operate retroactively, because the Plaintiff and the shareholder class that she represents would be "substantially and adversely affected by the correction." Again, I cannot agree.

The Plaintiff argues that she was substantially and adversely affected by the issuance of the various series of Preferred Stock, because those stock issuances diluted her percentage of equity as a common shareholder of Palomar. The Defendants respond that she and the class had no right not to be diluted, because Palomar indisputably was authorized to issue additional shares, albeit in classes not in series. Specifically, the Restated Certificate authorized Palomar to issue up to 100 million shares of common stock and 5 million shares of Preferred Stock,[15] and as of July 17, 1997, only 33,108,000 shares of common stock were issued and outstanding.
[13] I concur that the Plaintiff class never had a "right" to maintain its percentage share of equity undiluted by the issuance of additional shares. Because Palomar always had the authority to issue additional shares of common stock, the Plaintiff class could not have suffered in any cognizable legal sense, a "substantial and adverse" effect from the issuance of Preferred Stock in separately denominated "series."

Indeed, the only identifiable "substantial and adverse" effect would be what would result if the Certificates of Correction were not given retroactive effect. Were the Court to rule for the Plaintiff, the result would be the invalidation of 9.7 million shares -- over 25% of Palomar's 33,108,000 million shares outstanding and currently traded in the market. That outcome would effectively require the company to repurchase all of the invalidated shares from the persons holding invalid stock. The resulting outflow of cash would adversely affect the investment of the remaining stockholders, and if Palomar did not have sufficient resources to repurchase the invalidated shares, bankruptcy could conceivably result.
[14] The Court finds, for these reasons, that the Certificates of Correction operated retroactively to the date of the Original Certificate to cure any defect of authority to issue the Preferred Stock in series, and correlatively, to cure any defect in the common stock received in exchange for the Preferred.

* * *

For the reasons set forth above, the Court grants judgment against the Plaintiff and in favor of the Defendants. Counsel shall confer and submit an implementing form of Order.

---

[15]Restated Certificate of Incorporation of Palomar Medical Technologies, Inc. p. 1 ¶ 6.

TAYLOR v. LSI LOGIC CORP.

No. 13,915

Court of Chancery of the State of Delaware, New Castle

January 30, 1998

Plaintiff, previously a minority shareholder in a Canadian corporation, alleged that the defendant, a majority shareholder of the same foreign corporation and a Delaware corporation in itself, breached its fiduciary duty to the minority shareholders. Plaintiff also claimed that the defendant corporation engaged in a strategy to suppress the market price of the foreign corporation to enhance the attractiveness of an offer by the defendant corporation to purchase the shares of the minority shareholders. The defendant majority shareholder seeks to dismiss the claims for lack of subject matter jurisdiction and for failure to state a claim for which relief may be granted.

The court of chancery, per Vice-Chancellor Steele, granted the defendant's motion to dismiss holding that the legal issues of the plaintiff's claims are based on Canadian law and, therefore, the courts of Canada would be better suited and have a stronger interest in determining the outcome of the issues.

1. Federal Civil Procedure ⇐ 40, 54

The possible lack of subject matter jurisdiction may be raised at any time during the proceedings.

2. Action ⇐ 17, 66
Judgment ⇐ 2, 15

In cases involving conflicts of law, the law of the forum is generally followed as to procedural issues but not as to substantive issues; however, there is an exception to this rule that when the procedural rule of the foreign state and the substantive issues are considered to be inseparably

interwoven, the procedural law of the foreign state will control.

3. Courts ⇐ 510

Section 2 of the Canada Business Corporation Act, which lists a number of specific Canadian provincial courts where a complaint may be brought under the act, is a venue provision which does not require a complainant to assert claims in the courts specified therein.

4. Courts ⇐ 38, 489(1)

An act that contains a venue statute does not necessarily create exclusive subject matter jurisdiction.

5. Courts ⇐ 510

Where a foreign corporate law statute is determined by a court to identify proper venue and not exclusive subject matter jurisdiction, the Delaware Court of Chancery has concurrent jurisdiction and may deny a motion to dismiss for lack of subject matter jurisdiction.

6. Courts ⇐ 2
Federal Civil Procedure ⇐ 40, 54

In determining jurisdiction, an important consideration is the extent of undue hardship that a party will encounter in being required to litigate in a particular forum.

7. Courts ⇐ 1, 9

The determination of how much deference a court would grant to a decision based on a foreign provincial statute is a matter that should be decided by the courts of that foreign forum, not the Delaware Court of Chancery.

8. Courts ⇐ 8
Judgment ⇐ 10

The court of a foreign sovereign is in a better position than the Delaware Court of Chancery to interpret a statute intended to reflect the foreign sovereign's national policy.

9. Courts ⇐ 1, 510

When the Delaware Court of Chancery's opinion may be circumscribed by the Delaware Supreme Court, the court of chancery may not presume to interpret the law regarding the internal affairs of foreign national corporations while that law and policy underlying it is in a state of flux and has yet to be addressed with finality.

Kevin Gross, Esquire, and Joseph A. Rosenthal, Esquire, of Rosenthal, Monhait, Gross & Goddess, P.A., Wilmington, Delaware; Silverman, Harnes & Harnes, New York, New York, of counsel; and Berman, Devalerio Pease & Tabacco, San Francisco, California, of counsel, for plaintiff.

R. Franklin Balotti, Esquire, and Robert Stearn, Jr., Esquire, of Richards, Layton & Finger, Wilmington, Delaware; Dennis J. Block, Esquire, Stephen A. Radin, Esquire, and Alan R. Arkin, Esquire, of Weil, Gotshal & Manges, LLP, New York, New York, of counsel; and E. David D. Tavender, Esquire, of Milner Fenerty, Calgary, Canada, of counsel, for defendant.

STEELE, *Vice-Chancellor*

Alleging violation of Canada statutory law, minority shareholder of foreign corporation seeks damages from majority shareholder for engaging in oppressive and unfairly prejudicial conduct. Defendant majority shareholder, which is a Delaware corporation, seeks to dismiss for lack of subject matter jurisdiction and for failure to state a claim. I conclude that, although plaintiff for her own motives has selected a Delaware Court with concurrent jurisdiction, principles of comity require this Court to refrain from resolving public policy issues of first impression touching the internal governance of entities controlled by Canada law.

I. BACKGROUND

According to the allegations of the amended complaint, plaintiff Ethel Taylor was, at all relevant times, a shareholder of LSI Logic of Canada, Ltd. ("LSI Canada"). LSI Logic, Inc. ("Logic"), the majority shareholder of LSI Canada, is a Delaware corporation with headquarters in California. In November 1994, Logic announced its intention to take LSI Canada private through an offer to purchase the 45% of LSI Canada that it

did not already own at $3.30/share.[1] According to the allegations of the amended complaint, Logic announced, "[a]t the same time . . . that it planned to terminate all of LSI Canada's design and manufacturing operations and to convert LSI Canada into a mere distributor of [Logic's] products in Canada."[2] Logic also "announced that it would drastically increase the 'transfer pricing' of products [Logic] sold to LSI Canada, and that the net effect of this transformation would be to severely depress LSI Canada's future earnings."[3] ScotiaMcLeod, an investment banking firm retained by a committee of LSI Canada's independent directors, estimated the value of LSI Canada's shares at the time at $4.80 to $5.60 per share.

Logic withdrew its initial $3.30 offer but launched a second offer in June 1995, at $4.00 per share. This latter offer revealed ScotiaMcLeod's initial valuation of $4.80 to $5.60 share as well as ScotiaMcLeod's revised valuation of $4.90 to $5.70 per share. Logic also disclosed that Prudential Securities, an advisor retained by Logic, had valued LSI Canada's shares at $2.99 to $3.37 per share. Logic's offer was conditioned on acceptance by approximately two-thirds of the publicly-held shares. The second offer to purchase described Logic's future plans for LSI Canada:

> In the semiconductor industry, companies which perform the high risk, capital intensive operations generally have higher levels of profitability than companies which distribute products developed and manufactured by others . . . . in the near future LSI intends to increase intercompany pricing of products to LSI Canada (as has already been done with other affiliates performing similar activities) to levels that will reflect the results of the above mentioned analysis. It is anticipated that future pricing levels, when implemented, will have a material adverse affect on LSI Canada's profitability.[4]

In a circular provided to LSI Canada's shareholders, LSI Canada's committee of independent directors stated that although it did not believe that Logic's offer reflected the fair market value of LSI Canada's shares, it nonetheless recommended that shareholders "seriously consider accepting" the offer because, in its opinion, LSI Canada would have increasing difficulty in resisting changes to LSI Canada's business proposed by Logic and because the independent committee believed those changes would

---

[1]All monetary values in this opinion are expressed in Canadian dollars.
[2]Am. Compl. ¶ 7.
[3]*Id.*
[4]*Id.* ¶ 14 (quoting June 1, 1995, Offer to Purchase at 20).

"materially reduce the profitability of LSI Canada."[5]

Logic's second offer closed on July 6, 1995. Approximately 86% of LSI Canada's shares were tendered, *including those shares held by plaintiff Taylor.* In September, LSI Canada executed a reverse stock split which had the effect of purchasing all remaining outstanding shares at the offering price of $4.00 per share.

