

2020 WL 6379117 (Del.Ch.) (Trial Order)
Chancery Court of Delaware.

POLICE & FIRE RETIREMENT SYSTEM OF THE CITY OF DETROIT, Plaintiff,

v.

WALMART INC., Defendant;
Norfolk Country Retirement System, Plaintiff,

v.

Walmart Inc., Defendant;
The Ontario Provincial Council of Carpenters' Pension Trust Fund, Plaintiff,

v.

Walmart Inc., Defendant.

Nos. 2020-0478-JTL, 2020-0482-JTL, 2020-0697-JTL.
October 29, 2020.

[Proposed] Final Order and Judgment

[J Travis Laster](#), Judge.

***1 [EDITOR'S NOTE: By ruling of the court, Proposed Order is GRANTED. Please see PDF for full proposed order.]**

WHEREAS, by letter dated May 4, 2020, Plaintiff Police & Fire Retirement System of the City of Detroit (“Detroit P&F”) sought inspection of certain books and records of Defendant Walmart Inc. (“Walmart” or the “Company”) pursuant to [8 Del. C. § 220](#) (“[Section 220](#)”);

WHEREAS, by letter dated May 5, 2020, Plaintiff Norfolk County Retirement System (“Norfolk”) sought inspection of certain books and records of Walmart pursuant to [Section 220](#);

WHEREAS, by letters dated July 2, 2020, and August 10, 2020, Plaintiff the Ontario Provincial Council of Carpenters' Pension Trust Fund (“OPCC”) sought inspection of certain books and records of Walmart pursuant to [Section 220](#);

WHEREAS, on June 17, 2020, Detroit P&F and NCRS commenced the above-captioned actions bearing C.A. No. 2020-0478-JTL (the “Detroit P&F Action”) and C.A. No. 2020-0482-JTL (the “NCRS Action”), respectively, against Defendant Walmart pursuant to [Section 220](#);

WHEREAS, on August 21, 2020, OPCC commenced the above-captioned action bearing C.A. No. 2020-0697-JTL (the “OPCC Action,” and together with the Detroit P&F Action and the NCRS Action, the “Actions”) against Defendant Walmart pursuant to [Section 220](#);

WHEREAS, the parties subsequently engaged in discovery and submitted pre-trial briefing;

WHEREAS, on October 5, 2020, the Court conducted a trial in the Actions; **IT IS HEREBY ORDERED**, this ___ day of _____ 2020, as follows:

1. Plaintiffs are stockholders of Walmart, have complied with [Section 220](#) respecting the form and manner of asking demand for inspection, and have demonstrated that the inspection they seek is for proper purposes pursuant to [Section 220](#).

2. Defendant Walmart shall produce, on a rolling basis, the responsive, non-privileged portions of the following books and records to Plaintiffs, for the period of January 1, 2010 through the date of the entry of this Order (unless otherwise indicated), with such production to be completed on or before 60 days from the date of this Order:

a. Books and records previously Walmart agreed to be produced:

i. policies, procedures, and manuals concerning Walmart's dispensing and self-distribution of opioids;

ii. Board and Board Committee charters;

iii. the Company's Codes of Conduct, and Health & Wellness Compliance Program documents;

iv. documents related to the Company's Opioid Stewardship program; and

v. Board-level Materials relating to Walmart's self-distribution and dispensing of controlled substances.

b. Board-level Materials¹ relating to:

i. Policies and procedures regarding compliance with the CSA, DEA regulations, state laws, and suspicious order monitoring of controlled substances, and the establishment, review, approval, and implementation of such policies and procedures.

*2 ii. Policies and procedures regarding Board oversight, internal investigations, and compliance reviews related to the Company's distribution and dispensing of opioids for maintaining compliance with the CSA, DEA regulations, state laws, and suspicious order monitoring of controlled substances, including the Company's internal controls and implementation, monitoring, and effectiveness of the Company's compliance policies relating to the distribution and dispensing of opioids for maintaining compliance with the CSA, DEA regulations, state laws, and suspicious order monitoring of controlled substances.

iii. Complaints, investigations, lawsuits, or law enforcement inquiries related to opioids (including the complaints, reports or presentations regarding investigations, and law enforcement inquiries themselves to the extent they were provided to the Board); and CSRA Reports, PSW Reports, or similar reports from the Ethics and Compliance Department, Health & Wellness Department, or the executive-level Ethics, Compliance, and Risk Committee ("ECRC") that were provided to the Board.

iv. Director independence materials:

1. Director independence questionnaires from 2018-2020; and

2. Director nomination materials from 2018-2020.

c. Senior Management Materials:

i. Minutes and materials of Walmart's executive-level Ethics, Compliance, and Risk Committee related to opioid dispensing and distribution, including suspicious order monitoring and other compliance issues.

ii. Any formal presentations, reports, or memoranda prepared or created by Walmart's Executive VP of Global Governance for purposes of reporting to the CEO or to the Board on opioid compliance-related issues.

iii. Materials cited in the Opioid MDL by United States District Judge Polster in his two summary judgment rulings concerning Walmart's motions for summary judgment (JX 194 and 213).

d. Disclosure Materials:

i. Audit Committee and/or Board meeting minutes concerning the potential disclosure of the 2011 MOA in the Company's March 30, 2011, June 3, 2011, September 1, 2011, December 8, 2011 and March 27, 2012 quarterly and annual filings with the U.S. Securities and Exchange Commission ("SEC").

ii. Audit Committee and/or Board meeting minutes concerning the Company's potential disclosure of the U.S. Attorney for the Eastern District of Texas's notification to the Company that it was considering indicting the Company in the Company's June 4, 2018, March 28, 2019, or March 20, 2020 quarterly and annual filings with the SEC.

3. Within 30 calendar days of the completion of the production, the Company shall provide to Stockholders' Counsel a certification from Defendant's counsel who has overseen the collection, review, and production of the documents in response to the Demand (the "Certification"), stating as follows: *With the exception of any documents included on the privilege log, to the best of my knowledge after reasonable investigation, the Company's production is complete with respect to every category of documents that the Company is required to produce.*

4. All books and records falling within the categories of documents that the Court orders the Company to produce and produced prior to the Certification will be deemed incorporated by reference in any plenary complaint filed by Stockholders in subsequent litigation relating to this matter. For the avoidance of doubt, any books and records that fall outside the categories of documents ordered by the Court or are produced after the Certification shall not be deemed incorporated by reference into any plenary complaint filed by Stockholders in subsequent litigation.

*3 5. Within 30 calendar days from the date of completion of the production, Defendant shall, with respect to the books and records required to be produced in Paragraph 2 of this Order, provide a privilege log to Plaintiffs.

6. Without affecting the finality of this judgment, the parties may make further application to the Court to enforce or clarify this Order or to resolve any disputes concerning Defendant's privilege log or any books and records identified thereon.

IT IS SO ORDERED, this ___ day of _____ 2020.

J. Travis Laster, Vice Chancellor

Court Authorizer Comments:

I am grateful to the parties for having reached agreement on a form of order.

Footnotes

1 "Board-level Materials" is defined to include Board and committee minutes, resolutions, and meeting preparation materials, such as any attachments, presentations, reports, or other materials provided to Board members in preparation for or reviewed at Board or committee meetings.

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