SCANNED ON 6/26/2006

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: PART 53

Index Number : 602527/2005

D'ADDARIO, JOHN — In Re

vs — Viacom

ABRAMS, GEORGE S.

Sequence Number : 001

CONSOLIDATION/JOINT TRIAL

DEX NO. 602527/05

OTION DATE ______

OTION SEQ. NO. 01

OTION CAL. NO. ______

The following papers, numbered 1 to ______ were read on this motion to/for ______

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

is decided in accordance with accompanying memorandum decision and order.

FILED
JUN 26 2006
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 6/23/06

J.S.C.

CHARLES E. RAMOS

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE ______ FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK:COMMERCIAL DIVISION
--X

IN RE VIACOM INC.
SHAREHOLDER DERIVATIVE
LITIGATION

Index No. 602527/05

--X

Charles Edward Ramos, J.S.C.:

In motion sequence number 001, defendants, George S. Abrams ("Abrams"), David R. Andelman ("Andelman"), Joseph A. Califano, Jr., William S. Cohen, Phillipe P. Dauman ("Dauman"), Thomas E. Freston ("Freston"), Alan C. Greenberg ("Greenberg"), Leslie Moonves ("Moonves"), Charles Phillips, Jr., Shari Redstone, Sumner M. Redstone ("Redstone"), Frederic V. Salerno ("Salerno"), William Schwartz ("Schwartz"), Robert D. Walter ("Walter"), and defendant Viacom Inc. ("Viacom"), move pursuant to CPLR 3211 for an order dismissing the complaint for failure to state a cause of action and failure to comply with the Delaware Chancery Court Rule 23.1.[1]

Plaintiffs instituted this derivative action[2] alleging that defendants breached their fiduciary duty by awarding three Viacom directors, Freston, Moonves, and Redstone, excessive corporate executive compensation. Viacom moves for dismissal on the grounds that plaintiffs (1) failed to make a pre-action demand

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[1] The defendants' Memorandum of Law and other papers supporting this motion to dismiss contain factual allegations that would be appropriate on a motion for summary judgment pursuant to CPLR 3212. Those allegations will not be considered on this motion to dismiss pursuant to CPLR 3211.

[2] By Stipulation and Order, the actions *Juengling v Abrams, et al.*, index no. 602526/05 and *D'Addario v Abrams, et al.*, index no., 602527/05 were consolidated.

upon Viacom's Board of Directors (the "Board"), a prerequisite to maintaining a derivative action, and (2) fail to stata a claim for breach of fiduciary duty or unjust enrichment. In response, plaintiffs argue futility, on the grounds that the majority of the Board is interested and lacks independence from Redstone. For the reasons stated below, this Court finds that a demand upon the Board would be futile and that the complaint states valid causes of action. Defendants' motion to dismiss the complaint is denied in its entirety.

Background

Plaintiffs allege that Viacom's directors, listed above, breached their fiduciary duties by approving excessive and unwarranted compensation packages for Redstone, Viacom's Chairman of the Board and Chief Executive Officer; Freston, Viacom's Co-President and Co-Chief Operating Officer; and Moonves, Viacom's other Co-President and Co-Chief Operating Officer.

Viacom is a worldwide entertainment company, incorporated in Delaware, with its principal executive offices located in New York. As a publicly traded company on the New York Stock Exchange, Viacom's corporate governance practices are subject to the New York Stock Exchange Corporate Governance Rules.

Plaintiffs sued Viacom, its directors, and certain executive officers "seeking to remedy defendants' breaches of fiduciary duties and unjust enrichment." Plaintiffs claim that the compensation paid to the three Viacom officers was excessively high, at a time when Viacom reported an alleged record net loss

of $17.462 billion.

The Board itself is composed of twelve directors, five of whom Viacom concedes are not independent: Redstone, Shari Redstone, Abrams, Andelman, and Dauman. On June 1, 2004, Viacom's President and Chief Operating Officer, Mel Karmazin, resigned. Redstone recommended Freston and Moonves to the Board as Co-Presidents and Co-Chief Operating Officers, thereby replacing Karmazin. This recommendation was allegedly discussed and considered at several meetings of the Board and the Corporate Governance Committee. The Board unanimously approved Redstone's proposal.

The Board's Compensation Committee is chaired by Walter and includes members Salerno and Schwartz. The Committee allegedly met eight times during 2004, eventually determining and approving a compensation package for Redstone, Freston and Moonves.