Taylor alleges that "[Logic's withdrawn $3.30] proposal, coupled with its drastic changes in LSI Canada's business plans and operations, constitute a breach of [Logic's] fiduciary duty, as majority shareholder, to LSI Canada and its public stockholders."[6] In support of this claim Taylor alleges that the offering price was "grossly inadequate" and that "[b]y announcing simultaneously that it will be discontinuing LSI Canada's design operations, [Logic] unilaterally derailed LSI Canada's future prospects for earnings growth, thereby artificially depressing the market price of LSI Canada's stock and creating a scenario whereby the $3.30 offering price would appear 'fair.'"[7] The combination of these factors, according to Taylor, resulted in "unfair and improper coercion of LSI Canada's shareholders."[8]

Taylor also contends that Logic engaged in a "strategy" to suppress the market price of LSI Canada and to thereby "enhance the attractiveness" of Logic's later $4.00 per share offer.[9] As part of this strategy, according to Taylor, Logic initially offered a price of only $3.30 per share and "suppressed" the valuation of LSI Canada performed by ScotiaMcLeod at the request of LSI Canada's committee of independent directors by instructing LSI Canada not to release the report to the public. Furthermore, Taylor claims that Prudential "valued LSI Canada as if it had already been subjected to the drastic, disadvantageous business overhaul [Logic] is planning for it."[10] According to Taylor, passages from the second offer to purchase provide a clear warning to shareholders that they should tender now "or be stuck with shares in a worthless 'distributor' whose level of profitability [Logic] has decided deserves to be substantially lower than it has been in the past."[11]

Taylor believes that as a result of this warning, LSI Canada directors "caved in" to the pressure and were forced to recommend that shareholders

---

[5]*Id.* ¶ 17 (quoting LSI Canada's Director's Circular at 7).
[6]*Id.* ¶ 8.
[7]*Id.* ¶ 8(a), (b).
[8]*Id.* ¶ 8(b).
[9]*Id.* ¶ 11.
[10]*Id.* ¶ 13.
[11]*Id.* ¶ 14.

"seriously consider" the offer. In sum, Taylor alleges that "[Logic] has breached its fiduciary duty, as a controlling stockholder, to the majority shareholders of LSI Canada, and is guilty of oppressing LSI Canada's minority shareholders."[12] The amended complaint, in addition to requesting certification as a class action, seeks three forms of relief: 1) a permanent injunction enjoining Logic from pursuing its offer or implementing the transfer pricing or other polices that would undermine LSI Canada's profitability, 2) an award of compensatory and/or rescissionary damages and 3) an award of attorneys' fees.

On June 19, 1995, I denied Taylor's motion to expedite the proceedings concluding that Taylor had failed to show irreparable harm. On June 23, 1995, Logic responded to the amended complaint by filing a motion to dismiss based on the doctrine of *forum non conveniens*, the lack of a claim for which relief may be granted under Canada law, and the failure to establish irreparable harm. I granted Logic's motion to dismiss on the basis of *forum non conveniens* and did not reach the other issues raised in Logic's motion. On appeal, the Supreme Court reversed concluding that Logic had "not established with particularity on [the] record that it would be subjected to overwhelming hardship and inconvenience if required to litigate in Delaware."[13] Logic now seeks to dismiss for lack of subject matter jurisdiction and failure to state a claim.

II. ANALYSIS

Logic moves to dismiss Taylor's amended complaint pursuant to Court of Chancery Rule 12(b)(1) for lack of subject matter jurisdiction and pursuant to Court of Chancery Rule 12(b)(6) for failure to state a claim upon which relief may be granted under Canada law. The first assertion is based on the contention that section 241 of the Canada Business Corporation Act ("CBCA"), upon which Taylor relies, requires Taylor to bring her claim in a court in Canada. The second assertion is based on several contentions. First, Logic contends that Canada law does not currently recognize a claim based on the set of facts alleged by Taylor. Second, Logic contends that Taylor's claim is barred by the Canada Law Doctrine of Election. Third, Logic contends that Taylor fails to support a claim under Canada's theory of duress.

---

[12] *Id.* ¶ 19.

[13] **Taylor v. LSI Logic Corp.**, Del. Supr., 689 A.2d 1196, 1197 (1997).

A. Motion to Dismiss Pursuant Court of Chancery Rule 12(b)(1)

[1] The original and amended complaints fail to identify the precise common law or statute allegedly violated by Logic. After filing the amended complaint, however, plaintiff identified section 241 of the CBCA, and *not common law*, as the basis of the complaint.[14] The relevant portion of section 241 provides as follows:

> (1) A complainant may apply to a court for an order under this section.
> (2) If, upon an application under subsection (1), the court is satisfied that in respect of a corporation or any of its affiliates --
> (a) any act or omission of the corporation or any of its affiliates effects a result,
> (b) the business or affairs of the corporation or any of its affiliates are or have been carried on in a manner, or
> (c) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner that is oppressive or unduly prejudicial or that unfairly disregards the interest of any security holder, . . . the court may make an order to rectify the matters complained of.

The term "court," as it is used throughout section 241 is defined in section 2 of the CBCA as one of a number of specific courts defined by reference to the Province in which the action was initiated. For example, section 2 provides that "court" means "in the Provinces of Manitoba,

---

[14]Previously concluding that this action should be dismissed on *forum non conveniens*, I did not reach all of the arguments raised in Logic's first motion to dismiss. The current motion before the Court is Logic's "Renewed Motion to Dismiss." Taylor contends that because the parties have previously briefed and argued the issues raised in Logic's first motion to dismiss, that Logic's most recent opening brief "is really an unauthorized, unsolicited and improper post-argument sur-reply brief, and its belated arguments under Rule 12(b)(6) should not even be considered." Pl.'s Memo in Opp'n to Def.'s "Renewed" Mot. to Dismiss the Compl. at 1 [hereinafter Pl.'s Ans. Br.]. Logic responds by asserting that it was not aware until arguments on the first set of briefs that Taylor was relying on section 241 of the CBCA and *not at all* on common law fiduciary duties. Thus, it asserts that now is the first opportunity it has had to present a Rule 12(b)(6) argument that addresses the specifics of a claim based on section 241. Although Taylor asserts that Logic knew before the previous briefing of her intention to rely on section 241, the amended complaint does not refer to section 24,1 and Taylor does not contend that Logic knew, before the previous briefing, that section 241 was the *sole* basis for her allegations. Moreover, at oral argument, Taylor concedes that the possible lack of subject matter jurisdiction may be raised at any time. Accordingly, I find no reason to reject the 12(b)(6) arguments raised in Logic's most recent opening brief.

Saskatchewan, Alberta, and New Brunswick, the Court of Queen's Bench for the Province." Because it is not included in the list of available courts in any part of section 2, Logic concludes that the Court of Chancery lacks subject matter jurisdiction over Taylor's claim.

In support of this reading, Logic relies on the British Columbia Provincial Court's opinion, ***Anderson v. Ralston Court Ltd.***,[15] in which the court addressed a claim premised on a section of the British Columbia Company Act.[16] That Act contained wording identical to that of section 241 of the CBCA at least to the extent that the statute provided that a claimant alleging that the affairs of a company had been conducted in an "oppressive" or "unfairly prejudicial" manner "may apply to the court" as the term "court" was defined in a separate section of the Act. While the court dismissed the plaintiff's claim, finding that he had not stated a claim for oppression, the court did note that one alleging the claim of oppression "must bring" the claim in the court defined in the Act.[17] Logic also asserts that its interpretation of the court identification provision in the CBCA as a provision providing exclusive jurisdiction is supported by ***In re Nuveen Fund Litig.***,[18] in which a United States District Court interpreted a state statute providing that "a court in this state" may award equitable relief for violations of state corporate law to mean that *only* courts in that state, and not other courts, could provide the described equitable relief.

[2] As a separate basis for its contention that Taylor may not seek relief under section 241 in this Court, Logic contends that since the parties have agreed that this action should be decided pursuant to the substantive law of Canada and the procedural law of Delaware, the court identification provision in section 2 is, in fact, a *substantive* issue that should be decided by Canada law. In support of this argument, Logic relies on both Delaware and Canada law in its attempt to demonstrate that the court identification provision is substantive and that, as a substantive issue, the court identification provision requires Taylor to proceed in a Canada court. Thus, to begin its argument, Logic implicitly concedes that selection of the appropriate court is typically categorized as a procedural issue but contends that the court selection provision in section 2 falls within an exception to the general rule that procedural issues are governed by the law of the forum.[19] This exception "occurs when the procedural rule of the foreign

---

[15][1993] B.C.J. No. 2700 (Prov. Ct.) [QL].

[16]R.S.B.C. 1979, c. 59, § 224.

[17]***Anderson v. Ralston Court Ltd.***, [1993] B.C.J. No. 2700 (Prov. Ct.) [QL] ¶ 35(3).

[18]No. 94-C-360,1996 U.S. Dist. LEXIS 8077 (N.D. Ill. June 11, 1996).

[19]*See, e.g.*, *Lutz v. Boas*, Del. Ch., 176 A.2d 853, 857 (1961) ("It is well established that the law of the forum govern questions of remedial or procedural law.").

state is 'so inseparably interwoven with the substantive rights as to render a modification of the [general rule] necessary, lest a party be thereby deprived of his legal rights.' In such a case, the procedural law of the foreign state will control."[20]

Logic lists three factors that it believes illustrate the "inseparable nature" of the court identification provision. First, Logic contends that the substantive nature of the word "court" is revealed by the text of section 241, which provides not only that "[a] complainant may apply to a court," but that the "court may make an order to rectify the matters complained of" if "the court is satisfied" that section 241 was violated. Second, the lengthy list of unique remedies available to the "court," according to Logic, demonstrates the necessary link between the "court" and the parties' rights to seek and to oppose relief for a violation of section 241. These remedies include the power to amend articles of incorporation or bylaws, the power to amend or create a unanimous shareholder agreement, the power to appoint directors, the power to issue or exchange securities, the power to direct a corporation to purchase securities and the power to vary or void a transaction or contract.[21] Third, noting that one of the CBCA's stated objectives is "to advance the cause of uniformity of business corporation law in Canada,"[22] Logic contends that the drafters of the CBCA "hardly could have viewed a definition of 'court' that limits the forums available to shareholders to specifically enumerated forums in Canada as being a mere 'procedural' provision having no substantive effect outside of Canada, and that can be evaded by any Canada citizen by the simple expedient of commencing litigation in the United States."[23]

Logic further bolsters its argument in favor of the substantive nature of the court identification provision with references to federal and state cases holding that a court must apply foreign procedural rules where the failure to do so would "significantly affect the result of a litigation."[24] Finally, Logic directs the Court to the recent case of ***Tolofson v. Jensen***,[25] in which the Canada Supreme Court stated that "the purpose of

---

[20]*Monsanto Co. v. Aetna Casualty & Surety Co.*, Del. Super., C.A. No. 88C-JA-118, 1993 Del. Super. LEXIS 461, at * 8-9, Ridgely, P.J. (Dec. 21, 1993) (quoting *Connell v. Delaware Aircraft Indus., Inc.*, Del. Super., 55 A.2d 637, 640 (1947)).

