IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF	:	
TEXAS EASTERN OVERSEAS, INC.,	:	**C.A. No. 4326-VCN**
a dissolved Delaware corporation,	:	

MEMORANDUM OPINION

Date Submitted: July 21, 2009
Date Decided: November 30, 2009

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NOBLE, Vice Chancellor

I. INTRODUCTION

Petitioner AmeriPride Services Inc. ("AmeriPride") seeks the appointment of a receiver, pursuant to 8 *Del. C.* § 279, for Respondent Texas Eastern Overseas, Inc. ("TEO"), a dissolved Delaware corporation. TEO's predecessor-in-interest, Valley Industrial Services, Inc. ("VIS"), owned and operated an industrial cleaning facility in California (the "Facility") now owned by AmeriPride. During VIS's tenure, hazardous substances were released from the Facility into the soil and groundwater. AmeriPride has expended significant sums to study and remedy the contamination, and it seeks contribution from TEO in an action filed, and currently pending, in the United States District Court for the Eastern District of California (the "Federal Action").[1] The appointment of a receiver for TEO is necessary to maintain that lawsuit and to pursue potential insurance coverage. TEO, represented here through insurers who may have insured VIS, has moved to dismiss the Petition for failure to state a claim; AmeriPride has moved for judgment on the pleadings. This memorandum opinion resolves the competing motions.

[1] *AmeriPride Servs. Inc. v. Valley Indus. Servs., Inc.*, No. CIV. S-00-113 LKK/JFM (E.D. Cal.)

II. BACKGROUND

AmeriPride owns and operates an industrial laundry in Sacramento, California on the site of the Facility, which was constructed in the early 1960's.[2] In 1997, during remodeling work, AmeriPride detected the presence of several contaminants in the soil, including the dry-cleaning solvent perchloroethylene ("PCE"), which was reportedly used at the site from the early 1960's to 1982.[3] Because AmeriPride now owns the Facility, it has been required to monitor, remediate, and conduct ongoing investigations of the PCE contamination;[4] these measures have caused it to incur significant costs.[5] AmeriPride maintains that the PCE pollution was caused by VIS, which owned and operated the Facility for industrial cleaning purposes from 1972 to 1983. TEO acquired VIS through a

[2] The facts are drawn primarily from the Verified Petition for Appointment of Receiver for a Dissolved Corporation Pursuant to 8 *Del. C.* § 279 (the "Petition"). The background has been amplified by reference to California Regional Water Quality Control Board, Central Valley Region (the "Board"), Cleanup and Abatement orders. Pet. Ex. 3 at 1; Ex. 4-6.

[3] Later investigations revealed PCE contamination in the groundwater beneath, and in the vicinity of, the Facility.

[4] Pet. ¶ 12. AmeriPride, as the Facility's current owner and operator, is responsible for investigating and remedying the pollution under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et. seq.* ("CERCLA") and regulations of the United States Environmental Protection Agency ("EPA").

[5] *Id.* at ¶¶ 12, 13. Specifically, AmeriPride claims to have spent $17,000,000 on groundwater investigation, remediation, water replacement and monitoring costs, and expects to incur an additional $6,200,000 for future remediation and monitoring activities ordered by the Board.

series of mergers, and the Facility was sold to AmeriPride's predecessor-in-interest in 1983.[6] TEO was dissolved in November 1992.[7]

On January 19, 2000, AmeriPride sued VIS, TEO, and others in the Federal Action to recover the costs incurred in investigating, monitoring, and remedying the contamination.[8] On July 2, 2007, the District Court approved a settlement between AmeriPride and all defendants, except for VIS and TEO.[9] Shortly thereafter, the District Court approved an agreement between AmeriPride and TEO, which granted leave for TEO's counsel to withdraw and permitted AmeriPride to take a default judgment against TEO if no other counsel appeared on its behalf after sixty days from notice of the Court's order.[10] TEO's insurers and AmeriPride then engaged in settlement discussions, which ultimately proved

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[6] *Id.* at ¶¶ 4, 9. VIS was purchased by Petrolane, Inc. in the early 1970's; Petrolane continued to operate VIS as a wholly-owned subsidiary, but it sold the Facility in 1983 to Mission Industries. Mission Industries almost immediately thereafter resold the Facility to Welch's Overall Cleaning Co, Inc., which merged into AmeriPride in 1998. TEO purchased Petrolane in 1984, after it had sold the Facility. *See supra* note 1, Order Granting TEO's Mot. to Dismiss in the Federal Action, dated Nov. 24, 2008. Pet. Ex. 11 at 2.

