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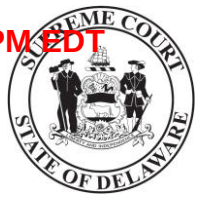

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THE NORTH RIVER INSURANCE COMPANY, Plaintiff Below-Appellant, v. MINE SAFETY APPLIANCES COMPANY, Defendant Below-Appellee.	)	No. 8, 2014 On Appeal From The Court of Chancery of the State of Delaware, C.A. No. 8456-VCG

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NATURE OF THE PROCEEDINGS

This is an appeal from a final order of the Court of Chancery granting judgment on the pleadings to Defendant-Appellee Mine Safety Appliances Company ("MSA") and denying judgment on the pleadings to Plaintiff-Appellant The North River Insurance Company ("North River"). North River alleged in its complaint that MSA, after filing suit in Delaware Superior Court seeking coverage for tort liabilities under insurance policies sold by North River to MSA, caused the filing of coverage claims against North River in West Virginia by tort plaintiffs who had settled with MSA for a combination of cash and an assignment of certain of MSA's rights to coverage from North River. North River claimed that, by doing so and by cross-claiming against North River in the West Virginia actions, MSA had subjected North River to the risk of inconsistent judgments. North River sought an injunction prohibiting MSA from, among other things, (a) prosecuting its cross-claims against North River in West Virginia; and (b) assigning to any tort claimant the right to assert claims against North River.

The parties cross-moved for judgment on the pleadings. On December 20, 2013, the Court of Chancery granted MSA's motion and denied North River's motion, thus rejecting North River's request for injunctive relief. This appeal followed.

SUMMARY OF ARGUMENT

1. Denied. The Court of Chancery committed no error by refusing to enjoin MSA from litigating the West Virginia actions. The court below correctly balanced the equities in determining that Delaware courts lack jurisdiction over the West Virginia tort plaintiffs, who have an independent right under West Virginia law to seek a declaration that North River must cover their claims. The Court of Chancery properly held that, given this right, an injunction would not protect North River from the risk of inconsistent judgments and would harm MSA by preventing it from participating in actions where the meaning of its insurance policies are at issue.

2. Denied. The Court of Chancery committed no error by refusing to issue an injunction barring MSA from prospectively assigning additional tort plaintiffs rights under insurance policies issued by North River. Again, the court correctly found that the tort plaintiffs have an independent right to pursue coverage determinations against North River, so the injunction would fail for the same reasons set forth above. Accordingly, the Court of Chancery properly refused to enjoin MSA from assigning additional tort plaintiffs rights under insurance policies issued by North River.

STATEMENT OF FACTS

MSA agrees with the facts as set forth in the opinion of the Court of Chancery. (Op. at 4-18.)[1] The relevant facts are summarized below.

1. MSA's business and tort liabilities: MSA, a Pennsylvania corporation licensed to do business in Delaware, manufactures and sells safety equipment, including air-purifying respirators worn in various industrial environments. (*See* B-24.)[2] Over the years, plaintiffs have filed suit against MSA for alleged injury from exposure to asbestos, silica, and coal-mine dust despite alleged use of the safety equipment sold by MSA. (*Id.*)

2. MSA's insurance policies: Starting in 1973, North River sold comprehensive general liability insurance policies to MSA to cover MSA for a variety of risks, including potential tort liability for bodily injury claims. (Op. at 5.) MSA asked North River to pay for bodily injury claims against it, but North River refused. (B-24.) MSA and North River are now litigating coverage issues in Pennsylvania state court, Pennsylvania federal court, and Delaware Superior Court. (Op. at 6-11.)

3. The West Virginia Actions: Caught between the escalating costs of defending and settling the numerous tort claims against it and North River's refusal

[1] The Court of Chancery's December 20, 2013 Memorandum Opinion was attached to North River's Opening Brief, and is cited herein as "(Op. at __)".
[2] An Appendix in Support of Appellee's Answering Brief is being filed simultaneously herewith.

to pay for a single claim, MSA embarked on a new settlement strategy to lower its cash payout for tort claims in West Virginia, including the ones that are at issue here (the "West Virginia Actions"). (B-27-29.) MSA paid the West Virginia tort plaintiffs a sum certain in cash (the "cash amount") and assigned the right to recover the rest of the settlement amount from one of the insurance policies issued by North River to MSA (the "assignment amount"). (Op. at 11-14.)

