NOTICE OF SPECIAL BOARD MEETING OF
THE BOARD OF DIRECTORS OF
MERCHANT FACTORS CORP.

January 26, 2024

NOTICE IS HEREBY GIVEN, that a Special Meeting of Board of the Directors (the "**Board**") of Merchant Factors Corp., a New York corporation (the "**Company**") will be held at 1:30 PM New York City time at the corporate office of the Company at 1441 Broadway, 22nd Floor, New York, New York, 10018 on March 13, 2024 via Zoom call. The agenda of the Special Board Meeting will be the removal of Russell Kaye pursuant to Article III, Section 4 of the Amended and Restated By-Laws of the Company, as of January 21, 2022 (the "**Bylaws**") and to transact such other business as may be properly come before this Special Meeting or any adjournment or postponement of this Special Meeting.

Only directors are entitled to notice of and to vote at the Special Meeting and at any adjournment or postponement of the Special Meeting. All directors are cordially invited to attend the Special Meeting via this electronic call. The meeting is scheduled for one hour.

Article III, Section 4(a) of the Bylaws provides that a director can be removed for "Cause" by a resolution adopted by the affirmative vote of two thirds of the Board members present a meeting. Cause includes:

"(ii) inappropriate behavior or misconduct that is detrimental to the corporation and/or the proper functioning of the Board, including but not limited to:
1. threats and/or personal attacks on other directors, whether verbal, written, by email or in social media;
2. continual disruption of Board meetings; and/or;
3. engaging in persistent inappropriate, abusive, or destructive behavior.'

Mr. Kaye has for the last several years on numerous occasions, including at the most recent Board meeting held on December 21, 2023 (the "**December 2023 Meeting**"), threatened and verbally attacked each and every other director. Mr. Kaye additionally has treated the directors and the Company's outside counsel in a condescending and unprofessional manner in emails if they do not immediately agree with him or acquiesce to his immediate demands and desires. For example, see the attached emails dated October 26, 2023. Mr. Kaye continually refuses to treat other Board members with respect and professionalism and does not recognize when others are speaking, disrupting the Board meetings. This aberrant behavior constitutes persistent inappropriate, abusive and destructive behavior.

Mr. Kaye has continually disrupted Board meetings including the December 2023 Meeting, requiring the then Chairman to "mute" Mr. Kaye's telephone's microphone to conduct the properly called for business of the meeting. Mr. Kaye continued to raise items which had previously been discussed on prior meeting agendas (his subordinated debt offering, for example) and which the Chairman had ruled already Mr. Kaye out of order. Mr. Kaye continued to engage in this persistent inappropriate and abusive behavior. For example, see the attached emails dated December 27, 2023.

Additionally, despite repeated admonishments to the contrary, Mr Kaye continues to believe that the directors need to immediately respond to his repeated emails and calls outside of Board meetings. And when they do not, he continues this behavior. He has failed to provide any authority supporting his abusive behavior. Such continued emails and calls further evidences

Mr. Kaye's persistent inappropriate, abusive, or destructive behavior. For example, see the attached email of January 8, 2024. Further as a director he has threatened "to be all over you" to the CEO with daily call and believes this is his proper oversight obligation. See email dated December 28, 2023. Again exhibiting abusive and threatening behavior.

Further, Mr. Kaye threatened Mr. Kaufman, a partner of Thompson Coburn LLP, who serves as outside counsel to the Company that he would be "fired" and that Mr. Kaye would file a unwarranted ethics complaint against Mr. Kaufman (including an email which listed solely as a subject line "Last chance to reconsider" and listed in the body an address of a Grievance Committee in White Plains, New York) if he did not conform his behavior according to Mr. Kaye desires. To further these efforts, to no effect, Mr. Kaye additionally called "an emergency shareholder meeting" to discuss the "departure of Mr. Kaufman." For example, see the attached emails dated as of December 24, 2024, December 29, 2024 and December 27, 2023. Again further evidencing Mr. Kaye's persistent inappropriate, abusive, or destructive behavior.

If you have any questions about the Special Meeting, please contact the Company's secretary at the Company's corporate offices.

EXHIBIT to
NOTICE OF SPECIAL BOARD MEETING OF
THE BOARD OF DIRECTORS OF
MERCHANT FACTORS CORP.
January 26, 2024

Archived: Thursday, January 25, 2024 9:31:02 AM
From: kayer@optonline.net
Mail received time: Thu, 26 Oct 2023 12:54:09
Sent: Thu, 26 Oct 2023 13:51:55
To: Kaufman, David J.
Subject: Fwd: another email
Importance: Normal
Sensitivity: None

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

------ Original Message ------
From: kayer@optonline.net
To: awinters@merchantfactors.com; Marc.Leaf@dbr.com
Sent: Tuesday, August 1, 2023 7:09 AM
Subject: another email

Adam and Marc,

Here's another email copied below.

When are you going to respond to my emails requesting further discussion? When will you start turning over the emails and other requested materials that you both agree that I'm entitled to receive? When and how will our settlement discussions continue?

-Russell

On November 7, 2019 at 2:43 PM Steven Kaye <skaye@merchantfinancial.com> wrote:

Dear Shareholders,

Historically, when Merchant needed to increase its capitalization to satisfy covenants with our lending group, it was decided that instead of distributing 100% of profits each year only 70% would be distributed. We were then faced with the choice of designating the remaining funds as retained earnings or asking the shareholders to lend back a portion of these funds as subordinated debt. This offered shareholders the ability to earn interest on the sub-debt. Initially, all shareholders participated on a pro-rata basis relative to shares held.

This sub-debt was intended to become part of the permanent capitalization of the company and commitments were made to the lending group that this capital would remain in the business in order to comply with Merchant's net worth covenant. This was reflected in the subordination agreements we signed.

Over time, through a series of events, some shareholders were allowed to reduce or increase sub-debt relative to their pro-rata share. This has created a situation where risk and reward have become unbalanced among shareholders. I believe we should rectify this situation.

There are several ways this can be done:

- **Voluntary Rebalancing Sub-Debt** – The company decides on how much sub-debt it wants to maintain and all shareholders voluntarily subscribe to their proper pro-rata share; no more or less.
- **Eliminate Sub-Debt** – We hold back distributions until all sub-debt is repaid from profits. We would then need to agree on a paydown schedule.
- **Increase Interest Rate** – We freeze the current total amount of outstanding sub-debt and raise the interest rate an additional 2% – 4%. Voluntary exchanges among shareholders would be permitted. As additional interest payments reduce the total distribution amounts, this will help to rebalance the risk vs. reward of holding sub-debt. Additionally, this helps offset recent reductions to the Prime Lending Rate.

There may be other methods of restoring fairness to the unbalanced risk vs reward created by uneven holding of sub-debt. I would like to discuss these and vote on a preferred approach in the next Board of Directors meeting.

-Steve

Archived: Thursday, January 25, 2024 9:31:52 AM
From: kayer@optonline.net
Mail received time: Thu, 26 Oct 2023 12:54:09
Sent: Thu, 26 Oct 2023 13:51:55
To: Kaufman, David J.
Subject: Fwd: another email
Importance: Normal
Sensitivity: None

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------ Original Message ------
From: kayer@optonline.net
To: awinters@merchantfactors.com; Marc.Leaf@dbr.com
Sent: Tuesday, August 1, 2023 7:09 AM
Subject: another email

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There may be other methods of restoring fairness to the unbalanced risk vs reward created by uneven holding of sub-debt. I would like to discuss these and vote on a preferred approach in the next Board of Directors meeting.

-Steve

Archived: Thursday, January 25, 2024 10:08:03 AM
From: kayer@optonline.net
Mail received time: Thu, 26 Oct 2023 12:52:28
Sent: Thu, 26 Oct 2023 13:50:17
To: Kaufman, David J.
Subject: Fwd: Re: RE: Board meeting- proposed date: Monday , August 21, 2023 at 2 p.m.
Importance: Normal
Sensitivity: None

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

------ Original Message ------
From: kayer@optonline.net
To: marc.leaf@faegredrinker.com
Sent: Monday, July 24, 2023 2:22 PM
Subject: Re: RE: Board meeting- proposed date: Monday , August 21, 2023 at 2 p.m.

Hi Marc,

Thank you for your direction on this. I will be happy to follow your advice and avoid discussion of the substance of the settlement and follow your lead on the discussion. I just wanted to know if the subject would be discussed and what I should anticipate.

It isn't on the agenda. Is the intent to discuss under "other business" or should it be listed separately?

-Russell

------ Original Message ------
From: marc.leaf@faegredrinker.com
To: kayer@optonline.net
Cc: jshapiro@lowenstein.com; awinters@merchantfactors.com
Sent: Monday, July 24, 2023 10:32 AM
Subject: RE: Board meeting- proposed date: Monday , August 21, 2023 at 2 p.m.

Russell,

At the August board meeting, Adam will brief the board on the process that he and you are engaged in, regarding a potential settlement of any claims that you or the Trust may have regarding the interest rate payable on the Trust's sub debt, and related matters. If you want to add anything from your perspective, you should be free to do so. However, as settlement discussions are still in progress, a general discussion among the other board members on the substance of any such claims would not be helpful or appropriate. Of course, the board will have an opportunity to deliberate any settlement proposal that management may ultimately recommend.

-- Marc

From: kayer@optonline.net <kayer@optonline.net>
Sent: Tuesday, July 18, 2023 8:47 AM
To: Leaf, Marc A. <marc.leaf@faegredrinker.com>
Subject: Fwd: Board meeting- proposed date: Monday , August 21, 2023 at 2 p.m.

This Message originated outside your organization.

Marc,

In you opinion, would a discussion of settlement talks related to the sub debt dispute at this meeting be in the best interests of Merchant?

Thanks,

-Russell

------ Original Message ------
From: ngrusd@merchantfinancial.com
To: kayer@optonline.net; eyemetrics@gmail.com; rwollman1218@gmail.com; bronalea@aol.com;

awinters@merchantfinancial.com
Cc: dtuzzio@merchantfinancial.com; marc.leaf@faegredrinker.com
Sent: Monday, July 17, 2023 6:14 PM
Subject: Board meeting- proposed date: Monday , August 21, 2023 at 2 p.m.

Dear Directors:

Please advise your availability for the above meeting via zoom.

The proposed Agenda is:

1. Approval of minutes of meeting held on May18, 2023. (Previously circulated).

2. Review of internal Financial Statements for the six months ended June 30, 2023.(To be circulated).

3. CEO report on current conditions; prospects for the balance of the year: return to office; and other matters.

4. Other business.

Please advise if you wish to add any Agenda items.

Best regards

Neville

Archived: Thursday, January 25, 2024 10:09:27 AM
From: kayer@optonline.net
Mail received time: Thu, 26 Oct 2023 12:50:06
Sent: Thu, 26 Oct 2023 13:47:55
To: Kaufman, David J.
Subject: Fwd: Fwd: RE: SUB DEBT DOCUMENTS
Importance: Normal
Sensitivity: None

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

------ Original Message ------
From: kayer@optonline.net
To: awinters@merchantfactors.com Cc: Marc.Leaf@dbr.com; jshapiro@lowenstein.com
Sent: Monday, July 10, 2023 8:50 AM
Subject: Fwd: RE: SUB DEBT DOCUMENTS
Adam,

Please note here, in the below email, that I was explaining to you why I couldn't sign the sub debt notes as early as Feb 2016 but you were still focused on getting me to sign them. You were not listening to why they had to be repaid, not signed, and indeed they were eventually repaid, not signed. Your judgement, at this time, to try to get me to sign these, was wrong. Steve also refused to sign them but could have at any point.

Steve was manipulating Neville, who, in turn was influencing you, Bonnie and Rick to take actions against the interests of the Trusts and myself. That's how I explain the wrong decisions that were made keeping the Trusts rate low while punishing me by stonewalling me making an investment in additional sub debt by me unwise and risky. I tried to acquire more sub debt when it became clear what your plan for the sub debt was in 2018, but YOU wouldn't allow this.

I hold you personally responsible because you oversaw this disaster and were the only one who could have stopped it. Maybe you had more important things on your mind at the time, but the buck stops with YOU. I appealed to you and was ignored. And more importantly, YOU are the ONLY board member who could have changed things then and could also change things now. Steve, you and I make the decisions, not Neville, nor Rick nor Bonnie. Yes, sometimes you have to take sides and you took the side that denied the Trusts the higher interest rate in 2016 and destroyed any relationship left between me and Merchant by deciding that my refusal to sign mom's notes was the problem and I was responsible. Again, Steve didn't sign them either, so why was I the culprit? Because Steven focused YOU on getting ME to sign the notes. But that was never the solution to this problem. I proposed paying mom back over three years which would have been the right thing to do but you (or Neville or the board) rejected this decision and continued to try to convince me to sign the notes.

When I finally agreed six months later, Steven wouldn't sign them either. So who caused the Emergency Loan of 2018 at prime +6% to become necessary? It certainly wasn't me. Who is accountable for millions in extra income costs that came straight out of my 1/3 share of the profits? There's no "grey area" here in my mind.

I had previously cautioned you about Steve's desire and ability to manipulate you and Neville. Steven quickly realized that Neville was far more gullible and worked primarily through him. You, being busy, just followed Neville's lead. But you were wrong to go along and that's why you can't explain why you (and the board) did the unwise things that you did. Steve convinced Neville and continues to work Neville to this day. That would also explain the problem with Neville ignoring me for a month last December, intending to follow through with Steve's wishes to cut the salaries and health care for Board members against our objections. I paid my attorney to address this. I shouldn't have to pay anything due to Neville's improper actions.

Steven and I agreed to pay for most of the $600,000 in legal fees incurred so far. The remaining balance is under $100,000. I believe that Merchant's improper board actions caused much of this expense and it is therefore, appropriate for Merchant to reimburse some of the legal fees incurred over the past seven years. What do you think would be fair? All I desire here is fairness and then we'll be done with this dispute. And if the Merchant Board made a mistake that harmed the Trusts and myself, Merchant should have to bear these legal fees.

Either way, the documentation that I want most from Merchant is likely to have occurred between Steve and Neville, so you might want to start with those conversations first. Of course, any of the discussion on this subject from which I was excluded, is of greatest interest. Again, I'm most interested in how the decisions were made. Many were made without my knowledge, so I would like to know how they came about. Do you feel that Marc provided sufficient and proper advice during this period? What did you ask him and what was his advice? Who said what and how were these questionable decisions made?

Now I sent you more facts in the below email, how about sending me something that I don't have pertaining to this subject. When would be good for a follow up call this week?

-Russell

------ Original Message ------
From: kayer@optonline.net
To: ngrusd@merchantfin.com; kayest@yahoo.com; awinters@merchantfactors.com; HBader@ballonstoll.com
Sent: Sunday, February 28, 2016 9:55 AM
Subject: RE: SUB DEBT DOCUMENTS

Neville,

"If you elect not to sign these documents, we respectfully request a meeting with you , your accountant, Steven and Howard Bader as soon as possible, to discuss the future of Merchant."

You still don't seem to understand that this isn't a choice on my part. Perhaps you can suggest how we pay a 50% estate tax and several million more in additional obligations when my mother dies. You negotiated a deal with the banks that the Kayes can't honor. This is not a problem that I created nor can do anything about. I've been calling for long term planning for Merchant since my father died nine years ago and little to none has been done, at least as far as I've been informed.

