



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LOUISIANA MUNICIPAL POLICE :
EMPLOYEES' RETIREMENT SYSTEM, :
on behalf of itself and all :
other similarly situated :
shareholders of Landry's :
Restaurants, Inc., and :
derivatively on behalf of :
nominal defendant Landry's :
Restaurants, Inc., :
:
Plaintiff, :
:
vs. : Civil Action :
:
TILMAN FERTITTA, STEVEN L. : No. 4339-VCL
SCHEINTHAL, KENNETH BRIMMER, :
MICHAEL S. CHADWICK, MICHAEL :
RICHMOND, JOE MAX TAYLOR, :
FERTITTA HOLDINGS, INC., :
FERTITTA ACQUISITION CO., :
RICHARD LEM, FERTITTA GROUP, INC. :
and FERTITTA MERGER CO., :
:
Defendants, and :
:
LANDRY'S RESTAURANTS, INC., :
:
Nominal Defendant. :

Chancery Courtroom 12C
New Castle County Courthouse
Wilmington, Delaware
Wednesday, October 6, 2010
10:00 a.m.

BEFORE: HON. J. TRAVIS LASTER, VICE CHANCELLOR.

SETTLEMENT HEARING

CHANCERY COURT REPORTERS
500 North King Street - Suite 11400
Wilmington, Delaware 19801-3759

1 APPEARANCES:

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STUART M. GRANT, ESQ.
JOHN C. KAIRIS, ESQ.
MARY S. THOMAS, ESQ.
Grant & Eisenhofer P.A.

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-and-

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MARK LEBOVITCH, ESQ.
of the New York bar
Bernstein Litowitz Berger & Grossmann LLP
for Plaintiff

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DAVID J. TEKLITS, ESQ.
Morris, Nichols, Arsht & Tunnell LLP
for Defendants Kenneth Brimmer, Michael
Chadwick, Michael Richmond and Joe Max
Taylor

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THOMAS A. BECK, ESQ.
Richards, Layton & Finger, P.A.
for Defendants Tilman J. Fertitta, Steven
Scheinthal, Fertitta Holdings Inc.,
Fertitta Acquisition Co., Richard Liem,
Fertitta Group, Inc. and Fertitta
Merger Co.

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BRUCE L. SILVERSTEIN, ESQ.
Young, Conaway, Stargatt & Taylor LLP
for Nominal Defendant Landry's
Restaurants Inc.

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1 MR. GRANT: Good morning, Your Honor.
2 Your Honor, this is the time the Court
3 has set for the fairness hearing for the settlements
4 in Landry's. I am happy to address some of the -- any
5 of the issues that the Court has to give you some
6 background, but I know since this was pretty close to
7 trial, and you had a lot of hearings in front of you,
8 that you probably know a great deal of the background.

9 THE COURT: I am certainly familiar
10 with the case, but for the benefit of the record, why
11 don't you give me the five-minute special.

12 MR. GRANT: Sure.

13 Rather than go back over the facts of
14 the case which are in the brief, I do want to talk
15 about the settlement itself because it really was an
16 extraordinary settlement. I was very proud to be part
17 of it, although I must give a lot of credit to all the
18 folks here, and particularly Mark Lebovitch who I
19 think may go into investment banking after this
20 experience.

21 As Your Honor knows, when we filed
22 this lawsuit, we had a claim that Mr. Fertitta walked
23 from a deal without paying the break-up fee. That was
24 our claim. Then he followed it up with coming in with

1 what we thought was a kind of lowball offer down at --
2 it kept ratcheting down, I think, after 21, down to 13
3 and change, and then eight and change as Your Honor
4 knows.

5 So we came in, and, really, while we
6 had challenges to the other offers, what we did have
7 was a very strong case that he should be paying
8 \$24 million for the break-up fee back to the company.

9 Somehow we managed to turn 24 million
10 back to the company into 65 million actually to the
11 shareholders. I thought that was a home run. In
12 fact, the more I thought about it, I thought it was a
13 grand slam. And then I'm thinking 65 when really the
14 max was 24 is probably a grand slam in the world
15 series, kind of thinking a little bit Phillies right
16 now.

