

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JAMES RUFFALO, PAUL POOLE, and	:
OPPORTUNITY PARTNERS, LP,	:
	:
Plaintiffs,	:
	:
v	:
	:
	: Civil Action
	: No. 5039-VCP
TRANSTECH SERVICE PARTNERS, INC.,	:
SURESH RAJPAL, AND LM SINGH,	:
	:
Defendants.	:

- - -

Chancery Courtroom No. 12B  
New Castle County Courthouse  
500 North King Street  
Wilmington, Delaware  
Thursday, February 3, 2011  
10:09 a.m.

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BEFORE: HON. DONALD F. PARSONS, JR., Vice Chancellor.

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RULINGS OF THE COURT FROM ORAL ARGUMENT ON PLAINTIFFS'  
MOTION FOR PRELIMINARY INJUNCTION

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CHANCERY COURT REPORTERS  
New Castle County Courthouse  
500 North King Street - Suite 11400  
Wilmington, Delaware 19801  
(302) 255-0524

1 APPEARANCES:

2 CARMELLA P. KEENER, ESQ.  
Rosenthal, Monhait & Goddess, P.A.

3 -and-  
4 CAROL S. SHAHMOON, ESQ.  
of the New York Bar  
Chitwood Harley Harnes LLP  
5 for Plaintiffs

6 DANIEL A. GRIFFITH, ESQ.  
Whiteford, Taylor & Preston LLP

7 -and-  
8 WILLIAM F. RYAN, JR., ESQ.  
HOWARD R. FELDMAN, ESQ.  
of the Maryland Bar  
9 Whiteford, Taylor & Preston LLP  
for Defendants

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1 in connection with a motion to dismiss. The  
2 plaintiffs claim that in the context of carrying out  
3 their responsibilities, Rajpal and Singh, in operating  
4 TransTech, were entitled to expend working capital  
5 amounts out of the interest and income that was  
6 derived from the 40 million-plus dollars that had been  
7 invested and put in a trust, that they could use money  
8 from those sources up to \$800,000 to explore different  
9 business opportunities. But in the plaintiffs' view,  
10 there was a cap on the expenditures of TransTech of  
11 800,000. They couldn't go beyond that.

12 I dismissed some of the claims that  
13 the plaintiffs made and held that there was not a hard  
14 \$800,000 cap, that the 800,000 did apply to business  
15 expenses but that there might be other expenses  
16 incurred, some of which would relate, for example, to  
17 the dissolution of the company that it appeared could  
18 occur outside the scope of that \$800,000 working  
19 capital fund.

20 So the claims that have survived the  
21 motion to dismiss on behalf of the plaintiffs include  
22 claims that TransTech has used moneys in excess of the  
23 \$800,000 cap for purposes that are not authorized  
24 under the operative agreements and that some of those

1 moneys have been paid to Rajpal and Singh or  
2 affiliates of those two individuals.

3           The matter is currently before me on  
4 an application for a preliminary injunction. And in  
5 that regard I note that in about mid-2009 the decision  
6 was made to dissolve TransTech. And it's been in the  
7 process of being dissolved since that time, winding  
8 down its affairs completely. And I believe at about  
9 the beginning of 2010 that there was something like  
10 300, maybe as much as \$375,000 that was in the  
11 accounts of TransTech. And then, according to an  
12 affidavit that was submitted by Sravasti Talukdar on  
13 behalf of the defendants, that amount had gone down  
14 maybe by September 30th, 2010, to something in the  
15 range of 210,000; and most recently it is down to  
16 about \$135,000 within the last month or so.

17           In early December of this year the  
18 plaintiffs moved for a preliminary injunction to stop  
19 further expenditures of moneys on behalf of TransTech  
20 until the allegations in this case can be tried. And  
21 that's the motion that is currently before me.