I'll let you or Howard get in touch with Barry Sunshine of Janover to see if Tuesday or Wednesday is OK with him. I need for you to have a close working relationship with an accountant that I trust to look out for the Kayes interests, which I have not had for the past nine years, so I want you and Merchant dealing with Barry directly.

-Russell

On Fri, Feb 26, 2016 at 05:19 PM, Neville Grusd wrote:

> Dear Russell:
>
> I am Fedexing you the Sub Debt documents for yourself, your Mom, and the 2 Trusts.
>
> No notarization are needed and we have included a prepaid envelope that you can leave at your mail box.
>
> The documents have been prepared on the same basis as have been signed by all the other shareholders,
>
> i.e. the due dates of the Notes have been extended to July 31, 2018.
>
> Adam and I are well aware of your desire not to extend your Mom's Notes and those of the Crossing 18 Trust , and intend to withdraw the funds on July 31, 2107.
>
> However, as management , we must stress that we believe this will have a very negative impact on our bank relationships.

The increased bank line, which we recently negotiated on very favorable terms, expires on June 30, 2018 and the banks expect the sub debt to be extended to at least that date

The only issue we have had with the banks is our leverage and their desire for us to increase our capital . We believe anything we do to show that the shareholders are not supportive and , in fact , want to reduce the capital, will cause them much concern.

We feel it is our fiduciary duty to inform you of the foregoing and that , unless there is someone who is willing to replace the sub debt you want repaid, we will

have to make serious decisions about future distributions (and the tax consequences of cutting them) ; the amount of the bank lines ; our future growth potential and the value of the company.

If you elect not to sign these documents, we respectfully request a meeting with you , your accountant, Steven and Howard Bader as soon as possible, to discuss the future of Merchant.

Best regards,

Neville

Neville Grusd

President

Merchant Financial Corporation

1441 Broadway, 22nd Floor

New York, NY 10018

Direct Tel: 212-840-2916

Direct Fax: 646-653-7732

Main Office:

Phone: 212-840-7575 Ext. 201

Fax: 212-869-1752

From: kayer@optonline.net
Mail received time: Thu, 26 Oct 2023 12:48:18
Sent: Thu, 26 Oct 2023 13:46:07
To: Kaufman, David J.
Subject: Fwd: Re: FW: Re: Notes for Trusts
Importance: Normal
Sensitivity: None
Archived: Thursday, January 25, 2024 10:10:37 AM

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

Marc recommended to Adam that he settle these outstanding claims. I started a negotiation and we started to establish the facts but that's when Adam lost interest and stopped responding.

------ Original Message ------
From: kayer@optonline.net
To: awinters@merchantfactors.com
Cc: Marc.Leaf@dbr.com; jshapiro@lowenstein.com; pknierim@ctseniorlaw.com
Sent: Saturday, July 8, 2023 8:53 AM
Subject: Re: FW: Re: Notes for Trusts

Adam and Marc,

We have a huge disagreement as to the facts of what happened 2016-17.

I have described to you exactly how I believe that the Trusts and myself were improperly treated during the sub debt restructure of 2016-18. You have offered no alternative explanation. One or both of you have to start reading my emails in order to establish the facts.

I doubt Adam's ability and sincerity in doing this. After half an hour on the phone yesterday he started whining about having to go negotiate a $100,000,000 deal or something of the sort and had to end the call. I understood this as "I have more important things to do." Excuse me if I'm wrong. I don't believe that he has the patience to deal with establishing the facts. I believe my time to be more valuable than his (he believes the opposite) and I'm willing to put the time in to establish the facts and come to a fair settlement. I may be wasting his time but he is wasting an equal amount of mine. Agreeing on the facts is necessary before we can discuss a meaningful settlement. I understand that you don't want to pay Marc to do this, yet you will pay Marc to pursue devisive and unenforceable bylaws that Marc knows are useless and a waste of money yet fails to inform management or the board of this. I think that paying Marc to negotiate this settlement may be the alternative that works better. Your decision. Then we can talk about what my limited time left with my wife is worth and what fair compensation for me would be.

Nonetheless, below is an email exchange that may not come up in your search. Read it and you will see that I was willing and wanting to sign the notes in Sept. 2016 but Steve refused and that's why they weren't signed.

So, again, I ask how it came to be that the Trusts were paid less than the other debt holders and that I was ignored for close to two years. Please answer this as it has been asked and ignored many times. You don't offer any narrative or explanation.

I will now send another thread from the same time which documents my frustration with being ignored and not told what other board members were being told. Where, when and who made the decision to keep the trusts at the old rate and not tell Russell about your plans? Did Marc recommend this. Yesterday, you said that it wasn't Steve and he was mine prime suspect. So what is your narrative as to how this came to be.

Oh, and read the below email and please offer your comments as to why you still believe that my refusal to sign was the problem, too.

I anxiously await a response from either of you along with some straight, honest talk.

-Russell

------ Original Message ------
From: kayer@optonline.net
To: ngrusd@merchantfin.com; awinters@merchantfactors.com; kayest@yahoo.com
Sent: Friday, September 30, 2016 2:01 PM
Subject: FW: Re: Notes for Trusts

Adam and Neville,

Steven is no longer giving his consent to having me sign the sub debt notes, as attorney, for my mother, as was most recently suggested and as has been done before.

Since he could challenge my authority to sign these notes, I have been advised by my attorney not to sign the notes unless Steve gives his consent.

Our attorneys won't be able to speak for the next ten days or so and we'll be cutting it pretty close with our end of October deadline but this is what Steve is now insisting upon.

See below correspondence.

-Russell

-------- Begin forwarded message --------
Subject: Re: Notes for Trusts
Date: 09/30/16 01:46:45 PM
From: "Russell Kaye" <kayer@optonline.net>
To: "Steve Kaye" <eyemetrics@gmail.com>, "Neville Grusd" <ngrusd@merchantfin.com>

OK, so if I don't have your approval, I will not be signing the notes.

Sorry to hear that you have changed your mind and are now delaying this.

My attorney is unavailable for the next week but he is trying to set up a meeting with Pat the following week. We'll address everything then.

-Russell

On Fri, Sep 30, 2016 at 01:09 PM, Steve Kaye wrote:

\> Your attorney is certainly free to discuss that point with Pat
\> Carpenter.
\>
\> -Steve
\>
\>
\> On 9/30/2016 12:39 PM, Russell Kaye wrote:
\>\> Steve,
\>\>
\>\>
\>\> I've been in communication with Neville and my attorney this morning
\>\> and I'd like to go ahead and sign both notes, as POA for mom, as done
\>\> previously. My attorney would like your consent, so that we can have
\>\> Neville go ahead and prepare notes today.
\>\>
\>\>
\>\> What say you?
\>\>
\>\>
\>\> -Russell
\>
\>

Archived: Thursday, January 25, 2024 10:14:30 AM
From: kayer@optonline.net
Mail received time: Thu, 26 Oct 2023 12:39:27
Sent: Thu, 26 Oct 2023 13:37:16
To: Kaufman, David J.
Subject: Fwd: Fwd: Fwd: Re:
Importance: Normal
Sensitivity: None

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

------ Original Message ------
From: kayer@optonline.net
To: Marc.Leaf@dbr.com Cc: jshapiro@lowenstein.com; awinters@merchantfactors.com
Sent: Saturday, July 1, 2023 10:20 AM
Subject: Fwd: Fwd: Re:
Marc,

I wrote to you yesterday requesting a schedule of when I could expect to start receiving the requested documents. I will require these documents regardless of the outcome of settlement talks with Adam. As trustee of the Crossing Trust, it is important to determine why the Trust was left at the old interest rate. Was this your advice to Adam? The documentation will establish the facts here and obscuring the facts is not in the best interests of Merchant.

When can I expect to start receiving the documents. I understand if I don't get an answer until the start of the business week but I DO request an answer to this question, again.

-Russell

------ Original Message ------
From: kayer@optonline.net
To: Marc.Leaf@dbr.com; awinters@merchantfactors.com
Sent: Friday, June 30, 2023 7:32 AM
Subject: Fwd: Re:

Marc,

It's been over a week now. I suspect Adam's intention to resolve this matter, so we need to reestablish the facts and confront management directly with them.

When can I expect to start receiving the requested documents? I'm going to need to determine how the decision to leave the Trusts at the old interest rate while raising the other debt holders interest rate by 4% was made. I can assure you that I wasn't included in these discussions, so as a trustee, I need to determine exactly why the Trusts were left out of this action by Merchant. Please tell me how much longer of a delay will there be before you start to turn over these documents and approximately how long it will take to produce all of the requested materials.

-Russell

------ Original Message ------
From: kayer@optonline.net
To: awinters@merchantfinancial.com
Sent: Wednesday, June 21, 2023 7:14 AM
Subject: Re:

Hi Adam,

Thanks for the update.

I look forward to hearing from you.

-Russell

------ Original Message ------
From: awinters@merchantfinancial.com
To: kayer@optonline.net
Sent: Tuesday, June 20, 2023 6:38 PM
Subject:

Good evening Russell,

I have a call with Marc Leaf tomorrow to discuss what you and I talked about. I will be in touch shortly thereafter.

Adam Winters
President/CEO

MERCHANT FINANCIAL GROUP

New York Office
1441 Broadway, 22nd Floor, New York, NY 10018

Phone: 212-840-7575

Archived: Thursday, January 25, 2024 9:47:29 AM
From: kayer@optonline.net
Mail received time: Thu, 26 Oct 2023 12:38:53
Sent: Thu, 26 Oct 2023 13:36:43
To: Kaufman, David J.
Subject: Fwd: Re: Re: Merchant
Importance: Normal
Sensitivity: None

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

------ Original Message ------
From: kayer@optonline.net
To: awinters@merchantfinancial.com; marc.leaf@faegredrinker.com Cc: awinters@merchantfactors.com; jshapiro@lowenstein.com
Sent: Saturday, July 1, 2023 10:08 AM
Subject: Re: Re: Merchant

Yes, I'll be here.

It would be nice if you and Marc had let me know that you wouldn't be around for a while when we were in the middle of discussions. You both didn't answer for a week or more.

I will be needing all of the requested documents regardless of the outcome of our discussions. Please let me know when I can expect to start receiving them.

-Russell

------ Original Message ------
From: awinters@merchantfinancial.com
To: kayer@optonline.net; marc.leaf@faegredrinker.com
Cc: awinters@merchantfactors.com; jshapiro@lowenstein.com
Sent: Friday, June 30, 2023 9:21 AM
Subject: Re: Merchant

Sorry Russell. I was away on family vacation. Are you free to speak Monday

Adam Winters
President/CEO

MERCHANT FINANCIAL GROUP

New York Office
1441 Broadway, 22nd Floor, New York, NY 10018

Phone: 212-840-7575

From: kayer@optonline.net <kayer@optonline.net>
Sent: Friday, June 30, 2023 8:21:37 AM
To: Leaf, Marc A. <marc.leaf@faegredrinker.com>
Cc: Adam Winters <awinters@merchantfactors.com> Shapiro, Jeffrey <jshapiro@lowenstein.com>
Subject: Re: RE: Merchant

Adam,

I'm still waiting to hear back from you to determine if we agree upon the facts. If not, I'd like to start getting documents as soon as possible as these have been requested several times.

-Russell

------ Original Message ------
From: marc.leaf@faegredrinker.com
To: kayer@optonline.net
Cc: awinters@merchantfactors.com
Sent: Thursday, June 22, 2023 10:21 AM
Subject: RE: Merchant

Russell,

Thanks for the update. I've spoken to Adam and he thinks it would be most productive for him to work with you directly on this, rather than getting me involved.

Kind regards,

Marc

From: kayer@optonline.net <kayer@optonline.net>
Sent: Wednesday, June 14, 2023 2:41 PM
To: Leaf, Marc A. <marc.leaf@faegredrinker.com>
Cc: winters, adam <awinters@merchantfactors.com>
Subject: Merchant

This Message originated outside your organization.

Hi Marc,

I called Adam this morning and had a discussion about my sub debt claim on behalf of the Crossing Trust. I feel that Adam and I communicated well and I expect that he will speak to you about the call.

I have advised Jeff Shapiro as of the end of last week to cease any additional work on behalf of the Trust for now as I attempt to reach a meeting of the minds with Adam. I therefore would ask you to communicate directly with me.

Jeff has advised that you want more specific direction as to which documents to produce and that our request was overly broad. Instead of searching for documents with "debt", which you claim would produce "hundreds of thousands" of matches, perhaps just try "subdebt" and "sub debt". But I'm not a computer search expert, so you need to figure this stuff out on the Merchant end. I can only provide a description of what I'm looking for and it isn't "debt" documents-it's "subdebt" documents, a much smaller subset.

Please start gathering these documents so that we can determine what actually happened here and therefore what is a fair settlement. Don't presume that the smallest dollar amount is in the best interests of Merchant without consulting Adam on that point. I think that we both want fair over cheapest, but please ask Adam, if in doubt.

If you have any questions, please don't hesitate to ask.

-Russell

Archived: Thursday, January 25, 2024 10:11:24 AM
From: kayer@optonline.net
Mail received time: Thu, 26 Oct 2023 12:44:18
Sent: Thu, 26 Oct 2023 13:42:06
To: Kaufman, David J.
Subject: Fwd: quick question
Importance: Normal
Sensitivity: None

They are just in denial that any of this happened and trying their best to move on.

------ Original Message ------
From: kayer@optonline.net
To: awinters@merchantfactors.com Cc: Marc.Leaf@dbr.com; jshapiro@lowenstein.com
Sent: Friday, July 7, 2023 11:42 AM
Subject: quick question

Adam,

Why didn't Steve sign the 2016 sub debt renewal for my mom? He had POA, too and could have signed and executed the note but choose not to.

So why do you blame me for refusing to sign the note? You still seem to think that I was the problem today, but please explain why you think that Steve refused to sign the note, too. We had a real problem with my mom's sub debt and the estate and you refused to even discuss it with me. This was very wrong, making my job handling mom's estate much harder. You still don't seem to believe this and think that I was just causing trouble? Then why didn't Steve sign the note? This seems to blow a hole in the idea that I was the problem here.

Both Steve and I were right in not renewing mom's sub debt. It had to be paid off and that's why, eventually, it was, just as I had been requesting since early 2016. But I was made to be the bad guy here and you and the board were totally wrong to scapegoat and punish me for trying to properly handle mom's sub debt. And you were totally wrong to see me as the problem here. You, and the board, need to have the ability to admit when you were wrong or we will not reach any settlement with these discussions. Again, I was right to identify the problem with mom's sub debt early, while there was still time for Merchant to pay the debt off over three years, but you mistakenly thought that the problem was one of getting me to renew a note that both Steve and I had been advised shouldn't be renewed. No, you (and the Board) screwed up here, Adam. We should have paid mom $2 million per year in 2016, 2017 and 2018 instead of waiting until 2018 and having to borrow from the sub debt holders at a higher rate. This was my request and suggestion in 2016. It was Merchant's mistake to not handle mom's sub debt over three years when I identified the opportunity to dispose of it this way.

Rick, Bonnie, Steve and Neville all profited at my and the Trust's expense from the Board's solution to the sub debt crisis that it caused. It wasn't a good solution, Adam. I asked several times since 2018 to acquire sub debt but those requests fell upon deaf ears. Once we agree upon the facts, I will await your proposal for settlement.