[21]CBCA § 241(3).

[22]*Id.* § 4.

[23]Reply Br. in Supp. of Def.'s Renewed Mot. to Dismiss at 8 [hereinafter Def.'s Reply Br.].

[24]*Hanna v. Plumer*, 380 U.S. 460, 466 (1965). *See also Gasperini v. Center for Humanities, Inc.*, II 6 S.Ct. 2211, 2219 (1996); *O'Hara v. Bayliner*, N.Y., 679 N.E. 2d 1049, 1054 (1997).

[25][1994], 32 C.P.C.(3d) 141.

substantive/procedural classification is to determine which rules will make the machinery of the forum court run smoothly as distinguished from those determinative of the rights of *both* parties."[26] Again relying on ***Anderson***, Logic submits that because "a claim by a plaintiff who does not sue in one of the courts identified by the statute will be dismissed," the court identification provision is "outcome determinative" and is, therefore, a substantive issue that must be addressed under Canada law, which requires dismissal for failure to file in the proper court.

Taylor responds by asserting that the definition of "court" in section 241 is a venue, not a jurisdictional, provision that simply specifies which of the potential courts in Canada shall hear a particular claim brought in Canada and does not provide that Canada has *exclusive* jurisdiction. Taylor contends that such an interpretation is supported by ***Messinger v. United Canso Oil and Gas Ltd.***[27] and ***Moss v. Prudential-Bache Securities, Inc.***[28] ***Messinger*** is apparently the only United States case interpreting the effect of the court identification provision of section 2 of the CBCA. There the court held that the requirement to seek leave from a "court" before filing a derivative suit was "surely a procedural mechanism that this court is not obligated to apply."[29] In ***Moss***,[30] the Supreme Court rejected an argument that a provision in the Federal Arbitration Act that provided an "application may be made to the United States court in and for the district within such award was made" required plaintiff to proceed *only* in that court stating that the defendant had confused jurisdiction with venue and concluded that the Court of Chancery had concurrent jurisdiction.

[3] In response to Logic's arguments, Taylor asserts that ***Anderson***, on which Logic repeatedly relies, clearly reveals that the court selection provision is regarded as a venue, not a jurisdictional, provision in Canada. She also rebuts Logic's reliance on ***Nuveen*** by asserting that the provision in ***Nuveen***, unlike section 2 of the CBCA, was not a venue provision as it did not state in which courts the plaintiff was required to file but referred generally to "courts of this state." Finally, Taylor asserts that even if this Court were to interpret the court selection provision in section 2 as a jurisdictional, rather than venue, provision, that courts, following the United States Supreme Court in ***Tennessee Coal, Iron & R.R. Co. v. George***,[31] have uniformly held that exclusive jurisdiction may not be

---

[26]*Id.* at 186.
[27]486 F. Supp. 788 (D. Ct. 1980).
[28]Del. Supr., 581 A.2d 1138, 1140 (1990).
[29]486 F. Supp. at 797.
[30]Del. Supr., 581 A.2d 1138, 1140 (1990).
[31]233 U.S. 354 (1914).

established except where the place of bringing the suit is part of the cause of action because the right and remedy are so inseparably united that the right depends upon enforcement in a particular tribunal. Logic, of course, maintains the court identification provision does so intertwine the right and the remedy that Canada's courts have exclusive jurisdiction. I conclude that, for the following reasons, Logic has failed to demonstrate that the rights and remedies of the parties in this case turn on the interpretation of the court identification provision, and that the provision in section 2 of the CBCA is a venue provision that does not require Taylor to assert her claims in the specified Canada court.

[4] First, Logic has failed to distinguish the facts of this case from those of other cases in which courts have refused to interpret statutes providing that a claimant "may" proceed in a specified court to require a claimant to proceed only in that court. Although I do not find *Messinger*[32] to be particularly persuasive with respect to section 2 of the CBCA,[33] and I read *Anderson* as supporting venue but not necessarily excluding jurisdiction, I fail to understand why this section should be interpreted any differently than the provision in *Moss*, which the Supreme Court described as a venue provision that was never intended to create exclusive jurisdiction.[34] I cannot conclude that the CBCA vests exclusive jurisdiction in Canada courts.

Second, even if I must concede that an inseparable connection between a right and a remedy provides an exception to the general rule and that this Court should apply its own procedural law when applying the substantive law of a foreign jurisdiction, Logic has failed to show an inseparable connection in this case, failed to demonstrate how the rights and remedies of the parties would be any different if this case were to proceed in Canada,[35] and failed to allege that proceeding here will deny it any defense otherwise available in a Canada court. Logic argues that, pursuant to *Anderson*, Taylor's claim would be dismissed in Canada for failure to file in the proper court. Accordingly, Logic submits that since the court identification provision would be "outcome determinative" in

---

[32]486 F. Supp. 788 (D. Ct. 1980).

[33]The Court in *Messinger* concluded that demand was excused, predicted that Canada courts would reach the same conclusion, and noted that even if defendants' argument that the court identification provision of section 2 were "regarded as going to interests that they consider substantive, rather than to the mere procedural propriety of this suit," that argument was "adequately met by the foregoing determination." *Id.* at 797-98.

[34]*Cf. Eisenbud v. Omnitech*, Del. Ch., C.A. No. 14695, Steele, V.C. (Mar. 21, 1996).

[35]Except, of course, for the fact that Taylor, in addition to an award of damages, seeks an award of attorneys' fees, a form of relief that, as both parties concede, is unavailable in Canada. This distinctive, but no doubt, telling, additional remedy, however, does not justify interpreting the court identification provision as providing exclusive jurisdiction in a court in Canada.

Canada, that the provision is substantive, and thus included within the substantive law this Court must apply. To Logic, application of that provision here would also result in dismissal. But this argument chases its own tail. Logic's argument, which purportedly explains why the provision should be read as a substantive rule of law providing exclusive jurisdiction, assumes that the provision confers exclusive jurisdiction rather than identifies the proper venue. I find no support for Logic's claim that this Court, in applying the court identification provision, must conclude that the provision provides exclusive jurisdiction. No comment in ***Anderson*** nor statement in the CBCA indicates an intent to create exclusive jurisdiction in the named courts.

[5] Accordingly, I find that this Court has concurrent jurisdiction with the appropriate Canada court specified in section 2 and deny defendant's motion to dismiss for lack of subject matter jurisdiction.

B. Motion to Dismiss Pursuant Court of Chancery Rule 12(b)(6)

Logic contends that even if this Court has subject matter jurisdiction, I should dismiss Taylor's claim nonetheless for failure to state a claim for which relief may be granted under existing Canada law. According to Logic, no court in Canada has ever awarded relief for the particular set of facts alleged by Taylor. Moreover, Logic contends that Taylor has taken inconsistent positions with respect to her claim and, therefore, that her claim should be barred by the Canada Doctrine of Election.

Logic's argument is presented in three parts. First, Logic contends that Taylor has failed to plead facts of oppression or unfairly prejudicial treatment. Second, Logic contends that Taylor has failed to provide any evidence that conduct by a majority shareholder falls within the conduct intended to be proscribed by section 241. Third, Logic argues that, pursuant to the Canada Doctrine of Election, Taylor's decision to accept the terms of Logic's second offer and to tender her shares prevents her from now challenging Logic's actions under section 241.

1. The Allegations of the Amended Complaint

Logic criticizes Taylor's complaint as well as the opinions in the affidavit of D.H. Jack, which is attached to Taylor's answering brief, for alleging that Logic's offer was oppressive because Logic intended to implement many changes to LSI, *in addition to the planned changes in transfer pricing*. Logic contends that except for the transfer pricing, all such changes had been implemented prior to announcement of the second offer. It alleges that the second offer "told LSI Canada shareholders that

'[for a number of years' LSI Canada 'had its own manufacturing, product development, sales, marketing and engineering operations,' but that 'the results of these efforts were disappointing and unprofitable' and that actions 'have been taken' that resulted in 'the elimination of these operations' in order 'to return LSI Canada's operations to profitability.'"[36]

Taylor's amended complaint alleges that the first offer threatened to "terminate all of LSI Canada's design and manufacturing operations and to convert LSI Canada into a mere distributor of LSI's products" as well as to "drastically increase the 'transfer pricing' of products LSI sold to LSI Canada."[37] The only allegation Taylor makes with respect to the second offer, however, is that Logic intended to increase the transfer pricing as part of its global business strategy. Absent from the description of the second offer is the allegation that Logic planned to terminate LSI Canada's design and manufacturing operations.[38]

At most, Taylor's complaint may be read to assert two separate allegations, both of which, either separately or together, are alleged to be violations of section 241 of the CBCA. First, Taylor alleges that Logic, as a majority shareholder, breached its fiduciary duties to Taylor by taking steps to depress artificially the share price of LSI Canada. These steps included the temporary suppression of ScotiaMcLeod's valuation and the generation of an offer for the shares of LSI Canada at a price that was well below its value. Taylor does not allege that Logic had a duty to disclose the valuation performed by ScotiaMcLeod at the request of LSI Canada's committee of independent directors or that LSI Canada would have disclosed ScotiaMcLeod's valuation had it not been for the actions of Logic. Taylor only alleges that Logic temporarily suppressed the valuation (at least until it launched its second offer) and deliberately presented an

---

[36]Def's Reply Br. at 22 (quoting June 1, 1995, Offer to Purchase at 19-20).

[37]Am. Compl. ¶ 7.

