EXPEDITED PROCEEDINGS IN THE DELAWARE COURT OF CHANCERY: THINGS OF THE PAST?

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I. INTRODUCTION

The Delaware Court of Chancery is widely regarded as the nation's preeminent state court forum for resolving corporate disputes. This reputation stems, in large part, from the fact that many of the nation's largest corporations have chosen to incorporate in Delaware.\(^1\) Perhaps not coincidentally, the Delaware Court of Chancery is also one of the few remaining equity courts in the nation, with its subject matter jurisdiction limited to matters seeking equitable relief — including injunctive relief — and to several other statutorily-specified areas.\(^2\)

During the national corporate takeover boom in the 1980s, the Court of Chancery faced a parallel boom in filings seeking to enjoin takeovers and other transactions.\(^3\) In that time, the court developed an estimable reputation for its willingness and ability to hear litigants on an expedited basis and to render decisions quickly enough to keep pace with the fast-moving demands of business.\(^4\)

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\(^1\)Leo Herzel & Laura D. Richman, *Forward to R. Franklin Balotti & Jesse A. Finkelstein, The Delaware Law of Corporations and Business Organizations* F-I (2d ed. 1994) (stating that the majority of Fortune 500 companies which are publicly traded are incorporated in Delaware).


\(^4\)William T. Quillen, *Constitutional Equity and the Innovative Tradition*, 56-Sum Law & Contemp. Probs. 29, 47 (1993) (observing that although the Delaware Court of Chancery has been subject to criticism for its managerial philosophies in certain major cases, corporate litigants are benefitted by expedient resolutions). See also Ronald J. Gilson, *The Fine Art of Judging: William T. Allen*, 22 Del. J. Corp. L. 914, 916-17 (1997) (stating that, starting in the mid 1980s, "the Court of Chancery was, de facto, the court of first and last resort for many takeover contests and was restructuring corporate law on the fly").
Both historically and currently, applications for injunctive relief against corporate transactions have frequently been for interim relief, including motions for temporary restraining orders (TROs) and for preliminary injunctions. Such motions, in turn, are generally accompanied by applications for expedited proceedings which, prior to this decade, were granted almost routinely and occasionally on an ex parte basis.

In recent years, however, the Court of Chancery has scrutinized plaintiffs' applications for expedited proceedings more carefully at the threshold, denying such applications with increasing frequency when opposed by defendants. This trend may go unnoticed by attorneys who do not practice regularly in the Court of Chancery, because all of the relevant decisions appear in unreported opinions and in obscure, uncirculated orders and transcripts. Moreover, there has been little or no appellate review of such decisions by the Delaware Supreme Court. Despite the lack of reported case law, the closer scrutiny given to applications for expedited proceedings has potentially significant consequences for attorneys and litigants.

There are some common themes to the decisions denying expedition. First, the Court of Chancery has become increasingly sensitive to the substantial costs to both the litigants and the court associated with expedited proceedings. Second, in such decisions, the court is making preliminary determinations concerning the merits of plaintiffs' motions for interim equitable relief and the potential defenses available without any separate dispositive motions by defendants. Specifically, the court is likely to deny an application for expedition if there is no colorable theory of irreparable harm or if the plaintiffs unreasonably delayed in bringing their companion motion for interim equitable relief.

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5 Santarelli, supra note 2, at 108 & n.3; see Del. Ch. Ct. R. 65 (1997).
7 While many of these opinions are available through LEXIS, Westlaw, or services specializing in uncirculated orders, it is almost certain that this article omits reference to at least some decisions denying applications for expedited proceedings. Sources cited herein that are not available through LEXIS and/or Westlaw are on file with the Delaware Journal of Corporate Law and with the author, and are available upon request.
8 It is perhaps somewhat unfair to subject the decisions denying expedition to scholarly scrutiny, given that the judges did not see fit to submit any of those decisions for publication, and virtually all of the decisions take the form of "letter opinions" to counsel or bench ruling transcripts. Nevertheless, the court is issuing such decisions with sufficient frequency to make an analysis of their reasoning important.
II. STANDARDS FOR INTERIM EQUITABLE RELIEF AND DEFENSES

Since applications for expedited proceedings generally accompany motions for interim equitable relief, and because the Court of Chancery has applied defenses to interim equitable relief to deny applications for expedited proceedings, it is helpful to recount the requirements for interim equitable relief as well as some of the defenses to such relief.

The standards for a motion for preliminary injunction are well settled. In order to establish an entitlement to a preliminary injunction, the plaintiff must demonstrate: "(1) a reasonable probability of success on the merits; (2) irreparable harm [to the plaintiff if the request is denied]; and (3) a balance of equities in [plaintiff's] favor." 9

The court examines similar factors on a motion for a TRO. The focus, however, is different, as explained by the court in Cottle v. Carr: 10

The essential predicate for issuance of the remedy is a threat of imminent, irreparable injury. . . . Once that is shown, the remedy ought ordinarily to issue unless the Court is persuaded (1) that the claim asserted on the merits is frivolous or not truly litigable, (2) that the risk of harm in granting the remedy is greater than the risk to plaintiff of denying it, or (3) that plaintiff has not proceeded as promptly as it might, has therefore contributed to the emergency nature of the application and is guilty of laches. 11

The first factor — the showing on the merits that is essential to the success of the TRO motion — has been referred to as a "colorable claim." 12

Because a risk of imminent, irreparable harm is a prerequisite to the granting of interim equitable relief, one obvious defense to a motion

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11Id. at *8 (citations omitted).
12See id. at *6-7.
for interim equitable relief is the absence of such harm.\textsuperscript{13} This usually occurs when the remedy at law (i.e., money damages) would be adequate to make the plaintiff whole.\textsuperscript{14} The absence of irreparable harm is increasingly utilized by the court to deny expedition at the threshold. In such decisions, the court is also placing great emphasis on the ability of defendants to pay any judgment that may be rendered against them, in apparent deference to the proposition that "where a plaintiff is seeking money damages, the remedy at law is adequate except in cases of insolvency."\textsuperscript{15}

Another defense to interim equitable relief (or to any form of equitable relief) derived from the TRO standards is laches. Laches is defined as "an affirmative defense that the plaintiff unreasonably delayed in bringing suit after the plaintiff knew of an infringement of his rights, thereby resulting in material prejudice to the defendant."\textsuperscript{16} This equitable defense also figures prominently in decisions denying expedition, in the context of scheduling motions for interim equitable relief.\textsuperscript{17}

III. HISTORICAL BACKGROUND

An application for expedited proceedings or discovery that accompanies a motion for interim equitable relief is usually made in a separate motion called a "motion to expedite proceedings" or a "motion to expedite discovery." Such motions can be employed to obtain an early answer to the complaint, a short and specific notice time for the taking of depositions, early responses to written discovery requests, and a prompt hearing date. Historically, expedited proceedings in the Court of Chancery have been routinely granted in connection with applications for interim equitable relief and have often been awarded \textit{ex parte}.\textsuperscript{18}

\textsuperscript{13} Santarelli, \textit{supra} note 2, at 126.


