



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DAVID A. STOCKMAN,)
)
 Plaintiff,)
)
 v.) C.A. No. 4227-VCL
)
 HEARTLAND INDUSTRIAL)
 PARTNERS, L.P., a Delaware limited)
 partnership and HEARTLAND)
 INDUSTRIAL GROUP, L.L.C., a)
 Delaware limited liability company,)
)
 Defendants.)

FIRST AMENDED AND SUPPLEMENTAL VERIFIED COMPLAINT

Plaintiff David A. Stockman, by and through his undersigned attorneys, for his First Amended and Supplemental Verified Complaint, alleges as follows:

NATURE OF THE PROCEEDING

1. Plaintiff David A. Stockman brings this action to obtain an order (i) compelling defendant Heartland Industrial Partners, L.P. (“HIP”) and/or Heartland Industrial Group, L.L.C. (“HIG”) and, together with HIP, the “Defendants”) to indemnify him for fees and expenses incurred in defending a criminal proceeding brought against Mr. Stockman arising out of his service on behalf of HIP as an officer and director of Collins & Aikman Corporation (“C&A”), which proceeding was dismissed by the filing of a *nolle prosequi*, and (ii) compelling HIP to advance fees and expenses incurred by Mr. Stockman in defending pending lawsuits brought against Mr. Stockman in the same capacity. C&A was liquidated in bankruptcy and has no means to satisfy any advancement or indemnification obligations to Mr. Stockman, and Mr. Stockman has been informed that all insurance policies under which he is entitled to coverage for his fees and costs of defense have been exhausted.

2. Mr. Stockman originally made a demand on HIP pursuant to Section 4.4(b) of the Amended and Restated Limited Partnership Agreement of Heartland Industrial Partners, L.P. dated as of May 10, 2000 (the “Partnership Agreement”) for HIP to advance Mr. Stockman’s fees and expenses incurred in defending the various proceedings related to his service with C&A. HIP, however, denied Mr. Stockman’s request for advancement under Section 4.4(b), forcing Mr. Stockman to bring this action to enforce his rights under Section 4.4(b) and for the fees and expenses incurred in this action.

3. After commencing this proceeding, the criminal indictment for which Mr. Stockman sought advancement was dismissed with prejudice through the filing of a *nolle prosequi* by the Acting United States Attorney for the Southern District of New York. Mr. Stockman then made a demand on HIP and HIG pursuant to Section 4.4(a) of the Partnership Agreement and Section 3.4 of the Amended and Restated Limited Liability Company Agreement of The Heartland Industrial Group, L.L.C. (the “LLC Agreement”) to indemnify him for the fees and expenses incurred in defending the criminal proceeding. HIP and HIG denied Mr. Stockman’s demand for indemnification, thereby forcing him to amend his original complaint and seek the Court’s assistance in enforcing his rights under Section 4.4(a) of the Partnership Agreement and Section 3.4 of the LLC Agreement.

THE PARTIES AND RELEVANT NON-PARTIES

4. David A. Stockman was a former member of Congress and the director of the Office of Management and Budget from 1981 through 1985.

5. HIP is a private equity firm formed in 2000 by, among others, Mr. Stockman, to make equity investments on behalf of HIP’s limited partners. HIP

maintained a portfolio of equity investments in several companies. Mr. Stockman is the Managing Member of HIP's General Partner, Heartland Industrial Associates L.L.C. ("HIA"), and the Managing Member of HIP's Investment Manager, defendant HIG.

6. In June 2005, at the outset of government investigations relating to C&A, Mr. Stockman entered into a Delegation Agreement under which he temporarily delegated his duties as Managing Member of HIA to an Executive Committee consisting of two Members of HIA, Daniel P. Tredwell and Timothy D. Leuliette, and Managing Member of HIG to Mr. Tredwell. During the pendency of the investigations and ensuing government actions, pursuant to the terms of the Delegation Agreement, Mr. Stockman has periodically renewed his delegation of authority. Under that delegation and subject to the terms of the Delegation Agreement, the Executive Committee has full authority and responsibility to execute the powers and duties of the Managing Member of HIA, including the powers and duties of HIA in its role as General Partner of HIP.

7. One of HIP's investments was in C&A. C&A designed, engineered, and manufactured automotive interior components for sale to automobile manufacturers. In 2001, HIP acquired approximately 60% of the outstanding shares of C&A. On behalf of HIP, and at the request of HIA as General Partner of HIP, Mr. Stockman became a member of the Board of Directors of C&A (the "Board") in February 2001, Chairman of the Board in August 2002, and Chief Executive Officer of C&A in August 2003. He continued serving as Chairman and CEO of C&A until May 2005. During this time period, HIP continued to acquire shares of C&A, and Mr. Stockman himself purchased \$1.5 million of C&A stock in the second half of 2004.