After settling with MSA, the tort plaintiffs, who are West Virginia residents with no contacts with Delaware, then amended their complaints to name North River as a Defendant. (*Id*.) The tort plaintiffs sought relief under the West Virginia Uniform Declaratory Judgment Act, which allows tort plaintiffs to seek a declaration that the tort defendant's insurer must cover their claims. (*Id*. at 11-12.) The tort plaintiffs also sought payment of the assignment amount. MSA cross-claimed against North River to collect the cash amount it had paid the West Virginia tort plaintiffs. (*Id*. at 12-14.)

North River moved to dismiss or stay the West Virginia Actions, but its motions were denied by two different West Virginia judges. (A-681-88; B-110-11.)

North River appealed to the West Virginia Supreme Court, which denied relief on March 28, 2014. (B-89.) In denying the relief, the West Virginia Supreme Court found North River's argument that - by virtue of the assignment,

the tort plaintiffs "step[ped] in the shoes" of MSA- "wholly without merit." (B-103.) The court held that the tort plaintiffs have an independent right under West Virginia law to bring a declaratory judgment action against North River. (B-104.) The court also found that the West Virginia actions "will not result in an unreasonable duplication or proliferation of litigation." (B-103-04.) Lastly, the court affirmed that Delaware has no jurisdiction over the West Virginia tort plaintiffs. (B-105.)

5. The present case: On April 4, 2013, North River brought the present action against MSA in the Court of Chancery. (B-1.) Among other things, North River asked the court to enjoin MSA from prosecuting the West Virginia Actions and to enjoin MSA from assigning insurance rights to any tort claimant. (B-14.) The parties cross-moved for judgment on the pleadings. (B-17, 47.) After hearing oral argument, on December 20, 2013, the Court of Chancery issued the Memorandum Opinion and Order on appeal here, which denied North River's request for injunctive relief and granted MSA's motion for judgment on the pleadings. (Op. at 26.) In denying the injunction, the Court reasoned that because it had no jurisdiction over the West Virginia tort plaintiffs, whom West Virginia courts held had a right to sue North River in West Virginia, it could not prevent the harm – that of inconsistent judgments – from which North River sought relief. (*Id.* at 24-25.) The Court of Chancery further found that because the West Virginia tort

plaintiffs could sue North River in West Virginia, it would be unfair to enjoin MSA from participating in the West Virginia actions. (*Id*. at 23.)

ARGUMENT

I. THE COURT OF CHANCERY PROPERLY REFUSED TO ENJOIN MSA FROM PROTECTING ITSELF IN LAWSUITS BROUGHT BY TORT PLAINTIFFS IN WEST VIRGINIA

A. Question Presented

Did the Court of Chancery err in declining to enjoin MSA from prosecuting the West Virginia actions? (Pl.'s Opening Br. at 17.)

B. Standard of Review

This Court "will not disturb" the grant or denial of a motion to enjoin a party from litigating in another state "in the absence of a showing that it constituted an abuse of discretion." *Box v. Box*, 697 A.2d 395, 397 (Del. 1997). North River argues, however, that this Court should apply a *de novo* standard of review because the court below based its decision on erroneous "legal conclusions" regarding West Virginia law. (*See* Pl.'s Opening Br. at 17.) In particular, North River contends that the Court of Chancery (a) misinterpreted West Virginia law regarding declaratory judgments and (b) speculated – without proof in the record – that the tort plaintiffs would continue their litigation against North River if MSA were enjoined. North River is simply wrong.

First, the Court of Chancery did not make any erroneous legal conclusion about West Virginia law. Instead, the Court of Chancery made a factual determination that, because a West Virginia court had already held that the tort plaintiffs could seek declaratory relief against North River in West Virginia, the

West Virginia litigation would proceed regardless of whether the Court of Chancery enjoined MSA. (*See* Op. at 23.) Based on that factual determination, the Court of Chancery correctly held that an injunction against MSA would not prevent the risk of inconsistent judgments. (*Id*.) Therefore, the court properly exercised its discretion in declining to issue a "useless" injunction.

