IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE SS&C TECHNOLOGIES, INC.	)	Consolidated
SHAREHOLDERS LITIGATION.	)	C.A. No. 1525-VCL

MEMORANDUM OPINION AND ORDER

Submitted: July 25, 2008
Decided: August 8, 2008

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LAMB, Vice Chancellor.

On March 6, 2008, this court issued an Opinion and Order granting, in part, a motion for sanctions and attorneys fees brought by the defendants in a class action litigation (the "Opinion"). This court limited the award to a discrete aspect of the litigation and did not find that an award of the defendants' total litigation expenses was warranted. Following this ruling, the defendants filed a joint fee petition seeking nearly $1,000,000 in fees and expenses. Given the narrow scope of the award and the extraordinary amount of fees and expenses requested by the defendants, this court finds the amount sought in the fee petition unreasonable and, thus, reduces it to $250,000.

I.[1]

In order to properly address the issues raised by the defendants' fee application, this court briefly discusses the procedural background of the dispute. This litigation began in 2005 when Carlyle Investment Management, LLC sponsored a deal to acquire SS&C Technologies, Inc. The SS&C board of directors and the stockholders approved the transaction, and the deal closed on November 23, 2005.

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[1] The defendants in the litigation are: SS&C Technologies Inc., Joseph H. Fisher, David W. Clark Jr., William C. Hunter, Jonathan M. Schofield, Albert L. Lord, William C. Stone, and Sunshine Acquisition Corporation. The co-lead plaintiffs were a partnership named Paulena Partners and Dr. Stephen R. Landan. This court addressed the parties and background of this litigation in two previous decision. *See In re SS&C Techs., Inc. S'holders Litig.*, 911 A.2d 816 (Del. Ch. 2006); *In re SS&C Techs., Inc. S'holders Litig.*, 948 A.2d 1140 (Del. Ch. 2008).

Following the announcement of the Carlyle transaction, the plaintiffs sued challenging various aspects of the transaction.[2] Several months later, the parties entered into settlement discussions and, on October 18, 2005, executed a memorandum of understanding to settle the consolidated action. Without informing the court of the agreement or seeking leave to present the settlement after the acquisition closed, the parties performed confirmatory discovery and submitted a stipulation of settlement on July 7, 2006. Due, in part, to the procedural posture of the settlement, this court refused to approve it.[3]

Following this ruling, the plaintiffs resumed prosecuting the case. During discovery, however, the defendants uncovered damaging information concerning the adequacy of the plaintiffs and the veracity of statements made in their court filings. As a result, on October 22, 2007, the plaintiffs approached the defendants and offered to withdraw without notice to the class, if the defendants would agree to maintain the confidentiality restrictions on the discovery taken of the plaintiffs. The defendants refused and, on November 29, 2007, the plaintiffs moved to withdraw with notice to the SS&C stockholders. On January 8, 2008, the defendants filed an opposition to the plaintiffs' motion and moved for sanctions based on the plaintiffs' conduct. As noted, the defendants sought an award of all

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[2] *Paulena Partners, LLC v. SS&C Techs., Inc.*, C.A. No. 1525-VCL (Del. Ch. filed July 28, 2005); *Landen v. SS&C Techs., Inc.*, C.A. No. 1541-VCL (Del. Ch. filed Aug. 3, 2005).
[3] *See In re SS&C*, 911 A.2d at 816.

the fees they incurred in connection with the litigation. After hearing oral argument on February 8, 2008, this court dismissed the action without prejudice and without notice to the putative class. In addition, this court awarded the fees "the defendants reasonably incurred in defending the motion to withdraw and in bringing the motion to unseal and for sanctions."[4] The court anticipated the fee petition would seek recovery of a moderate amount of fees and expenses, since the defendants had only filed one brief and presented at one oral argument.

The defendants submitted their fee petition and the plaintiffs filed an opposition. After receiving the defendants' reply brief, this court heard oral argument on July 9, 2008.

II.

As previously noted, the defendants' fee petition seeks close to $1,000,000 in fees and expenses.[5] The defendants seek $843,649.06 in attorneys' fees and litigation expenses incurred in connection with "resisting" the plaintiffs' motion to withdraw with notice to stockholders and in prosecuting the motion to unseal and

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[4] *In re SS&C Techs.*, 948 A.2d at 1152.