THE PROCEEDINGS

8. In 2002-2005, the auto industry, and in particular the business of companies like C&A which supplied component parts to auto manufacturers, came under great pressure from rising costs and declining demand. By 2005, C&A's business had begun to deteriorate, like many other auto manufacturer suppliers. In March 2005, a C&A internal management review identified certain historical accounting errors to be corrected, which were disclosed to the public. In May 2005, C&A filed for bankruptcy protection. The problems at C&A and the bankruptcy filing spawned government investigations, and led to the filing of a number of civil and criminal actions which named Mr. Stockman as a defendant in his capacity as, or because of his service as, a director and/or officer of C&A, including: *United States v. Stockman, et al.*, 07-Cr-220 (BSJ) (S.D.N.Y.) (the "Criminal Proceeding"); *SEC v. Collins & Aikman Corp., et al.*, 1:07-CV-02419 (SAS) (S.D.N.Y.); *K.J. Egleston v. Heartland Industrial Partners, L.P., et al.*, Case NO. 2:06-cv-13555 (including consolidated cases) (E.D. Mich.); *MainStay High Yield Corporate Bond Fund v. Heartland Industrial Partners, L.P., et al.*, 07-cv-10542 (E.D. Mich.); *Collins & Aikman Corp., et al. v. Stockman, et al.*, 07-cv-265 (SLR) (D. Del.); *Aurelius Capital Master, Ltd., et al. v. Stockman, et al.*, No. 081601483 (N.Y. Sup. Ct.); *In re Collins & Aikman Corp., et al.*, Case No. 05-55927 (SWR) (E.D. Mich. Bankruptcy) (including several adversary proceedings) (collectively, other than the Criminal Proceeding, the "Other Proceedings"). Apart from the last listed cases pending in bankruptcy court, the cases all involve alleged conduct by Mr. Stockman in the capacity of his service as a director and/or officer of C&A on behalf of HIP. The bankruptcy actions involve an attempt to recover from Mr. Stockman preferential

payments allegedly paid by C&A to HIG before the bankruptcy, which were allegedly paid to Mr. Stockman by HIG in his capacity as a member of HIG.

9. Mr. Stockman has incurred fees and expenses in the defense of the Proceedings. From the inception of the Criminal Proceeding and the Other Proceedings (together, the “Proceedings”), Mr. Stockman sought reimbursement of these fees and expenses under C&A’s directors and officers insurance coverage. Because insurance limits were exhausted by demands from numerous insureds in the many pending proceedings, the insurance coverage to date has only partially reimbursed Mr. Stockman’s fees and expenses to date, and based on policy language, coverage has been denied totally for fees and expenses in connection with the adversary proceedings in the bankruptcy court. In addition, Mr. Stockman’s attorneys have been advised by the insurance carriers that as of the date of this complaint, the amount of bills submitted to the insurance carriers for reimbursement exceeds the limits applicable to the remaining extant policies, leaving them unable to reimburse a portion of his already-incurred expenses. In short, Mr. Stockman has incurred fees and expenses to date that will remain unreimbursed by any available insurance policies and he continues to have to incur fees and expenses in defense of the pending actions.

THE RIGHT TO INDEMNIFICATION AND ADVANCEMENT

10. Section 4.4 of the Partnership Agreement provides for indemnification of and advancement to an “Indemnitee.” “Indemnitee” is defined in the Partnership Agreement as:

the General Partner, its Affiliates (including the Investment Manager, but excluding any Parallel Fund or Competing Fund), [] their respective officers, directors, agents, stockholders, members, employees and partners, and any other person who serves at the request of the General

Partner on behalf of the Partnership as an officer, director, partner, employee or agent of any other entities

(Partnership Agreement § 4.3(a).)

