COURT OF CHANCERY
OF THE
STATE OF DELAWARE

ORIGINAL

WILLIAM B. CHANDLER III
CHANCELLOR

P.O. BOX 581
GEORGETOWN, DELAWARE 19947
TELEPHONE (302) 856-5424
FASCIMILE (302) 856-5251

January 5,2001

Stuart M. Grant
Jay W. Eisenhofer
Megan D. McIntyre
C. Curtis Staropoli
Grant & Eisenhofer, P.A.
1220 N. Market Street, Suite 500
Wilmington, DE 1980 1

Robert K. Payson
Stephen C. Norman
Potter, Anderson & Corroon LLP
P.O. Box 95 1
Wilmington, DE 19899

FILED
01 JAN -9 PM 12:28
REGISTER IN CHANCERY
DIANNE M. KEMPSKI

Re: *Louisiana State Employees' Retirement System v. Citrix Systems, Inc., et al.*
Civil Action No. 18298

Dear Counsel:

This is my decision on the motion to stay the proceedings in this matter. The moving parties, the defendants Citrix Systems, Inc. ("Citrix") and ten directors,' seek a stay of this matter in light of a prior filed action in the Southern District Court of Florida alleging federal securities law

[1] These ten directors are Mark Templeton, John Cunningham, Edward Iacobucci, Michael Brown, Kevin Compton, Stephen Dow, Robert Goldman, Tyrone Pike, Roger Roberts, and John White. 'Templeton, Cunningham, and Iacobucci were both officers and directors of Citrix during the relevant period. The remaining seven directors served the company only in this capacity.

violations, The defendants contend that a stay would be appropriate under either the standard enunciated by the Delaware Supreme Court in *Mc Wane Cast Iron Pipe Corp. v. McDowell- Wellman Eng'g* Co.[2] or under the doctrine of *forum non conveniens*.

The action now before me (the '"Delaware Action") involves two claims, both of which seek to invalidate shareholder votes on two proposals conducted during the proposed class period of March 27, 2000 to June 9, 2000. The first proposal at issue ("Proposal 3") amended Citrix's 1995 Stock Plan to increase the number of options available to all employees. The second proposal ("Proposal 4") increased the number of options available to directors and officers of the company by approving Citrix's 2000 Director and Officer Option and Incentive Plan.

The first claim alleges that the defendants improperly manipulated the shareholder voting process on Proposal 3 by adjourning the annual meeting with the polls still open on that proposal knowing that Proposal 3 did not have enough votes to pass at that moment, and then reconvening the meeting and closing the polls when that proposal had enough votes to pass ("Claim I"). The second claim alleges that the defendants breached their fiduciary duties of care, loyalty, and candor by failing to disclose all material

---

[2] 263 A.2d 281 (1970).

information fully, fairly, and accurately in connection with the shareholder votes on Proposals 3 and 4.

I pass over a more thorough recitation of the background facts for the purposes of this motion. I will, however, briefly set forth a chronology of the basic facts at the heart of this dispute. On April 7, 2000, Citrix distributed a proxy statement to its shareholders in anticipation of shareholder votes on four proposals that would occur at the May 18, 2000 annual meeting (the "Annual Meeting"). On April 19, 2000, the defendants issued a press release reporting their first quarter 2000 financial results. On May 12, 2000, Citrix filed a quarterly report for their first quarter 2000 financial results.

At the Annual Meeting, Citrix closed the polls on three proposals, including Proposal 4, all of which were approved. Citrix adjourned the Annual Meeting with the polls still open on Proposal 3. Proposal 3 would have failed to pass had the polls lbeen closed on it at the Annual Meeting. Later, on June 2, 2000, the Annual Meeting was reconvened by Citrix, the polls were closed on Proposal 3, and Proposal 3 passed by a vote of 64,514,386 for and 63,147,895 against.

On June 12, 2000, the defendants announced that Citrix's second quarter earnings and revenues would fall short of analysts' predictions.

Within hours, the first in a series of class action complaints against Citrix and three of its current and former officers and directors was filed asserting violations of federal securities laws. Within several weeks, plaintiffs represented by 35 different law firms tiled more than 30 such complaints in the Southern District of Florida. On July 20, 2000, the Federal Court entered an order consolidating these actions as *In re Citrix Systems, Inc. Sec. Litig.* (the "Federal Action").[3] On October 5, the Federal Court entered an order appointing lead plaintiffs and co-lead counsel in the Federal Action. On November 30, the federal plaintiffs filed their consolidated amended complaint alleging violations of Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, for the period of October 18, 1999 to June 9, 2000. On September 18, 2000, the Louisiana State Employees' Retirement System ("LASERS") filed the Delaware Action asserting claims I and II (the "Delaware Action").