[7] Pet. ¶ 2 & Ex. 2.

[8] *Id.* at ¶ 14. AmeriPride contends that TEO, as the owner and operator of the Facility at the time of contamination, is liable for AmeriPride's investigation and remediation costs under CERCLA as well as the California Health and Safety Code; it also filed equitable indemnity and contribution claims. *Id.*

[9] *Id.* at ¶ 17. The District Court's order approving settlement has been reported as *AmeriPride Services, Inc. v. Valley Industrial Services., Inc.*, 2007 WL 1946635 (E.D. Cal. July 2, 2007).

[10] *Id.* at ¶¶ 20, 21; *see also supra* note 1, Stip. to Permit Entry of Default J., dated Sept. 7, 2007. Pet. Ex. 9 at 4.

unsuccessful. In May 2008, the insurers appointed counsel to defend TEO, thereby precluding default judgment in the Federal Action.[11]

In September 2008, TEO moved to dismiss AmeriPride's claims in the Federal Action for TEO's lack of capacity to be sued, citing 8 *Del. C.* § 278 and claiming that, because TEO has been dissolved for more than three years, it could no longer be sued. The District Court granted TEO's motion, but stayed the Federal Action to allow AmeriPride the opportunity to petition this Court for appointment of a receiver pursuant to 8 *Del. C.* § 279.[12] AmeriPride thereafter filed this action for the appointment of a receiver for TEO.

III. THE CONTENTIONS

A. *AmeriPride's Contentions*

AmeriPride contends that it has good cause for the appointment of a receiver. First, it claims that TEO has assets: namely, the insurance policies issued by the insurers defending TEO in this proceeding as well as in the Federal Action. Second, it argues that the policy concerns underlying 8 *Del. C.* § 278 and its three-year dissolution period are not implicated by the Petition. Because AmeriPride does not seek recovery from any of TEO's former shareholders, officers, or

[11] *Id.* Those insurers include members of the ACE Insurance Group, the American International Group and Lloyd's of London. *Id.* at ¶ 3. AmeriPride chose not to take the default judgment while it was engaged in the settlement negotiations. *Id.* at ¶ 20.

[12] *Id.* at ¶ 23; *see supra* note 1, Order Granting TEO's Mot. to Dismiss in the Federal Action, dated Nov. 24, 2008. Pet. Ex. 11 at 19.

directors, it contends that the Petition does nothing to jeopardize § 278's "protective purpose" of providing shareholders with a time period after which they may expect not to be sued.[13] Lastly, it asserts that it has a bona fide claim against TEO in the Federal Action.

B. *TEO's Contentions*

TEO claims that § 278 provides a three-year period after which dissolved corporations are no longer subject to suit and that appointment of a receiver under § 279 cannot be used to defeat this time limitation. It relies upon *In re Dow Chemical International Inc. of Delaware* in which this Court held that a "petitioner cannot use § 279 to bypass the three-year limitation under § 278 when a dissolved corporation holds no assets."[14] TEO maintains that it has no assets, and it argues that AmeriPride has done nothing more than put forth the "unsupported allegation that some undefined insurance asset exists from which AmeriPride may recover."[15] It therefore concludes that the appointment of a receiver under § 279 is not warranted by "speculation about availability of insurance proceeds."[16] As a related point, TEO asserts that AmeriPride's petition is barred by laches.

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[13] Pet. ¶ 26.
[14] TEO's Br. in Supp. of its Mot. to Dismiss at 7 (quoting *In re Dow Chem. Int'l Inc. of Del.*, 2008 WL 4989069, at *2 (Del. Ch. Nov. 18, 2008)).
[15] TEO's Br. in Opp. to AmeriPride's Mot. for J. on the Pleadings at 12.
[16] TEO's Br. in Supp. of its Mot. to Dismiss at 8.