11. Indemnitees are entitled to indemnification pursuant to Section 4.4(a) of the Partnership Agreement:

To the fullest extent permitted by law, the Partnership agrees to indemnify and save harmless each of the Indemnitees from and against any and all claims, liabilities, damages, losses, costs and expenses (including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and reasonable expenses of investigating or defending against any claim or alleged claim) of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by any Indemnitee and or to which such Indemnitee may be subject by reason of its activities on behalf of the Partnership or in furtherance of the interest of the Partnership or otherwise arising out of or in connection with the affairs of the Partnership, its Portfolio Companies or any Alternative Vehicle, including acting as a director of a Portfolio Company or the performance by such Indemnitee of any of the General Partner's responsibilities hereunder or the Investment Manager's responsibilities under the Advisory Agreement or otherwise in connection with the matters contemplated herein or therein; provided, that: (i) an Indemnitee shall be entitled to indemnification hereunder only to the extent that such Indemnitee's conduct (A) was in or was not opposed to the best interests of the Partnership, (B) in the case of a criminal action or proceeding, the Indemnitee had no reasonable cause to believe his conduct was unlawful, or (C) did not constitute fraud, bad faith, willful misconduct, gross negligence, a violation of applicable securities laws or any material breach of the Agreement or the Advisory Agreement (which has not been cured within 30 days after due notice), and except that nothing herein shall constitute a waiver or limitation of any rights which a Partner or the Partnership may have under applicable securities laws or other laws and which may not be waived; and (ii) the Partnership's obligations hereunder shall not apply with respect to (x) economic losses or tax obligations incurred by any Indemnitee as a result of such Indemnitee's ownership of an interest in the Partnership or in Portfolio Company or (y)

expenses of the Partnership than an Indemnatee has agreed to bear; and provided, further, that any amount payable by the Partnership to, or on behalf of, an Indemnatee pursuant to this Section 4.4 as a result of any settlement of a claim against such Indemnatee in an amount in excess of \$1 million, shall be subject to prior approval of the LP Advisory Committee.

12. Indemnitees are entitled to advancement of fees and expenses incurred in defending claims that are subject to indemnification pursuant to Section 4.4(b) of the Partnership Agreement:

Expenses reasonably incurred by an Indemnatee in defense or settlement of any claim that may be subject to a right of indemnification hereunder shall be advanced by the Partnership prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Indemnatee to repay such amount to the extent that it shall be determined ultimately that such indemnatee is not entitled to indemnified hereunder. No advances shall be made by the Partnership under this Section 4.4(b) (i) without the prior written approval of the General Partner or (ii) in connection with an action brought against an Indemnatee by a Majority in Interest of the Limited Partners.

(Partnership Agreement § 4.4(b).)

13. Pursuant to Section 3.4 of the LLC Agreement, the Managing Member of HIG (defined in Section 3.1 of the LLC Agreement as Mr. Stockman) is entitled to indemnification from HIG:

Except to the extent, if any, the Advisory Agreement in effect specifically provides otherwise, [HIG] shall indemnify and hold harmless the Managing Member and his delegates and agents from any loss or damage incurred by them (including reasonable attorneys' fees and costs) by reason of any acts performed or omitted by them for or on behalf of the Company unless they committed such acts in bad faith or such acts were the results of active and deliberate dishonesty and were material to the cause of action so adjudicated or the Management Member or his agents shall have personally gained in fact a financial profit

or other advantage to which he or she was not legally entitled.

(LLC Agreement § 3.4).

MR. STOCKMAN'S REQUEST FOR ADVANCEMENT IS DENIED

14. In a letter dated July 16, 2008 (the "July 18 Letter"), counsel for Mr. Stockman informed counsel for HIP that Mr. Stockman expected the insurance coverage available under the C&A policies to be exhausted before the end of August and to advise HIP that once the insurance proceeds are exhausted, Mr. Stockman intended to seek advancement of his costs and expenses incurred in defending the Proceedings under Section 4.4(b) of the Partnership Agreement. In the July 18 Letter, counsel for Mr. Stockman also asked HIP to provide proposed language for the undertaking required by Section 4.4(b).

15. On August 11, 2008, after counsel for HIP had failed to respond to the July 16 Letter, counsel for Mr. Stockman sent an e-mail (the "August 11 E-mail") informing counsel for HIP that Mr. Stockman had been advised by C&A's insurance carrier that requests for reimbursement of defense costs in July from all sources would exhaust all of the remaining C&A directors and officers insurance. In the August 11 E-mail, counsel for Mr. Stockman asked that HIP inform Mr. Stockman of its position on his request for advancement.

16. By letter dated August 26, 2008 (the "August 26 Letter"), counsel for HIP responded to the July 16 Letter and the August 11 E-Mail. In the August 26 Letter, counsel for HIP informed counsel for Mr. Stockman that insurance coverage for Mr. Stockman was still available under policies issued to HIP, so any request for advancement was premature at this time. He advised that Mr. Stockman should seek

reimbursement of his defense fees and costs from the HIP insurance carrier and provided contact information. In addition, counsel for HIP also indicated that HIP believed that the language requiring written approval of the General Partner for any advancement gave the General Partner discretion to advance fees and expenses incurred by Indemnitees.