[38]Taylor's answering brief also fails to respond to Logic's allegations that the amended complaint fails to note properly the timing of the termination of LSI Canada's design and manufacturing operations, except to note that "the most significant event, the ratcheting upwards of the transfer prices, had not yet occurred at the time of the tender offer." Pl.'s. Ans. Br. at 32. The eighteen-page single-spaced affidavit of D.H. Jack attached to Taylor's Answering Brief also describes the unspecified offer as including a warning that LSI Canada's design and manufacturing operations would be eliminated and states that "LSI Canada's board of directors as a whole recommended that the shareholders accept the offer before the share value decreased following implementation of the above-noted changes intended to be carried out by [Logic]." Jack Aff. at 3. Because I find that Mr. Jack's statements concerning the board "as a whole," the extent to which the board recommended Logic's offer, and the contents of the offer upon which the board commented, conflict with, or at least do not support, the allegations of the amended complaint, I fail to understand how Mr. Jack's proffered conclusions concerning the applicability of Canada law support plaintiff s allegations and decline to consider Mr. Jack's affidavit any further.

insufficient initial offer for the sole purpose of making its later $4.00 per share bid appear attractive.

The second allegation is that Logic breached the same duties by combining its second offer with the threat to increase the transfer pricing between Logic and LSI Canada and turn LSI Canada into a mere distributor. Taylor does not allege that Logic released misleading or incorrect disclosures or that Logic was not entitled, as majority shareholder, to implement the transfer pricing changes alleged in the complaint. Taylor's allegations rest solely on the claim that Logic's actions, taken as a whole, had the effect of oppressing or unfairly prejudicing Taylor as a minority shareholder in violation of Logic's duty under section 241. In support of her claim, Taylor relies on ***Arthur v. Signum Communications Ltd.***, in which the Ontario Court of Justice stated that the existence of "a plan or design to eliminate the minority shareholder" was "[a]mongst the indicia of conduct" prohibited by section 247(2) of the Ontario Business Corporations Act ("OCBA"), which, like section 241 of the CBCA, empowers the court to provide relief for conduct which causes or threatens an "oppressive or unfairly prejudicial" result.[39] Taylor fails to note any case in which a court has applied section 241 of the CBCA to a majority shareholder plan to eliminate a minority shareholder. Logic asserts that Taylor has also failed to reveal any case in which courts have expressly stated that actions by a majority shareholder are included within the types of actions proscribed by section 241. Accordingly, Logic contends that both failures provide a basis for holding that Taylor has failed to state a claim for which relief may be granted. Relying on cases such as ***Potter v. Pohlad***,[40] Logic argues that this Court should respond to Taylor's

---

[39][1991] O.J. No. 86 (Gen. Div.), *aff'd* [1993] O.J. No. 1928 (Div. Ct.). Taylor's counsel has provided copies of these opinions to the Court and, in separate correspondence, has identified the source of the opinions as LEXIS. Counsel, however, failed to provide the electronic database citation for either opinion, neither of which is available through the Court's version of LEXIS. The above quotation may be found at the internal page reference 91 of the opinion provided at exhibit 11 of Plaintiffs Appendix. *See also M. v. H.*, [1993], 1993 Ont. C.J. Lexis 1746, *12 (Ontario Court) (General Division) (noting that Arthur had listed "a plan or design to eliminate a minority shareholder" within the indicia of conduct falling within the oppression remedy *of the* OCBA.

[40]560 N.W. 2d 389, 395 (1997) ("We decline to extend Delaware law when the Delaware courts themselves have not commented." (affirming grant of summary judgment)). *See also Tidler v. Eli Lilly & Co.*, 851 F.2d 418, 424 (D.C. Cir. 1988) ("If the relevant state authorities do not indicate any particular receptiveness to innovative theories upon which the plaintiffs' claims vitally depend, plaintiffs' recourse is not to proceed directly to federal court, there to urge the tribunal to adopt such theories because the equities of the case or fundamental notions of justice require that they recover. On the contrary. If state law is inhospitable to their claims, then they must face up to that fact before the appropriate authorities --judicial or legislative -- of the state. It is decidedly not the business of federal courts to alter or augment

failure to state a claim by dismissing the action.

In the alternative, Logic seeks to dismiss Taylor's claim pursuant to the Canada law Doctrine of Election.[41] Taylor concedes that she, along with the majority of LSI Canada's public shareholders, tendered her shares in response to Logic's $4.00 per share offer, but, relying on ***Thermadel Foundation v. Third Canadian Investment Trust Ltd.***,[42] asserts that her decision to tender does not now preclude her from asserting a claim of oppression. Logic attempts to weaken the basis for Taylor's reliance on ***Thermadel*** by noting that although the court allowed a plaintiff who had tendered shares to pursue an oppression application, it noted that the plaintiff's claim was based on the failure of defendants to provide what was promised and concluded that given the "difficult and seemingly acrimonious relationship" between the parties, the court had "no doubt that it was the course of prudence" for the plaintiff to tender when it did.[43] Thus, there being no claim here that what was promised was not what Taylor received, Logic contends that Taylor is barred from bringing a claim of oppression.

2. Analysis

Although Taylor has failed to reveal a case wherein a Canada court has clearly stated that section 241 is intended to apply to 1) a tender offer that is not alleged to involve misleading disclosures, 2) the actions of a party solely in its capacity as a majority shareholder, or 3) any situation, other than ***Thermadel***, where the plaintiff has accepted, rather than dissented, from the tender offer, Logic is similarly unable to provide examples wherein a Canada court has clearly held that section 241 would *not* apply in such situations. Furthermore, Taylor notes that Logic, in its attempt to compare Taylor's claim to one of duress under Canada law, has

---

state law to meet the felt necessities of the case; to suggest otherwise is to ignore fundamental principles of comity inherent in our federal system of government.").

[41]Logic relies on ***Harding v. Thomson***, [1982] 5 W.W.R.258 (Alta. C.A.) at 267(describing the rule and stating that "[t]his rule has not been doubted in Canada, though, on occasion, it is not applied because, on examination, the two rights in contest prove not to be inconsistent with each other."); ***M.E.P.C, Canadian Properties Ltd. V. The Queen***, [1974] 64 D.L.R.(3d) 707 (F.C.T.D.) at 713 (dismissing claim where plaintiff had accepted compensation for expropriated lands and continued to attack validity of expropriation); ***United Australia Ltd. v. Barclays Bank Ltd.***, [1940] 4 All E.R. 20 (H.L.) at 37 (distinguishing between the selection of two alternative remedies and two inconsistent rights), and CBCA § 60(1)(2). I fail to understand how the citation to the CBCA supports Logic's claim concerning the prohibition on inconsistent or adverse claims.

[42][1995], 23 O.R.(3d) 7 (presently on appeal).

[43]*Id.* at 14.

failed to show that the theory of duress has ever been applied, or ever would be applied, to the facts of this case.

The ***Arthur*** court was apparently the first, and remains the only, court to suggest that "a plan or design to eliminate a minority shareholder" is a *type* of conduct intended to be addressed by the remedies provided under an oppression statute. The Court did not, however, identify which parties attempting such a plan would be subject to section 241. It did find that a shareholder's interest was unfairly disregarded when credit of the company was used to double the shareholding of another member of plaintiff's share class. Unlike the court in ***Brant Invs. Ltd. v. KeepRite Inc.***,[44] which concluded that "[t]he transaction did not discriminate between shareholders with the effect of benefiting the majority to the exclusion or detriment of the minority," the ***Arthur*** court concluded that the plaintiff had been excluded from a benefit provided to the majority.[45]

Nonetheless, Taylor notes that the language of section 241 has been described as "beyond question, the broadest, most comprehensive and most open-ended shareholder remedy in the common law world . . . unprecedented in its scope"[46] and asserts that the Canadian courts have an "avowed determination to accord [section 241] the broadest possible interpretation in order to effectuate its remedial purpose."[47] Taylor therefore concludes that although this Court would need to apply existing statutory law to a new set of facts, given such sweeping language and the broad remedial powers of Canada courts under the Act, "it would hardly be a stretch for this Court to conclude that LSI's blatant misuse of corporate power violated the Act."[48]

Although Taylor's amended complaint speaks in terms of Logic's violations of its fiduciary duties, I recognize that Taylor does not rely upon the common law but upon section 241 as the basis of her allegations.

Taylor's argument, however, confuses the *scope of the application* of section 241 with the *scope of the remedy* provided by section 241. Despite Taylor's claim that Canada courts interpret section 241 broadly,

---

[44][1987] 60 O.R.(2d) 737.

[45][1991] O.J. No. 86 (Gen. Div.), *aff'd* [1993] O.J. No. 1928 (Div. Ct.) (citing *KeepRite* at 769). Because the aforementioned difficulties of referencing this case, it is only possible to state that this citation refers to the internal page reference of 97 which, because it was inadvertently omitted from plaintiffs appendix, may be found attached to counsel's Dec. 30, 1997 submission to the Court.

[46]*Deluce Holdings Inc. v. Air Canada*, [1992], 98 D.L.R. 4th 509, 12 O.R. (3d) 131 at 149-150 (quoting Stanley M. Beck, "Minority Shareholders Rights in the 1980's" *Special Lectures of the Law Society of Upper Canada, 1982 Corporate Law in the 80's*, at 312).

[47]Pl.'s Ans. Br. at 25.

[48]*Id.*

Taylor provides no evidence whatsoever that Canada courts have applied section 241 to conduct by a majority shareholder. There is no question that a Canada court could provide a broad range of remedies for violations of the section. But a broad range of remedies does not imply that the section will be applied to a broad range of conduct or to a broad range of parties.

The extent to which, or the circumstances under which, the acts of a majority shareholder may be found to have created or threatened an oppressive or unfairly prejudicial result under section 241, has not been expressly identified by a Canada court, and Taylor does not attempt to explain why it should be clear to me that a Canada court would necessarily find that "oppressive acts" by a majority shareholder would constitute a claim under section 241.

On one hand, the courts of Canada have refused to hold that majority shareholders owe common law fiduciary duties to minority shareholders. On the other hand, some very imprecise language suggests majority shareholder conduct may be subject to scrutiny under Section 241.[49]

Unfortunately, Taylor fails to raise any other arguments, based on precedent or policy, in support of her claim that section 241 *should* be applied to conduct by a majority shareholder.

