IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

SUN-TIMES MEDIA GROUP, INC., et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 06C-11-108 RRC
	)	
ROYAL & SUNALLIANCE INS. CO. OF CANADA, et al.	)	
	)	
	)	
Defendants.	)	

Submitted: April 9, 2007
Decided: June 20, 2007

On Defendants Royal & SunAlliance Insurance Company of Canada, ACE INA Insurance Company, and Zurich Insurance Company's "Motion to Dismiss or Stay Plaintiffs' Complaint."
DENIED.

On Defendants Royal & SunAlliance Insurance Company of Canada, ACE INA Insurance Company, and Zurich Insurance Company's "Motion to Stay First-Party Discovery Pending Resolution of Motion to Dismiss."
DENIED.

MEMORANDUM OPINION

John E. James, Esquire and Richard L. Horwitz, Esquire, Potter Anderson & Corroon LLP, Wilmington, Delaware, Attorneys for Plaintiffs.

James W. Semple, Esquire and Matthew F. Lintner, Esquire, Morris James LLP, Wilmington, Delaware, Attorneys for Defendants.

COOCH, J.

Before the Court is Defendants' motion to dismiss or stay Plaintiffs' complaint in favor of previously filed related actions in Canada. This Court, however, is not sufficiently confident that the Canadian proceedings will promptly resolve the issues Plaintiffs have raised in their complaint. Additionally, Defendants have not met their burden in demonstrating that this action should be dismissed or stayed pursuant to the *forum non conveniens* doctrine. Therefore, Defendants' motion is **DENIED**.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs' complaint seeks a declaration of coverage under their excess directors and officers ("D&O") insurance policies issued by Defendants. Plaintiffs claim that they have incurred over $20 million (and expect to incur over $40 million) in defense costs as a result of defending themselves in multiple lawsuits that arose out of an alleged fraudulent scheme devised by certain inside directors of Plaintiff Sun-Times Media Group, Inc. f/k/a Hollinger International, Inc. ("International"). The complaint further asserts that Defendants are obligated to pay those defense costs and have wrongfully refused to do so.

Plaintiff International is a Delaware corporation with its principal place of business in Illinois. International's Canadian parent companies are

Hollinger Inc.[1] and Ravelston Corporation Limited ("Ravelston").[2] Plaintiffs Dwayne O. Andreas, Richard R. Burt, Raymond G. Chambers, Marie-Josee Kravis, Robert S. Strauss, A. Alfred Taubman, James R. Thompson, Lord Weidenfeld of Chelsea, and Leslie H. Wexner (collectively the "Outside Directors") are nine of International's former outside directors. Eight of the above Outside Directors are citizens of the United States and one (Lord Weidenfeld) is a citizen of the United Kingdom.

In 2002, International purchased liability insurance in a tower of insurance totaling $130 million in limits with a policy period of July 1, 2002 to July 1, 2003. The policies cover International, Ravelston, Hollinger Inc., and the individual directors and officers of those entities.

American Home Assurance Company ("American Home") and Chubb Insurance Company ("Chubb") sold the primary and first two excess policies in the tower, which have a combined policy limit of $50 million. Defendants Royal & SunAlliance Insurance Company of Canada, ACE INA Insurance Company, and Zurich Insurance Company (collectively the "Third Layer Insurers") sold excess D&O insurance that has a $40 million limit of

[1] Hollinger Inc. presently owns approximately 17% of the equity of International and beneficially holds approximately 67% of the overall voting power of International. Van Horn Aff., E-File 13594161, at ¶ 3. (James Van Horn was general counsel for International and is presently a consultant for International. Van Horn Aff., at ¶ 2.)

