WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

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Robert S. Saunders
T. Victor Clark
Ronald N. Brown, III
Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
P.O. Box 636
Wilmington, DE 19899

Kurt M. Heyman
Patricia L. Enerio
Jill K. Agro
Proctor Heyman LLP
1116 West Street
Wilmington, DE 19801

S. Mark Hurd
Amaryah K. Bocchino
Morris, Nichols, Arsht & Tunnell LLP
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19899

Re: *TravelCenters of America LLC v. Brog, et al.*
Civil Action No. 3751-CC

Dear Counsel:

Before me is a motion to stay discovery filed on September 9, 2008 by defendants Timothy E. Brog and The Edward Andrews Group Inc. (the "Non-Delaware Defendants") and E^2 Investment Partners LLC, Locksmith Value Opportunity Fund LP, and Pembridge Value Advisors LLC (the "Delaware Defendants," and collectively with the Non-Delaware Defendants, "Defendants"). Defendants seek a stay of discovery pending resolution of the Delaware Defendants' motion for judgment on the pleadings that was also filed on September 9, 2008. Plaintiff TravelCenters of America LLC ("TravelCenters") does not oppose a stay of merits discovery; however, plaintiff argues that the

motion should be denied with respect to remaining jurisdictional discovery.[1] For the reasons set forth briefly below, the motion to stay is granted in full.

Pursuant to Rule 26(c), the Court of Chancery may, in its discretion, grant a stay of discovery to protect a party from undue burden and expense.[2] Absent special circumstances, this Court will often grant a stay of discovery pending resolution of a potentially dispositive motion.[3] The justification for granting such a stay is efficiency; staying discovery pending resolution of a potentially dispositive motion prevents the unnecessary imposition of burden and expense on the parties in complying with discovery requests and on the Court in resolving discovery disputes.[4]

The burden on the party seeking such a stay is only to establish "some practical reason" why discovery should be stayed.[5] This burden is often easily met because avoiding unnecessary discovery is usually sufficient justification for a stay of discovery pending resolution of a potentially dispositive motion. Discovery will not be stayed, however, if the non-moving party demonstrates certain special circumstances that warrant denial of the stay. Such special circumstances may be present, for example, where: (1) the plaintiff has made a colorable claim of irreparable harm and has requested preliminary relief; (2) the information sought may become unavailable or difficult to obtain; or (3) the motion does not offer a reasonable expectation that further litigation in the matter will be avoided.[6]

Defendants have met their burden by showing a practical reason why discovery should be stayed; if the motion for judgment on the pleadings is resolved in favor of the Delaware Defendants then further discovery in the case will likely

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[1] The Non-Delaware Defendants have asserted lack of personal jurisdiction as a defense, and discovery regarding this defense is not yet complete.

[2] Ct. Ch. R. 26(c) ("Upon motion by a party . . . and for good cause shown, the Court . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including . . . (1) That the discovery not be had . . . ."); *In re Yahoo! Inc. S'holders Litig.*, C.A. No. 3561-CC, 2008 WL 2721800, at *1 (Del. Ch. July 11, 2008).

[3] *Yahoo!*, 2008 WL 2721800, at *1.

[4] *Id.* (noting that discovery is often stayed "to prevent the unnecessary imposition of undue burden or expense during the pendency of the resolution of a dispositive motion").

[5] *See Ohrstrom v. Harris Trust Co. of N.Y.*, C.A. No. 15709, 1997 WL 666977, at *2 (Del. Ch. Oct. 20, 1997).

[6] *See Yahoo!*, 2008 WL 2721800, at *1 n.4; *Ohrstrom*, 1997 WL 666977, at *2; *In re McCrory Parent Corp.*, C.A. No. 12006, 1991 WL 137145, at *1 (Del. Ch. July 3, 1991).

be unnecessary. Plaintiff offers several arguments as to why I should deny a stay as to jurisdictional discovery, all of which are unconvincing and fail to establish any special circumstances that warrant denying the stay.

Plaintiff argues that the personal jurisdiction question must be resolved at the outset of the litigation and, because the Non-Delaware Defendants raised the defense of personal jurisdiction, they should not be able to delay its resolution by refusing or delaying discovery on the issue. Because of the unique posture of the Non-Delaware Defendants' motion for judgment on the pleadings, however, the issue of personal jurisdiction is not a threshold question that must be decided before the Court reaches the merits of the motion for judgment on the pleadings. The Non-Delaware Defendants raised the defense of personal jurisdiction in their answer, and normally jurisdictional discovery should proceed so as to not delay resolution of the case. Here, however, the Delaware Defendants filed a motion for judgment on the pleadings. Because the Non-Delaware Defendants, the only parties challenging personal jurisdiction, have not joined the motion for judgment on the pleadings, I can resolve the motion without reaching the issue of whether this Court has personal jurisdiction over the Non-Delaware Defendants. As explained below, if I grant judgment on the pleadings in favor of the Delaware Defendants, any additional discovery, including jurisdictional discovery, will likely be unnecessary. As a result, efficiency concerns justify staying all discovery pending resolution of the motion for judgment on the pleadings.

