

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
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GEORGETOWN, DELAWARE 19947

Submitted: March 23, 2009
Decided: March 25, 2009

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Re: *In re John Q. Hammons Hotels Inc. S'holder Litig.*
Civil Action No. 758-CC

Dear Counsel:

This case, which was initiated over four years ago, is a shareholder class action arising out of a merger transaction involving John Q. Hammons Hotels, Inc. ("JQH" or the "Company"). The transaction closed in September 2005. Before me is plaintiffs' motion to compel the production of documents. For the following reasons, and in light of the liberal standard for relevance under Court of Chancery Rule 26, plaintiffs' motion to compel is granted.

During a January 2, 2009 teleconference, the Court directed that fact discovery be completed in this case by March 13. On January 12, plaintiffs served their Second Request for Production of Documents, seeking documents relating to the Company's post-merger financial performance. On February 11, defendants objected to the request for post-merger financial data, but agreed to produce the Company's year-end audited financials for 2005 and 2006. Plaintiffs filed their motion to compel on March 9, seeking (1) company-wide and hotel property-level

quarterly and annual financial reports for John Q. Hammons Hotels, LP (“JQH LP”)¹ for the period October 1, 2005 through December 31, 2007, (2) documentation sufficient to show purchase and sale transactions with a value of \$5 million or greater for the same period, and (3) valuation opinions during the period January 1, 2005 through December 31, 2007.

The standard for relevance under Court of Chancery Rule 26 is flexible and permits broad discovery. Rule 26(b)(1) provides that “[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” Further, the information sought need not even be admissible at trial if it “appears reasonably calculated to lead to the discovery of admissible evidence.”² Post-merger financial information is discoverable if it meets this liberal standard.³

Plaintiffs argue that the post-merger financial information is relevant because Lehman Brothers, Inc., the financial advisor that reviewed the merger for the special committee, deeply discounted the value of JQH compared to its peers based on its prediction that JQH would underperform peer companies in the post-merger period. In response, defendants argue that directors can only make decisions based on information available at the time and that the relevant inquiry is whether Lehman’s decision to apply the discount was reasonable when the decision was made in light of the information available at the time. Defendants also contend that the post-merger company is fundamentally different from the pre-merger company and that comparing the post-merger and pre-merger financial information would be comparing apples to oranges.

Plaintiffs reply by arguing that, separate from any question of the reasonableness of the opinion, Lehman’s valuation analysis is relevant to the issue of fair price, and the post-merger information plaintiffs seek is reasonably calculated to lead to discovery of evidence relevant to the validity of Lehman’s assumptions, which were based on post-merger events. Plaintiffs further contend that defendants, by arguing that the Company is different post-merger, are asking the Court to prematurely weigh the value of relevant evidence that has not yet been offered for admission.

¹ At the time of the merger, JQH held an interest in JQH LP, which allegedly owns and manages hotel properties.

² Ct. Ch. R. 26(b)(1).

³ See *In re Best Lock Corp. S’holder Litig.*, C.A. No. 16281, 2000 WL 1876460, at *6 (Del. Ch. Dec. 18, 2000).

After considering these arguments, I agree with plaintiffs that the post-merger financial information they seek meets the liberal standard for relevance under Rule 26 because it is “reasonably calculated to lead to the discovery of admissible evidence” regarding Lehman’s valuation analysis.⁴ Any differences between the pre-merger company and the post-merger company will be addressed when the Court considers whether the evidence is admissible and how much weight it should be given. Finally, the materials sought by plaintiffs cover the two year and one quarter period following the merger and do not impose an unreasonable burden on defendants.

For the foregoing reasons, plaintiffs’ motion to compel is granted.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in cursive script that reads "William B. Chandler III". The signature is written in black ink and includes a horizontal line under the name.

William B. Chandler III

WBCIII:jmb

⁴ Additionally, the post-merger information may be relevant in a breach of fiduciary duty action “which may, ultimately, justify a rescissory damages remedy.” *Best Lock*, 2000 WL 1876460, at *6.