

either aware of these projects and transactions before the injunction entered, or that they are unnecessary. These contentions have no basis in fact. Mr. Delli Priscoli was forced to step away from active oversight of the Railroad in 2020 due to serious medical issues and his need to concentrate on other business interests. During his absence, he entrusted oversight of the Railroad to Mr. Milanoski, who was vested with full managerial responsibility to operate the Railroad and related property interests. It was not until Mr. Delli Priscoli reassumed managerial control of the Railroad in February of this year, after the injunction entered, that he became aware of the need for and extent of the capital expenditures that will be required to maintain operation of the Railroad.

These facts are corroborated by the attached Affidavits of Brenda Johnson and John Cotter. During the period that Mr. Delli Priscoli stepped away from management of the Railroad, Mr. Milanoski did not involve Mr. Delli Priscoli in the day-to-day operations of the business or keep him apprised of operational business decisions. (Affidavit of John Cotter, ¶¶ 5-6; Affidavit of Brenda Johnson, ¶¶ 4-5.) In fact, Mr. Milanoski actively concealed information from Mr. Delli Priscoli, telling staff to provide information only to him and not to Mr. Delli Priscoli and stating that he would inform Mr. Delli Priscoli at a later date. (*Id.*) Contrary to the statements of Mr. Milanoski in his Affidavit indicating that the need for funding for repairs and improvements is not imminent, the Railroad requires significant capital to maintain and increase rail volume and ensure safety and there an immediate need for such capital given the long lead time for equipment and manpower. (Affidavit of John Cotter, ¶¶ 7-12.) Plaintiffs were aware of the immediate need for funding for repairs and improvements during their employment for the Railroad; in fact, when he resigned his employment with the Railroad Mr. DeWaele stated that he was leaving because of potential problems due to a lack of investment in the mainline infrastructure. (*Id.*, ¶¶ 7-8.) Mr.

Milanoski also falsely states in his Affidavit that Mr. Delli Priscoli ordered the Railroad to cease efforts to obtain federal grant and loan money for upgrades because of the need for an updated business valuation. In actuality, the Railroad had explored federal funding through a low interest loan program, but the application fee ranged between \$500,000 to \$700,000 with no guarantee of approval at the amount requested. (*Id.*, ¶¶ 10-11.) The Railroad did not further pursue federal funding because it did not have the cash flow and manpower to engage in a long-term due diligence process as required. (*Id.*) The Railroad is instead working on a proposal with MassDOT to fund the necessary rail infrastructure upgrades. (*Id.*)

There is also substantial evidence of fraud by Plaintiffs in connection with their negotiation of the 2022 Letter of Intent. As detailed in Mr. Delli Priscoli's Counterclaim (Doc. No. 14), during the negotiation process, Plaintiffs misrepresented to Mr. Delli Priscoli that the Railroad and related assets were valued at approximately \$42.9 million. However, a later discovered, private valuation prepared by Mr. Milanoski himself, which he shared with Mr. DeWaele, estimated the value of the assets at a range of \$69,020,000 to \$114,631,050. (*See* June 2, 2023 Affidavit of Jon Delli Priscoli, ¶ 16 and Exhibit A.) Demonstrating their fraudulent intent, Plaintiffs deleted this valuation document (as well as other relevant documents) from the Railroad's computer servers; the deleted documents needed to be recovered by the Railroad's IT provider. (*Id.*; Affidavit of Brenda Johnson, ¶ 7.) Plaintiffs also intentionally misrepresented to Mr. Delli Priscoli that the Dana Transport Right of First Refusal had been "taken care of" and was no longer in effect, and that they were owed 10% and 2.5% change in control bonuses as a result of revised employment agreements that did not in fact exist. (Counterclaims, ¶¶ 63-68.)

Plaintiffs also contend that they should not be required to post a bond. However, their Opposition fails to establish good cause for waiving the bond requirement. Mr. Delli Priscoli's

Affidavit submitted in support of the Motion details the potential damages and costs that will be incurred as a result of the preliminary injunction. In short, the preliminary injunction prevents the Railroad from taking the economic steps necessary to remain viable and to continue to make upgrades to the tracks, related infrastructure, and equipment. If these steps cannot be taken, the value of the Railroad will be diminished, if not destroyed entirely. The Letter of Intent valued the Railroad at over \$42 million and Plaintiffs' private valuation, which they concealed from Mr. Delli Priscoli and attempted to delete, valued the Railroad in the range of approximately \$69 million to \$114.6 million. Given this, a bond in the amount of \$25 million is warranted to protect against the potential losses the preliminary injunction may cause.

CONCLUSION

For the reasons set forth above and those asserted in the Motion and supporting Memorandum and Affidavit, Mr. Delli Priscoli moves this Honorable Court to:

- A. Revise the preliminary injunction so that only Mr. Delli Priscoli's sale or transfer of Grafton & Upton stock is prohibited, and that such Grafton & Upton shares may be encumbered by security interests of financial institutions associated with any capital projects or other business operations of the Grafton & Upton Railroad;
- B. Revise the preliminary injunction to make clear that Mr. Delli Priscoli and the Grafton & Upton Railroad may undertake capital improvement projects, replace equipment, engage in settlement discussions concerning ongoing claims and litigations, and make other business decisions in the regular course of business;
- C. Revise the injunction terms to require Plaintiffs to post a bond of \$25 million or such other sum as this Court may find appropriate, to cover damages that may be sustained by Mr. Delli Priscoli due to the ongoing restrictions on his ability to discuss the sale of

this interest, or to sell or transfer his interest, in the Grafton & Upton Railroad or other assets subject to the injunction; and