Until I am able to conclude that section 241 is applicable to the facts of Taylor's case, the remedies that section 241 may provide are irrelevant. Moreover, as Taylor's counsel openly admitted at oral argument, at this stage, Taylor is "seeking damages, period."[50]

[6] In sum, neither party has provided evidence that any of the asserted allegations or responses are definitely addressed by current Canada law. I concluded that this Court has concurrent jurisdiction with the appropriate court specified under section 241. The Supreme Court concluded that Logic faced no undue hardship by defending against Taylor's claims, including her claim for attorneys' fees, and I must conclude, therefore, that either this Court or the appropriate court in Canada may proceed with this action. Yet, the legal issues at the heart of this case are of first impression under Canada law, and I have been provided scant guidance as to how or whether section 241 would be applied to the facts before me.

I am convinced Canada has yet to decide either that a claim under

---

[49]*See, e.g., Brant Invs. Ltd v. KeepRite Inc.*, [1991] 80 D.L.R. (4th) 161 (Ontario C.A.) at 171-72 (finding no authority for argument that majority shareholder owes fiduciary duties in favor of minority shareholders and noting that "[t]he enactment of [oppression statutes] has rendered any argument for a broadening of the categories of fiduciary relationships in the corporate context unnecessary and, in my view, inappropriate").

[50]One must assume that Taylor's counsel inadvertently omitted Taylor's request for attorneys' fees which no Canada court would entertain.

section 241 would be barred simply because a shareholder accepts the offer or the contrary. That precise issue remains open and as noted elsewhere, is on appeal in an analogous case. *Thus, the central question presented by Logic's motion to dismiss for failure to state a claim is whether this Court should dismiss Taylor's amended complaint because there exists no clear basis for concluding she has a claim under existing Canada law, or whether this Court should deny the motion and attempt to determine whether section 241 was intended to cover the allegations of Taylor's complaint, even though no Canada court has yet addressed the specific issues presented here.*

Logic, of course, contends that dismissal is the only appropriate response. Not infrequently, courts dismiss claims founded on issues of first impression under foreign law because the plaintiff has failed to assert a claim for which relief may be granted under present law. In ***Doyle v. Hasbro, Inc.***,[51] for example, the First Circuit affirmed the dismissal of a negligent entrustment claim, finding that acceptance of plaintiffs' claim would "require a novel use of the doctrine" relied upon by plaintiffs.[52] The Court in ***Weiss v. Blue Cross/Blue Shield***[53] affirmed a grant of summary judgment for similar reasons.

> Thus, we must decline [plaintiffs] invitation to step beyond the "well-marked boundaries" of Delaware law and declare invalid that which neither the Delaware Legislature nor the Delaware Supreme Court have proscribed. Within the boundaries, [plaintiff's] argument cannot prevail.[54]

Other cases were decided on similar reasoning.[55] Implicitly

---

[51]103 F.3d 186 (1st Cir. 1996).

[52]*Id.* at 192.

[53]206 B.R. 622 (1st Cir. 1997).

[54]*Id.* at 627.

[55]*See, e.g.*, ***Andrade v. Jamestown Housing Authority***, 82 F.3d 1179, 1186 (1st Cir. 1997) (declining to extend state law to cover plaintiffs claim); ***City of Philadelphia v. Lead Industries Ass'n***, 994 F.2d 112, 123 (3d Cir. 1993) ("When the state's highest court has not addressed the precise question presented, federal court must predict how the state's highest court would resolve the issue and is not free to shape common law as it sees fit. . . . Federalism concerns require that we permit state courts to decide whether and to what extent they will expand state common law. . . . Our role is to apply the current law of the appropriate jurisdiction, and leave it undisturbed." (citations omitted)); ***Kassel v. Gannett Co.***, 875 F.2d 935, 949 (1st Cir. 1989) ("Although it would be possible that the state supreme court might be ready to adopt a different view, we cannot lightly indulge such speculation. Where a directly pertinent precedent of the state's highest court obtains, a federal court applying state law must be hesitant to blaze a new (and contrary) trail."); ***Cantwell v. University of Massachusetts***, 551 F.2d 879, 880 (1st Cir. 1977) (granting summary judgment because allegations did not give rise to claim under

underlying the reasoning in many of these dismissals is the conclusion that the foreign law clearly has yet to adopt the cause, that the foreign courts would not elect to so extend their law or that even if it were extended in the fashion proposed by plaintiff, that plaintiff would still not be entitled to the relief requested. The legal issues at stake in this case, however, are not clear. It is not like ***Doyle***, where the Court found that the argument proposed by plaintiffs was different than that currently permitted under state law and noted that plaintiffs had failed to "offer any convincing argument showing why the application of the doctrine in this context would be desirable,"[56] or ***Weiss***, where the Court identified three separate reasons why plaintiff's argument, based on an extension of law, would not support the relief requested even if the Court were to accept plaintiff's arguments. As noted, the facts of this case raise several legal issues that have not been directly addressed by Parliament or by Canada courts. If I were to accept Logic's argument that Taylor's claim should be dismissed for failure to state a claim under existing Canada law, this Court would be taking the position that it should never consider an issue of first impression under foreign law even if that law could be clearly determined from an unambiguous statute, legislative history or instructive case law. I am not prepared to go that far. I believe the better path to follow is to determine if this Court, on a motion to dismiss, should dismiss the case because a court of Canada, not our Court of Chancery, is the court to decide if Taylor has alleged a claim under section 241.

First, the issues raised by this case are clearly issues of current debate in Canada. One of the main cases that addresses the scope of the oppression remedy as well as whether a tendering shareholder may assert a claim of oppression is currently on appeal.[57]

[7] Second, the CBCA is an Act with a purpose of establishing a uniform corporate law. The oppression remedy provided by the CBCA is not the only statutory oppression remedy available in Canada, and several cases relied upon by both parties address oppression claims raised under an Ontario corporation statute as opposed to the CBCA. Although this statute contains similar wording, I am unable to conclude that decisions under the OCA would necessarily be considered precedential authority for a court deciding identical issues under the CBCA. The deference that a Court

---

existing law); *Potter v. Pohlad*, Minn. Ct. App., 560 N.W.2d. 389, 395 (1997) ("[Plaintiff] concedes that no Delaware cases directly address the issue of whether officers who act recklessly in connection with an acquisition breach their duties of good faith. We decline to extend Delaware law when the Delaware courts themselves have not commented.").

[56] *Id.* at 192.

[57] *Thermadel*, [1995], 23 O.R.(3d) 7.

would grant to a decision based on a Provincial statute (even decisions made by the same court) is a matter to be decided by the Canada courts, not the Court of Chancery.

[8] Third, in its response to Logic's motion for reargument before the Delaware Supreme Court, Taylor asserted that it would be a "jurisprudence of arrogance" to conclude that other courts could not decide issues involving the internal affairs of a Delaware corporation and, therefore, that Delaware should not refrain from deciding cases involving the internal affairs of foreign corporations. I agree that it would be improper for this Court to hold that other courts were not capable of deciding issues under *clearly settled* Delaware law. It would be pontifically arrogant, however, to conclude that this Court, and not a court of Canada, is in the better position to interpret in a definitive way a statute intended to reflect a foreign sovereign's national policy while it is the subject of heated debate.[58]

[9] Not infrequently, parties may be heard to argue in this Court that rulings of this Court are not to be afforded the full weight of law unless or until the same issues have been presented to and resolved by our Supreme Court.[59] If the opinions of this Court are circumscribed when they relate to the internal affairs of Delaware corporations, then surely the Court of Chancery may not presume to interpret the law regarding the internal affairs of Canadian corporations while that law and the policy underlying it is in a state of flux and has yet to be addressed with finality by either Parliament or a court of a sister common law sovereign nation.

Fourth, I do not believe that Taylor, a Canadian, having the opportunity to pursue her claim in Canada or in Delaware, is in any position to complain when this Court declines unilaterally to extend Canada law.[60]

Fifth, Logic's registration as a Delaware corporation provides the only connection to this Court. Plaintiff is not a Delaware citizen. The

---

[58]It should also be noted that there is an appraisal proceeding currently underway in Canada addressing the same transactions. One might expect that resolution of both cases by Canada courts would provide an ideal opportunity to resolve the relationship between Canada's appraisal and oppression remedies.

[59]Parties support such arguments with reference to passages from opinions such as *Kahn v. Roberts*, 679 A.2d 460 (1996), which has been described as implying that interpretations of Delaware law by the Court of Chancery are not to be accorded full weight until the Supreme Court has had the opportunity to comment. *See, e.g., id.* at 467 ("This Court has held that full disclosure is required when management is seeking stockholder action. *Notably, this Court* has never stated that full disclosure is required only when seeking shareholder action." (emphasis supplied)). *See also id.* n.7.

[60]*Cf. Brainard v. Imperial Manufacturing Co.*, 571 F. Supp. 37, Dist. R.I. 1983 ("A plaintiff who invokes the diversity jurisdiction of the federal court is in a peculiarly poor position to assert a common law cause of action not previously recognized by state courts.")

heart of her claim rests on the legal assumption that Canada would recognize for the first time that a majority shareholder owes fiduciary duties to minority shareholders and that that public policy can be found specifically within the language of a Canada "oppression" statute. This Delaware litigation proposes that this forum, one where attorneys' fees may arguably be recovered, should decide this matter for a Canadian before her own courts and Parliament clearly declare that principle to be the public policy of Canada.

[start - revised page - January 30, 1998]

The allegations do not involve the internal affairs of a Delaware corporation. The legal issues involved are based on Canada law, and they are unlikely to ever again be addressed by this Court. Moreover, this proposed ruling will never affect this Court or more than one citizen of Delaware. A disproportionate and inordinate amount of this Court's time has been spent resolving elements of a dispute in which we have little interest while significant matters of concern to Delawareans wait to be attended. Definitive policy statements affecting citizens elsewhere should be made by the government and courts designed by those citizens to decide the issues affecting them. Canada, and Canada alone, has a strong interest in interpreting its own corporate national policy in the first instance.

The Motion to Dismiss is ***granted***, without prejudice.

IT IS SO ORDERED.

[end - revised page - January 30, 1998]

UNION TEXAS PETROLEUM HOLDINGS, INC. v. TRAVELERS INDEMNITY CO.

