

COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE

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Transaction ID 27782120  
Case No. 4410-VCL



J. TRAVIS LASTER  
VICE CHANCELLOR

New Castle County Courthouse  
500 N. King Street, Suite 11400  
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October 28, 2009

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RE: Airborne Health Inc., *et al.* v. Squid Soap, LP, C.A. No. 4410-VCL

Dear Counsel:

Plaintiffs and counterclaim defendants Airborne Health, Inc. and Weil Gotshal & Manges LLP have moved to stay discovery pending the outcome of their motion for judgment on the pleadings. I do not require oral argument.

Whether to stay discovery is a discretionary matter for the Court. *See, e.g., Szeto v. Schiffer*, 1993 WL 513229, at \*2 (Del. Ch. Nov. 24, 1993) (Hartnett, V.C.). The filing of a potentially case-dispositive motion at the outset of litigation provides a frequent and logical predicate for the Court to consider granting a stay. *See, e.g., Electric Investment Trust PLC v. Cruz*, 1999 WL 1204844, at \*2 (Del. Ch. Nov. 30, 1999) (Chandler, V.C.). The Court will consider factors such as the scope of the motion, the timeline for its disposition, and whether the motion will simply result in the litigation shifting to another forum. The Court also will balance the need for discovery against the burdens that it entails. These are by no means exclusive factors. *See id.*

Here, the parties submitted a stipulation and proposed scheduling order dated August 4, 2009, which was entered as an order by Chancellor Chandler on that same date,

October 28, 2009

Page 2 of 2

which recited that “the parties agree that Plaintiffs need not respond to discovery until resolution of the motions or further order of the Court.” The term “motions” referred to plaintiffs’ motion for judgment on the pleadings and motion to stay discovery. The parties’ prior agreement weighs heavily in favor of a continued stay. Briefing on the motion for judgment on the pleadings is complete, and oral argument has been scheduled for November 13, 2009. I expect to rule promptly on the motion for judgment on the pleadings.

I do not perceive a significant risk of prejudice from continuing the stay. A stay of discovery does not affect the parties’ obligations to preserve potentially discoverable evidence. *See In re Trados Inc. S’holder Litig.*, 2009 WL 608552, at \*1 (Del. Ch. Feb. 26, 2009) (Chandler, C.) (noting expectation that parties will preserve documents and evidence pending the stay). I suspect that the experienced counsel involved in this matter took steps long ago to ensure that information would be properly preserved for the discovery process.

I therefore grant the motion to stay discovery. Discovery in this matter will be stayed pending my ruling on the motion for judgment on the pleadings.

Sincerely yours,

*/s/ J. Travis Laster*

J. Travis Laster  
Vice Chancellor

JTL/krw