This is why we need the documentation-you don't remember what happened last December, let alone 2016. Steve convinced you, Neville and the board to make some bad decisions back then. The sooner that you realize and admit this, the sooner we will be able to have meaningful settlement discussions. No grey area here, as you said on the phone earlier today.

-Russell

Archived: Thursday, January 25, 2024 10:16:21 AM
From: kayer@optonline.net
Mail received time: Thu, 26 Oct 2023 12:39:27
Sent: Thu, 26 Oct 2023 13:37:16
To: Kaufman, David J.
Subject: Fwd: Fwd: Fwd: Re:
Importance: Normal
Sensitivity: None

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

------ Original Message ------
From: kayer@optonline.net
To: Marc.Leaf@dbr.com Cc: jshapiro@lowenstein.com; awinters@merchantfactors.com
Sent: Saturday, July 1, 2023 10:20 AM
Subject: Fwd: Fwd: Re:
Marc,

I wrote to you yesterday requesting a schedule of when I could expect to start receiving the requested documents. I will require these documents regardless of the outcome of settlement talks with Adam. As trustee of the Crossing Trust, it is important to determine why the Trust was left at the old interest rate. Was this your advice to Adam? The documentation will establish the facts here and obscuring the facts is not in the best interests of Merchant.

When can I expect to start receiving the documents. I understand if I don't get an answer until the start of the business week but I DO request an answer to this question, again.

-Russell

------ Original Message ------
From: kayer@optonline.net
To: Marc.Leaf@dbr.com; awinters@merchantfactors.com
Sent: Friday, June 30, 2023 7:32 AM
Subject: Fwd: Re:

Marc,

It's been over a week now. I suspect Adam's intention to resolve this matter, so we need to reestablish the facts and confront management directly with them.

When can I expect to start receiving the requested documents? I'm going to need to determine how the decision to leave the Trusts at the old interest rate while raising the other debt holders interest rate by 4% was made. I can assure you that I wasn't included in these discussions, so as a trustee, I need to determine exactly why the Trusts were left out of this action by Merchant. Please tell me how much longer of a delay will there be before you start to turn over these documents and approximately how long it will take to produce all of the requested materials.

-Russell

------ Original Message ------
From: kayer@optonline.net
To: awinters@merchantfinancial.com
Sent: Wednesday, June 21, 2023 7:14 AM
Subject: Re:

Hi Adam,

Thanks for the update.

I look forward to hearing from you.

-Russell

------ Original Message ------
From: awinters@merchantfinancial.com
To: kayer@optonline.net
Sent: Tuesday, June 20, 2023 6:38 PM
Subject:

Good evening Russell,

I have a call with Marc Leaf tomorrow to discuss what you and I talked about. I will be in touch shortly thereafter.

Adam Winters
President/CEO

MERCHANT FINANCIAL GROUP

New York Office
1441 Broadway, 22nd Floor, New York, NY 10018

Phone: 212-840-7575

Archived: Thursday, January 25, 2024 10:15:46 AM
From: kayer@optonline.net
Mail received time: Thu, 26 Oct 2023 13:28:59
Sent: Thu, 26 Oct 2023 14:26:47
To: Kaufman, David J.
Subject: Fwd: Lack of communication
Importance: Normal
Sensitivity: None

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

------ Original Message ------
From: kayer@optonline.net
To: Marc.Leaf@dbr.com Cc: awinters@merchantfactors.com
Sent: Tuesday, August 22, 2023 3:49 PM
Subject: Lack of communication

Marc,

I think that there is a problem with communication among Board members. I thought that I had heard somewhere that, we, as Board members, were obligated to talk with and answer each other when asked relevant questions.

I believe that our board doesn't act like a board but as individuals, each with their own interests and this isn't in the best interests of Merchant, is it? Do you agree?

I am also disturbed at the fact that Adam feels that the Board has no role in improving profitability or running the business in any way. He seemed to resent this question or was offended in some way. Do you agree that the board should have no role here?

What is your feeling on the job that this board is doing and can you help us do a better job where we are falling short?

It's very hard for me to know what is going on when Adam consults individually with Board members and then refuses to answer any of my emails. This irresponsible behaviour represents a further deterioration in relations over which you and Adam are presiding. As a board member who is refusing to communicate with another board member, what do you suggest I do now? I have expressed a willingness to negotiate with you, Marc, but if negotiations are over, it would have been nice if someone told me this. Pretty unprofessional and disrespectful, no? I think so.

Marc, this might necessitate more attorney time on both sides to get me the emails to which I'm entitled. I will be submitting all legal bills pertaining to this settlement and the increased legal fees that you are causing directly by withholding corporate records to which I'm entitled. This will serve as notice that I am expecting reimbursement of all legal fees associated with obtaining these records and will be part of a settlement. You'll rest assured knowing that the legal fees are but a small percentage of the Trusts earnings and I suspect that the Trusts will be paid back in the end, one way or the other.

I'd like to follow your suggestion for a negotiated settlement, presuming that is still your suggestion. If Adam decides otherwise, he will not be acting in Merchant's best interests and I'd ask that you speak with him directly and NOT rely on my words here to do so. The ball is in your court, again, but please have the decency to tell me negotiations are over if so, and if they are ending with or against Marc's recommendation. Adam was as clear as mud on those points today at the meeting, so I await your or Adam's clarifying response as to the status of the recommended settlement negotiations.

Oh, and Happy Birthday to Walter Kaye. He would have been 96 today.

-Russell

Archived: Thursday, January 25, 2024 9:48:20 AM
From: kayer@optonline.net
Mail received time: Thu, 26 Oct 2023 13:30:13
Sent: Thu, 26 Oct 2023 14:28:01
To: Kaufman, David J.
Subject: Fwd: sub debt claim
Importance: Normal
Sensitivity: None

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

------ Original Message ------
From: kayer@optonline.net
To: ngrusd@merchantfinancial.com; awinters@merchantfactors.com; eyemetrics@gmail.com; bronalea@aol.com; rwollman1218@gmail.com Cc: Marc.Leaf@dbr.com
Sent: Tuesday, August 22, 2023 5:10 PM
Subject: sub debt claim

Dear Board Members,

My claim regarding the sub debt is simple. I, as a trustee of our biggest shareholder, The Crossing Trust, was never given the option of receiving a higher interest rate on behalf of the Trust. That's not fair, and it's really that simple.

Yes, it's true that I was requesting repayment of the money which never happened, but when Merchant failed to honor my request and repay the debt, it kept the Trusts funds at the interest rate that it choose. As a trustee, I should have been given the option of the higher interest rate. Steven never communicated anything to me about the option of a higher rate and the board shouldn't have taken advantage of Steve's unwillingness to communicate for the benefit of our largest shareholder. Obviously the fair thing to do would be to have Steve pay his half of the settlement for the Trust to me personally for causing these problems in the first place.

The email records that I have show me refusing to sign the renewal of mom's notes in early 2016 because I knew that they would have to be repaid upon her death. I suggested a three year payout of the $6.2 million to settle her estate, about $2 million/yr. The board rejected this but failed to come up with other suggestions and instead insisted that I just sign and renew mom's note, despite the fact that I couldn't do this and it wasn't going to happen. After not addressing the problem for two years, Adam and Neville deemed it an emergency and someone (Steve) came up with a solution that appealed to the greed of individual shareholders but was obviously unfair.

Now if Steven, who has "read the emails", can show me anywhere where I was offered the option of a higher interest rate for the Trust, Show me and these and Marc's billing will not need to happen. I am asking to see the documentation as to how the decision was made to omit The Trusts from the 4% increase in interest rates. It is part of the corporate record, and as a board member, I'm entitled to inspect said records. I'm waiting 8 months now and will engage my attorney with Marc, again, if necessary. Do you think that it is wise to continue to deny me records to which I'm entitled by law? Perhaps some of you need to have another talk with Adam, or, even better, we could discuss it as a Board, not individually.

-Russell

Archived: Thursday, January 25, 2024 10:18:01 AM
From: kayer@optonline.net
Mail received time: Thu, 26 Oct 2023 14:15:30
Sent: Thu, 26 Oct 2023 15:13:16
To: Kaufman, David J.
Subject: Fwd: Re: RE: Lack of communication
Importance: Normal
Sensitivity: None

Mr. Kaufman,

This was my last email to Marc. Negotiations of any settlement, as recommended by Marc, seem to have never been taken seriously by management. As you can see, they have wasted much of my time. And with a wife with little time left due to Alzheimer's this is just downright cruel. Adam doesn't understand this at all.

Merchant has been delaying and not being honest about their intent in turning over these documents. I hired a law firm to negotiate the settlement that Marc was recommending at the beginning of this year. By June, their work was not satisfactory as they hadn't engaged in any settlement negotiations, so I asked them to suspend their work. Since the beginning of June I have been acting as my own attorney only to have Adam and the board disrespect my time when it is so important to me. I continue to act as my own attorney but should Merchant continue to refuse to turn over these documents, I will hire an attorney to litigate, not negotiate, as Merchant has proven it is unable to negotiate in good faith. And I would expect Merchant to pay the cost for me to obtain these records since they would be the cause of this expense.

Please inform me as to when (and if) I can expect to receive the corporate records to which I am entitled.

-Russell Kaye

------ Original Message ------
From: kayer@optonline.net
To: marc.leaf@faegredrinker.com
Sent: Wednesday, September 13, 2023 8:03 AM
Subject: Re: RE: Lack of communication

Marc,

You promised me an update "by the end of the week" 2-3 weeks ago. Again, you appear to be stalling and ignoring my request. The message that I take from this is that Merchant is requiring me to employ my attorney to get me what you are willfully withholding, against the law. Is this accurate?

-Russell

------ Original Message ------
From: marc.leaf@faegredrinker.com
To: kayer@optonline.net Cc: awinters@merchantfactors.com; jshapiro@lowenstein.com
Sent: Thursday, August 24, 2023 12:57 PM
Subject: RE: Lack of communication

Russell,

Board members have a duty of due care, which requires both listening to one another and speaking up when there are things that need to be said. My takeaway from Tuesday's meeting is that you did a good job of expressing your views regarding the sub debt, and the other directors heard you and responded.

Directors should always act in the best interests of the Corporation. But that doesn't mean there will never be disagreements among the directors regarding the way to proceed—because individual directors may not always agree on what's in the Corporation's best interests.

And things get tricky when the same individuals are both directors and security holders—because an individual stockholder or noteholder may (without violating any duty as a director) exercise his or her rights with respect to such securities in the holder's own interest.

The Board has an important role in choosing, evaluating, compensating – and, when appropriate, removing – the CEO and other corporate officers. The Board must also exercise oversight over the business and affairs of the corporation, including assessing and managing risk. In my experience, such oversight primarily occurs at board and board committee meetings, when directors receive and respond to management reports, ask questions of management, make suggestions, request additional information, and authorize (or withhold authorization for) certain corporate actions—such as dividends, stock issuance, stock repurchases, mergers, bylaw amendments, etc. The Board is also responsible for selecting the company's independent auditors and approving the company's financial statements. As a practical matter, the Board as such has less direct involvement in the day-to-day operations of the business, which is generally delegated to management.

Adam never said or indicated that "the Board has no role in improving profitability or running the business in any way". To the contrary, he invited you, and each of the other directors, to contact him directly with your comments and suggestions—including business introductions and opportunities.

Regarding your document request, I have been speaking actively with Dan Tuzzio over the past few days, and that process is back on track. I'll follow-up by the end of next week to give you an update.

-- Marc

From: kayer@optonline.net <kayer@optonline.net>
Sent: Tuesday, August 22, 2023 4:50 PM
To: Leaf, Marc A. <marc.leaf@faegredrinker.com>
Cc: winters, adam <awinters@merchantfactors.com>
Subject: Lack of communication

This Message originated outside your organization.

Marc,

I think that there is a problem with communication among Board members. I thought that I had heard somewhere that, we, as Board members, were obligated to talk with and answer each other when asked relevant questions.

I believe that our board doesn't act like a board but as individuals, each with their own interests and this isn't in the best interests of Merchant, is it? Do you agree?

I am also disturbed at the fact that Adam feels that the Board has no role in improving profitability or running the business in any way. He seemed to resent this question or was offended in some way. Do you agree that the board should have no role here?

What is your feeling on the job that this board is doing and can you help us do a better job where we are falling short?

It's very hard for me to know what is going on when Adam consults individually with Board members and then refuses to answer any of my emails. This irresponsible behaviour represents a further deterioration in relations over which you and Adam are presiding. As a board member who is refusing to communicate with another board member, what do you suggest I do now? I have expressed a willingness to negotiate with you, Marc, but if negotiations are over, it would have been nice if someone told me this. Pretty unprofessional and disrespectful, no? I think so.

Marc, this might necessitate more attorney time on both sides to get me the emails to which I'm entitled. I will be submitting all legal bills pertaining to this settlement and the increased legal fees that you are causing directly by withholding corporate records to which I'm entitled. This will serve as notice that I am expecting reimbursement of all legal fees associated with obtaining these records and will be part of a settlement. You'll rest assured knowing that the legal fees are but a small percentage of the Trusts earnings and I suspect that the Trusts will be paid back in the end, one way or the other.

I'd like to follow your suggestion for a negotiated settlement, presuming that is still your suggestion. If Adam decides otherwise, he will not be acting in Merchant's best interests and I'd ask that you speak with him directly and NOT rely on my words here to do so. The ball is in your court, again, but please have the decency to tell me negotiations are over if so, and if they are ending with or against Marc's recommendation. Adam was as clear as mud on those points today at the meeting, so I await your or Adam's clarifying response as to the status of the recommended settlement negotiations.

Oh, and Happy Birthday to Walter Kaye. He would have been 96 today.

-Russell

Archived: Thursday, January 25, 2024 10:17:15 AM
From: kayer@optonline.net
Mail received time: Thu, 26 Oct 2023 14:15:52
Sent: Thu, 26 Oct 2023 15:13:41
To: Kaufman, David J.
Subject: Fwd: Continuing damages
Importance: Normal
Sensitivity: None

------ Original Message ------
From: kayer@optonline.net
To: awinters@merchantfactors.com; ngrusd@merchantfinancial.com; eyemetrics@gmail.com; bronalea@aol.com; rwollman1218@gmail.com Cc: Marc.Leaf@dbr.com; pknierim@ctseniorlaw.com
Sent: Wednesday, September 13, 2023 8:16 AM
Subject: Continuing damages

Dear Directors,

On 8/24/23 Marc Leaf wrote to me:

Directors should always act in the best interests of the Corporation.

It is in Merchant's best interests to save interest costs whenever possible. I have offered to replace the existing sub debt at a 4% lower rate than we are presently paying. I have made this offer several times before and I am renewing this offer to the Board once again, as of today. How are each of you, as Board members, able to justify having Merchant pay prime +6% on it's sub debt when I am offering, again, to replace these funds at prime +2%? As board members, we need to act in the best interests of Merchant and you have not done so and continue to harm Merchant by charging it excessive interest and depriving the Trusts, Adam and I a portion of the profits. You need to act to mitigate the ongoing damage caused by the excessive interest that you are unjustly demanding.

