



## I. INTRODUCTION

Plaintiffs George Chammas and Laurent Delifer (together, the “Plaintiffs”), each a co-founder and director of Defendant NavLink, Inc. (“NavLink”),<sup>1</sup> bring this action pursuant to 8 *Del. C.* § 220 (“Section 220”) seeking inspection of six categories of NavLink documents: (1) communications between the non-Plaintiff directors of NavLink and Khalil Al Emadi (NavLink’s Chief Executive Officer) and Richard Giugno (NavLink’s Chief Financial Officer), (2) communications between John Gibson (NavLink’s Chairman) and the remaining non-Plaintiff directors, (3) communications between the non-Plaintiff directors and Georges Abi Saab (NavLink’s board Secretary) and Stuart Davies (Abi Saab’s predecessor as board Secretary) regarding preparation of board minutes, (4) documents and communications related to NavLink’s contracts with an important customer, (5) documents and communications related to NavLink’s Annual Operating Plan (“AOP”) and three-year plan, and (6) communications between NavLink and its company counsel, King & Spalding, regarding the company’s 2015 Annual General Meeting (“AGM”).<sup>2</sup> Plaintiffs also seek an award of court costs and fees.<sup>3</sup>

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<sup>1</sup> Trial Tr. 4, 6.

<sup>2</sup> Pls.’ Post-Trial Mem. 3, 8, 9, 10, 12; Verified Compl. for Inspection of Books and Records (“Compl.”) ¶ 43.

<sup>3</sup> Compl. Wherefore clause.

## II. BACKGROUND

### A. *The Parties*

NavLink is an information technology services company that “provides high end managed services” and “run[s] high end data centers for enterprise customers and governments” in Saudi Arabia, Qatar, Lebanon, and the United Arab Emirates, with its principal place of business in Beirut, Lebanon.<sup>4</sup> Chammas co-founded NavLink with Delifer, and served as co-President and Chief Financial Officer from the company’s inception in 1996 until 2010, and as Chief Strategy Officer from 2010 to 2012, when he was removed by NavLink’s Board of Directors (the “Board”).<sup>5</sup> Delifer served as co-President and Chief Executive Officer of NavLink from 2001 to 2009, and was President and CEO from 2009 to 2012.<sup>6</sup> Chammas and Delifer have served as directors of NavLink at all relevant times.<sup>7</sup> Of the remaining four Board members, two are appointed by AT&T Corporation (“AT&T”) and two are appointed by Ooredoo Q.S.C. (“Ooredoo”).<sup>8</sup> AT&T and Ooredoo each own approximately thirty eight percent of NavLink.<sup>9</sup> Of NavLink’s remaining equity, Chammas’s brother owns seven percent, Delifer’s father owns

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<sup>4</sup> Trial Tr. 4-5.

<sup>5</sup> *Id.* at 4; Pls.’ Pre-Trial Br. 2.

<sup>6</sup> Trial Tr. 197.

<sup>7</sup> *Id.* at 6, 197; Pls.’ Pre-Trial Br. 3.

<sup>8</sup> Trial Tr. 6. In addition, NavLink’s CEO, Emadi, is an Ooredoo executive, and NavLink’s CFO, Giugno, is an employee of AT&T. Pretrial Stipulation and Order (“Pretrial Stip.”) II(J)-(K); Trial Tr. 7.

<sup>9</sup> Trial Tr. 5.

seven percent, and the remainder resides primarily with current and former NavLink employees.<sup>10</sup>

### B. *Board Meeting Minutes*

During NavLink's April 27, 2015 Board meeting (the "April Board Meeting"), John Gibson (chairman of the Board and an AT&T appointee<sup>11</sup>) thanked Abi Saab, the Board Secretary, for circulating a draft of the November 17, 2014 Board meeting (the "November Board Meeting") minutes promptly following that meeting.<sup>12</sup> Chammas and Delifer, however, first received such minutes only five days before the April Board Meeting.<sup>13</sup> On May 2, 2015, Chammas sent an email to Abi Saab requesting the "original email that was circulated attaching the draft November 17, 2014 board minutes."<sup>14</sup> Abi Saab replied that he would send the original "in the next couple of days," but failed to do so.<sup>15</sup> Chammas, on May 11 and 17, again requested the original email.<sup>16</sup> Abi Saab, in an alleged attempt to evade the request, responded that he could not locate the email, but would continue searching.<sup>17</sup> Chammas then emailed Gibson directly requesting the

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<sup>10</sup> *Id.* at 6, 197-98.

<sup>11</sup> *Id.* at 6, 76, 78.

<sup>12</sup> *Id.* at 14-15; JX 15, 17, 21.

<sup>13</sup> Trial Tr. 14-15; JX 15, 17, 21.

<sup>14</sup> JX 53 at 4-5.

<sup>15</sup> *Id.* at 4.

<sup>16</sup> *Id.* at 3-4.

<sup>17</sup> *Id.* at 3.

same information, to which Gibson responded that he too was unable to locate the communication.<sup>18</sup>

During the June 4, 2015, Board meeting (the “June Board Meeting”), Gibson again addressed the issue, stating that his remark at the April Board Meeting that all directors received the November meeting minutes promptly following the November Board Meeting was a mistake, and that all NavLink directors, himself included, received the November Board Meeting minutes at the same time, that is, five days before the April Board Meeting.<sup>19</sup> Discovery in this action, however, revealed an email sent on November 19 by Abi Saab solely to Gibson enclosing draft November Board Meeting minutes.<sup>20</sup> Plaintiffs allege that this communication between Abi Saab and Gibson, which excludes the remaining Board members, justifies their demand for inspection of (1) communications between the non-Plaintiff directors and NavLink’s CEO (Emadi) and CFO (Giugno) and (2) communications between Gibson and other non-Plaintiff directors.<sup>21</sup> Plaintiffs argue that such information is necessary “to determine the

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<sup>18</sup> *Id.* at 1-2.

<sup>19</sup> Trial Tr. 19-20; JX 84 at 4.

<sup>20</sup> Trial Tr. 20-21; JX 12.

<sup>21</sup> Plaintiffs’ Exhibit (“PX”) 1 at 1. PX 1, admitted at trial, *see* Trial Tr. 151, is an updated version of JX 130, which states the search categories, protocol, and terms requested by Plaintiffs. JX 130, however, omits the Category Five search terms, which PX 1 includes. PX 1 is Plaintiffs’ listing of the categories of books and records that they seek and is used in this memorandum opinion, and referenced as such, as a convenient catalog.

extent to which the [non-Plaintiff directors] ha[ve] excluded them, to identify what Board business the rest of the Board has conducted in their absence, and to take remedial action if appropriate.”<sup>22</sup> Chammas and Delifer also request, pursuant to category three in PX 1 (“Category Three”), “[a]ll documents and communications concerning the preparation of draft Board minutes by Georges Abi Saab or his predecessor Board Secretaries from September 29, 2014 through the present time.”<sup>23</sup> Such information is necessary, Plaintiffs contend, because they are entitled to the same information at the same time as all other directors, including Gibson, and such information is required to appropriately discharge their fiduciary duties.<sup>24</sup>

Plaintiffs also allege that the non-Plaintiff directors falsified meeting minutes.<sup>25</sup> At trial, Chammas testified that, during the April Board Meeting, the directors discussed potential dates on which to hold the Annual General Meeting (“AGM”).<sup>26</sup> According to Chammas, no resolutions were proposed or approved, though the Board, at the June Board Meeting, nonetheless approved draft minutes from the April Board Meeting indicating that a resolution finalizing the time and

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<sup>22</sup> Pls.’ Post-Trial Mem. 4.

