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WILLIAM B. CHANDLER III
CHANCELLOR

January 3, 2000

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P O BOX 581
GEORGETOWN, DELAWARE 19947

Stephanie M. Tarabicos
Morris, James, Hitchens & Williams LLP
P.O. Box 2306
Wilmington, DE 19899

Megan Semple Greenberg
Richard, Layton & Finger
P.O. Box 55 1
Wilmington, DE 19899

Re: *In the Matter of Magnolia Clinical Research, Inc.*
Civil Action No. 17311 -NC

Dear Counsel:

Petitioner Gail Trauco-Christensen seeks an Order of Dissolution and Appointment of a Receiver under 8 *Del. C.* § 273. Section 273 allows one stockholder of a “joint-venture” corporation to file a petition in this Court that, if granted, dissolves the corporation and distributes its assets. For § 273 to apply, the business relationship must constitute a joint venture corporation having two stockholders, each owning fifty percent (50%) of the corporation’s stock. That is the case here regarding Magnolia Clinical Research, Inc. (“Magnolia”). Generally, § 273 is applicable only when there is a rift between two fifty percent (50%) stockholders that prevents agreement on the desirability of dissolving the joint venture and the method for distributing its assets. See, e.g., *In re Venture Advisers*,

Inc., Del. Ch., C.A. No. 9439, *let. op.* at 7-8, *Berger, V.C.* (Dec. 1, 1988). It is undisputed that Magnolia's two shareholders are irreconcilably divided on those issues. For that reason, under § 273, this Court is empowered to order Magnolia's dissolution.

Respondent Brenda Wall, however, objects to dissolution. She contends that petitioner is wrongfully seeking "dissolution at a particular time in order to free [herself] to exploit a specific future business opportunity personally that would rightfully belong to the company if it should happen to continue to exist as a going concern at that future time." *In re Data Processing Consultants, Ltd.*, Del. Ch., C.A. No. 8907, *slip op.* at 13, *Allen, C.* (Nov. 25, 1987). Respondent also notes that she has a pending action against petitioner in federal district court in Georgia alleging, among other things, breach of fiduciary duties and tortious interference with contract.

Section 273 proceedings are narrow in scope. Only issues "directly related" or "immediately relevant" to the dissolution are properly raised. See *id.*, *slip op.* at 14-15. For example, this Court has held that a § 273 proceeding is not the appropriate vehicle to seek damages or the imposition of a constructive trust for breach of fiduciary duty. *Id.*, *slip op.* at 13-14. Section 273 concerns dissolution of the enterprise, and formulation of a plan to distribute its remaining assets. Accordingly, the allegations that give rise to respondent's federal complaint should

in no way prevent dissolution of Magnolia. Magnolia's continued corporate existence is not a necessary prerequisite for the federal court to reach full and just resolution of the pending action before it. Nor has respondent argued to the contrary.

Respondent also fails to allege sufficiently an attempt by petitioner to exploit personally "specific future" business opportunities. She does allege that petitioner "commenced a competing business and began to divert business of Magnolia to such competing business," and "hired and attempted to hire Magnolia's consultants." These allegations, even if taken as true, do not, in my opinion, constitute the "specific future" harm mentioned by the *Data Processing* Court. Furthermore, these allegations, which are similarly asserted in the federal action, can be addressed adequately by the federal court, without interfering with the dissolution action in this Court.

Section 273 exists to enable deadlocked shareholders to bring closure to what *has become* an inefficient and unworkable relationship. As dissolution will not generally be sought if all is well with a joint venture, it follows oft-times that the relationship will be rather strained when a shareholder seeks dissolution under §273. There may well be related litigation-often involving allegations of breach of fiduciary duty-contemporaneous to a § 273 proceeding. It makes little sense to deny dissolution pending resolution of these other actions unless, for instance,

special circumstances such as these mentioned in *Data Processing* are involved. For this reason, § 273 proceedings are intended to be narrow in scope and summary in nature. See D. Wolfe & M. Pittenger, *Corporate and Commercial Practice in the Delaware Court of Chancery*, § 8-11(a) (1998).

For all of the foregoing reasons, I grant petitioner's motion for appointment of a receiver for the purpose of dissolving Magnolia. Counsel shall confer so as to present the Court with an implementing order. Counsel should try to agree upon a proposed receiver who will, of course, assess the claims and counterclaims asserted in the federal action in determining how to proceed with the dissolution.

Very truly yours,

A handwritten signature in black ink, appearing to read "Wm B Chandler III". The signature is written in a cursive, slightly slanted style.

William B. Chandler III

WBCIII:meg

oc: Register in Chancery
xc: Vice Chancellors
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