

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

PHILIP R. SHAWE,

Plaintiff,

v.

POTTER ANDERSON & CORROON LLP
and KEVIN R. SHANNON,

Defendants.

Case No. _____

DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiff, Philip R. Shawe (“Plaintiff” or “Shawe”), for his Complaint against Potter Anderson & Corroon LLP (“Potter”) and one of its partners, Kevin R. Shannon (“Shannon”) (together, the “Defendants”) alleges and avers based on the information disclosed by Defendants and information of which Plaintiff has personal knowledge, and otherwise upon information and belief on all other matters:

NATURE OF THE ACTION

1. This is an action for monetary damages against Potter and Shannon, a Potter partner, to redress the wrongs committed when Shannon, on behalf of Potter, maliciously and intentionally submitted false and misleading information in an affidavit filed with the Court of Court of Chancery for the State of Delaware (the “Court of Chancery”) solely to cause Shawe injury.

2. Defendants’ conduct was improperly made solely to harm Shawe because it served no legitimate litigation goal, and provided no benefit to Defendant. Further, by filing the subject affidavit and deceiving the Court of Chancery Defendants violated their ethical responsibilities

(responsibilities that inure not only to their client, but also to the Court and any third party that will foreseeably be injured by their conduct).

3. Plaintiff explicitly does *not* allege in this action that Defendants committed any reputationally based torts such as defamation, libel, or infliction of emotional distress.

PARTIES

4. Plaintiff Shawe is an individual residing in the State of New York. Shawe owns forty-nine percent (49%) of the shares of common stock issued by TransPerfect Global, Inc. (“TPG” or the “Company”).

5. Defendant Potter is a Delaware limited liability partnership with offices in Wilmington and Dover, Delaware.

6. Defendant Shannon is an individual residing in the State of Delaware, an attorney admitted to practice in Delaware, and a Potter partner, who is resident in Potter’s Wilmington office.

7. Non-party Elizabeth Elting (“Elting”), who is Defendants’ client in the Chancery Action (as defined below), is an individual residing in the State of New York who owns fifty percent (50%) of the shares of common stock of TPG.

8. Non-party Shirley Shawe (“Ms. Shawe”), who is Shawe’s mother, is an individual residing in the State of Florida who owns one percent (1%) of the shares of common stock of TPG.

JURISDICTION AND VENUE

9. This Court has personal jurisdiction over each of the Defendants.

10. This Court possesses subject matter jurisdiction under 28 *U.S.C.* § 1332 because the matter in controversy exceeds \$75,000 and complete diversity of citizenship exists between Plaintiff and Defendants.

11. Venue is proper in this Court under 28 *U.S.C.* § 1391(b)(1) because, upon information and belief, both Defendants reside in Delaware, and under 28 *U.S.C.* § 1391(b)(2) because a substantial part of the events giving rise to the claim occurred in Delaware.

FACTUAL BACKGROUND

12. TPG is a Delaware corporation with its headquarters at Three Park Avenue, New York, New York 10016. The Company has grown to become one of the world's leading providers of translation, website localization, and litigation support services, which employs approximately 4,000 full-time employees, with over 100 offices throughout the world. The Company has a network of more than 10,000 translators, editors, and proofreaders working in approximately 170 languages.

13. Shawe and Elting are the co-founders, co-CEOs, and, prior to the appointment of a custodian, as referenced below, were the sole members of TPG's Board of Directors since its incorporation in Delaware in 2007.

14. In or about 2012, Shawe and Elting became embroiled in a series of contentious management disputes driven by Elting's increasing demands for substantially larger profit distributions and for Shawe to purchase her TPG shares at a premium.

15. Elting initially commenced an action in New York State Supreme Court, which remains pending but has been stayed in favor of the ongoing Court of Chancery proceedings in Delaware. Four actions were commenced by either Elting or Shawe concerning TPG filed in the Delaware Court of Chancery. *Elting v. Shawe*, C.A. Nos. 9661-CB, 9686-CB, 9700-CB, and

10449-CB. In these actions (collectively, the “Chancery Action”), Elting petitioned to appoint a custodian under 8 *Del. C.* § 226(a) to conduct a forced sale of the Company’s assets.

16. Following a six-day trial addressing the claims asserted in the Chancery Action (the “Merits Trial”), the Court of Chancery issued a post-trial memorandum opinion on August 13, 2015 (the “Merits Opinion”), in which the Court of Chancery granted Elting’s petition under 8 *Del. C.* §§ 226(a)(1) and (a)(2) and denied her petition for an equitable dissolution of the Company. Elting also withdrew her claims against Shawe for breach of contract and breach of fiduciary duty.