<sup>23</sup> PX 1 at 2.

<sup>24</sup> Trial Tr. 22.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 23.

place of the AGM was unanimously approved.<sup>27</sup> Plaintiffs contend that this falsification justifies their requests for (1) Abi Saab's NavLink emails, as well as his Ooredoo emails because he circulated the April Board Meeting minutes through his Ooredoo email account,<sup>28</sup> and (2) the information described in category six in PX 1 ("Category Six"), that is, "communications and documents reflecting communications between NavLink officers, directors or employees and King & Spalding regarding the 2015 Annual Meeting."<sup>29</sup>

### C. 2015 Annual Budget and Three-Year Operating Plan

During the April Board Meeting, the Board discussed NavLink's 2015 budget and its 2015-2017 three-year operating plan (the "Three-Year Plan").<sup>30</sup> Chammas asked "many questions" regarding the AOP and the Three-Year Plan.<sup>31</sup>

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<sup>27</sup> *Id.* at 24-25; JX 67 (May 29 email from Chammas to Abi Saab indicating Chammas's concern regarding the inaccuracies apparent in the draft April Board Meeting minutes).

<sup>28</sup> Trial Tr. 28; JX 40.

<sup>29</sup> PX 1 at 4; *accord* Trial Tr. 212 (Delifer expressing his concern regarding whether NavLink's counsel is receiving full and accurate information and his desire to understand the relationship between the Board and counsel). Chammas testified that such information is necessary to discern whether NavLink's counsel is aware that the time and place the Board set for the AGM may preclude attendance of certain stockholders. Trial Tr. 74-75 ("[I]n May, we found out that Lebanese nationals could not travel to Qatar without a visa. And the Qatari authorities have now imposed a very difficult process to obtain visas for Lebanese."). Such a concern arose, Chammas continues, because Giugno, in response to Chammas's inquiry, stated that he did not remember whether he shared this concern with King & Spalding. *Id.* at 75-76.

<sup>30</sup> JX 16, 19.

<sup>31</sup> Trial Tr. 30.

Management, however, was unable to answer those questions, and Yousuf Al Kubaisi, an Ooredoo-appointed director, asked management to “come back to the board with a revised plan to be approved” because of its inability to respond to the Board’s questioning.<sup>32</sup> On May 1, following the April Board Meeting, Chammas responded to an email from Abi Saab purportedly containing management’s clarifications with a request for additional information, including increased “[g]ranularity for all income and expenses for 2015, 2016 and 2017, . . . [m]ore clarity for the 2015 plan and budgets [and] [d]etails on Head Count.”<sup>33</sup> Such information was needed, Plaintiffs allege, to “make educated decisions and . . . vote on important matters.”<sup>34</sup>

On May 19, Abi Saab responded with additional information,<sup>35</sup> though such information, Chammas alleges, continued to lack the requisite granularity and detail to “make a decision as to the AOP and the three-year plan.”<sup>36</sup> Chammas, on

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<sup>32</sup> *Id.* at 31. For example, Chammas asked Giugno why cash in quarter three of 2015 was projected to drop by \$13 million while liabilities were increasing. *Id.* at 32; JX 21 at 4. Giugno responded that he was “not sure,” but that he would “look into it . . . [and] send . . . clarifications.” Trial Tr. 32; *accord* JX 21 at 4.

<sup>33</sup> JX 26; *accord* Trial Tr. 32. “Head Count” refers to the number of NavLink employee hours deemed billable as compared to those deemed non-billable. Trial Tr. 121, 157-58; JX 76.

<sup>34</sup> Trial Tr. 33.

<sup>35</sup> JX 37; Trial Tr. 33-34.

<sup>36</sup> Trial Tr. 34. For example, the revenue and EBITDA figures in the update sent as an attachment to Abi Saab’s May 19 email are not disaggregated among NavLink’s various operating entities, which Chammas contends is necessary to



May 24, sent to the Board a list of eight questions and topics needing clarification, including questions regarding a “new agreement” with Ooredoo that shifts four NavLink employees who work in Ooredoo data centers from “billable to non billable,”<sup>37</sup> and a request for business cases for Indonesia and the Kingdom of Saudi Arabia needed to verify the higher level financials.<sup>38</sup> During the June Board Meeting, Chammas again requested business cases, this time for the Kingdom of Saudi Arabia and Qatar, but Giugno replied that they did not exist.<sup>39</sup> When the Board subsequently voted on the 2015 budget, Chammas and Delifer abstained, because “[w]ithout business cases, [and] without details, [they could not] make an informed decision.”<sup>40</sup>

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effectively analyze the AOP and the Three-Year Plan. *Id.* at 34-36; JX 38 at GNCLSD00000201.

<sup>37</sup> Trial Tr. 37-39; JX 52.

<sup>38</sup> Trial Tr. 40-42; JX 52. Business cases “support management’s costly plans to establish or expand the Company’s operations.” Trial Tr. 40-41.

<sup>39</sup> Trial Tr. 42-43; JX 84 at 2. Additionally, NavLink, in its Answer, indicated that the requested business cases for Saudi Arabia, Indonesia, the United Arab Emirates, Qatar, and Oman did not exist. Def. NavLink, Inc.’s Answer to Pls.’ Verified Compl. for Inspection of Books and Records ¶¶ 17-19. Giugno, in a video deposition partially admitted at trial, testified that the reason NavLink stated in its Answer that “the ‘business cases’ Plaintiffs refer to do not exist,” *id.* ¶ 18, is that the phrase “business cases” is a typo—it should read “business case,” without the final “s,” because “the case in question was Indonesia, and that’s what was top of mind.” Trial Tr. 53.

<sup>40</sup> Trial Tr. 45.

“At some point” during the discovery process, Plaintiffs “obtained a business case for Ooredoo . . . for Qatar” (the “Qatar Business Case”).<sup>41</sup> Upon production of that document to NavLink, NavLink “flooded” Plaintiffs with “over 800 pages of financial information,” including some, but not all, business cases.<sup>42</sup> Chammas expressed concern over the Qatar Business Case’s representation that projects “in the hundreds of millions of Qatari Riyals” allocate to Ooredoo ninety percent of the revenue even though the project requires “a solution center in Doha with NavLink engineers, NavLink sales, [and] NavLink presales.”<sup>43</sup> Despite the lack of information provided to Plaintiffs, the 2015 budget was approved at the June Board Meeting.<sup>44</sup> Plaintiffs contend that the information requested in category five in PX 1 (“Category Five”)—that is, “business cases for the various countries where NavLink wants to establish and expand its operations,” and all documents or communications relating to NavLink’s operations and financial

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<sup>41</sup> *Id.* at 50-51.

