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November 9, 2013

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Re: *Cooper Tire & Rubber Co. v. Apollo (Mauritius) Holdings Pvt. Ltd., et al.*
Civil Action No. 8980-VCG

Dear Counsel:

On Friday, November 8, 2013, following a three-day trial and closing arguments, I issued a bench ruling on a subset of the issues before me. Following my ruling, Court briefly recessed to allow for counsel to confer and inform me how they wanted to proceed. Cooper decided to move for an interlocutory appeal, which it did orally. I granted certification from the bench and in a subsequent brief written Order. Because of this method of proceeding, I did not completely address with clarity the issues before me. The following letter is intended to complete my Bench Opinion.

This matter arose after an arbitrator issued an order, dated September 12, 2013, preventing Cooper from consummating a merger with Apollo absent

renegotiation of existing labor contracts between Cooper and the United Steelworkers ("USW"). As a result, on September 25, Apollo, Cooper, and the USW entered into an agreement that the merger "shall not close unless an agreement has been entered into in satisfaction of [the arbitrator's decision]."[1] Cooper filed this action on October 4, 2013, seeking a ruling that Apollo was in material breach of a contractual obligation to use reasonable best efforts to reach the required agreement with the USW; that Cooper had satisfied all conditions for closing the merger other than satisfying the arbitrator's order, as well as the parties' subsequent agreement, that such a contract be consummated prior to closing, which condition would have been satisfied absent Apollo's breach; and that but for this breach the merger would have closed on October 4. Cooper has since renegotiated a conditional contract with the USW and argues that, as a result, I should enjoin Apollo to accept that conditional contract and specifically enforce the Merger Agreement.

For the reasons stated in my bench decision of November 8, 2013, I found that Apollo was not in breach of its obligation under the Merger Agreement to use reasonable best efforts to negotiate an agreement with the USW, but that Apollo must continue to employ reasonable best efforts to enter an agreement with the USW to allow the merger to close. Ample time remains for Apollo's performance,

[1] Defs.' Answer, Ex. A.

since the Merger Agreement does not terminate until December 31, 2013. In order to demonstrate entitlement to specific performance, once an agreement between Apollo and the USW is reached, Cooper would have to demonstrate that it has otherwise satisfied all conditions precedent in order to close. Whether it has done so remains hotly contested by the parties, and remains unresolved in this litigation. However, the reason for the extreme expedition of this action, and the reason I entered a partial bench decision on November 8, 2013, is that Cooper seeks an order compelling specific performance by the morning of the business day next following closing arguments: November 12, 2013. Specific performance by such a date, according to Cooper, would relieve it of the obligation to disclose third-quarter financials to Apollo and its lenders, as would otherwise be required by financing agreements in support of the merger no later than November 14, 2013. Cooper is unlikely to be able to provide those financials due to the physical seizure of a Cooper subsidiary in China by a minority partner in that venture.

Because, for the reasons in my bench decision, I found that Apollo is not in material breach with respect to its negotiations with the USW, which are ongoing, Cooper cannot, at present, close the merger consistent with the arbitrator's order and with the agreement reached among Apollo, Cooper, and the USW implementing that order. Cooper is not entitled to specific performance, therefore, even if it has otherwise satisfied all other required conditions for closing the

merger. If Cooper's counsel proves correct in predicting that it will not be able to comply with the requirement that it provide third-quarter financials by November 14, and that, as a result, it will not thereafter be entitled to specific performance, it would be an impermissible advisory opinion for me to decide whether Cooper has complied with those conditions precedent to the consummation of the merger. If, as Cooper's CFO testified at trial was possible, timely reporting of the third-quarter financials is completed, Cooper's request for specific performance will remain viable, and I retain jurisdiction to address all issues remaining.

For all the foregoing reasons, and for the reasons stated in my bench decision of Friday, November 8, 2013, Cooper has failed to demonstrate a present entitlement to specific performance. To the extent that the foregoing requires an Order to take effect, IT IS SO ORDERED. My certification of Cooper's interlocutory appeal applies to the order herein. The parties should confer and notify me how they intend to proceed on the issues remaining.

Sincerely,

*/s/ Sam Glasscock III*

Sam Glasscock III