IV. ANALYSIS

This matter turns on whether AmeriPride has asserted reasonable grounds to conclude that TEO has undistributed assets warranting the appointment of a receiver. As will be explained in greater detail, AmeriPride has made this showing, in part through reliance upon a series of orders issued by the Board suggesting the existence of insurance assets. In addition, the policies underlying § 278's time limitation will be only minimally implicated, and it is, for purposes of this proceeding, undisputed that AmeriPride has a bona fide claim against TEO in the Federal Action. Thus, AmeriPride has shown good cause for the appointment of a receiver.

A. *The Applicable Standards of Review*

This memorandum opinion addresses TEO's motion to dismiss for failure to state a claim pursuant to Court of Chancery Rule 12(b)(6) and AmeriPride's motion for judgment on the pleadings brought under Court of Chancery Rule 12(c). The Court will grant a motion to dismiss under Rule 12(b)(6) only if it can determine with reasonable certainty that a plaintiff "can prevail on no set of facts that can be inferred from the pleadings."[17] A motion for judgment on the pleadings, on the other hand, "may be granted only when no material issue of fact

[17] *Nemec v. Shrader*, 2009 WL 1204346, at *3 (Del. Ch. Apr. 30, 2009) (citing *Solomon v. Pathe Commc'ns Corp.*, 617 A.2d 35, 38 (Del. 1996)).

exists and the movant is entitled to judgment as a matter of law."[18] Under both rules, the Court may consider the content of documents integral to, and incorporated by reference into, the Petition.[19]

B. *Section 278* and *Section 279 of the DGCL*

Although AmeriPride seeks relief under § 279 of the Delaware General Corporation law, TEO argues that the Petition is barred by § 278, which provides in part:

> All corporations, whether they expire by their own limitation or are otherwise dissolved, shall nevertheless be continued, for the term of 3 years from such expiration or dissolution or for such longer period as the Court of Chancery shall in its discretion direct, bodies corporate for the purpose of prosecuting and defending suits, whether civil, criminal or administrative, ...[20]

Furthermore, "any action, suit, or proceeding," brought by or against the corporation before or during the three years following the date of the corporation's dissolution "shall not abate by reason of the dissolution of the corporation," and the corporation will thus continue as a "body corporate" beyond that three-year period for the purpose of defending or prosecuting the suit.[21]

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[18] *Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund, II, L.P.*, 624 A.2d 1199, 1205 (Del. 1993).
[19] *Werner v. Miller Tech. Mgmt., L.P.*, 831 A.2d 318, 327 (Del. Ch. 2003) (applying the above-stated rule in the context of a Rule 12(b)(6) motion to dismiss); *Petroplast Petrofisa Plasticos S.A. v. Ameron Int'l Corp.*, 2009 WL 3465984, at *8 (Del. Ch. Oct. 28, 2009) (applying the above stated rule in the context of a Rule 12(c) motion for judgment on the pleadings and quoting *McMillan v. Intercargo Corp.*, 768 A.2d 492, 500 (Del. Ch. 2000)).
[20] 8 *Del. C.* § 278.
[21] *Id.*

In this instance, § 278 must be read together with § 279 as part of a broader statutory scheme. Section 279 provides in part:

> When any corporation organized under this chapter shall be dissolved in any manner whatsoever, the Court of Chancery, on application of any creditor, stockholder or director of the corporation, *or any other person who shows good cause therefor*, at any time, may . . . appoint 1 or more persons to be receivers, of and for the corporation, to take charge of the corporation's property . . . with power to prosecute and defend, in the name of the corporation, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid.[22]

In *In re Citadel Industries, Inc.*, this Court commented that "the statutory scheme [established by §§ 278, 279] seems to contemplate two situations," one in which the corporation maintains its status as a legal entity "and is capable of winding up its affairs through its own officers and directors," and the other in which the corporation no longer has legal existence, and therefore requires a receiver or trustee to oversee its "unfinished business."[23] Our Supreme Court has held that, "in tandem," the two statutes ensure that a dissolved corporation maintains the authority and viability to sue and be sued "incident to the winding up of its affairs."[24]