-Russell

Archived: Thursday, January 25, 2024 10:18:49 AM
From: kayer@optonline.net
Mail received time: Thu, 26 Oct 2023 13:52:04
Sent: Thu, 26 Oct 2023 14:49:53
To: Kaufman, David J.
Subject: Fwd: Re: Re: Sub debt owed
Importance: Normal
Sensitivity: None

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

------ Original Message ------
From: kayer@optonline.net
To: awinters@merchantfinancial.com Cc: ngrusd@merchantfinancial.com; rwollman1218@gmail.com; bronalea@aol.com; eyemetrics@gmail.com; Marc.Leaf@dbr.com; pknierim@ctseniorlaw.com; jshapiro@lowenstein.com
Sent: Wednesday, August 30, 2023 8:00 AM
Subject: Re: Re: Sub debt owed

Adam,

No, Adam. This is now between you and Steve. You have seen what he has said. He said things that he shouldn't have, making your (and the board's) position a lot more difficult and clearly stating that we both wanted to be paid the higher interest rate in 2016-17. That means Merchant has already made the mistake of not paying us the higher interest rate. Whether or not he wants to correct it now is not the point. He has claimed that it was a miscommunication back in 2016-17 that caused us to receive the lower interest rate, so, yes, Merchant certainly made a big mistake in not clearly asking and determining the intent of either trustee as to the higher offered rate. Was Merchant's actions taken without Steven or my approval? Was it Merchant who tried to rip off both of the trustees by not communicating with either?

The emails and correspondence that will answer this question was promised by Marc this week. Is this still the plan? I haven't heard anything else about these documents.

Lying to fellow board members and trying to deprive them of equal interest rates is also not a good policy, yet Steve has pulled you other board members right into this problem. It's not going away without a settlement.

Adam, now talk with Steve and I together or alone but don't put it on me.

-Russell

------ Original Message ------
From: awinters@merchantfinancial.com
To: kayer@optonline.net; awinters@merchantfactors.com Cc: Marc.Leaf@dbr.com; pknierim@ctseniorlaw.com; jshapiro@lowenstein.com
Sent: Wednesday, August 30, 2023 6:36 AM
Subject: Re: Sub debt owed

Can you please have Steve reach out to me to confirm you're on the same page?
Thanks.

Adam Winters
President/CEO

MERCHANT FINANCIAL GROUP

New York Office
1441 Broadway, 22nd Floor, New York, NY 10018

Phone: 212-840-7575

From: kayer@optonline.net <kayer@optonline.net>
Sent: Monday, August 28, 2023 8:27:17 AM
To: Adam Winters <awinters@merchantfactors.com>
Cc: Leaf, Marc <Marc.Leaf@dbr.com>; Knierim, Paul <pknierim@ctseniorlaw.com>; Shapiro, Jeffrey <jshapiro@lowenstein.com>
Subject: Sub debt owed

Adam,

Now that Steve and I agree that we both wanted (and still want) to be paid, how do you want to proceed?

Have you spoken with Steve about this? If not, when do you plan to?

I believe that under Marc's guidelines, you are obligated to communicate with me about this and you haven't done so since the Board meeting. Also, this is a Trust matter and I'm a trustee, so no discussions about the Trust should be made by you without the other Trustees being present. If you spoke with Steve already, you shouldn't have and need to speak with both of us for Trust matters.

So, when are the three of us going to talk about this? I anxiously await your reply.

-Russell

Archived: Thursday, January 25, 2024 10:20:17 AM
From: kayer@optonline.net
Mail received time: Thu, 26 Oct 2023 13:50:03
Sent: Thu, 26 Oct 2023 14:47:51
To: Kaufman, David J.
Subject: Fwd: Re: Re: Interest due Crossing trust
Importance: Normal
Sensitivity: None

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

------ Original Message ------
From: kayer@optonline.net
To: eyemetrics@gmail.com Cc: Marc.Leaf@dbr.com; awinters@merchantfactors.com; pknierim@ctseniorlaw.com; jshapiro@lowenstein.com; ngrusd@merchantfinancial.com; rwollman1218@gmail.com; bronalea@aol.com
Sent: Saturday, August 26, 2023 7:16 AM
Subject: Re: Re: Interest due Crossing trust

Steve,

Emails that you and Merchant ignored six years ago and now point to as the gospel truth are weak tea, indeed.

-Russell

------ Original Message ------
From: eyemetrics@gmail.com
To: kayer@optonline.net Cc: jshapiro@lowenstein.com; pknierim@ctseniorlaw.com
Sent: Friday, August 25, 2023 1:49 PM
Subject: Re: Interest due Crossing trust

Russell,

The emails I referred to were written by you six years ago when you refused to renew your, Mom's, and the trusts' sub-debt with Merchant.

In October 2017 you wrote, "*Without control of the Board, no more Crossing money goes into the business and what is in there will come out (at least my half). You are welcome to do as you please with your half after mom's (sic) passes away.*"

In November 2017 you wrote to Adam, *"You still don't get the fact that this is about trust and accountability. When you are no longer able to communicate with me directly, there is zero chance that I will loan merchant (sic) anything." "Payment of my raise from mid 2015 through the end of this year would be another prerequisite to any consideration of loaning Merchant millions of dollars." ... "I suspect that you will not be able to earn my trust again, so the consequences must now be borne by all the shareholders. This was your choice not to address the problem when it was manageable. I am now going to sell the company and I really think that it will be easy to find interested buyers. I have two leads already."*

In late December when the decision was made to increase the interest on sub-debt to prime + 6% you wrote to Neville and me, *"I'm choosing to renew my sub debt with Merchant the newly offered 10.25% rate." "I also intend to replace half of mom's sub debt at the new rate when her debt comes due."* But you placed a condition on it. You continued, *"I cannot agree to extending the required six month renewals on the sub debt as has always previously been required. You are asking the board to give up the leverage to hold management accountable every six months and therefore have less control over management. Especially in view of recent events, I cannot consent to this."*.

I have other lengthy and verbose emails where you clearly state that you will not fund Merchant unless you have control of the Board.

Of course, I was eager to sign the new notes and I increased my personal sub-debt but, as was legally mandated, these notes required both trustees to act in concert. You refused to sign so the trusts then continued for some period to receive the reduced interest rate. I was extremely distressed at the time over the needless loss of additional interest.

I have attached the 12/20/17 memo from Marc offering the new notes to all shareholders. I have also attached the Board minutes from our 12/28/17 meeting which further documents your statements as to why you refused to sign the new notes.

In light of all this, I don't believe the C18 Trust has a valid claim against Merchant. If your personal attorneys disagree, I will listen to their argument.

-Steve

On 8/25/2023 11:13 AM, kayer@optonline.net wrote:

Steve,

When you say that this is the first time that I've contacted you about this, what about all of the emails that you said that you had at the last Board meeting regarding this subject? Weren't you aware of my claim when you received the emails from me years ago? Do you have any emails reflecting this claim or not? I'd be happy to look at them and see if I was ever offered the opportunity at a higher interest rate. More importantly, were you offered this higher rate and denied it on behalf of the Trust without informing me? Please give me a direct answer to this important question.

I presume that you understand that you lack the authority to do this and such an instruction, without my approval, should have never been followed by Merchant. They need to ask both of us and didn't.

I know that Merchant does and Marc has assured me that I'll receive them. Do you need me to send you copies?

In light of the emails that you have, I don't understand your claim that this is the first time that I've contacted you on this subject. Can you explain further?

-Russell

------ Original Message ------
From: eyemetrics@gmail.com
To: kayer@optonline.net
Sent: Friday, August 25, 2023 8:43 AM
Subject: Re: Interest due Crossing trust

Russell,

Since this is the first time you have contacted me about this issue, all the information I have is second hand. I was not aware you had negotiated with management and I would like to establish some basic facts. What is the exact dollar amount you believe the trust is owed?

-Steve

On 8/25/2023 8:32 AM, kayer@optonline.net wrote:

Steve,

I believe that you may be aware of a source of income that has been improperly denied to the Crossing 18 Trust.

Interest rates for sub debt holders were raised in 2018 by 4% for sub debt holders in the Merchant companies but the Trusts were never offered the opportunity for this higher rate. I have negotiated with management at Merchant who have expressed a willingness to enter into settlement talks and pay the Crossing Trust a yet to be determined sum to compensate for it's past underpayment of interest. As a trustee of the Crossing 18 Trust, I would request your cooperation in recovering this money due to the Trusts. Your thoughts?

-Russell

Archived: Thursday, January 25, 2024 10:21:29 AM
From: kayer@optonline.net
Mail received time: Thu, 26 Oct 2023 13:45:29
Sent: Thu, 26 Oct 2023 14:43:19
To: Kaufman, David J.
Subject: Fwd: Re: Re: Interest due Crossing trust
Importance: Normal
Sensitivity: None

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

------ Original Message ------
From: kayer@optonline.net
To: eyemetrics@gmail.com Cc: Marc.Leaf@dbr.com; awinters@merchantfactors.com; pknierim@ctseniorlaw.com; jshapiro@lowenstein.com
Sent: Saturday, August 26, 2023 6:51 AM
Subject: Re: Re: Interest due Crossing trust

Steve,

Are you still "extremely distressed" over the loss of interest because you are ignoring the fact that Merchant has offered and is still offering a settlement. We can still recover the interest that is owed to us. It doesn't matter what any lawyer thinks and there's no need to involve any. Merchant is offering the Trusts money as a settlement. Are you on board or not?

And do you want Neville, Bonnie and Rick involved at this point, or not.

What was written years ago need not even be considered now as we are being offered the money that we were deprived of. How would you suggest that we proceed? We could ask for the help of an attorney or negotiate ourselves.

And, yes, the emails prove my point that you were well aware of the claim but choose not to communicate with me and, I believe, influenced the rest of the board to ignore the problem of repayment of mom's debt. This necessitated an "emergency" requiring the raise in interest to raise the money to pay mom. It was irresponsible for you to ignore the need for repayment and to influence the board not to communicate with me. Someone must have made the decision to deprive the Trusts of funds and it wasn't me. When Merchant (and you) decided to keep the Trusts subdebt instead of repaying it or communicating with me that Merchant was keeping it and not repaying it, we surely would have agreed to the higher interest rate. All I know is that I was ignored and not told anything about the intention of Merchant to ignore my emails and requests for repayment, making them irrelevant. The records that Merchant has been stalling to turn over may very well show who made the decision to maintain the interest rate with the raise that everyone else enjoyed.

-Russell

------ Original Message ------
From: eyemetrics@gmail.com
To: kayer@optonline.net Cc: jshapiro@lowenstein.com; pknierim@ctseniorlaw.com
Sent: Friday, August 25, 2023 1:49 PM
Subject: Re: Interest due Crossing trust

Russell,

The emails I referred to were written by you six years ago when you refused to renew your, Mom's, and the trusts' sub-debt with Merchant.

In October 2017 you wrote, "*Without control of the Board, no more Crossing money goes into the business and what is in there will come out (at least my half). You are welcome to do as you please with your half after mom's (sic) passes away.*"

In November 2017 you wrote to Adam, *"You still don't get the fact that this is about trust and accountability. When you are no longer able to communicate with me directly, there is zero chance that I will loan merchant (sic) anything." "Payment of my raise from mid 2015 through the end of this year would be another prerequisite to any consideration of loaning Merchant millions of dollars." ... "I suspect that you will not be able to earn my trust again, so the consequences must now be borne by all the shareholders. This was your choice not to address the problem when it was manageable. I am now going to sell the company and I really think that it will be easy to find interested buyers. I have two leads already."*

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I have other lengthy and verbose emails where you clearly state that you will not fund Merchant unless you have control of the Board.

Of course, I was eager to sign the new notes and I increased my personal sub-debt but, as was legally mandated, these notes required both trustees to act in concert. You refused to sign so the trusts then continued for some period to receive the reduced interest rate. I was extremely distressed at the time over the needless loss of additional interest.

I have attached the 12/20/17 memo from Marc offering the new notes to all shareholders. I have also attached the Board minutes from our 12/28/17 meeting which further documents your statements as to why you refused to sign the new notes.

In light of all this, I don't believe the C18 Trust has a valid claim against Merchant. If your personal attorneys disagree, I will listen to their argument.

-Steve

On 8/25/2023 11:13 AM, kayer@optonline.net wrote:

> Steve,
>
> When you say that this is the first time that I've contacted you about this, what about all of the emails that you said that you had at the last Board meeting regarding this subject? Weren't you aware of my claim when you received the emails from me years ago? Do you have any emails reflecting this claim or not? I'd be happy to look at them and see if I was ever offered the opportunity at a higher interest rate. More importantly, were you offered this higher rate and denied it on behalf of the Trust without informing me? Please give me a direct answer to this important question.
>
> I presume that you understand that you lack the authority to do this and such an instruction, without my approval, should have never been followed by Merchant. They need to ask both of us and didn't.
>
> I know that Merchant does and Marc has assured me that I'll receive them. Do you need me to send you copies?
>
> In light of the emails that you have, I don't understand your claim that this is the first time that I've contacted you on this subject. Can you explain further?
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> -Russell

------ Original Message ------
From: eyemetrics@gmail.com
To: kayer@optonline.net
Sent: Friday, August 25, 2023 8:43 AM
Subject: Re: Interest due Crossing trust

Russell,

Since this is the first time you have contacted me about this issue, all the information I have is second hand. I was not aware you had negotiated with management and I would like to establish some basic facts. What is the exact dollar amount you believe the trust is owed?

-Steve

On 8/25/2023 8:32 AM, kayer@optonline.net wrote:

> Steve,
>
> I believe that you may be aware of a source of income that has been improperly denied to the Crossing 18 Trust.
>
> Interest rates for sub debt holders were raised in 2018 by 4% for sub debt holders in the Merchant companies but the Trusts were never offered the opportunity for this higher rate. I have negotiated with management at Merchant who have expressed a willingness to enter into settlement talks and pay the Crossing Trust a yet to be determined sum to compensate for it's past underpayment of interest. As a trustee of the Crossing 18 Trust, I would request your cooperation in recovering this money due to the Trusts. Your thoughts?
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> -Russell

Archived: Thursday, January 25, 2024 10:22:27 AM
From: kayer@optonline.net
Mail received time: Thu, 26 Oct 2023 13:28:59
Sent: Thu, 26 Oct 2023 14:26:47
To: Kaufman, David J.
Subject: Fwd: Lack of communication
Importance: Normal
Sensitivity: None

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

------ Original Message ------
From: kayer@optonline.net
To: Marc.Leaf@dbr.com Cc: awinters@merchantfactors.com
Sent: Tuesday, August 22, 2023 3:49 PM
Subject: Lack of communication

Marc,

I think that there is a problem with communication among Board members. I thought that I had heard somewhere that, we, as Board members, were obligated to talk with and answer each other when asked relevant questions.

I believe that our board doesn't act like a board but as individuals, each with their own interests and this isn't in the best interests of Merchant, is it? Do you agree?

I am also disturbed at the fact that Adam feels that the Board has no role in improving profitability or running the business in any way. He seemed to resent this question or was offended in some way. Do you agree that the board should have no role here?

What is your feeling on the job that this board is doing and can you help us do a better job where we are falling short?

It's very hard for me to know what is going on when Adam consults individually with Board members and then refuses to answer any of my emails. This irresponsible behaviour represents a further deterioration in relations over which you and Adam are presiding. As a board member who is refusing to communicate with another board member, what do you suggest I do now? I have expressed a willingness to negotiate with you, Marc, but if negotiations are over, it would have been nice if someone told me this. Pretty unprofessional and disrespectful, no? I think so.