[2] At all material times Ravelston beneficially owned 78% of Hollinger Inc. Van Horn Aff., at ¶ 4.

liability and is excess of $50 million in underlying insurance (the "Third Layer Policy"). Defendants AXA Corporate Solutions Assurance, Temple Insurance Company, Continental Casualty Company, Lloyd's Underwriters, GCAN Insurance Company f/k/a Gerling Global Canada, and ACE INA Insurance Company (collectively the "Fourth Layer Insurers") sold excess D&O insurance that has a $40 million limit of liability and is excess of $90 million in underlying insurance.[3]

From January 1999 until about May 2001, International's inside directors, Lord Conrad Black, David Radler, John Boultbee, and Peter Atkinson (collectively the "Inside Directors") allegedly took part in a scheme to defraud International, its public shareholders, and Canadian tax authorities. After receiving a demand letter from a major shareholder in May 2003, International formed a Special Committee of the Board to conduct an independent investigation of the allegations. That committee issued a report in August 2004 that described how the Inside Directors allegedly ran a "corporate kleptocracy" that supposedly looted International of hundreds of millions of dollars.[4]

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[3] The Fourth Layer Insurers join in the Third Layer Insurers' motion to dismiss or stay this action.

[4] Smick Aff., E-file 13769450, Ex. H, at 4. (Joseph M. Smick is a partner at the firm of Sedgwick, Detert, Morgan & Arnold, LLP. In that capacity, he was retained by Defendant Zurich Insurance Company. Smick Aff., at 2.)

Subsequently, on August 18, 2005, federal criminal charges were brought against Ravelston, Radler, and Mark Kipnis (International's former General Counsel) in the United States District Court for the Northern District of Illinois. The indictment was later amended to add Black, Boutbee, and Atkinson as defendants. Radler pled guilty to one count of the indictment on September 20, 2005. Recently, Ravelston also entered into a plea agreement.[5] The criminal trial began on March 14, 2007. The Court understands that the criminal trial is still continuing.

The alleged fraudulent scheme also spawned numerous civil lawsuits. On December 9, 2003, Cardinal Value Equity Partners, LP filed a derivative action on behalf of International in the Delaware Court of Chancery (the "Cardinal Derivative Action"). Pursuant to a settlement agreement executed on May 2, 2005, American Home and Chubb funded a settlement of the Cardinal Derivative Action in the amount of $50 million, thereby exhausting all insurance coverage beneath the Third Layer Policy. The Superior Court of Justice in Ontario, Canada (the "Canadian Court" where related legal proceeding have taken place) and the Court of Chancery have each approved the Cardinal Derivative Action settlement.

[5] Tr. of March 16, 2007 Oral Argument, E-File 14506275, at 11.

In addition, beginning in 2004, several shareholder class action suits were filed on behalf of International's shareholders in Illinois and Canada, naming International, Hollinger Inc., Ravelston, the Inside Directors and the Outside Directors, among others, as defendants.

Importantly for this case, at the time International filed its complaint in this Court on November 9, 2006,[6] there were two related pending "applications"[7] in the Canadian Court.[8] On May 13, 2005, Hollinger Inc. had filed an application against American Home, Chubb, the Third Layer Insurers, the Fourth Layer Insurers, International, Ravelston, Cardinal, the Inside Directors, the Outside Directors,[9] and others seeking an order:

> a. declaring that the payment by [American Home and Chubb] for the Cardinal Settlement would not exhaust, diminish, or otherwise alter the obligations owed by [American Home and Chubb] to [Hollinger] Inc.;
> b. in the alternative, enjoining [American Home and Chubb] from entering into the Cardinal Settlement;

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[6] International subsequently amended the complaint on November 13, 2006 to add the Outside Directors as plaintiffs.

[7] An application is apparently a type of legal proceeding in Canada usually reserved for cases where material facts are not in dispute. It appears that there is no right to conduct or receive documentary discovery and evidence is usually presented to the court through affidavits. Hoaken Aff., E-File 13655555, at ¶ 3 (Eric R. Hoaken is lead Canadian counsel for International in its insurance-related litigation. Hoaken Aff., at ¶ 5.)