<sup>42</sup> *Id.* at 51.

<sup>43</sup> *Id.* at 57-58. When he and Delifer ran the company, Chammas noted, “the revenue share was 55 percent to Ooredoo, 45 percent to NavLink.” *Id.* at 58. NavLink’s ten percent share in the Qatar Business Case concerns Chammas due to the long-term nature of the transaction and the fact that he is unsure of—despite having requested information regarding—which NavLink representative negotiated with Ooredoo, especially given that Ooredoo appoints one third of NavLink’s Board and that NavLink’s CEO is an Ooredoo executive. *Id.* at 58-59.

<sup>44</sup> *Id.* at 63-64. The Three-Year Plan was also discussed at the June Board Meeting, though the vote was scheduled to occur at NavLink’s next Board meeting. *Id.* at 64.

performance in Saudi Arabia, Indonesia, the United Arab Emirates, and Qatar<sup>45</sup>— is necessary to make an informed vote on the AOP and the Three-Year Plan.<sup>46</sup>

#### D. *Contracts with Saudi Telecom*

Plaintiffs also seek “documents and communications with [Saudi Telecom (‘STC’)] regarding the [Managed Hosting Services] and [Managed Security Services] contract addenda.”<sup>47</sup> NavLink had a “major contract” with STC, referred to as the Managed Resource Services (“MRS”) contract, along with additional smaller contracts to service STC’s customers.<sup>48</sup> NavLink has two contract addenda to the MRS contract: the Managed Hosting Services (“MHS”) contract (providing revenue of \$5.4 million and EBITDA of \$1.2 million pursuant to the Three-Year Plan) and the Managed Security Services (“MSS”) contract (providing revenue of \$23.5 million and EBITDA of \$3.3 million pursuant to the Three-Year Plan).<sup>49</sup> In mid-May, however, “STC requested from NavLink to end both addenda by June 24, 2015.”<sup>50</sup> An email from Emadi, NavLink’s CEO, to the entire Board (and CFO Giugno) listed NavLink’s two options: (1) accept STC’s request and negotiate new contracts with STC, or (2) reject STC’s request and transfer the

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<sup>45</sup> PX 1 at 3.

<sup>46</sup> Trial Tr. 62-64.

<sup>47</sup> PX 1 at 2.

<sup>48</sup> Pls.’ Pre-Trial Br. 14; Trial Tr. 67; JX 49.

<sup>49</sup> JX 49 at 1-2.

<sup>50</sup> *Id.* at 2.

matter to the legal department for litigation.<sup>51</sup> Emadi then evaluated the two options, explaining that “[o]ption 2 . . . jeopardizes the collection efforts of around \$31 [million owed by STC].”<sup>52</sup> Emadi finally requested the Board’s approval of his proposed “modified option 1” response, which includes attempting to negotiate an end to the MHS addendum on December 31, 2015 (as opposed to June 24), and maintaining the MSS addendum until all unpaid amounts have been collected (but no new orders will be placed).<sup>53</sup>

Chammas, however, testified that he does not “have the information that [he] need[s] to choose between these two options or any other options.”<sup>54</sup> Kubaisi, an Ooredoo-appointed director, in response to Emadi’s proposal, requested additional information, including whether Emadi informed the Board of STC’s December 2014 request for non-renewal prior to the April Board Meeting.<sup>55</sup> While management did not respond to Kubaisi’s email by writing, Chammas testified that, during a verbal discussion, Giugno explained to Kubaisi and Emadi that “the

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 2-3; Trial Tr. 67. Emadi continued that, “[i]n case of litigation, STC will most likely not pay NavLink until the litigation ends according to what several people at STC have advised.” JX 49 at 3.

<sup>53</sup> JX 49 at 3.

<sup>54</sup> Trial Tr. 66.

<sup>55</sup> *Id.* at 68-70. Chammas also expressed concern that management did not inform the Board of STC’s request until May 2015, “almost six months after the company officers knew about it.” *Id.* at 70.

reason why Mr. Emadi did not inform the [B]oard was that it was premature.”<sup>56</sup> Plaintiffs therefore contend that their request under category four in PX 1 (“Category Four”) for “documents and communications with STC regarding the MHS and MSS contract addenda”<sup>57</sup> is necessary to provide them with sufficient information to make an informed decision regarding Emadi’s email request.<sup>58</sup>

#### *E. Alleged Secret Meetings*

Chammas also expressed concern regarding alleged secret “pre-board meetings” between the non-Plaintiff directors at which they “agreed on a course of action” without informing Plaintiffs (the “Secret Meetings”).<sup>59</sup> Chammas suggests that the non-Plaintiff directors use the Secret Meetings to benefit Ooredoo and AT&T at the expense of NavLink stockholders.<sup>60</sup> Plaintiffs contend the alleged Secret Meetings justify their requests under categories one and two in PX 1 (“Categories One and Two”) for documents and communications concerning NavLink between (1) NavLink management and Gibson or other non-Plaintiff

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<sup>56</sup> *Id.* at 71.

<sup>57</sup> PX 1 at 2.

<sup>58</sup> Trial Tr. 72 (“[W]hat we received from the CEO is just a summary of the contract situation. It doesn’t tell us anything about the context. Without context, we cannot make a decision.”).

<sup>59</sup> *Id.* at 140, 142; Confidential Dep. of George Chammas (“Chammas Dep.”) 55-57. Chammas testified that he knew of the Secret Meetings because he and Delifer “were told,” but the identity of the informant remained confidential throughout the litigation. Trial Tr. 140-41; Telephonic Oral Arg. on Pls.’ Mot. for Protective Order and Rulings of the Ct. 22.

<sup>60</sup> Chammas Dep. 55-57.

Board members (except those relating to the Plenary Action (defined below)), and (2) Gibson and any other non-Plaintiff NavLink director.<sup>61</sup> Essentially, Plaintiffs seek this information to “determine the extent to which NavLink’s management and the [non-Plaintiff] directors are excluding them from meetings and decisions regarding board business.”<sup>62</sup>

Plaintiffs, in seeking fulfillment of this request, also refer to Giugno’s deposition testimony regarding management’s pre-Board meeting communications with Gibson.<sup>63</sup> According to Giugno, prior to a Board meeting, “there may[ ]be a flurry of e-mail.”<sup>64</sup> Neither Chammas nor Delifer, however, received such “flurries.”<sup>65</sup>

#### F. *The Plenary Action*

On May 12, 2015, Maroun Chammas (George Chammas’s brother) and Seraphin Delifer (Laurent Delifer’s father, and together with Maroun Chammas, the “Plenary Plaintiffs”) filed a class and derivative complaint on behalf of NavLink against AT&T, Gibson, and current and former non-Plaintiff NavLink directors alleging breach of fiduciary duty and contract (the “Plenary Action”).<sup>66</sup>

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<sup>61</sup> PX 1 at 1.

