IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE JOHN Q. HAMMONS HOTELS INC. SHAREHOLDER LITIGATION	))))	CONSOLIDATED C.A. NO. 758-CC

PLAINTIFFS' REPLY IN FURTHER SUPPORT OF MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Plaintiffs respectfully submit this reply in further support of their Motion to Compel Production of Documents, dated March 9, 2009 (the "Motion to Compel")[1] and in response to Defendants' Opposition to Plaintiffs' Motion to Compel Production of Documents, dated March 19, 2009 (the "Opposition"). As grounds therefor, Plaintiffs represent as follows:

1. Defendants base their Opposition on an incorrect statement of the law and inaccurate characterization of Plaintiffs' position.

2. Defendants misstate the law when they assert that post-merger evidence "is only admissible 'to show that plans in effect at the time of the merger have born fruition.'" Opposition ¶ 6 (quoting *Gonsalves v. Straight Arrow Publishers, Inc.*, 701 A.2d 357, 362 (Del. 1997)). *Gonsalves* (an appraisal case) does not so limit itself (*see* Motion to Compel ¶ 8), and the standard is necessarily broader where, as here, the case concerns a fiduciary breach and therefore permits the Chancery Court to exercise wide discretion in shaping an appropriate remedy. *See Int'l Telecharge, Inc. v. Bomarko, Inc.*, 766 A.2d 437, 440 (Del. 2000).[2] In addition, it is obvious that post-merger events may shed light on pre-merger value, and are therefore "reasonably calculated to lead to the discovery of admissible evidence." *In re Best*

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[1] Capitalized terms not defined herein have the respective meanings ascribed in the Motion to Compel.

[2] Defendants' assertion that "Plaintiffs have not, and could not, seek rescissory damages" (Opposition ¶ 10) is simply incorrect – Plaintiffs seek recovery for a breach of fiduciary duty and have made no election of remedies.

Lock Corp. S'holder Litig., 2000 WL 1876460 (Del. Ch.) at *6. *See Gower v. Beldock,* 1998 WL 200267 (Del Ch.) at *3; *Ross v. Proco Management, Inc.*, 1983 WL 17991 (Del. Ch.) at *2.

3. Defendants mischaracterize Plaintiffs' argument when they assert that "[t]he relevant inquiry is whether Lehman Brothers' decision to apply the discount [to peer multiples] was reasonable when the decision was made in light of the information available at that time." Opposition ¶ 8. In fact, separate from any question of subjective reasonableness, Lehman's valuation analysis is highly relevant to the issue of fair price in this action, and post-Merger facts are likely to assist in determining the validity of Lehman' assumptions, which were *explicitly* based on post-Merger events.

4. Defendants' claim that the Company's "completely different debt structure" and "different management" after the Merger renders its post-Merger financial performance irrelevant (Opposition ¶ 9) asks the Court to prematurely weigh evidence that has not yet been offered for admission, and assumes that the Court should disregard the effect of changes to the Company's debt structure and management in determining fair price – an assertion that, as a matter of law, is highly doubtful. *See In re Emerging Commc'ns, Inc. S'holder Litig.*, 2004 WL 1305745 (Del. Ch.) at *13 (cost savings resulting from consolidation of company with parent post-merger "were not merger-dependent" and were therefore properly counted in fair price/value analysis).

5. Finally, notwithstanding Defendants' claims (Opposition ¶ 11), the relevance of post-Merger valuation opinions to the issue of fair price is self-evident, and the hotel-level detail sought by Plaintiffs, as previously noted (Motion to Compel ¶ 4), is needed to allow direct comparability of pre- and post-Merger performance by enabling Plaintiffs to account for acquisitions, dispositions and other changes outside the ordinary course of business.

6. While Defendants characterize the discovery Plaintiffs seek as "extensive" (Opposition ¶ 3), the totality of post-Merger financial data requested by Plaintiffs is likely contained in just three computer spreadsheets (combining quarterly and annual results for 2005, 2006 and 2007), and the documents needed to respond to Plaintiffs' requests regarding material transactions and valuation opinions are similarly likely to be few in number.

7. Defendants also incorrectly suggest that Plaintiffs had agreed in January to limit further discovery and that Defendants "consented to this limited additional discovery . . . ." Opposition ¶ 2. In fact, on the January 2, 2009 conference call with the Court, Plaintiffs specifically requested "time to complete the discovery that [counsel] just identified, *and any other we identify"* (Opposition Exhibit B, at 6:16-18) and pointedly objected to restrictions on the scope of discovery in the time remaining before any discovery cutoff (*id.* at 7:8-18). While Defendants *proposed* limits on the scope of further discovery (*id.* at 10:4-10), the Order implementing the Court's rulings imposed no such limits. *See* Motion to Compel Exhibit D.[3]

[3] Defendants' claim of delay (Opposition at 3 n.3) based on an objection to producing post-Merger documents that they made in response to document requests served by Plaintiffs in 2006 erroneously suggests that Plaintiffs were obligated to predict that Defendants would object to their recently-filed Second Document Request.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court enter an Order in the form previously submitted.

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