This article examines a post-1993 trend in the Court of Chancery against the routine expedition of proceedings. Before discussing these recent cases, however, it should be stressed that the court's scrutiny of applications for expedition is, strictly speaking, not new. In fact, one of the most frequently-cited decisions on the subject is the Court of Chancery's 1986 ruling in Greenfield v. Caporella.19

In Greenfield, the plaintiffs moved for expedited discovery on their application for the appointment of a receiver for Burnup & Sims, Inc., as a result of the defendant directors' alleged looting of the company in various transactions.20 Additionally, the plaintiffs sought a TRO to prevent defendants from entering the company into any transactions out of the ordinary course of business.21 Vice-Chancellor (now Justice) Hartnett stated that the court "does not set matters for an expedited hearing or permit expedited discovery unless there is a showing of good cause why that is necessary."22 Without defining "good cause," the court held that the plaintiffs had not made such a showing where, *inter alia*, the complaint failed to allege that any of the defendants were insolvent or that they would be unable to satisfy any judgment rendered against them in the case.23 In addition, the court found that all of the transactions in question occurred years earlier and were already challenged in prior lawsuits.24 Presumably the court's decision was also influenced by the plaintiffs' motion for a TRO, which was denied in the same opinion on grounds that there was no showing of possible irreparable harm, nor "a showing of the reasonable probability of ultimate success on the merits, or that most of the alleged improper acts [were] not already being

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20Id. at *1, *reprinted* in 12 Del. J. Corp. L. at 1068.
21Id. at *1-2, *reprinted* in 12 Del. J. Corp. L. at 1069.
22Id. at *2, *reprinted* in 12 Del. J. Corp. L. at 1070. For this proposition, the court cited Amsellem v. Shopwell, Inc., No. 5683, 1978 WL 2510 (Del. Ch. Sept. 13, 1978), *reprinted* in 5 Del. J. Corp. L. 148 (1980). In that case, the court had initially expedited the matter due to the filing of a motion for a preliminary injunction against an exchange offer. Id. at *1, *reprinted* in 5 Del. J. Corp. L. at 149. The defendant subsequently withdrew and terminated the exchange offer, making the preliminary injunction hearing unnecessary. Id., *reprinted* in 5 Del. J. Corp. L. at 150. Accordingly, the court vacated its earlier order expediting the proceedings, saying that "[i]t should be no deviation from the normal procedure except in unusual circumstances where conditions exist that would likely prejudice a party if he is compelled to wait." Id.
24Id.
adequately addressed in [other] pending . . . litigation." Thus, the court in *Greenfield* apparently denied expedition because it believed that the remedy at law (i.e., money damages) would be adequate, that the defendants would be capable of satisfying any judgment rendered, and that there was a strong laches defense.

There were also other pre-1994 decisions denying expedition of proceedings. In *Rosman v. Interstate Bakeries Corp.*, involving a challenge to a tender offer, the defendants sought to vacate a motion to expedite the proceedings that had been granted on an *ex parte* basis. Chancellor Allen addressed the court's usual practice of granting motions to expedite proceedings, but nevertheless granted the motion to vacate the order expediting proceedings. Of great importance to the court appeared to be the fact that the plaintiff intended to amend the complaint the following day:

I have read the complaint in this case, . . . and I can't remember reading a weaker complaint than this one.

On the other hand, I am not called upon to make any judgment about its legal sufficiency at this moment, but I am called upon to make some kind of judgment about the *ex parte* application for expedited discovery right now.

Now, I'm sympathetic with the need of the plaintiffs' bar to get expedited discovery in these cases, and we frequently enter these orders really without a great deal of thought on the assumption that if the defendants feel that there is some need to adjust the schedule, they will come in if it can't be worked out, *et cetera*. So that's what has happened here.

The fact that the complaint was filed for five days and then an *ex parte* application was made for discovery is something that I take notice of.

I don't think I can answer the substantive question that is now presented as to whether or not this complaint justifies putting the defense to the burden of expedited discovery.

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23*Id.* at *3, *reprinted in* 12 *DEL. J. CORP. L.* at 1071.
24No. 9263 (Del. Ch. Sept. 29, 1987).
25*Id.*, slip op. at 4.
26*Id.*, slip op. at 20.
And I refer to the complaint that was filed . . ., not to the [amended] complaint [that is to be filed]. To pass on the substantive question that is posed by the amended complaint I have to see the amended complaint.

. . . [F]or the time being, on the complaint that’s currently filed I’ll grant the motion and withdraw the order permitting expedited discovery. I’ll entertain an application tomorrow for expedited discovery on the new complaint.29

The following year, in *McCardell v. Facet Enterprises, Inc.*,30 involving a challenge to a tender offer, Chancellor Allen refused to schedule a preliminary injunction hearing, with the following observations:

An application of this kind is troubling to me. First, I have no intention to encourage defendants to come in and make litigation of the scheduling of a preliminary injunction an important aspect of these cases. Nevertheless, I have on rare occasion refused to schedule a preliminary injunction. In those instances in which that has been done, there has not been a transaction pending. Ordinarily there is a strong inclination of the Court to make itself uncomfortable in order to accord to plaintiffs an opportunity for their plausible claims to be presented after some discovery. A conference of this type is not an appropriate occasion for the Court to make a determination that the complaint fails to state a claim, unless that fact is so apparent from the face of the pleading that to require the defendants to respond to expedited discovery would itself be an unjustified oppression.

There are, however, in this case two factors that make it a particularly difficult one, even though the Court does follow the general inclination that I just mentioned, and that is that the transaction here in issue is the closing of a tender offer . . .; that the complaint contains no allegation whatsoever

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29 *Id.*, slip op. at 18-20. The plaintiff’s intention to file an amended complaint also figured prominently in the court’s denial of expedition two months later in *Cottle v. Standard Brands Paint Co.*, No. 9342 (Del. Ch. Nov. 24, 1987).
30 No. 9822 (Del. Ch. Apr. 28, 1988).
that the tender offer is not being made in an arm's length way; that the information being provided by the offeror is not full and complete and, indeed, the offeror is not named as a party to the complaint.