17. Mr. Stockman proceeded as requested by HIP by submitting requests for reimbursement that exceeded the available limits of the C&A directors and officers insurance policy to the HIP insurance carrier. As the fees submitted to the HIP insurance carrier mounted, counsel for Mr. Stockman asked the carrier for information regarding funds remaining under that policy before the insurance limits were exceeded. He was informed that the amount remaining available under the HIP insurance policy for reimbursement of all insureds was less than the fees and costs already submitted to the carrier for reimbursement by Mr. Stockman alone.

18. By letter dated October 29, 2008 (the "October 29 Letter"), counsel for Mr. Stockman advised counsel for HIP that requests for reimbursement of defenses costs submitted to HIP's insurance carrier would exhaust the amount remaining under that policy, and that therefore the only remaining avenue for advancement of Mr. Stockman's fees and costs of defense was HIP. As a result, in the October 29 Letter counsel for Mr. Stockman made a formal demand for advancement pursuant to Section 4.4(b) and submitted an unsigned form of undertaking to repay any amounts advanced if it is ultimately determined that Mr. Stockman is not entitled to indemnification, asking that HIP approve or edit the proposed undertaking.

19. By letter dated November 21, 2008 (the "Rejection Letter"), HIP rejected Mr. Stockman's demand for advancement. In the Rejection Letter, HIP took the position

that notwithstanding the language of Section 4.4(b) that “Expenses reasonably incurred by an Indemnitee . . . *shall be advanced* by the Partnership,” that section gave the General Partner complete discretion whether to make any advancement, and, if so, on any terms and conditions. Accordingly, HIP, which heretofore has not had to shoulder *any* of the burden of the legal fees and expenses incurred by its affiliates named in the Proceedings, took the position that it would not advance any sums to Mr. Stockman unless he agreed to several conditions or limitations not contained in Section 4.4(b): (i) that he accept a cap on total legal fees entitled to advancement; (ii) that he provide adequate security to assure repayment if it is ultimately determined that he is not entitled to indemnification; and (iii) a written certification that he (a) is entitled to advancement, (b) has not transferred any assets by gift other than in the ordinary course, and (c) has acted consistent with Section 4.4(a)(i) of the Partnership Agreement. In addition, HIP vaguely questioned statements in the draft form of undertaking sent with the October 29 Letter without specifying those objections or suggesting an alternative form of undertaking, and took the position that Mr. Stockman was not entitled to any advancement for defense of the preference action against him in bankruptcy court seeking the return of funds allegedly paid to him by HIG.

20. In addition to the fact that Mr. Stockman does not agree that Section 4.4(b) of the Partnership Agreement gives the General Partner complete discretion whether to make any advancement, and, if so, on any terms and conditions it chooses, the terms and conditions proposed by HIP are unacceptable to Mr. Stockman. Accordingly, Mr. Stockman had no choice but to commence this action to ensure continuing coverage of his mounting legal bills and expenses in defending the Proceedings.

21. In light of the unspecified objections counsel for HIP raised to his previously proposed form of undertaking, on December 5, 2008 Mr. Stockman delivered to counsel for HIP a signed undertaking tracking the exact language specified in Section 4.4(b).

22. Having received no response to the December 5, 2008 undertaking, on December 16, 2008, Mr. Stockman commenced this proceeding to enforce his right to advancement.

MR. STOCKMAN'S REQUEST FOR INDEMNIFICATION IS DENIED

23. On January 8, 2009, HIP filed a motion to dismiss and brief in support thereof. On January 9, in the Criminal Proceeding, the Acting United States Attorney for the Southern District of New York filed a *nolle prosequi* as to the indictment against, among others, Mr. Stockman. In the *nolle prosequi*, the Acting U.S. Attorney stated that after a renewed assessment of the evidence, "further prosecution of David Stockman ... would not in the interests of justice." The filing of a *nolle prosequi* in the Criminal Proceeding is the functional equivalent of a dismissal with prejudice of all charges brought against Mr. Stockman in the Criminal Proceeding.

24. By letter dated January 15, 2009, Mr. Stockman requested pursuant to Section 4.4 (a) of the Partnership Agreement and Section 3.4 of the LLC Agreement that HIP and HIG indemnify him for the fees and expenses incurred in defending the Criminal Proceeding. By letter dated January 21, 2009, HIP and HIG rejected Mr. Stockman's claim for indemnification for the Criminal Proceeding, arguing that notwithstanding the fact that Mr. Stockman was successful on the merits in the Criminal Proceeding, he may not be entitled to indemnification if, in the Other Proceedings, Mr. Stockman's conduct is

found not to have satisfied the standard of conduct required for indemnification set forth in the Partnership Agreement and the LP Agreement.

