COURT OF CHANCERY
OF THE
STATE OF DELAWARE

STEPHEN P. LAMB
VICE CHANCELLOR

New Castle County Court House
500 N. King Street, Suite 11400
Wilmington, Delaware 19801

Submitted: February 26, 2007
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Joseph A. Rosenthal, Esquire
Rosenthal, Monhait & Goddess, P.A.
Suite 1401, Mellon Bank Center
Wilmington, DE 19899-1070

Richard M. Donaldson, Esquire
Montgomery & McCracken, Walker
& Rhoades, LLP
300 Delaware Avenue, Suite 750
Wilmington, DE 19801

Edward P. Welch, Esquire
Skadden, Arps, Slate, Meagher
& Flom, LLP
One Rodney Square
Wilmington, DE 19899

Raymond J. DiCamillo, Esquire
Richards, Layton & Finger
One Rodney Square
Wilmington, DE 19899

RE: Gerald Ortsman v. Dennis O. Green, et al.
C.A. No. 2670-N

Dear Counsel:

In this is purported class action challenging a proposed premium cash acquisition by merger of Adesa, Inc., a publicly traded Delaware corporation, Adesa is alleged to be North America's largest publicly traded provider of wholesale vehicle auctions and used vehicle dealer floorplan financing. The equity value of the transaction is in excess of $2.5 billion. On Monday, February 26, 2007, the court heard the plaintiff's motion for expedited proceedings, which was met with strong opposition from all of the defendants. For the reasons briefly explained herein, that motion will be granted to a limited extent.

The purchaser in the proposed merger is a consortium of private equity firms led by Kelso & Co., L.P. Somewhat unusually, there is no indication that Adesa's senior management has any intention or expectation of participating in the surviving entity, either as managers or equity participants.[1] Judging from the complaint and the definitive proxy material, the proposed acquisition appears to be the product of an extended sales effort that was led by Adesa's independent board majority. Thus, the proposed transaction does not appear to raise the basic and sometimes substantial concerns of conflicts of interest on the part of management often encountered in similar private equity transactions. The merger agreement, which is scheduled to be voted on by Adesa's stockholders on March 28, 2007, provides for a 1.6% termination fee and a fiduciary out. There are not alleged to be any other substantial deal protection provisions.

The amended complaint claims that the $27.85 per share cash price offered in the proposal "substantially undervalues" Adesa and offers only a minimum premium. The complaint also challenges the process followed by the board of directors, alleging, in effect, that it was not one reasonably calculated to secure the best available transaction. In particular, the complaint focuses on the conflicted role payed by UBS Securities LLC, the company's financial adviser. UBS was

[1] This conclusion was confirmed in Mr. Donaldson's February 26, 2007 letter to the court.

retained in 2005 to advise Adesa in connection with a potential business combination and continued thereafter serving as the company's lead adviser in connection with the sale process. The alleged conflict arose in 2006, when UBS advised Adesa that it wished to be able to offer debt financing to potential acquirers. The board of directors permitted UBS to do so and retained Credit Suisse Securities (USA) LLC to issue a fairness opinion. According to the complaint, UBS's conflict actually affected the sales process when UBS advised the Adesa board not to pursue an indication of interest from a strategic buyer that UBS believed would not be interested in a leveraged transaction and, thus, would not be a source for it of fees from debt financing.

The amended complaint also alleges a number of deficiencies in Adesa's proxy statement, in particular the disclosure of Credit Suisse's advice as to the fairness of the proposed transaction and the disclosure of the fees paid to UBS and Credit Suisse. Many of these claims are based on the faulty premise that every detail of Credit Suisse's work product, including every underlying assumption, should be disclosed and explained in the context of this third-party transaction. Other matters, however, including those alleged in paragraphs 50(b)(vii)(1), (2), (6), (7), and (8) of the amended complaint relate, generally, to the failure to disclose the fees paid to UBS and Credit Suisse in this and other recent transactions

involving the members of the buyer group, and issues relating to UBS's conflicted role in the deal. For example, the proxy statement says only that Credit Suisse was paid "a customary fee in connection with its services, a significant portion of which was payable upon the rendering by Credit Suisse of its opinion." Thus, a reader of the proxy statement is not told how much Credit Suisse was paid, whether it would have received the same payment even if it was unable to render a fairness opinion at $27.85, or how much Credit Suisse has earned in recent periods from Kelso or other members of the buyer group.

The defendants point out that this is a premium cash offer that resulted from a lengthy process conducted by independent, disinterested directors. They also point out that there are no substantial impediments to the emergence of a higher competing offer, if one is available. The defendants also argue that the alleged deficiencies in the proxy statement are immaterial as a matter of law. Finally, they argue that the plaintiff is guilty of laches and should be denied the opportunity to engage in costly expedited proceedings, there being adequate post-transaction remedies.

While it is true that there are substantial post-transaction remedies, including an appraisal remedy, the court concludes that the plaintiff is entitled to engage in limited expedited discovery and an opportunity to present a motion for a

preliminary injunction. The court recognizes that there is no automatic right to expedition.[2] Nonetheless where, as here, there are colorable disclosure claims, the better course is to address them in advance of a stockholder vote when appropriate disclosure-based relief is available.[3] Only by remedying proxy deficiencies in advance of a vote can irreparable harm be avoided. In this connection, the court finds no evidence of laches in the plaintiff's prosecution of this motion. On the contrary, the plaintiff would appear to have moved quickly once Adesa made clear the proposed schedule for the stockholder meeting.

The areas into which discovery will be allowed are those discussed above relating to UBS's conflicted role in the transaction and the disclosure allegations made in paragraph 50(b)(vii) enumerated above. The hearing will be held on March 23, 2007 at 10 a.m. The reply brief should be filed no later than 5 p.m. on March 21, 2007. Counsel are directed to confer and submit an appropriate form of order.

Very truly yours,

/s/ Stephen P. Lamb
Vice Chancellor

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[2] *Gianmmargo v. Snapple Beverage Corp.*, 1994 WL 672698, at *2 (Del. Ch. Nov. 15, 1994).
[3] *See, e.g., In re J.P. Morgan Chase & Co. S'holder Litig.*, 906 A.2d 808, 825-26 (Del. Ch. 2005), *aff'd*, 808 A.2d 766 (Del. 2006).