In this situation, both as a matter of substantive law and as a matter of jurisdiction, there would be no basis for the Court to enter an injunction against the transaction . . . .

. . . .

[It] is clear . . . that if [plaintiff] proves the allegations of the . . . complaint that she filed, the Court would not be in a position to enjoin the transaction here involved. In that setting I can't imagine that expedited discovery is necessary or appropriate.31

Chancellor Allen's explanation of his previous denials of expedition as involving cases in which "there has not been a transaction pending" does not appear to be consistent with the facts or reasoning of *Rosman*, in which a tender offer was spending. Additionally, research has not uncovered any decisions by Chancellor Allen denying expedition prior to *Rosman*. The court did, however, use this rationale in later decisions denying expedition.

In *In re Tri-Star Pictures, Inc. Litigation*,32 the plaintiffs sought to schedule a hearing on their motion for a preliminary injunction against a merger and to obtain expedited discovery in aid of their motion.33 Vice-Chancellor Jacobs observed as follows:

[T]his Court will rarely, if ever, refuse to schedule a preliminary injunction hearing or permit expedited discovery to go forward where a preliminary injunction application is made. The reason for that is that when the Court is asked to refuse to schedule a hearing and correlative to schedule the expedited discovery that would normally precede that hearing, it is in effect being asked to make a pre-preliminary determination of the case itself, a procedure which is not

31 *Id.*, slip op. at 4-6.
32 No. 9477 (Cons.) (Del. Ch. Sept. 29, 1989).
33 *Id.*, slip op. at 3-4.
sanctioned by any rule of procedure, at least that is contained in our rule book.

. . . .

Nevertheless, every rule must have its exception, and it is true that on rare occasions litigants have applied for preliminary injunctions based on pleadings that on their face were so manifestly and plainly legally inadequate that to initiate the heavy machinery of expedited discovery and of the preliminary injunction procedure would in such cases have inflicted an injustice upon the parties and waste the resources of the Court.34

The court concluded that expedited proceedings were not warranted because there was no allegation in the complaint that irreparable harm would result from the merger, and it could not be gleaned from any of the facts pled that no adequate remedy existed at law.35

The court also stated in Tri-Star that it was not persuaded that the plaintiffs' theory of irreparable harm was "legally tenable" under the existing circumstances.36 In a letter to counsel, however, the court stated:

Upon reflection it occurred to me that this particular language could be misread to suggest that the plaintiffs were obliged, on a motion to schedule a preliminary injunction proceeding, to establish the legal sufficiency of their claim. That, of course, is not correct. The court did not, and did not intend to, impose any such burden upon the plaintiffs. All that was intended by that particular reference to a "legally tenable" theory, is that it appear from the relevant pleadings that the claim of irreparable harm be at least legally colorable.37

Just weeks later, in Hearne v. Bobb,38 the same Vice-Chancellor who decided Tri-Star again denied a request to schedule a preliminary

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34Id., slip op. at 1-2.
35Id., slip op. at 2.
36In re Tri-Star Pictures, Inc. Litig., No. 9477 (Cons.), slip op. at 3.
38No. 11,113 (Del. Ch. Oct. 17, 1989).
injunction hearing.\textsuperscript{39} With none of the caveats enunciated in the \textit{Tri-Star} Addendum, the court held that the plaintiff failed to allege, or show, that no adequate remedy at law was available to him.\textsuperscript{40} The court also found the three month delay in filing the request for expedited proceedings to be, \textit{prima facie}, laches.\textsuperscript{41} The court later denied a motion for reconsideration of its decision on substantially the same grounds.\textsuperscript{42}

Shortly thereafter, in \textit{Herd v. Major Realty Corp.},\textsuperscript{43} the plaintiff challenged a merger, but had withdrawn its application for a TRO against the stockholders' meeting at which the merger would be voted upon.\textsuperscript{44} Instead, after the merger was already consummated, the plaintiff sought to schedule a preliminary injunction hearing on its motion to prevent the defendants from taking any steps to dispose of corporate assets outside the ordinary course of business.\textsuperscript{45} This hearing was to afford the plaintiff the ability to have the merger rescinded.\textsuperscript{46} Then Vice-Chancellor (now Chancellor) Chandler refused to schedule the preliminary injunction hearing, stating: 

Although I am mindful of this Court's duty to afford prompt and complete relief in situations where a wrong has been demonstrated and there is an absence of an adequate remedy at law, the circumstances in this case do not justify scheduling a hearing on the preliminary injunction application at this time. . . .

Because plaintiff's motion does not identify a transaction or event that poses a threat of irreparable injury to them as Major stockholders and because rescissory damages will be available in any event for any harm they have suffered as a result of the actions of the defendants, a hearing on the pending motion for preliminary injunction is unnecessary.

\textsuperscript{39}Id., ltr. op. at 1.

\textsuperscript{40}Id.

\textsuperscript{41}Id.

\textsuperscript{42}See Hearne v. Bobb, No. 11,113, 1989 WL 133622 (Del. Ch. Oct. 23, 1989) (holding that plaintiff has still not explained either "why his rescission claim cannot be protected by resorting to legal remedy . . . [or] why he delayed for three months in bringing this action").

\textsuperscript{43}No. 10,707 (Del. Ch. Nov. 8, 1989).

\textsuperscript{44}Id., ltr. op. at 1-2. The court had previously denied plaintiff's motion for a TRO to prevent the company from selling certain assets in anticipation of the challenged merger. See \textit{Herd v. Major Realty Corp.}, No. 10,797, 1989 WL 72787 (Del. Ch. June 27, 1989), \textit{reprinted in} 15 \textit{Del. J. Corp. L.} 638 (1990).

\textsuperscript{45}Herd, No. 10,707, ltr. op. at 2.