22           Specifically, the motion for  
23 preliminary injunction asks that the Court enter an  
24 order preliminarily enjoining the defendants from

1 making any payments from any accounts of TransTech  
2 Services Partners, Inc. pending the trial of this  
3 action. I've considered the briefs that have been  
4 submitted by the parties, as well as the affidavits  
5 that they each have submitted, and heard the arguments  
6 of counsel today and am prepared at this time to give  
7 my ruling.

8           As far as a preliminary injunction is  
9 concerned, this Court has broad discretion in granting  
10 or denying a preliminary injunction. Such injunctions  
11 may be granted where the movants demonstrate three  
12 things: first, a reasonable probability of success on  
13 the merits at a final hearing; second, an imminent  
14 threat of irreparable injury; and, third, a balance of  
15 the equities that tips in favor of issuance of the  
16 requested relief.

17           The moving party bears a considerable  
18 burden in establishing each of these necessary  
19 elements. Plaintiffs may not merely show that a  
20 dispute exists and that plaintiff might be injured.  
21 Rather, the plaintiffs must establish clearly each  
22 element, because injunctive relief will not be granted  
23 unless warranted. However, there is no steadfast  
24 formula for the relative weight that each of the

1 factors deserves. Accordingly, a strong demonstration  
2 as to one element may serve to overcome a marginal one  
3 as to another.

4           Moreover, preliminary injunctive  
5 relief should not be granted if the injury may be  
6 adequately compensated for after a full trial on the  
7 merits either by an award of damages or by some form  
8 of equitable relief. The injury must be of such a  
9 nature that no fair and reasonable redress may be had  
10 in a court of law and that to refuse the injunction  
11 would be a denial of justice.

12           In this instance I consider first  
13 whether there's been a showing of reasonable  
14 probability of success on the merits. And success on  
15 the merits I think goes to the claims of the  
16 plaintiffs that TransTech and the sponsors have  
17 violated the plaintiffs' rights by expending moneys in  
18 breach of the operative agreements, specifically not  
19 only exceeding the \$800,000 limit but also expending  
20 additional sums that were not authorized beyond that  
21 limit. So if all they had done was gone up to the  
22 \$800,000 limit, that's no problem. And based on my  
23 previous opinion, I believe that some expenditures  
24 beyond that are authorized. The question is whether

1 the kinds of expenditures that have occurred here,  
2 which look like they may be in total on the order of  
3 almost \$3 million -- that's inclusive of the \$800,000.  
4 It's somewhere between 2.3 and \$3 million.

5 (Continuing) -- whether those expenditures comport  
6 with the obligations of TransTech to its investors and  
7 the obligations of Rajpal and Singh.

8 I'll note parenthetically at this  
9 point that as a technical matter, the claims currently  
10 are cast, I believe, only against TransTech. And to  
11 the extent they're seeking money damages, I don't know  
12 that there are money damage claims against Rajpal and  
13 Singh. There may be. There may be amendments later.  
14 I don't know. But they certainly exists as far as  
15 TransTech. And I've already discussed in my previous  
16 opinion why, in my opinion, it is appropriate for  
17 Rajpal and Singh to continue to be parties to this  
18 action.

19 I believe, based on the evidence that  
20 I have considered, that the plaintiffs have shown that  
21 they are likely to succeed on the merits of their  
22 claims, that at least some of the moneys in excess of  
23 the \$800,000 expended by TransTech have been  
24 improperly expended or expended in breach of its

1 obligations under the operative agreements. That does  
2 not mean that I'm confident at this point that  
3 plaintiffs will succeed ultimately in proving their  
4 claims. We haven't reached that stage in the  
5 litigation. We haven't gotten to that detail. We  
6 haven't had any trial. So it is still possible that  
7 at the end of the day the defendants may succeed in  
8 the litigation. But for purposes of a preliminary  
9 injunction, I believe that the plaintiffs have shown a  
10 reasonable probability of success in making out their  
11 claims.

