

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
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GEORGETOWN, DELAWARE 19947

Submitted: April 28, 2008
Decided: April 28, 2009

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Re: *In re Appraisal of Metromedia International Group, Inc.*
Civil Action No. 3351-CC

Dear Counsel:

I have reviewed and considered the submission filed by petitioners in support of their motion for reconsideration of the Court's post-trial opinion as well as respondent's opposition. For the reasons briefly given below, I grant petitioners' motion for reargument.

Under Court of Chancery Rule 59(f), the moving party bears the burden of demonstrating that the "Court has overlooked a decision or principle of law

that would have controlling effect or the Court has misapprehended the law or the facts so that the outcome of the decision would be affected.”¹ Determinations under this rule, however, are always reserved to the judicial discretion of the Court so that any injustice may be prevented,² and the court will grant reargument when it appears that it may have overlooked or misapprehended the factual or the legal principles governing the disposition of the motion.³ Given the flexibility of Rule 59(f), the Court may, upon its discretion, review its previous ruling for any possible misapprehension or misapplication of a governing fact or legal principal.⁴

Here, there exists the potential that the Court misapprehended how to interpret the conversion price mandated by the certificate of designation by misinterpreting the interaction between Section 8(g) and Section 5.1. Respondent, in its opposition, glosses over the fact that it agreed with petitioners that the \$7.91 conversion price calculated in Section 5.1 should be inserted into Section 8(a) to calculate the conversion ratio.

Respondent also mistakenly assumed that when the Court stated that “no preferred holder exercised this one-time option in this case,” it meant that none of the preferred holders *participating in the appraisal proceeding* exercised this one-time option. In fact, the Court believed that the 695 preferred holders exercised their conversion option under Section 8(a). If I had known that the 695 preferred holders received a conversion price of \$7.91 pursuant to Section 5.1, resulting in a conversion ratio of 10.038, that fact may have been material to my ultimate interpretation of the certificate of designation.

Nevertheless, even in their brief for reargument, petitioners have failed to provide a legal rationale for why my interpretation of the interaction between Section 5.1 and 8(g) is incorrect. Rather than preclude petitioners opportunity for reargument based on this failure, as respondent argues, I grant petitioners the opportunity to reargue their legal position.

¹ *Miles, Inc. v. Cookson Am., Inc.*, 677 A.2d 505, 506 (Del. Ch. 1995) (quoting *Stein v. Orloff*, 1985 WL 21136, at *2 (Del. Ch. Sept. 26, 1985)); see also *Fisk Ventures, LLC v. Segal*, 2008 WL 2721743, at *1 (Del. Ch. July 3, 2008).

² See *Daniel D. Rappa, Inc. v. Hanson*, 209 A.2d 163 (Del. Ch. 1965).

³ *VGS, Inc. v. Castiel*, 2003 WL 1794210, at *1 (Del. Ch. Mar. 27, 2003).

⁴ *Id.*

I do not grant this opportunity lightly, however, and I believe the issue ripe for reargument is narrow and precise. Therefore, I grant the parties one week to provide the Court with a focused legal argument, in ten pages or less, on how they initially analyzed the interaction between Sections 8(g), 8(a), and 5 to come to the conclusion that the conversion price in Section 5.1 (\$7.91) should be substituted into the conversion formula in Section 8(a) to yield a ratio of 10.038. The parties should include in their analysis why, if the conversion formula in Section 8(a) is implicated by Section 8(g), the Court should discard the \$15.00 conversion price expressly given in Section 8(a) in favor of the \$7.91 conversion price given in Section 5.1. I will not consider any arguments exceeding this scope.

For the foregoing reasons, petitioners' motion for reargument is GRANTED subject to the restrictions above.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in cursive script that reads "William B. Chandler III". The signature is written in black ink and is positioned above the printed name.

William B. Chandler III

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