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Re: *Mirarchi, et al. v. Picard, et al.,* CA. No. 17495
Chevedden v. Burnham, et al., C.A. No. 17838
Haar v. Barrett, et al., CA. No. 19018
Lasker v. Barrett, et al., C.A. No. 19027

Dear Counsel:

I do not believe oral argument is necessary in order to resolve the pending motion. Accordingly, this letter sets forth my decision on plaintiffs' motion to consolidate the four above-captioned cases. Having reviewed the facts as well as the underlying legal issues, I am not persuaded that the connection between the four actions is sufficient to justify a consolidation of all four cases. I am, however, satisfied that two pairs of factually related actions do encompass common issues of fact and law and should be tried

together. Thus, the motion to consolidate is granted in part and denied in part.

Court of Chancery Rule 42 authorizes the consolidation of separately commenced actions in narrowly defined circumstances:

> [W]hen actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

The prerequisite for consolidating multiple actions is a finding of common issues of law, common issues of fact, or both.* The inquiry is whether justice can be administered between the parties without a multiplicity of suits.[2] When determining the merits of a proposed consolidation, I must exercise certain discretion and weigh the possible saving of time and effort that consolidation would advance against any inconvenience, delay, or expense that it would occasion.[3]

Mirarchi **v.** *Picard* (C.A. No. 17495) and ***Chevedden v. Burnham*** (C.A. No. 17838) both involve the adequacy of Raytheon's financial

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[1] James W. Moore, et al., Moore's Federal Practice § 42.10[2][c] (Matthew Binder 3d ed.).
[2] ***Cahall v. Lofland, 108*** A. 752 (Del. Ch. 192Q).
[3] ***Joseph*** v. ***Shell Oil*** Co., 498 **A.2d** 1117, 1123 (Del. Ch. 1985).

reporting with respect to that company's integration of newly acquired businesses. As part of an expansion strategy that Raytheon adopted in the early 1990's, it acquired various assets, including Texas Instruments ("Texas") in January 1995 and Hughes Electronics ("Hughes") in December 1997. Following these acquisitions, Raytheon is reported to have encountered difficulty pertaining to the integration of these new investments. At the same time, Raytheon's operational reporting system failed to reflect accurately the integration of certain businesses and assets, as a consequence of which it took an insufficient earnings charge in October 1998.

The complaints in *Mirarchi/Chevedden* allege that the Raytheon board failed to implement a reliable financial reporting system. They also claim that Raytheon's annual financial statements for 1997 and 1998, as well as its quarterly statements until the second quarter of 1999, were misstated. In addition, plaintiffs challenge press releases Raytheon issued on January 28, April 22 and July 1999 for being materially misleading. As a result, a federal class action was filed in which certain plaintiffs maintained that the director defendants' lack of good faith in overseeing and monitoring the reporting system regarding the integration of acquisitions constituted a violation of their duty of care. Here, plaintiffs' actions against the Raytheon board now seek damages for the cost Raytheon incurred in fending off the

federal action, plus indemnification for the harm the federal action inflicted upon Raytheon's reputation, as well as the decline in Raytheon stock.

In July 2000, Raytheon consummated a stock purchase agreement it had entered on April 14, 2000 and sold its Raytheon Engineering and Construction International, Inc. ("RE&C") subsidiary to Washington group International ("WGI"). Alleging fraud and misrepresentations, WGI commenced an action against Raytheon seeking to obtain damages and the rescission of the agreement. The WGI action has since been litigated and settled.

Both in *Haar v. Barrett* (C.A. No. 19018) and *Lasker v. Barrett* (C.A. No. 19027), plaintiffs filed actions against the Raytheon board of directors that attacked the stock purchase agreement. Contending that the WGI action resulted from infirmities in the stock purchase agreement, the *Haar* and *Lasker* plaintiffs seek redress for the injury Raytheon suffered as a result of the litigation. Plaintiffs specifically assert that, while negotiating with WGI or during WGI's due diligence, Raytheon failed to procure adequate information concerning construction project contracts. Additionally, the *Haar* and *Lasker* plaintiffs assert a claim against PricewaterhouseCooper ("PWC"), RE&C's auditing firm, for knowingly contributing to Raytheon's

disclosure of inaccurate financial data in the context of the WGI negotiations.

PWC's role, however, is confined to the *Haar/Lasker* litigations. Given that plaintiffs also sue the auditing firm, the complaints involve an array of legal theories ranging from breach of fiduciary duty, to breach of contract and a professional negligence theory.

