

Murex Co-Founder, Ex-Wife See Most Record Demands Denied

By Jeff Montgomery

Law360, Wilmington, Del. (March 27, 2020, 8:10 PM EDT) – A co-founder of oil and gas venture Murex Petroleum and his ex-wife lost most of their bid for company records on Friday, after a Delaware vice chancellor found many of their separate demands ineligible, improper or sufficiently answered.

Vice Chancellor Morgan T. Zurn, in a ruling from the bench, did approve some requests from Julie W. Kessel, ex-wife of company co-founder and former Chief Operating Officer Donald A. Kessel.

But the vice chancellor flatly stated that evidence and a substantial record, including proceedings from a trial in September 2019 on the books and records suit filed by the Kessels, supported a conclusion that Donald Kessel invoked Section 220 of Delaware's General Corporation Law in an effort to sell the entire company – a purpose deemed improper under the stockholder- and corporate governance-focused law.

"Don has a deep and complicated history with Murex," Vice Chancellor Zurn noted, pointing out that he had at various times served as a company director and officer, prospective competitor, unsuccessful buyer and active instigator of attempts to get the company sold.

Statements otherwise, Vice Chancellor Zurn said, "verge on being a ruse," as Don Kessel's primary purpose was not reasonably related to his position as a stockholder, but as an individual pursuing records for his own purposes.

Privately held Murex currently operates 230 wells in North Dakota, South Dakota and Montana, and has oil, gas and mineral interests in five other states and Canada. Its revenues topped \$120 million per year in 2014 before falling off as declining oil prices led to a wave of energy company bankruptcies.

Delaware's General Corporation Law allows investors to demand and sue for a range of company records if deemed proper. The Chancery Court has been a constant arena, however, for battles over the scope of the "proper" definition and range of records available on demand.

The Kessels' stated purpose includes efforts to value their shares and to communicate with other shareholders for possible share purchases or sales to stockholders or third parties.

Although Donald Kessel claimed a proper stock sale-related purpose when he launched a books and records suit in 2018, according to Vice Chancellor Zurn, he also had previously retained investment advisers to help sell the company and had a hand in unauthorized sharing of confidential information.

During the same ruling, the vice chancellor found Julie Kessel had a proper purpose in seeking the information, primarily to develop an accurate valuation of her stock as part of an effort to secure the best price in a sale.

"Julie has been selling stock for what she perceives is a great discount," the vice chancellor said. "At this juncture, Julie is seeking additional material to value her stock in order to negotiate a fair sale."

While Julie Kessel might have been aware of her ex-husband's different intentions, "I see no evidence that Julie's actions were in pursuit of that same purpose," Vice Chancellor Zurn said.

During a trial in September 2019, Julie Kessel testified that she joined her ex-husband in the records demand only to protect her largest source of wealth, obtained as part of a divorce settlement, which she says she needs to help her

meet the needs of a large extended family.

The court nevertheless denied or limited some of Julie Kessel's requests, while also requiring Murex to provide other records, including some details on oil and gas leases in a digital spreadsheet format more suited to stockholder analysis, rather than in document form.

The Kessels are represented by Richard L. Renck of Duane Morris LLP, and Mark R. Beebe, Francis V. Liantonio Jr. and Jennifer C. Bergeron of Adams and Reese LLP.

Murex is represented by Brett D. Fallon, Chuck N. Kunz III and Albert J. Carroll of Morris James LLP, and Karen L. Spaulding of Beatty & Wozniak PC.

The case is Kessel et al. v. Murex Petroleum Corp., case number 2018-0820, in the Court of Chancery of the State of Delaware.

--Editing by Adam LoBelia.