COURT OF CHANCERY OF THE STATE OF DELAWARE

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VICE CHANCELLOR

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Re: *In re ISN Software Corp. Appraisal Litigation*,
C.A. No. 8388-VCG

Dear Counsel:

This matter requires me to determine the fair value of stock of ISN Software Corp. ("ISN" or the "Company") held by two minority stockholders at the time of a merger by which the controller cashed out some, but not all, of the stock held by the minority (the "Merger"). For the reasons that follow, I find that the method used by the controller to determine value is unreliable; that the Company did not trade publicly and that historical sales of stock are not reliable indicators of fair value; and that no comparable company evaluation exists on which I may reasonably rely. For

those reasons, I conclude that a discounted cash flow ("DCF") analysis is the most reliable indicator of fair value. Each of the two Petitioners provided an expert who opined as to the fair value based on a DCF, as did an expert for the Respondent. Since a DCF is a widely used method of valuation, in reliance on which large amounts of capital are deployed in corporate markets each year, an optimist (a.k.a. someone other than a judge presiding in appraisal trials) might assume that experts hired to examine the same company, analyzing the same set of financial data, would reach similar results of present value based on discounted cash flow. In fact, it is quite common for the petitioner's expert in an appraisal to reach a DCF value twice that arrived at by the respondent's expert (although never the reverse). In a competition of experts to see which can generate the greatest judicial skepticism regarding valuation, however, this case, so far, takes the prize: one of the Petitioners' experts opines that fair value is greater than *eight times* that implied by the DCF provided by the Respondent's expert. Given such a divergence, the best scenario is that one expert, at the least, is wildly mistaken. I have taken the framework of one of the experts, considered the proper inputs to employ where the parties diverged, and reached a statutory fair value of $98,783 per share. My reasoning follows.

I. BACKGROUND

A. Background Facts

Because the only issue here is the statutory fair value of ISN's stock at the

time of the Merger, the following factual adumbration should be sufficient to the reader's understanding of the issues.

Formed in 2000, Respondent ISN is a privately held Delaware corporation controlled by William "Bill" Addy.[1] ISN provides a subscription-based online contractor database, ISNetworld, which is designed to help users meet internal and governmental record keeping and compliance requirements.[2] The Company's customers are classified as either "hiring clients"—contractors seeking work—or "owners"—businesses seeking to hire contractors—each of whom subscribe to ISN's software platform.[3] Contractor subscriptions comprise the majority of ISN's revenues.[4] Although a substantial portion of ISN's customers are concentrated in the oil and gas industry, the Company serves a variety of industries across more than 70 countries.[5] ISN had generally experienced substantial growth in the years leading up to the Merger.[6]

Petitioners Polaris and Ad-Venture are former stockholders of ISN, owning 201 shares and 544 shares of ISN's common stock, respectively, at the time of the Merger.[7] Ad-Venture is controlled by Bill Addy's brother, Brian Addy, who left

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[1] Joint Pre-Trial Stipulation ("PTO") ¶ 3.
[2] *Id.* at ¶ 4.
[3] *Id.*
[4] *Id.*
[5] *Id.* at ¶ 5; Joint Trial Exhibit ("JX") 784 at 8–9.
[6] *See* Trial Tr. 724 (Bill Addy); *see also* JX 783 at 8–10 (describing ISN's historical growth).
[7] PTO ¶¶ 1–2.

