

TABLE OF CONTENTS

	<u>Page</u>
PRELIMINARY STATEMENT	1
ARGUMENT	2
I. PLAINTIFFS REQUIRE EXPEDITED DISCOVERY TO OBTAIN THE NECESSARY PRELIMINARY RELIEF.	2
A. The Grounds for Expedited Discovery.	2
B. The Governing Legal Standard	3
C. The Proposed Discovery Program	5
CONCLUSION	8

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<u>American Stores Co. v. Lucky Stores,</u> C.A. No. 9766, Allen, C., slip op. (Del. Ch. April 13, 1988)	5
<u>Facet Enterprises, Inc. v. Prospect Group, Inc.,</u> C.A. No. 9746, Jacobs, V.C., slip op. (Del. Ch. April 15, 1988)	4
<u>Robert M. Bass Group, Inc. v. Evans,</u> 552 A.2d 1227 (Del. Ch. 1988)	4
<u>Shamrock Holdings, Inc. v. Polaroid Corporation,</u> C.A. Nos. 10,075, 10,079, 10,582, and 10,585, Berger, V.C., slip op. (Del. Ch. March 17, 1989)	4
<u>UA Entertainment v. UA Columbia Cablevision,</u> C.A. No. 6432 Brown, V.C., slip op. (Del. Ch. April 29, 1981)	7
 <u>OTHER AUTHORITIES</u>	
8 C. Wright & A. Miller, <u>Federal Practice and</u> <u>Procedure</u> (1970)	6

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

PARAMOUNT COMMUNICATIONS INC. and	:	
KDS ACQUISITION CORP.,	:	
Plaintiffs,	:	
TIME INCORPORATED, TW SUB INC., JAMES	:	
F. BERE, HENRY C. GOODRICH, CLIFFORD	:	C.A. No.
J. GRUM, MATINA S. HORNER, DAVID T.	:	
KEARNS, GERALD M. LEVIN, J. RICHARD	:	
MUNRO, N.J. NICHOLAS, JR., DONALD S.	:	
PERKINS, CLIFTON R. WHARTON, MICHAEL	:	
D. DINGMAN, EDWARD S. FINKELSTEIN,	:	
HENRY LUCE III, JASON D. McMANUS,	:	
JOHN R. OPEL, and WARNER COMMUNICATIONS	:	
INC.,	:	
Defendants.	:	

PRELIMINARY STATEMENT

Today, Paramount Communications Inc. commenced an all cash tender offer for all shares of Time Incorporated ("Time"), at a price of \$175 per share, which represents a \$49 (38.9%) premium over the current market price of Time shares and a nearly \$66 (60.4%) premium over the market price of Time shares immediately preceding the announcement of a proposed merger between Time and Warner Communications Inc. ("Warner"). Plaintiffs filed this action today, seeking declaratory and injunctive relief against a series of defensive measures adopted by Defendants that will deprive stockholders of any opportunity to consider alternatives to the proposed merger, including Plaintiffs' premium all cash offer. Plaintiffs have also moved for a temporary

restraining order to prevent the imminent implementation of a particularly onerous defensive measure -- a Lock-Up Stock Swap.

By this motion, Plaintiffs seek leave to commence expedited discovery. Plaintiffs make this application because of the necessity for immediate injunctive relief against the illegal Lock-Up Stock Swap and the other defensive measures that Defendants have at their disposal to thwart Plaintiffs' offer. The expiration date of the offer, now scheduled for July 5, 1989, represents the outside date for obtaining the preliminary injunctive relief requested in the Complaint.

The facts upon which the action and this motion are based are set out in full in the Statement of Facts contained in Plaintiffs' Memorandum of Law in Support of Their Motion For a Temporary Restraining Order.

ARGUMENT

I. PLAINTIFFS REQUIRE EXPEDITED DISCOVERY TO OBTAIN THE NECESSARY PRELIMINARY INJUNCTIVE RELIEF

A. The Grounds for Expedited Discovery.

Today, Plaintiffs have moved for a temporary restraining order against the Lock-Up Stock Swap. Plaintiffs intend to move promptly for a preliminary injunction against

the Lock-Up Stock Swap as well as for other necessary relief.^{1/} Plaintiffs must conduct discovery to develop the evidentiary foundation to support the requested relief at a pace consistent with the timetable for Plaintiffs' tender offer. The expiration date of the offer, now scheduled for July 5, 1989 represents the outside date for obtaining all preliminary injunctive relief requested in the Complaint. Without expedited discovery and prompt preliminary relief, the director Defendants, in breach of their fiduciary duties, will be able to manipulate Time's corporate machinery to stymie the offer and deprive Plaintiffs and other Time stockholders of the protection of Delaware law.

B. The Governing Legal Standard.

Chancery Court Rule 30(a) authorizes the taking of depositions on an expedited basis with leave of the Court.

