

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

TRAVELCENTERS OF AMERICA LLC, :

Plaintiff, :

vs. :

Civil Action  
No. 3516-CC

TIMOTHY E. BROG, JEFFREY S. :  
WALD, E2 INVESTMENT PARTNERS :  
LLC, LOCKSMITH VALUE :  
OPPORTUNITY FUND LP, THE :  
EDWARD ANDREW GROUP INC., :  
PEMBRIDGE VALUE ADVISORS LLC :  
and LOCKSMITH CAPITAL :  
MANAGEMENT LLC, :

Defendants. :

E2 INVESTMENT PARTNERS LLC and :  
LOCKSMITH VALUE OPPORTUNITY FUND :  
LP, :

Counterclaim Plaintiffs, :

vs. :

TRAVELCENTERS OF AMERICA LLC, :

Counterclaim Defendant. :

- - -  
Court of Chancery Courthouse  
34 The Circle  
Georgetown, Delaware 19947  
Friday, April 4, 2008  
9:00 a.m.

BEFORE: HON. WILLIAM B. CHANDLER, III, Chancellor.

THE COURT'S RULING

CHANCERY COURT REPORTERS  
500 North King Street - Suite 11400  
Wilmington, Delaware 19801-3759  
(302) 255-0525

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APPEARANCES:

ROBERT S. SAUNDERS, ESQ.  
LINDA ELIZABETH BEEBE, ESQ.  
RONALD N. BROWN, III, ESQ.  
Skadden Arps Slate Meagher & Flom LLP  
For Plaintiff TravelCenters of America LLC

DAVID S. EAGLE, ESQ.  
Klehr Harrison Harvey Branzburg & Ellers LLP  
-AND-

DAVID C. BURGER, ESQ.  
of the New York Bar  
Robinson Brog Leinwand Greene Genovese &  
Gluck, P.C.  
For Defendants and Counterclaim Plaintiffs

- - -

1                   THE COURT: Counsel, I appreciate your  
2 indulgence in giving me a few minutes to think about  
3 this.

4                   I have, of course, listened carefully  
5 to the testimony today. Before today I had an  
6 opportunity to review your written submissions, your  
7 briefs on the matter, and throughout the trial I  
8 followed carefully and closely the exhibits that have  
9 been introduced and offered to the Court and the  
10 documents on various issues.

11                   You know, yesterday, I issued an  
12 opinion, a letter decision in the case that really was  
13 addressed principally to the question of whether or  
14 not the expert witness proffered by the plaintiffs,  
15 Professor Thomas, could testify at trial and whether  
16 his testimony would be admissible. But in the course  
17 of that letter, I did something else. I tried to  
18 signal to everyone very clearly that limited liability  
19 companies are creatures of contract. They are  
20 entities governed strictly by the language set forth  
21 in their LLC agreements. It's that language that will  
22 in large part govern and control my decision today.  
23 And my decision today is that the notice that was  
24 submitted by E<sup>2</sup> in this case is invalid because it

1 violates Section 9.7 of the LLC agreement.

2           Section 9.7 of TravelCenters of  
3 America LLC agreement and the validity of E<sup>2</sup>'s  
4 December 31, 2007 notice of intent to nominate  
5 Messrs. Brog and Wald for election to the TCA board  
6 and to present other proposals at TCA's 2008 annual  
7 meeting are the center of this controversy.

8           As I mentioned, I listened carefully  
9 to the testimony of the four fact witnesses and the  
10 one expert witness. I've considered carefully their  
11 testimony and their demeanor in the course of doing  
12 so, and I've concluded, as I said, that the notice  
13 that was faxed to TravelCenters on December 31 is  
14 invalid and insufficient under Section 9.7 of the LLC  
15 agreement and therefore has no force or effect. I've  
16 reached this conclusion for a number of reasons. I  
17 don't intend to identify every single reason, but I  
18 will pause long enough to identify a few of the  
19 reasons why I believe the notice is invalid.

20           First, the December 31 notice fails to  
21 identify Mr. Golub as a participant, as is required  
22 under Regulation 14(a) and Section 14(a) of the  
23 Federal Exchange Act. The evidence presented today  
24 clearly demonstrates that Golub is, among other

1 things, the source of E<sup>2</sup>'s funding, the sole member of  
2 E<sup>2</sup>, and his investment power over E<sup>2</sup> is clear and that  
3 Golub could remove Brog, for example, as a manager of  
4 E<sup>2</sup> at any time and for any reason. And for these and  
5 for a number of reasons and circumstances that have  
6 been recited at length today, I'm satisfied that the  
7 notice violated Section 9.7 by failing to disclose  
8 that Golub is a participant in the proxy solicitation.

