COURT OF CHANCERY
OF THE
STATE OF DELAWARE

LEO E. STRINE, JR.
CHANCELLOR

New Castle County Courthouse
500 N. King Street, Suite 11400
Wilmington, Delaware 19801-3734

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RE: *In re Southern Peru Copper Corporation Shareholder Derivative Litigation*, C.A. No. 961-CS

Dear Counsel:

The parties in this case raised myriad evidentiary issues in their post-trial briefs. Here are the rulings on those issues, although none is consequential to my post-trial decision:

- The plaintiff argues that absent any evidence that Goldman Sachs has in the past exclusively relied upon a relative DCF analysis to support the fairness of a merger, the court should infer that it never has done so. The defendants respond that absent the plaintiff's objection, they would have called a Goldman witness to testify at trial. I reject the plaintiff's argument. As I recognized in the post-trial opinion, the absence of a Goldman witness is as much the fault of the plaintiff's slow pace in prosecuting this litigation as it is the fault of the defendants. The case relied on by the plaintiff in making his argument, *In re Emerging Commc'ns S'holders Litig.*, 2004 WL 1305745 (Del. Ch. June 4, 2004), is not applicable to this case. In *Emerging*, the court drew the inference that the defendants' financial advisor's testimony would have been unfavorable to the defendants because the financial advisor did not testify at trial and defendants did not contend

that he was unavailable to testify. *Id.* at *25. Here, by contrast, the Goldman banker refused to testify. Thus, the plaintiff's objection is overruled.

- The plaintiff objects for the first time in its post-trial briefing to the defendants' reliance on a certain page contained in one of the joint trial exhibits for the proposition that copper companies were trading at a premium to their DCF values at the time of the Merger. *See* JX-103 at SP COMM 006945. The plaintiff argues that this passage is "hearsay within hearsay, yet defendants proffer it as if it is competent expert advice." Pl. Op. Post-Tr. Br. at 12. I reject this argument because, as the defendants point out, the plaintiff's counsel never raised an objection to this exhibit at the proper time and on that basis waived its right to do so. *Clawson v. State*, 867 A.2d 187, 191 (Del. 2005) (explaining that evidentiary foundation issues must be raised either by a pre-trial motion or by objection at trial). Thus, the plaintiff's objection is overruled.

- The defendants object to JX-149, which is a Forbes.com article entitled "The World's Billionaires 2011," as irrelevant and inadmissible hearsay. *Id*. The defendants further argue that plaintiff never sought to rely on this article at trial or otherwise. I agree with the defendants that this newspaper article is irrelevant hearsay to the extent that the plaintiff's offer it to prove the truth of the matter asserted, i.e., that German Larrea was a billionaire in 2011. *See* D.R.E. 802. Thus, the defendants' objection is sustained.

- The plaintiff objects on the bases of relevance, authenticity, and hearsay to JX-161, a record from Broadridge Financial Solutions, Inc. showing that a former plaintiff, James Sousa, voted for the Merger. The defendants argue that the fact that Sousa voted in favor of the Merger he previously claimed was unfair is unquestionably relevant. As to the plaintiff's authenticity and hearsay objections, the defendants obtained an affidavit from Broadridge authenticating the document and certifying that it is a business record. *See* DX-1. Given that the document is relevant and a certified business record, there is no reason to exclude it from evidence.

- The defendants object to JX-27 and JX-28 as being irrelevant, constituting improper summaries and containing improper expert opinion. The defendants point out that neither exhibit was disclosed in Beaulne's report and that both exhibits are outside the scope of his report. The defendants further argue that the exhibits should be inadmissible because the plaintiff

offered neither at trial. The plaintiff does not address the admissibility of either exhibit in its post-trial briefing. I find that these exhibits are improper summaries to the extent they rely on information beyond what was included in Beaulne's expert report and not testified to by Beaulne at trial. *See* D.R.E. 1006, 6 *Weinstein's Federal Evidence* § 1006.07, at 1006-28, 1006-30 (2d ed. 2011). Moreover, to the extent that the plaintiff seeks to offer this evidence as a belated supplement to Beaulne's expert report, it is inadmissible as unfairly raised.

IT IS SO ORDERED.

Very truly yours,

/s/ Leo E. Strine, Jr.

Chancellor

LESJr/sj