[5] There were three out of state law firms and three Delaware law firms involved in the defense of this litigation. Wilmer Cutler Pickering Hale and Dorr LLP and Morris, Nichols, Arsht & Tunnell LLP represented SS&C, Joseph H. Fisher, David W. Clark, Jr., William C. Hunter, Jonathan M. Schofield and Albert L. Lord. An attorney from each of these firms presented at the oral argument on behalf of the defendants and these firms incurred the majority of the legal fees on this matter. The combined fee request for these two firms is $697,209.31. Latham & Watkins LLP and Richards, Layton & Finger P.A. represented Sunshine Acquisition Corp. and Cadwalader, Wickersham & Taft LLP and Ashby & Geddes, P.A. represented William C. Stone.

the motion for sanctions. The defendants calculated this amount by aggregating all of the fees and expenses incurred after the plaintiffs conveyed their October 22 threat to withdraw with notice "if the defendants did not acquiesce to a quiet withdrawal."[6] According to the defendants, "it was on that date" that the "defendants' time and resources were redeployed from defending against plaintiffs' substantive allegations to defending against plaintiffs' misconduct . . . ."[7] The defendants represent that this fee amount is "reasonable in scope given the customary nature of each firm's hourly rates, the issues plaintiffs injected into the their motion to withdraw and their reply brief, and the resources expended in defending against plaintiffs' motion and in bringing [the] motion for sanctions."[8] In addition, the defendants' submitted affidavits from all the defense attorneys "containing time sheets and disbursements for services rendered from October 22, 2007 through March 6, 2008."[9]

The defendants seek an additional $123,722.36 in connection with the fee petition itself. The defendants incurred these expenses from March 7, 2008, through the date of the oral argument on the defendants' petition, July 9, 2008.

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[6] Defs.' Fee Petition ¶ 5.
[7] *Id*.
[8] *Id*. at ¶ 6.
[9] *Id*.

The plaintiffs contest the fee amount sought by the defendants and contend that "this court should award defendants no more than $150,000 in fees and $50,000 in expenses."[10] The plaintiffs assert that "the amount actually billed does not determine reasonableness."[11] Instead, the plaintiffs argue, this court must independently examine the defendants' fees and expenses under the Delaware Lawyers' Rules of Professional Conduct to determine if the fees are reasonable. According to the plaintiffs, the defendants' fee petition includes excessive, redundant, and duplicative hours.

III.

As the plaintiffs note, in order to determine whether the defendants' fees are reasonable, the court must evaluate the fee petition under Rule 1.5(a) of the Delaware Lawyers' Rules of Professional Conduct. Rule 1.5(a) lists the following factors:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly;
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> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
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> (3) the fee customarily charged in the locality for similar legal services;

[10] Pls.' Opp'n 1.
[11] *Id*. at 2.

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

In determining whether an application for attorneys' fees and litigation expenses is reasonable, "[c]ourts generally exclude excessive, redundant, duplicative or otherwise unnecessary hours."[12] In addition, this court has "broad discretion in fixing the amount of attorneys fees to be awarded."[13]

IV.[14]

The plaintiffs principally challenge the defendants' fee petition as "excessive and duplicative." The plaintiffs assert that the roughly 1,000 hours in attorney time billed defending the plaintiffs' motion and bringing the motion to unseal and for sanctions is facially unreasonable given the work performed. More specifically, the plaintiffs contend that:

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[12] *Richmont Capital Partners I, L.P. v. J.R. Investments Corp.*, 2004 WL 1152295, at *3 (Del. Ch. May 20, 2004).
[13] *Johnston v. Arbitrium (Cayman Islands) Handels*, 720 A.2d 542, 547 (Del. 1998).
[14] While this court relies on Rule 1.5(a) to examine the reasonableness of the defendants' fees and expenses, it is important to note that the award this court granted was essentially a sanction. As are result, this court is not entirely focused on Rule 1.5(a) to determine the size of the fee award.