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[22] 8 *Del. C.* § 279 (emphasis added).
[23] 423 A.2d 500, 504 (Del. Ch. 1980); *see also City Investing Co. Liquidating Trust v. Cont'l Cas. Co.*, 624 A.2d 1191, 1195 (Del. 1993) ("Section 278 provides an automatic extension of corporate existence for three years. . . . [A] petition under Section 279 is directed to the restoration of corporate existence once terminated under Section 278 or otherwise by the action of its officers and directors.").
[24] *City Investing Co.*, 624 A.2d at 1195.

TEO claims that petitions brought under § 279 are barred when "the purpose is to pursue a lawsuit on a claim that arose after the § 278 period has expired."[25] In support of this proposition, it relies upon this Court's two decisions in *In re Dow Chemical International Inc. of Delaware*.[26] The facts of *Dow Chemical* are somewhat similar to those present here: a representative of a group of plaintiffs pursuing tort litigation in California against a dissolved Delaware corporation filed a petition under § 279 for the appointment of a receiver to maintain the California action.[27] The Court in *Dow I* held that "the purpose of § 279 is to benefit shareholders and creditors where there are undisposed of assets remaining after dissolution" by permitting the appointment of a receiver to collect and distribute these assets.[28]

Both *Dow* opinions emphasized and relied upon the fact that the dissolved corporation had no assets left to distribute. In *Dow I*, the Court concluded that "petitioner cannot use § 279 to bypass the three-year limitation under § 278 when a dissolved corporation *holds no assets*," and thereafter denied the § 279 petition.[29] It later denied the petitioner's motion for reargument in *Dow II* on the ground that

[25] TEO's Br. in Supp. of its Mot. to Dismiss at 5.
[26] *In re Dow Chem. Int'l Inc. of Del.*, 2008 WL 4603580 (Del. Ch. Oct. 14, 2008) ("*Dow I*"); *In re Dow Chem. Int'l Inc. of Del.*, 2008 WL 4989069 (Del. Ch. Nov. 18, 2008) ("*Dow II*").
[27] *Dow I*, 2008 WL 4603580, at *1.
[28] *Id.*
[29] *Id.* at *2 (emphasis added).

there was no misunderstanding that the dissolved corporation had no assets left to distribute:

> The only mention in the Application regarding assets of Dow Chemical of Delaware is that petitioner did not have access to respondent's financial records or insurance information, and that "[a] receiver would have standing to marshal liability insurance policies likely held by respondent. Respondent filed an affidavit along with its opposition to the Application that stated that Dow Chemical of Delaware has not had assets since December 1988. Petitioner alleged nothing to rebut this claim. In the motion for reargument petitioner claims that Dow Chemical of Delaware "may" still hold some assets and that it held assets in 1985, three years before it was dissolved. Petitioner's speculation that respondent may hold assets is not supported by anything in the record or in petitioner's motion . . . .[30]

TEO's reading of the *Dow* opinions is overly broad. Instead of standing for the wide proposition that a § 279 petition may not be brought after expiration of the § 278 period, *Dow I* and *II* instead teach that a petitioner has not shown good cause under § 279 if it does no more than speculate that the dissolved corporation may still have undistributed assets.[31]

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[30] *Dow II*, 2008 WL 4989069, at *1.

[31] TEO cites *United States Virgin Islands v. Goldman, Sachs & Co.*, 937 A.2d 760 (Del. Ch. 2007), in further support of its argument that a § 279 petition may not be brought after § 278's three-year extension. The Court in *Goldman* held that § 278, "by its plain terms," makes clear that a dissolved corporation's ability to prosecute or defend lawsuits as to claims not in existence at the time of dissolution terminates "three years from the date of its dissolution." *Id.* at 788. *Goldman* does little to hinder AmeriPride's § 279 petition; in fact, the Court in *Goldman* suggested that, under § 279, a receiver may be appointed to bring or defend claims arising after expiration of § 278's three-year period, but only if the corporation possesses undistributed assets. *Id.* at 803 n.182 (citing *Citadel*, 423 A.2d at 506). With this conclusion, it is not necessary to consider whether there were claims in existence at the time of dissolution (arising from PCE released before then) and whether that temporal nuance holds any relevance within the confines of a § 279 proceeding.