Marc, this might necessitate more attorney time on both sides to get me the emails to which I'm entitled. I will be submitting all legal bills pertaining to this settlement and the increased legal fees that you are causing directly by withholding corporate records to which I'm entitled. This will serve as notice that I am expecting reimbursement of all legal fees associated with obtaining these records and will be part of a settlement. You'll rest assured knowing that the legal fees are but a small percentage of the Trusts earnings and I suspect that the Trusts will be paid back in the end, one way or the other.

I'd like to follow your suggestion for a negotiated settlement, presuming that is still your suggestion. If Adam decides otherwise, he will not be acting in Merchant's best interests and I'd ask that you speak with him directly and NOT rely on my words here to do so. The ball is in your court, again, but please have the decency to tell me negotiations are over if so, and if they are ending with or against Marc's recommendation. Adam was as clear as mud on those points today at the meeting, so I await your or Adam's clarifying response as to the status of the recommended settlement negotiations.

Oh, and Happy Birthday to Walter Kaye. He would have been 96 today.

-Russell

Archived: Thursday, January 25, 2024 9:48:01 AM
From: kayer@optonline.net
Mail received time: Thu, 26 Oct 2023 13:52:04
Sent: Thu, 26 Oct 2023 14:49:53
To: Kaufman, David J.
Subject: Fwd: Re: Re: Sub debt owed
Importance: Normal
Sensitivity: None

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

------ Original Message ------
From: kayer@optonline.net
To: awinters@merchantfinancial.com Cc: ngrusd@merchantfinancial.com; rwollman1218@gmail.com; bronalea@aol.com; eyemetrics@gmail.com; Marc.Leaf@dbr.com; pknierim@ctseniorlaw.com; jshapiro@lowenstein.com
Sent: Wednesday, August 30, 2023 8:00 AM
Subject: Re: Re: Sub debt owed

Adam,

No, Adam. This is now between you and Steve. You have seen what he has said. He said things that he shouldn't have, making your (and the board's) position a lot more difficult and clearly stating that we both wanted to be paid the higher interest rate in 2016-17. That means Merchant has already made the mistake of not paying us the higher interest rate. Whether or not he wants to correct it now is not the point. He has claimed that it was a miscommunication back in 2016-17 that caused us to receive the lower interest rate, so, yes, Merchant certainly made a big mistake in not clearly asking and determining the intent of either trustee as to the higher offered rate. Was Merchant's actions taken without Steven or my approval? Was it Merchant who tried to rip off both of the trustees by not communicating with either?

The emails and correspondence that will answer this question was promised by Marc this week. Is this still the plan? I haven't heard anything else about these documents.

Lying to fellow board members and trying to deprive them of equal interest rates is also not a good policy, yet Steve has pulled you other board members right into this problem. It's not going away without a settlement.

Adam, now talk with Steve and I together or alone but don't put it on me.

-Russell

------ Original Message ------
From: awinters@merchantfinancial.com
To: kayer@optonline.net; awinters@merchantfactors.com Cc: Marc.Leaf@dbr.com; pknierim@ctseniorlaw.com; jshapiro@lowenstein.com
Sent: Wednesday, August 30, 2023 6:36 AM
Subject: Re: Sub debt owed

Can you please have Steve reach out to me to confirm you're on the same page?
Thanks.

Adam Winters
President/CEO

MERCHANT FINANCIAL GROUP

New York Office
1441 Broadway, 22nd Floor, New York, NY 10018

Phone: 212-840-7575

From: kayer@optonline.net <kayer@optonline.net>
Sent: Monday, August 28, 2023 8:27:17 AM
To: Adam Winters <awinters@merchantfactors.com>
Cc: Leaf, Marc <Marc.Leaf@dbr.com>; Knierim, Paul <pknierim@ctseniorlaw.com>; Shapiro, Jeffrey <jshapiro@lowenstein.com>
Subject: Sub debt owed

Adam,

Now that Steve and I agree that we both wanted (and still want) to be paid, how do you want to proceed?

Have you spoken with Steve about this? If not, when do you plan to?

I believe that under Marc's guidelines, you are obligated to communicate with me about this and you haven't done so since the Board meeting. Also, this is a Trust matter and I'm a trustee, so no discussions about the Trust should be made by you without the other Trustees being present. If you spoke with Steve already, you shouldn't have and need to speak with both of us for Trust matters.

So, when are the three of us going to talk about this? I anxiously await your reply.

-Russell

Archived: Thursday, January 25, 2024 9:46:06 AM
From: kayer@optonline.net
Mail received time: Thu, 26 Oct 2023 13:50:03
Sent: Thu, 26 Oct 2023 14:47:51
To: Kaufman, David J.
Subject: Fwd: Re: Re: Interest due Crossing trust
Importance: Normal
Sensitivity: None

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

------ Original Message ------
From: kayer@optonline.net
To: eyemetrics@gmail.com Cc: Marc.Leaf@dbr.com; awinters@merchantfactors.com; pknierim@ctseniorlaw.com; jshapiro@lowenstein.com; ngrusd@merchantfinancial.com; rwollman1218@gmail.com; bronalea@aol.com
Sent: Saturday, August 26, 2023 7:16 AM
Subject: Re: Re: Interest due Crossing trust

Steve,

Emails that you and Merchant ignored six years ago and now point to as the gospel truth are weak tea, indeed.

-Russell

------ Original Message ------
From: eyemetrics@gmail.com
To: kayer@optonline.net Cc: jshapiro@lowenstein.com; pknierim@ctseniorlaw.com
Sent: Friday, August 25, 2023 1:49 PM
Subject: Re: Interest due Crossing trust

Russell,

The emails I referred to were written by you six years ago when you refused to renew your, Mom's, and the trusts' sub-debt with Merchant.

In October 2017 you wrote, "*Without control of the Board, no more Crossing money goes into the business and what is in there will come out (at least my half). You are welcome to do as you please with your half after mom's (sic) passes away."*

In November 2017 you wrote to Adam, *"You still don't get the fact that this is about trust and accountability. When you are no longer able to communicate with me directly, there is zero chance that I will loan merchant (sic) anything." "Payment of my raise from mid 2015 through the end of this year would be another prerequisite to any consideration of loaning Merchant millions of dollars." ... "I suspect that you will not be able to earn my trust again, so the consequences must now be borne by all the shareholders. This was your choice not to address the problem when it was manageable. I am now going to sell the company and I really think that it will be easy to find interested buyers. I have two leads already."*

In late December when the decision was made to increase the interest on sub-debt to prime + 6% you wrote to Neville and me, *"I'm choosing to renew my sub debt with Merchant the newly offered 10.25% rate." "I also intend to replace half of mom's sub debt at the new rate when her debt comes due."* But you placed a condition on it. You continued, *"I cannot agree to extending the required six month renewals on the sub debt as has always previously been required. You are asking the board to give up the leverage to hold management accountable every six months and therefore have less control over management. Especially in view of recent events, I cannot consent to this.".*

I have other lengthy and verbose emails where you clearly state that you will not fund Merchant unless you have control of the Board.

Of course, I was eager to sign the new notes and I increased my personal sub-debt but, as was legally mandated, these notes required both trustees to act in concert. You refused to sign so the trusts then continued for some period to receive the reduced interest rate. I was extremely distressed at the time over the needless loss of additional interest.

I have attached the 12/20/17 memo from Marc offering the new notes to all shareholders. I have also attached the Board minutes from our 12/28/17 meeting which further documents your statements as to why you refused to sign the new notes.

In light of all this, I don't believe the C18 Trust has a valid claim against Merchant. If your personal attorneys disagree, I will listen to their argument.

-Steve

On 8/25/2023 11:13 AM, kayer@optonline.net wrote:

Steve,

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I presume that you understand that you lack the authority to do this and such an instruction, without my approval, should have never been followed by Merchant. They need to ask both of us and didn't.

I know that Merchant does and Marc has assured me that I'll receive them. Do you need me to send you copies?

In light of the emails that you have, I don't understand your claim that this is the first time that I've contacted you on this subject. Can you explain further?

-Russell

------ Original Message ------
From: eyemetrics@gmail.com
To: kayer@optonline.net
Sent: Friday, August 25, 2023 8:43 AM
Subject: Re: Interest due Crossing trust

Russell,

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-Steve

On 8/25/2023 8:32 AM, kayer@optonline.net wrote:

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From: kayer@optonline.net
Mail received time: Thu, 26 Oct 2023 13:45:29
Sent: Thu, 26 Oct 2023 14:43:19
To: Kaufman, David J.
Subject: Fwd: Re: Re: Interest due Crossing trust
Importance: Normal
Sensitivity: None

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Archived: Thursday, January 25, 2024 9:47:01 AM
From: kayer@optonline.net
Mail received time: Thu, 26 Oct 2023 14:15:30
Sent: Thu, 26 Oct 2023 15:13:16
To: Kaufman, David J.
Subject: Fwd: Re: RE: Lack of communication
Importance: Normal
Sensitivity: None

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

Mr. Kaufman,

This was my last email to Marc. Negotiations of any settlement, as recommended by Marc, seem to have never been taken seriously by management. As you can see, they have wasted much of my time. And with a wife with little time left due to Alzheimer's this is just downright cruel. Adam doesn't understand this at all.

Merchant has been delaying and not being honest about their intent in turning over these documents. I hired a law firm to negotiate the settlement that Marc was recommending at the beginning of this year. By June, their work was not satisfactory as they hadn't engaged in any settlement negotiations, so I asked them to suspend their work. Since the beginning of June I have been acting as my own attorney only to have Adam and the board disrespect my time when it is so important to me. I continue to act as my own attorney but should Merchant continue to refuse to turn over these documents, I will hire an attorney to litigate, not negotiate, as Merchant has proven it is unable to negotiate in good faith. And I would expect Merchant to pay the cost for me to obtain these records since they would be the cause of this expense.

Please inform me as to when (and if) I can expect to receive the corporate records to which I am entitled.

-Russell Kaye

------ Original Message ------
From: kayer@optonline.net
To: marc.leaf@faegredrinker.com
Sent: Wednesday, September 13, 2023 8:03 AM
Subject: Re: RE: Lack of communication

Marc,

You promised me an update "by the end of the week" 2-3 weeks ago. Again, you appear to be stalling and ignoring my request. The message that I take from this is that Merchant is requiring me to employ my attorney to get me what you are willfully withholding, against the law. Is this accurate?

-Russell

------ Original Message ------
From: marc.leaf@faegredrinker.com
To: kayer@optonline.net Cc: awinters@merchantfactors.com; jshapiro@lowenstein.com
Sent: Thursday, August 24, 2023 12:57 PM
Subject: RE: Lack of communication

Russell,

Board members have a duty of due care, which requires both listening to one another and speaking up when there are things that need to be said. My takeaway from Tuesday's meeting is that you did a good job of expressing your views regarding the sub debt, and the other directors heard you and responded.

Directors should always act in the best interests of the Corporation. But that doesn't mean there will never be disagreements among the directors regarding the way to proceed—because individual directors may not always agree on what's in the Corporation's best interests.

And things get tricky when the same individuals are both directors and security holders—because an individual stockholder or noteholder may (without violating any duty as a director) exercise his or her rights with respect to such securities in the holder's own interest.

The Board has an important role in choosing, evaluating, compensating – and, when appropriate, removing – the CEO and other corporate officers. The Board must also exercise oversight over the business and affairs of the corporation, including assessing and managing risk. In my experience, such oversight primarily occurs at board and board committee meetings, when directors receive and respond to management reports, ask questions of management, make suggestions, request additional information, and authorize (or withhold authorization for) certain corporate actions—such as dividends, stock issuance, stock repurchases, mergers, bylaw amendments, etc. The Board is also responsible for selecting the company's independent auditors and approving the company's financial statements. As a practical matter, the Board as such has less direct involvement in the day-to-day operations of the business, which is generally delegated to management.

Adam never said or indicated that "the Board has no role in improving profitability or running the business in any way". To the contrary, he invited you, and each of the other directors, to contact him directly with your comments and suggestions—including business introductions and opportunities.

Regarding your document request, I have been speaking actively with Dan Tuzzio over the past few days, and that process is back on track. I'll follow-up by the end of next week to give you an update.

-- Marc

From: kayer@optonline.net <kayer@optonline.net>
Sent: Tuesday, August 22, 2023 4:50 PM
To: Leaf, Marc A. <marc.leaf@faegredrinker.com>
Cc: winters, adam <awinters@merchantfactors.com>
Subject: Lack of communication

This Message originated outside your organization.

Marc,

I think that there is a problem with communication among Board members. I thought that I had heard somewhere that, we, as Board members, were obligated to talk with and answer each other when asked relevant questions.

I believe that our board doesn't act like a board but as individuals, each with their own interests and this isn't in the best interests of Merchant, is it? Do you agree?

I am also disturbed at the fact that Adam feels that the Board has no role in improving profitability or running the business in any way. He seemed to resent this question or was offended in some way. Do you agree that the board should have no role here?

What is your feeling on the job that this board is doing and can you help us do a better job where we are falling short?

It's very hard for me to know what is going on when Adam consults individually with Board members and then refuses to answer any of my emails. This irresponsible behaviour represents a further deterioration in relations over which you and Adam are presiding. As a board member who is refusing to communicate with another board member, what do you suggest I do now? I have expressed a willingness to negotiate with you, Marc, but if negotiations are over, it would have been nice if someone told me this. Pretty unprofessional and disrespectful, no? I think so.

Marc, this might necessitate more attorney time on both sides to get me the emails to which I'm entitled. I will be submitting all legal bills pertaining to this settlement and the increased legal fees that you are causing directly by withholding corporate records to which I'm entitled. This will serve as notice that I am expecting reimbursement of all legal fees associated with obtaining these records and will be part of a settlement. You'll rest assured knowing that the legal fees are but a small percentage of the Trusts earnings and I suspect that the Trusts will be paid back in the end, one way or the other.

I'd like to follow your suggestion for a negotiated settlement, presuming that is still your suggestion. If Adam decides otherwise, he will not be acting in Merchant's best interests and I'd ask that you speak with him directly and NOT rely on my words here to do so. The ball is in your court, again, but please have the decency to tell me negotiations are over if so, and if they are ending with or against Marc's recommendation. Adam was as clear as mud on those points today at the meeting, so I await your or Adam's clarifying response as to the status of the recommended settlement negotiations.

Oh, and Happy Birthday to Walter Kaye. He would have been 96 today.

-Russell

Archived: Thursday, January 25, 2024 10:26:47 AM
From: kayer@optonline.net
Mail received time: Thu, 26 Oct 2023 12:14:51
Sent: Thu, 26 Oct 2023 13:12:40
To: Kaufman, David J.
Subject: Fwd: Re: Re: Document request
Importance: Normal
Sensitivity: None

------ Original Message ------
From: kayer@optonline.net
To: marc.leaf@faegredrinker.com Cc: jshapiro@lowenstein.com; pknierim@ctseniorlaw.com
Sent: Thursday, April 13, 2023 8:25 AM
Subject: Re: Re: Document request
Marc,

If management intended to stall for a month, it is their obligation to tell us that up front. You don't work for management and should not be part of their effort to stall. You, and management, are not dealing with us in good faith.

Also, you told the board when we elected Neville as Chairman that it was merely a title with no actual power. Now you have instructed me to go to Neville to resolve a matter of complaints of uncivil behavior. When would be a good time for a phone call on civil behavior bylaws which you helped negotiate last year?