17. On February 22, 2015, Elting moved for sanctions based on certain alleged acts of misconduct by Shawe relating to the litigation of the Chancery Action (the “Sanctions Motion”).

18. On July 20, 2016, following a two-day evidentiary hearing on January 7-8, 2016 (the “Sanctions Hearing”), the Court of Chancery granted Elting’s motion for sanctions (the “Sanctions Opinion”), and directed Shawe to pay Elting: (i) 33% of her attorneys’ fees and expenses in connection with the litigation of the Merits Trial (including computer expert expenses but not including other expert expenses) (the “Merits Fees”) from December 2, 2014 up to the resolution of the Merits Trial on August 13, 2015 (the “Merits Period”); and (ii) 100% of her attorneys’ fees and expenses in connection with the litigation of the Sanctions Hearing (the “Sanctions Fees”). Sanctions Opinion at p. 55. The Sanctions Opinion further directed Elting to file affidavits documenting “the amount of the reasonable attorneys’ fees and expenses she incurred during [these] periods.” *Id.*

19. On August 3, 2016, Elting submitted her fee application (the “Fee Application”). Elting’s counsel at Kramer Levin Naftalis, & Frankel LLPC (“Kramer Levin”) and Paul, Weiss, Rifkind, Wharton & Garrison LLP (“Paul Weiss”), the two firms representing Elting with Potter,

submitted affidavits annexing a detailed itemization of their legal fees (broken down by date, individual attorney, time worked, fee for that time, and a description of the work performed). Kramer Levin filed one itemization exhibit for its purported Merits Fees and one itemization exhibit for its Sanctions Fees. With minor exceptions, Paul Weiss claimed only Sanctions Fees and submitted one itemized exhibit that included those exceptions.

20. In support of the Fee Application, Potter submitted an affidavit sworn to on August 3, 2016 by Shannon, the partner who led Potter's efforts in the Chancery Action (the "Shannon Affidavit"). Potter, like Kramer Levin, claimed both Merits Fees and Sanctions Fees. Unlike Kramer Levin, however, Potter inexplicably only provided time entry descriptions on the schedules to the Shannon Affidavit that related to Potter's claimed Sanctions Fees. *See Shannon Aff.* at 4, n.1.

21. Notwithstanding that Potter claimed reimbursement of \$466,438 in Merits Fees, the Shannon Affidavit conspicuously provided no itemization or detail relating to Potter's Merits Fees during the Merits Period.

22. Instead, absent any direction from the Court to do so, as set forth in the Shannon Affidavit, instead of presenting the actual Merits Fees owed based on the work done, Potter simply calculated its Merits Fees by "subtracting the Sanctions Fees incurred during the Merits Period (as shown on Schedule 1, *i.e.*, \$190,774) from the total fees incurred during the Merits Period (\$1,604,222), which resulted in a net amount of \$1,413,448. We multiplied that net amount by 33%, which results in an Additional Award of fees of \$466,438." *Shannon Aff.*, ¶ 9 (footnote omitted).

23. Defendants provided no justification for their failure to calculate the fees based on the actual work performed to be sure that the fees being asserted were appropriate under the Court

of Chancery's order, nor provide any itemized support in the Shannon Affidavit for Potter's assertion of \$1,413,448 of total Merits Fees, so Shawe, or the Court of Chancery could review Defendants asserted Merits Fees and object to any fees not appropriate under the Court of Chancery order.

24. On August 17, 2016, Shawe filed objections to the Fee Application, including specific objections to several categories of Kramer Levin fees, and objecting to Potter's failure to provide any itemization of its claimed Merits Fees of \$1,413,448.

25. On August 19, 2016, the Court of Chancery issued a Final Order and Judgment Concerning Elting's Motion for Sanctions (the "August 19, 2016 Order"). The August 19, 2016 Order overruled Shawe's objection to including \$466,438 in Merits Fees by Potter without providing any supporting itemization of the claimed Merits Fees, explaining that the Shannon Affidavit, asserting that Shannon's review of "the invoices reflecting Potter fees and costs that have been billed to Elting in connection with the" Chancery Action was sufficient to award Potter's asserted Merits Fees. However, the August 19, 2016 Order also sustained several of Shawe's objections to the Merits Fees of Kramer Levin, notwithstanding that the sustained objections to the Kramer Levin Merits Fees necessarily applied equally to Potter's Merits Fees.