9 I further find that the notice  
10 violated item 5(b)(2) of Schedule 14(a) because it  
11 failed to disclose that Golub gave his permission to  
12 Brog to use E<sup>2</sup> for the purpose of proposing Brog and  
13 Wald for election, and because Golub commented and  
14 approved on the notice in which this proposal was  
15 made, making Golub a party to an understanding  
16 pursuant to which a nominee for an election as  
17 director is proposed to be elected and therefore  
18 governed by that securities law provision in Section 9  
19 of the LLC.

20 I note as well that the notice does  
21 not disclose Golub's beneficial interest and that of  
22 his affiliates. The evidence satisfies me that his  
23 beneficial interest in E<sup>2</sup> and Locksmith Value in a  
24 number of different ways is clear, and therefore his

1 interest as a shareholder-associated person was  
2 necessary to be disclosed as well. Accordingly, the  
3 notice is invalid because of these deficiencies  
4 standing alone, but there are others.

5                   Second, the notice violates Section  
6 9.7 of the LLC agreement because it failed to disclose  
7 Brog's earlier violation of the federal securities  
8 laws. Item 401 of Schedule 14(a) requires disclosure  
9 of any involvement in certain legal proceedings during  
10 the past five years that are material to an evaluation  
11 of the ability or integrity of any director or person  
12 nominated to become a director.

13                   In this circumstance the SEC staff  
14 had, as a matter of fact, concluded that Mr. Brog had  
15 violated the federal securities laws in 2006 in  
16 connection with the Gyrodyne Company proxy  
17 solicitation. This determination by the SEC has never  
18 been withdrawn or vacated. It's materiality is clear,  
19 if not based on the uncontroverted testimony of  
20 Professor Thomas, then by the very implicit admission  
21 of Mr. Brog himself who acknowledges its materiality  
22 by his conduct; namely, his contact with the SEC in an  
23 effort to have the determination of his violation  
24 withdrawn or rescinded or qualified. But of course,

1 it was not rescinded, withdrawn or qualified. That  
2 conduct by Mr. Brog, it seems to me, plainly  
3 demonstrates the materiality of the SEC's finding or  
4 declaration as to Mr. Brog, and clearly shows its  
5 materiality to the shareholders or directors of TCA.

6 In passing, I think it unarguable that  
7 Mr. Brog was a participant within the meaning of the  
8 federal securities laws in the Gyrodyne proxy  
9 solicitation process by virtue of being a nominee for  
10 election, a fact that made it incumbent upon him to  
11 insure compliance with all SEC rules and regulations.

12 Third, E<sup>2</sup>'s December 31, 2007 notice  
13 also violated Section 9.7 because it failed to  
14 adequately disclose the principal occupation and  
15 employment of Mr. Wald during the past five years;  
16 specifically, it failed to identify Wald's employment  
17 with Spinback or WorkMarket, or what those businesses  
18 were; that he had multiple occupations, or that he had  
19 no occupation, are, in either event, material facts  
20 that I find a shareholder or a director of  
21 TravelCenters of America would certainly want to know  
22 and would have a right to know. Frankly, this seems  
23 to me self-evident; but to the extent it isn't, I  
24 credit expressly the testimony of TCA's expert,

1 Professor Thomas, on this issue, as well as those  
2 other issues of federal securities law requirements  
3 and materiality to the extent those issues are  
4 questions of fact.

5                   Now, finally, for now, Section 9.7  
6 governs notices for nominations or for other business  
7 to be properly brought before an annual meeting. It  
8 contains a certificate requirement. Under the  
9 mandatory language of Section 9.7(a)(2), no  
10 shareholder may give notice to nominate directors or  
11 to present other proposals unless the shareholder  
12 holds a certificate for all shares owned by such  
13 shareholder, and a copy of these certificates shall  
14 accompany such shareholders notice to the secretary in  
15 order for such notice to be effective.

16                   Section 9.7(a)(2) states further that  
17 this stock certificate requirement would be  
18 inapplicable unless shareholders are entitled to  
19 receive a certificate evidencing the shares owned by  
20 them. It's undisputed by the parties that the notice  
21 at issue in this case was not accompanied by a copy of  
22 the stock certificate of E<sup>2</sup>.