ISN's board around the end of 2007.[8] Polaris purchased its stock indirectly from Brian Addy in 2012.[9] The Addy brothers, I note, have had a long and contentious history in this Court, not pertinent here.[10]

On January 9, 2013, ISN completed the Merger, by which the Company merged with its wholly owned subsidiary, 2013 Sub Inc., pursuant to 8 *Del. C.* § 251, with ISN continuing as the surviving corporation.[11] Stockholder approval was obtained pursuant to 8 *Del. C.* § 228 by the written consent of Bill Addy and ISN's CEO Joe Eastin, who at that time owned 65.3% and 4.9% of the Company's stock, respectively.[12] A Certificate of Merger was filed with the Delaware Secretary of State on January 9, 2013.[13]

ISN did not engage a financial advisor or an investment bank in connection with the Merger, nor did it obtain a fairness opinion.[14] The merger consideration entitled certain minority stockholders—including Polaris, but not Ad-Venture—the right to receive $38,317 per share.[15] To determine that price, Bill Addy used a

[8] Trial Tr. 488–89 (Brian Addy).
[9] JX 463.
[10] *See Ad-Venture Capital Partners, L.P. v. ISN Software Corp.*, C.A. No. 6618-VCG (Del. Ch. Jan. 3, 2012) (TRANSCRIPT); *Ad-Venture Capital Partners, L.P. v. ISN Software Corp.*, C.A. No. 5172-CC (Del. Ch. May 4, 2010) (TRANSCRIPT).
[11] PTO ¶ 7.
[12] *Id.* at ¶¶ 6, 8.
[13] *Id.* at ¶ 9.
[14] *Id.* at ¶¶ 10–11.
[15] *Id.* at ¶ 12. On the date of the Merger, each share of ISN common stock held by a stockholder that (1) owned less than 500 shares of ISN common stock and (2) was not an "eligible S Corporation shareholder," was converted into the right to receive $38,317 in cash. That included

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valuation created by a third party in 2011, which he theoretically adjusted based on his expectations of the Company's outlook at the time,[16] but on which no party relies as an indication of fair value on the date of the Merger.[17]

B. The Appraisal Action

On January 16, 2013, ISN delivered to Petitioners a Notice of Stockholder Action Taken by Written Consent and Notice of Appraisal Rights.[18] On January 31, 2013, Ad-Venture delivered to ISN a written demand for appraisal of all of its 544 shares of common stock.[19] On that same day, Polaris demanded appraisal of all of its 201 shares of common stock.[20] Ad-Venture and Polaris each filed a Verified Petition for Appraisal pursuant to 8 *Del. C.* § 262 on March 7 and April 22, 2013, respectively.[21] The Respondent has not disputed that the Petitioners are entitled to an appraisal in accordance with 8 *Del. C.* § 262.

On September 9, 2013, ISN and Polaris agreed to a stipulation and proposed order pursuant to which ISN paid $25,000 per share plus interest at the statutory rate of 5.75%, compounded quarterly from January 9, 2013 to September 9, 2013, thus

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the stock held by Polaris and Gallagher Industries. JX 576. All other ISN shares, including those held by Ad-Venture, remained unchanged and continued to remain outstanding. *Id.*

[16] JX 559.

[17] Trial Tr. 733, 784–85, 810–25 (Bill Addy).

[18] PTO ¶ 14.

[19] *Id.* at ¶ 15.

[20] *Id.* at ¶ 17.

[21] *Id.* at ¶ 18.

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tolling the running of interest with respect to that amount;[22] ISN and Ad-Venture did not agree to a similar stipulation.[23]

Trial was held in Georgetown from February 1 to February 5, 2016. Following post-trial briefing, I heard post-trial oral argument on June 14, 2016. This Letter Opinion serves as my decision regarding the Petitions for Appraisal.

II. ANALYSIS

A. Legal Framework

In accordance with 8 *Del. C.* § 262, upon finding that a stockholder is entitled to an appraisal, the "Court shall determine the fair value of the shares exclusive of any element arising from the accomplishment or expectation of the merger."[24] To determine "fair value," the Court must value the corporation as a going concern based on the corporation's "operative reality" as of the date of the merger.[25] The Court "must take into consideration all factors and elements which reasonably might enter into the fixing of value," and account for "facts which were known or which could be ascertained as of the date of merger."[26] In making its determination, the