The Compensation Committee approved compensation agreements for Freston and Moonves, effective July 1, 2004, which provided:

> [F]or each executive, among other things, an initial base salary of $5 million per year (of which $2 million per year is deferred); annual bonus compensation under the Senior Executive Short-Term Incentive Plan (the "STIP"), with a target bonus set at 200% of base salary for such year; and a grant of stock options to purchase 1.5 million shares of Class B Common Stock, of which 500,000 vested on December 31, 2004 and the remaining 1,000,000 vests in four equal annual installments, and four annual awards, commencing in 2005, of 115,000 restricted share units that vest upon certification by the Committee that the one-year performance criteria established by the Committee for the year in which the units were granted has been achieved.

Freston, who has served as Co-President and Co-Chief Operating Officer of Viacom since July 1, 2004, received cash

compensation of approximately $20 million, stock options worth $1.9 million, Viacom shares valued of approximately $32 million, totaling an estimated $52 million in compensation.

Moonves, who also served as Co-President and Co-Chief Operating Officer of Viacom since July 1, 2004, received $20 million in cash compensation, stock options worth $1,901,410 and Viacom shares valued at $32 million, totaling approximately $52 million in compensation.

Redstone owns 71.2% of all outstanding Viacom Class A Common Stock and a majority of the equity of National Amusements, Inc. ("National Amusements"), which, in turn, owns approximately 6.5% of Viacom's Class B Common Stock. Redstone received cash compensation of approximately $21.5 million, stock options of $2,050,000 in Viacom shares, valued at approximately $34.4 million, totaling $56 million in compensation. The Compensation Committee also recommended that Redstone receive a $16.5 million cash bonus and approximately $2 million worth of stock options.

In 2004, after being on the job as Co-COO for six months, Freston received a base salary of $4,221,539, a SESTIP bonus of $16 million, and options valuing $32,047,100. Moonves received a base salary of $5,773,077, a SESTIP bonus of $14 million and a value of stock options totaling $32,071,665.

Around this time, the Compensation Committee decided to revise Redstone's Compensation package as they believed that Redstone's salary should be greater than that of executives reporting to him. Redstone's new employment agreement provided

for an additional base salary of $500,000 per year, a reduction of $4 million to his deferred compensation to an initial rate of $2 million. Redstone received the same stock options and restricted share units which were provided to Freston and Moonves.

Plaintiffs object to Viacom's payment of $159,996,504 in one year to the COOs and CEO, which the entire Viacom Board unanimously approved pursuant to the Compensation' Committee's recommendations. Specifically, plaintiffs claim that Redstone dominated the Viacom compensation scheme in that no checks existed to monitor the awarding of excessive compensation to Redstone, Freston and Moonves, due, in part, to the alleged lack of independence of three Board members, Greenberg, Salerno and Schwartz.

In attempting to establish their lack of independence, plaintiffs allege that Greenberg has long-standing close business and personal relationships with Redstone. Salerno's daughter is employed in the Business Development Department of a Viacom subsidiary. Additionally, Schwartz is counsel to a law firm which Viacom paid $9,998,510 in legal fees in fiscal year 2004.

Plaintiffs maintain that a demand on Viacom's Board prior to instituting this action would have been futile since the majority of the Board's twelve directors are interested.

Plaintiffs further allege that the compensation packages were excessively high given that they were conferred at a time when Viacom recorded $17.5 billion in losses.

In contrast, defendants assert that the Compensation Committee was advised by an independent compensation consultant. Further, defendants challenge that plaintiffs filed this lawsuit without making a demand on the Board of Directors of Viacom, have failed to make particularized allegations sufficient to demonstrate that such pre-suit demand would have been futile and therefore, ask this Court to dismiss this action in its entirety.

Discussion

I. Demand on the Board

On a motion to dismiss made pursuant to CPLR 3211 (a)(7), facts alleged in the complaint are presumed to be true and will be accorded every favorable inference if they fit within a legally cognizable claim. *Wilson v Hochberg*, 245 AD2d 116, (1st Dept 1997).