\textsuperscript{46}Id.
Having failed to demonstrate any good cause or reason to schedule such a hearing, the application is denied.\(^47\)

In \textit{Hager v. Motel 6, L.P.},\(^43\) the plaintiffs sought to enjoin the sale of the named partnership.\(^49\) The court echoed \textit{Tri-Star}'s requirement that "the invocation of the heavy machinery of expedited proceedings\(^50\) must be justified, and also made the following statement concerning the expedition of proceedings:

The Court does, I think, impose a rather low standard upon plaintiffs in order to schedule a preliminary injunction. It does that for the obvious reason that plaintiff, who has not yet had access to discovery mechanisms, will not typically be in a position to or should be made to be in a position to present the case in any kind of a forceful or strong way. On the other hand, it is the case that in the last five years at least there have been a number of occasions in which the Court has declined to schedule matters of this type.\(^51\)

In denying expedition, the court stated that it was "motivated by the fact that [there is] virtually no likelihood of granting a preliminary injunction in this case."\(^52\) The court bolstered this position by finding that "there is no reason in the world why money damages would not be adequate, and there is no suggestion that the defendants would not be able to satisfy a judgment."\(^53\)

Finally, in \textit{Redsail Easter Ltd. Partners, L.P. v. Radio City Music Hall Productions, Inc.},\(^54\) an action for breach of a limited partnership agreement and dissolution of the limited partnership, the plaintiff sought to enjoin the defendant from going forward with a planned transaction that excluded the plaintiff from any of the profits.\(^55\) The court believed that damages would be an adequate remedy for the alleged breach and


\(^{43}\)No. 11,641 (Del. Ch. July 20, 1990).

\(^{49}\)See id., slip op. at 3.

\(^{49}\)Id., slip op. at 6.

\(^{50}\)Id., slip op. at 2.

\(^{51}\)\textit{Hager}, No. 11,641, slip op. at 3.

\(^{52}\)Id., slip op. at 5.

\(^{53}\)No. 12,036 (Del. Ch. Apr. 9, 1991).

\(^{54}\)See id., slip op. at 44.
refused to schedule a preliminary injunction hearing, stating that, notwithstanding the fact that the plaintiffs had "litigable claims," it was not convinced that there was any substantial risk of imminent injury to the plaintiffs.\footnote{Id., slip op. at 48. Prior to 1994, the court also refused to expedite the proceedings in connection with applications for interim equitable relief in other cases, by determining that a stay of the entire proceeding in favor of a prior-filed action was appropriate. See, e.g., Basner v. Gillette Co., Nos. 9080 & 9082, 1987 Del. Ch. LEXIS 454 (Del. Ch. June 26, 1987); DiRocco v. Roessner, No. 8107, 1985 WL 11567 (Del. Ch. Aug. 12, 1985), \textit{reprinted in} 11 Del. J. Corp. L. 604 (1986), \textit{appeal refused}, 505 A.2d 452 (Del. 1985).}

A number of points are clear from these early decisions denying expedition. First, the court obviously did not want to create the impression that it was showing disfavor toward expedited proceedings and stressed that expedition was routine in cases involving applications for interim equitable relief. Second, the court occasionally recognized, albeit uncomfortably, that in denying expedition at the outset it was either making threshold determinations on the merits of the complaints or on the claims for injunctive relief contained in them, including preliminary rulings on irreparable harm and laches defenses. Third, the expense to the litigants and the burden on the judicial system provided additional incentive to deny applications lacking good cause.

\section*{IV. CURRENT STANDARDS FOR EXPEDITION}

In 1994, after several years of relative calm on the issue,\footnote{Research has revealed no decisions denying expedition on motions for interim equitable relief in 1992 or 1993. The court did deny expedition in Corporate Property Assocs. 8, L.P. v. Amersig Graphics, Inc., No. 13,241, 1993 WL 499005 (Del. Ch. Nov. 17, 1993), \textit{reprinted in} 20 Del. J. Corp. L. 321 (1995), but that case did not involve a motion for interim equitable relief.} a "rash" of litigation over the expedition of proceedings generated an increase in decisions. This increase fulfilled Chancellor Allen's fearful prophecy that decisions denying expedition would "encourage defendants to come in and make litigation of the scheduling of a preliminary injunction an important aspect of these cases."\footnote{McCardell v. Facet Enterprises, Inc., No. 9822, slip op. at 4 (Del. Ch. Apr. 28, 1988).} These recent decisions denying expedition share many similarities with their judicial antecedents, particularly in addressing the increased expenses associated with expedited proceedings. What distinguishes these more recent cases from their predecessors, however, is that they seem to place a higher overall burden on plaintiffs to justify expedition.
In Union Pacific Corp. v. Santa Fe Pacific Corp. (Union Pacific), involving a contest between Union Pacific and Burlington Northern, Inc., for control of the defendant corporation, the court denied an application for expedited discovery on the plaintiff's motion for a preliminary injunction. In reaching this conclusion, the court noted that "no colorable threat of irreparable harm [was] articulated or shown that would warrant intervention by [the court] on the expedited schedule . . . requested." The clear implication in this holding is that the plaintiff possessed the burden to "articulate" or "show" a colorable theory of irreparable harm in order to justify expedited proceedings. This requirement contrasts with the pronouncements in the Tri-Star Addendum that the plaintiffs did not need to establish the legal sufficiency of their claims during a motion to schedule a preliminary injunction. Based upon subsequent events, Union Pacific I seems to have opened the floodgates of litigation over expedition.

Just one month after Union Pacific I, the court denied expedition in Giammargo v. Snapple Beverage Corp., a case in which the plaintiffs sought to enjoin the acquisition of Snapple by an affiliate of Quaker Oats Company. This case deserves special attention, because it was the first to succinctly set forth the prerequisites to expedition that currently apply in the Court of Chancery. Giammargo involved a motion for expedition and a request to schedule a preliminary injunction hearing. Chancellor Allen first stated that he was "not required or able on this application to

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60Id. at *5.
61Id.
62Tri-Star Addendum, supra note 37.
63Earlier in 1994, in In re Blockbuster Entertainment Corp. Shareholders' Litig., No. 13,319 (Cons.), 1994 Del. Ch. LEXIS 23 (Del. Ch. Mar. 1, 1994), then Vice-Chancellor (now Justice) Berger not only rejected a motion to expedite discovery, but even refused to schedule a hearing on a motion for a TRO against Blockbuster's purchase of Viacom, Inc. stock. Id. at *2. In an apparently fact-specific decision, the court was particularly mindful that the proceeds of the purchaser were to be used to finance Viacom's purchase of Paramount Communications, Inc., and that "[u]nder these circumstances, the prospect of an injunction would create enormous uncertainty with widespread repercussions." Id. The court also denied expedition in Macklowe v. Planet Hollywood, Inc., No. 13,450 (Del. Ch. Aug. 17, 1994), without a great deal of comment other than to state that "it is within the discretion of the Court to conclude whether or not an application to expedite proceedings for a preliminary injunction should be granted," and that it was "not satisfied that good cause has been shown to expedite the proceedings." Id., slip op. at 31.
65Id. at *1-2.
judge the merits or even the legal sufficiency of these pleadings. Rather, the court continued:

The question presented is a more specialized one: whether in the circumstances the plaintiff has articulated a sufficiently colorable claim and shown a sufficient possibility of a threatened irreparable injury, as would justify imposing on the defendants and the public the extra (and sometimes substantial) costs of an expedited preliminary injunction proceeding.