12           Extensive amounts have been paid to  
13 third-party creditors. Large amounts of those moneys  
14 are being paid to lawyers that look like they may be  
15 representing TransTech and not just TransTech but  
16 Rajpal and Singh as well. Even to the extent that  
17 they're representing TransTech in defense of this  
18 action, and so on, questions can be raised as to  
19 whether those are expenditures that fit within ones  
20 that TransTech is entitled to take out of the moneys  
21 that it's authorized to spend of the investors.

22           The way things are set up -- and to  
23 give an example, if there -- let's assume that,  
24 hypothetically, TransTech had spent \$3 million. It

1 may turn out that all that it was authorized to spend  
2 under the agreements would have been the 800,000. And  
3 let's say, for the benefit of round numbers, an  
4 additional \$1.2 million can be justified as  
5 dissolution expenses or things of that nature,  
6 bringing you to \$2 million. Then those \$2 million  
7 rightfully would be owed by TransTech to whoever those  
8 creditors were and the plaintiffs would have no claims  
9 to those moneys.

10           In this case TransTech, in fact, spent  
11 \$3 million. And that additional million dollars in  
12 expenditures, in an oversimplified way, can be viewed  
13 as expenditures that really should have been on the  
14 nickel of Rajpal and Singh and not on the investors.  
15 And they are the ones who should be responsible for  
16 that additional money. And TransTech, arguably, acted  
17 in violation of its obligations to its investors in  
18 paying those sums.

19           At this point TransTech -- and before  
20 I even go on with that next statement, this is  
21 hypothetical. I have not found that any of these  
22 things are actually the bottom line of this case. So  
23 it may turn out to be not the case when we're  
24 finished.

1                   But assuming that the hypothetical  
2 were to hold true, what has occurred here is that  
3 TransTech has already paid out something in the range  
4 of 2.3 to \$2.5 million. So it has already paid to  
5 these other creditors sums that -- maybe it didn't  
6 have the right to pay that or was paying them moneys  
7 that a legitimate claim was had to those moneys by the  
8 plaintiffs in this action. Now the situation is that  
9 there is still another 600,000 or so of creditors'  
10 claims that are being made against TransTech.  
11 TransTech only has \$135,000 or so left in its bank  
12 accounts. And TransTech, which currently is still  
13 under the control of Rajpal and Singh, wishes to be  
14 able to proceed in an unfettered way to compromise  
15 those claims, however it does, after it investigates  
16 them and pay out the money as it sees fit.

17                   I think in this situation where the  
18 plaintiffs have shown a likelihood of success and they  
19 have shown, based on the evidence that's before me,  
20 that the sponsors and their affiliates have already  
21 been paid something in the range of \$670,000, with the  
22 third-party creditors having in excess of 1.5 million  
23 that's been paid to them already, given that fact and  
24 the fact that the defendants have also admitted that

1 at least approximately \$12,000 in payments that have  
2 been made since the dissolution was commenced had been  
3 made to the sponsors after that \$800,000 spending  
4 limit had been gone through, those things are enough  
5 to convince me that there's a reasonable likelihood of  
6 success on the merits.

7           As far as the irreparable harm, Rajpal  
8 and Singh are both in India. I think that's been  
9 understood throughout. But it has been represented,  
10 and nothing has been shown to the contrary, that it  
11 will be very difficult for any of the plaintiffs to  
12 recover any money here from Rajpal and Singh because  
13 of the fact that they are in India and the state of  
14 affairs in terms of India versus the United States and  
15 recognizing one another's judgments and things of that  
16 nature.

17           I think there's been a sufficient  
18 showing there to convince me that there would -- if  
19 the Court were to allow things to proceed as they  
20 have, that the last 135,000 would be spent through and  
21 that there would be nothing available to the  
22 plaintiffs at the end of the day.

