

WILLIAM B. CHANDLER III
CHANCELLOR

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

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: November 14, 2005
Decided: December 14, 2005

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Re: *In re Sunbelt Beverage Corp. Shareholder Litigation*
Consolidated Civil Action No. 16089-NC

Dear Counsel:

Having carefully considered the parties' written submissions, I have concluded that oral argument is unnecessary.

Sunbelt Beverage Corporation (now known as Sunbelt Holding Inc.) is a Delaware-based, privately-owned company that, currently through its operating subsidiaries, is engaged in the wholesale distribution of wine and spirits. The individual defendants were all directors of Sunbelt. Sunbelt is presently one of the larger alcoholic beverage wholesalers in the country. Mr. and Ms. Goldring (together, referred to as "Goldring"), through closely-held entities, are also among the largest alcoholic beverage wholesalers in the country.

Before the events that comprise the subject of this lawsuit, Goldring held an 11% stake in Sunbelt. In 1997, purportedly pursuant to a call option in the shareholders agreement to which Goldring was a party, Sunbelt attempted to purchase Goldring's shares and initiate a statutory merger. Goldring objected and filed an appraisal action in 1997, and a common law action for breach of fiduciary duty in 1999, in Delaware. In 1998 and in respect to the appraisal action, Sunbelt moved in the Southern District of New York to compel arbitration pursuant to the shareholders agreement. Arbitration ensued, staying the consolidated Delaware action. In 2002, the arbitrator decided that the exercise of the call was without merit, and the stay of the Delaware claims was lifted. Discovery on the Delaware claims proceeded (because Sunbelt was found by the arbitrator not to have had a contractual right to merge), albeit at what plaintiffs argue was a slow pace.

Goldring's common law breach of fiduciary duty claims seek rescissory relief and the award of damages returning plaintiffs to the monetary equivalent of owning 11% of Sunbelt today. The damages phase of such a claim would require significant discovery into the present financial records of Sunbelt to determine its current value.

Defendants argue that because plaintiffs have not promptly pursued rescissory relief, statutory appraisal is the only remedy available for the statutory merger approved by Sunbelt's Board of Directors in 1997, and only the value of Sunbelt at the time of the merger is relevant. Defendants therefore seek to limit the scope of discovery and request partial summary judgment in respect to the common law action. After carefully examining the facts presented, I conclude that plaintiffs have not delayed in their pursuit of the common law action sufficiently to constitute unreasonable delay. The court-ordered stay of the Delaware proceedings was not lifted until March 2002, and by July 2005 a final scheduling order was negotiated. Additional impediments to the prompt resolution of this case include the necessity of negotiating a confidentiality order (entered in 2003), and ongoing disputes (addressed below) regarding the scope of discovery. Plaintiffs may therefore proceed with their claim for rescissory relief.

I recognize, however, the burden placed on defendants to allow discovery of Sunbelt's past and present finances (including the burden of sharing proprietary information with a competitor). Therefore, I will limit plaintiffs' discovery in the common law action. Defendants have already produced documents through December 1998, almost a year and one-half after the merger. That is sufficient for present purposes. The expanded post-merger time period proposed by Goldring will be at least nine years at the time of trial, quite a longer period than *In re Best*

Lock Corp. Shareholder Litigation, where a request to stay discovery was denied when relevant post-merger period was a much shorter two and one-half years.¹ Therefore, issues concerning the circumstances and fairness of the merger should be prepared and tried first, including the breach of fiduciary duty claims. If Goldring successfully demonstrates that there was a breach of fiduciary duty, then I will allow an additional stage of discovery and trial to determine the present value of Sunbelt and the damages owed to Goldring.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in black ink that reads "William B. Chandler III". The signature is written in a cursive style with a horizontal line at the end.

William B. Chandler III

WBCIII:bsr

¹ 2000 WL 1876460 (Del. Ch. Dec. 19, 2000).