[22] *Id.* at ¶ 19. The proposed order was entered as an Order of the Court on September 10, 2013. *In re ISN Software Corp. Appraisal Litig.*, C.A. No. 8388-VCG (Del. Ch. Sept. 10, 2013) (ORDER).
[23] PTO ¶ 19.
[24] 8 *Del. C.* § 262(h).
[25] *See M.G. Bancorporation, Inc. v. Le Beau*, 737 A.2d 513 (Del. 1999) (citing *Cede & Co. v. Technicolor, Inc.*, 684 A.2d 289, 298 (Del. 1996)).
[26] *Weinberger v. UOP, Inc.*, 457 A.2d 701, 713 (Del. 1983) (quoting *Tri-Continental Corp. v. Battye*, 74 A.2d 71, 72 (Del. 1950)).

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Court has "significant discretion to use the valuation methods it deems appropriate, including the parties' proposed valuation frameworks, or one of the Court's own making."[27] In an appraisal proceeding, both the petitioner and the respondent share the burden to establish fair value by a preponderance of the evidence.[28]

B. Overview of the Experts

Each of the three parties proffered experts who submitted opening and rebuttal expert reports and testified live at trial. The gap between the expert valuations is wide—alarmingly so—ranging from $106 million to $820 million. Polaris's expert, Bruce B. Bingham, testified that the fair value of ISN as of January 9, 2013 was $820 million, or $230,000 per share.[29] Ad-Venture's expert, David G. Clarke, opined that the fair value of the Company on the date of the Merger was $645 million, or $222,414 per share.[30] ISN's expert, Daniel Beaulne, testified that the fair value of ISN was $106 million, or $29,360 per share, at the time of the Merger.[31]

The experts relied on various valuation methods, weighting each as they saw fit, to determine the fair value of ISN as of the date of the Merger:

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[27] *In re Appraisal of DFC Global Corp.*, 2015 WL 3753123, at *5 (Del. Ch. July 8, 2016) (citing *In re Appraisal of Ancestry.com, Inc.*, 2015 WL 399726, at *15 (Del. Ch. Jan. 30, 2015)).
[28] *Laidler v. Hesco Bastion Envtl., Inc.*, 2014 WL 1877536, at *6 (Del. Ch. May 12, 2014) (citing *M.G. Bancorporation*, 737 A.2d at 520).
[29] JX 784 at 77–78. Bingham relied, in part, on the conclusions of Polaris's expert David Tamm who analyzed various aspects of ISN's growth prospects. *Id.* at 2; JX 782 at 4.
[30] JX 783 at 54.
[31] JX 781 at 73. Because Clarke and the other experts disagree regarding the effect of stock options on the number of shares outstanding, the per-share values diverge even more than the total valuations. *See infra* note 53.

Bruce B. Bingham (Polaris's Expert)

Method	Weight	Value (in millions)
Discounted Cash Flow	50%	$860
Guideline Public Companies	45%	$810
Comparable Transactions	5%	$540

David G. Clarke (Ad-Venture's Expert)

Method	Weight	Value (in millions)
Discounted Cash Flow	60%	$662
Guideline Public Companies	40%	$620

Daniel Beaulne (ISN's Expert)

Method	Weight	Value (in millions)
Discounted Cash Flow	25%	$100
Direct Capitalization of Cash Flow	25%	$94
Guideline Public Companies	25%	$109
Prior Transaction #1	12.5%	$124
Prior Transaction #2	12.5%	$119

C. Reliance on DCF Analysis

As I illustrate above, the experts utilized a variety of valuation methods to determine the fair value of ISN as of the date of the Merger. For the following reasons, I rely exclusively on the DCF method in my analysis.

All three of the experts relied to some extent on the guideline public companies, or "GPC," method. Generally, the experts disagreed as to the universe of guideline public companies, the method by which the companies should be

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compared, and the extent of an applicable size premium, if any. In this case, where ISN has no public competitors, and where the Company's alleged industry includes various and divergent software platforms,[32] I find the GPC method less reliable than a DCF to determine ISN's fair value.

