

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

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CBS CORPORATION, GARY L.  
COUNTRYMAN, CHARLES K. GIFFORD,  
BRUCE S. GORDON, LINDA M. GRIEGO,  
and MARTHA L. MINOW,

Plaintiffs,

v.

C.A. No. 2018-\_\_\_\_ -\_\_\_\_

NATIONAL AMUSEMENTS, INC., SHARI  
REDSTONE, SUMNER M. REDSTONE,  
NAI ENTERTAINMENT HOLDINGS LLC,  
and SUMNER M. REDSTONE NATIONAL  
AMUSEMENTS TRUST,

Defendants.

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**PLAINTIFFS’ MOTION FOR A TEMPORARY RESTRAINING ORDER**

1. This is an action by the media company CBS and the members of a Special Committee of its Board of Directors to prevent its controlling stockholder, National Amusements, Inc. (“NAI”) — whose control derives from the Company’s dual-class stock structure, not NAI’s economic ownership — and Shari Redstone (who controls NAI) from abusing NAI’s voting control and further harming CBS and its public stockholders in breach of their fiduciary duties. The CBS Special Committee of independent directors was formed to address NAI’s request that CBS merge with Viacom, Inc., another company controlled by NAI through a dual-class stock structure. Compl. ¶ 49.

2. CBS has called a special meeting of the Board for Thursday, May 17, 2018 (the “Special Board Meeting”) to discuss ways in which the Board may protect the Company against Ms. Redstone moving forward, including the potential issuance of a stock dividend that would dilute NAI’s voting power, as permitted by CBS’s charter and as recommended by the Special Committee. *Id.* ¶ 7. Plaintiffs seek a TRO under Court of Chancery Rule 65(b) to prevent any action to interfere with that meeting or the effectiveness of actions taken at the meeting.

3. The Special Committee believes that the Company and its public stockholders face a serious threat of imminent, irreparable harm in Ms. Redstone’s potential response to the Special Committee’s unanimous decision yesterday, May 13, 2018, that the proposed Viacom transaction is not in the best interests of CBS stockholders (other than NAI). *Id.* ¶ 62.

4. NAI is currently effectively controlled by Ms. Redstone, the daughter of NAI’s chairman and CEO Sumner Redstone. *Id.* ¶ 21. Through her control of NAI, Ms. Redstone’s recent actions have led the Special Committee to conclude that she presents a significant threat of irreparable and irreversible harm:

- After obtaining control over Viacom in 2016, Ms. Redstone pushed for a potential CBS/Viacom merger but unilaterally stopped discussions after CBS requested governance protections at any combined company.

- Ms. Redstone interfered with the CBS Board nomination process and installed on the Board the Redstones' personal lawyer, who has sought to implement her directives.
- Ms. Redstone has acted to undermine CBS's highly lauded and successful management team in a series of escalating attacks, including by talking to potential CEO replacements without Board approval and deriding executives.
- In again proposing a CBS/Viacom merger in 2018, Ms. Redstone has not only refused to agree to typical public company governance, but also improperly interjected herself into negotiations.
- Ms. Redstone reportedly expressed her willingness to replace CBS directors to compel a merger with Viacom regardless of the Special Committee's process, deliberations, and conclusion.
- Ms. Redstone unilaterally, and without Board approval, informed a potential acquirer of CBS to not make an offer for the Company, depriving the Board of the opportunity to consider a potentially value-enhancing transaction. *Id.* ¶ 2.

The Special Committee members, all independent directors of the Company, unanimously believe that the CBS Board has a fiduciary duty to act now to protect all stockholders and prevent Ms. Redstone from further breaches of her fiduciary duties. *Id.* ¶ 7.

5. The Redstones' and NAI's voting control over CBS is not matched by their economic interest. Through CBS's dual-class stock structure of Class A voting stock and Class B non-voting stock, NAI controls 80% of CBS's voting power, but owns only 10% of the economic interest. *Id.* ¶ 4. Ms. Redstone also controls Viacom through a similar dual-class stock structure. *Id.* ¶¶ 2, 24, 41.