Also, has management instructed you in any way to limit the amount of time that you dedicate to the questions of the Board? That wouldn't be in the best interests of Merchant, would it?

We have heard nothing about how AI might affect our business. It's negligent, in my opinion, for the board to NOT be discussing this and the Board actively suppressed your questions and discussion of the banking crisis. I still have many unanswered questions and a board that just doesn't care or want to be bothered. Where's the accountability? That's why I brought you to Merchant and we still don't have a succession plan or Shareholder Agreement. You were chosen (by me and Andy) to bring accountability and corporate governance and you haven't been able to achieve either. Something needs to change, as I said back in January when we last spoke on the phone.

-Russell

-Russell

------ Original Message ------
From: marc.leaf@faegredrinker.com
To: jshapiro@lowenstein.com
Cc: kayer@optonline.net; awinters@merchantfinancial.com
Sent: Thursday, April 13, 2023 7:58 AM
Subject: Re: Document request

I understand that the Company is just about done with its year end audit, which frees up the time to address this. Senior management is aware of the requests and will be working on them asap.

-- Marc Leaf

917-847-4018 (mobile)

On Apr 6, 2023, at 4:25 PM, Shapiro, Jeffrey M. <jshapiro@lowenstein.com> wrote:

This Message originated outside your organization.

Marc – while we appreciate you providing corporate documents, its been four weeks since Russell made his request for information. Of the ten categories of materials requested, only two have been provided to date. Given the nature of the information requested (much of which already exists), its unacceptable that management has not delivered the balance of the requested material. We would appreciate you providing an update at your earliest convenience.

Thanks,

Jeff

Jeffrey M. Shapiro
he, him, his
Partner
Lowenstein Sandler LLP

T: (973) 597-2470
M: (973) 809-1070
F: (973) 597-2471
image482318763.jpg image012132.jpg
image012680.png

From: Leaf, Marc A. <marc.leaf@faegredrinker.com>
Sent: Thursday, March 23, 2023 5:39 PM
To: kayer@optonline.net
Cc: Shapiro, Jeffrey M. <jshapiro@lowenstein.com> Dan Tuzzio <dtuzzio@merchantfinancial.com> Adam Winters <awinters@merchantfinancial.com>
Subject: RE: RE: Document request

Russell,

Please see the following documents attached:

- Merchant Factors By-laws adopted 1/21/22
- Secretary Certificate delivered to IDB in connection with the execution of the 2021 Loan and Security Agreement (includes certificate of incorporation and by-laws of all three entities, as amended—as in effect on 6/30/2021).
  - Note that Merchant Business Credit, Inc. dissolved in 2021
- DBAs for Merchant Factors Corp. and Merchant Financial Corp. to use the name “Merchant Financial Group”
- Shareholder Agreement dated 10/1/1984, with amendments
  - Modification agreement dated 6/28/1994
  - Second Modification agreement dated 4/15/1995
  - Second Modification [sic] agreement dated 1/4/1998
  - Third Modification agreement dated 7/1/1998 (with related shareholder and board consent)
- Additional counterparts of joint written consent relating to Third modification agreement and unsigned draft of a purported “Fourth” modification agreement (I’ve never seen anything to suggest this last document was ever executed)
- DBA for Merchant Factors Corp. to use the name Merchant Business Credit

Please let me know if you have any questions.

-- Marc

From: kayer@optonline.net <kayer@optonline.net>
Sent: Thursday, March 23, 2023 11:01 AM
To: Leaf, Marc A. <marc.leaf@faegredrinker.com>
Cc: Shapiro, Jeffrey <jshapiro@lowenstein.com>
Subject: Re: RE: Document request

This Message originated outside your organization.

Marc,

Can we prioritize the Cert. of Incorporation, Bylaws and Shareholder Agreement, with all amendments and get them ASAP?

-Russell

------ Original Message ------
From: marc.leaf@faegredrinker.com
To: jshapiro@lowenstein.com
Cc: kayer@optonline.net
Sent: Wednesday, March 22, 2023 3:48 PM
Subject: RE: Document request

I heard back yesterday from Dan Tuzzio that he is collecting the documents. Will follow-up with him at noon Friday.

From: Shapiro, Jeffrey M. <jshapiro@lowenstein.com>
Sent: Wednesday, March 22, 2023 4:45 PM
To: Leaf, Marc A. <marc.leaf@faegredrinker.com>
Cc: kayer@optonline.net
Subject: RE: Document request

This Message originated outside your organization.

Marc – I wanted to check back for an update about the materials that Russell Kaye requested. Would appreciate you letting us know the status at your earliest convenience.

Thanks,

Jeff

Jeffrey M. Shapiro
he, him, his
Partner
Lowenstein Sandler LLP

T:
M: **(973)** 809-1070
F: **(973)** 597-2471

From: Shapiro, Jeffrey M. <jshapiro@lowenstein.com>
Sent: Thursday, March 9, 2023 2:12 PM
To: Leaf, Marc A. <marc.leaf@faegredrinker.com>
kayer@optonline.net
Subject: RE: Document request

Thanks Marc. Nice to meet you by e-mail as well.

Jeffrey M. Shapiro
he, him, his
Partner
Lowenstein Sandler LLP

T: **(973)** 597-2470
M: **(973)** 809-1070
F: **(973)** 597-2471

From: Leaf, Marc A. <marc.leaf@faegredrinker.com>
Sent: Thursday, March 9, 2023 12:55 PM
To: kayer@optonline.net
Cc: Shapiro, Jeffrey M. <jshapiro@lowenstein.com>
Subject: RE: Document request

Thank you, Russell.

Jeffrey – good to meet you by email.

I will reach out to my client today to begin the process of responding to this request.

Marc A. Leaf
Partner
Pronouns: he/him/his

marc.leaf@faegredrinker.com
Connect: vCard

+1 212 248 3276 direct

Faegre Drinker Biddle & Reath LLP
1177 Avenue of the Americas, 41st Floor
New York, New York 10036, USA

From: kayer@optonline.net <kayer@optonline.net>
Sent: Thursday, March 9, 2023 12:52 PM
To: Leaf, Marc A. <marc.leaf@faegredrinker.com>
Cc: Shapiro, Jeffrey <jshapiro@lowenstein.com>
Subject: Document request

This Message originated outside your organization.

Marc – I hope this note finds you well. I am writing in my capacity as a director of Merchant Factors Corp. (the "Company") to request documents and information in respect of the Company to assist me in my role as a director. The requested materials are as follows:

- The Company's Certificate of Incorporation and Bylaws including all amendments
- The Company's stock ledger from the time of its incorporation until the present time that identifies all shares of stock issued by the Company including the number of shares issued and the names of the individuals to whom such shares were registered (including shares subsequently redeemed irrespective of whether now held in treasury)
- All agreements between or among any of the stockholders of the Company regarding their shares of stock in the Company
- Minutes or other records of all meetings or actions of the Company's board of directors (including any board committees) and the Company's stockholders since January 1, 2020
- The Company's financial statements (income statements, balance sheets and statements of cash flow) for each of the past five completed fiscal years and for January 2023
- The Federal and State business income tax returns of the

Company for the calendar years ended December 31, 2019 through 2021
- Copies of all documents evidencing any existing indebtedness of the Company with banks or other institutional lenders
- Copies of all documents evidencing any existing indebtedness of the Company with stockholders, directors or other insiders and/or their affiliates
- A schedule of the compensation arrangements for the Company's officers, directors and senior members of management including a list of perquisites made available by the Company to each such individual broken down by year since January 1, 2020
- All executive compensation studies, analyses or surveys prepared by or for the Company since January 1, 2020

I have copied Jeffrey Shapiro of Lowenstein Sandler, who is assisting me as counsel in connection with this inquiry. I would appreciate you arranging with the Company for these materials to be provided to Mr. Shapiro at the earliest opportunity. He will assist me with the review and will arrange for the materials to be available for my review.

If you have any questions, please contact Mr. Shapiro at jshapiro@lowenstein.com or at (973) 597-2470.

Thank you,

Russell

This message contains confidential information, intended only for the person(s) named above, which may also be privileged. Any use, distribution, copying or disclosure by any other person is strictly prohibited. In such case, you should delete this message and kindly notify the sender via reply e-mail. Please advise immediately if you or your employer does not consent to Internet e-mail for messages of this kind.

Archived: Thursday, January 25, 2024 9:48:07 AM
From: kayer@optonline.net
Mail received time: Thu, 26 Oct 2023 11:50:00
Sent: Thu, 26 Oct 2023 12:47:49
To: Kaufman, David J.
Subject: Fwd: Re: RE: Unresolved issues
Importance: Normal
Sensitivity: None

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

Hi David,

I'm going to forward my emails with Marc Leaf since the beginning of this year in an attempt to bring you up to speed in your new role of policeman. The problem referenced in the below emails was an attempt (conspiracy) between my brother and Neville to discontinue the board's compensation and health insurance in Dec 2022. I use this word because this was attempted without the knowledge of three board members who were to be harmed by this action and email objections were ignored three times by management until Marc stepped in and told Adam, Neville and Steve that they couldn't do this without a board vote. Of course, when put to a vote, it failed and Steve dropped his attempt. But Neville, Steve nor Adam were never held accountable in any way nor even told that what he tried to do was wrong. That's a brief synopsis of the subject of the below email.

The failure to hold anyone accountable when they make mistakes has been getting much worse over the years and the offences more serious. The reason that Marc was brought in during 2016 was to institute corporate governance and bring accountability to the board and management. He made reasonable success on the former but none on the later. In fact, accountability has progressively declined over the years and is presently unsatisfactory in so many areas. I've got quite a few stories but prefer to just focus on present issues for now, of which there are several.

For example, we have no succession plan despite my multiple attempts since my father died in 2007 to institute one. Adam doesn't want us to consider any replacement for him and the board doesn't want to rock the boat and upset Adam. Negotiations with Marc when Adam's contract was last renewed promised this succession plan within a certain time frame. I'd like you to find out if this plan is past due (I believe that it is) and help the board get a succession plan in place ASAP. This was one of Marc's missions from the time that he was hired and one that he never achieved. We need a succession plan right now-no more delays. I'd note that Adam is probably in default of his employment contract and I'd ask you to advise him of this if you agree.

Adam told me that he fired Marc because he didn't do enough. He said Marc was more of a politician, passive and unwilling to offer advice. I agreed with these statements 100%. Marc should have be willing to advise Management and/or the board when they are taking unwise or unadvisable actions. Marc didn't see it as his role to get involved. Please tell me and/or management when we are wrong, so we can reconsider. Don't be afraid to advise us, because that's what an inexperienced board needs to most. You need to be more than a law book that sits in the corner, like Marc, trying not to take sides, but willing to offer more guidance and advice without us asking. If you see management refusing to communicate with me about paying off my mom's sub debt for two years, as they did in 2016-17 and since, you need to advise the board against doing this and advise communication to resolve the problem instead of letting it develop into a crisis which would cost Merchant several million dollars to resolve. In the board's view (thanks to Steve's lobbying), they were punishing me for refusing to renew my mom's sub debt-something mom's attorney told me that I shouldn't do. Steve had the authority to renew it but didn't, choosing to blame me and advise not discussing the matter with me. Upon review, if you feel that Adam and/or the board or I have made mistakes involving the sub debt since 2016, I'd urge you tell tell them or me as this will go a long way to resolving this still ongoing dispute.

Shortly before being fired, Marc told the board that Merchant did nothing wrong in 2016-17 with respect to mom's sub debt. My belief was that he only said this because he believed it was his job to protect Merchant first, even if it involved not being truthful with the board. I fail to understand how refusing to discuss my mom's sub debt when I had POA and was responsible for seeing it paid off, as well as the subsequent actions of issuing new debt at a higher rate to preferred board members, wasn't a huge mistake on the part of Merchant, it's management and Board. The board is entitled to your honest assessment of these actions, not a cover up to protect management and keep the truth from the board. All I ask for is your honest and equal consideration after reviewing the facts and correspondence.

You may think that you are smarter than my brother but don't make this same mistake that Marc made. Steve is VERY manipulative and VERY good at it. It wasn't until Marc's seventh year that I started to hear things from him like "I just thought that your brother would...." Steve will defy logic and cause much damage in a quest to control Merchant. And he's doing a lousy job. You should be aware that it is others unwillingness to get involved in a family dispute that is Steven's most pwerful weapon and the one which produces the best results for him. As an attorney, you've seen family disputes. Don't be unwilling to weigh in with Steve or management or myself if you see them being unreasonable. This would be a mistake that Marc and many others have made.

I will email entire threads today, starting with the one below, to reduce duplication.

-Russell

------ Original Message ------
From: kayer@optonline.net
To: marc.leaf@faegredrinker.com Cc: Andrew.Kassner@dbr.com; awinters@merchantfactors.com
Sent: Friday, January 13, 2023 8:16 AM
Subject: Re: RE: Unresolved issues

Marc,

Let's speak at 11AM today.

I think that you need to reread the emails. You are wrong, plain and simple. Neville wrote us an email saying that this action was happening. It was clearly not a suggestion. When we objected, Neville, Steve nor Adam backed off nor said that they are not moving forward. Indeed, as of the New Year, the order had been given and not rescinded. It was NOT a suggestion as you incorrectly state. They tried to ram it through and Rick and Bonnie are totally in agreement with my assessment.

Adam did not respond to your surrogate communication between us. He does not recognize the fact that you stated when you called to discuss One Merchant. They Kayes still control Merchant. If Adam chooses to speak with Steve privately and impose bad ideas, like cutting our health care and/or token salaries, Adam isn't treating me equally, as required by our identical ownership status. Don't you think that your role should be to inform Adam that his unequal treatment of the two primary owners might not be in the best interests of Merchant? Merchant needs an attorney who can do this.

Marc, I never asked you nor am I asking now for you to provide management oversight. What you have failed miserably at is showing the board the best ways to exercise oversight and allow the board to decide what is appropriate. That's the kind of suggestions that I'm looking for and I simply don't believe you that no attorney would or could provide this advice. You are the expert that we hire to provide expertise and advice in corporate governance and accountability. How do we get there? My dad had an attorney who was a friend and willing to help instead of evade and offer straw man responses. Marc, you are not doing the job that we need you to do and I would like a new attorney for Merchant.

Again, let's talk at 11AM.

-Russell

------ Original Message ------
From: marc.leaf@faegredrinker.com
To: kayer@optonline.net
Cc: rwollman1218@gmail.com; bronalea@aol.com; skaye@merchantfactors.com; awinters@merchantfinancial.com; ngrusd@merchantfinancial.com
Sent: Thursday, January 12, 2023 2:05 PM
Subject: RE: Unresolved issues

Russell,

I am happy to speak with you or any other director regarding Board business. I could call you between 11:00 and 12:00 tomorrow, or any time after 2:00 pm tomorrow. My calendar is also wide open on Tuesday, if those times tomorrow don’t work.

If by “Steven’s proposal” you mean the discontinuation of director salaries, I am not aware of any attempt to “ram it through”. The only thing I know is that a suggestion was made and objected to and has since been withdrawn, so in fact there was nothing for the board to vote on.

I’d also note that Adam responded directly to your January 2nd email.

It’s not my job to provide management oversight. Nor do I believe that any other lawyer—at my firm or otherwise—would or should take on that role, which would be a clear conflict of interest for company counsel.