Similarly, the Court of Chancery made no legal conclusions in determining that the tort plaintiffs could continue their litigation against North River if MSA were enjoined. The Court of Chancery never "assum[ed]" – as North River contends – that the plaintiffs "would" continue suing North River without MSA. (Pl.'s Opening Br. at 27.) Rather, it made a factual determination that the tort plaintiffs have the right to bring "a declaratory action against the defendant's insurer where that insurer has denied coverage…." (Op. at 24-25.) That possibility was enough for the equities to weigh in MSA's favor. (*Id*. at 25.)

Because the lower court reached no legal conclusions regarding West Virginia law, the standard of review is abuse of discretion. However, even if the standard is *de novo*, the Court of Chancery did not err in refusing to enjoin MSA from participating in the West Virginia Actions.

C. Merits of Argument

1. North River Did Not Meet The Stringent Standard For Issuing A Permanent Injunction

Because permanent injunctive relief is an "extraordinary" remedy, the test

for obtaining such relief "is stringent." *In re Cencom Cable Income Partners, L.P. Litig.*, 26 Del. J. Corp. L. 294, 308 (Del. Ch. 2000). To obtain a permanent injunction, North River had to show: (1) actual success on the merits of its claims; (2) that it would suffer irreparable harm absent injunctive relief; and (3) that the equities support the relief requested. *See Examen, Inc. v. VantagePoint Venture Partners 1996*, 2005 WL 1653959, at *2 (Del. Ch. July 7, 2005) (quoting *Christiana Town Ctr., LLC v. New Castle Cnty.*, 2003 WL 21314499, at *2 (Del. Ch. June 6, 2003), *aff'd*, 841 A.2d 307 (Del. 2004) (TABLE)); *see also Draper Commc'ns, Inc. v. Del. Valley Broadcasters Ltd. P'ship*, 505 A.2d 1283, 1288 (Del. Ch. 1985) (citing *Gimbel v. Signal Cos., Inc.*, 316 A.2d 599, 602-03 (Del. Ch. 1974), *aff'd*, 316 A.2d 619 (Del. 1974)). In deciding whether the equities support the relief requested, "a court of equity has discretion to grant or deny an application for injunctive relief in light of the relative hardships of the parties." *Bernard Pers. Consultants, Inc. v. Mazarella*, 1990 WL 124969 (Del. Ch. Aug. 28, 1990) (citing *Richard Paul, Inc. v. Union Improvement Co.*, 91 A.2d 49, 54 (Del. 1954)); *see also Cantor Fitzgerald, L.P. v. Cantor*, 724 A.2d 571, 587 (Del. Ch. 1998). The Court of Chancery relied on the third factor in refusing to grant North River an injunction.

Here, in finding that the balance of the equities favored not enjoining MSA, the Court of Chancery weighed the relative harms and determined that because it

has "no jurisdiction over the West Virginia tort plaintiffs," an injunction would be ineffective to achieve its desired result. (Op. at 21-22.) The Court of Chancery reasoned that because the West Virginia courts had already determined that the West Virginia tort plaintiffs can continue to litigate their coverage issues against North River in West Virginia, North River would still face the risk of inconsistent judgments even if the Court of Chancery enjoined MSA from litigating in West Virginia. (*Id*. at 23.) The Court further found that because "the actions between North River and certain West Virginia tort plaintiffs will be proceeding, it would be inequitable to exclude MSA from participating in that litigation." (*Id*.)

2. The Court Of Chancery Did Not Err In Finding That The Balance Of Equities Favored MSA

a) The Court Of Chancery Correctly Applied West Virginia Law

North River principally argues that the Court of Chancery "mistakenly rel[ied]" on *Christian v. Sizemore*, 383 S.E.2d 810 (W. Va. 1989), which held that a tort plaintiff may sue the tort defendant's insurer for a declaration that its policy covers the tort claim. (Pl.'s Opening Br. at 24.) North River argues that *Christian* applies only where a tort plaintiff sues the insurer *before* settling with the tort defendant, and not (as in the present case) where the plaintiff sues afterward. (*Id*.) North River claims that, because the West Virginia tort plaintiffs did not bring

their declaratory judgment action until after they settled with MSA, there is no need to determine coverage. (*Id*. at 25.)

