

## Celadon Execs Seek Toss Of TA Dispatch Chancery Suit

By **Leslie A. Pappas**

*Law360, Wilmington, Del. (May 29, 2024, 8:22 PM EDT)* -- Former executives of now-defunct Celadon Group Inc. who sold its business assets a few months before the transport and logistics company went bankrupt told Delaware's Court of Chancery on Wednesday that a lawsuit from the disgruntled Alabama buyer should be dismissed because it lacks specifics and rehashes already-settled claims.

Alabama trucking and transport management company TA Dispatch LLC already tried to sue the former Celadon directors and officers in Indiana state court, but the case was dismissed because the sale contracts required disputes to be litigated in Delaware and under Delaware law, the defendants' attorney said at a hearing in Wilmington.

"We moved to dismiss the original complaint," Lloyd Winawer of Bergeson LLP, an attorney for the defendants, argued at the hearing. "The amended complaint is also deficient."

The current Chancery Court lawsuit — which TA Dispatch filed after the suit in Indiana was thrown out — is unfair because it brings the same claims against the same defendants, Winawer argued at the hearing Wednesday.

Two counts of the complaint — claims of negligent misrepresentation and "statutory suppression" under Alabama statutes — automatically fail because the sale contracts included choice-of-law provisions that mandate the application of Delaware law, Winawer argued.

Vice Chancellor Nathan A. Cook had no questions for Winawer, but had plenty for TA Dispatch, ranging from contract provisions to Alabama law.

TA Dispatch acquired the transportation logistics and brokerage services assets from Indianapolis-based Celadon Group subsidiaries Celadon Trucking Services Inc., Celadon Logistics Services Inc. and Hyndman Transport Ltd., according to the complaint, which was amended in May 2023.

TA Dispatch initially filed the lawsuit in November 2022, alleging that Celadon executives Paul Svinland, Kathryn Wouters, Chase Welsh and Jon Russell misrepresented the company's business and hid material facts when they negotiated the deal in April 2019.

The deal included a three-year handoff, but the companies' relationship almost immediately soured.

TA Dispatch sued Celadon in Chancery in December 2019, asserting various breaches of contract and

accusing Celadon of failing to hand over \$6.2 million owed under remittance and asset purchase agreements.

Celadon and 24 of its affiliates filed for Chapter 11 bankruptcy protection a week later, putting the Chancery lawsuit on hold.

After settling the litigation with the Celadon entities, TA Dispatch then sued the individual directors and officers in Indiana state court in March 2021.

In its Delaware lawsuit, TA Dispatch is trying to re-cast failed breach of contract claims as tort claims against the individual officers and directors, which is not equitable, Winawer argued at the hearing Wednesday. The Alabama claims are also time-barred, he said.

The Delaware complaint also doesn't allege enough specifics about what any of the individual defendants actually said or did to meet pleading requirements under Delaware law.

The vice chancellor challenged TA Dispatch's attorney, John S. Vishneski III of Reed Smith LLP, on nearly every point.

He asked why Delaware law doesn't govern the dispute. The misrepresentations that the defendants allegedly made relate to the asset purchase agreement, which includes a Delaware choice of law provision, the vice chancellor said. "It's about the agreement, yes?"

The dispute isn't about the contract itself, but about the actions of the defendants, Vishneski said. Although the agreement is governed by Delaware law, none of the individual defendants were signatories to the contract, the Celadon companies were, Vishneski argued.

Vice Chancellor Cook asked Vishneski to address the questions about Alabama law, and Vishneski cited an Alabama case that hadn't been mentioned in the briefs, prompting an extended discussion about the case and ending with a rebuke from the court.

"I very carefully review your filings," the vice chancellor said. "When I show up and people start making new arguments altogether ... that is not helpful to a busy court. Not to mention unfairness to the other side."

"I'm trying to read this decision on the fly and trying to react because right now is the time that I have you in front of me. So now we spend 20 or 30 minutes fumbling around," the vice chancellor said. "I could have done this very easily if you had just sent a letter and said, 'There's this other case, be prepared.'"

Vishneski apologized.

The vice chancellor shifted to the defendants' arguments about specificity.

"Can you point me to a single alleged misrepresentation in the complaint that is made specifically by any of the defendants?" the vice chancellor asked.

"We don't have that specified in the complaint," Vishneski said. "We could have."

"You could have, right?" the vice chancellor said.

The vice chancellor then observed that the defendants moved to dismiss TA Dispatch's original complaint because there weren't enough specifics about how each defendant misrepresented the company.

"And your response was to take the word 'defendants' and break it apart and put in the names [of the defendants] without saying who said what, is that correct?" the vice chancellor asked.

"Correct," Vishneski replied.

"Is there anywhere in this complaint that has a specific reference to who said what?" the vice chancellor asked.

"We don't go that deeply on this, no," Vishneski said.

The vice chancellor took the matter under advisement and did not say when he would make a decision.

TA Dispatch LLC is represented by John S. Vishneski III, Andrew M. Barrios, Brian M. Rostocki and Mark W. Eckard of Reed Smith LLP.

Defendants Paul Svindland, Kathryn Wouters, Chase Welsh and Jon Russell are represented by Lloyd Winawer of Bergeson LLP and Rudolf Koch, Daniel E. Kaprow and Elizabeth J. Freud of Richards Layton & Finger PA.

The case is TA Dispatch LLC v. Paul Svindland et al., case number 2022-1043, in the Court of Chancery of the State of Delaware.

--Additional reporting by Jeff Montgomery. Editing by Kelly Duncan.