[8] Two other applications had also been filed in Canada: one by International on May 12, 2005 and one by American Home and Chubb on May 13, 2005. However, both of these applications were essentially resolved by the Canadian Court's approval of the Cardinal Settlement. Def. Opening Brief in Support of their Mot. to Dismiss or Stay, E-File 13594161, at 10-11.

[9] Although the Outside Directors were named as respondents in this application, it is uncontested that none of them "ever attorned to the jurisdiction of Ontario or participated in any way in the various applications." Hoaken Aff., at ¶ 15.

c. declaring that [American Home and Chubb] and [the Third and Fourth Layer Insurers] have a duty to indemnify [Hollinger] Inc. and pay all defense costs and expenses in certain of the Underlying Actions, including, inter alia, the Illinois Securities Litigation; and
d. any further relief that the court deems just.[10]

Similarly, on that same date, Black and his wife, Lady Barbara Amiel Black, had filed an application in the Canadian Court against American Home, Chubb, the Third Layer Insurers, and the Fourth Layer Insurers seeking an order:

a. declaring that the payment by [American Home and Chubb] for the Cardinal Settlement would not exhaust, diminish, or otherwise alter the obligations owed by [American Home and Chubb] to Black;
b. declaring that [American Home and Chubb] and [the Third and Fourth Layer Insurers] have a duty to indemnify Black and pay all defense costs and expenses in certain of the Underlying Actions, including, inter alia, the Illinois Securities Litigation; and
c. any further relief that the court deems just.[11]

On January 10, 2007, Plaintiffs filed a motion for partial summary judgment seeking an order declaring that the Third Layer Insurers have a duty to pay past and future defense costs incurred by Plaintiffs in a consolidated Illinois class action (*In Re Hollinger International Securities Litigation*, No. 04C-0834 (N.D. Ill.)).[12] Subsequently, on January 18, 2007,

[10] Def. Opening Brief in Support of their Motion to Dismiss or Stay, at 8. *See also id*. at Ex. F.

[11] *Id*. at 11. *See also id*. at Ex. I.

[12] As stated previously, International and the Outside Directors have been sued in numerous actions arising from the Inside Directors alleged fraudulent scheme; however, Plaintiffs limited their motion for partial summary judgment to seeking a declaration that

Defendants filed a motion to stay first-party discovery pending the outcome of their motion to dismiss as well as this motion to dismiss or stay Plaintiffs' complaint on January 25, 2007.[13]

On March 22, 2007, the Canadian Court issued a decision in the two remaining pending Canadian applications filed by Hollinger Inc. and by the Blacks, dismissing them both as "premature." With respect to the Hollinger Inc. application, the court stated that the insurance policy was one of indemnity and therefore only if the underlying claims could result in indemnity would Hollinger Inc. be entitled to defense costs. However, the court held that it could not presently determine whether or not the claims could result in indemnity and therefore dismissed the application. In that connection, the Court stated that Radler plea agreement required "further exploration." The court further held that "[i]f the defendants in the [Illinois] criminal trial now proceeding are acquitted/or civil proceedings are not

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the Third Layer Insurers have a duty to pay past and future defense costs in one specific case, *In Re Hollinger International Securities Litigation*. Plaintiffs state that the parties "may be able to use the Court's ruling on this motion to resolve the Third Layer Insurers' obligations regarding the other actions at issue." In an opinion issued simultaneously today, the Court has granted Plaintiffs' motion for partial summary judgment. *Sun-Times Media Group, Inc., et al. v. Royal & SunAlliance Ins. Co. of Canada, et al.*, C.A. No. 06C-11-108 RRC, Cooch, J. (June 20, 2006).