North River is wrong. *Christian* makes clear that, regardless of any rights from an assignment of insurance proceeds, tort plaintiffs have independent rights under the West Virginia Declaratory Judgment Act to seek a declaration that a tort defendant's insurance policy covers their claims. 383 S.E.2d at 814. Furthermore, *Price v. Messer* makes clear that this right exists regardless of whether the tort plaintiffs have settled with the tort defendants. 872 F. Supp. 317, 321 (S.D. W. Va. 1995). The Court of Chancery recognized as much. (*See* Op. at 21-22.)

If there were any doubt on the point, the recent decision of the West Virginia Supreme Court of Appeals refusing – on identical facts – to dismiss or stay the West Virginia Actions demonstrates that the Court of Chancery was correct about West Virginia law. Confronted with the same arguments about *Christian* that North River now makes here, the West Virginia Supreme Court unanimously held that the West Virginia Declaratory Judgment Act gives tort plaintiffs an independent right to sue the tort defendant's insurer for a declaration of coverage and that tort plaintiffs can exercise that right either before or after they settle with the tort defendant. (*See* B-103.) "*Christian* does not require, as the petitioner suggests, that the circuit court must exercise its discretion in a particular manner or that a bifurcated coverage issue must, in every instance, be finally resolved *before*

the merits of an underlying liability claim may be addressed." *State ex rel. Piper v. Sanders*, 724 S.E.2d 763, 767 (W. Va. 2012) (emphasis in original). Rather, "these decisions remain within the trial court's sound discretion." *Id*. Thus, even if MSA had not assigned its rights to them, the tort plaintiffs have a direct cause of action against MSA's insurers (before, during, or after settlement). (*See* B-103-104); *see also Christian,* 383 S.E.2d at 814*; Price*, 872 F. Supp. at 321. The Court of Chancery therefore correctly applied West Virginia law in acknowledging that the tort plaintiffs have an independent action against North River under the West Virginia Uniform Declaratory Judgment Act.

b) North River's Argument That The Tort Plaintiffs Stepped Into MSA's Shoes By Virtue Of An Assignment Is "Wholly Without Merit"

North River further argues that, by accepting an assignment of certain of MSA's insurance rights as part of settlement of the underlying claim, the West Virginia tort plaintiffs stepped into MSA's shoes and are therefore subject to Delaware's jurisdiction. (*See* Pl.'s Opening Br. at 24-25.) This argument is untenable for several reasons.

First, Delaware's lack of personal jurisdiction over the West Virginia tort plaintiffs is undisputed. During the Court of Chancery proceedings, North River conceded that Delaware has no jurisdiction over the tort plaintiffs. (*See* B-81.)

Without jurisdiction over these plaintiffs, an injunction would indeed be "useless" to stop them from pursuing the West Virginia litigation.

Second, the West Virginia Supreme Court of Appeals has expressly rejected North River's argument that the assignment creates personal jurisdiction over the tort plaintiffs, calling it "wholly without merit." (B-103.) That court reasoned that plaintiffs have an independent right to sue North River in West Virginia regardless of whether they receive an assignment. (*Id.*) Therefore, whether or not the tort plaintiffs step into MSA's shoes is irrelevant. Even if the tort plaintiffs were enjoined from pursuing an action under the assignment, they still have an independent right to pursue North River under the West Virginia Uniform Declaratory Judgment Act. (*Id.*) Thus, the Court of Chancery did not err in finding that because it has "no jurisdiction over the West Virginia tort plaintiffs," an injunction would be ineffective to achieve its desired result. (Op. at 21.)

c) North River's Argument That The Court Of Chancery Speculated That The West Virginia Actions Would Continue Is Without Merit.

As noted above, the Court of Chancery's decision that an injunction would be ineffective to prevent the possibility of inconsistent judgments rested in part on the possibility of tort plaintiffs bringing or continuing their actions against North River (with or without MSA). That possibility weighted the equities in MSA's favor.