Because Viacom is incorporated in Delaware, the rules applicable to shareholder derivative pre-litigation demands upon board of directors are governed by Delaware law. *Hart v General Motors Corp.*, 129 AD2d 179, 183 (1st Dep't, appeal denied, 70 NY2d 608 [1987]). Further, as a derivative action, Delaware Rule 23.1 applies and requires that a demand be made upon the board of directors prior to the commencement of legal proceedings. In the absence of such a demand, a shareholder must plead with particularity the efforts undertaken by the plaintiff, thereby obviating the need for a pre-suit demand. Del Ch Ct R 23.1; *White v Panic*, 793 A2d 356, 200 Del. Ch Lexis 14 (Del Ch 2000), aff'd, 783 A2d 543 (Del 2001). Plaintiffs concede that they did

not make a pre-action demand upon the Board.

The Delaware Supreme Court has stated that one of two factors are sufficient to determine demand futility. A demand is excused if:

> (1) "'under the particularized facts alleged, a reasonable doubt is created that [...] the directors are disinterested and independent;'" or
> (2) "the pleading creates a reasonable doubt 'that the challenged transaction was otherwise the product of a valid exercise of business judgment.'"

Brehm v Eisner, 746 A2d 244, 256, 2000 Del. Leis 51 (Del. 2000) (quoting *Aronson*, 473 A2d at 814), affirmed by 2006 Del. Lexis 307 [Del. June 8, 2006]). Under Delaware law as clearly articulated in *Brehm*, these prongs are in the disjunctive. Therefore, if either prong is satisfied, demand is excused.

With regard to disinterested directors, plaintiffs challenge the independence of three directors: Greenberg, Salerno and Schwartz. If a reasonable doubt is raised that any one of these directors was interested or not independent, futility is established and the need for a demand is excused.

Greenberg

According to the complaint, Greenberg "has a long-standing close business and personal relationship with Redstone." A director may be considered interested, and thus, disqualified from considering a demand, if:

> [...] [the director] is controlled by another. This lack of independence can be shown when a plaintiff proves that the director is beholden to the controlling person or so under their influence that their discretion would be sterilized. *Carlson v Hallinan*, 2006 Del. Ch. LEXIS 58 (Ct Chan Del, 2006), clarified, in part, by motion denied 2006 Del. Ch Lexis 95 (Del. Ch May 22, 2006).

In opposition, defendants rely on *In re J.P. Morgan Chase & Co.*, No. Civ 531-N, 2005 WL 1076069, at *10 (Del Ch Apr 29, 2005), aff'd 2006 WL 585606 (Del. Super March 8, 2006) to support their argument that a close personal and financial relationship between Greenberg and Redstone is insufficient to prove demand futility. This Court disagrees with defendants' analogy of *In re J.P. Morgan Chase & Co.* to the matter presented here.

In *In Re J.P. Morgan Chase*, the Delaware Chancery Court rejected plaintiff's claim that Riley Bechtel, a member of the JP Morgan Chase Board and director of the Bechtel Group, was not independent. In that case the Bechtel Group received $2 billion from a business managed by J.P. Morgan Chase, not from J. P. Morgan Chase directly. This business, necessarily distanced the relationship between Bechtel and JP Morgan, whereby Bechtel was found to be capable of rendering an objective decision concerning plaintiff's demand on the board of directors. Here, in contrast, Greenberg, as Redstone's investment banker, advised Redstone directly in his 1993 acquisition of Paramount Communications, Inc., in addition to his 1994 acquisition of Blockbuster, Inc. Greenberg, along with his firm, Bear Stearns, also advised Redstone and Viacom in the 2004 unwinding of the 1994 Blockbuster, Inc. acquisition and allegedly continues to provide broker and investment services to Redstone and Viacom.

The fact that Greenberg advised Redstone in his personal affairs in two large acquisitions, provided services and continues to provide services to Viacom is sufficient to create a

reasonable doubt as to his ability to evaluate plaintiffs' demand without a taint of interest, "extraneous considerations" or influences. In *In Re Walt Disney Company Derivative Litigation*, 731 A2d 342, 357-360 (Del Ch 1998) (the Chancery Court of Delaware held that "the fact that Stern's [director's] architectural firm has received, and perhaps continues to receive payments, from Disney over a period of years raises a reasonable doubt as to Stern's independent judgement[...]). Affirmed in part, reversed in part and remanded by 746 A2d 244 (Del. Super 2000). A director is interested if "she will receive a personal financial benefit from a transaction that is not equally shared by the shareholders." *Official Committee of Unsecured Creditors of Integrated Health Servs., Inc. v Elkins*, No. Civ. 20228, 2004 WL 1949290, at *10 (Del Ch Aug 24, 2004) (citing *Rales v Blasband*, 634 A2d 927, 936 (Del 1993).