> Approximately half of the defendants' brief . . . advocated their position that the underlying claims asserted in this case were insubstantial. The special committee defendants, however, had already submitted a 25-page brief to that effect in September 2006, after the settlement hearing. Thus, much of the research and analysis on the claims and defenses had already been done, and defendants' counsel had no reasonable need to redo the work.[15]

In response, the defendants argue that "[t]he legal landscape was clearly different than when the defendants' brief in support of settlement was filed."[16] In support of this argument, the defendants cite to three recent decision in this court purportedly relevant to the plaintiffs' claims.[17] More forcefully, the defendants argue that:

> Had plaintiffs simply withdrawn from the case and not tried to carry through on their threat, the time and resources devoted to addressing the merits of the case would have been unnecessary. Instead they chose to inject into their motion an attack on both the process and price of the SS&C/Carlyle merger, thus necessitating a response that was akin to a summary judgment briefing, which is necessarily expensive.[18]

As previously noted, the defendants seek $843,644.06 in attorneys' fees and expenses in connection with the motion to withdraw and related matters. The work performed for these fees consists of one 50-page brief and the preparation for, and presentation at, a roughly two-hour oral argument. The defendants' counsel spent

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[15] Pls.' Opp'n 3.
[16] Defs.' Reply 6.
[17] Those cases are: *In re Lear Corp. S'holder Litig.*, 926 A.2d 94 (Del. Ch. 2007); *In re Netsmart Tech., Inc. S'holders' Litig.*, 924 A.2d 171 (Del. Ch. 2007); *In re Topps Co. S'holders Litig.*, 926 A.2d 58 (Del. Ch. 2007).
[18] Defs.' Reply 7.

approximately 700 hours in connection with preparing the brief and the two defense attorneys that presented at the oral argument billed roughly 80 hours in connection with that presentation.[19] Before turning to the factors of Rule 1.5(a), this court must note the extraordinary nature of these figures given the circumstances. As discussed, this court granted the defendants a limited fee award. Perhaps naively, this court did not anticipate the enormity of the fees and expenses detailed in the fee petition and certainly did not contemplate such an oversized award. Several other reasons also militate in favor of considerably reducing the amount sought by the defendants' counsel.

Most significantly, as the plaintiffs note, the fee request is not commensurate with the work reasonably and necessarily required to respond to the plaintiffs' motion and to bring the motion for sanctions and removal of the confidentiality restrictions. The plaintiffs' motion raised a narrow set of legal issues that did not implicate much of the work reflected in the joint petition. Court of Chancery Rule 23(e) and well-settled Delaware jurisprudence provide a discrete set of issues involved in determining whether to disseminate notice of the dismissal of class action litigation. Moreover, the facts in this case did not present a difficult

[19] Pls.' Opp'n App. Ex. A. The defendants do not raise any gross exception to the categorization of the hours produced by the plaintiffs in their opposition papers, arguing only that those calculations may not be precise. Thus, the court will use the plaintiffs' categorization, realizing that it may be imprecise.

question on this issue. In fact, this court concluded that "nothing in this case suggested the need to notify the putative class of a 'without prejudice' dismissal."[20]

In justifying their fees, the defendants contend that much of the time-consuming analysis incorporated into their brief was necessary to respond to the issues the plaintiffs raised concerning the merits of the case. The defendants refer to an ancillary reason the plaintiffs noted in their motion to further support giving notice to the stockholders.[21] In their motion, the plaintiffs stated that "[a]nother reason to require notice . . . is that discovery has shown that the claims have sufficient merit."[22] The plaintiffs also included a roughly five-page discussion generally addressing the merits of the underlying claims.

The plaintiffs' terse and mostly unsupported discussion about the merits did not reasonably necessarily warrant the defendants' extraordinary efforts.[23] In fact, the plaintiffs' discussion largely restated the facts and legal issues raised in briefs throughout the course of the litigation. Nevertheless, the defendants dedicated a remarkable number of hours on approximately eleven pages in their brief criticizing the plaintiffs' claims. Clearly, much, if not all, of this analysis was unnecessary given the standard for determining whether to give notice in

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[20] *In re SS&C Techs.*, 948 A.2d at 1143.
[21] The plaintiffs first discussed the aforementioned standard and case law.
[22] Pls.' Mot. to Withdraw 6.
[23] *Cf. Richmont*, 2004 WL 1152295, at *3 (reducing an award of attorneys' fees "to reflect the reasonable value of services").

connection with the dismissal of class action litigation. Therefore, this court will not hold the plaintiffs responsible for all of the extraordinary costs associated with this aspect of the briefing. Nor will the court require the plaintiffs to reimburse the defendants for the very substantial amounts paid to the defendants' valuation expert in connection with the motion to withdraw.[24]

Similarly, a substantial portion of the defendants' brief merely restates the background of the dispute, also reducing the number of hours reasonably billed preparing the document. This is particularly true where, as here, the defendants were familiar with the facts and legal arguments in the dispute and had already performed overlapping work throughout the course of the litigation.