No. 15,448

Court of Chancery of the State of Delaware, New Castle

February 19, 1998

Plaintiffs, insured, sought declaratory relief alleging that a settlement agreement entered into between defendants did not alter plaintiffs' right to pre-1985 insurance coverage. In the alternative, plaintiffs requested an injunction requiring defendants to place plaintiffs in the same economic position in which they would have been had the settlement agreement not been executed. Defendants filed a motion to dismiss alleging that plaintiffs' claims were premature and that the court lacked subject matter jurisdiction over them. Defendants also moved to dismiss on the grounds that plaintiffs failed to state a claim for relief.

The court of chancery, per Chancellor Chandler, denied defendants' motion to dismiss on the grounds that (1) plaintiffs' claims were ripe for adjudication, (2) the court had subject matter jurisdiction over them, and (3) plaintiffs stated valid claims for relief.

1. Pretrial Procedure ⇦ 679

For the purpose of a motion to dismiss, all well pleaded allegations of the complaint are accepted as true.

2. Pretrial Procedure ⇦ 679

It is well settled under Delaware law that a complaint will not be dismissed for failure to state a claim unless it appears reasonably certain that a plaintiff would not be entitled to the relief sought under any set of facts which could be proven to support the action.

3. Pretrial Procedure ⇦ 679

In considering the sufficiency of the complaint, all well pleaded allegations are accepted as true, and all reasonable inferences are construed in favor of the plaintiff.

4. Declaratory Judgment ⇐ 271, 365

In determining whether an issue is ripe for adjudication, the court must balance between two competing interests: (1) the court must consider the purpose of the Delaware Declaratory Judgment Act to provide early and comprehensive resolutions of disputes, and (2) this interest must be weighed against the policies of judicial economy and restraint. DEL. CODE ANN. tit. 10, § 6502 (1997).

5. Declaratory Judgment ⇐ 161, 382

Declaratory relief is appropriate for settlement of the question of liability of an insurance carrier, and the issue of such liability is ripe for adjudication even though judgment has not been obtained against the party who asserts coverage.

6. Declaratory Judgment ⇐ 271, 276

The court of chancery has jurisdiction over a claim for declaratory relief only if equity would independently have subject matter jurisdiction over the controversy without reference to the declaratory judgment statute.

7. Declaratory Judgment ⇐ 271, 276

The court of chancery has jurisdiction over a declaratory judgment action only if there exists an underlying basis for equity jurisdiction measured by traditional standards.

8. Corporations ⇐ 307

According to Delaware's liberal notice pleading standard, allegations of self-dealing by a defendant which results in that defendant gaining an enormous monetary benefit for itself without any benefit to the plaintiffs are sufficient to state a claim for breach of fiduciary duty.

9. Declaratory Judgment ⇐ 276
Equity ⇐ 3, 21, 44

A court of law is not necessarily a more appropriate forum than a court of equity to resolve a fiduciary duty claim where the underlying facts of the lawsuit shows the claim is of an equitable nature, even though the court of equity may not have exclusive jurisdiction over such a claim.

10. Declaratory Judgment ⇐ 276
Equity ⇐ 3, 21, 45

Even though a plaintiff may have an adequate remedy at law in the form of money damages, a request for injunctive and other equitable relief establishes subject matter jurisdiction for a court of equity.

11. Equity ⇐ 3, 45

A necessary basis for equity jurisdiction exists where a plaintiff seeks equitable relief because a legal remedy would require the plaintiff to seek reimbursement on a case-by-case basis; such a remedy would cause piecemeal compensation and piecemeal justice, rather than complete and adequate relief.

12. Pretrial Procedure ⇐ 679

On a motion to dismiss, all reasonable inferences will be drawn in favor of the plaintiffs.

13. Pretrial Procedure ⇐ 679

A valid claim for aiding and abetting a corporation to breach its fiduciary duties to former subsidiaries is stated where allegations are sufficient to raise the inference that a party knowingly participated in the alleged breach.

14. Contracts ⇐ 221

As a direct consequence of an insurance settlement agreement between a defendant corporation and defendant insurer which prevents a formerly covered subsidiary of the corporation from ascertaining whether a claim constitutes a covered loss, defendants may not claim that such evidence is a condition precedent to stating a claim for breach of contract.

A. Gilchrist Sparks, III, Esquire, and Donna L. Culver, Esquire, of Morris, Nichols, Arsht & Tunnell, Wilmington, Delaware, for plaintiffs.

Thomas J. Allingham II, Esquire, Kevin F. Brady, Esquire, and Kevin M. Maloy, Esquire, of Skadden, Arps, Slate, Meagher & Flom, LLP, Wilmington, Delaware, for defendants.

CHANDLER, *Chancellor*

Plaintiffs are former subsidiaries of defendant Allied-Signal, Inc. ("Allied-Signal"). Defendant The Travelers Indemnity Company ("Travelers") is an insurance company that provided insurance coverage to Allied-Signal and plaintiffs. Plaintiffs seek declaratory relief that a settlement agreement entered into between Allied-Signal and Travelers does not alter plaintiffs' right to pre-1985 insurance coverage under the Travelers policies. In the alternative, plaintiffs request an injunction requiring AlliedSignal to place plaintiffs in the same economic position they would be in had the Settlement Agreement not been executed. Defendants seek to dismiss plaintiffs' action based on their twin assertions that plaintiffs' claims are premature and that this Court lacks subject matter jurisdiction over them. Defendants also seek to dismiss plaintiffs' remaining counts on grounds that they fail to state a claim for relief. Because I find that plaintiffs' claims are ripe for adjudication and that this Court has subject matter jurisdiction over them, I deny defendants' motion. I also decline to dismiss plaintiffs' other counts, because I find that they state valid claims for relief.

I. BACKGROUND

A. *The Parties*

[1] For the purpose of a motion to dismiss, all well-pleaded allegations of the Complaint are accepted as true.[1] The facts that follow are alleged in the Complaint and are accepted as true for purposes of this motion. Plaintiffs are segments or former subsidiaries of Allied-Signal, a defendant in this lawsuit. Plaintiff Union Texas Petroleum Corporation ("UTPC") is a wholly-owned subsidiary of Union Texas Petroleum Holdings, Inc. ("Holdings"), as are plaintiffs Union Texas Petrochemicals Corporation and Unistar (collectively referred to as "UTP"). Plaintiff Union Texas International Corporation is a subsidiary of UTPC. All plaintiffs are Delaware corporations with their principal place of business in Houston, Texas.

Defendant Allied-Signal, also a Delaware corporation, is an advanced technology company with divisions in aerospace, automotive products and engineered materials. Defendant Travelers, a Connecticut

---

[1]*Havens v. Attar*, Del. Ch., C.A. No. 15134, Chandler, V.C. (Jan. 30, 1997), slip op. at 10.

corporation, is an insurance company that provided insurance coverage to Allied-Signal and certain of its predecessors and subsidiaries from the date of their respective incorporations until 1985.

B. *The 1985 Insurance Agreement*

On July 2, 1985, Allied-Signal sold about 50% of its stock in Holdings to Kohlberg, Kravis, Roberts & Co. ("KKR"). In connection with that transaction, on June 27, 1985, Holdings and Allied-Signal entered into an Insurance Agreement (the "1985 Insurance Agreement") setting forth the parties' respective rights and obligations with respect to, *inter alia*, the handling of insurance matters following the sale to KKR. Pursuant to this agreement, Holdings would continue as an insured under certain, if not all, of Allied-Signal's Travelers insurance policies that provided pre-1985 coverage. In addition, to the extent that Holdings was entitled to receive payment under the Travelers policies, Allied-Signal agreed to make reasonable efforts to obtain payment of insurance proceeds.

C. *The Insurance Coverage Settlement*

On September 13, 1990, Allied-Signal and Travelers entered into a comprehensive settlement agreement (the "Settlement Agreement") that resolved a long-standing dispute over the availability of insurance coverage for more than 250 environmental pollution claims that Allied-Signal had submitted to Travelers over a period of several years.[2] The Settlement Agreement obligated Travelers to pay a multi-million dollar lump sum to Allied-Signal, in exchange for Allied-Signal's releasing and discharging Travelers from liability for any and all present and future environmental property damage claims.[3] Pursuant to the Settlement Agreement, Allied-

---

[2]In 1988, Travelers sued Allied-Signal in the United States District Court for the District of Maryland, seeking a declaration that the Travelers policies did not cover Allied-Signal's environmental pollution claims. That same year, Allied-Signal filed a comprehensive suit in New Jersey seeking environmental pollution coverage for some 200 remediation sites. The Settlement Agreement disposed of the Maryland and New Jersey litigations.

[3]Specifically, the Settlement Agreement released Travelers:

> from any and all liability . . . for any and all claims, demand, allegations or obligations, whether or not presently known, which have been, could have been or may be asserted by any Person against Allied-Signal or any entity for whom Allied-Signal is or may be liable, or directly against Travelers, or by Allied-Signal against Travelers, arising out of or related to any obligation of Travelers to indemnify Allied-Signal for or against Environmental Pollution Claims including, without limitation any liability arising out of (a) any claim asserted by Allied-Signal against Travelers in

Signal released Travelers from liability for, *inter alia*, any claims under any policy that had been or could have been asserted against Travelers with respect to any environmental pollution damage.[4] Significantly, Travelers' settlement payment exhausted all property damages liability coverage for environmental pollution claims for *all insureds* under the policies.[5] The Settlement Agreement further provided that Allied-Signal would indemnify Travelers against any and all present and future claims relating to environmental pollution claims under the policies. Neither Travelers nor Allied-Signal consulted with or notified plaintiffs prior to the execution of the Settlement Agreement.

D. *Implementation of the Settlement Agreement*

Following the execution of the Settlement Agreement, UTP submitted environmental property damage claims to Travelers for which it sought insurance coverage under the Allied-Signal Travelers' policies. In response, Travelers disclaimed any coverage defense or indemnity obligations, asserting that any coverage that might have existed for such claims has been completely discharged by the Settlement Agreement.