[13] Defendants have made no request to stay Plaintiffs' third-party discovery. *See* Def. Motion to Stay First-Party Discovery Pending Resolution of Mot. to Dismiss, E-File 13505591.

proceeded with, [Hollinger] Inc. may re-apply before me and renew its request."[14] Hollinger Inc. has indicated its intent to appeal the decision.[15]

Similarly, with respect to Black's application, the court held that there was "no overriding interest to be served by making a determination at this time." But the court stated that "[i]f Conrad Black is acquitted and civil proceedings do not proceed, he may well be entitled to claim defence costs of the civil proceedings named above and can renew his request at that time."[16] The record in this case does not indicate whether or not Black has filed an appeal of this Canadian decision.

II. THE PARTIES' CONTENTIONS

Moving Defendants contend that Plaintiffs' complaint should be dismissed or stayed in favor of the first-filed Canadian proceedings pursuant to *McWane Cast Iron Pipe Corp. v. McDowell-Wellman Engineering Co*.[17] Under *McWane*, this court has discretion to dismiss or stay an action where "there is a prior action pending elsewhere, in a court capable of doing prompt and complete justice, involving the same parties and the same

[14] Def. March 23, 2007 letter to the Court, E-File 14233870, Ex. 1, at ¶ 47.
[15] Pl. April 9, 2007 letter to the Court, E-File 14421046.
[16] *Id*. at ¶ 52.
[17] 263 A.2d 281 (Del. 1970).

issues."[18] Accordingly, Defendants argue that the Canadian proceedings were first-filed and that the Canadian Court is capable of providing "prompt and complete justice." Defendants also contend that the parties in the Canadian proceedings are the same or substantially similar as the parties in the present action. Furthermore, Defendants claim that the Canadian proceedings and the instant action both arise out of the same operative facts and involve the same issue—whether the Third and Fourth Layer Policies provide coverage for the various civil lawsuits that have arisen out of the alleged misconduct of International's Inside Directors.

Defendants also assert that this action should be dismissed or stayed on *forum non conveniens* grounds. Defendants maintain that Canadian law will not apply to this coverage dispute. Defendants also contend that it will be easier to obtain access to relevant proof and to compel witnesses to testify in Canada. Defendants further assert that the pending Canadian proceedings weigh in favor of dismissal or stay of this action. Moreover, Defendants argue that it will be less costly and more efficient to defer to the Canadian proceedings.

In response to Defendants' *McWane* challenge, Plaintiffs contend that the parties involved in the Canadian proceedings are not the same as the

[18] *Id*. at 283.

parties in this action because the Outside Directors, although named as respondents in Hollinger Inc.'s application, "never attorned to the jurisdiction of the Ontario Court and have not appeared or participated in any of the Canadian proceedings."[19] In addition, Plaintiffs claim that the Canadian proceedings do not involve the same issues before this Court because each individual insured has separate and independent rights to coverage. Therefore, Plaintiffs assert that a resolution by the Canadian Court as to Black's and Hollinger Inc.'s entitlement to coverage will not resolve the issue of International's and the Outside Directors' entitlement to coverage. Plaintiffs also emphatically contend, especially in light of the Canadian Court's March 22, 2007 dismissal of the Hollinger Inc. and Black applications as "premature," that there is no reasonable assurance that the Canadian Court is likely to dispense the *McWane*-required "prompt and complete justice" with respect to the issues raised in their complaint.

Plaintiffs also oppose Defendants' alternative *forum non conveniens* argument. Plaintiffs maintain that their forum choice of Delaware should be upheld "absent significant countervailing circumstances," none of which, they assert, exist in this case. They contend that this case is not one of the

[19] Pl. Opposition to Def. Mot. to Dismiss or Stay Pl. Compl., E-File 13751962, at 9.

"rare" cases in Delaware where a plaintiff's choice of forum should be defeated.

