WILLIAM B. CHANDLER III
CHANCELLOR

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

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: January 20, 2010
Decided: February 15, 2010

S. Mark Hurd
Samuel T. Hirzel
Morris, Nichols, Arsht & Tunnell
1201 N. Market Street
P.O. Box 1347
Wilmington, Delaware 19899-1347

Jesse A. Finkelstein
Srinivas M. Raju
Richards Layton & Finger, P.A.
One Rodney Square
920 N. King Street
Wilmington, Delaware 19801

Re: *In re Sunbelt Beverage Corp. S'holder Litig.*
Consolidated Civil Action No. 16089-CC

Dear Counsel:

I have reviewed defendants' motion for reconsideration and plaintiff's response to that motion. For the reasons discussed briefly below, I deny defendants' motion in full. I also will file a revised Opinion, which will correct an error in my original Opinion and thereby confirm that the interval for compounding of interest shall be *quarterly*.

I disagree with defendants' assertion that I misapprehended a value in Professor Ruback's discounted cash flow analysis. More specifically and fundamentally, I disagree with defendants' interpretation of the meaning of Ruback's testimony relating to the different beta values he and Reilly utilized in their respective analyses. Ruback did not agree that Reilly's beta value was the only justifiable beta to use, nor did Ruback agree that the beta values he used in his

own analysis were incorrect. Throughout Ruback's testimony it was clear that he acknowledged methodological merit to various valuation approaches and to various inputs in valuation models, *in so far* as the different values and different approaches all revealed a fair value of approximately two-and-one-half times the Merger price. Contrary to defendants' assertions, there never was an "agreed-upon beta value of .70."[1] Much like the Court now feels at this stage in the litigation, at trial Ruback simply expressed the hope that the parties would move beyond disputes relating to specific components of the various valuation models and reach a point of understanding supported by several different models and inputs: that the Merger price of $45.83 per share reflected a drastic undervaluation of Sunbelt, by a factor of approximately 2.5. Ruback did not agree to amend his discounted cash flow analysis on the basis of any enlightenment reached under cross examination, and, likewise, I will not amend my Opinion on this point.

I also disagree with defendants' understanding of how I exercised my discretion to award interest at the statutory rate. I acknowledge that the source of the confusion may be my citation to the current version of 8 *Del. C* § 262(h),[2] a citation that may suggest I have employed an approach in 2010 that was not available to the Court at the time of the 1997 Merger. Just as plaintiff argues, however, my citation to the current version does not mean that my decision is based on an erroneous view of the operative language or a misapplication of Delaware law in 1997. As I stated in the Opinion, "I do not find either party to have demonstrated good cause for me to depart from [the] statutory interest rate."[3] I then cited to the current version of 8 *Del. C* § 262(h). Yet my Opinion employs language that nearly mirrors language *defendants' own motion* uses when explaining how the Court has applied and can apply the statutory rate.[4] Defendants own motion thus clearly demonstrates that long before the 2007 amendment to 8 *Del. C* § 262(h), and in the years leading up to the 1997 Merger, the Court could and did apply the statutory legal rate, as supported by 6 *Del. C* § 2301. The 2007 amendment to 8 *Del. C* § 262(h) thus codified an approach the Court had long had the authority to utilize—awarding interest at a rate of 5% above the Federal Reserve discount rate. My citation to the current

[1] Defs.' Mot. for Reconsideration, 3.
[2] *See In re Sunbelt Beverage Corp. S'holder Litig.*, 2010 WL 26539, at *16 n.65 (Del. Ch. Jan. 5, 2010).
[3] *Id.* at *16.
[4] *See* Defs.' Mot. for Reconsideration, 4 ("The statutory legal rate was not the presumption under the pre-amendment version of § 262(h), and was to be used only if neither party introduced sufficient evidence for the Court to determine a fair interest rate.") (citing *Chang's Holdings, S.A. v. Universal Chems. & Coatings, Inc.*, 1994 WL 681091, at *3 (Del. Ch. Nov. 22, 1994)).

version of the statute, which reflects the 2007 amendment, thus should not be read to mean that I have misapplied Delaware law or exceeded the discretion available to this Court at the time of the 1997 Merger. Accordingly, I will not amend my Opinion to change the interest rate awarded therein. To use defendants' own standard: neither party has introduced sufficient evidence for me to determine a fair interest rate to be applied over the period of thirteen years following the Merger, particularly given that much of those thirteen years has seen the economy shaken, interest rates stirred, and even the most prudent of investors on the rocks.

I will issue a revised Opinion clarifying that the interest should be compounded *quarterly*. Beyond that revision, I make no change to my original Opinion, and I deny defendants' motion for reconsideration.

As will be indicated in the revised Opinion, counsel shall agree upon a form of implementing Order, which shall be submitted within twenty days of this date.

IT IS SO ORDERED.

Very truly yours,

William B. Chandler III

WBCIII:bjt