North River inaccurately contends that the court below "speculated" that the tort plaintiffs would go forward even if MSA were enjoined. North River also asserts, without citing to any part of the record, that "not a single tort plaintiff has sought to bring an independent declaratory judgment action against North River." (Pl.'s Opening Br. at 26-27.)

First, under Delaware Supreme Court Rule 8, "[o]nly questions fairly presented to the trial court may be presented for review…." Del. Supr. Ct. R. 8. North River *never* contended in the proceedings below that tort plaintiffs would not sue independent of MSA, even though MSA argued in that court that the tort plaintiffs' actions would go forward regardless of whether an injunction was issued. Therefore, North River has waived this argument.

Second, as noted above, the Court of Chancery's decision was based on the tort plaintiffs' rights to bring independent declaratory judgment actions against North River. And given that the record shows that the tort plaintiffs have brought no less than four actions against North River seeking coverage (all of which include separate counts for declaratory relief under the West Virginia Declaratory Judgment Act), the Court of Chancery's finding that the tort plaintiffs intend to go forward with these actions can hardly be deemed "speculative" or unsupported.

d) The Court Of Chancery Did Not Err In Finding That It Would Be Inequitable To Exclude MSA From Participating In The West Virginia Litigation.

The Court of Chancery determined that, "because the actions between North River and certain West Virginia tort plaintiffs will be proceeding, it would be inequitable to exclude MSA from participating in that litigation." (Op. at 23.) The Court of Chancery further held that "a permanent injunction against MSA would inequitably preclude MSA from protecting its rights . . . while North River continues to litigate, and to vigorously argue that MSA lacks coverage…." (*Id*. at 23-24.) North River's arguments to the contrary do nothing to weaken these conclusions.

First, North River argues that *McVey v. MSA*, in which the tort plaintiff has sought coverage and MSA has not cross-claimed, shows that MSA would not be prejudiced by an injunction. (Pl.'s Opening Br. at 28.) But MSA remains a party in *McVey* and can state its position on issues in that case. Moreover, MSA still has the right to cross-claim in *McVey*. *See* W. Va. R. Civ. P. 13(g). If MSA were enjoined, it would lose these rights, while North River could continue to litigate its coverage positions. As the Court of Chancery found, that would be inequitable.

Second, North River argues that the lower court "improperly rewarded MSA's own inequitable conduct." (Pl.'s Opening Br. at 29.) However, the West Virginia Supreme Court has agreed with the Delaware Court of Chancery in

rejecting any notion that MSA perpetrated a "sham" on the Delaware court. (B-107.) MSA's settlement with the tort plaintiffs not only benefitted MSA in reducing its cash outlay, it allowed the tort plaintiffs to "realize some recovery on their claims that have been pending for years." (*Id*.) Thus, North River's attempt at arguing that MSA suffers from "unclean hands" fails.

3. North River Failed To Prove Actual Success On The Merits Of Its Claims

The Court of Chancery's decision not to enjoin MSA from litigating in West Virginia was based on a failure of North River to meet the third factor of the permanent injunction test. To the extent the first two factors are relevant to the analysis, North River fails to meet its burden on those as well.

As a matter of comity, Delaware courts are reluctant to interfere in matters involving foreign courts. "Generally, it is a proper exercise of the Court of Chancery's discretion to permit parties simultaneously to pursue 'non-mirror image' claims for relief in separate jurisdictions. Principles of federalism often require considerations of comity between dual sovereign states. Well-established principles of collateral estoppel will address the preclusive effect of any factual determination that is made in the first case to be decided." *Box*, 697 A.2d at 398-99 (citations omitted). Delaware has recognized an exception to this general rule for "mirror-image" cases (i.e., those that involve the same parties and same issues). *See Williams Natural Gas Co. v. BHP Petrol. Co.*, 574 A.2d 264, 1990 WL 38329,

at *2 (Del. 1990) (TABLE). That exception does not apply here because, as demonstrated below, the West Virginia and Delaware actions involve different parties and different issues.