Recognizing that the Non-Delaware Defendants have not joined the motion for judgment on the pleadings, plaintiff argues that granting the motion in favor of the Delaware Defendants would not, as a matter of law, resolve the claims against the Non-Delaware Defendants. Plaintiff states that the Non-Delaware Defendants "cannot use someone else's potentially dispositive motion as a shield to avoid their own jurisdictional discovery."[7] This argument implies that entry of judgment on the pleadings would not obviate the need for jurisdictional discovery from the Non-Delaware Defendants. As the complaint asserts essentially the same claims against all Defendants, I do not see how this is possible. The Delaware Defendants present two independent grounds on which I could enter judgment on the pleadings: (1) that there was not a breach of the LLC agreement because the provision at issue constituted a condition, the non-occurrence of which does not constitute a breach and (2) that plaintiff's claims are barred by *res judicata*. If I were to enter judgment on the pleadings based on either of these arguments, that

[7] Pl's. Sept. 26, 2008 Letter at 2.

ruling would become the "law of the case."[8] Would plaintiff then argue that the Non-Delaware Defendants violated an LLC provision that this Court ruled could not be violated because it constituted only a condition? Would plaintiff continue to pursue claims that this Court ruled were barred by *res judicata*? Pursuit of such arguments would be frivolous.[9]

If this Court enters judgment on the pleadings in favor of the Delaware Defendants, it is also likely that plaintiff would be barred by principles of *res judicata* from asserting the same claims in future proceedings. Claim preclusion generally occurs when the following three conditions are satisfied:

> 1) the prior judgment was final and on the merits, and rendered by a court of competent jurisdiction in accordance with the requirements of due process; 2) the parties are identical, or in privity, in the two actions; and 3) the claims in the second matter are based upon the same cause of action involved in the earlier proceeding.[10]

Additionally, a party can invoke issue preclusion, or collateral estoppel, as a defense where:

> (1) [t]he issue previously decided is identical with the one presented in the action in question, (2) the prior action has been finally adjudicated on the merits, (3) the party against whom the doctrine is invoked was a party or in privity with a party to the prior adjudication, and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action.[11]

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[8] *Kenton v. Kenton*, 571 A.2d 778, 784 (Del. 1990) ("The 'law of the case' is established when a specific legal principle is applied to an issue presented by facts which remain constant throughout the subsequent course of the same litigation.").

[9] *See Beck v. Atlantic Coast PLC*, 868 A.2d 840, 850-51 (Del. Ch. 2005) ("The bad faith exception to the American Rule applies in cases where the court finds litigation to have been brought in bad faith or finds that a party conducted the litigation process itself in bad faith, thereby unjustifiably increasing the costs of litigation . . . . Courts have found bad faith conduct where parties have unnecessarily prolonged or delayed litigation, falsified records, or knowingly asserted frivolous claims.").

[10] *In re Bally's Grand Deriv. Litig.*, C.A. No. 14644, 1997 WL 305803, at *7 (Del. Ch. June 4, 1997).

[11] *Betts v. Townsends, Inc.*, 765 A.2d 531, 535 (Del. 2000).

Planitiff is correct in pointing out that a court conducting an action cannot predetermine the *res judicata* effect of its judgment.[12] The standard for granting a stay of discovery, however, does not require assurance that the discovery will not still be required. If the motion for judgment on the pleadings is ultimately granted, it is unlikely that the jurisdictional issues would still have to be litigated. That this Court cannot predetermine the preclusive effect of its decision does not mean that I must abandon common sense and well-settled legal principles that lead to the conclusion that jurisdictional discovery in this case will likely be unnecessary if I grant the motion for judgment on the pleadings.

Additionally, plaintiff's argument misconstrues the purpose and nature of the discovery rules when it suggests that the Non-Delaware Defendants should not be able to "shield" themselves from discovery.[13] Discovery is not a weapon or a punishment; it is a tool for exposing facts and illuminating issues.[14] Unnecessary discovery should be avoided; indeed, this Court often grants a stay of discovery in order to avoid the burden and expense of unnecessary discovery.

Finally, plaintiff argues that the cost of completing discovery will not be burdensome because the only outstanding items for jurisdictional discovery are seven interrogatories and depositions of Mr. Brog, Edward Andrews Group Inc., and E^2 Investment Partners LLC. Preparing for and defending even one deposition can be costly, and the mere fact that the remaining discovery may not be as expensive as in other cases is not sufficient reason for this Court to abandon its policy of avoiding the burden and expense of unnecessary discovery. Additionally, the motion for judgment on the pleadings has been fully briefed and will be decided by this Court in a timely manner. If the motion for judgment on the pleadings is not dispositive, then discovery will have been delayed only for a short time.

I have concluded, in the exercise of my discretion, that the most efficient way to proceed is to stay discovery pending resolution of the motion for judgment

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[12] *See In re Phila. Stock Exch., Inc.*, 945 A.2d 1123, 1147 (Del. 2008).
[13] Pl's. Sept. 26, 2008 Letter at 2.
[14] *See In re Pennzoil Co. S'holders Litig.*, C.A. Nos. 15764, 15755, 1997 WL 770663, at *2 (Del. Ch. Oct. 27, 1997) ("[T]he discovery process in the Court of Chancery should be carefully supervised to avoid wasteful duplication and to avoid the risk that discovery will become a strategic weapon, rather than a legitimate method to flesh out issues for the impending trial."); *Delmarva Drilling Co. v. Am. Water Well Sys., Inc.*, 1988 WL 7396, at *2 (Del. Ch. Jan. 26, 1988).

on the pleadings. I recognize that personal jurisdiction is a threshold issue that generally must be decided before the Court reaches the merits of a dispute. In this case, however, the Court is faced with a motion for judgment on the pleadings, the resolution of which does not require reaching the issue of personal jurisdiction over the Non-Delaware Defendants. The procedural posture of this case may result in this Court deciding the merits of this action without ever reaching the issue of personal jurisdiction over the non-Delaware Defendants. While proceeding in such order may not be the usual course, it is not a sufficient reason for this Court to abandon its policy of staying discovery in order to prevent unnecessary burden and expense. For the foregoing reasons, the motion to stay discovery is granted.

IT IS SO ORDERED.

Very truly yours,

William B. Chandler III

WBCIII:jmb