Therefore, plaintiffs have fulfilled their burden to escape the demand requirement by sufficiently pleading that a reasonable doubt exists that Greenberg was interested in the decision concerning the executives' compensation packages.

Salerno

Plaintiffs additionally allege that a pre-litigation demand would have been futile, because Salerno's daughter is employed in the Business Development Department of a Viacom subsidiary, Showtime cable-network.

The relevant standard to determine demand futility pursuant to Delaware law is whether a reasonable doubt exists as to the

director's interestedness in the subject transaction. "Family employment ties can give rise to concerns about the ability of directors to act independently of a company's management". *J.P. Morgan Chase*, 2005 WL 1076069 at *10. However, Ms. Salerno is neither an executive nor an officer of Showtime or Viacom. Plaintiffs have otherwise provided no other allegations regarding Salerno's alleged lack of independence. Ms. Salerno does not work for Viacom directly but for a Viacom subsidiary. These allegations are insufficient to challenge Salerno's independence in objectively evaluating a pre-litigation demand.

Schwartz

Schwartz is counsel to the law firm Cadwalader, Wickersham & Taft. In the fiscal year of 2004, the year in which Schwartz approved Redstone's compensation package, Viacom paid Cadwalader, Wickersham & Taft $998,510 in legal fees. In addressing the relationship between counsel, legal services, and directors' independence, the Supreme Court of Delaware found that a director is interested when he can affect the "livelihood" of the company due to his position, and the director and his businesses create a substantial portion of the law firm's revenue. *Texlon v Meyerson*, 802 A2d 257, 265 (Del 2002).

Although the fees in question are significant, plaintiffs fail to demonstrate that $998,510 in legal fees constitutes a substantial portion of Cadwalader's overall profits. This, combined with the fact that Schwartz did not receive any direct compensation related to this legal fee nor is he a partner of the

firm, suggests that he is not in a position to affect or be affected by the firm's successes. On this record, and without prejudice to a further showing, this is insufficient to state a claim challenging Schwartz's independence.

Finally, in order to demonstrate that the Board is "disinterested" or "independent" within the meaning of *Brehm*, a majority of the board must be disinterested; that is, if the board is evenly split between disinterested and interested directors, the pre-litigation demand qualifies as futile. *Beneville v York*, 769 A2d 80, 86 (Del Ch 2000). Since defendants concede that five directors, Redstone, Shari Redstone, Abrams, Andelman and Dauman, are not independent, and this Court determines that plaintiffs have sufficiently alleged that at least Greenberg lacks independence from Redstone, the Viacom Board is interested, satisfying one of the two alternative prongs of the *Brehm* demand futility test. Therefore, it is unnecessary to address the second prong of the *Brehm* test regarding actions that fall outside of the protection of the business judgment rule.

II. Failure to State a Cause of Action

Defendants also assert that the complaint fails to state a cause of action.

Counts I and II: Breach of Fiduciary Duty

The first and second causes of action are both for breach of fiduciary duty. In the first, plaintiffs attack the process by which the Board adopted the offending compensation packages. In

the second, plaintiffs focus on the benefit to the director defendants and other company insiders.

Defendants' first argument is that section 102(b)(7) of Delaware's General Corporation Laws ("DGCL") bars plaintiff's first and second causes of action against the outside directors for breach of fiduciary duty. "The directors of Delaware corporations have a triad of primary fiduciary duties: due care, loyalty and good faith." *Emerald Partners v Berlin*, 787 A2d 85, 90, Del 2001). Section 102(b)(7) permits shareholders of Delaware corporations "to exculpate directors from personal liability for the payment of monetary damages for breaches of their duty of care, but not for duty of loyalty violations, good faith violations and certain other conduct." Id.

Viacom's shareholders adopted a charter provision eliminating the directors' personal liability for decisions that do not constitute bad faith, a personal benefit, or intentional misconduct. Plaintiffs characterize Counts I and II as breaches of fiduciary duty, but in Count II plaintiffs specifically allege a breach of good faith. Count II charges defendants with favoring their own interests over the shareholders' interests. Therefore, defendants' motion to dismiss Count II must be denied.

