

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

LEO E. STRINE, JR.
CHANCELLOR

New Castle County Courthouse
Wilmington, Delaware 19801

Date Submitted: February 22, 2013
Date Decided: February 26, 2013

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RE: Senior Housing Capital, LLC v. SHP Senior Housing Fund, LLC
Civil Action No. 4586-CS

Dear Counsel:

The defendant, CalPERS, has moved to strike from the record a letter and evidence submitted post-trial by the plaintiff, SHP, under Court of Chancery Rule 171(a).¹ CalPERS claims that the submission is improper because SHP did not first obtain court approval. I deny the motion. The decision to admit supplemental briefing is in the discretion of the court.² Here, CalPERS submitted as an exhibit to its post-trial opening brief a chart that did not contain supporting citations.³ SHP objected to this exhibit in its post-trial answering brief, and CalPERS was asked by the court, at post-trial

¹ Del. Ct. Ch. R. 171(a) (“Unless otherwise ordered, no additional briefs or letters containing argument shall be filed without first procuring Court approval.”).

² See, e.g., *Pereyron v. Leon Constantin Consulting, Inc.*, 2004 WL 3048945, at *1 (Del. Ch. Oct. 21, 2004).

³ Defs.’ Post-Tr. Op. Br. Ex. 8.

argument, to submit a new version with supporting authority.⁴ CalPERS then submitted a new version of the exhibit. SHP has now submitted a letter in response to CalPERS' new submission, and has attached to the letter two exhibits, in spreadsheet form, that are part of the original joint trial exhibits. SHP was not able to address CalPERS' exhibit in its regular post-trial briefing, because CalPERS submitted its new version after the post-trial oral argument. Therefore, I treat SHP's submission as part of its post-trial answering brief, and deny CalPERS' motion to strike.

CalPERS seeks leave to respond to SHP's submission. But, if SHP had been able to respond to CalPERS' chart in its post-trial answering brief, CalPERS would not have been permitted to file a reply brief to respond further. Therefore, I do not grant CalPERS leave to respond. As my learned former colleague Chancellor Chandler once observed, "[i]t is inhumane to expect the trial judge to plead for yet another bucket of water to be added to the ocean."⁵

Very truly yours,

/s/ Leo E. Strine, Jr.

Chancellor

⁴ Pls.' Post-Tr. Ans. Br. 7; Post-Tr. Arg. 164:21-165:8.

⁵ *ONTI, Inc. v. Integra Bank*, 751 A.2d 904, 929 n.103 (Del. Ch. 1999).