III. DISCUSSION

A. The Court will not dismiss or stay this action pursuant to *McWane.*

Delaware courts have broad discretion, under *McWane* and its progeny, to dismiss or stay an action where "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."[20] Generally, "litigation should be confined to the forum in which it is first commenced, and a defendant should not be permitted to defeat the plaintiff's choice of forum in a pending suit by commencing litigation involving the same cause of action in another jurisdiction of its own choosing."[21] However, a court will not, as a matter of right, stay an action by reason of a prior filed action.[22] Ultimately, when deciding whether to dismiss or stay a case where a similar action has been filed previously in another jurisdiction, a court must

[20] *McWane*, 263 A.2d at 283.
[21] *Id*.
[22] *Id*.

consider the economy of judicial effort, the efficiency of the administration of justice, and the prevention of unwarranted delay.[23]

Under the particular circumstances of this case, the Court does not find that a dismissal or stay is warranted under *McWane*. It does not appear that the Canadian Court will resolve the issues before this Court (to the extent the same issues are involved) any time in the near future. That court recently dismissed the Hollinger Inc. and Black applications as "premature," stating that "[i]f the defendants in the criminal trial now proceeding are acquitted and/or civil proceedings are not proceeded with, Inc. may re-apply before me and renew its request."[24] The court further stated that "[i]f Conrad Black is acquitted and civil proceedings do not proceed, he may well be entitled to claim defence costs…and can renew his request at that time."[25]

Final resolution of the Illinois criminal case may ultimately take years. Also, some or all of the Canadian applicants might, for whatever reason, elect not to refile their applications once the Canadian Court deems the related criminal cases finally resolved. Although Hollinger Inc. has apparently appealed the Canadian Court's March 22, 2007 order, to the extent that the Canadian proceedings are still "pending" (because of the

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[23] *Transamerica Corp. v. Reliance Ins. Co.*, 1995 WL 1312656, at *6 (Del. Super.).

[24] Def. March 23, 2007 letter to the Court, E-File 14233870, Ex. 1, at ¶ 47.

[25] *Id*. at ¶ 52.

appeal),[26] any resolution "would likely span an extended period of time."[27] Having thus concluded that the Canadian Court cannot presently afford "prompt justice" to the parties, the Court need not decide whether the other *McWane* requirements are met.[28] This Court will not dismiss or stay this action under *McWane*.

B. The Court will not dismiss or stay this action pursuant to the doctrine of *forum non conveniens*.

The present action should not be dismissed or stayed on the grounds of *forum non conveniens*. It is only the "rare" case where a plaintiff's choice of forum is defeated.[29] In order to dismiss an action pursuant to this doctrine, defendants "must demonstrate, with particularity, that being required to litigate in Delaware would subject it to overwhelming

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[26] *JW Acquisitions, LLC v. Shulman*, 2006 WL 3087797, at *5 (Del. Ch.) (holding that where all that was left of a prior filed New York case was "an ephemeral certiorari petition to the Court of Appeals . . . this court cannot stretch the 'prior action pending elsewhere' concept so think as to encompass the all but moribund New York case").

[27] *Id*. (stating that "assuming for the sake of argument that [the defendant] succeeded in its efforts to overturn the judgment dismissing the complaint, the resolution of that complex fraud case would likely span an extended period of time").

[28] *See id*. (denying the defendant's motion to dismiss or stay after consideration of only the "prompt" and "prior pending action" *McWane* factors).

[29] *Chrysler First Bus. Credit Corp. v. 1500 Locust Ltd. P'ship*, 669 A.2d 104, 108 (Del. 1995) ("A plaintiff's choice of forum should not be defeated except in the rare case where the defendant establishes, through the *Cryo-Maid* factors, overwhelming hardship and inconvenience."). *See also Asten v. Wanger*, 1997 WL 634330, at *1 (Del. Ch.) ("It is well recognized, however, that plaintiffs should not be denied their choice of an appropriate forum absent significant countervailing circumstances related to judicial economy, efficiency and fairness.").

hardship."[30] However, "the burden on the moving party is a lesser one when a stay rather than a dismissal is sought."[31] The burden on a defendant seeking to stay an action has been described as "inconvenience and hardship sufficient to move the [court] to delay the exercise of its jurisdiction."[32] Even when considering these factors under the lesser standard, Defendants have not met their burden to justify the dismissal or stay of Plaintiffs' complaint.

