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January 30, 2015

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Re: *ReCor Medical, Inc. v. Warnking*
C.A. No. 7387-VCN
Date Submitted: November 3, 2014

Dear Counsel:

The Court awarded Plaintiff ReCor Medical, Inc. (“ReCor”) its attorneys’ fees and expenses incurred in this action and in defending the appeal taken by Defendants Reinhard Warnking and Sound Interventions, Inc. (the “Defendants”).¹ The parties have been unable to agree upon an implementing form of order because of their dispute about whether post-judgment interest should be simple or compound.

¹ See *ReCor Med., Inc. v. Warnking*, 2014 WL 5317768 (Del. Ch. Oct. 15, 2014).

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The Court “has broad discretion, subject to principles of fairness” in awarding interest.² That discretion includes the authority to award compound interest.³ An award of simple interest allows the obligor to gain something of a cumulative advantage by delaying payment of its obligation.⁴ Because of this, simple interest may generally be viewed as “ha[ving] nothing to commend it.”⁵ In *Seaport Village Limited*, for example, the Court awarded interest, compounded quarterly, on a fee award.⁶

Defendants assert that a compound interest rate would be unfair. They focus on their expenditures promoting the technology that ReCor now controls. Although the amount expended is not clear, some benefit did, in fact, accrue to ReCor. As a matter of equity, this undoubtedly favors the Defendants, but the Defendants’ own inequitable conduct played an integral role in the Court’s resolution of the merits of this action.

² *Valeant Pharm. Int’l v. Jerney*, 921 A.2d 732, 756 (Del. Ch. 2007).

³ *Gotham P’rs L.P. v. Hallwood Realty P’rs, L.P.*, 817 A.2d 160, 173 (Del. 2002).

⁴ *See, e.g., Brandin v. Gottlieb*, 2000 WL 1005954, at *30 (Del. Ch. July 13, 2000).

⁵ *Gotham P’rs L.P.*, 817 A.2d at 173.

⁶ *Seaport Vill. Ltd. v. Seaport Vill. Operating Co., LLC*, 2014 WL 4782817, at *2 (Del. Ch. Sept. 24, 2014).

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In addition, with interest rates at low levels, the legal rate of interest of the discount rate plus five percent⁷ may overstate the value accruing to Defendants from possessing the funds owed to ReCor.

There is no clear-cut exit from the conundrum posed by the parties. Compound interest is not a default answer because the question is committed to the Court's discretion. Yet, on balance, the reasons cited for simple interest do not outweigh the reality that compound interest is a more accurate means of measuring the time value of money owed by Defendants to ReCor. Accordingly, interest on the fee and expense award will be compounded quarterly.

An implementing order will be entered.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K

⁷ See 6 Del. C. § 2301.