-- Marc

From: kayer@optonline.net <kayer@optonline.net>
Sent: Thursday, January 12, 2023 8:40 AM
To: Leaf, Marc A. <marc.leaf@faegredrinker.com>
Cc: wollman, Rick <rwollman1218@gmail.com> Robins, Bonnie <bronalea@aol.com>
Subject: Unresolved issues

This Message originated outside your organization.

Marc,

You were supposed to get back to me on Steven's proposal and the attempt to ram it through without the Board's approval. I believe that we need to discuss this so that management and Steven don't attempt a stunt like this again. Please let me know when it would be best to speak with you about this. I'd like to set up a phone call, please.

Another area of concern comes in a letter from the new accountant for the Trusts. A single line drew my attention. "It looks like the Merchant's income is lower in 2022 than it was in 2021." Yet, Merchant is reporting record income for 2022. I'd like an explanation of this conflicting information.

It's clear to me that the board doesn't have and isn't exercising the oversight that it should. We cut the T&E budget by half to control Adam's out-of-control spending but how is he doing? Would you know if he was spending more now or more importantly, HOW T&E dollars are now being spent? And now Steve and Adam are trying to cut our health care and salary by force and deceit and then don't want to discuss it? We need to discuss this and shame them for trying it or their next attempt will be bolder.

Marc, Steve and Adam are not acting in the best interests of Merchant and you are letting them do so. I get it that you view your role here as quite limited but don't you think that your firm has another attorney who might be willing to get a bit more involved in providing advice to management? Not every attorney has the same view as you as to their role and I don't think that you are helping enough with oversight, accountability, and to guide an inexperienced board, providing advice as well as suggestions and recommendations.

Blowing me off on the current matter isn't particularly professional, either. You never replied to my first inquiry on this subject back in November and haven't been responsive since. What's up?

-Russell

Archived: Thursday, January 25, 2024 9:48:33 AM
From: kayer@optonline.net
Mail received time: Thu, 26 Oct 2023 09:12:51
Sent: Thu, 26 Oct 2023 10:09:16
To: Adam Winters Kaufman, David J.
Subject: Re: Information for David Kaufman
Importance: Normal
Sensitivity: None

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

Hi Adam,

I've spoken with him and apparently you have not brought him up to speed on the matters with which Marc and I were engaged. Instead, you have attempted to cut off my access to our new attorney, first by your statement in the minutes in which the announcement of his hiring was made, and later by not providing any contact information.

Additionally, I was quite disappointed to hear that my request and Marc's promise of production of these corporate records to which I am entitled was not even something that Mr, Kaufman was aware of. I have promised to deliver and Mr. Kaufman has agreed to review our correspondence to get up to speed, so I'd request that you send any emails to Marc on which you were copied, so he knows exactly what you were told and how Merchant responded. Also, correspondence between yourself and Marc on this subject and your intentions of how to respond to me is probably information that Mr. Kaufman should have, too.

These problems are going to get worse before they get better. And they will get better when we sell the business. This relationship is beyond repair, the source of too much stress and I want to sell. We don't have a business unless the Kayes and management agree and they don't. Steven does not represent my wishes and for you to hold me engaged in Merchant subject to Steve's wishes is unfair and sadistic on your part. This bullshit has stolen much of the little precious time that I have left before my wife no longer recognizes me. And I blame you and Steve directly for that.

It's time to tell Steve that you want out-that you can't work under these conditions. What's he going to say, no? Too bad. All three of us have to agree and we don't. And if we start preparing today for the sale of Merchant, doing it properly will probably take 3-5 years, a fact that I've been stating since my dad passed away in 2007. So, it's time to tell Steven that we are on a path towards selling Merchant. And as you said on your failed attempt to sell the company, "We can always reject the offer if we don't like it." But let's start preparing today. Tell Steven today and start to cooperate with me instead of him. He doesn't have the choice to tell you whether you offer your talents to us or another owner. In view of increasing strife, you want new owners and so do I. We're going to make another attempt to sell Merchant-this time because I say so, not you.

-Russell

------ Original Message ------
From: awinters@merchantfinancial.com
To: kayer@optonline.net
Sent: Wednesday, October 25, 2023 4:23 PM
Subject:

Here you go,

David J. Kaufman (he/him/his)
djkaufman@thompsoncoburn.com
P: 312 580 2342
F: 312 580 2201
M: 847.530.7080

Thompson Coburn LLP
55 East Monroe Street 37th Floor
Chicago, IL 60603
www.thompsoncoburn.com

Adam Winters
President/CEO

MERCHANT FINANCIAL GROUP

New York Office
1441 Broadway, 22nd Floor, New York, NY 10018

Phone: 212-840-7575

Archived: Thursday, January 25, 2024 9:49:26 AM
From: kayer@optonline.net
Mail received time: Wed, 27 Dec 2023 08:06:04
Sent: Wed, 27 Dec 2023 09:06:00
To: Kaufman, David J.
Subject: You're fired
Importance: Normal
Sensitivity: None

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

David,

I'm sorry that it had to end this way, but your failure to follow my simple instructions by the 5PM deadline yesterday has signaled that you are not seeing that you didn't something wrong and /or are not willing to correct it. Adam has proven to be too much of a wimp to speak up in your defense. An admission of your mistake by either of you might have avoided this disruption, but I've never known Adam to be able to admit a mistake and take accountability. Steven continually tries to piss me off by publicly kissing Adam's ass excessively while he knows that I'm trying to kick Adam's ass. You saw this at the end of the meeting.

Adam has made the same mistake before-not realizing that my first offer is the best that you are likely to see. There will be no negotiation. I gave you the opportunity to make things right and you refused. I need counsel that I can trust when Adam and Steve try to steam roll over me and the board. You are clearly not that guy and therefore need to go.

Please resign as soon as possible so that I am not forced to compel your resignation and/or firing. Putting me through more unnecessary stress at this time isn't going to get you anywhere but more hated.

-Russell

P.S. I have never been muted at a board meeting before. You saw the way that Steve interrupted me and then you when you were trying to answer my questions with no consequence. Fair? What would you have done about it? Nothing, I presume, as you were silent. I told you that we needed a policemen and you didn't understand. Perhaps now you do. You have already failed. Resign. I don't trust you which means you can't stay. It's really that simple.

Archived: Thursday, January 25, 2024 9:49:18 AM
From: kayer@optonline.net
Mail received time: Wed, 27 Dec 2023 07:46:13
Sent: Wed, 27 Dec 2023 08:46:07
To: Grusd, Neville wollman, Rick Robins, Bonnie
Cc: Kaufman, David J.
Subject: Shareholder Meeting
Importance: Normal
Sensitivity: None

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

Neville,

I am requesting an emergency shareholder meeting to discuss the departure of David Kaufman, as company attorney and hiring of a new attorney.

David has lost my confidence, and I, as a Board member, must have free and unfettered access to reliable information needed to preform my duties. I firmly believe that David is biased towards management and doesn't understand that he is here to help both management and the board WITHOUT SHOWING FAVOR to either. He misled the board when he said that most shareholders (or board members) don't have direct access to the company counsel. He was talking about public corporations, not small, closely held corporations. The truth is actually the exact opposite of what David led the board to believe. Most boards in corporations like ours DO, INDEED have this access. We need reliable information and David has already proven to me his intent to be deceptive TO THE DIRECT HARM to Merchant. David is attempting to obstruct our access to the information that we need as a board and that's a direct threat to the best interests of Merchant.

I have been communicating directly with David since the day after the meeting, so David knows that the board can't do what Steve and Adam just attempted-cut me, or anyone, off. He knows that he screwed up but was unwilling to come forward and discuss how he is going to make it right. I gave him until 5PM yesterday. I have also been trying to get a hold of Adam since the meeting by email and phone and he is still hiding now. He refuses to speak to me even though it was decided at the meeting that I need to speak to Adam to get permission to speak to David. Adam is a wimp who can't stand up to Steve's bad ideas and he needs to be accountable and explain why they fired Marc and hired this shill. I'm reaching out to Marc and speaking with my attorney today, too, But we're going to need another meeting to discuss Adam and Steve's latest screw up. And it's going to cost Merchant more unnecessary money, just like "Civility Bylaws". They worked like a charm, didn't they?

I'm reaching out to Marc today to discuss the possibility of using another attorney from Drinker, Biddle to replace Marc (and David). If you want to be part of the process, please respond. If you don't care, don't respond, but that will be interpreted as not caring and could be used by me as an argument to remove a board who refuses to exercise their obligation of oversight.

Looking forward to hearing from you.

-Russell

Archived: Thursday, January 25, 2024 9:48:40 AM
From: KAUFMAN, DAVID J.5D6
To: kayer@optonline.net
Subject: RE: Merchant legal matters
Importance: Normal
Sensitivity: None

Russell:

Thanks for the email.

What I mentioned to your counsel was that if you believe that you had questions or concerns that you believe are relevant to all Board members, you should first ask either the CEO or the Chair. That person can then see if this is an issue relevant to the Board and check with me and seek further advice as necessary. If you reach out to me directly, I will check with the CEO or Chair first to see if they want me to examine your request based on that concern.

Second, I would not characterize whether your fellow Board members are ignoring your emails or not. I would not seek to describe communication between the Board members outside of Board meetings. If your emails are not bouncing back, my guess is that they are being delivered to the recipients. I would note that during the Board meeting there seemed to be a healthy discussion among the various members on the issues on the agenda. Thanks.

David J. Kaufman
(he/him/his)
djkaufman@thompsoncoburn.com
P: 312 580 2342
F: 312 580 2201
M: 847.530.7080

Thompson Coburn LLP
55 East Monroe Street 37th Floor
Chicago, IL 60603
www.thompsoncoburn.com

From: kayer@optonline.net <kayer@optonline.net>
Sent: Monday, January 8, 2024 6:59 AM
To: Kaufman, David J. <DJKaufman@thompsoncoburn.com>
Subject: Merchant legal matters

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

Hi David,

My attorney has written to me advising that you are now willing to speak directly with me about legal issues involving Merchant but not for statics and financial numbers. Is this the case? I have questions involving Neville's powers as Chairman that I need answered before there can be a vote on him, as Chairman.

Additionally, Our board is now, for the first time in Merchant history, completely ignoring me. My understanding is that, among the board's fiduciary responsibilities, is to communicate with each other in order to operate as board. There is now zero communication. Adam, Neville, Steve, Rick and Bonnie have all ignored my last email and many before that. Shouldn't you be having a talk with the other board members about their responsibility to communicate with each other in order to function as a board?

So, When can we start the discussion of Merchant legal matters?

-Russell

P.S. I have questions about Neville and nobody is answering them. I am requesting a postponement, just as Rick requested and was granted at the 12/21 meeting, a postponement in today's board meeting and vote.

Archived: Thursday, January 25, 2024 9:48:49 AM
From: kayer@optonline.net
Mail received time: Sat, 23 Dec 2023 11:47:23
Sent: Sat, 23 Dec 2023 12:47:17
To: Kaufman, David J.
Subject: Re: Re: Ignoring me...
Importance: Normal
Sensitivity: None

David,

I think that you still need to provide me with Adam's cell number. Why are you obstructing and protecting Adam here? You are not supposed to favor mgmt or board but you are clearly tightly in Adam's pocket. Could this be an ethics complaint against you?

-Russell

------ Original Message ------
From: DJKaufman@thompsoncoburn.com
To: kayer@optonline.net
Sent: Saturday, December 23, 2023 11:59 AM
Subject: Re: Ignoring me...
Sorry to intrude in your holiday weekend, but do think it would be useful to have a call no longer than say 30 minutes mid week to better understand your Board concerns? Thanks.

David J. Kaufman
Thompson Coburn LLP
55 East Monroe Street
Suite 3700
Chicago, IL 60603
312.580.2342 p
847.530.7080 c

On Dec 22, 2023, at 2:33 'a0PM, kayer@optonline.net wrote:

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

Just sent to Adam. Forgot to CC you, so I'm forwarding this email.

------ Original Message ------
From: kayer@optonline.net
To: awinters@merchantfactors.com
Sent: Friday, December 22, 2023 2:32 PM
Subject: Ignoring me...

...is not an option for you. Yesterday, you instructed me to speak with Management instead of our lawyer, David. That's what I'm trying to do, but once again, you are not cooperating and communicating.

I just called him on his cell to get your cell number. I don't have it handy. I could go back and look it up from when I called you a few months ago, but it's easier for you to just give it to me here.

Please respond with your cell number and a good time to call so that we can discuss your succession plan, now overdue? When was the board supposed to have that? Also, I think that your idea suggested a few months ago to speak every week is a good one. Which day and time is best for you?

-Russell

Archived: Thursday, January 25, 2024 9:49:01 AM
From: kayer@optonline.net
Mail received time: Sat, 23 Dec 2023 11:39:37
Sent: Sat, 23 Dec 2023 12:39:33
To: Kaufman, David J.
Subject: Re: Re: Ignoring me...
Importance: Normal
Sensitivity: None

David,

Don't worry about the Holiday weekend-we're all Jewish and I had my Chinese take out last night. Besides, It's become management's preference to schedule volitile Board meetings just before Holiday weekends in hopes of muffling the response in the days after that often occurs. It's deliberate and sort of like the Friday evening news dumps that bury the story over the weekend. So, it's Merchant's management (and Steve) that has disrupted the weekend with it's chosen scheduling.

No, I believe that I've said everything that I have to say in this email and the ones that followed, including this morning.

Either you leave now or I get you removed. If my emails weren't enough to convince you, then I'm not interested in expending additional effort without the result of replacing you. You should have reversed your position already, but haven't. You want to talk but have a losing hand.

I'm not interesting in explaining further, as I have done so in my emails and won't repeat myself. I have already reached out to find a new lawyer for Merchant and need to focus on moving forward. That does not include you.

I strongly object to having you as Merchant's lawyer and will take the necessary actions to have you removed if you do not do so yourself. Again, let me be perfectly clear, I want you to resign and save Merchant the additional legal fees of having you removed.

I'm sorry that our brief relationship had to end this way but you've done this to yourself. My first call to you was an attempt to caution you but you didn't heed that caution and are advocating an untenable position on behalf of management, and still fail to recognize and acknowledge that fact. Further discussion, if required, will come from my attorney, at Merchant's expense.

-Russell

P.S. Note that Adam is too much of a wimp to respond and stand up to either Steve or me. That's what got you into this problem, isn't it? Blame trusting Adam and Steve for your situation. Cutting off access of the board to our attorney for council just isn't a winning hand, and the better lawyer, Marc, recognized this and refused. Get it now? Steve convinces Adam to do something stupid to inflame me, wimpy Adam is convinced despite the fact that it disadvantages me, personally, and now wimpy Adam doesn't want to talk about it with me. How childish!. We all have our strengths and weaknesses but Adam's inability to face conflict and desire to please are not the leadership qualities required here. He is not leading but cowering in the corner. And this, too, is not in Merchant's best interests.

P.P.S. I told Adam in an email several weeks ago that I'd like to discuss the sale of the business. I want out. All I get are crickets. Is this is the best interests of Merchant? Since Adam refuses to discuss this, I will proceed to discuss with others.

------ Original Message ------
From: DJKaufman@thompsoncoburn.com
To: kayer@optonline.net
Sent: Saturday, December 23, 2023 11:59 AM
Subject: Re: Ignoring me...
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RECEIVED FROM EXTERNAL SENDER - USE CAUTION

Just sent to Adam. Forgot to CC you, so I'm forwarding this email.