17 That really was an extraordinary
18 result. The result really was done with a leverage of
19 litigation, but I need to give a lot of credit to
20 Mark. I was only somewhat joking when I said
21 investment banking. Because I must say I was a little
22 disappointed, but only a little, in Mr. Fertitta
23 because he wanted to get this company as cheap as
24 possible. I guess I could actually understand that.

1 He's on one side of the transaction.

2 The entity or the people who really
3 disappointed me were the outside directors and their
4 investment banker, because they're the ones who were
5 supposed to be standing up for the shareholders, and
6 they just didn't. They caved. They were
7 non-existent.

8 It was in that void that the system
9 really worked, and shareholder litigation worked, and
10 put us and the client, and Mark in particular, in the
11 middle there to represent the shareholders.

12 In so doing, the litigation pushed on,
13 but Mark really negotiated and did what the board and
14 its investment bankers should have done. He's the one
15 who had direct negotiations with the buyer. He's the
16 one who figured out how to leverage the significant
17 shareholder and get him involved to at least threaten
18 to block the deal. He's the one who really put the
19 whole business deal together.

20 As Your Honor knows, we thought we had
21 a deal at 21, and I really had to love the investment
22 banker who was the same one who gave the opinion at
23 14.75 and said that was fair. Why? Because, you
24 know, that's what the company is worth and the stock

1 is selling for less.

2 Then when we get the \$21 deal, they
3 say, well, we can't give an opinion. You could give
4 one at 14.75 but you can't give one at 21. Well, the
5 stock is more than 21 now.

6 We're actually thinking of going into
7 the investment banking business and giving opinions
8 because we can look where the deal price is and the
9 stock price is and give opinions accordingly. That's
10 the resources we had from the company to work with.

11 But Mark, on the other hand, instead
12 of giving up on the 21, really sat down and negotiated
13 to get 24 and really also had to negotiate with the
14 major shareholder to make sure that there wasn't an
15 additional grab there because that was also a pending
16 risk. It was a tool we could use, but it was also a
17 risk that, well, wait a minute, I have enough shares,
18 maybe I can cut my own deal and get a disproportionate
19 amount.

20 Mark worked with Ackman and Pershing,
21 and worked with the company, and worked with Fertitta,
22 and although we were certainly adverse to them, to Mr.
23 Fertitta's credit, in the end, I think he came through
24 and did the deal he needed to do.

1 And from the research we've done on
2 him, he's actually an extraordinary restaurateur. And
3 this company belongs private. It's small enough that
4 it ought to be. It shouldn't be in the public
5 markets. I think he's going to do great in it. So I
6 think it's a win/win situation for every one.

7 Then I want to jump to the second deal
8 which also gave us leverage for the first deal,
9 because one of the things that Mr. Fertitta did not
10 want to do is say, "Okay, I'll buy out the company,
11 but I have this potential judgment sitting out there
12 for this other class, and I don't want to find out
13 that I need X dollars and next thing I know it's 50 or
14 \$60 million more."

15 So we negotiated, after that deal, of
16 how are we going to resolve those who basically sold
17 their stock in reliance on, well, there's a \$21 deal
18 coming, or bought their stock accordingly, and then
19 when the stock kind of petered out because he pulled
20 out of the deal and they sold, to say, well, wait a
21 minute, I've been damaged.

22 That was a very tough litigation
23 position to take. There were questions of whether you
24 could certify that class. There were questions of

1 whether Delaware even recognized that as a cause of
2 action. I think that it is a cause of action. I look
3 forward to the next opportunity when I can present it
4 to Your Honor and get a favorable ruling that it's a
5 cause of action. But I think it's fair to say for now
6 it is undecided as to whether that would prevail.

7 But notwithstanding that, we pressed
8 really hard, and I think the threat of having that
9 case out there, and Mr. Fertitta wanting to do the
10 deal, is what kind of drew that together. So those
11 who are actually -- who sold at a loss are getting
12 compensated, and I think will be compensated quite
13 well if one does the numbers as to what percentage of
14 their recognized loss will actually be repaid. I
15 think it will be very, very high.

16 THE COURT: Did anybody come in
17 because of the \$500,000 expense reimbursement?

18 MR. GRANT: No.

19 MR. LEBOVITCH: Your Honor, no. We
20 didn't hear anything about the expense. We heard
21 people calling us about the calculations of the
22 return. It was all very favorable. There were some
23 thoughts, but they were all aware of it, and I talked
24 to them about it, and everyone supported it.