COUNT I
**(Indemnification Pursuant to Section 4.4(a) of the Partnership Agreement
and Section 3.4 of the LLC Agreement)**

25. Plaintiff repeats and realleges each and every preceding paragraph as if fully set forth herein.

26. Mr. Stockman is an Indemnitee under the Partnership Agreement because he served as an officer and director of C&A at the request of HIP and the claims asserted against Mr. Stockman in the Proceedings arise out of his service as an office and director of C&A.

27. As the Managing Member of HIG, the Investment Manager for HIP, Mr. Stockman also served as an officer and director of C&A on behalf of HIG.

28. The claims asserted against Mr. Stockman in the Criminal Proceeding were claims which may be subject to a claim for indemnification by Mr. Stockman pursuant to the Partnership Agreement and the LLC Agreement.

29. As a result of the filing of the *nolle prosequi*, Mr. Stockman was successful on the merits in the Criminal Proceeding.

30. Mr. Stockman is entitled to an order compelling HIP and HIG to indemnify him for the fees and expenses Mr. Stockman incurred in the Criminal Proceeding for which he has not already been reimbursed.

COUNT II
(Advancement Pursuant to Section 4.4(b) of the Partnership Agreement)

31. Plaintiff repeats and realleges each and every preceding paragraph as if fully set forth herein.

32. Mr. Stockman is an Indemnitee because he served as an officer and director of C&A at the request of HIP and the claims asserted against Mr. Stockman in the Proceedings arise out of his service as an office and director of C&A.

33. The claims asserted against Mr. Stockman in the Proceedings are claims which may be subject to a claim for indemnification by Mr. Stockman.

34. All other sources of advancement available to Mr. Stockman for the fees and expenses incurred in defending the Proceedings have been exhausted.

35. Mr. Stockman demanded advancement for the fees and expenses incurred in defending the Proceedings and submitted the undertaking to HIP required by Section 4.4(b) of the Partnership Agreement.

36. HIP denied Mr. Stockman's demand for advancement based on the argument that the General Partner retains complete discretion whether to make any advancement at all and, if so, on any terms and conditions it chooses. The plain language of Section 4.4(b) does not give the General Partner the discretion to withhold advancement, nor does it give the General Partner discretion to set any terms and conditions on advancement that it chooses.

37. Mr. Stockman is entitled to an order from the Court compelling HIP to advance Mr. Stockman any unreimbursed fees and expenses he has already incurred in defending the Other Proceedings.

38. Mr. Stockman is entitled to an order from the Court compelling HIP to advance Mr. Stockman the fees and expenses he incurs in the future defending the Other Proceedings.

**COUNT III
(Fees for Fees)**

39. Plaintiff repeats and realleges each and every preceding paragraph as if fully set forth herein.

40. Pursuant to applicable Delaware law, if Mr. Stockman is successful on Count I and/or Count II, he is entitled to an award of the fees and expenses incurred in bringing the successful portions of this action.

41. Mr. Stockman has incurred and will continue to incur fees and expenses in the prosecution of this action.

42. Mr. Stockman is entitled to an order compelling HIP to pay the reasonable fees and expenses incurred in bringing this action.

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Enter judgment in favor of Mr. Stockman and against HIP and HIG on Count I;
- B. Enter an Order compelling HIP and HIG to indemnify Mr. Stockman for any unreimbursed fees and expenses incurred in defending the Criminal Proceeding;
- C. Enter judgment in favor of Mr. Stockman on Count II;
- D. Enter an Order compelling HIP to advance to Mr. Stockman any unreimbursed fees and expenses incurred in defending the Other Proceedings to

the date of such Order without the terms and conditions proposed in the Rejection Letter;

E. Enter an Order compelling HIP to advance to Mr. Stockman the fees and expenses incurred in defending the Other Proceedings after the date of such Order without the terms and conditions proposed in the Rejection Letter;

F. Enter an Order compelling HIP and HIG to pay Mr. Stockman the fees and expenses incurred in prosecution this action;

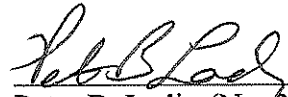
G. Award Mr. Stockman pre-judgment and post-judgment interest;

H. Grant such other and further relief as this Court deems just and proper.

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Dated: February 3, 2009

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