6. The Special Committee has grave concerns that Ms. Redstone will use her control to irreparably interfere with the Company's effective and successful management and to rewrite the decision of the duly-constituted Special Committee. In particular, the Special Committee believes that Ms. Redstone will follow through on the threats expressed in the media—much like she did in her controversial takeover of the Viacom board in 2016, *id.* ¶¶ 63-66—and will seek to replace CBS's independent Board members, and make other changes to CBS's organizational documents to impede the CBS Board. *Id.* ¶ 62. Even if Ms. Redstone does not attempt to force a merger with Viacom, the harm to CBS and its stockholders is clear: despite management's record performance in the face of Ms. Redstone's conduct, CBS's stock has fallen from nearly \$70 to around \$50 in the last several months—an approximately \$7 billion loss in market cap born by Class B stockholders. *Id.* ¶ 3.

7. At the request of the Special Committee, CBS has called the Special Board Meeting to discuss ways in which the Board may protect the Company and its stockholders against Ms. Redstone. The Special Committee intends to recommend that the Board approve the issuance of a stock dividend that would dilute NAI's voting power (but not its economic interest) from 80% to approximately 17% in order to protect the long-term interests of CBS's stockholders going forward. *Id.* ¶ 71. This dividend is permitted by CBS's

charter, which authorizes a stock dividend “on the basis of a ratable distribution of identical securities to holders of shares of Class A Common Stock and Class B Common Stock.” *Id.* ¶ 25.

8. The contemplated dividend would dilute NAI’s voting control so that Ms. Redstone is no longer able to block the CBS Board from considering appropriate corporate strategies in the best interest of all stockholders, to violate repeated representations to stockholders about how they would be treated, to threaten to replace directors who do not do her bidding, and to force a merger not in the best interest of CBS stockholders (other than NAI). *Id.* ¶¶ 2, 6, 8. The dividend would not alter NAI’s economic stake, and NAI would continue to hold the largest voting position in the Company. *Id.* ¶ 72.

9. The Special Board Meeting is being duly noticed, in accordance with CBS’s bylaws, which will advise all directors — including Ms. Redstone — of its purpose. There are very real dangers that Ms. Redstone will seek to preempt the meeting, and obstruct the Board’s exercise of its fiduciary duties, by attempting to replace the Board members before they can meet or by making other changes to CBS’s organizational documents to frustrate the Board’s deliberations. There is also a danger that Ms. Redstone will attempt to interfere with any decision that may be taken by the Board after the meeting before they may become effective.

10. Accordingly, Plaintiffs seek a TRO under Court of Chancery Rule 65(b) to prevent any action to interfere with the Special Board Meeting or the effectiveness of actions to be taken at the meeting. If the TRO issues, the CBS Board will be able to make an informed decision on how to deal with Ms. Redstone's abuses and interference.

11. There is clear precedent for the Court to grant such relief: for example, in *Hollinger International, Inc. v. Black*, the court granted injunctive relief to prevent Conrad Black from undoing the independent process he had set up to govern the sale of the publishing company he controlled. 844 A.2d 1022, 1092 (Del. Ch. 2004). And, in *Shamrock Holdings v. Iger*, the court refused to dismiss a complaint that the board of Disney had violated its fiduciary duties by running a process to select its new CEO that was inconsistent with how it had announced the process to stockholders. 2005 WL 1377490, at \*6 (Del. Ch. June 6, 2005). This Court may issue an injunction to protect the independence of the CBS Board, and its ability to exercise its authority in compliance with its fiduciary duties, which is of critical importance to CBS's stockholders.

12. However, the dividend, if approved by the Board, will not be effective until this Court has ruled.

## ARGUMENT

13. The purpose of a temporary restraining order is “to protect the status quo and to prevent imminent and irreparable harm from occurring before a preliminary injunction hearing or the final resolution of a matter.” *Newell Rubbermaid Inc. v. Storm*, 2014 WL 1266827, at \*4 (Del. Ch. Mar. 27, 2014). To obtain a TRO, a plaintiff must demonstrate a “colorable claim,” that “it would be irreparably injured without interim injunctive relief,” and that “the balance of hardships tips in its favor.” *Id.* Plaintiffs’ required showing on the merits is “less exacting” at the TRO stage than at the preliminary injunction stage because of the absence of expedited discovery and the limited time the Court has to address the issues. *Arkema Inc. v. Dow Chem. Co.*, 2010 WL 2334386, at \*3 (Del. Ch. May 14, 2010). Rather, the “chief focus” when reviewing a TRO motion is “the nature and imminence of the allegedly impending injury.” *Id.*

