



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

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: November 18, 2009

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Re: *Laborers Local 235 Benefit Funds v. Starent Networks, Corp., et al.*
Civil Action No. 5002-CC

Dear Counsel:

I have considered oral arguments on plaintiff's motion for expedited proceedings. I grant plaintiff's motion to expedite on the ground of the stock-based compensation expense disclosure claim.

To achieve expedition in this Court, a movant must establish a "sufficiently colorable claim and show[] a sufficient possibility of a threatened irreparable injury." *Giammargo v. Snapple Beverage Corp.*, 1994 Del. Ch. LEXIS 199, at *6 (Del. Ch. Nov. 15, 1994). Under Delaware law, nearly all disclosure violations are *per se* irreparable harm because the harm arising from the un- or misinformed transaction is of a nature where the injury cannot be compensated adequately in damages. *See Alpha Builders, Inc. v. Sullivan*, 2004 Del. Ch. LEXIS 162, at *19 (Del. Ch. Oct. 5, 2004).

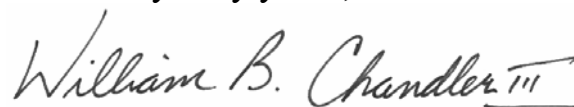
Of plaintiff's numerous disclosure violation allegations, I find one colorable. Plaintiff brings to light an inconsistency in defendants' treatment of the stock-based compensation expense in the Proxy Statement. Although two of the several valuation methodologies treat stock-based compensation traditionally as a non-cash expense, the discounted cash flow analysis—arguably the most important valuation metric—treats the stock-based compensation as a cash expense. This change in norms, from a non-cash expense to a cash expense, allegedly results in a lower valuation range. Though there may be a valid reason for the treatment of the stock-based compensation in the discounted cash flow analysis, that this detour is not disclosed or otherwise highlighted in the relevant proxy statement section gives me pause. Thus, plaintiff has established a colorable disclosure claim. As a disclosure claim, it threatens irreparable harm by omitting material information or by misleading stockholders regarding information that a reasonable investor would want to know before making a decision.

Plaintiff's motion to expedite is GRANTED on the grounds of the stock-based compensation expense disclosure claim. Having found one claim sufficient, I do not address the other disclosure claims, or the *Revlon* claims.

A preliminary injunction hearing will be held in Georgetown on December 3, 2009 at 2 p.m. The parties shall confer regarding scheduling and briefing matters. The Court assumes the parties will arrange a discovery time table addressing, *inter alia*, plaintiff's request for access to all relevant information regarding the discounted cash flow analysis.

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

WBCIII:dmq