

## Dr Pepper Shareholders Denied Appraisal In \$21B Keurig Deal

By **Vince Sullivan**

*Law360 (June 1, 2018, 8:46 PM EDT)* -- Shareholders of Dr Pepper Snapple Group Inc. do not have appraisal rights in the proposed \$21 billion merger of the company with Keurig Green Mountain Inc., after a Delaware Chancery Court judge ruled Friday that Dr Pepper itself is not a party to the deal.

In an opinion issued by Chancellor Andre G. Bouchard, the court ruled that appraisal rights afforded to shareholders of a company that is a party to a merger do not apply in this transaction because Dr Pepper is merely the parent of Salt Merger Sub Inc., a subsidiary created to merge with the parent company of Keurig.

Section 262 of the Delaware General Corporation Law provides shareholders with a right to seek a court determination of the fair value of their shares in a company after a merger is announced. The court has the authority to award the petitioning shareholders the difference between the deal price and the appraised value under certain conditions.

Chancellor Bouchard said that Section 262 requires a petitioning shareholder to hold stock in a constituent corporation, which requires the company to be one “actually being merged or combined.”

“Based on that construction, the court concludes that Dr Pepper’s stockholders do not have a statutory right to appraisal under Section 262(b) because Dr Pepper is not a constituent corporation,” the opinion said. “Instead, Dr Pepper is simply the parent of one of the two corporations that will be merged in connection with the proposed transaction.”

Chancellor Bouchard said appraisal rights were not warranted here because Dr Pepper shareholders are not giving up their holdings in the company through the merger transaction.

The deal, announced in January, is described in the opinion as a reverse triangular merger in which Dr Pepper will create a wholly-owned merger subsidiary that will combine with the indirect parent of Keurig, Maple Parent Holdings Corp.

Under the terms of the transaction, Dr. Pepper shareholders will receive a special cash dividend of \$103.75

per share partly funded by a \$9 billion payment from Maple Parent and will retain a 13 percent stake in the combined entity, while Keurig shareholders will wind up with the remaining 87 percent of the company.

Dr Pepper owns more than 50 beverage brands, including Dr Pepper, 7 Up and Snapple, and will combine with Keurig's Green Mountain Coffee Roasters brands and its single-serving beverage business to create a behemoth in the beverage industry anticipated to bring in \$11 billion in annual revenue post-merger, the companies said in a statement at the time the deal was announced.

Keurig CEO Bob Gamgort is slated to be the chief executive of the combined venture, while Dr Pepper CEO Larry Young will serve on the board of directors, the statement said.

Dr Pepper will issue common stock as consideration for the merger, with Keurig parent JAB Holdings SARL becoming the controlling shareholder of Dr Pepper post-merger.

Stockholders of Dr Pepper are not being asked to vote on the merger, but will have to vote on two corporate actions necessary to complete the deal, including the issuance of new stock, at a special meeting set for June 29, according to the opinion.

The suit was filed in March by shareholders City of North Miami Beach General Employees Retirement Plan and Maitland Police Officers and Firefighters Retirement Trust and accused Dr Pepper of failing to inform investors of their appraisal rights in a proxy statement outlining the merger deal. They asked the court to enjoin the transaction until they were granted their appraisal right.

Both sides agreed the case boiled down to a legal question of whether the terms of the deal gave rise to appraisal rights for Dr Pepper shareholders, and each filed motions for summary judgment based on the answer to that question.

The shareholders argued that they ought to have appraisal rights, but Chancellor Bouchard said their request would require the court to ignore the plain language of Section 262 and create an application of the state's law that was tailored only to the specific facts of this case.

"Such an approach is undesirable as it would create uncertainty in the law and invite litigation," the opinion said.

Representatives for the shareholders, Dr Pepper and Maple Parent did not immediately respond late Friday to request for comment.

The shareholders are represented by Michael J. Barry, Jeff A. Almeida and Laina M. Herbert of Grant & Eisenhofer PA and Mark Lebovitch and John Vielandi of Bernstein Litowitz Berger & Grossman LLP.

Dr Pepper Snapple Group Inc. and its directors are represented by S. Mark Hurd, Melissa A. DiVincenzo, Eric S. Klinger-Wilensky and Alexandra Cumings of Morris Nichols Arshat & Tunnell LLP and Brian A. Herman and Jason H. Wilson of Morgan Lewis & Bockius LLP.

Maple Parent Holdings Corp. is represented by Paul J. Lockwood, Joseph O. Larkin, Sarah R. Martin, Alyssa S. O'Connell and Michelle L. Davis of Skadden Arps Slate Meagher & Flom LLP.

The case is City of North Miami Beach General Employees' Retirement Plan, et al., v. Dr Pepper Snapple Group Inc., et al., case number 2018--0227, in the Court of Chancery of the State of Delaware.

--Additional reporting by Benjamin Horney. Editing by Alanna Weissman.

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