Apparently mindful of creating an impression that the Court of Chancery now disfavored expedited proceedings, the court added: "This court traditionally has acted with a certain solicitude for plaintiffs in this procedural setting and thus has followed the practice of erring on the side of more hearings rather than fewer. We continue that tradition of solicitude."

The court further noted, seemingly contrary to its earlier insistence, that it was not reaching the merits of the case, stating that:

our responsibility to all parties and to the public's interest in efficient justice requires, nevertheless, that where there clearly is no demonstrable need for the remedy of preliminary injunction or, in the rarer case when there is not even any colorable claim pleaded, that we decline to impose the costs associated with such a proceeding.

Ultimately, the Giammargo court declined to expedite the case or to schedule a preliminary injunction on the grounds that, should the plaintiffs' claims subsequently be found to have legal merit, the court would then be better positioned to grant the appropriate remedies necessary to fully compensate the plaintiffs for loss suffered. The court reasoned that this decision corresponded with the traditional test for granting a preliminary injunction, because it had not discovered any harm to the plaintiffs which could not be remedied through monetary

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66 Id. at *5-6.
67 Id. at *6.
70 Id. at *7.
71 Id.
compensation. Moreover, if such damages did prove necessary, the court remained satisfied that the defendants possessed the financial resources required for a proper restitution. Finally, the court added that if it had perceived "a higher potential for unfairness" in the challenged corporate transaction, "it is unlikely that [it] would, in effect, relegate the [plaintiffs] to an ex post remedy so early in the proceeding."

Thus, Giammargo forth two requirements for expedition: (1) a sufficiently colorable claim; and (2) a sufficient possibility of a threatened irreparable injury. These requirements appear to summarize the holdings of the previous decisions denying expedition, albeit somewhat loosely. For example, decisions denying expedition on the basis of laches can be viewed as a determination either that the plaintiff did not have a sufficiently colorable claim to warrant expedition or that the defenses to plaintiffs' claims were sufficiently strong to warrant denial of expedition. Moreover, a number of the decisions denying expedition have been expressly based on the lack of irreparable harm.

Giammargo's requirements also appear to extend beyond the pre-1994 cases, however, by squarely placing the burden on plaintiffs to "show" the two elements required for expedition. Because an application for expedition associated with a motion for interim equitable relief must itself be made by motion, plaintiffs have, technically speaking, always maintained the burden of justifying expedition. However, prior to 1994, even when the court denied expedition, it classified this burden as "a rather low standard," and emphasized that plaintiffs were not "obliged, on a motion to schedule a preliminary injunction proceeding, to establish the legal sufficiency of their claim[s]." Upon comparison, Giammargo and its progeny appear to have elevated the bar for plaintiffs to justify expedition. The Giammargo test, in essence, constitutes a "pre-preliminary" ruling on the elements of a motion for interim equitable relief, which encompasses the colorability of the merits of the case, the issue of irreparable harm, and the possibility of laches.

While not every subsequent decision concerning expedition has expressly relied on Giammargo, they have essentially applied the same reasoning. For instance, soon after Giammargo, Vice-Chancellor Steele...

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73Id. at *8.
74Id. at *8-9.
75Id. at *6.
77Tri-Star Addendum, supra note 37, at 2.
78See supra Part II.
expressly followed its reasoning to deny expedition in *Steiner v. Puritan-Bennett Corp.*

Disputes over expedition did not abate in 1995. Shortly after *Steiner*, the court faced another application for a preliminary injunction hearing and expedited discovery in the *Union Pacific* litigation (*Union Pacific II*), which it again denied on the grounds that the "applicant[s] ha[d] delayed unreasonably in presenting the application." Later that year, in *Taylor v. LSI Logic Corp.*, the court referred to *Giammargo* as "the most recent and relevant standard for ... expediting matters." The court proceeded to apply that standard in a motion to expedite the proceedings in a case seeking to enjoin the defendant corporation’s acquisition of its subsidiary’s publicly-held stock.

In *In re International Jensen Inc. Shareholders Litigation*, the court again denied expedition, observing:

A party’s request to schedule an application for a preliminary injunction, and to expedite the discovery related thereto, is normally routinely granted. Exceptions to that norm are rare. A paradigm exception, however, arises where the moving papers fail to articulate a colorable claim of irreparable harm and any wrongful conduct can be

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80 Union Pac. Corp. v. Santa Fe Corp., Nos. 13,778 & 13,587, 1995 Del. Ch. LEXIS 10, at *3 (Del. Ch. Jan. 30, 1995) [*Union Pacific II*] (citing *In re Blockbuster Entertainment Corp. Shareholders’ Litig.*, No. 13,319 (Cons.), 1994 Del. Ch. LEXIS 23 (Del. Ch. Mar. 1, 1994); DiRocco v. Roessner, No. 8107, 1985 WL 11567 (Del. Ch. Aug. 12, 1985), reprinted in 11 Del. J. Corp. L. 604 (1986), appeal refused, 505 A.2d 452 (Del. 1985)). While there were material intervening events between the *Union Pacific I* and *Union Pacific II* decisions, together they may create the impression that an application for expedition is always either "too early" (*Union Pacific I*) or "too late" (*Union Pacific II*).
82 Id. at *3.
adequately remedied by a money damages award. The defendants argue that this is such a case, and I agree.\textsuperscript{65}

The subsequent events in the \textit{International Jensen} case are also instructive in terms of when expedition may be granted. The original complaint, filed by International Jensen shareholders, sought to enjoin Recoton Corporation’s acquisition of that company on the grounds that another bidder, Emerson Radio Corporation, was willing to pay a higher price. In denying the application for expedition, Vice-Chancellor Jacobs noted that it was not "a case where the unsuccessful bidder (here, Emerson) is in court seeking injunctive relief to compel a new auction and claiming that it is prepared to bid more than the successful bidder."\textsuperscript{66} Later, Emerson itself filed a complaint seeking to compel a new auction.\textsuperscript{67} The court responded by expediting the proceedings and holding a hearing on plaintiffs’ motion for a preliminary injunction, which it later denied.\textsuperscript{68}