Different Parties: North River concedes that a court should not issue an injunction where it does not have "jurisdiction over all the parties in interest" and where it is "powerless to render a decree that finally and completely concludes the matter in controversy." (B-79) (quoting *Peyton v. William C. Peyton Corp.*, 187 A. 849, 852 (Del. Ch. 1936).)

In each of the cases cited by North River, there was no question that the Delaware court had jurisdiction over all the parties. *See Williams*, 1990 WL 38329, at *1 ("[T]he Texas action and this action involve identical parties and issues."); *Household Int'l, Inc. v. Eljer Indus., Inc.*, 1995 WL 405741, at *1 (Del. Ch. June 19, 1995) ("There are no additional parties or significant legal issues in either of these suits. They are in effect the same suit in two jurisdictions."); *Ivanhoe Partners v. Newmont Mining Corp.*, 1988 WL 34526, at *5 (Del. Ch. Apr. 7, 1988), *supplemented by* 1988 WL 73750 (Del. Ch. July 15, 1988) (neither party asserted that court lacked jurisdiction); *Air Prods. & Chems., Inc. v. Lummus Co.*, 235 A.2d 274, 277 (Del. Ch. 1967) ("[I]njunctive power should not be exercised in a situation (not claimed to be present here) in which, because of a lack of

jurisdiction over all of the parties in interest, the Delaware Court is powerless to render a decree finally and completely disposing of the matters in controversy.").

Here, Delaware has no jurisdiction over the tort plaintiffs, and they are not parties to the Delaware Action. Furthermore, the West Virginia Supreme Court found North River's argument that the tort plaintiffs are part of the Delaware action by virtue of an assignment to be "wholly without merit." (B-103.) Therefore, the Delaware and West Virginia actions are not "mirror images" with respect to the parties involved.

Different issues: On appeal, North River fails to argue that the issues in Delaware are the same as the ones in West Virginia; therefore, it has waived this argument. In any event, however, the issues being adjudicated in West Virginia are indeed different from those in Delaware. The West Virginia Supreme Court agreed with the Court of Chancery that Delaware "cannot determine whether the settlement agreements are enforceable, and has not been presented with the affirmative defenses asserted by North River" in West Virginia. (B-105.) Therefore, the Delaware action "will not address the relief sought by the plaintiffs." (B-108.)

Given the lack of commonality between the Delaware and West Virginia actions and the important considerations of comity at issue, North River's argument on the first prong fails.

4. North River Failed To Prove That It Would Suffer Irreparable Harm If Injunctive Relief Is Not Granted

North River argues that it will suffer irreparable harm by the risk of inconsistent judgments if MSA is not enjoined from litigating in West Virginia. For the reasons stated below, North River fails to make a sufficient showing under this factor of the permanent injunction analysis.

First, the Court of Chancery's focus was not whether North River can demonstrate irreparable harm from the risk of inconsistent judgments, but whether enjoining MSA would alleviate that harm. (*See* Op. at 22-23.) The Court of Chancery unequivocally found that it would not. (*Id*.)

Second, the West Virginia Supreme Court found that the West Virginia Actions will "not result in an unreasonable duplication or proliferation of litigation" because there are different parties and issues, and thus the Delaware Court would be unable to resolve the tort plaintiff's claims. (B-104.)

Third, the West Virginia circuit court has already made clear that it will be mindful of rulings in the Delaware action that may impact West Virginia. As the West Virginia Supreme Court noted, "the circuit court acknowledged [the out-of-state court] rulings may impact the rights of the plaintiffs and stated it would give whatever deference is due while handling this litigation." (B-108.) This, along with the fact that the plaintiffs' actions against North River will continue

regardless of whether MSA is enjoined from litigating, North River has failed to prove that it will suffer irreparable harm.

In sum, North River's arguments that the Court of Chancery erred in refusing to enjoin MSA from litigating in West Virginia fail, and North River's appeal should be denied.

II. THE COURT OF CHANCERY PROPERLY REFUSED TO ENJOIN MSA FROM MAKING FUTURE ASSIGNMENTS

A. Question Presented

Did the Court of Chancery abuse its discretion by refusing to enjoin MSA from continuing to assign rights to underlying tort plaintiffs in future settlements? (Pl.'s Opening Br. at 30.)