1 MR. GRANT: That was something we
2 wanted to do if there was someone else out there who
3 wanted this, but one of the difficult things in this
4 deal -- and it's, you know, how do you push up a deal
5 price when you don't really have a second bidder -- is
6 Mr. Fertitta is really a key, key element to the
7 success of this business, and obviously, if someone
8 else bought it, I'm not sure that asset was going to
9 stay with the company, and I'm not sure it was for
10 sale.

11 So we needed to see if there was
12 anyone else out there. We needed the threat of "you
13 got to put your best dollars out there because we're
14 going to go shop it." In the end, I'm not really sure
15 any of us believed that there would be someone else
16 out there, and that was a threat.

17 THE COURT: I hear you. I thought it
18 was a creative idea, and it's something that you
19 wonder in terms of the improving the efficacy of go-
20 shops particularly that people don't do more often
21 because there obviously is a cost for a second bidder
22 coming in, particularly if there's a controller, or
23 even if there's a match right.

24 So I was really curious, from a

1 broader perspective, as to the degree to which it was
2 positively received by the market or that type of
3 thing, or if anybody did indeed come in. I thought
4 that was a creative solution and a good idea.

5 One of my other questions for you, I
6 was trying to think if there was any potential
7 conflict of any kind between the interests of the two
8 classes, and given the definitions and different
9 non-overlapping definitions and the difference in the
10 claims, I could not come up with any.

11 I wanted to put it to you whether,
12 when you were thinking about this as a fiduciary for
13 two classes, you had identified any conflicts between
14 the two, either as to allocation of consideration, et
15 cetera, and how you dealt with those if you, indeed,
16 identified any.

17 MR. GRANT: We identified a potential
18 conflict; not a conflict. That is, if the company
19 said, "You know what, I have X dollars, that's all I
20 have to buy the company and settle the lawsuit, and
21 I'll throw it out there, you whack it up how you want
22 to," that was our fear.

23 So to make sure that that wasn't a
24 problem, we said, "No, we're not doing that. Let's

1 negotiate the deal. When that deal is done, then
2 we'll negotiate the settlement of the litigation of
3 the other class."

4 There was a lot of push back to say,
5 well, for exactly that reason, "We want to know what
6 it's going to cost us," and the compromise was that
7 the deal would be conditioned on the class being
8 resolved because we'll discuss that later. As I
9 understand it, if Your Honor approves it, there's
10 going to be a call made and the deal will close
11 sometime this afternoon.

12 So that's how we avoided it. We said
13 we're just not talking about the other one. We're
14 settling this, we're re-doing the deal based on what's
15 a fair deal, and when that's over and done with, then
16 we'll talk about the litigation as a separate matter.
17 So we were very, very conscious of that. So I think
18 there's no conflict whatsoever.

19 THE COURT: Walk me through how you
20 and Mr. Lebovitch came to your judgments in the plan
21 of allocation.

22 MR. GRANT: Sure.

23 I start off with it's not a perfect
24 science as you can imagine. We tried to divide the

1 groups up by events that happened. So we took the
2 September 17th to October 7th group, which was the
3 time that the deal had been announced, and there was
4 then some information put into the market that the
5 deal might be in jeopardy.

6 Those folks who sold -- you know, it
7 was hard to say that the whole reason they sold was,
8 "Wow, the deal is in jeopardy," but there was some
9 information out there that could have driven the price
10 down. So those folks, we said, you know, there was a
11 portion of their damages that was related to the risk
12 that this deal was going to crater. And we credited
13 that with 25 cents or 25 percent of the drop between
14 the 21 expected buyout price and whatever they sold.

15 Those who sold on October 7th, after
16 October 7th when basically the deal had cratered and
17 the announcement was pulling out, that we say, okay,
18 that drop was totally attributed to the loss of the
19 deal. So they get 100 percent.

20 Then, between October 7th -- for those
21 who purchased between October 7th and October 18th,
22 there was discussion of a renegotiation. So there was
23 information out there that said, well, this is at
24 risk, so if you really expect -- the full 21 is really

1 not necessarily -- I hope I have this right, is not
2 necessarily when you're already told that that may be
3 in jeopardy and we're renegotiating, that that's
4 not -- you shouldn't be entitled to 100 percent, but
5 recognizing that you still have a reasonable
6 expectation that your fiduciaries will not breach
7 their duty that your damage is -- those we allocated
8 50 percent.

9 Then there's the post-October 18th
10 group when the 13.50 deal was announced. They had a
11 reasonable expectation of 13.50, and when that deal
12 was yanked and the stock dropped back down to six,
13 seven, eight, somewhere around there, those folks were
14 damaged, so they're entitled to 100 percent of the
15 difference between 13.50 because that was the deal
16 that was pending at that time and not between the 21
17 and the sale price.

18 THE COURT: I thought the way you
19 explained it now and in your briefs made sense to me.
20 That's an area where there are obviously conflicts
21 because you have competing claims from the different
22 segments of the class.

23 So what are your suggestions for how I
24 review that and how I insure that there is nothing

1 problematic in terms of the facially plausible
2 allocation that you have presented.

3 MR. GRANT: I think a few ways. The
4 first is let the money do the talking, and that is the
5 people in each of those groups were given notice and
6 said this is how we're allocating. If any of them
7 think that we're being unfair, they need to step up
8 and protect their interests and come forward to you.
9 There are a number of decent size shareholders who
10 would be worth it to at least send a letter. We got
11 none of those. That leads me to believe that those
12 who actually have an economic interest think it's
13 fair.

14 THE COURT: I take it none of these
15 people in the back are objectors.

16 MR. GRANT: Two of them are employed
17 by me and are trying to fulfill their requirements so
18 they could be members of the Delaware bar, and the
19 last one is a face probably recognized by you from the
20 press.

21 So that, to me, would be the biggest
22 way. The second way is I think you have to have some
23 confidence, or I hope you have some confidence in
24 counsel in that we're experienced, we've done this,

1 and we try to do it right, and as I mentioned, it's
2 not an exact science.

3 If you said, "Why did you allocate
4 25 percent instead of 30 percent," I can't give you an
5 answer that I'd be happy with. So I wouldn't even
6 try. Can I say that relative to the group that got
7 50 percent, does 25 percent, double that, sound fair?
8 It sounds fair.

9 So some of it's also -- I guess the
10 beauty of equity is your gut in looking at it and
11 saying does the rationale work. I think the law
12 basically on that is that counsel and client are given
13 pretty wide discretion to do things, unless you think
14 it's extremely unreasonable, in which case obviously
15 you have an obligation to step in.

16 THE COURT: Unless you could perceive
17 some reason why counsel, why the decisionmaker, would
18 have confidence, and here, because your compensation,
19 your interest is based upon the overall recovery, it
20 didn't strike me that you did, but there again, you
21 have been thinking about this case longer than I.

22 Did you identify any concerns that you
23 felt you had to address as a fiduciary for that class?

24 MR. GRANT: No.

1 THE COURT: All right. Anything else?
2 You are being flagged by your colleague.

3 MR. GRANT: I know, and I'm going to
4 ignore his over exuberance.

5 THE COURT: Anything else I should
6 know?

7 MR. GRANT: Unless you want to hear
8 about the fee, I think that's pretty straightforward.
9 It's under 15 percent, and I think given the result,
10 it's fair.

11 THE COURT: The only question I have
12 on the fee is it's hard to judge expenses, so why did
13 you all decide to do separate expenses as opposed to
14 just an all-in number relative to the benefits? I
15 like to know what your expenses are.

16 MR. GRANT: We could have done a fee
17 that was add 600,000 to the 3.6, and we could have
18 done it that way. Sometimes that's a negotiation with
19 the defendants based on who's paying it, why it's
20 being paid, what sounds reasonable.

21 And I don't think the expense number
22 was that large that it would raise an issue, so we
23 just -- maybe the Court thinks we give it more thought
24 than we give it.

1 THE COURT: It's not out of line at
2 all relative to your lodestar. It's even less than
3 what you might think an expense figure would typically
4 be. But I think it's generally easier for me to think
5 of this as a portion of the total recovery or total
6 benefit as opposed to segmenting the two.

7 I did have one other question for you
8 on that. This was not a case where the bulk of the
9 work came after the settlement, obviously, because you
10 all did the heavy lifting beforehand. But was there
11 some percentage of your lodestar and work that took
12 place after the settlement was agreed to?

13 MR. GRANT: Well --

14 THE COURT: Recognizing you've got two
15 different settlements.

16 MR. GRANT: I guess I divided it into
17 three categories based on Your Honor's inquiry. One
18 was from inception through June 22nd, which is when we
19 signed the first settlement agreement. The second was
20 June 23rd through July 23rd when we signed the second
21 settlement agreement. And the third was July 24th
22 through September 15th, I guess, which is when we
23 applied that.

24 This last one, which is

1 post-settlement agreements, is approximately 1 percent
2 of the time.

3 THE COURT: That's what I figured. I
4 wanted to know because it is something that's
5 important to me because we do weight that time -- at
6 least I. I shouldn't speak for my colleagues. But I
7 weight that time far less in terms of equating it to
8 benefits conferred. Given all the work you did
9 beforehand, I'm not surprised that it was such a small
10 percent.

11 MR. GRANT: I think that's a debate
12 that we could have for another case, but this
13 certainly isn't the case to have it, because even if
14 it didn't count at all, I think it would support the
15 full fee.

16 THE COURT: All right. I have no more
17 questions for you, Mr. Grant. Thank you.

18 Do the defendants have anything to
19 add?

20 MR. BECK: Nothing from the Fertitta
21 defendants, Your Honor.

22 THE COURT: All right.

23 Hearing nothing, I will go ahead and
24 give you my ruling. So I have four tasks today that I

1 am going to run through. The first is class
2 certification. The second is adequacy of notice. The
3 third is whether to approve the settlement, and the
4 fourth is attorneys' fees.

5 As to class certification, we have two
6 sub-classes; the 2008 class and the 2009 class. I
7 have reviewed the definitions of those, and they are
8 appropriate. The use of sub-classes is appropriate in
9 this case given the differing claims and the lack of
10 overlap. Also the exclusion from both classes of the
11 defendants and, loosely defined, their affiliates, is
12 similarly appropriate. So I have no problem with the
13 class definitions.

14 Working from those definitions, this
15 case easily satisfies the Rule 23 requirements in
16 terms of numerosity. It's a publicly traded company
17 with approximately 7 million shares publicly held.
18 Over 8,000 packets were mailed out to potential class
19 members. So numerosity is met.

20 In terms of commonality, there were
21 certainly common questions as to whether Fertitta and
22 the other defendants breached their fiduciary duties.
23 Those common questions affect all stockholders. As to
24 typicality, as is standard in a case like this, there

1 are no distinctions among stockholders as to those
2 claims.

3 As to the adequacy of the class
4 representative, the plaintiff held common stock
5 throughout the class period and has no conflicting
6 interests. They are a sophisticated, long-term
7 institutional holder which is the type of plaintiff
8 that we encourage in Delaware, and they retained very
9 competent counsel who pursued this litigation
10 vigorously. So I have absolutely no problem at all
11 with adequacy.

12 Having determined that the 23(a)
13 elements are met, I also find this class is
14 appropriately certified under 23(b)(1) and 23(b)(2) as
15 a non-opt out class. Certification under Rule
16 23(b)(1) is appropriate, under the CME Group versus
17 Chicago Board Holdings, to prevent the risk of
18 inconsistent rulings.

19 And certification under 23(b)(2) is
20 appropriate under the same precedent because of the
21 request for class-wide relief and the fact that the
22 defendants acted on the same basis as to all of the
23 class.

24 So for those reasons, I am certifying

1 this as a non-opt out class pursuant to Rules 23(b)(1)
2 and (b)(2).

3 Next, adequacy of notice. This is a
4 determination required by Rule 23(e). I have reviewed
5 the notice, and it sufficiently describes the lawsuit,
6 consideration, location and times of the settlement
7 hearing and informed class members of their right to
8 appear. The record reflects in the form of the Fraga
9 affidavit, the Scheinthal affidavit and Kagan
10 affidavit, that notice was appropriately provided, not
11 only by mailing, but also through public disclosure as
12 well as through a website.

13 Turning to the merits of the
14 settlement, I agree with Mr. Grant that this is a
15 settlement that it is a pleasure to review. This is
16 an excellent settlement. My job is not to pre-judge
17 or rule on -- I guess post-judge or rule on the case,
18 but rather to assess the strengths and weaknesses of
19 the case in light of the consideration received.

20 In terms of the 2009 class claims,
21 those were going to be hotly contested claims. The
22 fiduciary duty claims, I thought, were strong. At the
23 same time though, the defendants, particularly the
24 special committee members, also had powerful defenses,

1 particularly in the form of Section 102(b)(7), and
2 there were questions about the measures of damages.

3 What is ultimately compelling though
4 is the significant increase in the consideration for
5 the eventual deal that the plaintiffs received from
6 14.75 to \$24 per share, and unlike many cases where
7 plaintiffs claim credit for increases and it's a
8 shared credit case, it is my view here that this was
9 effectively a sole credit case.

10 The special committee's performance --
11 and, again, I am not making any final determinations
12 on this, but I think the record strongly suggests that
13 the special committee's performance was quite poor and
14 feckless, and that it was, indeed, the plaintiff's
15 lawyers who got in here and worked to get the
16 consideration up.

17 In terms of the deal, there were also
18 other very salutary features, including the 45-day
19 go-shop, a waiver of stand-stills, the limitation of
20 Fertitta's termination fee to reimbursement of
21 expenses, and then as I commented with Mr. Grant, I
22 did think that the inclusion of cost reimbursement for
23 up to \$500,000 for a bidder's due diligence costs was
24 a promising way to try to induce some type of deal

1 competition.

2 There were other features that
3 plaintiffs got as well.

4 So given all that, I have absolutely
5 no problem approving the settlement as to the 2009
6 class claims.

7 In terms of the 2008 class claims,
8 this is an equally strong and impressive settlement.
9 These claims involve very complex, unsettled legal
10 issues where I thought that there was substantial
11 debate as to whether Delaware would recognize the
12 claims. It was essentially a novel legal theory.

13 I'm again not commenting on the
14 strength of it today, but all I will say is it was
15 something where there were very -- I shouldn't say
16 very, but there were strong arguments made on both
17 sides, and it was something that I was going to have
18 to think a lot about.

19 There were also substantial questions
20 as to damages and recoverability because of 141(e),
21 102(b)(7) and other issues. Notwithstanding these
22 significant impediments, the plaintiffs obtained a
23 recovery of 14 and a half million dollars. Now, that
24 may not sound large to partners in Mr. Grant and

1 Mr. Lebovitch's firms who are used to recovering mega
2 amounts for much larger issuers, but given that this
3 entity only had approximately 6 million public shares,
4 when you're talking about recovering \$2 a share, and
5 given the strength of the claims, I thought that that
6 was a quite remarkable result.

7 In terms of the plan of allocation, as
8 I say, I don't have to determine today whether this is
9 some type of deferential review or whether it's a
10 reasonableness review. Assuming that I were to review
11 it for reasonableness, I think the allocations that
12 plaintiff's counsel came to are certainly reasonable,
13 and so I have no problem with the plan of allocation.

14 So for all these reasons, I think that
15 the settlement of the 2009 claims is one that I am
16 happy to approve and commend.

17 Finally, I turn to the application for
18 attorneys' fees. The Delaware policy on attorneys'
19 fees is to award attorneys' fees and expenses to
20 incentivize counsel to bring these types of cases to
21 benefit the corporations and their stockholders.

22 This Court has to make an independent
23 determination of reasonableness, applying the
24 Sugarland factors which focuses primarily on the

1 benefits achieved for shareholders, and then looks, as
2 a cross check, at the efforts of counsel and the time
3 spent. Other factors include the contingent nature of
4 the fee, difficulty of the litigation and the standing
5 and ability of counsel.

6 Here, I have no question that this fee
7 is reasonable and was well earned. In terms of the
8 2008 class, counsel got real money in the form of 14
9 and a half million. In terms of the 2009 class,
10 counsel obtained 65 million in increased consideration
11 as well as the non-monetary benefits that I
12 identified.