That Rule provides:

After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of Court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to

^{1/} As described more fully in the Complaint, prior to the expiration date of the offer, Plaintiffs require an order (i) declaring that the Delaware Business Combination Statute, 8 Del. C. § 203 has no application to the offer or, in the alternative, preliminarily enjoining the director Defendants to take all steps necessary to render the Delaware Business Combination Statute inapplicable to the offer; (ii) preliminarily enjoining the director Defendants to take all steps necessary to exempt the Offer from the Supermajority Provision in Article V of Time's Certificate of Incorporation; and (iii) requiring Time and the Director Defendants to redeem any rights distributed pursuant to the Preferred Stock Purchase Rights Plan.

the expiration of 30 days after service of the summons and complaint

With respect to the notice required for the taking of a deposition, Rule 30(b)(3) states that "[t]he court may for cause shown enlarge or shorten the time for taking the deposition."

Pursuant to Chancery Rule 34(b), a request for the production of documents may be served upon a defendant "with or after service of the summons and complaint". Although a defendant is usually permitted 30 days to respond to such a request (or 45 days after the service of the summons and complaint), Rule 34(b) further provides that "[t]he court may allow a shorter or longer time" for the production of documents.

Courts in Delaware order expedited discovery as an appropriate tool to ensure meaningful preliminary relief where illegal defensive maneuvers threaten tender offers. See Shamrock Holdings, Inc. v. Polaroid Corporation, C.A. Nos. 10,075, 10,079, 10,582, and 10,585, Berger, V.C., slip op. at 2 (Del. Ch. March 17, 1989) (expedited discovery ordered in suit to enjoin issuance of convertible preferred stock and a \$1.1 billion proposed stock repurchase program in the face of outstanding tender offer); Robert M. Bass Group, Inc. v. Evans, 552 A.2d 1227, 1228 (Del. Ch. 1988) (expedited discovery ordered in suit to enjoin a restructuring of Macmillan, Inc. approved following an offer to acquire all of Macmillan's common stock); Facet Enterprises, Inc. v. Prospect Group, Inc., C.A. No. 9746, Jacobs, V.C., slip op.

at 1 (Del. Ch. April 15, 1988) (expedited discovery ordered in suit seeking to enjoin poison pill during pending tender offer); American Stores Co. v. Lucky Stores, C.A. No. 9766, Allen, C., slip op. at 3-4 (Del. Ch. April 13, 1988) (same).

As explained by Chancellor Allen, a motion for expedited discovery

is quite conventional in litigation of this type for a very good reason. Cases involving contests for corporate control are of necessity very fast-moving. Unlike the classic model of litigation which those who formulated the rules no doubt had in mind, (i.e., a constellation of fixed, historical facts upon which a claim is based), takeover cases are fluid, constantly changing affairs, or almost so. In some instances, the underlying subject matter of the suit -- control of the corporation -- may itself be fully resolved before the time of taking depositions under Rule 30 may have arrived. Even in this context, plaintiff must show some reason justifying departure from the sequence envisioned by the rules, but in this context such a showing will be easier to make.

The presence of a transaction of some sort, a shareholders meeting, the closing of a tender offer or the closing of some structural transaction (a recapitalization, sale of substantial assets, etc.), is typically the reason in such cases to permit expedited discovery. Here I am satisfied that there is legitimate need for expedited discovery and will therefore order that plaintiff may institute any discovery now contemplated by our rules.

Id. at. 3-4 (emphasis supplied).

C. The Proposed Discovery Program.

Plaintiffs seek an Order directing Defendants to comply, on shortened notice, with Plaintiffs' First Request for Production of Documents. A copy of this document request is included as Exhibit G in Plaintiffs' Appendix of Exhibits in Support of Their Motion for a Temporary

Restraining Order and for an Order Granting Leave to Conduct Expedited Discovery. Plaintiffs further require an Order permitting Plaintiffs to take depositions of the Defendants on three days' notice. Plaintiffs also seek limited discovery from non-parties and plan to serve subpoenas duces tecum and ad testificandum on the investment bankers that have advised Time and Warner in connection with the merger and on Time's accountant, Ernst & Whinney, as set forth in Plaintiffs' Motion for a Commission submitted this date. Finally, Plaintiffs seek leave to make such additional discovery requests as the circumstances may warrant.

Expedited discovery will work no hardship or prejudice upon Defendants. The purpose of the time intervals provided by the Delaware Chancery Rules between the commencement of an action and the commencement of discovery is to provide defendants with sufficient time to procure counsel and acquaint themselves with the facts. See 8 C. Wright & A. Miller, Federal Practice and Procedure § 2104 (1970) (construing identical federal rules). Since the claims on which Plaintiffs seek expedited discovery concern defensive measures adopted by the Defendants, the Defendants are thoroughly familiar with the relevant facts. Moreover, the Defendants are large corporations and sophisticated businessmen who have already retained prominent outside counsel in connection with the Warner Merger. In fact, Defendants' counsel are currently defending a number of

stockholder suits challenging the Warner Merger, the Lock-Up Stock Swap and the Preferred Stock Purchase Rights Plan.

Plaintiffs' counsel will, of course, cooperate with counsel for Defendants to accommodate any unanticipated difficulties presented by the accelerated discovery schedule. In conjunction with this motion, Plaintiffs have prepared a form of confidentiality order to facilitate expedited document production and preparation for the preliminary injunction hearing. See UA Entertainment v. UA Columbia Cablevision, C.A. No. 6432, Brown, V.C. slip op. (Del. Ch. April 29, 1981).

