

COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE

WILLIAM B. CHANDLER III  
CHANCELLOR

THE FAMILY COURT BUILDING  
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December 28, 2000

**'VIA FAX AND U.S. MAIL**

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REGISTERED IN CHANCERY  
DIANNE M. KEMPSKI  
00 DEC 28 PM 3:55  
FILED

Re: *Dunlap, et al. v. Sunbeam Corp.*  
*Civil Action No. 18243*

Dear Counsel:

I have your correspondence in this case. After considering your respective positions, this is my decision on the substantive and procedural issues outstanding.

First, I am not persuaded by plaintiffs that this matter is not appropriate for referral to a Master. Appointment of a Master will not delay this matter because I will not allow it to be delayed. The Court's Master is

available to hear and determine this matter in January, and quite capable of making a prompt ruling. Any exceptions will be on an expedited basis, and review by me will also be expedited. As I continue to believe the issues are mostly technical, I do not understand why this case is not an ideal candidate for referral to the Master. Accordingly, I intend to enter an order to that effect.

Second, as I have already stated, the threshold burden is on the plaintiffs to demonstrate the *prima facie* reasonableness of the fees for which they seek advancement or reimbursement. *See Citadel Holding Corp. v. Roven*, Del. Supr., 603 A.2d 818, 825 (1992). To meet this burden, plaintiffs will be required to offer more than “their counsel’s self-serving and . . . subjective testimony” that the fees and expenses are reasonable. That sort of *ipse dixit* cannot be sufficient, and I trust plaintiffs’ counsel understand that fact. I need not define how plaintiffs may demonstrate reasonableness in the first instance, however. Defendant, in turn, must be prepared to describe the precise manner in which particular expenditures are unreasonable. I also agree with plaintiffs that defendant should produce invoices or other suitable evidence regarding expenses incurred by Sunbeam in connection with the financial restatement. In the interest of time, I also direct Sunbeam’s

counsel to identify the specific fees and expenses that Sunbeam challenges as unreasonable and to articulate the grounds for that assertion. I defer ruling on Sunbeam's potential motion to compel until counsel have provided me with more particulars as to the relevance and importance of the PWC documents to this proceeding.

Third, I grant Sunbeam's motion to amend its answer to include an "out-of-pocket" defense, as I do not view such amendment to be futile or barred by law of the case. I note as well that plaintiffs have withdrawn opposition to the motion to amend, albeit without prejudice to their right to attack the amendment's underlying legal theory.

Finally, counsel have suggested two different dates for the trial—January 8 and January 15. I would recommend January 22<sup>nd</sup> and 23<sup>rd</sup> (with the 25<sup>th</sup> as an extra reserve day), as it will afford counsel additional time to prepare and to submit pretrial issues for resolution. The Master's schedule also would permit him to consider the testimony and documents on January 9<sup>th</sup> and 10<sup>th</sup>. Counsel should confer and alert me as soon as possible as to which week is preferable for the parties and the witnesses. A Rule 16 pre-trial stipulation should be submitted at least two days before the trial. All

exceptions to the Master's Report must be filed within three days of his final Report.

If counsel believe a telephone conference with the Court would be helpful in light of this letter, please advise me as soon as possible.

IT IS SO ORDERED.

Very truly yours,

*William B. Chandler III*

William B. Chandler III

oc: Register in Chancery  
xc: Master Sam Glasscock