14. *First*, the “colorable claim” requirement for a TRO requires that a plaintiff show “essentially a non-frivolous cause of action.” *Newell*, 2014 WL 1266827, at \*9 (citation omitted); *see also Reserves Dev. Corp. v. Wilmington Tr. Co.*, 2008 WL 4951057, at \*2 (Del. Ch. Nov. 7, 2008) (describing “lenient standard” plaintiff faces). Plaintiffs easily meet this standard.

15. Plaintiffs’ complaint adequately alleges that defendants have been abusing and are threatening to continue to abuse their control, in breach of their

fiduciary duties to the Company and its stockholders. In particular, Ms. Redstone's determination to force through a merger of CBS and Viacom on terms that are contrary to the best interests of the public stockholders — without allowing them any voice on the transaction notwithstanding their ownership of 90% of the economics of CBS — would constitute a breach of her duties. Further, any action to reconstitute the Board would subvert the Board-approved Special Committee process, to further Ms. Redstone's self-interest and be inequitable because the Redstones have repeatedly promised to stockholders that NAI *will do no such thing*. See Compl. ¶¶ 30-37.

16. CBS's stockholders invested in CBS on the strength of those representations, and, under this Court's precedents, it would be a fiduciary breach for NAI as a controller to abandon those promises for inequitable gain. For example, in *Shamrock Holdings*, the court refused to dismiss a claim by a major Walt Disney Company stockholder that the board had violated its fiduciary duties by not complying with its public representation that it would engage in a careful process to select the next CEO. 2005 WL 1377490, at \*5. Similarly, in *Dousman v. Kobus*, the court estopped a major stockholder from attempting to enforce a supermajority voting bylaw in a way that was inconsistent with his prior public disclosures. 2002 WL 1335621, at \*6-7 (Del. Ch. June 6, 2002). Any effort by Ms. Redstone and NAI to impose their own directors on CBS, in violation of

NAI's prior representations, would be a fiduciary breach, and thus Plaintiffs have stated more than a "colorable claim" and a "non-frivolous cause of action."

17. *Second*, CBS and its stockholders face a threat of imminent, irreparable harm. "Injury is irreparable when a later money damage award would involve speculation" or undue "difficulty of shaping monetary relief." *Hollinger*, 844 A.2d at 1090. That is the case here.

18. Ms. Redstone's potential response to the Special Committee's rejection of a Viacom transaction poses an existential threat to CBS. If Ms. Redstone can replace Board members or modify the Company's governance documents in the next three days, it is uncertain that the Board will be able to protect all stockholders by considering at the next Board meeting whether to take action in response to her threats and breaches of fiduciary duty.<sup>1</sup> This would leave Ms. Redstone with the unfettered ability to replace the Board and cram down a merger with Viacom, or otherwise take action that is detrimental to the public stockholders who hold 90% of CBS's equity.

19. This is a grave concern. Ms. Redstone and NAI, with the actual or effective acquiescence of Mr. Redstone, have in the past attempted to subvert the governance of CBS and Viacom. As explained in the Complaint, Ms. Redstone

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<sup>1</sup> Although under the SEC rules Ms. Redstone may be required to wait 20 days before she formally seats her directors, *see* 17 C.F.R. § 240.14c-2(b), it is unclear that the directors she purports to replace will be able to take any action.

took control of NAI from Mr. Redstone in highly contentious circumstances, which are still the subject of litigation. *See* Compl. ¶¶ 41-42. Ms. Redstone then promptly exercised written consents to pack the Viacom board with her own nominees. *Id.* ¶¶ 63-64. Since then, Ms. Redstone has attempted twice to force CBS and Viacom to merge, in an effort to bail out Viacom. *Id.* ¶¶ 43, 46.

20. If Ms. Redstone were permitted, in violation of her past promises to public stockholders, to replace the Board and force through a CBS/Viacom merger or otherwise interfere with the actions that may be approved at the Special Board Meeting, it will be virtually impossible for the Court to quantify the resulting damage to the stockholders: the Court could not know what would have happened if Ms. Redstone had not acted inequitably or what a fair remedy would be. *See, e.g., Fletcher Int'l, Ltd. v. Ion Geophysical Corp.*, 2013 WL 6327997, at \*19 (Del. Ch. Dec. 4, 2013) (noting superiority of injunctive relief over damages remedy where damages are hard to quantify).

