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COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE

JACK B. JACOBS  
VICE-CHANCELLOR

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WILMINGTON, DELAWARE 19801

September 12, 2000

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DEPARTMENT OF  
CORRECTIONS

SEP 12 2000  
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FILED

Re: R. Ted Weschler v. Quad-C, Inc. And  
Terrence D. Daniels  
ivi Action No. 18118

Gentlemen:

Pending is the defendants' motion to stay discovery pending the disposition of their motion to dismiss for failure to make a demand or plead demand futility, for lack of personal jurisdiction, for improper venue, and for failure to state a claim on which relief can be granted. The motion is potentially case dispositive,

Absent special circumstances, discovery will normally be stayed pending the determination of a motion to dismiss the complaint. "Special circumstances"

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have been found to include situations where (i) the motion does not offer a “reasonable expectation” of avoiding further litigation, (ii) the plaintiff has requested interim relief, and (iii) the plaintiff will be prejudiced because the information may be **unavailable** at a later time.’

In this case the plaintiff does not seek interim relief, nor does he claim that a brief delay of discovery would be prejudicial.<sup>2</sup> Rather, the plaintiffs position is that the motion, **regardless** of its outcome, does not offer a “reasonable expectation” of avoiding further litigation because: (i) if venue is found to be improper, he will refile the suit in a jurisdiction where venue is proper, (ii) if the complaint is found to be defective, he will amend it to cure its defects,

This position, if accepted, would doom any motion to stay discovery to failure, because any plaintiff opposing the motion could merely promise to refile his lawsuit or **curatively** amend his complaint. That is not what the “no-reasonable-expectation-of-avoiding future litigation” exception is about. That exception is designed primarily to cover the situations where the dismissal motion,

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<sup>1</sup>Greenspan v. Hinrichs, Del. Ch., C.A. Nos, 15459, 15461, Jacobs, V.C. (Feb. 10, 1998)(citing In Re McCrory Parent Corp., Del. Ch., C.A. No. 12006, Allen, C. (July 3, 1991)).

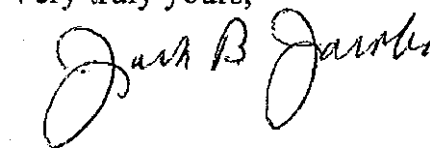
\*Briefing on the dismissal motion will be completed in approximately four weeks.

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even if granted, would leave at least one or more claims against one or more parties still pending. Discovery procedures are not available to uncover the basis of claims not yet asserted or of lawsuits not yet filed?

The motion to stay discovery is therefore granted. IT IS SO ORDERED.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jack B. Jacobs".

cc: Register in Chancery

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<sup>3</sup>See Weinberaer v. Palm Beach, Inc., Del. Ch., C.A. No. 7696, Berger, V.C. (July 9, 1985); Grimes v. Donald, Del. Supr., 673 A.2d 1207, 1218, n. 22 (1996).