Delaware courts examine six factors, known as the "*Cryo-Maid*" factors, when determining whether to dismiss or stay an action pursuant to *forum non conveniens* grounds: (1) whether Delaware law is applicable; (2) the relative ease of access to proof; (3) the availability of compulsory process for witnesses; (4) the possibility of the view of the premises; (5) the pendency or nonpendency of a similar action or actions in another

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[30] *Candlewood Timber Group, LLC v. Pan Am. Energy, LLC*, 859 A.2d 989, 994 (Del. 2004). *See also Ison v. E.I. DuPont de Nemours & Co.*, 729 A.2d 832, 835 (Del. 1999) ("The court must require the defendant to show that this is one of those rare cases where the drastic relief of dismissal is warranted based on a strong showing that the burden of litigating in this forum is so severe as to result in manifest hardship to the defendant.").

[31] *Moore Golf, Inc. v. Ewing*, 269 A.2d 51, 52 (Del. 1970). *See also Kolber v. Holyoke Shares, Inc.*, 213 A.2d 444, 447 (Del. 1965) (noting that "[t]he requisite showing with respect to [the *Cryo-Maid* factors] is far greater, however, for a dismissal than for a stay.").

[32] *ANR Pipeline v. Shell Oil Co.*, 525 A.2d 991, 992 (Del. 1987). *See also Hurst v. General Dynamics Corp.*, 583 A.2d 1334, 1338 (Del. Ch. 1990) (stating that the party seeking the stay "is required to shoulder the burden of showing sufficient inconvenience and hardship"). *But see United Phosphorus, Ltd. v. Micro-Flo Co.*, 808 A.2d 761, (Del. 2002) (holding that the defendant's "motion to dismiss or stay must be denied unless [the defendant] satisfies the heavy burden of establishing overwhelming hardship").

jurisdiction; and (6) all other practical problems that would make the trial of the case easy, expeditious and inexpensive.[33]

Defendants claim that it will be "easier" to obtain access to relevant proof if this litigation were to proceed in Canada rather than Delaware. However, they have not "identif[ied] any specific pieces of evidence necessary to [their] defense that [they] will not be able to produce in Delaware."[34] International is a Delaware corporation with its headquarters and corporate witnesses located in the United States. Eight of the Outside Directors reside in the United States. Although the now-dismissed Black and Hollinger, Inc. applications were filed in Canada prior to this lawsuit, discovery in Canada is apparently more limited than it would be here.[35] In addition, the related Cardinal Derivative action was filed in Delaware. Therefore, the first factor does not favor a dismissal or stay.

Defendants also assert that it "likely will be more difficult to compel witnesses to testify" in Delaware. They do not, however, specifically

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[33] *Ison*, 729 A.2d at 837-38. *See also General Food Corp. v. Cryo-Maid, Inc.*, 198 A.2d 681, 684 (Del. 1964). The parties agree that the "view of the premises" factor is not at issue here.

[34] *Mar-Land Indus. Contractors, Inc. v. Caribbean Petroleum Refining L.P.*, 777 A.2d 774, 781 (Del. 2001). *See also Warburg, Pincus Ventures, L.P. v. Schrapper*, 774 A.2d 264, 272 (Del. 2001) (stating that to succeed on a motion to dismiss on *forum non conveniens* grounds, a defendant must produce "more than generalized references to the garden-variety concerns and expenses that characterize transnational litigation").

[35] Hoaken Aff., at ¶ 3 ("An important distinction between the procedure in the Canadian and Delaware courts relates to the availability of third-party discovery. Discovery from third parties is not available in Ontario actions as of right, and can be obtained only by specific order of the Court.").

identify any witnesses that could not be compelled to testify in Delaware.[36] Moreover, as previously stated, the Canadian Court's ability to compel witness testimony and third-party discovery is apparently more limited than a Delaware court's.[37] Consequently, this factor does not weigh in favor of a dismissal or stay.

