



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

\_\_\_\_\_)  
IN RE: APPRAISAL OF DELL INC. ) C.A. No. 9322-VCL  
\_\_\_\_\_)

**ORDER REGARDING EQUITABLE AWARD OF INTEREST**

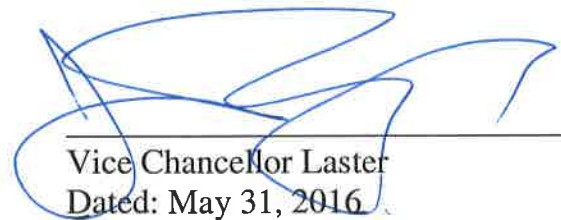
1. This court has held that certain petitioners failed to perfect their appraisal rights. Those petitioners have moved for an award of equitable interest. They asked for full briefing on the issue. The respondent corporation opposed both their substantive request and the procedural ask. Further briefing is unnecessary. The motion for an equitable award of interest is denied.

2. Section 251 of the Delaware General Corporation Law (the "DGCL") provides that an agreement and plan of merger shall define, for purposes of shares that will not remain outstanding after a merger, "the cash, property rights, or securities . . . which the holders of such shares are to receive." 8 *Del. C.* § 251(b)(5). The merger agreement for the transaction that gave rise to the potential entitlement to an appraisal in this case called for converting shares that would not remain outstanding after the merger into the right to receive a specified amount of cash per share, without interest. JX 349.

3. Section 262 of the DGCL provides stockholders with a statutory alternative to accepting the merger consideration. 8 *Del. C.* § 262. If a stockholder does not properly perfect its appraisal rights, then the stockholder receives the merger consideration. The appraisal statute only contemplates an award of interest for stockholders who properly perfect their appraisal rights. 8 *Del. C.* § 262(h).

4. The petitioners did not properly perfect their appraisal rights. They are therefore entitled to the merger consideration, without interest. *Neal v. Ala. By-Products Corp.*, 1988 WL 105754, at \*5 (Del. Ch. Oct. 11, 1988).

5. Equitable considerations do not enter into the statutory analysis for stockholders who did not properly perfect their appraisal rights. In any event, in this case, the petitioners knew, at a minimum, that there was a significant risk that they would not qualify for appraisal, either because they had submitted instructions (albeit inadvertently) to vote their shares in favor of the merger, or because their shares were transferred by their custodians to a new record holder, or both. The petitioners could decide to accept that legal risk in the hope that their arguments would prevail, and to the extent they are successful on appeal, the wisdom of their decision may still be borne out. What they are not entitled to at this point is compensation for taking that risk in the form of an interest award that the statute does not authorize and that the merger agreement did not contemplate.



Vice Chancellor Laster  
Dated: May 31, 2016