

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

MORGAN T. ZURN
VICE CHANCELLOR

LEONARD L. WILLIAMS JUSTICE CENTER
500 N. KING STREET, SUITE 11400
WILMINGTON, DELAWARE 19801-3734

October 15, 2026

Michael A. Barlow, Esquire
Quinn Emanuel Urquhart & Sullivan, LLP
500 Delaware Avenue, Suite 200
Wilmington, DE 19801

David E. Wilks, Esquire
Wilks Law, LLC
4250 Lancaster Pike, Suite 200
Wilmington, DE 19805

RE: ***Shareholder Representative Services, LLC v. Alexion Pharmaceuticals, Inc.***,
Civil Action No. 2020-1069-MTZ

Dear Counsel,

Thank you for your continued efforts to resolve the terms of the final order and judgment in this case.¹ I write to address the two issues you recently brought to my attention.

The first is how to adjudicate SRS’s claim in its Count I that Alexion breached its commercially reasonable efforts (“CRE”) obligations to achieve Milestone 1.² Alexion seeks a judgment in its favor; SRS seeks a dismissal as moot.

My liability opinion found Alexion’s fall 2021 HV-108 study satisfied Milestone 1 and that Alexion breached its obligation to pay.³ That opinion then

¹ I write for the parties and assume familiarity with this matter and the defined terms we have used.

² Docket Item (“D.I.”) 155 ¶ 255 (“In Section 3.8(f) of the Agreement, Alexion covenanted that ‘[f]or a period of seven (7) years following the Closing Date, [Alexion] shall and shall cause its affiliates (including [Syntimmune]) to use Commercially Reasonable Efforts to achieve ... each of the Milestone Events’”); *id.* ¶ 258 (“The above breaches proximately and directly caused SRS to suffer monetary damages in the amount of at least \$370 million, the sum total of the unpaid Earn-Out Payments due for the achievement of Milestone Events (i) through (iii).”).

³ *S’holder Rep. Serv’s LLC v. Alexion Pharms., Inc.*, 2024 WL 4052343, at *28–36 (Del. Ch. Sept. 5, 2024).

addressed “whether SRS proved Alexion failed to use commercially reasonable efforts to achieve Milestones 2 through 8.”⁴ SRS presented three theories. One of them, based on “Alexion’s pivot away from the IV formulation for the WAIHA indication,” failed to demonstrate a breach of Alexion’s CRE obligations.⁵ That complete failure dooms any claim for breach of CRE obligations to achieve Milestone 1. For the other two theories—suspending ALXN1830’s clinical development in 2020, and Alexion’s 2021 termination of the program after Milestone 1 was reached—SRS explicitly limited the consequences and damages from a CRE breach to Milestones 2 through 8.⁶ SRS waived any claim by SRS that either of those actions affected Milestone 1.⁷ Judgment on Count I with regard to Milestone 1 shall be entered in Alexion’s favor.

The second issue is how to calculate postjudgment interest. We have addressed that issue iteratively. My damages opinion generally observed that the “modern approach” of “compounding interest using a floating interest rate based on the legal rate,” “compounding at quarterly intervals,” was appropriate for post-

⁴ *Id.* at *36.

⁵ *Id.* at *40.

⁶ D.I. 364 at 70 (arguing that SRS met its burden on damages “by showing that Alexion failed to timely pay for its achievement of Milestone 1, and that ALXN1830 was ‘reasonably certain’ to have obtained the remaining Milestones had Alexion not breached the Merger Agreement”); *id.* at 72 (“Absent Alexion’s Breach, it is ‘Reasonably Certain’ that ALXN1830 Would Have Achieved Milestones 2 to 8”); *id.* at 77 (arguing “[t]he evidence showed that had Alexion not suspended ALXN1830’s clinical development in 2020,” Milestones 2 through 8 would have been achieved as of certain dates); *id.* at 80 (arguing “[i]f the Court were to conclude that Alexion breached the Merger Agreement in December 2021, when it terminated the ALXN1830 program,” Milestones 2 through 8 would have been achieved as of certain dates); *see* D.I. 370 (addressing Milestone 1 only in terms of whether it was achieved).

⁷ *Emerald P’rs v. Berlin*, 726 A.2d 1215, 1224 (Del. 1999) (“Issues not briefed are deemed waived.”). To use SRS’s words: it is not the case that the Court simply “did not adjudicate SRS’s Milestone 1 CRE claim.” D.I. 470 at 1 (capitalization omitted). SRS did not present that claim for adjudication. As the liability opinion explained, SRS had to prove harm to prove a breach, and the only harm it identified from the CRE breach was Alexion’s failure to achieve Milestones 2 through 8. *S’holder Rep. Serv’s*, 2024 WL 4052343, at *40; *see supra*, n.6.

judgment interest here.⁸ A few months later, we revisited prejudgment interest in view of the Merger Agreement's contract rate—"[i]n pursuit of getting this right," "as the parties presented it for the first time in supplemental briefing."⁹ I held the contract rate should govern Milestone 1; that the theory underlying expectation damages supported using the contract rate for Milestones 2 and 3, which the record showed would have been due before the expected judgment date; and that the remaining milestones did not accrue prejudgment interest.¹⁰

The parties now join issue on postjudgment interest. Alexion contends the contract rate should apply to the entire judgment amount as of the date of judgment. SRS seeks a "milestone-specific post-judgment calculation," setting the Milestone 1 rate at the date Milestone 1 was due; the Milestones 2 and 3 rate at the due dates predicted by the trial record; and Milestones 4 through 8 at the floating legal rate as of the date of judgment.¹¹

Delaware law is clear that postjudgment interest is only owed after the date of judgment, and so is calculated as of that date.¹² Delaware law uses the parties' specified lawful contract rate to set the postjudgment interest rate.¹³ And I have already held the principles of expectation damages support applying the contract rate even to milestones that do not meet the contractual terms, in order to avoid a windfall.¹⁴ Together, these principles direct the use of the contract rate as of the date of judgment for each damages amount and prejudgment interest. That ruling should

⁸ *S'holder Rep. Serv's LLC v. Alexion Pharms., Inc.*, 341 A.3d 513, 551 (Del. Ch. 2025).

⁹ *S'holder Rep. Serv's LLC v. Alexion Pharms., Inc.*, 2025 WL 2993473, at *1–2 (Del. Ch. Oct. 23, 2025).

¹⁰ *S'holder Rep. Serv's*, 2025 WL 2993473, at *2–4.

¹¹ D.I. 470 at 5.

¹² *Noranda Aluminum Hldg. Corp. v. XL Ins. Am., Inc.*, 269 A.3d 974, 979 (Del. 2021) (applying 6 Del. C. § 2031(a)).

¹³ See generally *Sequoia Presidential Yacht Grp. LLC v. FE P'rs, LLC*, 2014 WL 2610577 (Del. Ch. June 12, 2014) (applying 6 Del. C. § 2301).

¹⁴ *S'holder Rep. Serv's LLC*, 2025 WL 2993473, at *3 (citing *Fortis Advisors LLC v. Johnson & Johnson*, 2024 WL 4048060, at *54–55 (Del. Ch. Sept. 4, 2024)).

resolve the parties' dispute over the amount of the bond securing a stay pending appeal.

Please alert chambers when you are prepared to file a stipulated final order and judgment with numbers filled in, so that we can ensure it is entered the same day.

Sincerely,

/s/ Morgan T. Zurn

Vice Chancellor¹⁵

MTZ/ms

cc: All Counsel of Record, via *File & ServeXpress*

¹⁵ Sitting by designation under Del. Const. art. IV, § 13(2). *See* D.I. 467.