ISN's expert, Mr. Beaulne, attributed 50% of his valuation to the direct capitalization of cash flow, or "DCCF," method. The DCCF method assumes that a company will grow in perpetuity at a long-term growth rate, or "capitalization rate."[33] Accordingly, the DCCF is typically an appropriate valuation tool when the company has reached a steady state, or where no other feasible valuation methods exist.[34] As neither of those factors are true here, I find that the DCCF method is a less reliable indication of ISN's fair value than is the DCF.

Beaulne also utilizes a past-transactions valuation method, giving 12.5% weight to each of two prior transactions.[35] The first transaction occurred three

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[32] Petitioners allege that ISN is a "Software as a Service," or SaaS, company. Bingham defines the SaaS industry to include "software that is owned, delivered and managed remotely by one or more providers. The provider delivers software based on one set of common code and data definitions that is consumed in a one-to-many model by all contracted customers at [any time] on a pay-for-use basis or a subscription based on use metrics." JX 784 at 4 (citations omitted). Presumably, the SaaS industry includes various business applications, such as accounting and customer relationship management, in addition to the contractor management applications ISN provides.

[33] JX 781 at 29.

[34] Trial Tr. 383–84 (Bingham).

[35] I note that Bingham, Polaris's expert, included a valuation based on comparable transactions. Bingham admits, however, that limited comparable transactions exist and he accordingly assigns that analysis minimal (5%) weight. I also note that Polaris failed to provide an explanation of Bingham's comparable transactions analysis in its post-trial briefing. Therefore, I do not specifically address Bingham's analysis in this post-trial Letter Opinion.

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months before the date of the Merger. On October 10, 2012, Ad-Venture sold 201 shares of ISN stock and transferred other consideration to Polaris—a Petitioner here—for $29,783 per share in cash.[36] The transaction included non-stock consideration, such as call and put options, an escrow agreement, a personal guarantee, and a "right of co-sale."[37] The second transaction occurred just three weeks before the date of the Merger. On December 20, 2012, Ad-Venture sold 155 shares of ISN stock to Gallagher Industries, subject to a "minimum proceeds agreement," in exchange for parcels of "ranch" land—undeveloped, large so-called ranch lots in a Colorado resort housing development.[38]

I find that Beaulne's past-transactions analysis is an unreliable indicator of fair value for multiple reasons. First, I find that the characteristics of the Company and its stock, along with the nature of the prior transactions, are fatal to the reliability of the resulting sales price. Specifically, ISN is a privately held company, controlled by Bill Addy, with stock that does not regularly trade; in other words, the Company's stock is illiquid. When entering the prior transactions, Brian Addy testified that he sold the stock for a variety of reasons, including his desire for liquidity.[39] As such,

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[36] Trial Tr. 8, 72–73 (Youngren); JX 463.
[37] JX 463.
[38] JX 526; Trial Tr. 512 (Brian Addy). Gallagher Industries was an ISN stockholder at the time of the Merger and was one of the stockholders cashed out by the transaction. Gallagher Industries, I note, has not sought appraisal.
[39] Trial Tr. 525 (Brian Addy). Brian Addy also testified that sale of his ISN stock was of intrinsic value to him because adding outside investors could potentially "accomplish a whole multitude of

Brian Addy was not focused solely on maximizing the sales price. In regards to the nature of the transactions, there is no indication that the stock was shopped to multiple buyers,[40] or that the sales prices were determined using complete and accurate information.[41] Therefore, I find it unlikely that the prior sales generated fair value in return for ISN shares.

Second, each of the transactions contained complex and incompatible forms of consideration, such as financial options and land, that are difficult to value; I do not find such exchanges reliable methods of valuation in this context. Based on all of those factors, I do not consider the past-transactions analyzed by Beaulne in my determination of fair value.

D. DCF Valuation

I rely exclusively on the DCF valuation method to determine the fair value of ISN on the date of the Merger. The DCF method, although complex, relies on a simple and powerful concept: simply put, the DCF method estimates the fair value of a company by summing the company's future cash flows, discounted to present value. It follows, necessarily, that the accuracy of DCF valuation is dependent on

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things," such as creating a "buffer" to alleviate the (very substantial) tension between the Addy brothers. *Id.* at 494–95, 525–26 (Brian Addy).

[40] *Cf. Gesoff v. IIC Indus., Inc.*, 902 A.2d 1130, 1154 (Del. Ch. 2006) ("As this court has held in the past, reliance on a price determined in a thinly traded, illiquid, market is evidence of a price's unfairness.") (citations omitted).

[41] In the transaction with Polaris, for example, the essential terms of the transaction were negotiated nearly two years before that transaction closed, and the negotiations were largely based on an unsubstantiated value provided by Bill Addy. Trial Tr. 20, 31–33 (Youngren).

the accuracy of the projections on which it relies. Integral to any DCF valuation model is the length of the period used to project future cash flows, which I refer to as the "projection period." The projection period is typically followed by a terminal value, representing the company's remaining cash flows in perpetuity.

Here, each of the three experts utilized a different projection period in their analysis: Beaulne used a 5-year projection period; Bingham used a 6-year projection period; and Clarke used a 10-year projection period. In selecting the appropriate projection period, I balance ISN's current stage within its lifecycle, the length of time it will remain in that stage, and the reliability of the projections available to estimate future cash flows. While the experts agree that ISN was growing at the time of the Merger, the differences in their projection periods reflect disagreement regarding the remaining length of the Company's growth stage. Complicating the issue, ISN itself did not regularly create long-term financial projections.[42] The experts, therefore, were required to project future cash flows using various assumptions regarding growth and efficiency. While that approach is inherently less reliable than using long-term management projections,[43] I note the reliability of the experts' projections is bolstered by ISN's subscription-based business model, its

[42] *Id.* at 726–27 (Bill Addy).

[43] *See Merion Capital, L.P. v. 3M Cogent, Inc.*, 2013 WL 3793896, at *11 (Del. Ch. July 8, 2013) ("Generally, this Court 'prefers valuations based on contemporaneously prepared management projections because management ordinarily has the best first-hand knowledge of a company's operations.'") (citing *Doft & Co. v. Travelocity.com Inc.*, 2004 WL 1152338, at *5 (Del. Ch. May 20, 2004)).

ability to retain customers, and the inelastic demand for its product. Nonetheless, projections out more than a few years owe more to hope than reason.[44] Balancing those considerations, I find the use of a standard 5-year projection period appropriate here.[45]

As their contrasting conclusions illustrate, the experts disagree on many other key assumptions and inputs. In light of my decision to use a 5-year projection period, I find it appropriate to start with Beaulne's DCF model as a framework. I have closely examined the disagreements among the experts and have adjusted Beaulne's DCF model to reflect my conclusions regarding those items. A list of my adjustments follows. To the extent an assumption or input is not mentioned below, I have considered the issue, and adopted Beaulne's input as the best indication of ISN's value, notwithstanding the fact that one of the Petitioners' experts projected a different value.[46] I depart from Beaulne's inputs, as follows:

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[44] *See Travelocity.com Inc.*, 2004 WL 1152338, at *6 ("[T]his court is inherently suspicious of post-merger, litigation-driven forecasts because '[t]he possibility of hindsight bias and other cognitive distortions seems untenably high.'") (quoting *Agranoff v. Miller*, 791 A.2d 880, 892 (Del. Ch. 2001)).

[45] This Court has recognized that a projection period of five years is typical in a DCF valuation. *See, e.g.*, *Global LT LP v. Golden Telecom, Inc.*, 993 A.2d 497, 511 (Del. Ch. 2010) (citing *Cede & Co. v. JRC Acquisition Corp.*, 2004 WL 28693, at *4 (Del. Ch. Feb. 10, 2004)).