Plaintiffs allege that UTP *has incurred* more than $2 million in defense costs and damages in connection with an ongoing pollution claim brought against it. Plaintiffs further allege that they remain exposed to the risk of additional defense costs and damages, both with respect to this action and possible future actions. Accordingly, plaintiffs seek declaratory relief pursuant to 10 *Del. C.* § 6501 confirming that their coverage under the Travelers policies has not been extinguished or modified by the Settlement Agreement.[6]

> the Maryland or the New Jersey Action; (b) any alleged bad faith . . .; (c) any liability arising out of any allegedly negligent or otherwise improper engineering services provided . . . concerning any site that is, was, or may be the subject of an Environmental Pollution Claim.

Agreement of Settlement, Compromise and Release at 5-6, ¶ 5 [hereinafter "Settlement Agreement"].

[4]The term, "environmental pollution claims" was defined broadly in the Settlement Agreement to include, *inter alia*, "all claims made or costs incurred with Environmental Pollution." Settlement Agreement at 3, ¶ 2.5. The term, "Environmental Pollution" was also defined broadly and includes "the contamination, potential contamination, or alleged contamination of air, environmental, soil property (tangible or intangible), persons, water or the atmosphere. . . ." *Id.* at 2-3, ¶ 2.4.

[5]The Settlement Agreement broadly defined the term "policies" to include all policies, whether known or unknown as of September 1990, "issued or alleged to have been issued by Travelers to Allied-Signal at any time, up to the date of [the Settlement Agreement]." Settlement Agreement at 2, ¶ 2.1.

[6]Specifically, plaintiffs request that the Court find that the Settlement Agreement did

Plaintiffs explain that they seek declaratory relief so as to avoid litigating separately each coverage issue involving environmental pollution disputes under the pre-1985 coverage. According to plaintiffs, a limited declaration from this Court would increase judicial economy, avoid relitigation of this issue stemming from coverage disputes, and avoid confusion with respect to processing routine claims. Alternatively, plaintiffs seek injunctive relief against Allied-Signal designed to place plaintiffs in the same economic position they would be in had the Settlement Agreement not been executed.

The Amended Complaint includes several counts. First, plaintiffs assert that, because Allied-Signal had no authority to enter into the Settlement Agreement or to compromise plaintiffs' insurance coverage, the Settlement Agreement does not affect plaintiffs' rights. Second, plaintiffs contend that if the Court, nonetheless, finds that Allied-Signal entered into the Settlement Agreement as plaintiffs' agent and that Allied-Signal has bound plaintiffs to the Settlement Agreement, then: 1) Allied-Signal breached its fiduciary duties owed to plaintiffs, 2) Travelers knowingly participated in that breach, 3) Allied-Signal breached its 1985 Insurance Agreement, and 4) Travelers breached the implied covenant of good faith and fair dealing owed to plaintiffs. Third, plaintiffs urge the Court to find that they were included in the Settlement Agreement either by the mutual mistake of Travelers and Allied-Signal, or by a mistake of Allied-Signal, accompanied by knowledge and silence by Travelers. Finally, plaintiffs allege that as a result of their reasonable reliance on the existence of the pre-1985 coverage, defendants are estopped from denying plaintiffs' pre-1985 coverage.

E. *Defendants' Motion to Dismiss*

Defendants have moved to dismiss this action based on their assertion that plaintiffs' Amended Complaint fails to state a claim upon which relief can be granted. Specifically, defendants contend that plaintiffs' request for declaratory relief is premature, and that this Court lacks subject matter jurisdiction over plaintiffs' claims. Defendants also argue that plaintiffs' claims of breach of fiduciary duty, aiding and abetting, and breach of contract should be dismissed for failure to state a claim. Because I find that plaintiffs' claims are ripe and that this Court does have subject matter jurisdiction over them, however, I decline to grant

---

not "alter, cancel, discharge, reduce or release Travelers from any insurance coverage obligations to the plaintiffs under the Pre-1985 coverage." Am. Compl. at 8, ¶ 22.

defendants' motion to dismiss. As for plaintiffs' remaining counts, I also find that plaintiffs state valid claims for breach of fiduciary duty, aiding and abetting, and breach of contract and, therefore, I decline to dismiss those claims as well.

II. DISCUSSION

A. *Legal Standard*

[2-3] It is well settled under Delaware law that a complaint will not be dismissed for failure to state a claim unless it appears reasonably certain "that a plaintiff would not be entitled to the relief sought under any set of facts which could be proven to support the action."[7] In considering the sufficiency of the complaint, all well-pleaded allegations are accepted as true, and all reasonable inferences are construed in favor of the plaintiff.[8] Having considered the sufficiency of the Amended Complaint, accepting as true all plaintiffs' well-pleaded allegations and drawing all reasonable inferences in favor of plaintiffs, I cannot conclude that plaintiffs would not be entitled to the relief sought under the set of facts alleged in their Amended Complaint. Accordingly, I cannot grant defendants' motion to dismiss. My specific reasons regarding the individual claims follow below.

B. *Ripeness*

Defendants argue that plaintiffs' request for declaratory relief is premature because plaintiffs have failed to plead an actual controversy as required under the Delaware Declaratory Judgment Act ("the Act").[9] Defendants assert that plaintiffs did not allege that they properly presented a claim to either Allied-Signal or Travelers, or that the claim was rejected by either Travelers or Allied-Signal due to an exhaustion of insurance coverage. According to defendants, because plaintiffs have not alleged

---

[7]*Ramunno v. Cawley*, Del. Supr., No. 530, 1996, Veasey, C.J. (Jan. 22, 1998), slip op. at 11; *Rabkin v. Philip A. Hunt Chem. Corp.*, Del. Supr., 498 A.2d 1099, 1104 (1985).

[8]*Havens v. Attar*, Del. Ch., C.A. No. 15134, Chandler, V.C. (Jan. 30, 1997), slip op. at 10.

[9]10 *Del. C.* § 6502. To merit declaratory relief, a controversy must satisfy four requirements. Specifically, the controversy must involve: 1) the rights or other legal relations of the party seeking declaratory relief, 2) a claim of right or other legal interest asserted against one who has an interest in contesting the claim; 3) parties whose interests are real and adverse; and 4) an issue in dispute that is ripe for judicial determination. *Id. Stroud v. Milliken Enters.*, Del. Supr., 552 A.2d 476, 479 (1989), *quoting Rollins Int'l, Inc. v. International Hydronics Corp.*, Del. Supr., 303 A.2d 660, 662-63 (1973).

facts that demonstrate a concrete claim was presented and rejected, there can be no actual controversy as to insurance coverage.

Defendants further contend that because plaintiffs do not claim that either Allied-Signal or Travelers has any current obligation to pay under the insurance policies, it is mere speculation as to whether these costs would become a covered loss under any Travelers policy. In addition, defendants believe it is unlikely that any environmental claim against any plaintiff will ever implicate coverage under the relevant policies. Accordingly, defendants urge the Court to dismiss plaintiffs' request for declaratory relief as premature.

[4] "In determining whether an issue is ripe for adjudication, the Court must balance between two competing interests. First, the Court must consider the purpose of the Act to provide early and comprehensive resolutions of disputes. This interest must be weighed against the policies of judicial economy and restraint."[10] It is clear to me that in balancing between the competing interests of providing an early and comprehensive resolution of the dispute between the parties, and exercising judicial restraint, the balance tips in favor of an early resolution of this dispute.

I base my conclusion on the fact that plaintiffs have *already incurred* costs of at least $2 million in connection with an ongoing environmental pollution claim. Second, plaintiffs requested that Travelers cover these costs under their existing Travelers' policies. Third, Travelers refused plaintiffs' request for coverage based *solely* on the terms of the Settlement Agreement with Allied-Signal.[11] Thus, plaintiffs have attempted to exercise their rights under the Travelers policies, and Travelers disputes the existence of those rights based solely on the existence of the Settlement Agreement. Accordingly, I am confident that a real issue, ripe for adjudication, now exists as to whether Travelers is obligated to cover plaintiffs under the Travelers policies, and if not, whether Allied-Signal is obligated to obtain pre-1985 coverage for its former subsidiaries who are now the plaintiffs in this action.[12]

[5] Defendants' assertion that, because plaintiffs have not alleged facts to demonstrate that a concrete claim was presented and rejected, there

---

[10]*Hoechst Celanese v. National Union Ins.*, Del. Supr., 623 A.2d 1133, 1137 (1992).

[11]In response to plaintiffs' request for coverage of costs incurred in connection with an environmental pollution claim, Travelers sent plaintiffs a letter dated November 12, 1990, stating that the Settlement Agreement "addressed all past, present and future property damage environmental pollution claims, including the [referenced] matter. As a result, The Travelers will no longer have any involvement in the [referenced] matter." Am. Compl. ¶ 19, Ex. B.

[12]*See Schick Inc. v. Amalgamated Clothing & Textile Workers Union*, Del. Ch., 553 A.2d 1235, 1238 (1987); 10 *Del. C.* § 6512 ("This chapter is declared to be remedial . . . and is to be liberally construed and administered.").

cannot be an actual controversy as to insurance coverage, is simply not true. Travelers need not first deny plaintiffs' claim under its policies in order for plaintiffs to assert a question of liability under its insurance contract.[13] To the contrary, "[t]he question of liability under insurance contracts has proved to be particularly susceptible to declaratory adjudication . . . . [I]t is now generally accepted that declaratory relief is appropriate for settlement of the question of liability of the insurance carrier; and, according to the decided weight of authority the issue of such liability is ripe for adjudication even though judgment has not been obtained against the party who asserts coverage."[14]

Neither must plaintiffs submit their claims to Allied-Signal (and presumably be rejected by Allied-Signal) in order to assert a legally cognizable claim. Plaintiffs have a very real and obvious interest in knowing whether the Settlement Agreement has altered or terminated altogether their pre-1985 coverage under the Travelers policies. In their current position, plaintiffs remain exposed to the risk of additional defense costs and damages, both with respect to this action and other potential actions. Thus, I find that plaintiffs' claims are ripe for adjudication and decline to dismiss them on this ground.