<sup>62</sup> Pls.’ Pre-Trial Br. 28.

<sup>63</sup> *Id.* at 29; Confidential Videotaped Dep. of Richard Giugno (“Giuigno Dep.”) 46.

<sup>64</sup> Giugno Dep. 46; *accord* Pls.’ Pre-Trial Br. 29.

<sup>65</sup> Trial Tr. 79, 221.

<sup>66</sup> JX 32 ¶¶ 126-41; *accord* Pretrial Stip. I. The Plenary Plaintiffs later amended their complaint, removing AT&T as a defendant and limiting their claims to breach

NavLink alleges that Plaintiffs’ books and records demands are motivated to “further their personal interests in the Plenary Action, and not any role they have as Directors, and thus they come before this Court with unclean hands.”<sup>67</sup> Specifically, NavLink alleges that Plaintiffs are principals of the Plenary Plaintiffs due to their close relationships, that Plaintiffs, as principals, control the Plenary Plaintiffs in the Plenary Action, and that “by virtue of their relationship, knowledge is imputed between the principal and agent.”<sup>68</sup>

In response, Plaintiffs contend that any “high level” communications between Plaintiffs and Plenary Plaintiffs is appropriate considering that Plaintiffs, as directors, owe the Plenary Plaintiffs, as stockholders, fiduciary duties.<sup>69</sup> Plaintiffs also made a “binding representation . . . that they will not disclose the Demanded Information or information derived therefrom to the Plenary Plaintiffs without NavLink’s prior written consent or a Court order.”<sup>70</sup> In addition, the Plenary Plaintiffs have affirmed that they “do not expect . . . that the documents [Chammas and Delifer] seek in the Section 220 Action will be shared with [them] . . . or used in the Plenary Action unless (a) the Court orders their

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of fiduciary duty. Verified Second Amended and Supplemental Class and Derivative Complaint, *Chammas v. Gibson*, C.A. No. 11015-VCN (Del. Ch. filed Sept. 9, 2015).

<sup>67</sup> Def. NavLink, Inc.’s Pre-Trial Br. 22-23; *accord* Pretrial Stip. IV(B).

<sup>68</sup> Def. NavLink, Inc.’s Pre-Trial Br. 23.

<sup>69</sup> Pls.’ Pre-Trial Br. 39.

<sup>70</sup> JX 96; Pls.’ Pre-Trial Br. 42.

production . . . , (b) they become public, or (c) [the Plenary Plaintiffs] obtain them independently through discovery in the Plenary Action.”<sup>71</sup>

### III. CONTENTIONS

Plaintiffs contend that reviewing documents and communications sought pursuant to each of the six categories in PX 1 is necessary to appropriately discharge their fiduciary duties owed to NavLink.<sup>72</sup> NavLink contends that it has produced, during the course of this action, sufficient books and records—including business cases, financial information, and the termination of the STC contract addenda—to moot Plaintiffs’ claims and allow them to act in accordance with their duties.<sup>73</sup>

### IV. ANALYSIS

#### A. *Legal Standard*

Under Delaware law, “[a]ny director shall have the right to examine the corporation’s . . . books and records for a purpose reasonably related to the director’s position as a director.”<sup>74</sup> The defendant corporation bears the burden of proving that any such inspection is for an improper purpose.<sup>75</sup> A director who has a proper purpose, however, has “virtually unfettered” rights to inspect books and

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<sup>71</sup> JX 94, 98; Pls.’ Pre-Trial Br. 42.

<sup>72</sup> Pretrial Stip. III(A); Pls.’ Post-Trial Mem. 1.

<sup>73</sup> Pretrial Stip. II(H), IV(G); Def. NavLink, Inc.’s Post-Trial Mem. of Law 6.

<sup>74</sup> 8 *Del. C.* § 220(d).

<sup>75</sup> *Id.*



records.<sup>76</sup> Such “unfettered” rights imply a right of access at least equal to that of the remainder of the board.<sup>77</sup> Management cannot “pick and choose” the specific information each director receives.<sup>78</sup>

The broad inspection rights afforded directors of Delaware corporations are “correlative with [their] duty to protect and preserve the corporation. [They are] fiduciar[ies] and in order to meet [their] obligation as such [they] must have access to books and records; indeed [they] often [have] a duty to consult them.”<sup>79</sup> In addition, a director’s proper purpose does not become improper “because of the possibility that he may abuse his position as a director and make information available to persons hostile to the Corporation or otherwise not entitled to it. If [the director] does violate his fiduciary duty in this regard, then the Corporation has its remedy in the courts.”<sup>80</sup>

## B. *Application*

Plaintiffs allege that, despite NavLink’s productions prior to and throughout this action, inspection of documents listed in each category of PX 1 is necessary to

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<sup>76</sup> *Norman v. US MobilComm, Inc.*, 2006 WL 1229115, at \*4 (Del. Ch. Apr. 28, 2006); *McGowan v. Empress Entm’t, Inc.*, 791 A.2d 1, 5 (Del. Ch. 2000).

<sup>77</sup> *Moore Bus. Forms, Inc. v. Cordant Hldgs. Corp.*, 1996 WL 307444, at \*5 (Del. Ch. June 4, 1996).

<sup>78</sup> *Hall v. Search Capital Gp., Inc.*, 1996 WL 696921, at \*2 (Del. Ch. Nov. 15, 1996).

<sup>79</sup> *Henshaw v. Am. Cement Corp.*, 252 A.2d 125, 128 (Del. Ch. 1969).

<sup>80</sup> *Id.* at 129.

“perform their fiduciary duties.”<sup>81</sup> NavLink, arguing that it has “bent over backwards” to respond to Plaintiffs’ requests for “granular” information, suggests that Plaintiffs’ true motive underlying their request for information is “to gain an advantage in the Plenary Action and to force a buyout of their respective family/agents’ NavLink stock.”<sup>82</sup> With this context, the Court now considers each request in turn.

1. Categories One and Two

Plaintiffs seek, pursuant to Categories One and Two, (1) “[a]ll documents and communications concerning NavLink between or among NavLink management, on the one hand, and board chairman Gibson or any other board member (but excluding Plaintiffs) from September 29, 2014 through the present time,” and (2) “[a]ll documents and communications concerning NavLink between or among board chairman Gibson, on the one hand, and any other NavLink director, on the other hand (but excluding Plaintiffs) from September 29, 2014

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<sup>81</sup> Pls.’ Post-Trial Mem. 1; *accord* Pretrial Stip. III(A).

