2013, the Court of Chancery granted the Potential Plaintiffs' motion to intervene and certified their interlocutory appeal.

(6) Applications for interlocutory review are addressed to the sound discretion of this Court. The Court has examined the Court of Chancery's January 25, 2013 and February 14, 2013 letter opinions under the criteria in Supreme Court Rule 42. In the exercise of our discretion, we have concluded that exceptional circumstances warranting interlocutory review do not exist in this case.

⁴ *In re Freeport-McMoRan Copper & Gold, Inc. Derivative Litig.*, 2013 WL 297958 (Del. Ch. Jan. 25, 2013).

⁵ *Id.*

NOW, THEREFORE, IT IS HEREBY ORDERED that the interlocutory appeal is REFUSED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice