

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

STEPHEN P. LAMB  
VICE CHANCELLOR

New Castle County Court House  
500 N. King Street, Suite 11400  
Wilmington, Delaware 19801

Submitted: May 22, 2009  
Decided: June 24, 2009

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***RE: In re BEA Systems, Inc. Shareholders Litigation  
C.A. No. 3298-VCL***

Dear Counsel:

I have read and considered the papers filed in connection with the plaintiffs' application for an award of fees. For the reasons briefly discussed in this letter, I have determined to allow a total of \$81,297 in fees and expenses.

This action arose out of the acquisition of BEA Systems, Inc. by Oracle Corporation. Filed in early 2008, it was dismissed by stipulation on grounds of mootness on January 22, 2009, reserving jurisdiction to consider the present fee application. The claim for fees is premised on the fact that, after the complaint was filed, the company made two changes to its proxy materials to deal with misstatements pointed out in the complaint. Thus, since these changes were presumably a result of the plaintiffs' litigation efforts, they assert the right to recover fees following the mootness dismissal under the line of cases dating back to *Chrysler v. Dann*.<sup>1</sup> To compensate them for their efforts, the plaintiffs' counsel seek an award of \$350,000.

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<sup>1</sup> 223 A.2d 384, 386-87 (Del. 1966).

I conclude that the plaintiffs' claims were "meritorious" when filed, given the low standard applied to such determination.<sup>2</sup> I also conclude that the two revised disclosures were of some benefit to the class. Nevertheless, the benefit achieved in the litigation was unmistakably modest. Moreover, the two corrective disclosures the plaintiffs claim credit for were only a minor aspect of their complaint. I rejected the large majority of their claims at the hearing on the motion for preliminary injunction. Thus, the bulk of the claims asserted produced no compensable benefit at all.

The plaintiffs' counsel submitted affidavits showing that they had spent a total of 436 hours on the litigation by the time the corrective disclosures were made. They also showed that they incurred a total of \$19,430 in costs during that same period. Undoubtedly, most of that time and those costs was spent on aspects of the litigation that produced no benefit. Recognizing the imprecision involved, I will assume that one-quarter of the time and costs are rationally attributable to the claims that resulted in the benefit. Using the information the plaintiffs provide about their counsels' normal hourly rates and applying a reasonable risk premium of 50% produces a fee award of approximately \$76,440. To that, I will add one-quarter of the costs, or \$4,857.

Considering all other relevant factors, I conclude that a total award of \$81,297 in fees and expenses is appropriate to compensate the plaintiffs' counsel for their efforts in this case. IT IS SO ORDERED.

/s/ Stephen P. Lamb  
Vice Chancellor

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<sup>2</sup> *Id.*