[46] Notably, I adopt Beaulne's assumptions regarding ISN's future cash collections, EBITDA, and the Company's long-term growth rate. I find these conservative assumptions more likely than the bolder growth assumed by the Petitioners' experts. Furthermore, contrary to the assumptions employed by the Petitioners, I do not make separate adjustments for executive compensation, charitable contributions, or private jet usage. Those expenditures were a part of the Company's operative reality on the date of the Merger, and there is no evidence sufficient, in my opinion, to demonstrate that they represent waste or actionable breaches of fiduciary duty; as such, they would have likely continued in a going-concern ISN.

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- I remove Beaulne's annual cash flow adjustment for incremental working capital;[47]
- I add an annual cash flow adjustment for the change in deferred revenue, calculated using Beaulne's projected deferred revenue balances at the end of each year;[48]
- I add a cash flow adjustment in 2014 of $16.5 million to account for an expected tax refund;[49]
- I add approximately $34 million to the sum of ISN's discounted cash flows

[47] Beaulne estimated that ISN's working capital requirements equal 12% of its projected revenue. He made that determination based on the working capital needs of a set of guideline companies in the information technology services industry with supposedly similar subscription billing characteristics. I reject Beaulne's approach for the same reasons I previously rejected the GPC valuation method: ISN has no direct public competitors, nor are there many companies that provide similar software applications. Clarke, by contrast, arbitrarily increased working capital each year by 2.5% of cash collections. Bingham made no adjustment to working capital based on his determination that ISN historically operated with a negative working capital balance.

The nature of ISN's business indicates that its need for additional working capital would be small (although not nonexistent) and the parties have given me no adequate way to compute that small amount. In light of those facts, I find Bingham's assumption most appropriate. To the extent specific current asset or liability accounts require adjustment, I have made a separate adjustment accordingly, as described *infra*.

[48] Since ISN—consistent with its model of pre-paid yearly subscriptions—records a portion of its cash receipts as deferred revenue and not as revenue earned, an annual cash flow adjustment must be made to account for the cash received. Because deferred revenue is a current liability, such an adjustment would necessarily be included in a cash flow adjustment for the change in working capital. For reasons stated above, I forgo a cash flow adjustment for the change in working capital here, however. *See supra* note 47. Accordingly, I include a separate cash flow adjustment for deferred revenue.

[49] ISN expected to receive a $16.5 million tax refund resulting from its decision in early 2013 to change from a cash-based accounting method to an accrual-based method. *See* JX 781 at 44; JX 783 at 38. The Company classified the expected refund as a current asset, which is included in ISN's calculation of working capital. Since I do not make an adjustment for the change in working capital, *see supra* note 47, I include a separate cash flow adjustment for receipt of the tax refund, which was expected in 2014.

for the balance of the "Buyout and Litigation Reserve" account as of December 31, 2012;[50]

- I use a size premium of 2.46%, based on Ibbotson's 8th decile, to calculate the Company's cost of equity;[51] and
- I use a cost of equity of 10.46% based solely on the capital asset pricing model.[52]

After making the foregoing adjustments, I conclude that the value of ISN as of January 9, 2013 is approximately $357 million, or $98,783 per share.[53]

E. Interest

Unless the Court in its discretion determines otherwise "for good cause shown," a petitioner is entitled to statutory interest from the effective date of the merger through the date of payment of the judgment.[54] Statutory interest accrues at 5% over the Federal Reserve discount rate, compounded quarterly.[55] ISN alleges

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[50] ISN separated a portion of its cash to create a "Buyout and Litigation" reserve. I find that the balance of that account, therefore, is not needed to fund the Company's ongoing operations, *i.e.*, it is a distributable non-operating asset. Trial Tr. 806 (Bill Addy); JX 560 at 4. Accordingly, I add the balance of that cash reserve as of December 31, 2012 to the value of ISN. Trial Tr. 823 (Bill Addy).