C. *The Insurance Coverage*

The question then becomes whether AmeriPride has provided sufficient grounds for the Court to conclude that it is reasonably likely TEO continues to hold undistributed assets. TEO claims that "neither the Petition nor Motion identifies with any detail the alleged insurance assets," and that "none of the insurers that have retained the undersigned counsel [who represent TEO in this action] have issued an insurance policy to TEO.[32] Moreover, TEO argues that, even if an insurance policy exists "it is unknown whether it affords coverage for TEO," and if TEO is an insured on such policy, "whether the loss is the subject of AmeriPride's claims."[33] Lastly, TEO argues that it is unclear as to whether, and how much, it would have to pay in deductibles and self-insured retentions.

In the Petition, AmeriPride alleges that TEO is currently being defended in the Federal Action by "issuers of general liability insurance policies," and that "the policies issued by TEO's Insurers provided coverage to VIS, Inc. and, as a result of the mergers, to TEO."[34] Standing alone, these statements perhaps would not be enough to deflate TEO's skepticism regarding the existence and extent of its alleged insurance coverage. AmeriPride, however, did more than simply allege the existence of the insurance policies; it attached to the Petition four Cleanup and

[32] TEO's Br. in Opp. to AmeriPride's Mot. for J. on the Pleadings at 12.
[33] *Id.*
[34] Petition ¶¶ 3, 15.

Abatement Orders issued by the Board.[35] In each order, the Board identifies VIS as a named party, addresses its potential responsibility and liability for the contamination, and states that "[a]lthough these entities [VIS and its predecessors] may have dissolved, *during their existence they had insurance policies that*, if located, may provide coverage to this Order."[36]

Based upon the Cleanup and Abatement Orders integral to, and incorporated within, the Petition, it is materially more than mere speculation that VIS held (and thus TEO benefited from) insurance policies that would provide coverage for the claims asserted by AmeriPride.[37] In addition, the parties acknowledged in the Federal Action that "because VIS was merged into corporations which eventually

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[35] Board Cleanup and Abatements Orders (from 2003, 2005, 2006, and 2007). Pet. Exs. 4-7.

[36] *Id.* at ¶ 6 (same paragraph for each order) (emphasis added). The orders further state that, "[a]s former owners of the site and operators of the laundry facility, these entities caused or permitted waste to be discharged to waters of the state where it has created and threatens to create a condition of pollution or nuisance." *Id.*

[37] Separately, AmeriPride submitted copies of comprehensive general liability policies issued to Petrolane and certain of its subsidiaries. *See* Letter to the Court from AmeriPride's counsel, May 19, 2009. It is not the function of this Court within a § 279 action to resolve any insurance coverage dispute, and nothing set forth in this memorandum opinion should be read as any expression by the Court of any views as to the ultimate disposition of any such dispute. The insurance policies support AmeriPride's contention that it is a reasonable likelihood that there is available coverage for VIS and thus TEO.

Although the Court necessarily focuses on the policies underlying the DGCL, the more significant policy question framed by this proceeding is whether insurers should be absolved of their indemnification obligations through the mere fortuity of the dissolution of their insureds (or their successors). The result here, if AmeriPride's substantive allegations regarding contamination of the Facility site are to be believed, would avoid a reordering of societal risk allocation from the insurers who are deemed to have accepted the risks (whether they foresaw the risks that would arise as a result of CERCLA's enactment may be a different matter) to AmeriPride.

merged into TEO, VIS has no separate existence from TEO."[38] Thus, there is good reason to believe that TEO may be responsible for VIS's pollution, and if this is the case, it is also reasonable to expect that VIS's insurance policies would provide coverage for TEO's liability.[39] Of course, final determination of TEO's liability for the contamination and the extent and availability of VIS's insurance policies is beyond the scope of this memorandum opinion.