23           The last item as far as the balance of  
24 the equities, it appears that the 600 or so thousand

1 dollars in outstanding debts to the creditors are  
2 mostly debts that have been outstanding for at least a  
3 year and in some cases for two years. So that what  
4 will happen as a result of -- if the Court were to  
5 issue a preliminary injunction, is that those  
6 creditors would have to wait somewhat longer before  
7 they would realize anything on the amounts that are  
8 owed to them. But by granting a preliminary  
9 injunction, I preserve at least some possibility that  
10 if it does turn out at the end of the day that the  
11 plaintiffs are correct and that they have a legitimate  
12 claim to those moneys and that that claim is superior  
13 to the claim of the other creditors -- and it does  
14 appear that questions can be raised about the  
15 propriety of TransTech itself as the entity as opposed  
16 to Rajpal and Singh paying some of these debts that  
17 were incurred to these other creditors -- it seems to  
18 me that there won't be much harm to the defendants or  
19 to its creditors if a preliminary injunction is  
20 issued. And, on the other hand, if I don't issue a  
21 preliminary injunction, I'm confident that there will  
22 not be any money in TransTech when we get to the trial  
23 of this action.

24 So for all of those reasons, I've

1 decided that it is appropriate to enter a preliminary  
2 injunction in this case. I looked but didn't see a  
3 proposed order for preliminary injunction. I'm not  
4 sure if there is one or not.

5 MS. KEENER: Your Honor, I don't  
6 believe we've submitted a proposed order because we  
7 weren't quite sure the remedy that the Court --

8 THE COURT: All right. And I  
9 recognize that there are -- you know, I would  
10 appreciate some level of common sense in terms of I  
11 don't know what has to be done in terms of TransTech;  
12 and there might be some very, very low level  
13 thousand-dollar limit, \$5,000, but very low limit that  
14 it can keep its office lights on but maybe not even  
15 that.

16 MR. FELDMAN: The other practical  
17 consideration, Your Honor, is, for example, they've  
18 asked to take the 30(b)(6) deposition of a corporate  
19 designee. That designee obviously will incur travel,  
20 lodging expenses, and those have to be paid. And so  
21 at a very practical level, if they want to make  
22 somebody come here from India, unless plaintiffs want  
23 to pay for those expenses, the Court -- necessarily we  
24 ask that the Court consider that the company be

1 allowed to pay litigation-related expenses such as  
2 that.

3 MS. KEENER: Your Honor, I believe  
4 there are issues even as to the appropriateness of the  
5 corporation --

6 THE COURT: Right. I mean, we may be  
7 in a situation -- I can't tell the corporation and its  
8 sponsors what to do. I've concluded that in these  
9 circumstances, given all the money that's already been  
10 expended and the little that's left, that it's  
11 appropriate to enter this preliminary injunction. I  
12 guess the company will just have to sort out what  
13 it's -- you know, whether it's going to continue. But  
14 I'm not inclined to allow anything beyond the very,  
15 very minimal leeway. We're talking a couple thousand  
16 dollars, something like that.

17 MR. FELDMAN: Well, perhaps we can  
18 have built into the order a mechanism by which we can  
19 submit proposed expenses such as that I described for  
20 Your Honor's consideration.

21 THE COURT: All right. Well, I think  
22 that we -- No. 1, let's go back to the form of the  
23 order. And you can both sit down. It's okay. I  
24 appreciate your standing.

1           In terms of the proposed form of  
2 order, I'll require that \$20,000 secured be the bond  
3 that be posted, which would cover any interest or  
4 anything like that that might be owed to these  
5 creditors beyond -- or other damages that might occur  
6 as a result of the preliminary injunction if it turned  
7 out later to have been improperly granted.

8           But I do wonder where are we going in  
9 this case. Do we have a trial date?

10           MS. KEENER: Your Honor, we do not  
11 have a trial date. My next proposal to the Court  
12 would have been to request that the Court direct the  
13 parties to meet and confer on a proposed pretrial  
14 scheduling order, that perhaps we could work backwards  
15 from a trial date. We do have to take that 30(b)(6)  
16 deposition. We do need to explore the validity of the  
17 purported outstanding creditor claims, because, as  
18 Your Honor has indicated, those issues are relevant to  
19 the inquiry that the Court will face at a trial.