A comparison of the relevant time periods to which the four actions refer reveals that the pertinent conduct underlying the complaints divides into two distinct sets of facts, separated by approximately seventeen months (Oct. 1998 – April 2000). Moreover, different individual shareholders commenced the four suits, obtaining representation by different counsel. Although the *Mirarchi/Chevedden* actions appear to be derivative of the October 1998 business integration and write down dispute, the *Haar/Lasker* claims are centered upon Raytheon's sale of its subsidiary RE&C to WGI and the shareholder litigation that ensued. All four actions press claims against the director defendants for alleged breaches of their fiduciary duty, but only the complaints in *Haar/Lasker* (because of their claims vis-a-vis the auditors) assert additional theories based upon the breach of contract and

professional negligence. Despite the similarity of legal theories, this Court assesses the viability of the claims presented in their special context. In contrast to the *Mirarchi/Chevedden* actions, which are based on fiduciary duty issues relating to the integration and control of Raytheon's newly acquired assets, the *Haar/Lasker* actions challenge the defendants' observance of their duties in a completely unrelated context-Raytheon's sale of RE&C. Additionally, the four actions do not simply address the Raytheon officers and directors as one and the same group of defendants. Instead, in the course of time the composition of the Raytheon board was subject to change and the *Haar/Lasker* litigation introduces five additional defendants on the one hand, including PWC, but refrains from asserting claims against James Land or Thomas Phillips on the other hand.[4]

A consolidation is not called for as a practical matter either. Presently, defendants have submitted motions in all four actions petitioning the Court to dismiss the cases for failure to make a demand pursuant to Rule

[4] The *Mirarchi/Chevedden* action names as defendants Dennis J. Picard, Daniel P. Burnham, Ferdinand Colloredo-Mansfeld, John M. Deutch, Thomas E. Everhart, John R. Galvin, L. Dennis Kozlowski, James N. Land, Henrique de Campos Mereilles, Thomas L. Phillips, Warren B. Rudman and Alfred M. Zeien. In contrast, the defendants in the *Haar/Lasker* action constitute a different set of board members, *i.e., Barbara M. Barrett,* Daniel P. Burnham, Ferdinand Colloredo-Mansfeld, Henrique de Campos Mereilles, John M. Deutch, Thomas E. Everhart, John R. Galvin, L. Dennis Kozlowski, Dennis J. Picard, Frederic M. Poses, Warren B. Rudman, Michael Ruettgers, William R. Spivey and Alfred M. Zeien. In addition, the *Haar/Lasker* action also names the auditing firm of PricewaterhouseCoopers, LLP, who offered services to the subsidiary, as a defendant.

23.1. As established by the Supreme Court in *Rales*,[5] the demand futility analysis, which the Court will be asked to apply, requires an examination of the board's business judgment "at the time the complaint is filed." Since the four actions relate to two separate sets of facts, the complaints have been filed independently of one another, necessitating separate judicial review. Finally, in the four cases, the composition of the board of directors, the conduct of which is the subject of this Court review, changed over time. As a result, the legal analysis to be applied must not only account for the timing of the two unrelated litigations but it also must acknowledge that the group of defendants changed over time. Accordingly, it stands to reason that there is no, or only little, factual overlap. As a consequence, the requested consolidation cannot produce the economies and efficiencies it is designed for, and must be denied.

Consistent with this Court's earlier finding in *Cahall*,[6] that disallowed "[a] combination in one suit of distinct and independent matters," I find that the four actions do ,not share a sufficient nexus to warrant consolidation. Other than naming Raytheon as the common defendant, I cannot discern any other point, either factually or legally, to which one could connect the four

[5] *Rales v. Blasband*, 634 A.2d 927 (Del. 1993).
[6] *See Cahall v. Lofland*, 108 A.2d 752,754 (Del. Ch. 1920).

actions. In addition to the apparent absence of commonalities, the four cases deserve to be decided separately by reason of the different time periods, the changing composition of the group of defendants and most of all, because the required legal analysis compels the Court to scrutinize the defendants individually, rather than as a group. I thus fail to see how the consolidation of the four actions into one promotes the administration of justice.

On the other hand, one can discern two separate sets of actions that encompass the exact same factual background and raise identical legal issues. In the exercise of my discretion under Rule 42, and in the interest of judicial economy, I conclude that the motion to consolidate must be granted in part and denied in part. While the four actions are too incongruent to be consolidated into a single action, good and sufficient reason exists to consolidate the *Mirarchi* action with the ***Chevedden*** action, and the ***Haar*** action with the ***Lasker*** action.

Counsel should submit a conforming Order.

Very truly yours,

William B. Chandler III

WBCIII:meg

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