What can and should be addressed, however, are TEO's concerns that it would be responsible for costs beyond the scope of any potential insurance coverage. Appointing a receiver so suit may proceed against TEO that threatens its former officers, directors, or shareholders would undermine the purposes of § 278. In *Dow I*, this Court held that § 278 was intended to balance the public policy interest of providing adequate time for potential claimants to bring suit against a dissolved corporation with the countervailing consideration of "allowing directors,

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[38] *Supra* note 1, Order Granting TEO's Mot. to Dismiss in the Federal Action, dated Nov. 24, 2008. Pet. Ex. 11 at 4.

[39] The good cause standard of § 279 is not defined. From *Dow I* and *Dow II*, it requires something more than speculation. Conversely, a standard akin to a preponderance of the evidence would require the Court to delve too deeply into the merits of a dispute that would be better resolved elsewhere. There must be a purpose for appointment of a receiver—a problem or opportunity to be resolved or pursued, and a reasonable likelihood that some positive outcome would result. In this instance, good cause depends upon a reasonable likelihood that there would be an asset available to the receiver that would benefit a creditor-claimant, such as AmeriPride. Similarly, the claim to be satisfied—at least in part—through the receiver's efforts must be facially plausible. The proceeding for appointment of a receiver does not efficiently serve as a mechanism for resolving what may prove to be difficult and complex legal or factual contentions associated with the merits of any creditor's claim against the assets that may be available to the receiver. In addition, it is not an efficient venue for resolving whether a receiver has any definitive claim to the asset. Ultimately, good cause depends upon the perception that appointment of a receiver is likely to be—in a broader sense—worth the effort.

officers, and stockholders to be free from claims relating to the dissolved corporation after sufficient time has passed."[40]

Suit against TEO in the Federal Action, however, would not jeopardize the policy concerns stated above. By its own terms, § 279 limits the power of an appointed receiver. Such receivers may "take charge of the *corporation's property*, and . . . collect the debts and property due *and belonging to the corporation*" for the purpose of prosecuting and defending lawsuits.[41] Section 279 does not necessarily authorize a receiver to pursue property belonging to the dissolved corporation's directors, officers, or shareholders.[42] Thus, in the event TEO is not covered by VIS's insurance policies, or not covered to the full extent of its liability, the receiver (and thus, AmeriPride as a consequence of the appointment of a receiver) will have no claim to TEO assets distributed in the dissolution process or any separate claim against TEO's former shareholders, directors or officers.[43]

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[40] *Dow I*, 2008 WL 4603580, at *2.

[41] 8 *Del. C.* § 279 (emphasis added).

[42] *See Citadel Indus., Inc.*, 423 A.2d at 506 ("Where there are no undistributed assets against which to effect a recovery, § 279 provides little solace to one possessing an after-discovered claim against a dissolved corporation."); *cf* Cal. Corp. Code § 2011(a)(1)(A) (permitting suit against dissolved corporations, only "*to the extent of [their] undistributed assets*, including, without limitation, any insurance assets that may be able to satisfy claims).

[43] If for no other reason, this is because AmeriPride has confirmed that it "does not seek any recovery from TEO's former shareholders, officers, or directors and that they are not involved in the Federal Action." Pet. ¶ 26. Regardless, TEO argues that appointing a receiver would prejudice its former officers and directors who "would be essential witnesses for any insurance coverage concerns arising in this matter." TEO's Br. in Opp. to AmeriPride's Mot. for J. on the Pleadings at 15. Sections 278 and 279 are concerned with the distribution of assets and settling

D. *Laches*

TEO also claims that AmeriPride's claims are barred by the equitable doctrine of laches. It points out that AmeriPride seeks the appointment of a receiver under § 279 "fourteen years after its corporate successors took over the facility" and "eight years after first learning of TEO's lack of capacity to be sued."[44] It also cites to 10 *Del. C.* § 8106 for what it considers the "analogous statute of limitations."[45]

Laches, equity's answer to the law's statute of limitations, will preclude relief when an "unreasonable delay in bringing suit has materially prejudiced the defendants."[46] The defense is based on the equitable maxim that "'equity aids the vigilant, not those who slumber on their rights.'"[47] A critical inquiry when deciding the applicability of laches is "whether it is inequitable to permit a claim to be enforced, the touchstone of which is inexcusable delay leading to an adverse change in the condition or relations of the property or the parties."[48] When looking

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of claims; while it may be an inconvenience for TEO's former directors and officers to testify in the Federal Action, this annoyance does not threaten the policies underlying § 278, which is focused more on director and shareholder liability and the need for finality. If there are no assets, then these burdens would become relatively more significant.