20           So we do anticipate there will be some  
21 discovery taken, especially in light of the invoices  
22 that were provided to us by e-mail. There are certain  
23 other issues that need to be explored based on  
24 affidavits submitted to us and documents that we have

1 all just recently seen.

2           So I believe there need be a  
3 reasonable period of time for discovery and that we  
4 could be ready for trial pretty quickly, at the  
5 Court's direction.

6           THE COURT: All right. Now, another  
7 problem -- and this is -- it's a problem for -- you  
8 know, for TransTech. (Continuing) -- is how is it  
9 going to proceed. I don't know if there needs to be a  
10 receiver or somebody -- you know. I'm not sure what's  
11 going to happen in connection with TransTech going  
12 forward.

13           But we have a piece of litigation. We  
14 do need to move forward to a trial. So I agree with  
15 that. It's time to get this case on a schedule that  
16 makes sense. I don't have any predisposition as to it  
17 has to be very quickly or -- you know, how soon we  
18 need to have the trial; but it doesn't seem like it's  
19 all that complicated. So probably it could go forward  
20 fairly quickly.

21           MS. KEENER: Your Honor, I'm sorry. I  
22 just wanted to make one additional point. We're not  
23 quite sure, but we believe the company may have --  
24 continue to pay a D and O policy. We haven't had an

1 opportunity to explore that issue. So I'm not quite  
2 sure whether the company would bear the costs of  
3 litigating or whether a D and O policy would --

4 THE COURT: Yeah, that's possible.

5 MS. KEENER: I'm sorry, Your Honor.  
6 We just don't know the answer to those questions yet.

7 THE COURT: The relief these  
8 plaintiffs are seeking in this preliminary injunction,  
9 I've concluded they're entitled to that. Where we go  
10 from there and what the company's options are and  
11 those types of things, I don't know. The company will  
12 make its own decisions and it has whatever resources  
13 it has.

14 So, one, I'll need a form of  
15 preliminary injunction submitted. It should be fairly  
16 straightforward. I think the idea is that they should  
17 not be expending any additional moneys without the  
18 authorization of the Court.

19 Now, it -- you know, there may be ways  
20 in which they can continue on their business through  
21 insurance or through other kinds of things that they  
22 need a very low level of -- I haven't thought about  
23 that aspect of it. So whether there is some kind of  
24 an accommodation that can be worked out that does

1 something other than freeze every penny that they  
2 have, then that should be explored.

3           But, you know, at this point, if it  
4 doesn't get worked out, don't bring it back to me.  
5 The whole thing's getting enjoined. Unless there's a  
6 really -- you better have a really good argument as to  
7 why it's got to be something else and the case law to  
8 show otherwise. But I don't want either side acting  
9 unreasonably here.

10           I think you hear what I'm talking  
11 about. I'll preserve as much of that as we can and  
12 move forward in a orderly fashion to get these  
13 disputes resolved. And maybe at the end of the day,  
14 the statements that Ms. Talukdar is making, maybe that  
15 ends up being the most sensible way this proceeds and  
16 maybe I'll agree with defendants. You know, I don't  
17 know where we'll end when we're finished, but it is  
18 time to preserve what's left and move forward to get  
19 to a final resolution. All right?

20           Thank you.

21           MS. KEENER: Thank you, Your Honor.

22           (Court adjourned at 11:50 a.m.)

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CERTIFICATE

I, NEITH D. ECKER, Official Court Reporter for the Court of Chancery of the State of Delaware, do hereby certify that the foregoing pages numbered 3 through 19 contain a true and correct transcription of the rulings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated, except as revised by the Vice Chancellor.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 9th day of February 2011.

/s/ Neith D. Ecker

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Official Court Reporter  
of the Chancery Court  
State of Delaware

Certificate Number: 113-PS  
Expiration: Permanent