The defendants in the Delaware Action seek a stay of this case in light of the Federal Action. The parties agree on the standard to be applied when this Court considers staying or dismissing a state action in Delaware in favor

[3] *In re Citrix Systems, Inc. Sec. Litig.*, Master File No. 00-6796-CIV-DIMITROULEAS (S.D.FL.).

of another state or -federal action. *Mc Wane* provides the following guiding principle:

> [A] stay may be warranted . . . by facts and circumstances sufficient to move the discretion of the Court; [ ] such discretion should be exercised freely in favor of the stay when there is a prior action pending elsewhere, in a court capable of doing prompt and complete justice involving the same parties and the same issues."

These factors must be analyzed with a strong regard to principles of comity and the orderly, efficient administration of justice in the courts involved in the actions.[5] Under this standard., the parties, issues, and claims in both actions need not be identical. "Substantial or functional identity is sufficient.""

The defendants argue that the Federal Action was filed first, the Southern District of Florida is a competent forum for providing prompt and complete justice, and the Federal Action and the Delaware Action involve substantially the same parties, claims, and "a core nucleus of operative fact[s]."[7] On the other hand, the plaintiffs have attempted to distinguish this action under the *McWane* analysis. LASERS contends that there are

---

[4] 263 A.2d at 283.
[5] *Mc Wane,* at 282-83.
[6] *AT&T Corp. v. Prime Security Distributors, Inc.,* Del. Ch., CA. No. 15177, mem. op. at 2, Jacobs, V.C. (Oct. 24, 1996).
[7] *Schnell* v. *Porta Systems Corp.,* Del. Ch., C.A. 12948, mem. op. at 9, Hartnett, V.C. (Apr. 12, 1994).

substantial factual differences underlying the Federal Action -when compared to the Delaware Action, and that the two actions involve different causes of actions, claims and parties. I will analyze each of these arguments below.

As an initial matter, I note that there is no dispute here that the Federal Action was filed first. I. therefore: consider this element of the *McWane* analysis satisfied. As a general matter, I note without hesitation that the Southern District of Florida is an able court capable of providing complete justice to the parties in the Federal Action.

Next, LASERS argues that the Federal Action and the Delaware Action involve different parties. In the Federal Action, the plaintiff class is defined as purchasers of Citrix stock between October 20, 1999 and June 9, 2000. The Delaware action asserts claims on behalf of owners of Citrix stock on March 27, 2000 who continued to hold such stock through and including June 9, 2000. As noted above, the parties to the claims need not be identical.* Here, there is substantial overlap between these two groups of plaintiffs." That is, any person or entity that purchased Citrix stock between October 20, 1999 and March 27, 2000 and did not sell that stock before June 9, 2000 will be members of both classes of plaintiffs. There are differences

[8] *AT&T Coup.,* mem. op. at 2.
[9] For example, both the named plaintiffs in the Federal Action and LASERS would appear to meet the requirements for membership in both classes.

between these two groups, however, as Citrix shareholders who did not purchase Citrix stock during the federal class period will not be members of the federal plaintiffs' class and purchasers of Citrix stock during the federal class period who then sold their stock before June 9, 2000 will not be rnembers of the Delaware plaintiffs class. Nevertheless, I find that regardless of these differences, the two proposed classes for the purposes of the *Mc Wane* analysis describe substantially the same groups of plaintiffs as the similarities in the composition and interests between the federal class and the Delaware class easily outweigh their differences.

A similar logic controls with respect to the plaintiffs' arguments concerning differences between the defendants to the two actions. The defendants to the Federal Action are Citrix and three individuals who were both directors and officers of the company." The Delaware Action defendants are Citrix, these three officer/directors, and seven non-officer directors." Several Delaware cases directly address this issue of whether the inclusion of outside directors presents a substantial difference between claims filed in Delaware as opposed to those filed in federal court.[12] As is

---

[10] See *supra* note 1.
[11] *Id.*
[12] See, e.g., *Derdiger* v. *Tallman*, Del. Ch., C.A. No. 17276, mem. op. at 7-8, Chandler, *C.* (July *20, 2000); Corwin v. Silverman,* Del. Ch., C.A. No. 16347, mem. op. at 4, Chandler, C. (June 30, 1999); *Schnell*, mem. op. at 11.

more thoroughly discussed. in *Derdiger*, *Corwin*, and *Schnell*, the absence of the outside directors as defendants to the Federal Action will not interfere with the Federal Court's ability to do "complete justice" nor does there appear to be any reason why the outside directors could not be added as defendants to the Federal Action should there be any truly viable claim against them. For purposes of the *Mc Wane* analysis, I find that the defendants in the Delaware Action are substantially the same as those in the Federal Action.

LASERS also asserts that the basic issues and facts in the Delaware Action are substantially different from those in the Federal Action. At the core of the Federal Action are allegations against the federal defendants that Citrix issued false and misleading statements regarding its financial results in the months leading up to the June 12, 2000 disclosure of lower-than-expected results. In the Delaware action, LASERS argues that Claim I "arises out of the improper manipulation of a shareholder vote scheduled to take place on May 18, 2000" and that Claim II arises from "the defendants' failure to disclose that C'itrix would not meet its projections for the second quarter of 2000."[13] For reasons that will become apparent during the

[13] Pls.' Answering Br., at 5.

following discussion, I will treat Claim I and Claim II separately as I compare them to the claims and issues asserted in the Federal Action.