[44] TEO's Br. in Opp. to AmeriPride's Mot. for J. on the Pleadings at 15.

[45] *Id.*

[46] *AQSR India Private, Ltd. V. Bureau Veritas Holdings, Inc.*, 2009 WL 1707910, at *10 (Del. Ch. June 16, 2009) (citing *U.S. Cellular Inv. Co. v. Bell Atl. Mobile Sys., Inc.*, 677 A.2d 497, 502 (Del. 1996)).

[47] *Estate of Osborn ex. rel. Osborn v. Kemp*, 2009 WL 2586783, at *11 (Del. Ch. Aug. 20, 2009) (quoting *Adams v. Jankouskas*, 452 A.2d 148, 157 (Del. 1982)).

[48] *Reid v. Spazio*, 970 A.2d 176, 183 (Del. 2009).

to whether there has been inexcusable delay, the Court will put great weight upon the analogous statute of limitations.[49]

There has been no inexcusable delay in the filing of AmeriPride's petition, and thus it would not be inequitable to order the appointment of a receiver pursuant to § 279. AmeriPride detected the PCE contamination in 1997, after which it conducted a series of soil and groundwater investigations.[50] AmeriPride then brought suit in January 2000 against VIS, TEO, and other potentially responsible parties. It settled with the other defendants and negotiated directly with TEO, against which it was prepared to take a default judgment with approval from the District Court before the insurers appointed counsel to defend TEO in the Federal Action. AmeriPride acted in a reasonable period of time to investigate the contamination and prosecute its claims.

TEO also asks the Court to apply the statute of limitations codified in 10 *Del. C.* § 8106; that provision, which sets a three-year time bar for many actions, does not apply here by analogy.[51] By its terms, this statute does not

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[49] Donald J. Wolfe, Jr. & Michael A. Pittenger, *Corporate and Commercial Practice in the Delaware Court of Chancery* § 11.05[c], at 11-65 (2009).

[50] Board Cleanup and Abatement Orders ¶¶ 11, 12. AmeriPride first reported the discharge of volatile compounds in its wastewater in 1992, however the Order makes clear that soil and groundwater contamination was not discovered until 1997. *Id.* at ¶¶ 9, 11, 12.

[51] It is hard to see why a statute of limitations should be imported for petitions brought under § 279, which, as explained above, provides an alternative to § 278's three-year extension of corporate legal existence by giving the Court of Chancery discretion to appoint a receiver to take charge of undistributed assets upon a showing of good cause. Thus, § 279 could be said to provide a discretionary extension of the time limitations of § 278. "Good cause," moreover,

govern the appointment of a receiver and it would not govern litigation in California involving the claims associated with the Facility's operations.[52]

V. CONCLUSION

AmeriPride has demonstrated a reasonable likelihood, well beyond mere speculation, that TEO has undistributed assets in the form of rights under one or more insurance policies. Additionally, granting AmeriPride the relief it seeks will not undermine the public policies of 8 *Del. C.* § 278, but instead will facilitate the pursuit of its bona fide claims in the Federal Action. For these reasons, AmeriPride has shown good cause for the appointment of a receiver pursuant to 8 *Del. C.* § 279, and its petition is hereby granted.[53]

Counsel are requested to confer and to submit a form of order for the appointment of a receiver of and for TEO with authority to pursue and act with respect to available insurance coverage and to defend in the Federal Action.

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guides the Court's discretion in several respects, and, if there were unreasonable delay in bringing the petition, this would undermine the supposed good cause for AmeriPride's request.

[52] Other defenses tendered by TEO, such as champerty, improper purpose, and conflict of interest are rejected, because they either have been abandoned or are without merit.

[53] Thus, AmeriPride's motion for judgment on the pleadings is granted. TEO's motion to dismiss is denied.