Count I does not specify which of the three parts of fiduciary duty were breached. However, it does charge that a majority of the directors were not independent of Redstone and thus the process by which the compensations was adopted was unfair. Consequently, the first cause of action can be

characterized as one for breach of loyalty since the director defendants allegedly preferred Redstone's interest over the shareholders. Therefore, this Court rejects defendants' reliance on DGCL § 102(b)(7) to dismiss either the first or second cause of action.

Entire Fairness

Second, defendants argue that there could be no breach of fiduciary duty because the compensation was not the product of an interested party transaction since an interested director was not on both sides of the transaction and an alleged majority of disinterested directors approved the compensation. As discussed above, the Court finds that plaintiffs have sufficiently alleged a lack of independence.

The allegations in Count I constitute a claim for breach of fiduciary duty, but Count I is mistakenly entitled "Entire Fairness". Defendants admit that should this Court determine that the challenged compensation constitutes an interested transaction, then the entire fairness standard is applicable. "Entire fairness" is not a cause of action, but rather, a standard of judicial review to be applied when shareholders challenge the actions of a board of directors. *Emerald Partners v Berlin*, 787 A2d 85, 89 (Del 2001).[3]

> The category of transactions that require judicial review pursuant to the entire fairness standard *ab initio* do so because, by definition, the inherently interested nature of

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[3] The other two existing standards are the traditional business judgment rule, and an intermediate standard of enhanced judicial scrutiny. *Emerald Partners v Berlin*.

> those transactions are inextricably intertwined with issues of loyalty.
> *Id.* at 93.

As a result of the board's interestedness and directors' dependance on Redstone, this Court will apply the entire fairness analysis in this motion.

> The concept of entire fairness has two prongs: fair dealing and fair price. The fair dealing prong of the entire fairness inquiry relates to how a transaction is structured and negotiated. The fair price prong relates to the economic and financial considerations of a proposed merger. When making a determination of a transaction's entire fairness courts examine the transaction as a whole looking at both fair price and fair dealing, without focusing on one component over another.

International Telecharge, Inc. v Bomarko, Inc., 766 A2d 437, 440 (Del Super Ct 2000).

The entire fairness two prong test usually applies in cases whereby courts assess the fairness of a merger to the shareholders. It is also appropriate to apply the entire fairness analysis to evaluate the fairness of the executives' compensation package. *See eg. Carlton Invs. v TLC Beatrice Int'l Holdings*, Del. Ch. LEXIS 86, *49, n 49, 1997 WL 38130 (Del. Ch 1997).

Here, plaintiffs allege that the compensation set (price) is inextricably intertwined with the cloud of interest overshadowing the Viacom board (process). Also relevant to whether the compensation level was fair, this Court must consider Viacom's 2004 financial performance. Plaintiffs rely on an op-ed piece published in Bloomberg News on May 18, 2005, which evaluated Viacom's loss at $17.5 billion in the same year that the

compensation was awarded to Freston, Moonves and Redstone. Defendants' challenge plaintiffs' reliance on the opinion editorial as a purported factual basis for their allegation surrounding Viacom's financial loss. Parties may rely on the media as "tools at hand" when intending to later specify particularized allegations. *Brehm,* 746 A2d at 249. However, editorials do not establish facts and cannot be the basis of a complaint; yet, they may be used as preceding steps to well pled causes of action. *Id.* During the discovery phase, plaintiffs are likely to compile documentary evidence that will establish precisely Viacom's loss, if any. This is not a motion for summary judgment. The Court finds that plaintiffs' allegations are sufficient to challenge the entire fairness of the compensation transaction.

Third, defendants argue that this action must be dismissed as against all disinterested directors and urge this Court to conduct an individual inquiry as to whether each director acted in good faith while serving on the Board during the 2004 compensation approval process and thus were protected by the business judgement rule. This Court disagrees. In addressing circumstances that deprive corporations' boards of the protections of the business judgment rule, this Court held that:

> In recognition that courts are ill equipped to evaluate the complexities of directors' business decisions, adherence to the business judgment rule bars judicial inquiry into the propriety of actions taken by corporate directors made in good faith on behalf of the corporation. [...] The presumptive applicability of the business judgment rule is rebutted, and judicial inquiry thereby is triggered,

> however, by a showing that a breach of fiduciary duty has occurred, which includes evidence of bad faith, self-dealing, or by decisions made by directors' demonstrably affected by inherent conflicts of interest. (Citations omitted).