D. Obtain such other just and appropriate relief as this Honorable court finds warranted.

Respectfully Submitted,

JON DELLI PRISCOLI

By his attorneys,

/s/ John F. Welsh

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Dated: July 10, 2023

CERTIFICATE OF SERVICE

I, John F. Welsh, counsel for the Defendant in the above-referenced matter, hereby certify that on July 10, 2023, I served upon Plaintiffs' counsel the foregoing *Reply in Further Support of Motion to Modify Preliminary Injunction and Require Plaintiffs to Post Adequate Security* via email to the following address:

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/s/ John F. Welsh

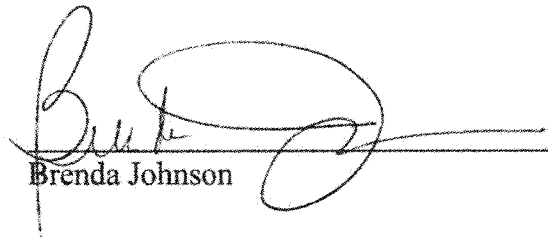
John F. Welsh

3. In 2020, Mr. Delli Priscoli stepped back from various business activities due to serious medical issues. Mr. Milanoski assumed comprehensive control over Grafton & Upton and related businesses interests owned by Mr. Delli Priscoli.
4. During the 2020-2022 period, I reported directly to Mr. Milanoski rather than Mr. Delli Priscoli. On repeated occasions throughout that period, Mr. Milanoski instructed me and other administrative staff not to provide information to Mr. Delli Priscoli, but only to him. Mr. Milanoski stated that "there were things that Jon doesn't need to know."
5. I recall one time he indicated during a telephone call that he was clearing trees and brush at a Holliston site. Mr. Milanoski ordered me not to tell Mr. Delli Priscoli about it, and said that he would at some later date.
6. During the 2020-2022 period, Mr. Delli Priscoli was at best an occasional visitor to various company offices and facilities. From time to time, he would call the office on some business matter, but such calls were infrequent. I used to go to Mr. Delli Priscoli's home from time to time to get some checks signed or for other requests.
7. After Mr. Milanoski and Mr. DeWaele left Grafton & Upton and First Colony, I discovered that all of their emails on the Grafton & Upton server had been deleted. All folders were missing. I contacted the Company's IT provider, IT Support RI. IT Support RI was able to recover the deleted emails.

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Signed under the pains and penalties of perjury.

Dated: July 7, 2023



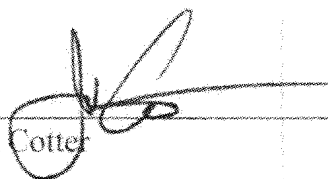
Brenda Johnson

4. During this period, Mr. Delli Priscoli would only occasionally visit various company offices and facilities. From time to time, he would call the office to check in on matters of concern.
5. When communicating on critical matters (i.e., cash flow issues), I would document funding challenges and present worksheets to Michael Milanoski, who stated he preferred to meet with Mr. Delli Priscoli at an offsite location at a later date. While a review of customer agreements and other financial deals happened frequently with the finance team, some agreements between Mr. Milanoski and Mr. Delli Priscoli were not vetted by accounting, such as the restated LOI to purchase the railroad, West Street partnership agreement, and executive employment contracts before signing.
6. I do not believe that Mr. Milanoski involved Mr. Delli Priscoli in the day-to-day operation of the company or kept him apprised of operational business decisions. For example, Mr. Milanoski and John DeWaele bought and sold company vehicles from time to time. I had assumed that the sale of major pieces of equipment were reviewed with Mr. Delli Priscoli but later found out that this was not the case.
7. It should not be a surprise to anyone that railroads require significant capital to maintain and increase rail volumes but to also take safety into consideration. Over the past 5 years, the company has invested over \$12 Million (including grant money) in the rail line and locomotive shop building. However, I was provided with a copy of a conversation in which Mr. DeWaele stated to Michael Polselli (New England Regional Manager) that he was leaving his position because of potential problems due to a lack on investment in the mainline infrastructure, which I found concerning.

8. I provided an operational budget based on past spending levels to Mr. Milanoski and Mr. DeWaele that, once reviewed, would be changed where necessary. The budgets included costs for repairs and improvement to the main rail line (non-capital expenses only).
9. Capital expenses for large jobs related to rail crossings were handled by Michael Milanoski and John DeWaele. To my knowledge, Mr. Delli Priscoli was not involved in major capital discussions unless additional debt or lease agreements needed to be executed.
10. Over the past few years, the company was exploring funding through the Federal Railroad Rehabilitation & Improvement Financing (RIFF) low interest loan program for such repairs and improvements; however, the range for the application fee was between \$500,000 and \$700,000 with no guarantee of approval at the amount requested. At this time, the company determined that it did not have the cash flow ability and manpower to pursue a long-term due diligence process to explore the possibility of Federal funding. Accordingly, the company did not pursue this loan, and the valuation process that would have been required was never completed.
11. Instead, the company is working on a proposal with MassDOT to fund the necessary rail infrastructure upgrades. This includes, but is not limited to, upgrading the track weight from 85lb rail to 132RElb, given the increases in freight volume.
12. These repairs and improvements require a long lead time for both equipment and manpower and need to be commenced immediately before additional safety issues arise.
13. A glass recycler which leases a building at our 141 Mendon Street (formerly 1 Fitzgerald Drive), Hopedale location would like to purchase the building. I was informed that if the company cannot complete the sale of the building, the glass recycler will look to another short line carrier for storage space.

Signed under the pains and penalties of perjury.

Dated: July 10, 2023


John Cotter