<sup>82</sup> Def. NavLink, Inc.’s Post-Trial Mem. of Law 1. At the outset, the Court finds this argument unpersuasive following Plaintiffs’ pre-trial “binding representation” to not disclose the demanded information to the Plenary Plaintiffs, JX 96, and the Plenary Plaintiffs’ pre-trial declarations not to seek the same from Plaintiffs. JX 94, 98.

through the present time.”<sup>83</sup> Both requests exclude “documents and communications concerning the defense of the Plenary Action.”<sup>84</sup>

Plaintiffs’ alleged purpose for seeking this information is to investigate whether “the other members of the Board and management are excluding them from board business and related communications,”<sup>85</sup> including emails prior to Board meetings and alleged Secret Meetings.<sup>86</sup> Plaintiffs have not alleged, however, that any such “secret” communications amounted to official Board action; instead, they allege that the Secret Meetings and other communication resulted in the non-Plaintiff directors “agree[ing] on a course of action” without notifying Plaintiffs.<sup>87</sup> Even if the alleged Secret Meetings occurred, Plaintiffs cannot point to any resolutions or other official Board actions resulting therefrom.<sup>88</sup>

Under Section 220, Plaintiffs, as NavLink directors, are entitled to NavLink’s books and records “for a purpose reasonably related to the director’s position as a director.”<sup>89</sup> Therefore, if the documents and communications

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<sup>83</sup> PX 1 at 1.

<sup>84</sup> *Id.*

<sup>85</sup> Pls.’ Post-Trial Mem. 3; *accord* Trial Tr. 78.

<sup>86</sup> Trial Tr. 78-79, 139-40; Pls.’ Post-Trial Mem. 3.

<sup>87</sup> Trial Tr. 142.

<sup>88</sup> *Id.* at 141-42. Chammas testified that he and Delifer discuss NavLink business outside of Board meetings, but he asserts that the fact that the non-Plaintiff directors do the same is “different.” *Id.* at 142.

<sup>89</sup> 8 *Del. C.* § 220(d).

requested in Categories One and Two constitute books and records of NavLink, and are “reasonably related to the director’s position as a director,” Plaintiffs are entitled to their production. The Court, however, is unwilling to conclude, based on the facts of this case, that all communications between the non-Plaintiff directors or between such directors and NavLink officers are books and records of NavLink.<sup>90</sup>

Mere suspicions of pre-meeting collusion among board members or board members and management, in the context of a Section 220 action, is insufficient to compel the production of private communications between such officers and directors,<sup>91</sup> even to the extent that such communications are stored on the

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<sup>90</sup> The fundamental issue underlying many of Plaintiffs’ requests can be reduced to whether communications among corporate actors amount to books and records of the corporation.

<sup>91</sup> *Khanna v. Covad Commc’ns Gp., Inc.*, 2004 WL 187274, at \*9 (Del. Ch. Jan. 23, 2004) (“[T]o require the production of all communications, including e-mails, among directors and officers of [a company], under these circumstances, would be excessive. The appropriate documents . . . consist of those documents which are not the documents of individuals but, instead, are those which are held by the corporation.”). Cf. *In re Lululemon Athletica Inc. 220 Litig.*, 2015 WL 1957196, at \*5 (Del. Ch. Apr. 30, 2015) (“The statute is silent as to the books and records of the corporation’s directors, and Delaware courts have not read Section 220 so broadly as to include, as a general matter, books and records in a director’s personal possession. If anything, the prevailing rule appears to cut against the inclusion of such documents.” (footnotes omitted)); Edward P. Welch, et al., *Folk on the Delaware General Corporation Law* § 220.04[D], at 7–221 (2015) (“[P]ersonal documents of corporate officers, copies of which are not found among the corporation’s books and records, are not subject to inspection under section 220.”).

defendant company's servers.<sup>92</sup> While directors' access to company books and records is broader than that of stockholders, the requested information itself must qualify as a book or record of the company before the Court will order its production.<sup>93</sup>

The Court notes that while this holding is not to be interpreted as a blanket prohibition against inspection of private communications among directors,<sup>94</sup>

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<sup>92</sup> On which server a document or communication is stored is not necessarily determinative of whether it constitutes a book or record of the company. However, to be subject to compelled production pursuant to Section 220, a book or record must be "in the possession or control of the corporation." *Estate of Polin v. Diamond State Poultry Co.*, 1981 WL 7612, at \*3 (Del. Ch. Apr. 14, 1981). Were management to provide corporate documents to certain directors and not others, however, Plaintiffs may be entitled to such documents. *Hall*, 1996 WL 696921, at \*2 ("When management communicates with the directors on matters of concern to the Board collectively, it cannot pick and choose which directors will receive that information. Absent a governance agreement to the contrary, each director is entitled to receive the same information furnished to his or her fellow board members.").

<sup>93</sup> While stockholders "must show by a preponderance of the evidence that they have a proper purpose for inspection of any record that they seek," *In re New Media Books & Records Action*, 2015 WL 9459740, at \*1 (Del. Ch. Dec. 23, 2015), and that such books and records are "necessary and essential to accomplish the stated, proper purpose," *Saito v. McKesson HBOC, Inc.*, 806 A.2d 113, 116 (Del. 2002), directors are entitled to all books and records "reasonably related to the director's position as a director." 8 *Del. C.* § 220(d). Although such standards reflect a Section 220 plaintiff's ease of access to a company's books and records, the universe of available information remains constant. That is, whether a particular document qualifies as a company book or record is independent of whether the requesting party is a director or a stockholder.

<sup>94</sup> See *Wal-Mart Stores, Inc. v. Indiana Elec. Workers Pension Trust Fund IBEW*, 95 A.3d 1264, 1273 (Del. 2014) (noting the Section 220 defendant's acknowledgment that "officer-level documents that 'refer[ ] to communications with members of the Board' regarding the WalMex Investigation are necessary and

subjecting Section 220 proceedings to such broad requests, even by directors, runs contrary to the “summary nature of a Section 220 proceeding.”<sup>95</sup> As such, any request for communications among corporate directors and officers must (1) state a proper purpose,<sup>96</sup> (2) encompass communications constituting books and records of the corporation, i.e., those that affect the corporation’s rights, duties, and obligations,<sup>97</sup> and (3) be sufficiently tailored to direct the Court to the specific

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essential to the demand futility inquiry,” and assuming that such documents constitute books and records of the corporation (first alteration in original)).

<sup>95</sup> *Southpaw Credit Opportunity Master Fund LP v. Advanced Battery Techs., Inc.*, 2015 WL 915486, at \*10 (Del. Ch. Feb. 26, 2015). While the scope of discovery under Court of Chancery Rule 26 (“Rule 26”) “is broad and far-reaching . . . [and] renders discoverable any information that ‘appears reasonably calculated to lead to the discovery of admissible evidence,’” *Pfizer Inc. v. Warner-Lambert Co.*, 1999 WL 33236240, at \*1 (Del. Ch. Dec. 8, 1999) (quoting Rule 26(b)), inspection of corporate documents pursuant to Section 220 is “substantially limited in scope,” *Highland Select Equity Fund, L.P. v. Motient Corp.*, 906 A.2d 156, 165 (Del. Ch. 2006), *aff’d sub nom.*, *Highland Equity Fund, L.P. v. Motient Corp.*, 922 A.2d 415 (Del. 2007), and permits production and inspection only of documents and communications that fall within Section 220’s contemplation of “books and records.”