26. Specifically, the Court of Chancery sustained Shawe's objections and reduced Kramer Levin's Merits Fees by \$287,266 for having improperly included: (i) fees relating to a mediation from March 9, 2015 to June 29, 2015; (ii) fees regarding the Merits Trial for work related to Shirley Shawe; (iii) certain "inexplicable" or unexplained fees; and (iv) the elimination of a 20% fee discount granted to Elting by her counsel prior to August 13, 2015.

27. It was impossible for Shawe or his counsel or the Court of Chancery to determine how much of the \$1,413,448 in Merits Fees incurred by Potter fell into the four categories of fees

specifically disallowed for Kramer Levin by the Court of Chancery because the Shannon Affidavit intentionally failed to provide any itemization of Potter's Merits Fees, including whether Potter's rates were increased by premium for any period.

28. Given that Defendants, like Kramer Levin, participated in every aspect of this case Defendants' total Merits' Fees included fees for work that falls within each of the disallowed categories. In other words, there was not sufficient legal basis for the August 19, 2016 Order to disallow over \$200,000 in mediation-related fees claimed by Kramer Levin as not appropriate under the Sanctions Opinion but determine that Shannon's review of Potter's invoices (made prior to the Court of Chancery identifying categories of fees that should not be included in the sanctions) was sufficient to explain how Potter, specifically Shannon, somehow participated in the mediation without incurring any fees requiring disallowance.

29. Likewise, there is no basis to conclude that although Kramer Levin incurred almost \$55,000 in Ms. Shawe-related fees disallowed under the August 19, 2017 Order, Potter included no such fees in its Merits Fees calculation, and therefore, Potter's fees required no adjustment. Finally, there is no basis to conclude that, despite Kramer Levin submitting itemized invoices explaining its charges, it still incurring almost \$19,000 in "inexplicable" or unexplained fees, but Potter, who explained none of their fees, incurred and claimed no inexplicable or unexplained fees.

30. A simple review of the docket in the Chancery Action shows that Defendants performed work related to Elting's claims against Ms. Shawe, a category of fees specifically disallowed to Kramer Levin. For example, Potter filed a summons with an affidavit of service on Ms. Shawe. In addition, Potter filed a notice of deposition of Ms. Shawe and a notice that Potter

served its responses and objections to Ms. Shawe's first set of requests for documents to Elting. Such entries were docketed during the Merits Period.

31. The transcripts of court hearings in the Delaware Chancery Action further demonstrate that Defendants expended numerous hours working on matters related to Elting's claims against Ms. Shawe. Defendants conferred with Ms. Shawe's counsel about whether she would testify at trial and whether, given Ms. Shawe's position as the third TPG shareholder, Elting would be withdrawing one of her claims.

32. Defendants appeared and argued on behalf of Elting at a hearing conducted during the Merits Period that pertained solely to Ms. Shawe's motion to dismiss Elting's Second Amended Complaint. Defendants conferred with opposing counsel, exchanged correspondence with opposing counsel, conducted research, prepared briefs in opposition, prepared for oral argument, and participated in oral argument relating solely to Ms. Shawe's motion. Defendants certainly charged Elting for this work, and based upon the Shannon Affidavit, these fees were included in the calculation of the Merits Fees awarded to Elting.

33. Ms. Shawe's participation in the Chancery Action, which necessarily would have resulted in the expenditure of time and incurring of fees by Potter related to her participation, is further referenced in Chancellor Bouchard's letter opinion dated September 2, 2015, denying Ms. Shawe's motion to intervene in C.A. No. 9686-CB to file a motion to alter or amend the Order entered on August 13, 2015 dismissing the claims in that action pursuant to the Merits Opinion.

34. In the September 2, 2015 letter opinion, Chancellor Bouchard observed that Ms. Shawe "had actively participated in every phase of the litigation" of the Delaware Chancery Action, that she was deposed, and that she then participated in the Merits Trial. The Court of Chancery further listed the hearings in which Ms. Shawe participated, including the civil action(s)

to which each hearing was relevant, according to the transcripts on file, as: September 5, 2014 (9686);¹ September 18, 2014 (9700); September 26, 2014 (9661, 9686, 9700, 10141); November 18, 2014 (9661, 9686, 9700, 10141); December 11, 2014 (9700); January 6, 2015 (9661, 9686, 9700); January 21, 2015 (9700); February 2, 2015 (9700); February 11, 2015 (9661, 9686, 9700, 10141); February 19, 2015 (9700); February 20, 2015 (9661, 9686, 9700, 10141); March 9, 2015 (9661, 9686, 9700, 10449); April 28, 2015 (9661, 9686, 9700, 10449); and June 3, 2015 (9661, 9686, 9700, 10449). Ten of the fourteen above-listed hearings, in which Ms. Shawe participated, occurred during the Merits Period.