13 Counsel litigated this case on an
14 entirely contingent basis, and when I say contingent,
15 I mean contingent. There are contingent cases, and
16 there are contingent cases, and when one moves into a
17 deal bump, or a likely deal bump situation, or some
18 other type of merger and acquisition situation where
19 you know, as plaintiff's counsel, that the defendants
20 are interested in getting a class-wide release, the
21 level of contingent risk is not nearly as significant
22 as in a situation like this where you enter into a
23 situation where there's not a clear path to
24 settlement, where you were pressing novel theories,

1 where you have to litigate hard over an extended
2 period of time. This case was litigated over an
3 extended period of time, and, indeed, up to the eve of
4 trial.

5 So this is the type of case where I
6 think counsel is entitled to what Vice Chancellor
7 Strine has called the full measure in terms of the
8 type of a risk premium. This isn't the type of case,
9 again, where risk is mitigated because of the inherent
10 nature of how deals get settled.

11 So here plaintiff's counsel put in
12 over 12,000 hours prosecuting the case. The requested
13 fee is \$11,625,000 in fees, and reimbursement of
14 expenses of \$599,503.71.

15 As I suggested to Mr. Grant, whether
16 he wanted to quantify that as a single fee or as a
17 separate fee, I have a modest preference for the
18 former, but certainly in terms of this case, both
19 numbers are reasonable, and I am going to award the
20 full amount.

21 I do want to make a comment again
22 about the excellent efforts that both Mr. Lebovitch
23 and Mr. Grant and their firms put into this case and
24 achieved. Earlier this year, I wrote a decision in

1 Revlon where I actually replaced plaintiff's counsel
2 because they hadn't seemed to do the work, or do a
3 good job and seemed to be pushing the limits of the
4 Peppercorn theory of consideration.

5 In doing so, what I said and what I
6 meant was that I think class and derivative litigation
7 is important; that I am not at all critical of class
8 and derivative litigation, and that I think it has
9 significant benefits in terms of what it achieves for
10 stockholders, or it can. It doesn't have to act as a
11 general tax for the sale of indulgences for deals.

12 This case, I think, shows precisely
13 the type of benefits that you can achieve for
14 stockholders and how representative litigation can be
15 a very important part of our corporate governance
16 system.

17 So, if you had book ends, you would
18 put the Revlon situation on one book end and you'd put
19 this case on the other book end. You'd hold up the
20 one as an example of what not to do, and you hold up
21 this case as an example of what to do.

22 So that, in a nutshell, I think,
23 explains why I have no trouble at all approving these
24 settlements, and have done so, and why I have no

1 trouble at all awarding the full measure of the fees
2 and expenses requested, and have done so.

3 Mr. Grant, do you have orders that I
4 can sign?

5 MR. GRANT: Yes, Your Honor.

6 I have three orders: One approving
7 the first settlement, one approving the second
8 settlement, and one with attorneys' fees. As it turns
9 out, one of my colleagues, I guess, was able to
10 predict what Your Honor would like, and there is just
11 one space for the fee. So since you wanted it to be a
12 combined fee like that of the 11.625, there's one
13 space for that and one for expenses. It's not broken
14 up into two separate fees. The order I guess is
15 hopefully to Your Honor's liking and was the one that
16 was filed.

17 THE COURT: Mr. Grant, I was assuming
18 I should get you to confirm these are in the same form
19 that were efiled previously and submitted?

20 MR. GRANT: Yes, Your Honor, and
21 that's based on my belief from the stamp on the very
22 first page.

23 THE COURT: Thank you so much. I
24 should have caught that.

1 MR. GRANT: It's always a mystery when
2 the paralegals hand you the documents as you go to
3 court saying "Is this what we filed."

4 THE COURT: I have signed and dated
5 these orders, and I am handing them to the clerk so
6 that they can be efiled on the docket.

7 Thank you, everyone, for your time
8 today and for your thorough presentations.

9 We stand in recess.

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11 (The Court adjourned at 10:40 a.m.)

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CERTIFICATE

I, MAUREEN M. McCAFFERY, Official Court Reporter of the Chancery Court, State of Delaware, do hereby certify that the foregoing pages numbered 3 through 29 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF, I have hereunto set my hand at Dover, this 7th day of October, 2010.

/s/Maureen M. McCaffery

Maureen M. McCaffery
Official Court Reporter
of the Chancery Court
State of Delaware

Certification Number: 201-RPR
Expiration: 1/31/11