<sup>96</sup> While directors seeking to inspect corporate books and records must do so for a purpose “reasonably related” to their position as directors, the corporation bears the burden of proving that the purpose is improper. *See supra* text accompanying note 75.

<sup>97</sup> *Estate of Polin*, 1981 WL 7612, at \*3 (documents subject to a Section 220 request are limited to “those which were intended to reflect on the business, condition or legal rights of the corporation”). The fact that a document or communication is maintained by a corporation does not result in its automatic categorization as a corporate book or record. Section 220 is not a means by which a director or stockholder may scrutinize the interstices of the corporation to support mere suspicions of wrongdoing; instead, the requested information must affect the corporation’s rights and obligations in a way relevant to the plaintiff’s proper purpose.

books and records relevant to the director's proper purpose.<sup>98</sup> Here, Plaintiffs have not shown that the broad range of private communications requested in Categories One and Two satisfy the second or third requirement above.<sup>99</sup> Accordingly, Plaintiffs' demands pursuant to Categories One and Two are denied.

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<sup>98</sup> See *Louisiana Mun. Police Empls.' Ret. Sys. v. Countrywide Fin. Corp.*, 2007 WL 2896540, at \*15 (Del. Ch. Oct. 2, 2007) (ordering inspection of communications between directors and other persons or entities where a stockholder "stated a proper purpose and narrow scope for the investigation of such documents"), *order clarified*, 2007 WL 4373116 (Del. Ch. Dec. 6, 2007). While director requests for information pursuant to Section 220 need not be made with the same "rifled precision" as those made by stockholders, see *Brehm v. Eisner*, 746 A.2d 244, 266 (Del. 2000), they still must direct the Court to specific books and records related to the plaintiff's proper purpose. Without such direction, the Court is unable to direct production of an appropriate set of documents, and unwilling to burden the corporation to search for the same.

<sup>99</sup> While some subset of communications within Plaintiffs' broad request may fall within Section 220's reach, Plaintiffs must, in the context of a Section 220 proceeding, focus their request at least to the extent that the Court is able to discern such subsets, as to avoid the breadth and accompanying burdens of discovery pursuant to Rule 26. See *First Corp. v. U.S. Die Casting & Dev. Co.*, 687 A.2d 563, 570 (Del. 1997) ("The scope of the production which the Court of Chancery ordered in this case is more akin to a comprehensive discovery order under Court of Chancery Rule 34 than a Section 220 order. The two procedures are not the same and should not be confused. A Section 220 proceeding should result in an order circumscribed with rifled precision. Rule 34 production orders may often be broader in keeping with the scope of discovery under Court of Chancery Rule 26(b)."); *Amalgamated Bank v. UICI*, 2005 WL 1377432, at \*1 (Del. Ch. June 2, 2005) ("Invocation of the statutory right to inspect corporate books and records, however, 'does not open the door to wide ranging discovery that would be available in support of litigation.'"); *U.S. Die Casting & Dev. Co. v. First Corp.*, 1995 WL 301414, at \*3 (Del. Ch. Apr. 28, 1995). Though the standards enumerated in the above authority apply in the context of stockholder Section 220 requests, the concerns about feasibility and clarity apply to director requests as well.

## 2. Category Three

Category Three requests “[a]ll documents and communications concerning the preparation of draft Board minutes by Georges Abi Saab or his predecessor Board Secretaries from September 29, 2014 through the present time.”<sup>100</sup> Plaintiffs request such information for the stated purpose of “understand[ing] what happened with the draft minutes and how the minutes were produced.”<sup>101</sup> Plaintiffs’ concern regarding the preparation of draft Board minutes stems from: (1) Gibson’s statement at the April Board Meeting thanking Board Secretary Abi Saab for “promptly” sending the minutes of the prior Board meeting while Plaintiffs did not receive any such communication,<sup>102</sup> and (2) alleged falsification and improper Board approval of the April Board Meeting minutes.<sup>103</sup>

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<sup>100</sup> PX 1 at 2.

<sup>101</sup> Trial Tr. 198; *accord id.* at 12; Pls.’ Post-Trial Mem. 8.

<sup>102</sup> Trial Tr. 199-200; JX 22 at 1. Gibson, at the June Board Meeting, “said that it was a mistake, [and] that . . . all . . . directors received the minutes at the same time,” that is, five days before the April Board Meeting. Trial Tr. 200; *accord id.* at 20; JX 84 at 4. After filing this action, however, NavLink produced an email dated November 19 from Abi Saab to Gibson containing draft minutes of the November Board Meeting. Trial Tr. 200.

<sup>103</sup> Trial Tr. 22-25; Pls.’ Post-Trial Mem. 8. Specifically, Plaintiffs contend that while the Board, during the April Board Meeting, discussed potential dates for the AGM, no such resolution was proposed or adopted. Trial Tr. 23-24. The draft meeting minutes sent to the Board on May 20, 2015, however, indicated unanimous approval of a resolution setting forth the date and time of the AGM. JX 40, 41; Trial Tr. 23-25. Upon receipt of the draft minutes, Chammas communicated his concerns, stating that “[he has] reviewed the draft board minutes; they are materially inaccurate. No board resolutions were proposed at the meeting much less passed. Please correct the draft minutes accordingly.” JX 67



First, Plaintiffs have stated a purpose reasonably related to their function as directors; they seek to investigate allegations, supported with credible evidence, of inconsistencies with respect to the timing, recipients, and content of various draft meeting minutes.<sup>104</sup> Ensuring the accuracy of corporate documents is well within Plaintiffs' duties as directors.<sup>105</sup>

Second, while this category, similar to Categories One and Two, requests communications among NavLink Board members and management, its focus is substantially narrowed by the qualifying phrase "concerning the preparation of draft Board minutes," which limits its scope, for the most part, to communications regarding corporate actions or inactions with respect to alleged wrongdoing. Though the draft minutes themselves have been produced, this request includes communications among non-Plaintiff directors regarding preparation and dissemination of the allegedly falsified minutes. Plaintiffs' request for documents contained in Category Three is, therefore, divisible into two categories:

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(May 29, 2015 email from Chammas to the Board). The Board, however, never corrected the minutes, and instead approved them at the June Board Meeting. Trial Tr. 26-27.

<sup>104</sup> *See supra* notes 102-03.

<sup>105</sup> The Court notes that Plaintiffs have received, during the course of this litigation, the disputed November email between Abi Saab and Gibson containing draft minutes. JX 12; Trial Tr. 20-21. To the extent additional communications between the Secretary and non-Plaintiff directors containing draft meeting minutes exist, however, such communications fall within the scope of Section 220, are reasonably related to Plaintiffs' position as directors, and are therefore subject to Plaintiffs' Section 220 request.

(1) communications to and from the Board Secretary *containing* draft Board meeting minutes, and (2) communications among non-Plaintiff Board members *concerning* draft Board meeting minutes.