35. Regarding the additional disallowed category of fees related to the mediation proceeding in the Chancery Action, the invoices provided by Kramer Levin reflect that Kramer Levin and Potter collaborated in preparing for the mediation. At least nine separate disallowed entries in Kramer Levin's invoices disclose that the "[Kramer Levin] team and [Potter] team" held "numerous conferences" and exchanged emails about the mediation during the Merits Period. Upon information and belief, Shannon himself attended two days of mediation, representing Elting, in April of 2015.

36. Finally, the Court of Chancery rejected Kramer Levin's Merits Fees regarding certain entries deemed "inexplicable." Potter collaborated closely with Kramer Levin in representing Elting and it stands to reason that it would have had similar unexplained fees.

37. On September 2, 2016, Shawe filed a Motion to Alter or Amend the Final Judgment under Court of Chancery Rule 59(e). The basis for that motion was that the disallowance of the three categories of Merits Fees claimed by Kramer Levin in the August 19, 2016 Order required

¹ The parenthetical references are to the civil action number ("C.A. No.") for the actions which the hearing was relevant.

disallowing those same categories of fees from Potter's Merits Fees, including mediation-related fees and Ms. Shawe-related fees, and that Potter must therefore be required to provide sufficient itemization of its Merits Fees to allow the Court of Chancery to determine the fees that should be disallowed.

38. On September 12, 2016, Elting filed her Opposition to the Motion to Alter or Amend the Final Judgment. Once again, with no excuse or justification, Defendants chose not to provide any itemization of Potter's Merits Fees. In fact, Potter acknowledged in Elting's Opposition that Potter's fees may have included work pertaining to the disallowed categories, but argued that the improper inclusion of extra fees was cured by the fact that "any such fees would be *de minimis* when compared to the Fee Award."

39. On September 20, 2016, the Court of Chancery issued its Order Denying the Motion to Amend, adopting Potter's argument that, despite including disallowed fees in Potter's Merits Fees, such disallowed fees were "*de minimis*" and therefore the Motion to Alter or Amend the Final Judgment did not meet the exacting standard of "manifest injustice" imposed by Court of Chancery Rule 59(e). September 20, 2016 Order at p. 5. ("even if one assumed that Potter's estimate included some amounts" for the three categories of disallowed fees, the magnitude of such fees would be "*de minimis* in the context of a \$7.1 million fee award.").

40. Shawe appealed from the August 19, 2016 Order and the Delaware Supreme Court affirmed, in an opinion dated February 13, 2017, holding that the "Court of Chancery has broad discretion in fixing the amount of attorneys' fees to be awarded" such that "[a]bsent a clear abuse of discretion, this Court will not reverse the award." (footnote omitted).

41. Notwithstanding the Court of Chancery's conclusion that any disallowed fees included by Potter in the Shannon Affidavit did not rise to the magnitude required to amend the

August 19, 2016 Order under Court of Chancery Rule 59(e), the Court of Chancery's September 20, 2016 Order did not attempt to rebut the clear evidence that Defendants' total Merits Fees included fees specifically disallowed by the Court of Chancery's August 19, 2016 Order. Having himself done work that would necessarily be included in the categories of fees the Court of Chancery specifically disallowed to Kramer Levin, Shannon knowingly and intentionally failed to reduce Potter's Merits Fees accordingly.

42. Although the propriety of the Court of Chancery's decision to accept Potter's Merits Fees without itemization is not the issue in this action, it must be noted that Potter gave no explanation why its co-counsel, Kramer Levin, submitted itemized time-entries for both the Merits Fees and the Sanctions Fees while Potter avoided submission of their time-entries related to the Merits Fees. The Court of Chancery's acceptance of Potter's Merit Fees calculation, without requiring Potter to submit itemized time-entries (especially given the reductions Kramer Levin was required to take and the clear overlap in the work by the two firms), raises the appearance of favoritism.² It also makes clear that the Court of Chancery's approval of Potter's invoice was not in any way made to knowingly absolve Defendants of their improper actions.