Defendants also maintain that Canadian law applies to this coverage dispute. Plaintiffs, however, claim that the choice of law issue is unsettled. Even assuming, for purposes of this motion only (but without now deciding), that Canadian law will apply, Delaware courts are competent "to wrestle with open questions of the law of sister states or foreign countries"[38] Therefore, the Court gives this factor little weight.[39]

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[36] *See Monsanto Co. v. Aetna Cas. and Sur. Co.*, 559 A.2d 1301 (Del. 1988) ("To prevail on a *forum non conveniens* motions to dismiss, defendants must identify the inconvenienced witnesses and the specific substance of their testimony.").

[37] Hoaken Aff., at ¶ 3 (explaining that "witnesses in Canadian provinces other than Ontario are not automatically compellable by a subpoena issued by the Ontario Superior Court of Justice, and that such parties will only be compellable if a specific certificate is issued by the Court for attachment to the summons or subpoena in question.").

[38] *Taylor v. LSI Logic Corp.*, 689 A.2d 1196, 1200 (Del. 1997) ("The application of foreign law is not sufficient reason to warrant dismissal under the doctrine of forum non conveniens.").

[39] *See Mt. Hawley Ins. Co. v. Jenny Craig, Inc.*, 668 A.2d 763, 769 (Del. 1995) ("Even though Delaware may not apply and California law could, this Court does not find this means [the defendant] has shown hardship and inconvenience."); *Monsanto*, 559 A.2d at 1305 ("If it were necessary to adjudicate some or all issues of coverage using the laws of other States, this possibility alone would not weigh overwhelmingly in favor of the defendants.").

In addition, the only related action in Canada that could be considered still pending is the apparent pending appeal of the Hollinger Inc. application.[40] As discussed above under the *McWane* analysis, that application does not justify the dismissal or stay of Plaintiff's complaint.

As for practical considerations, the final *Cryo-Maid* factor, Defendants cite *IM2 Merch. and Mfg., Inc. v. Tirex Corp.*[41] for the proposition that Delaware's claimed "little, if any, interest" in this dispute should favor dismissal or stay of this action. However, the Delaware Supreme Court distinguished that case in *Candlewood* stating that, "*IM2* turned less on the interests of a foreign forum than on the financial hardship facing the Quebec-based defendant, which had 'lost a good deal of money and [was] apparently in default of its tax obligations,' and could not 'easily bear' the 'markedly increased' costs of litigating in Delaware."[42] The *Candlewood* Court went on to say that Delaware has a "significant" interest in making "available to litigants a neutral forum to adjudicate commercial

[40] As previously stated, the present record does not indicate if Black has appealed the March 22, 2007 dismissal of his application.

[41] 2000 WL 1664168, at *11 (Del. Ch.) (holding that "the procession of this litigation in Delaware rather than Quebec, Canada will result in the imposition of significant and undue costs on the defendants that are unjustified by any countervailing public or legitimate private interest served by conducting this case here").

[42] 859 A.2d at 1000 n. 33.

disputes against Delaware entities, even where the dispute involves foreign law and the parties and conduct are centered in a foreign jurisdiction."[43]

After considering all of the *Cryo-Maid* factors, Defendants have not met their burden to dismiss or stay this action.[44]

IV. CONCLUSION

For the above reasons, Defendants' motion to dismiss or stay Plaintiffs' complaint is **DENIED**.[45]

IT IS SO ORDERED.

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Richard R. Cooch

oc: Prothonotary

[43] *Id*. at 1000.

[44] *See Monsanto*, 559 A.2d at 1308 ("An action may not be dismissed upon bare allegations of inconvenience without an adequate showing of particulars of the hardships relied upon.").

[45] Defendants' pending "Motion to Stay First-Party Discovery Pending Resolution of Motion to Dismiss" is hereby **DENIED**.