It is well settled that board meeting minutes fall within the ambit of available books and records of a company.<sup>106</sup> NavLink does not argue any meaningful distinction between draft meeting minutes and approved meeting minutes with respect to qualification as company books and records. Therefore, any communication, whether from a NavLink or non-NavLink email account, to or from a NavLink Board Secretary (including Abi Saab and Davies—Abi Saab’s predecessor as NavLink’s Secretary) containing draft meeting minutes is properly considered a company book and record.

The question remaining, then, is whether communications between a board secretary and directors *concerning* draft meeting minutes fall within the ambit of corporate books and records subject to inspection pursuant to Section 220. As it is the Board Secretary’s corporate duty to properly keep draft meeting minutes,<sup>107</sup> communications to and from the Board Secretary in carrying out this corporate

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<sup>106</sup> *E.g.*, *Grimes v. Donald*, 673 A.2d 1207, 1218 (Del. 1996) (“A stockholder who makes a serious demand and receives only a peremptory refusal has the right to use the ‘tools at hand’ to obtain the relevant corporate records, such as reports or minutes, reflecting the corporate action and related information in order to [effectuate a proper purpose].”), *overruled on other grounds by Brehm v. Eisner*, 746 A.2d 244 (Del. 2000).

<sup>107</sup> *Flaherty v. Lacy*, 1983 WL 18000, at \*9 (Del. Ch. May 23, 1983).

duty directly affect the company's rights, duties, and obligations, and therefore fall within the scope of the corporation's books and records.<sup>108</sup> This request also, however, includes communications regarding meeting minute preparation between Board members. Mere communications among directors regarding draft meeting minutes, where Plaintiffs have not alleged that such communications amount to official corporate business or otherwise affect the corporation's rights or obligations, fall outside the scope of the company's books and records.<sup>109</sup>

Therefore, with respect to Category Three, Plaintiffs are entitled to communications between non-Plaintiff directors and the current or former Board Secretary containing or concerning draft or official Board meeting minutes. To the extent Category Three incorporates Board communications concerning draft meeting minutes excluding the Secretary, the request is denied.

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<sup>108</sup> This is especially true where, as here, Plaintiffs have proffered and supported with credible evidence allegations of wrongdoing with respect to the creation, dissemination, and adoption of such minutes. *See supra* notes 102-03.

<sup>109</sup> Such communications, not involving the Board Secretary, have no direct link to the corporation's official business, and therefore amount to no more than mere director discussions, similar to those requested (and denied) in Categories One and Two. Although Plaintiffs' Category Three request encompasses such communications, its otherwise narrow scope respects the summary nature of Section 220 proceedings and allows the Court to reasonably discern those which are in fact subject to Section 220.

### 3. Category Four

Category Four requests “[a]ll documents and communications with STC regarding the MHS and MSS contract addenda.”<sup>110</sup> STC is a major client of NavLink, and the MHS and MSS contract addenda were projected, in NavLink’s Three-Year Plan, to generate \$27.2 million in revenue in 2015.<sup>111</sup> Emadi’s request that the Board consider NavLink’s options in response to STC’s request to terminate the MHS and MSS contract addenda accordingly implicates Plaintiffs’ “virtually unfettered”<sup>112</sup> right to access NavLink’s books and records to the extent reasonably necessary to inform such a judgment. Therefore, Plaintiffs are entitled to communications between management and STC containing documents and records that “reflect on the . . . legal rights of the corporation,”<sup>113</sup> and are related to STC’s request to terminate the MHS and MSS contract addenda.

Again, however, this category also requests “communications” between management and STC. While such communications may reasonably be related to Plaintiffs’ position as directors, and while the scope of the request is somewhat narrowed,<sup>114</sup> not all communications between officers and corporate clients fall

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<sup>110</sup> PX 1 at 2.

<sup>111</sup> JX 49; Pls.’ Pre-Trial Br. 33.

<sup>112</sup> *McGowan*, 791 A.2d at 5.

<sup>113</sup> *Estate of Polin*, 1981 WL 7612, at \*3.

<sup>114</sup> The Court notes that, while this request is narrower than those in Categories One and Two, it is broader than that in Category Three. Specifically, it requests all communications with respect to two contracts between NavLink and one of its

within Section 220's contemplation of books and records of the company. Although communications containing official corporate documents or other communications, such as acceptance of offers to enter into binding agreements or waivers of legal liabilities, may fall within Section 220's purview, mere conversations, especially in the absence of alleged mismanagement or wrongdoing,<sup>115</sup> between management and STC do not rise to the level of corporate records.<sup>116</sup>

Therefore, Plaintiffs are entitled to all official documents, acceptance of proposals, and other communications affecting the corporation's rights, duties, and obligations exchanged between NavLink management—specifically Emadi and

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largest customers. The request is not limited to STC's requested termination of the contracts or to a specific NavLink officer. Such a request, if granted in full, would "re-create a year's worth of email traffic," Def. NavLink, Inc.'s Post-Trial Mem. of Law 13, and would likely encompass an excessive number of communications not within Section 220's contemplation of books and records.

<sup>115</sup> Plaintiffs mention their and other directors' concern regarding the timing of management's disclosure of STC's request to terminate the MHS and MSS contracts, Trial Tr. 70, but a tardy disclosure, without more, does not rise to the level of mismanagement sufficient to bring "all communications" within the scope of Section 220.

<sup>116</sup> *See supra* notes 94-95, 97 and accompanying text. While email and other written communications may be characterized as corporate "documents," documents that are mere communications constitute corporate books or records only to the extent that they affect the corporation's rights, duties and obligations. Therefore, although management negotiates and conducts business with third-party corporate clients, such communications constitute books and records of the corporation only to the extent that they affect the corporation's rights and obligations. Such communications, however, likely fall within Plaintiffs' attendant Category Four request for corporate "documents."

Bassel Dbaibo (the Chief Commercial Officer)—and STC concerning STC’s request to terminate prematurely the MHS and MSS contract addenda. Such documents and communications are reasonably related to Plaintiffs’ position as directors, and are necessary for Plaintiffs to develop an informed opinion on and submit an appropriate recommendation regarding STC’s requested termination and Emadi’s proposed response. To the extent that Category Four requests communications in excess of those described above, the request is denied.

#### 4. Category Five

Category Five seeks “[a]ll documents requested by Plaintiffs in connection with their evaluation of NavLink’s 2015 budget and three-year operating plan.”<sup>117</sup>

Such documents include

(i) business cases for the various countries where NavLink wants to establish and expand its operations, including Saudi Arabia, Indonesia, the United Arab Emirates, Qatar, and Oman, including, but not limited to, documents and communications relating to market analysis, strategy, competitive landscape, revenue and cost drivers, product development roadmaps, products and services positioning, and all material information and key assumptions used to develop the business cases and financial projections; and (ii) any and all documents or communications relating to sales, marketing and operations related to NavLink’s business and financial performance in Saudi Arabia, Indonesia, the United Arab Emirate and Qatar.<sup>118</sup>

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<sup>117</sup> PX 1 at 3.