------ Original Message ------
From: kayer@optonline.net
To: awinters@merchantfactors.com
Sent: Friday, December 22, 2023 2:32 PM
Subject: Ignoring me...

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I just called him on his cell to get your cell number. I don't have it handy. I could go back and look it up from when I called you a few months ago, but it's easier for you to just give it to me here.

Please respond with your cell number and a good time to call so that we can discuss your succession plan, now overdue? When was the board supposed to have that? Also, I think that your idea suggested a few months ago to speak every week is a good one. Which day and time is best for you?

-Russell

Archived: Thursday, January 25, 2024 10:30:45 AM
From: kayer@optonline.net
Mail received time: Sat, 23 Dec 2023 09:46:26
Sent: Sat, 23 Dec 2023 10:46:20
To: winters, adam
Cc: Kaufman, David J.
Subject: Access to David
Importance: Normal
Sensitivity: None

Adam,

Trying to cut off access of the board members to information necessary for it's basic functions for the first time in the history of our company is what requires you to now fire David. His willingness to support your new radical proposal that management now has the ability to cut off this information access disqualifies him as an attorney for Merchant. He is supposed to help the board and making himself unavailable without your approval is beyond your authority. You cannot act as gatekeeper of information, King Adam. Marc already told you this and your foolish reaction was to fire him, rather than talk to me about firing him and I would have gladly agreed. But you can't replace him with an obvious bargain basement shill for management. You and Steven just got him fired. Please inform David formally or I will compel you to do so in court and seek recovery of all legal fees that it takes to do so.

David,

You have fallen victim to "the talk". This a discussion that Steven is sure to have (whether directly or indirectly, through Adam) with any new attorney to "shape the field" before they speak to me. That's why they kept your hiring secret from me until you could be "shaped". He will tell you all sorts of reasons why you have to ignore me and shouldn't trust me. He uses his psychology credentials to falsely assert that I'm mentally ill. It's really despicable and how Steve sabotages relationships with attorneys. He is responsible of the firing of the last three, as many as we've had at Merchant, counting you. He got our very first lawyer fired right after we hired him to settle dad's estate.

Watching the varieties of reactions over the years has been both informative and entertaining.

Sharp lawyers, like mom's estate attorney on my side, Paul Knierim, will pick up on this immediately, see through it and tell me about Steven's misguided attempt to taint their client's image. A couple admitted to have fallen victim to this after they were fired. Marc Leaf tried to play it as a diplomat, not believing Steven's crazy assertions but, painfully trying to stay in the middle and therefore not winning the approval of either side. You had no problem taking sides and supporting management in restricting the availability of information to the board. You clearly are favoring the board in this and other decisions, pointed out at the board meeting. Free access to ALL OF the information that the board requires is demanded by law and you have proven your loyalty to the effort of restricting that information. Even if you were to reverse yourself now, how can we trust you. We can't. Resign now. I certainly don't want you as Merchant's attorney and, in case you weren't aware, I own 1/3 of the company. I tried to warn you to be fair and serve both the board and management equally. Marc did this by not allowing Steve to make $37,000 in legal fees the issue that prevents the board from doing proper oversight.

I don't say that you are wrong just because we don't agree, as you tried to claim I did at the meeting. That was insulting and dead wrong. You are wrong on the merits-it's wrong to make Adam the gatekeeper of information that the board needs to exercise oversight and provide advice to management. Marc told Adam and Steve this and Adam allowed himself to be persuaded by Steve to fire Marc and cut of my access to advice. Now please do your job properly before you go and advise Adam that you can't make Adam the gatekeeper of information for the board.

Steven is using Adam to make stupid decisions to piss me off, at the expense of Merchant and everyone's nerves. I know that you don't quite understand this family dynamic, but I assure you, this is what is happening. Do you see how pissed off I am. Steve knows how to push my buttons and he is using Adam and David to do so. Adam needs to consider what Russell will think as Russell is Steven's equal in say in Merchant but Steven has Adam in a place where Adam doesn't give a damn what I think. In this case, Steven got Adam to whack open a hornet's nest with a baseball bat, and both you, David and Adam, obliged him. I've warned you both but Steve is very good at persuasion

Can't we just have peace at Merchant without you further trying to limit the control that the board has always had. Why did you start this provocation again-over a wrong position on legal fees?

-Russell

Archived: Thursday, January 25, 2024 10:31:23 AM
From: kayer@optonline.net
Mail received time: Fri, 22 Dec 2023 13:33:58
Sent: Fri, 22 Dec 2023 14:33:54
To: Kaufman, David J.
Subject: Fwd: Ignoring me...
Importance: Normal
Sensitivity: None

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

Just sent to Adam. Forgot to CC you, so I'm forwarding this email.

------ Original Message ------
From: kayer@optonline.net
To: awinters@merchantfactors.com
Sent: Friday, December 22, 2023 2:32 PM
Subject: Ignoring me...

...is not an option for you. Yesterday, you instructed me to speak with Management instead of our lawyer, David. That's what I'm trying to do, but once again, you are not cooperating and communicating.

I just called him on his cell to get your cell number. I don't have it handy. I could go back and look it up from when I called you a few months ago, but it's easier for you to just give it to me here.

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-Russell

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From: kayer@optonline.net
Mail received time: Sat, 23 Dec 2023 09:46:26
Sent: Sat, 23 Dec 2023 10:46:20
To: winters, adam
Cc: Kaufman, David J.
Subject: Access to David
Importance: Normal
Sensitivity: None

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Adam,

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Can't we just have peace at Merchant without you further trying to limit the control that the board has always had. Why did you start this provocation again-over a wrong position on legal fees?

-Russell

Archived: Thursday, January 25, 2024 10:32:35 AM
From: kayer@optonline.net
Mail received time: Sat, 23 Dec 2023 11:48:58
Sent: Sat, 23 Dec 2023 12:48:50
To: Kaufman, David J.
Subject: Fwd: Re: phone call
Importance: Normal
Sensitivity: None

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

Never mind. Another reason you got to go.

------ Original Message ------
From: awinters@merchantfinancial.com
To: kayer@optonline.net
Sent: Wednesday, June 14, 2023 9:27 AM
Subject: Re: phone call

Please call my mobile. 9085652806.
You were correct with the office number. � ?� ?

Adam Winters
President/CEO

MERCHANT FINANCIAL GROUP

New York Office
1441 Broadway, 22nd Floor, New York, NY 10018

Phone: 212-840-7575

From: kayer@optonline.net <kayer@optonline.net>
Sent: Wednesday, June 14, 2023 10:18:29 AM
To: Adam Winters <awinters@merchantfinancial.com>
Subject: Re: Re: phone call

Hi Adam,

I'll call you at 11AM today, if that's OK. 212-840-7576, if I remember correctly.

-Russell

------ Original Message ------
From: awinters@merchantfinancial.com
To: kayer@optonline.net; awinters@merchantfactors.com
Sent: Wednesday, June 14, 2023 9:00 AM
Subject: Re: phone call

Hi Russell,

I am available today or tomorrow although I have a lunch meeting from 12:30-2 today

Adam Winters
President/CEO

MERCHANT FINANCIAL GROUP

New York Office
1441 Broadway, 22nd Floor, New York, NY 10018

Phone: 212-840-7575

From: kayer@optonline.net <kayer@optonline.net>
Sent: Wednesday, June 14, 2023 9:56:55 AM
To: Adam Winters <awinters@merchantfactors.com>
Subject: phone call

Hi Adam,

Are you available today or tomorrow for a phone call?

I'd like to discuss your thoughts on a possible settlement before I engage Dan or Marc and use their time to produce the documents needed.

-Russell

Archived: Thursday, January 25, 2024 10:33:06 AM
From: kayer@optonline.net
Mail received time: Sun, 24 Dec 2023 10:43:52
Sent: Sun, 24 Dec 2023 11:43:44
To: Wayne, Doug
Cc: winters, adam Kaufman, David J.
Subject: Fwd: Foolish, foolish move on your part
Importance: Normal
Sensitivity: None

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

Doug,

A Merry Christmas to you and the family. I hope that you are all well. I've got another new problem with Merchant arising from the firing of Marc Leaf (for giving correct advice) and hiring of a management shill, David Kaufman, all at Steve's behest.

If I die prematurely and soon, please go after this guy, David Kaufman, Adam and Steve as I believe that the stress that they are now willingly and deliberately inflicting might just be Steven's effort to shorten my life and gain full control of Merchant. I haven't been eating or sleeping very much since the stunt that they pulled last Thursday.

Steven had Marc fired after seven years with Merchant because Marc refused to cut of the board's access to consultation with the company attorney. Marc was obviously correct in refusing to do this. Steven improperly accessed company information and went to Adam whining that I had spent $37,000 of Merchant money consulting with Marc. Adam and David Kaufman at a board meeting last Thursday. I was instructed to address management instead of David directly to get approval to speak to our attorney. I've been trying to get in touch with Adam since last Friday but he is childishly ignoring my emails and calls. The aggravation that he is causing me by his childish and immature failure to lead or ever admit any mistake, is certainly a factor in my stress and overall health. And David, Adam and Steve do not have the right to inflict unfair policies and then run away and hide.

I'm happy to speak to you more about this, if you'd like, but don't feel obligated. You are about to be named something in the new will that I'm not writing and I will certainly be in touch, probably later this week before I appoint you as anything. What position would be best for you and me, executor?

-Russell

------ Original Message ------
From: kayer@optonline.net
To: djkaufman@thompsoncoburn.com
Sent: Sunday, December 24, 2023 11:21 AM
Subject: Foolish, foolish move on your part

David,

Do you understand now that Steven and Adam persuaded you to do something that Marc Leaf refused to do-limit my and other board members access to information required for oversight?

Yes, that's why Steve pressured Adam to fire Marc. Adam feels that Marc wasn't proactive enough for his unwillingness to immorally and maybe illegally cut off the board's access to information required to fulfill our obligations. Marc was correct in refusing and it cost him his job. You weren't correct in your choice and choose to appear before the board and deliberately mislead us. You told us that access to the company attorney was not allowed in most corporations while deliberately omitting the FACT that the exact opposite is true for small, tightly held corporations. You, essentially claimed the opposite of what was true. You need to apologize and convince the board that this won't happen again and, quite frankly, I don't see how you will do that. But I'm giving you benefit of doubt and allowing you until 5PM Tuesday to convince me otherwise before I hire an attorney to have you removed and possibly file an ethics complaint. But I'm going to need a board meeting, only for this purpose: to explain why what you, Adam and Steve did was wrong and how we can be assured that it won't happen again.

I also felt that Marc wasn't proactive enough but in a very different way than Adam. He did his best not to take sides and lasted seven years until Steve convinced Adam to get rid of him. But things steadily deteriorated over those years **while I tried to tell Marc that he had to weigh in more and offer advice**. Steven urged management not to speak with me about how my mom's sub debt was going to be paid off before her death. Instead of helping, Steve convinced them to stonewall me and, I thought that Marc would realize that avoiding dealing with this problem was wrong and urge Adam to address it. But he didn't. Marc didn't want to take sides. That's why the sub debt problem and liability and damages have grown over the years. More recently, Marc oversaw new bylaws being written and enacted including "civility bylaws" to address civility at our board meetings. This was Ricks idea. Marc admitted to me about a year later that those bylaws were "ridiculous" and "unenforceable". My obvious question to him and the board was , "Why did you waste our time and money enacting them rather that advising us that this wasn't a good use of our time and money. **My point is that we need an attorney who will advise the board, fairly and equally to management, assist the board in any way practical, admit when they have made a mistake (nobody's perfect) and, most importantly advise and act in the best interests of the company.** It's clearly NOT in the best interests to limit or support limiting the board's access to any and all information that any of it's members need to fulfil their obligations as Directors.

Just on a personal note, I've had trouble sleeping and eating since your alarming performance on Thursday. This was exactly Steven goal, really. And you participated by being willing to push an immoral proposal on behalf of Steve, designed specifically to piss me off. Do you think that $37,000 in legal fees really means anything to owners who have tens of million of dollars? But that's all it took to get you and Adam to do something that I find SO VERY OFFENSIVE as to produce that all caps reaction.

One third of caregivers die before those for whom they are caring. Do let your immoral act of telling me that I wasn't entitled to access to legal information except at Adam's approval in order to preform my job of Director be one of the contributing factors to my demise. Your proclamation and position supporting a wrong policy has put the additional stress on me that is impairing my ability to eat and sleep. You, Adam and Steve might just find yourselves liable for more that you bargained. I am forwarding a separate copy of this email with additional comments to an attorney friend who will see that my wishes are followed should this stress prove to be too much for me.

-Russell

Archived: Thursday, January 25, 2024 9:49:08 AM
From: kayer@optonline.net
Mail received time: Thu, 28 Dec 2023 07:46:30
Sent: Thu, 28 Dec 2023 08:46:24
To: Adam Winters
Cc: Kaufman, David J.
Subject: Re: Re: Succession plan and sale of business
Importance: Normal
Sensitivity: None

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

Adam,

We can and should still talk about the subject of the sale of the business before it's presented to the board. I have a feeling that if I can convince you to sell, the rest of the board would follow. They really don't have a choice, do they? So, yes, we very much need to talk about the sale of the business. You seem to think that things have changed when the basic ownership of our company hasn't changed They haven't. You have always been obligated to discuss what I determine needs to be discussed. I still make that decision, not you. Understand?

How much vacation do you get and how much have you taken this year? I don't believe that you have any vacation time left. You just come up with this excuse today?

Unfortunately, you have put me in the position of having to be all over you to provide the proper oversight. Therefore, I am perfectly serious about talking every day, just like my dad did with you. I'd often have discussions with him about his conversations afterwards. I don't like you and you don't like me but this last stunt and your stubborn refusal to admit your error has caused the necessity in my mind to learn more and get more involved in Merchant's everyday operations, just like dad and just like I did previously when I worked everyday for Merchant. When can we start speaking instead of emailing again?

-Russell

------ Original Message ------
From: awinters@merchantfinancial.com
To: kayer@optonline.net; awinters@merchantfactors.com Cc: djkaufman@thompsoncoburn.com
Sent: Wednesday, December 27, 2023 3:52 PM
Subject: Re: Succession plan and sale of business

Once again the sale of the company is a board decision not yours alone. If you would like to sell your shares you are entitled to do so. I am on vacation with my family and have a succession plan that I will present when I'm back in January.

Adam Winters
President/CEO

MERCHANT FINANCIAL GROUP

New York Office
1441 Broadway, 22nd Floor, New York, NY 10018

Phone: 212-840-7575

From: kayer@optonline.net <kayer@optonline.net>
Sent: Wednesday, December 27, 2023 3:29:27 PM
To: Adam Winters <awinters@merchantfactors.com>
Cc: Kaufman, David <djkaufman@thompsoncoburn.com>
Subject: Succession plan and sale of business

Adam,

Repeating these two questions, when can we discuss the succession plan that you have promised in your contract as well as the sale of the business? These are my two top priority issues that we must address first. And there's more about which we will need to have discussions.

In fact, my dad talked to you pretty much every morning. Perhaps we can revive that old tradition. But you'll have to pick up the phone when I call, not run away from the need for more oversight, which you continue to demonstrate is sorely needed. So, a morning phone call, perhaps?

-Russell