In addition, the defendants consistently used several attorneys to perform the same task. "When considering attorneys' fees, a 'court should greet with healthy skepticism a claim that several lawyers were required to perform a single set of

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[24] The defendants seek to recover $216,472.30 spent in connection with an expert valuation report done by the National Economic Research Associates, Inc. ("NERA"), along with substantial additional legal fees incurred in reviewing that report. Less than one page of the motion to withdraw raised claims challenging the price of the transaction–principally a reference to certain cash flow valuations prepared by the company's financial advisor during the course of negotiations. The defendants rely primarily on this short passage in the motion and the three-page response in their answering brief to justify this very substantial component of their petition for fees and expenses.

The court will not shift to the plaintiffs the costs associated with the NERA report. It is worth repeating that this court made no finding that the plaintiffs' substantive claims in this litigation were frivolous. Moreover, the defendants engaged NERA to comply with a scheduling order setting the submission date for the defendants' expert report on December 15, 2007. Although the defendants no doubt made a good faith decision to proceed with the NERA report despite the filing of the motion to withdraw, the court refuses to require the plaintiffs to bear the cost of that decision.

tasks and may discount the time for two or three lawyers in courtroom or conference when one would do.'"[25] The duplicative fees and expenses generated by the various defense attorneys is clearly unreasonable, even when considering there were several independently represented defendants.[26]

Turning to the fees and expenses generated by the defendants' advocacy of their motion to unseal and for sanctions, these costs also are higher than reasonably necessary. The defendants argue that the extensive time spent on these motions was necessary because "[d]ue to plaintiffs' repeated misrepresentations, defendants had to investigate every contention, fact citation, and legal citations . . . ."[27] While this court does not dismiss the additional burden required to reveal the plaintiffs' misconduct, it cannot justify shifting to the plaintiffs or their counsel all of the substantial costs associated with the time billed in connection with these motions. Foremost, the defendants gathered almost all of the necessary information before the plaintiffs' October 22 threat. Indeed, the centerpiece of the defendants' discussion was the testimony taken from the plaintiffs' depositions, which occurred in July and September of 2007.[28] In addition, the defendants hired a third party to

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[25] *Richmont*, 2004 WL 1152295, at *3 (quoting *Van Dorn Retail Mgmt., Inc. v. Jim's Oxford Shop, Inc.*, 874 F.Supp. 476, 489 (D.N.H. 1994) (citations omitted)).
[26] The defendants' time entries are also duplicative considering the defendants submitted several briefs in connection with the settlement hearing.
[27] Defs.' Reply 4-5.
[28] The defendants also relied on several of the plaintiffs' submissions, which had been on the record for months, if not years, before the October 22 conversation.

track down the litigation history of the plaintiffs and almost all of the submissions the defendants rely on to illustrate the plaintiffs' misstatements were in the record for months, if not years, before the October 22 conversation.

The remaining factors of Rule 1.5(a), to the extent they apply, also support significantly reducing the defendants' fee petition. The defense counsel in this case was not working on a contingent fee basis and there were no onerous time constraints. In addition, while the results achieved in the litigation were positive, the defendants were not entirely successful. As noted, the defendants sought a fee award for the total costs of the litigation, but this court held that there was nothing to suggest that the underlying claims were not meritorious.

Taking into account all of the factors of Rule 1.5(a), this court finds that the reasonable award is $225,000 for the fees incurred in connection with the plaintiffs' motion and $25,000 in connection with the fee petition.[29]

V.

For the foregoing reasons, the plaintiffs or their counsel shall pay to the defendants the sum of $250,000 in fees and expenses within 30 days of the date of this memorandum opinion and order. IT IS SO ORDERED.

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[29] While it is appropriate to shift fees incurred in preparing the fee petition itself, as a part of the court's decision to sanction the plaintiffs' misconduct, that fees-on-fees award must itself be reasonable and proportionate. The court's decision to award only $25,000 for the preparation of the fee petition (as opposed to the more than $123,000 requested) reflects the court's determination that such lower amount is reasonable and proportionate to the underlying fee award.