<sup>118</sup> *Id.*

Plaintiffs’ purpose for making this request—to develop an informed opinion regarding the propriety and advisability of NavLink’s AOP and Three-Year Plan<sup>119</sup>—is reasonably related to Plaintiffs’ position as directors. The Court notes that, during the pendency of this proceeding, NavLink has produced documents responsive to this category, including “business cases, financial information, and the termination of the STC contract addenda.”<sup>120</sup> To the extent the requested search terms reveal documents within the scope of Plaintiffs’ request not yet produced, however, Plaintiffs are entitled to such documents.

Plaintiffs’ request for “communications relating to sales, marketing and operations,” however, exceeds the scope of documents contemplated by Section 220. Plaintiffs do not allege specific wrongdoing with respect to such documents, or that the requested communications in any way affect the corporation’s rights, duties, or obligations. Mere communications between corporate officers and corporate clients, in the absence of such allegations, cannot

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<sup>119</sup> Pls.’ Pre-Trial Br. 10-11.

<sup>120</sup> Def. NavLink, Inc.’s Post-Trial Mem. of Law 6; *accord* Pretrial Stip. II(H). More specifically, the production included AOPs, Three-Year Plans, financial statements and other financial information, salary information, meeting agendas, prior draft meeting minutes, budget forecasts, business cases used to develop the AOP and Three-Year Plan, and emails and analyses concerning the STC contract addenda termination. *Id.* at 6-7; Pls.’ Post-Trial Mem. 12 (“NavLink . . . dumped hundreds of pages of financial documents on Plaintiffs, including some business cases.”). Plaintiffs argue that NavLink’s production has “critical gaps,” although they do not identify the specific documents allegedly withheld. Pls.’ Post-Trial Mem. 11; *accord* Trial Tr. 210.

properly be considered books and records of the company.<sup>121</sup> Additionally, Plaintiffs allege no proper purpose for requesting these communications. They do not address how, if NavLink produces documents sufficient to satisfy Category Five, communications relating to those documents would reasonably relate to their position. Thus, Plaintiffs' Category Five request is denied to the extent that it seeks director or management "communications relating to [NavLink's] sales, marketing and operations."

#### 5. Category Six

Category Six requests "[a]ll communications and documents reflecting communications between NavLink officers, directors or employees and King & Spalding [(NavLink's company counsel)] regarding the 2015 Annual Meeting."<sup>122</sup> Plaintiffs' alleged purpose for requesting this category of documents and communications is to ensure that NavLink's counsel is receiving full and accurate information regarding the AGM.<sup>123</sup> This concern stems from the fact that the time and place at which the non-Plaintiff directors scheduled the AGM may prevent certain NavLink stockholders from exercising their voting rights.<sup>124</sup> NavLink

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<sup>121</sup> *See supra* notes 97, 116.

<sup>122</sup> PX 1 at 4.

<sup>123</sup> Pls.' Post-Trial Mem. 12; Trial Tr. 75-76, 212.

<sup>124</sup> For example, Plaintiffs are concerned that management did not fully inform King & Spalding of the difficulty of obtaining a Qatari visa for Lebanese passport holders, which could deny certain stockholders the ability to attend the AGM. Trial Tr. 74-75.



argues that its productions to date satisfy Plaintiffs’ alleged purpose, and that the search terms requested are overly broad.<sup>125</sup>

Directors are obligated to properly schedule and conduct corporate meetings so as to ensure stockholder enfranchisement.<sup>126</sup> Communications between NavLink management and King & Spalding regarding the time and place of the AGM are therefore reasonably related to Plaintiffs’ position as directors. Next, the scope of the request—limited solely to communications concerning the 2015 AGM—is sufficiently narrow to avoid unnecessary burdens inconsistent with Section 220’s summary nature. Finally, such communications qualify as books and records of the company. Ensuring that a company’s counsel remains adequately informed to properly advise the corporation can improve corporate governance and avoid corporate liability. Plaintiffs have alleged facts supporting a reasonable inference that management has failed to adequately inform King &

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<sup>125</sup> Def. NavLink, Inc.’s Post-Trial Mem. of Law 14-15. Plaintiffs respond that the produced documents aggravate, rather than alleviate, their suspicions regarding information provided to King & Spalding. Pls.’ Post-Trial Mem. 13; JX 71 (email from King & Spalding to Giugno suggesting that King & Spalding did not receive full information regarding the AGM).

<sup>126</sup> Cf. *MM Cos. v. Liquid Audio, Inc.*, 813 A.2d 1118, 1126-27 (Del. 2003) (“The power of managing the corporate enterprise is vested in the shareholders’ duly elected board representatives,” and “[m]aintaining a proper balance in the allocation of power between the stockholders’ right to elect directors and the board of directors’ right to manage the corporation is dependent upon the stockholders’ unimpeded right to vote effectively in an election of directors.”); *Schnell v. Chris-Craft Indus., Inc.*, 285 A.2d 437, 439 (Del. 1971) (invalidating a meeting date set by directors attempting to thwart the plaintiff stockholders’ proxy fight).

Spalding of material facts concerning the time and place of the 2015 AGM.<sup>127</sup> Such a failure risks potential liability and therefore affects NavLink's legal duties and obligations. Accordingly, Plaintiffs are entitled to the requested communications between NavLink's management and King & Spalding. Such communications, and therefore Plaintiffs' requested search terms, are limited to those regarding the 2015 AGM.

## V. CONCLUSION

Plaintiffs are entitled to (1) communications between Board Secretaries Abi Saab and Davies and non-Plaintiff directors containing and concerning Board meeting minutes; (2) corporate documents, and communications between NavLink management and STC containing such documents, regarding termination of the MHS and MSS contract addenda; (3) documents, other than mere communications, related to NavLink's 2015 budget and Three-Year Plan; and (4) communications between management and King & Spalding regarding the AGM.<sup>128</sup> Plaintiffs' remaining requests are denied. Also, as Plaintiffs acknowledged, books and

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<sup>127</sup> When discussing his concerns regarding the ability of Lebanese NavLink stockholders to vote at the AGM as scheduled, Chammas asked Giugno whether Giugno shared Chammas's concerns with company counsel, to which Giugno responded "I don't remember." Trial Tr. 76.

<sup>128</sup> Production of such documents should be limited to those not made available during the course of this litigation. The Court recognizes that, due to NavLink's pre-trial document production, determining what still needs to be produced is at best an imprecise effort. NavLink has not contested its responsibility to engage in electronic document searches, and therefore the Court does not address this issue.

records which they obtain because of this action shall not be provided to the Plenary Plaintiffs.<sup>129</sup>

**IT IS SO ORDERED.**

*/s/ John W. Noble*

Vice Chancellor

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<sup>129</sup> The parties shall bear their own costs and attorneys' fees. Plaintiffs have not provided a satisfactory basis for awarding them their legal fees.