

**COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE**

DONALD F. PARSONS, JR.  
VICE CHANCELLOR

New Castle County CourtHouse  
500 N. King Street, Suite 11400  
Wilmington, Delaware 19801-3734

Submitted: October 1, 2008  
Decided: November 13, 2008

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Re: *Eugenio Postorivo, et al. v. AG Paintball Holdings, Inc., et al.*  
*and KEE Action Sports Holdings, Inc., et al. v. Eugenio*  
*Postorivo, et al.*, Consolidated Civil Action No. 2991-VCP

Dear Counsel:

In my August 21, 2008 Opinion on Plaintiffs' Sanctions Motion, I awarded Plaintiffs up to \$50,000 in attorneys' fees and costs against Defendants and MMWR. By letter dated August 26, 2008, Plaintiffs' counsel represented that the Postorivo parties incurred a total of \$302,996.76 in attorneys' fees and costs with respect to discovery and supplemental briefing on the Sanctions Motion, and requested leave to seek an award in that amount, with a supporting brief, "linking these fees and expenses to the findings of fact and conclusions of law in the Opinion." Alternatively, Plaintiffs suggested that the

Court might defer consideration of these issues and their application until the conclusion of the case. Deeming Plaintiffs' request a motion for reargument under Court of Chancery Rule 59(f), I directed Defendants to respond to it, which they have. For the reasons stated below, I deny Plaintiffs' request for reargument.

Reargument under Rule 59(f) is appropriate only when “the court has overlooked a controlling decision or principle of law that would have controlling effect, or the court has misapprehended the law or the facts so the outcome of the decision would be different.”<sup>1</sup> The moving party must make a showing that “the court’s misunderstanding of a factual or legal principle is both material and would have changed the outcome of its earlier decision.”<sup>2</sup>

Even assuming Plaintiffs could demonstrate, as they proffer, that their fee request is based only upon “those depositions that the Court relied upon [in] its Opinion in reaching its determination [on disqualification] ..., and only upon the fees and expenses incurred in preparing the supplemental round of briefing ...and in presentation of the Motion ...”, they still would not have shown a basis for reargument or modification of

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<sup>1</sup> *Those Certain Underwriters at Lloyd’s, London v. Nat’l Installment Ins. Servs., Inc.*, 2008 WL 2133417, at \*1 (Del. Ch. May 21, 2008); *see also Quereguan v. New Castle County*, 2006 WL 2522214, at \*2 (Del. Ch. Aug. 18, 2006); *see also Cole v. Kershaw*, 2000 WL 1336724, at \*3 (Del. Ch. Sept. 5, 2000) (citing *Miles, Inc. v. Cookson America, Inc.*, 677 A.2d 505 (Del. Ch. 1995)).

<sup>2</sup> *Those Certain Underwriters*, 2008 WL 2133417, at \*1.

my earlier ruling. There is no suggestion in Plaintiffs' August 26 letter that the Court overlooked a controlling legal principle or otherwise misapprehended the law. Nor do I know of any basis for such an argument. As to the facts relevant to the award of \$50,000 in attorneys' fees and expenses, Plaintiffs' offer of proof does not suggest the existence of any fact contrary to the assumptions I made in reaching that decision. As stated in the Opinion, I determined not to award a higher amount to the Postorivo parties because "all the parties contributed to inflating the complexity and expense of the Sanctions Motion and Plaintiffs only partially succeeded on that Motion." Further, I explicitly noted that the fees and expenses incurred may have greatly exceeded \$100,000, as they apparently did, but found that, in that case, "tactical and other concerns of Plaintiffs likely contributed to the increased costs, and such fees and costs should not be borne by Defendants or MMWR."

Because Plaintiffs have not shown that the Court misapprehended the law or the facts so that the outcome of the challenged decision would be different, I deny their request for reargument and confirm the award of \$50,000 in attorneys' fees and expenses related to the Sanctions Motion against Defendants and MMWR. I note, however, that the \$50,000 award reflects the Court's conclusion as to an appropriate amount of reimbursement in the context of Plaintiffs' Sanctions Motion. I did not find, for example, that the amount of fees and expenses incurred were unreasonable in connection with the

overall prosecution of this action. Consequently, this ruling is without prejudice to Plaintiffs' ability at the end of the litigation to seek to recoup more than the \$50,000 awarded under a different theory, such as their claim for indemnification, or to Defendants' ability to oppose any such request.

Sincerely,

/s/Donald F. Parsons, Jr.

Vice Chancellor

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