23                   Though defendants had presented  
24 evidence that they may have encountered difficulty in



1 obtaining the stock certificates, they have not  
2 demonstrated that they were not entitled to receive  
3 such certificates. On the contrary, Mr. Portnoy  
4 testified that the board adopted a resolution "that  
5 company shares be issued in certificated form."  
6 Although later modified, Mr. Portnoy testified that  
7 the November 2007 TravelCenters' board meeting minutes  
8 reflect that shareholders are entitled to certificates  
9 for the shares they own and that such certificates  
10 would be available if requested.

11 I find that, as of the date of notice,  
12 December 31, 2007, E<sup>2</sup> neither held a certificate for  
13 the shares it owned nor attached a copy of the  
14 certificate to the notice. Accordingly, because E<sup>2</sup>  
15 did not comply with Section 9.7(a)(2), I must conclude  
16 that E<sup>2</sup>'s notice is invalid. On this note, I point  
17 out that I'm not persuaded by the arguments the  
18 defendants have made that it was impossible to obtain  
19 a certificate. This contention is belied, in my  
20 opinion, by Portnoy's testimony that other  
21 shareholders did, in fact, obtain such certificates,  
22 and by plaintiff's exhibits which show the same thing.

23 Additionally, though the defendants  
24 did encounter difficulty in obtaining a certificate,

1 they essentially backed themselves into their own  
2 corner. Mr. Brog did not authorize his broker to seek  
3 a certificate until on or around December 11. What's  
4 more, it's undisputed, however, that he bought  
5 shares -- for Pembridge at least -- 100 shares earlier  
6 in November. So there was ample time for Mr. Brog or  
7 Pembridge, or any shareholder who wanted a certificate  
8 to ask for a certificate.

9                   If the designees, the brokers or the  
10 broker's broker were unable to obtain a certificate,  
11 I'm unsure why no effort was made to contact  
12 TravelCenters of America directly to demand a  
13 certificate. In any event, not until December 21,  
14 just five business days before the deadline for filing  
15 a notice, did that broker, the defendants' agent,  
16 attempt to obtain a certificate. In this case the  
17 defendants are sophisticated investors who agreed to  
18 be bound by an LLC agreement that explicitly and  
19 unambiguously requires them to attach copies of  
20 certificates to any notice submitted to the company.  
21 Defendants chose to delay the perhaps hypertechnical  
22 but nevertheless necessary process of obtaining the  
23 certificate. This Court is unwilling to excuse or  
24 countenance that neglect. I therefore reject the

1 argument of defendants that their failure to attach  
2 the certificate is somehow excused.

3 For all of those reasons, the notice  
4 that was sent to TravelCenters by E<sup>2</sup> on December 31,  
5 2007 is invalid and of no force and effect.

6 To that end, counsel, I have entered a  
7 form of order, and I'm now signing that order that  
8 implements the Court's ruling, as you just heard me  
9 announce it. I'm handing that to the clerk of the  
10 court. It will be available to you, if you like a  
11 copy today, or it will be e-filed and available to you  
12 electronically.

13 There is only one other issue  
14 outstanding. I have not overlooked it. I know there  
15 is an issue with respect to the attorneys' fees in  
16 connection with the discovery dispute. I'll rule on  
17 that by Monday and advise you accordingly.

18 If there is nothing further, if there  
19 is something I overlooked, please tell me now. I hear  
20 nothing.

21 Thank you very much for being  
22 available.

23 Court's in recess.

24 (Court adjourned at 5:00 o'clock p.m.)

CERTIFICATE

1  
2 I, DIANE G. MCGRELLIS, Official Court  
3 Reporter of the Chancery Court, State of Delaware, do  
4 hereby certify that the foregoing pages numbered 3  
5 through 11 contain a true and correct transcription of  
6 the proceedings as stenographically reported by me at  
7 the hearing in the above cause before the Vice  
8 Chancellor of the State of Delaware, on the date  
9 therein indicated.

10 IN WITNESS WHEREOF I have hereunto set  
11 my hand at Wilmington, this 7th day of April, 2008.

12  
13 /s/ Diane G. McGrellis

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14 Official Court Reporter  
15 of the Chancery Court  
16 State of Delaware

17 Certification Number: 108-PS  
18 Expiration: Permanent  
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