In \textit{H.F. Ahmanson & Co. v. Great Western Financial Corp.},\textsuperscript{69} the plaintiff engaged in an attempted hostile takeover of Great Western.\textsuperscript{70} Ahmanson twice sought expedited discovery in aid of applications for injunctive relief in order to modify the date selected for Great Western’s annual stockholders’ meeting.\textsuperscript{71} Vice-Chancellor Jacobs declined to expedite discovery in both instances, largely on the grounds that there was no cognizable theory of irreparable harm.\textsuperscript{72} The court further observed that "no independent shareholder was complaining" and that "it appeared that Ahmanson was pressing the Court to expend its limited resources on what might be an unnecessary or duplicative injunction proceeding that would serve primarily Ahmanson’s individual strategic interests as a bidder, as distinguished from the interests of Great Western’s shareholders generally."\textsuperscript{73}

Nevertheless, the court decided that it would consider granting an injunction proceeding, contingent upon Ahmanson’s ability to exhibit a

\begin{footnotesize}
\textsuperscript{65}Id. at *1-2.
\textsuperscript{66}Id. at *6.
\textsuperscript{68}Id. at *67 (concluding that plaintiffs’ injunction claim “failed to establish that they [would] probably succeed on the merits of their claims”).
\textsuperscript{69}Id. at *6.
\textsuperscript{70}No. 15,650, 1997 Del. Ch. LEXIS 55 (Del. Ch. Apr. 25, 1997).
\textsuperscript{71}Id. at *1.
\textsuperscript{72}Id. at *3-6.
\textsuperscript{73}Id.
\end{footnotesize}
"legally cognizable claim[ ]" warranting injunctive relief.\footnote{Id. at *6-7.} Upon subsequent briefing and argument, the court found that neither cause of action at issue presented cognizable irreparable harm.\footnote{Id. at *7-10.} The court did, however, determine that one of the causes of action adequately alleged a violation of the defendant’s bylaws, which, in turn, could support a motion for injunctive relief to require an earlier stockholders’ meeting.\footnote{Id. at *9-10.} The court again noted that the relief sought by the plaintiff was "primarily to serve its individual interests as a bidder," and that "[n]o one representing the interests of the unaffiliated shareholders has come forward to claim a need for [such relief]."\footnote{H.F. Ahmanson & Co., 1997 Del. Ch. LEXIS 55, at *11.} Despite this shortcoming, the court sought to balance those factors, which "counsel against scheduling a preliminary injunction proceeding at [that] stage,"\footnote{Id.} with the bylaw violation allegations that "at the least, obligate the Great Western board to account for its acts."\footnote{Id. at *12.} Ultimately, the court declined the invitation to schedule an injunction hearing, but granted Ahmanson the opportunity to perform limited expedited discovery.\footnote{H.F. Ahmanson & Co., 1997 Del. Ch. LEXIS 55, at *12.} By employing this procedural device, the court believed that it would both protect Ahmanson’s rights, as well as shed light on whether injunctive relief was truly necessary.\footnote{Id.}

This result seems somewhat contradictory with \textit{International Jensen}, where the same Vice-Chancellor (Jacobs) expedited the proceedings for the bidding company but not for the target company’s shareholders. It does, however, provide new insight into the court’s views on expedition. Presumably, where the court views an application for expedition to be for purely "strategic" purposes, it will not burden the defendants with onerous expedited discovery. Moreover, the \textit{Ahmanson} case follows the post-1994 trend: First, by placing a higher burden on plaintiffs to justify expedition and, second, by making merit-related determinations on applications for expedition — even though, here, the ultimate decision on expedition was actually a motion to dismiss on the merits. On the other hand, \textit{Ahmanson} also demonstrated that the court
is not attempting to present what it perceives as the legitimate aspects of applications for expedition.

Most recently, Chancellor Chandler denied expedition in In re Western National Corp. Shareholders Litigation.102 This decision is noteworthy for a number of reasons apart from its holding. First, in Western National, Chancellor Chandler expressly adopted Chancellor Allen’s formulation of the standards for expedition in Giammargo.103 Because Chancellor Chandler succeeded Chancellor Allen as the Chief Judge of the Court of Chancery in June 1997, his decisions have enhanced significance. Thus, it can be assumed that Giammargo is firmly rooted as the standard for expedition that the court will apply. Second, Western National appears to be Chancellor Chandler’s first written decision denying expedition on an application for interim equitable relief since 1989, when (as a Vice-Chancellor), he penned the decision in Herd v. Major Realty Corp.104

Western National is also noteworthy because its holding appears to be diametrically opposed to then Vice-Chancellor Chandler’s decision granting expedition in Morton v. American Marketing Industry Holdings, Inc.105 In both cases, the plaintiff shareholders sought to enjoin proposed mergers on the grounds of allegedly inadequate disclosures made in connection therewith. Also in both cases, the mergers were foreordained because a majority of the stock of the corporations at issue was controlled by entities that favored the merger. Finally, in both cases the plaintiffs alleged that the disclosures were inadequate for purposes of aiding them in choosing between accepting the merger consideration or seeking an appraisal of their shares pursuant to section 262 of the Delaware General Corporation Law.106

The similarities between the two cases end there, however. In Morton, the plaintiff contended that "[w]ithout [the undisclosed] information, . . . he [was] unable to make an informed choice between seeking appraisal and accepting the merger price." The court observed that "[u]nder Delaware law, the ‘inability to make that choice constitutes irreparable harm, because having foregone one remedy, the plaintiffs may be unable to obtain the economic equivalent of the other." On those

103 Id., ltr. op. at 2.
104 No. 10,707 (Del. Ch. Nov. 8, 1989).
108 Id. (quoting Sealy Mattress Co. v. Sealy, Inc., 532 A.2d 1324, 1340 (Del. Ch. 1987)).
grounds, the court held that "a preliminary injunction hearing should be scheduled,"\textsuperscript{109} because "at least the potential for irreparable harm exist[ed]."\textsuperscript{110} Although on such grounds the court could have granted expedition consistent with the rationale of \textit{Giammargo}, which requires "a sufficiently colorable claim and . . . a sufficient possibility of a threatened irreparable injury,"\textsuperscript{111} instead \textit{Morton} distinguished \textit{Giammargo} on the basis that it "did not involve allegations of disclosure violations."\textsuperscript{112}

As noted above, the plaintiffs in \textit{Western National} also contended that the "alleged disclosure violations . . . [would] prevent them from making an informed choice" as to whether to accept the merger consideration or to seek appraisal."\textsuperscript{113} The court was not as sympathetic to such allegations this time, however, holding that:

any harm caused by the alleged disclosure violations does not render (and is not alleged to render) the shareholder vote on whether or not to approve the merger an inaccurate expression of choice by those shareholders approving the merger. The only harm alleged is the harm to the shareholders' ability to select one of the . . . options on an informed basis. If it is later determined that the defendants have breached their disclosure duty and that such breach prevented the shareholders from making an informed decision on which of the . . . forms of compensation to select, that harm may be remedied with an award of damages.\textsuperscript{114}