B. Standard of Review

For the reasons set forth in Section I.B., the standard of review is abuse of discretion.

C. Merits of Argument

North River argues that the Court of Chancery erred in denying North River's request for an injunction barring MSA from assigning its rights under insurance contracts with North River prospectively to additional tort plaintiffs in settlement agreements. (*Id.*) North River makes three arguments in support of its claim – all of which are the same as in Section I – and for the same reasons set forth in Section I above and reiterated below, North River's arguments fail.

First, North River argues that the lower court incorrectly speculated that underlying tort plaintiffs would bring independent declaratory judgment actions against North River. North River misinterprets the Court of Chancery's Opinion. As stated above, even the possibility of bringing an action was enough for the equities to weigh in MSA's favor. Furthermore, North River brings up new facts

in its argument that are neither supported in the record nor raised in the lower court; therefore North River has waived raising those arguments in this court. *See* Delaware Supreme Court Rule 8.

Second, North River argues that an injunction would not be "useless." (*Id*. at 31.) North River's contention fails again for the same reasons cited throughout this brief. North River acknowledges that "enjoining MSA from future assignments may not eliminate all risk of inconsistent judgments," the very harm that North River calls "irreparable" earlier in its brief. (*Id*. at 20, 32.) Thus, as the Court of Chancery reasoned, if the injunction is not going to cure the harm North River is requesting the court to alleviate, the injunction is, in effect, "useless." (Op. at 23, 25.)

Furthermore, North River's reliance on *In re Del Monte Foods Company Shareholders Litigation* is misplaced. 25 A.3d 813 (Del. Ch. 2011). There the Court of Chancery entered a *preliminary* injunction enjoining Del Monte Foods Company for a period of twenty days from proceeding with a stockholder vote on the proposed merger between Del Monte and Blue Acquisition Group, Inc. The Court issued the limited injunction to permit a competing bidder to come forward before the stockholder vote. The Court deemed the twenty-day injunction sufficient time for a serious bidder to come forward, and therefore remedy the harm caused by a breach of fiduciary duty in connection with the sales process. By

contrast here, North River is seeking a permanent injunction that would restrain MSA for all time from entering into settlement agreements with tort plaintiffs in which MSA assigns its rights under insurance policies. As held by the Court of Chancery, such an injunction would serve no purpose because the tort plaintiffs possess the independent right to bring claims against North River irrespective of any assignment. Thus, unlike *Del Monte* where the limited injunction served the purpose of providing a mechanism to remedy the harm caused by the fiduciary breach, the permanent injunction North River seeks would not remove the alleged harm faced by North River – the threat of inconsistent judgments.

Third, North River argues that there is no basis in the record to conclude that MSA would be hampered in its ability to settle claims if it were enjoined from assigning its rights. (Pl.'s Opening Br. at 33.) Significantly, however, North River has denied coverage. (B-24.) Left alone to defend itself against thousands of lawsuits, MSA entered into settlement agreements with tort plaintiffs in the form of partial assignments of insurance proceeds in order to reduce its cash outlay. (B-27-29.) Had the Court of Chancery granted North River's request for relief, not only would MSA be precluded from protecting its rights, but the court also would have impaired MSA's ability to settle thousands of tort claims against it, in contravention of the strong public policy that "favors the voluntary settlement of contested issues." *Rome v. Archer*, 197 A.2d 49, 53 (Del. 1964). In accordance

with this public policy, MSA has the right to settle cases by assigning insurance rights to tort plaintiffs as part of the settlement. *See Egger v. Gulf Ins. Co.,* 903 A.2d 1219, 1231 (Pa. 2006); *Smith v. Buege*, 387 S.E.2d 109, 116-17 (W. Va. 1989) (citing *Nease v. Aetna Ins. Co.*, 9 S.E. 233, 235 (W. Va. 1889)). Therefore, the Court of Chancery did not err in denying North River's request to enjoin MSA from assigning future cases.

CONCLUSION

For the foregoing reasons, MSA respectfully requests that the Court find North River's appeal to be without merit and affirm the Opinion and Order of the Court of Chancery.

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of April, 2014, a true and correct copy of the foregoing was served via LexisNexis *File & ServeXpress* on the following:

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