Claim I concerns issues and facts on a discrete matter of Delaware corporate governance recently addressed by my decision in *State of Wisconsin Investment Board* v. *Peerless Systems Corp.*[14] The consolidated federal complaint contains several paragraphs that largely duplicate LASERS's contentions concerning Citrix's decision to adjourn the Annual Meeting without closing the polls on Proposal 3.[15] Due to the inclusion of these paragraphs, the defendants argue that the issues that will be confronted should Claim I proceed in this Court are identical to disputed aspects of the Federal Action. The Court does not dispute that the Federal Action has included many if not all of the contentions made by LASERS in the present action. Nevertheless, Claim I presents the rather unique case where Delaware has a paramount interest in the prompt resolution of a dispute that impacts the governance of a Delaware corporation."

Although I have no doubt concerning the ability and interest of the Southern District of Florida in providing complete justice in the Federal

[14] Del. Ch., C.A. No. 17637, Chandler, C. (Dec. 4, 2000).
[15] Federal Consol. Am. Compl., ¶¶ 117-2 1.
[16] *See AT&T Corp.*, at 4; *Oralco, Inc.* v. *Bradley*, C.A. No. 12763, slip op. at 2-4, Chandler, V.C. (Nov. 4, 1992).

Action and I am mindful of the importance of protecting a litigant's choice of forum, I do not believe that either of these interests will be sacrificed if Claim I is allowed to proceed before this Court. In this action, LASERS asserts a claim attacking the Citrix board's decision to adjourn a vote and then reconvene the Annual Meeting. The propriety of the defendants' actions implicates a recently elucidated aspect of Delaware law on an issue governing the internal affairs of a Delaware corporation.[17] The nature of the claim, a challenge to an increase in the number of options available for distribution to employees, also counsels this Court that a prompt decision in this matter is required.

In direct contrast to Claim 1, Claim II presents a clear case where the plaintiffs have repackaged federal securities law claims as Delaware fiduciary duty claims." No functional difference exists between the core facts of Claim II concerning the defendants purported failure to disclose that Citrix would not meet its projections for the second quarter of 2000 and the core facts of the Federal Action concerning material misrepresentations and omissions of Citrix's financial condition leading up to the fateful

---

" See *Peerless, supra* note 14 (denying plaintiffs' motion for summary judgment but requiring the defendants to show a compelling justification for their decision to adjourn an annual shareholders meeting with the polls still open **on a certain** proposal that would have been rejected had the polls been closed.)

[18] *See Derdiger*, **at** 10.

announcement of June 12, 2000. Here, the Federal Action claims and Claim II arise "from a common nucleus of operative facts [that] ought to be brought in the same court at the same time."[19] This is particularly true in this matter because if Claim II were to go forward in this Court, there would be a real risk of inconsistent verdicts and a waste of time and judicial resources for both this Court and the Southern District of Florida.

I also briefly note that I do not find Citrix's *forum non conveniens* argument persuasive with regard to Claim I.[20] As stated above, Claim I involves a Delaware corporation. and a discrete issue of corporate governance under Delaware law. Further, in order to apply the doctrine of *forum non conveniens*, this Court must find "overwhelming hardship" to the defendant.[21] This is simply not the case here. The inconvenience and expense that accompanies a Delaware corporation when it defends itself against a claim pertaining to a discrete issue of corporate governance does not rise to the level of an "overwhelming hardship." This argument is therefore without merit.

---

[19] *Schnell*, at 9.
[20] Because I have concluded that Claim II shall be stayed pursuant to the *McWane* doctrine, there is no reason to include Claim II in the *forum* non *conveniens* analysis.
[21] *Ison v. E.I. Dupont de Nemours and Co.,* Del. Supr., 729 A.2d 832, 838 (1999).

For the reasons stated above, I conclude that the most efficient manner in which to handle these two claims is to deny the defendants' motion to stay Claim I and conditionally grant their motion to stay Claim II. On Claim II, the accompanying order shall grant the stay on the condition that the Federal Action is amended to specifically include this claim. If the federal plaintiffs choose not to accept this claim as part of the Federal Action, LASERS may return to this Court to fully litigate Claim II before me. The Court further notes that if Citrix decides to vacate the vote on Proposal 3 so that the company can no longer engage in any acts pursuant to the adoption of that proposal, Claim I would be effectively mooted.

For all of the reasons set forth above, I deny the motion to stay Claim I and conditionally grant the motion to stay on Claim II.

IT IS SO ORDERED.

Very truly yours,

William B. Chandler III

William B. Chandler III

WBCIII:meg

oc: Register in Chancery
xc: Vice Chancellors
Law Libraries