Of course, the same observations could have been made with respect to the disclosure allegations in \textit{Morton},\textsuperscript{115} which \textit{Western National} did not even cite, let alone distinguish. Nor did \textit{Western National} make any effort (as \textit{Morton} did)\textsuperscript{116} to distinguish \textit{Giammargo} on the grounds that it did not involve disclosure allegations. Instead, \textit{Western National}

\textsuperscript{109}Id.
\textsuperscript{110}Id.
\textsuperscript{112}\textit{Morton}, 1995 Del. Ch. LEXIS 162, at *7.
\textsuperscript{113}\textit{In re Western Nat'l Corp. Shareholders Litig.}, No. 15,927 (Cons.), ltr. op. at 5 (Del. Ch. Feb. 3, 1998).
\textsuperscript{114}Id.
\textsuperscript{116}Id. at *6-7.
recognized *Giammargo* as the standard for expedition in the Court of Chancery.\textsuperscript{117} *Morton* and *Western National* thus leave some uncertainty in their wake as to whether *Giammargo* should be applied in disclosure cases.

V. SOME QUALIFICATIONS

While the above recitation of authorities could lead the reader to believe that expedited proceedings in the Court of Chancery are things of the past, that would undoubtedly be an overstatement. Court of Chancery records reveal that between 1994 and 1996 — the period marking the recent wave of expedition denials — the court conducted approximately 160 TRO and/or preliminary injunction hearings.\textsuperscript{118} On the other hand, the more significant statistic may be how many *preliminary injunction* hearings were conducted, because it is these hearings which require the "heavy machinery" of expedited discovery.\textsuperscript{119} The court conducted approximately fifty preliminary injunction hearings during these three years. In that time, it declined to schedule at least seven preliminary injunction hearings, which, while not insignificant, is hardly an overwhelming percentage.\textsuperscript{120}

It is also noteworthy that, to the extent the Court of Chancery is

\textsuperscript{117} *In re Western Nat'l Corp. Shareholders Litig.*, No. 15,927 (Cons.), ltr. op. at 2.

\textsuperscript{118} The foregoing statistics were compiled from calendars and other records maintained by the Court of Chancery.

\textsuperscript{119} TRO hearings, by contrast, normally require little or no discovery. The only decision cited above that refused to schedule a TRO hearing was *In re Blockbuster Entertainment Corp. Shareholders' Litig.*, No. 13,319 (Cons.), 1994 Del. Ch. LEXIS 23 (Del. Ch. Mar. 1, 1994), *see supra* note 63. All of the other decisions that refused to schedule hearings did so in the context of injunction motions.

scrutinizing applications for expedition more closely, such scrutiny appears to be limited to applications for expedition in connection with motions for interim equitable relief, as opposed to applications for expedition in other contexts. For example, there are several types of corporate disputes over which the Court of Chancery has express statutory jurisdiction. The statutes in question and/or the interpretive case law contemplate that the actions thereunder will be "summary proceedings" (i.e., they will proceed on an expedited basis). Perhaps because of the statutory mandates, there does not appear to be any significant movement to curtail the expedition of these "summary proceedings." 

Expedited proceedings also do not appear to be in any jeopardy when they are prompted by objections to proposed settlements of stockholder class and derivative actions. That is, if the court determines that discovery is warranted in such a context, it will grant discovery on an expedited basis. Of course, any discovery granted in the settling of a class or derivative action must be expedited by definition, because there is generally not a great deal of time between the notice of the settlement to the class members and the hearing on the proposed settlement.

VI. SOME IMPLICATIONS

The implications for litigants are potentially enormous when the court denies either expedition or the scheduling of a TRO or preliminary injunction hearing at the outset of a case. As recognized in In re Blockbuster Entertainment Corp. Shareholders' Litigation, such a ruling "denies a party the opportunity to seek interim relief." Giammargo added that such a ruling "relegate[s] the [plaintiff] to an ex post remedy . . . early in the proceeding." Indeed, even the pre-1994 decision in

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121See Del. Code Ann. tit. 8, § 211 (1991 & Supp. 1996) (action to compel meeting of stockholders); id. § 220 (action to inspect corporate books and records); id. § 225 (action to determine election of directors).

122Expedition has been denied in summary proceedings in rare instances. See, e.g., H.F. Ahmanson & Co., No. 15,650, 1997 Del. Ch. LEXIS 55, at *3 (denying expedition in § 225 case where claim "was not cognizable because no election of directors had yet occurred"); Moore Bus. Forms, Inc. v. Cordant Holdings Corp., No. 14,595 (Del. Ch. Oct. 12, 1995) (denying expedition in § 225 case in view of pendency of motions in related action in the court).


125Id. at *2.

Tristar recognized that "when the Court is asked to refuse to schedule a [preliminary injunction] hearing and correlative to schedule the expedited discovery that would normally precede that hearing, it is in effect being asked to make a pre-preliminary determination of the case itself, a procedure which is not sanctioned by any rule of procedure, at least that is contained in our rule book."127

Given that the precedents on expedition since 1994 appear to place a higher burden on plaintiffs, it appears advantageous for defendants to continue opposing expedition when they have a legitimate basis. While this is perhaps good news for defense counsel, it also has a potentially detrimental impact on the public's perception of the Court of Chancery as an institution receptive to hearing matters on an expedited basis. Indeed, the recent decisions denying expedition reflect this concern by emphasizing that the court, despite these rulings, continues its "tradition of solicitude" towards expedited proceedings.128

Another potential contribution to this change in perception is that the decisions denying expedition, while representing a relatively small portion of the total applications for expedition, have been issued in cases that are, as a group, arguably higher in profile (including large corporate transactions of national interest).129 The fact that the denial of expedition has been historically rare only heightens the attention paid to such decisions.130

There are also other practical and theoretical consequences to the court's recent reluctance to schedule expedited proceedings. For example, there is a serious question whether a determination that plaintiffs are not entitled to equitable relief at the threshold, but

127 In re Tri-Star Pictures, Inc. Litig., No. 9477 (Cons.), slip op. at 1 (Del. Ch. Sept. 29, 1989). There is, of course, a mechanism provided by the rules for dealing with truly frivolous applications for interim equitable relief, which may be invoked by the defendants or the court without the serious consequences of denying expedition. Del. Ch. Ct. R. 11. On the other hand, given the hostility that is invariably injected into the proceedings by Rule 11 motions, one unintended benefit of the court's willingness to deny expedition may be to deter Rule 11 litigation.