² Delaware is a small state with a small bar. Plaintiff, however, resides in New York, which is a large state with a large bar, so he raises that the context of the relationship between the presiding judge in the Chancery Action and Shannon lends color to this appearance. Although the Court of Chancery's decisions concerning the Defendants' conduct at issue does not preclude this action or control concerning the validity of Plaintiff's claims, Plaintiff provides a few anecdotal facts regarding the relationship of Shannon and Chancellor Bouchard. Shannon and Chancellor Bouchard, upon information and belief, have known each other since they represented aligned clients in *In re Walt Disney Co. Derivative Litigation*, 907 A.2d 693 (Del. Ch. 2005) approximately twenty years ago. Both served on the board of St. Francis Hospital. They have appeared as co-panelists at the annual Tulane Law School Corporate Law Institute in New Orleans, Louisiana (including while the Chancery Action was pending). Plaintiff understands (and has been assured by counsel) that these facts are not necessarily indicia of impropriety. The Court of Chancery's failure to require Potter to submit itemized records like its co-counsel, coupled with Shannon's relationship with the presiding judge, does however engender speculation, even if unwarranted.

43. Although Defendants had ample opportunity to do so after the Court of Chancery issued the August 19, 2016 Order, finding that certain categories of Merits Fees were disallowed, Defendants willfully and knowingly failed to exclude those categories of fees from Potter's Merits Fees. Defendants' conduct was intended solely to inflict harm on Shawe because, as acknowledged in the Shannon Affidavit, Elting had paid Potter's fees before the Fee Application was filed, so Defendants gained no economic benefit by requiring Shawe to repay the disallowed categories of fees.

44. Shannon's affidavit, knowingly omitted itemized support for Potter's Merits Fees and Defendants intentionally did not amend the Merits Fees to reflect the categories of work explicitly disallowed by the August 19, 2016 Order. Defendants' continuing and intentional failure to supplement or correct the Shannon Affidavit to exclude the impermissible fees caused Shawe to pay a higher amount of Potter's attorneys' fees to Elting under the August 19, 2016 Order than the Sanctions Opinion intended for him to pay.

45. On September 8, 2016, Shawe filed a letter of credit with the Court satisfying the full Sanctions Fees amount under the August 19, 2016 Order.

**FIRST CAUSE OF ACTION
(Prima Facie Tort)**

46. Plaintiff incorporates by reference the foregoing paragraphs 1 through 45 above as though set forth herein.

47. The Sanctions Opinion required Defendants to provide support for the amount of reasonable attorneys' fees and expenses that Elting incurred during the relevant periods.

48. The Defendants thereafter, in the Shannon Affidavit, maliciously and intentionally misrepresented the nature of some fees incurred during the Merits Trial to injure Shawe and without any economic benefit to Defendants.

49. The Court also sustained objections to four categories of Kramer Levin's Merits Fees discounting \$287,266 from the fees paid by Shawe, after Shawe's attorneys reviewed Kramer Levin's fee submissions filed with the Court of Chancery. Since Shannon did not provide an itemization provided no itemization of Potter's Merits Fees, it is impossible to determine the amount of them that fall into the disallowed categories. Given Shannon's involvement in every aspect of the Chancery Action, it is a virtual certainty that Potter billed for work by Shannon regarding some if not all of these categories.

50. Although the Defendants had the opportunity to correct their misrepresentations or to supply the accurate information following the August 19, 2016 Order, Defendants persisted in misrepresenting the amount of Merits Fees attributable to Potter by knowingly including categories of fees disallowed to Kramer Levin by the Court of Chancery, and thereby knowingly and intentionally increasing the sanctions amount payable by Shawe.

51. Defendants have provided no excuse or justification for their misconduct; rather, such actions were purposefully taken solely to inflict harm on Shawe.

52. Because of Defendants' misconduct, Shawe is entitled to damages in an amount to be determined at trial consisting of such portion of the \$1,413,448 in Merits Fees improperly included by Potter in its calculation of what was to be paid by Shawe and approved by the Court of Chancery's August 19, 2016 Order, plus interest thereon.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Philip R. Shawe respectfully requests the Court to enter judgment in his favor and against Defendants Potter Anderson & Corroon LLP and Kevin R. Shannon, jointly and severally, and award Plaintiff:

- a. Compensatory damages, in an amount to be determined after a trial, consisting of the portion of one-third of any amount of the \$1,413,448 improperly included in Potter's calculation of Merit Fees because of Defendants' misconduct;
- b. Post-judgment interest at the statutory rate;
- c. Reasonable attorneys' fees and costs; and
- d. Such other and further relief as this Court deems just and proper.

COGGINS LAW LLC

/s/Christopher M. Coggins
Christopher M. Coggins (I.D. No. 4785)
1007 N. Orange Street, 4th Floor
Wilmington, Delaware 19801
Telephone: 302.307.6905
Facsimile: 302.269.3200

Attorney for Petitioner Philip R. Shawe

Dated: September 24, 2017