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Cc: Mark.Rabogliatti@black-river.com[Mark.Rabogliatti@black-river.com]
From: Dan.Chapman@black-river.com
Sent: Sat 19/05/2012 2:15:53 AM (UTC)
Subject: Re: Tristan Confidential

Good. I didn't get thru to petronko. But when I do, if we forgo going after the tap, I believe he will have some helpful info on what stati was doing. At this point, that may well be worth it.
Dan Chapman

From: Greg.Vojack@vsbpartnersllp.com <Greg.Vojack@vsbpartnersllp.com>
To: Dan Chapman (black-river.com); Andrei Rodzianko (black-river.com)
Cc: Mark Rabogliatti (black-river.com)
Sent: Fri May 18 20:51:35 2012
Subject: FW: Tristan Confidential

Privileged and Confidential

I have send the below to Camille and Daniel (Mark was copied) to stimulate their creative attack mode thinking. The Tristan matter should not be looked at just through the precedential prism of what selection of causes of action might be used without some thought to the facts, since the facts in public information support certain actions like piercing the corporate shield that is typically disregarded because it is very difficult to get a court to agree. I know that in some parts you disagree with the assessment, but they all can lead to an aggressive approach to bring him back to the table for a reasonable discussion.

From: Vojack, Greg
Sent: Saturday, May 19, 2012 7:41 AM
To: Camille.Abousleiman@dechert.com; daniel.gal@dechert.com
Cc: 'Mark.Rabogliatti@black-river.com'
Subject: Tristan Confidential

Privileged and Confidential

I just wanted to share with you some of the high level analysis that we have been considering over the past year, inside and outside of Kazakhstan's jurisdiction to help put together a comprehensive action plan.

1. I believe it would be very helpful for the NY team and yourselves to take a little time and review the audited financial statements of 2009 and 2008 as well as the annual reports for those years. They show a systematic stripping of the monetary assets of the two Guarantors in part by not returning revenue from sale of crude oil. The reports imply that Kazakhstan was harassing them so what choice did they have but to strip guarantors to get their money out (see point 2 there was not a provision in the Tristan Note Indenture to prevent this stripping)? Maybe well true about Kazakhstan, but it is not a defense for their default under the Tristan notes. (Note Vitol took Stati to Arbitration in London and tried to use the defense "we could not pay you back because of Kazakhstan" but the Tribunal do not accept that argument and found for Vitol.) It seems that large amounts were taken and that could have been used to service the debt – but rather got invested in other projects that Stati owned through Ascom. The receivable gets as high as \$160 million and is only reduced by offsets to his other companies. During that period the Stati Structure moved money around from his oil trading firm to other entities outside of Kazakhstan. The amount in large part remains a receivable on the books of the Guarantors. Additionally, during the period they declared a large dividend, in violation of the Tristan Note Indenture to offset in part the receivable. The only way that they were able to do that was by moving funds around the complex Stati Structure. In a sense the Guarantors, Ascom, and the Stati Structure simply became the Alter Ego of Stati and his son, it was from this set of facts that caused me to consider piercing the corporate shield.
2. If you look at the Note Indenture itself it is very troubling. It lacks clear dispute settlement provisions, the intercompany notes that are to on lend funds do not fully cover the total amounts of Notes issued by Tristan. Tristan is a special purpose SPV so it has no other source of income so how could it pay back the note holders. A principal flaw in the structure is that Ascom is not a guarantor of the Tristan Notes so assets can be stripped from the Guarantors since Ascom was either

directly or indirectly in sole control over the Kazakhstan Guarantors and Stati was in sole control over Ascom. The Structure of the TAP notes and their issue is major question. If during that time Stati got \$160 million for oil that was never returned to the Guarantors or to Tristan, why did he need to issue the TAP notes to simply raise \$30 or \$60 million (the amount is not clear) for interest and taxes? Unless it was yet another way to strip monetary assets.

3. **Some have argued that the issuance of the Tap and the alleged Clifton Purchase of the Guarantors was a sham or a fraud.** The notes were issued at a low price, then the market heard that Clifton a company controlled by the Alysselbaev family (a Kazakhstan family very close to Adel Kambar of Ren Cap) was going to purchase the Guarantors so the notes went up in price. As it turned out the Alysselbaev family could not get state permission to purchase the Guarantors. Of course Stati claimed this was more harassment from the Kazakhstan Government, but the major source of wealth of the family encountered problems not because of the Kazakhstan government but because of discrepancies in the accounting that were discovered by the purchaser of the Alysselbaev's gold mine. And it was always in question as to where Alyselbaevs would get the funds to complete the sale. The sale contemplated paying Stati \$277 million and then the balance to the Note holders. However the Alysselbaev's when questioned by the Government as to means to pay allegedly stated, we will use the BTA model and restructure the notes before paying.

It would seem to me that Stati would be concerned about the US discovery process. I believe that the above can be helpful as you consider the NY side of the equation. So the idea generally it seems to me is to develop a NY attack that allows for attaching any resources that may be outside of Kazakhstan, in parallel with a Kazakhstan action to attack what would be paid from Kazakhstan as a means to bring Stati back to reality. If he was really willing to take \$277 in 2010 why has the number increased so much today if he really had the note holders interest in mind?

Something that was said yesterday that I did not understand clearly or maybe heard wrong. Let's assume that through an article 94 action in Kazakhstan the Note holders get a claim against Ascom for \$500 million. Agreed that such claim can only be enforced in Kazakhstan, because the court could only order an arrest of any and all assets of Ascom in Kazakhstan. Let's further assume that the Arbitration ends and the panel awards the Claimants \$700 million. So now Ascom has an asset in Kazakhstan a receivable from the Arbitration Award. Government of Kazakhstan has been served with the notice of an arrest of all assets of Ascom, if then Kazakhstan pays the \$500 million to the note holders as directed to do so by a court does not that reduce the amount that Ascom can go after outside of Kazakhstan to \$200 million?

There is no question that Kazakhstan did handle this matter poorly, and over reacted in the manner in which they took the assets. **However it is equally clear that Stati as well took actions that indicated he truly did not have the note holders interests in mind.** These represent some general thoughts that we can further develop over the next 10 days.

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