C. *Subject Matter Jurisdiction*

[6-7] Defendants further maintain that, even if the Court finds this controversy ripe for adjudication, this Court must still dismiss plaintiffs' Amended Complaint because it lacks subject matter jurisdiction over the suit. Defendants correctly assert that the Court of Chancery has jurisdiction over a claim for declaratory relief only if equity would independently have subject matter jurisdiction over the controversy without reference to the declaratory judgment statute.[15] Thus, "the Court of Chancery has jurisdiction over a declaratory judgment action only if there exists an underlying basis for equity jurisdiction measured by traditional standards . . . ."[16]

Defendants argue that plaintiffs fail to assert claims that provide the necessary underlying basis for equity jurisdiction. First, defendants assert

---

[13]The complaint, read fairly, indicates that plaintiffs *did* submit claims to Travelers, and that Travelers refused them, based solely on the release of obligation under the terms of the Settlement Agreement. Am. Compl. ¶¶ 19-21.

[14]*Harleysville Mutual Casualty Ins. Co. v. Carroll*, Del. Super., 123 A.2d 128, 131 (1956).

[15]*Burris v. Cross*, Del. Super., 583 A.2d 1364, 1377 (1990); *Heathergreen Commons Condominium Ass'n v. Paul*, Del. Ch., 503 A.2d 636, 642 (1985).

[16]*Heathergreen Commons Condominium Ass'n*, 503 A.2d at 642.

that plaintiffs' fiduciary claim, which is indisputably within the ambit of equity jurisdiction, "is of no significance" because plaintiffs have not alleged facts to support it and the claim, therefore, cannot provide the required basis in equity to support this Court's jurisdiction over a declaratory judgment action.[17] Second, having declared plaintiffs' fiduciary duty claim a nullity, defendants argue that plaintiffs cannot invoke the Court's equitable jurisdiction based solely on their request for injunctive relief, because this form of relief is not complementary to the declaratory judgment claim, but is instead *an alternative* to the declaratory relief sought.

I disagree with both of defendants' arguments. Not only do I find that plaintiffs have asserted a proper claim for breach of fiduciary duty, but I also find that plaintiffs' request for injunctive relief independently confers subject matter jurisdiction over plaintiffs' claims. My reasons are as follows.

1. *Fiduciary Duty*

Defendants contend that the Amended Complaint fails to state a claim for breach of fiduciary duty. Defendants concede that plaintiffs allege an agency relationship existed between Allied-Signal and plaintiffs with respect to provisions of the Travelers policies.[18] Nonetheless, defendants argue that plaintiffs must plead specific facts which "would tend to show that Allied-Signal breached a duty arising from this agency relationship," and that plaintiffs have failed to do so.[19] Defendants raise the alternative argument that, if the Court finds plaintiffs do state a claim for breach of fiduciary duty, that claim should be heard in the Superior Court and not the Court of Chancery because the fiduciary duty stems from an agency relationship, not a relationship between a corporate officer and a shareholder.[20]

[8] I disagree with both of defendants' arguments. With respect to

---

[17]Def. Br. at 18.

[18]Am. Compl. ¶ 17. The provision in the Travelers policy provides:

> 12. Sole Agent. With respect to the insurance afforded by this policy and *any other* policy issued by the company as evidence of this insurance, [Allied-Signal] is authorized to act on behalf of all insureds with respect to the giving and receiving of notice of cancellation, receiving any return premium or dividend, *and changing any provision thereof.* (Emphasis added.)

Am. Comp., ¶ 12, Ex. A.

[19]Def. Br. at 21-22.

[20]*See Liquid Tank Services, Inc. v. Sullivan*, Del. Super., C.A. Nos. 92C-86-171, 92C-06-172, Balick, J. (Sept. 18, 1992).

defendants' argument that plaintiffs have not pleaded their claim of breach of fiduciary duty with enough specificity, I find that plaintiffs' pleadings are sufficient to state a claim under the notice pleading standards applicable to a claim for breach of fiduciary duty.[21] The gist of plaintiffs' claims against Allied-Signal for breach of fiduciary duty is that in executing the Travelers/Allied-Signal Settlement Agreement, Allied-Signal misused any authority conferred upon it pursuant to the sole agency clause by preferring its own interests to those of plaintiffs. In particular, the Amended Complaint alleges that Allied-Signal secretly, without seeking the authorization or consent of plaintiffs, sold out plaintiffs' insurance coverage by entering into the Travelers/Allied-Signal Settlement Agreement, and accepted payment from Travelers for doing so, none of which has been paid to plaintiffs. As a result of this alleged self-dealing, according to plaintiffs, Allied-Signal "gained an enormous monetary benefit for itself without any benefit whatsoever, to the plaintiffs."[22] Under our liberal notice pleading standard, these allegations are sufficient to state a claim for breach of fiduciary duty.

[9] As to defendants' argument that the Superior Court is a more appropriate forum than the Court of Chancery to resolve plaintiffs' fiduciary duty claim, I cannot agree. Defendants may be correct that this Court does not have exclusive jurisdiction over such a claim.[23] Nonetheless, given the underlying facts in this lawsuit, I find plaintiffs' breach of fiduciary claim to be of an equitable nature, suitable for resolution in this Court. Therefore, I find that the Court of Chancery should retain jurisdiction over plaintiffs' fiduciary duty claim.

2. Injunctive Relief

[10] Even if plaintiffs had not stated a claim for breach of fiduciary duty, I would still deny defendants' motion to dismiss, finding that plaintiffs' request for injunctive and other equitable relief against Allied-Signal establishes subject matter jurisdiction in this Court. Defendants argue that this Court does not have subject matter jurisdiction over plaintiffs' claims because plaintiffs have an adequate remedy at law in the form of money damages. Specifically, defendants assert that plaintiffs do not need an equitable remedy because they can seek reimbursement on an *ad hoc* basis for amounts expended defending individual actions.

---

[21]*In re Wheelabrator Tech. Inc. Shareholders Litigation*, Del. Ch., C.A. No. 11495, Jacobs, V.C. (Sept. 1, 1992), slip op. at 23 n.18.

[22]*See* Am. Compl. ¶¶ 15-18, 28.

[23]*See Liquid Tank Services, Inc. v. Sullivan, supra.*

In response, plaintiffs argue that injunctive relief that restores plaintiffs' insurance coverage is far superior and will provide more certain relief than sporadic litigation. Plaintiffs assert that the uncertainty surrounding the existence of pre-1985 insurance coverage for environmental damage claims has a present detrimental impact on their business operations. According to plaintiffs, as a result of defendants' actions, UTP cannot provide assurances regarding the state of its insurance coverage to lenders or prospective acquirers of any of its businesses. Plaintiffs further assert that, because defendants deny that plaintiffs are entitled to insurance coverage, plaintiffs also face the potential loss or impairment of their excess coverage.

[11] I agree with plaintiffs that the type of relief they seek can only be granted in this Court. Plaintiffs should not have to seek reimbursement on a case-by-case basis. Such a remedy would cause piecemeal compensation and piecemeal justice, rather than complete and adequate relief. Accordingly, I find that the injunctive relief sought by plaintiffs provides a necessary independent basis for equity jurisdiction.

D. *Remaining Claims*

[12] Defendants' motion to dismiss also asserts that there is no merit to plaintiffs' claims against Travelers for aiding and abetting Allied-Signal, nor to plaintiffs' claims against Allied-Signal for breaching the 1985 Insurance Agreement. As previously stated, on a motion to dismiss, all reasonable inferences will be drawn in favor of the plaintiffs. Given this lenient standard of review, I find that plaintiffs state valid claims for both aiding and abetting and for breach of contract and decline to dismiss these claims at this time.

1. Aiding and Abetting

[13] With respect to the aiding and abetting claim, the allegations of the Amended Complaint are sufficient to raise the inference that Travelers knowingly participated in Allied-Signal's alleged breach of fiduciary duty. I base this finding on the following facts alleged in plaintiffs' Amended Complaint. Travelers was aware of the sole agency provision in the Travelers policies.[24] After Allied-Signal's sale of Holdings stock to KKR, Travelers knew that plaintiffs were entities separate from Allied-Signal. Moreover, Travelers had dealt directly with UTP on matters relating to

---

[24]*See supra* n.18.

plaintiffs' insurance coverage under the Travelers' policies. Travelers did not invite any of the plaintiffs to participate in the negotiations leading up to the execution of the Settlement Agreement, nor did Travelers notify any of the plaintiffs of the existence of the Settlement Agreement.[25] When plaintiffs inquired as to the content of the Settlement Agreement, Travelers refused to disclose any information. Given the totality of the facts and the reasonable inferences to be drawn from them, I find that plaintiffs do state a valid claim for aiding and abetting.

2. Breach of Contract

Defendants also assert that plaintiffs have failed to state a claim against Allied-Signal for breach of contract because plaintiffs have "failed to plead that they have properly presented a claim which would constitute a covered loss under the terms and conditions of the Travelers policies issued to Allied-Signal and Plaintiffs."[26] In other words, because plaintiffs have presented no evidence of a "covered loss" under the terms of the Travelers policies, defendants argue plaintiffs have no basis to assert that there are any insurance proceeds to which they are entitled under the 1985 Insurance Agreement.

[14] Defendants, themselves, acknowledge that they refused to provide the evidence they now demand from plaintiffs. "[I]n a series of letters postdating the execution of the [Settlement Agreement], Travelers asserted that any Pre-1985 Coverage that might have existed for environmental pollution claims was completely discharged by the [Settlement Agreement] . . . ."[27] Accordingly, the "presentation" requirement urged by defendants is not tenable. As a direct consequence of the Settlement Agreement, plaintiffs cannot even ascertain whether their claim constitutes a "covered loss" under the terms of the Travelers policies. Defendants may not now claim that such evidence is a condition precedent to stating a claim for breach of contract. Thus, I find that plaintiffs have pled a breach of contract claim sufficient to withstand a motion to dismiss under Rule 12(b)(6).

For all of the reasons discussed above, I deny defendants' motion to dismiss.

IT IS SO ORDERED.

---

[25]Plaintiffs first learned of the Settlement Agreement after reading an article in the *Wall Street Journal*. Am. Compl. at 6, ¶ 16.

[26]Def. Br. at 27.

[27]Am. Comp. ¶ 19.