Higgins v New York Stock Exchange, 2005 NY Slip Op 25365 (Sup Court, Ramos, J. NY County, 2005).

The business judgment rule will not serve to shield directors' decisions if extraneous influences are found to affect those decisions. *Brehm*, at 256 footnote 31. In other words, if a director is interested, he or she cannot maintain that the challenged transaction was otherwise the product of a valid exercise of business judgment. Therefore, this action will not be dismissed as to the interested directors.

As to the disinterested defendants, the business judgment rule is also unavailable. If plaintiffs demonstrate that an interested director controls or dominates the board as a whole, the business judgment rule will not protect the board, interested or not. Redstone allegedly dominates and controls the Viacom Board. The dispositive issue, thus, is not the specific relationship between Redstone, Freston and Moonves, but rather, the workings of the Viacom management engaged in the ratification of the actions of its officers. Further, Redstone allegedly exerts influence over Viacom management. He owns 71.2% of all outstanding Viacom Class A Common Stock, Viacom's only voting stock. He served and continues to serve as Viacom's Chairman of the Board and CEO. Additionally, his daughter Shari Redstone has served as director of Viacom and was named Non-Executive Vice Chairman of the Board by Redstone, and two of Redstone's personal

attorneys, Abrams and Andelman, are directors of Viacom. These allegations are sufficient to state a claim that the compensation was not the product of a valid business judgment.

Finally, relying on *In re Walt Disney Co. Derivative Litig.*, 2005 Del. Ch. LEXIS 113 (Del Ch Aug. 9, 2005), defendants challenge plaintiffs' claim for breach of the duty of good faith, claiming that no such duty exists at all. This Court rejects defendants' argument. Defendants' argument simply misinterprets dicta in *In re Walt Disney Co.*, wherein the Court discusses the difference, if any, between the duty of loyalty and duty of good faith. Indeed, that court also states that "the concept of intentional dereliction of duty, a conscious disregard for one's responsibilities, is an appropriate (although not the only) standard for determining whether fiduciaries have acted in good faith." *Id.* at 175. Further, that court specified what directors must do in order to fulfill their duty of good faith to the company and its shareholders.

Therefore, plaintiffs have stated a claim for breach of fiduciary duty.

Count III: Unjust Enrichment

Plaintiffs adequately state a claim for unjust enrichment in count III of their complaint. Pursuant to Delaware law,

> [u]njust enrichment is the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity or good conscience. The elements of unjust enrichment are: (1) an enrichment; (2) an impoverishment; (3) a relation between the enrichment and impoverishment; (4) the absence of justification; and (5) the absence of a remedy provided by law.

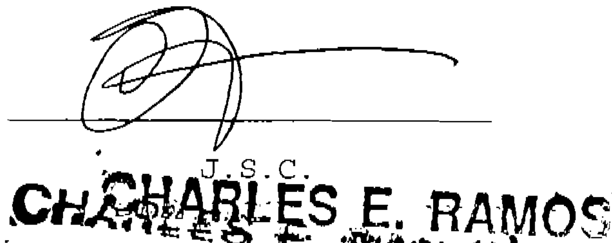
Jackson Nat'l Life Ins. Co. v Kennedy, 741 A2d 377, 393 (1999).

Plaintiffs have alleged the necessary facts to support a claim that the enrichment of Freston, Moonves and Redstone resulted in the unjust impoverishment of Viacom, which occurred through the distribution of allegedly excessive compensation in 2004. Additionally, plaintiffs have adequately pled the third element of a claim for unjust enrichment, since Freston, Moonves and Redstone work for Viacom. Further, in light of Viacom's alleged $17.5 billion loss the same fiscal year that the compensation was distributed, plaintiffs have adequately plead that the 2004 compensation packages for all three officers is unjustified. Finally, in the absence of proof of contract by either party, and as plaintiffs have otherwise not pled a breach of contract claim, this Court must sustain the unjust enrichment claim at this juncture.

Accordingly, it is

ORDERED that defendants' motion to dismiss is denied.

Dated: June 23, 2006



J.S.C.

CHARLES E. RAMOS

Counsel are hereby directed to obtain an accurate copy of this Court's opinion from the record room and not to rely on decisions obtained from the internet which have been altered in the scanning process.

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JUN 26 2006

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