129 See id. (involving Quaker Oats Company's acquisition of Snapple); Union Pacific Corp. v. Santa Fe Pacific Corp., Nos. 13,778 & 13,587, 1994 Del. Ch. LEXIS 188 (Del. Ch. Oct. 18, 1994) (involving a contest for control of Santa Fe between Union Pacific and Burlington Northern, Inc.).

130 As recognized by the court in Union Pac. Corp. v. Santa Fe Corp., Nos. 13,778 & 13,587, 1995 Del. Ch. LEXIS 10 (Del. Ch. Jan. 30, 1995), "which involv[ed] a $3.85 billion transaction and a contest for control of one of the country's largest railroad systems," id. at *11: "Ordinarily, a detailed opinion on a motion of this kind would be unnecessary. However, given the public interest in this controversy and the magnitude of what is at stake, an explanation of the Court's reasoning is appropriate." Id. at *2.
potentially entitled to monetary relief at a later point, effectively denies them of any remedy at all. This is particularly problematic in light of section 102(b)(7) of the Delaware General Corporation Law,\textsuperscript{131} which permits a corporation to adopt a charter provision shielding its directors from monetary liability — but not from injunctive relief — for acts of gross negligence in breach their fiduciary duty of care, but not for acts that violate their duty of loyalty.\textsuperscript{132}

In *International Jensen*, the plaintiffs asserted that if they were prevented by the court from obtaining injunctive relief, they might possess no alternative remedy since "(i) they have alleged breaches of both the duties of loyalty and care and (ii) should the Court reject their duty of loyalty claims, no recovery would be available on the duty of care claims, because [the company's] charter contains an exculpatory clause modeled after . . . [section] 102(b)(7)."\textsuperscript{133} The court rejected this argument on the grounds that the "essence of plaintiffs' complaint" was a duty of loyalty claim, as opposed to a duty of care claim, and that if the duty of loyalty claim survived, then money damages would be adequate.\textsuperscript{134}

While this reasoning may be sound, it is somewhat at odds with the


\textsuperscript{132}The full text of section 102(b)(7) reads as follows:

(b) In addition to the matters required to be set forth in the certificate of incorporation by subsection (a) of this section, the certificate of incorporation may also contain any or all of the following matters:

. . .

(7) A provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director: (i) For any breach of the director's duty of loyalty to the corporation or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under § 174 of this title; or (iv) for any transaction from which the director derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective. All references in this paragraph to a director shall also be deemed to refer (x) to a member of the governing body of a corporation which is not authorized to issue capital stock, and (y) to such other person or persons, if any, who, pursuant to a provision of the certificate of incorporation in accordance with § 141(a) of this title, exercise or perform any of the powers or duties otherwise conferred or imposed upon the board of directors by this title.


\textsuperscript{134}Id. at *5.
following observations by the Delaware Supreme Court in *Arnold v. Society for Savings Bancorp, Inc.*, 135 which was decided just weeks before *International Jensen*:

> Notwithstanding Section 102(b)(7), monetary damages are available for wrongful conduct going beyond duty of care violations. Moreover, equitable remedies not involving monetary damages are also permitted. Thus, an injunction ... was an available remedy at an early stage of these proceedings. The mere fact that these remedies were found unavailing does not mean that there should now be a finding of money damages against the corporate defendants.

While section 102(b)(7) and charter provisions adopted thereunder will leave stockholders without a monetary remedy in some instances, they remain protected by the availability of injunctive relief. Stockholders are not discouraged from pursuing such remedies when warranted. The Delaware courts are quite capable of addressing expedited claims ... The Court of Chancery is responsive and this Court has demonstrated its willingness and ability to consider expedited appeals in appropriate injunction cases. 136

There is an apparent tension between the Delaware Supreme Court's insistence in *Arnold* that money damages are not necessary to remedy fiduciary duty violations because injunctive relief is available, and the Court of Chancery's insistence in *International Jensen* and other cases that injunctive relief is not necessary to remedy fiduciary duty violations because monetary damages are available and expedited proceedings are too burdensome. 137

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135 678 A.2d 533 (Del. 1996).
136 *Id.* at 541-42 (citations omitted).
137 Another potential consequence of denying expedition of proceedings at the threshold on the grounds that there is no equitable basis for an injunction is that it could deprive the court of continuing jurisdiction over the case. In most of the cases cited above, there were claims of a breach of fiduciary duty, which served as an independent basis for Court of Chancery jurisdiction apart from the claims for equitable relief. *See Harman v. Masoneilan Int'l, Inc.*, 442 A.2d 487, 492 (Del. 1982) (holding that "the claim lies within equity's inherent or exclusive jurisdiction even though damages through an accounting may be the only feasible relief") (emphasis omitted). Moreover, even where there were no claims of a breach of fiduciary duty, as in Redsail Easter Ltd. Partners, L.P. v. Radio City Music Hall Productions,
While it would certainly be an overstatement to say that the Court of Chancery is closing its doors to expedited proceedings, case law since 1994 has made it more difficult for plaintiffs to obtain such treatment on motions for interim equitable relief. This case law has the obvious benefit of conserving the resources of litigants and the court in more marginal cases, as well as potentially deterring purely strategic applications for expedited discovery. However, these decisions plainly involve threshold determinations on the merits of motions for interim equitable relief in a manner not contemplated by any rule of procedure. Additionally, they have implications on the public’s perception that the Court of Chancery provides prompt equitable relief.

Inc., No. 12,036 (Del. Ch. Apr. 9, 1991), there were usually claims that fell under the court’s statutory jurisdiction, such as claims for dissolution of a limited partnership and breach of a limited partnership agreement. See Del. Code Ann. tit. 6, § 17-802 (1993) (application for dissolution of limited partnership made to Court of Chancery); id. § 17-111 (action concerning limited partnership agreement may be brought in Court of Chancery). If there had not been such basis for the court’s jurisdiction, the court could have had the duty to dismiss the cases sua sponte for lack of subject matter jurisdiction. See Del. Ch. Ct. R. 12(h)(3) ("Whenever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.")(emphasis added); but see, e.g., New Castle County Volunteer Firemen’s Ass’n v. Belvedere Volunteer Fire Co., 202 A.2d 800, 803 (Del. 1964) (finding that under the equity clean-up doctrine, when once “jurisdiction is properly obtained by Chancery, it will go on to decide the whole controversy, even though to do so involves the giving of a purely legal remedy").