[51] *See* JX 1011. Utilization of the Ibbotson deciles to determine the size premium is consistent with the approach used by each of the experts here.

[52] Consistent with all of the experts, I determined that ISN's weighted average cost of capital was equal to its cost of equity because the Company did not have long-term debt on the date of the Merger.

[53] My price per share is based on 3,614 shares outstanding on a diluted basis, consistent with the analysis by Beaulne and Bingham.

[54] 8 *Del. C.* § 262(h).

[55] *Id.*

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that good cause exists here to deny Ad-Venture interest at the statutory rate. ISN's argument is based on the unusual nature of the Merger here, in which only Polaris' (and Gallagher Industries') shares were squeezed out. Here, Polaris was deprived of its stock as of the date of the Merger, January 9, 2013, and statutory interest (as modified by the agreement between Polaris and ISN) runs from that date. Ad-Venture is in a somewhat different position; the Merger, the parties agree, did not take Ad-Venture's stock, but did convey to Ad-Venture a statutory appraisal right to demand fair value for its stock.[56] Ad-Venture perfected that right with its demand, dated January 31, 2013. I find that to be the appropriate date for statutory interest to begin to run. ISN's obligation to pay fair value accrued as of that date, and it has, effectively, had the use of that value since the demand was perfected.

Based on the foregoing, Ad-Venture is entitled to pre- and post-judgment interest as described above. Polaris is entitled to pre- and post-judgment interest, beginning as of the date of the Merger, for the portion of Polaris's per-share award above $25,000—the amount previously addressed by agreement between Polaris and ISN.

F. Attorneys' Fees and Expenses

The Petitioners argue that ISN has acted in bad faith to frustrate a fair valuation of the Company. Specifically, they argue that ISN failed to preserve

[56] *See* Trial Tr. 480–81; *see also* 8 *Del. C.* § 262(b).

documentary evidence and that various sources of electronic information were improperly destroyed. In addition, Polaris argues that ISN acted in bad faith by misleading stockholders regarding the value of ISN's shares and by acting with disregard for the interests of minority stockholders in ISN's determination of the merger price.

In the course of preparing this matter for trial, the Petitioners had difficulty securing discovery that should have been forthcoming with minimal effort; ultimately, they were forced to resort to motion practice, and I shifted some fees in this regard to the Respondent, by Order of June 30, 2015.[57] In post-trial briefing, the Petitioners seek further fee shifting, under our Supreme Court's rationale in *Montgomery Cellular Holding Co. v. Dobler*.[58] I find that the parties here were ultimately able to develop a record sufficient to permit me to determine fair value. It is likely that my findings in this Letter Opinion have clarified issues pertaining to the fee-shifting request. It seems prudent, therefore, to direct the parties to confer and inform me whether and to what extent the Petitioners' request to shift fees remains at issue, and I will not address the issue further here in this Letter Opinion.

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[57] *In re ISN Software Corp. Appraisal Litig.*, C.A. No. 8388-VCG (Del. Ch. June 30, 2015) (ORDER).
[58] 880 A.2d 206 (Del. 2005) (awarding attorneys' and expert witness fees to the petitioners after finding that respondents repeatedly acted in bad faith to obstruct a fair valuation of the company).

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III. CONCLUSION

Based on the foregoing, I conclude that the value of ISN as of January 9, 2013 is $357 million, or $98,783 per share. I have not shown my calculations, since they should be easily reproducible by making the adjustments I have described to Beaulne's spreadsheet, which the parties helpfully provided. I note, however, that relying on the mathematical skill of this superannuated history major—even as assisted by an able judicial clerk—would be hubristic. While my valuation methodology is final, I am willing to revisit the math, as appropriate. Accordingly, this letter opinion will not be final for two weeks, during which time the parties should notify the Court of any mathematical errors.

To the extent the foregoing requires an Order to take effect, IT IS SO ORDERED.

Sincerely,

/s/ Sam Glasscock III

Sam Glasscock III