21. The relief sought here is consistent with the relief sought in *Hollinger*, 844 A.2d 1022, in which this Court granted a corporation a preliminary injunction against a similar attempt by a controller to undo a strategic process with independent directors to which that stockholder had agreed. Black had “nearly absolute” control over Hollinger through high-vote stock, although he had only 15% of the equity interest. *Id.* at 1033. Black violated an agreement with the

board by threatening to sell one of Hollinger's principal assets for his own benefit and taking steps to disable the independent committee that he had agreed to establish to run the "strategic process." *Id.* at 1044-47. Then-Vice Chancellor, now-Chief Justice Strine enjoined Black's proposed asset sale. *Id.* at 1092.

22. CBS is at risk of the same inequitable conduct — an unfair transaction forced on it by a controlling stockholder. As in *Hollinger*, Ms. Redstone's controlling voting stake is disproportionate to her economic interest. As in *Hollinger*, Ms. Redstone faces a Special Committee and a majority independent Board who have proven they will stand up for the public stockholders and prevent her from using CBS in a manner contrary to the best interests of all stockholders. And as in *Hollinger*, there is a real risk that Ms. Redstone might remove the Board or otherwise frustrate Board action. In those circumstances, then-Vice Chancellor Strine granted an injunction against any action by the controlling stockholder that would harm the public stockholders and invalidated a bylaw amendment enacted by written consent that gave Black the ability to veto any action taken by Hollinger — which is exactly the same bylaw Ms. Redstone forced on Viacom in 2016 and may seek to force on CBS in the next three days. Compl. ¶ 63; *Hollinger*, 844 A.2d at 1092.

23. By comparison, the relief Plaintiffs seek here is modest, designed to allow the independent CBS Board to consider the recommendation of the Special

Committee that it approve the stock dividend. Plaintiffs seek an order preventing Ms. Redstone from violating her fiduciary duties by interfering with the orderly conduct of the upcoming Special Board Meeting, and from thereafter subverting any decisions taken in it.

24. **Third**, the balance of hardships weighs in Plaintiffs' favor. The TRO seeks an injunction against efforts by Ms. Redstone to interfere with the upcoming Board meeting by trying to replace the directors, to make any adverse changes to CBS's organizational documents, and to undermine the effectiveness of any actions to be taken by the Board at the meeting. All the TRO thus seeks is breathing space to allow the Board to comply with its fiduciary duties in the interests of all the Company's stockholders. Meanwhile, Ms. Redstone is simply being held to her past promises and will have a full opportunity to be heard. Indeed, as noted above, CBS commits that, in the event the CBS Board approves the stock dividend of Class A shares to be considered at the Special Board Meeting, CBS will not issue any Class A shares distributable in the stock dividend, or otherwise cause such dividend to become effective, pending expiration of the TRO or further order of the Court. As such, the balancing of hardships clearly weighs in favor of plaintiffs. *See, e.g., Newell*, 2014 WL 1266827, at \*11 ("not an undue hardship" for defendant to have to "honor her agreement"); *Stirling Inv. Hldgs., Inc. v. Glenoit Universal, Ltd.*, 1997 WL 74659, at \*3 (Del. Ch. Feb. 12,

1997) (balance of equities, requiring defendant to abide by terms of agreement, favored plaintiff, even though defendant would suffer some harm).

### **CONCLUSION**

25. For the reasons above, the Court should enter a TRO preventing NAI, Sumner Redstone, and Shari Redstone, and each of their directors, officers, agents, servants, employees, attorneys, and persons in active concert or participation with them, from (a) interfering with the composition of CBS's Board (other than electing the slate currently nominated for election at the May 18 annual meeting of stockholders) or modifying the Company's governance documents until any actions approved by the Board at the upcoming Special Board Meeting become effective; (b) taking any other actions to interfere with any decisions taken by CBS's Board at the Special Board Meeting; and (c) interfering with the issuance of any shares payable in a stock dividend.

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