COURT OF CHANCERY
OF THE
STATE OF DELAWARE

DONALD F. PARSONS, JR.
VICE CHANCELLOR

New Castle County CourtHouse
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Wilmington, Delaware 19801-3734

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Re: *Global Link Logistics, Inc. v. Olympus Growth Fund III, L.P., et al.*, Civil Action No. 4444-VCP

Dear Counsel:

In my October 8, 2009 Order, I confirmed an arbitration award in favor of Plaintiffs[1] and also held that judgment would be entered against certain Defendants[2] for

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[1] Plaintiffs are: Global Link Logistics, Inc.; Golden Gate Logistics, Inc.; and GLL Holdings, Inc.

[2] Defendants subject to the award of costs and expenses are: Olympus Growth Fund III, L.P.; Olympus Executive Fund, L.P.; CBW Key Employee Capital II, LLC ("CBW"); and CJR World Enterprises, Inc ("CJR"). In this Letter Opinion, I refer to Olympus Growth Fund III, L.P. and Olympus Executive Fund, L.P., collectively, as the "Olympus Parties." For simplicity, I refer to the Olympus Parties, CBW, and CJR, collectively, as "Defendants," but note that both the

"reasonable costs and expenses, including attorneys' fees, for this action to enforce the arbitration award."[3] Pursuant to that Order, Plaintiffs submitted a request for fees and expenses totaling $142,259.63. This request consists of $136,525.50 in attorneys' fees and $5,734.13 in expenses. The request reflects the work of three law firms: a Delaware firm, Prickett, Jones & Elliott, P.A. ("Prickett Jones"), which billed $34,353 in fees and $2,045.06 in expenses, for a total of $36,398.06, and two firms for which Jeffrey J. Bushofsky, Plaintiffs' lead counsel, worked at different times during this litigation, McDermott Will & Emery ("MWE") and Ropes & Gray LLP ("Ropes & Gray," collectively with MWE, the "Bushofsky Firms"). The Bushofsky Firms charged a combined $102,172.50 in fees and $3,689.07 in expenses, for a total of $105,861.57. Defendants challenge Plaintiffs' fee request as unsupported and unreasonable.

After carefully reviewing the parties' submissions on Plaintiffs' application for reimbursement of its attorneys' fees and expenses, I reject Defendants' objections as unpersuasive. Accordingly, for the reasons stated in this Letter Opinion, I grant Plaintiffs' fee request in its entirety and award Plaintiffs costs and expenses totaling $142,259.63.

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arbitration and this confirmation proceeding involved additional defendants, as well.

[3] Docket Item 42 ¶ 3.

I. PARTIES' CONTENTIONS

Defendants contend that in light of the simplicity of this matter, which they characterize as an unopposed action to confirm an arbitration award, both the hours worked (roughly 231) and the rate charged (a blended hourly rate of $567) by Plaintiffs' counsel are unreasonably high. Defendants particularly criticize the number of hours Bushofsky billed (111.75 – almost half of the total hours Plaintiffs' counsel billed) at an average rate of $659 an hour, contending there was no need for such an expensive partner to bill so many hours on such a simple matter.

Plaintiffs respond that they pursued this action to judgment as expeditiously and efficiently as possible and note that their hours partially reflect Defendants' refusal to consent to a judgment in this matter, thereby forcing Plaintiffs' counsel to spend more time litigating this dispute than otherwise would have been necessary.

II. DISCUSSION

I granted Plaintiffs their attorneys' fees in this case on the basis of a fee shifting provision in the Stock Purchase Agreement between Plaintiffs and Defendants. As the Delaware Supreme Court recently noted in *Mahani v. EDIX*, in contractual fee shifting cases the court still must determine whether the requested fees are reasonable.[4] Moreover, "[t]he party seeking attorneys' fees and expenses bears the burden of

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[4] *Mahani v. EDIX Media Gp., Inc.*, 935 A.2d 242, 245-46 (Del. 2007).

establishing the reasonableness of the amount sought."[5] Delaware courts evaluate the reasonableness of fee requests under Rule 1.5(a) of the Delaware Lawyers' Rules of Professional Conduct.[6] Rule 1.5(a) lists eight factors a court is to consider in determining reasonableness. Several of those factors are relevant in this case, including:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; . . .
>
> (3) the fee customarily charged in the locality for similar legal services;
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> (4) the amount involved and the results obtained; . . .
>
> (6) the nature and length of the professional relationship with the client; [and]
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services.[7]

In regard to the first factor, Defendants contend that the relative paucity of filings made on Plaintiffs' behalf and the brevity of those documents demonstrates the unreasonableness of Plaintiffs' fee request.[8] This contention is without merit, however.

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5 *Korn v. New Castle Cty.*, 2007 WL 2981939, at *2 (Del. Ch. Oct. 3, 2007) (quoting *Boyer v. Wilm. Materials, Inc.*, 1999 WL 342326, at *1 (Del. Ch. May 17, 1999)) (internal quotation marks omitted).

6 *In re SS & C Techs., Inc.*, 2008 WL 3271242, at *2 (Del. Ch. Aug. 8, 2008).

7 Del. Lawyers' Rules of Prof'l Conduct R. 1.5(a).

8 The substantive filings Plaintiffs made in this action consisted of: (1) an eleven-page Complaint; (2) three-page answers to the counterclaims separately asserted by CJR and a related defendant; (3) a four-page motion for summary judgment confirming the arbitration award; (4) an eleven-page brief in support of the motion

While obtaining confirmation of an arbitration award generally is not overly difficult, the circumstances of this case justify the effort expended on Plaintiffs' behalf. Plaintiffs were opposed by multiple sets of defendants, many of whom were represented by well-respected national and international law firms who vigorously represented their clients throughout the lengthy underlying arbitration proceeding.[9] Moreover, Plaintiffs successfully obtained an award of more than $15 million at arbitration, of which approximately $9 million remained unpaid when Plaintiffs commenced this action for confirmation. In this context, Plaintiffs reasonably could have expected the confirmation proceeding to be just as contentious as the arbitration. Based on that fact and the fact that an award of $9 million was at stake, Plaintiffs understandably relied on skilled counsel and proceeded carefully to obtain confirmation of the arbitration award.

Defendants' challenge to the number of hours Plaintiffs' counsel spent litigating this matter based on their contention that confirmation of the arbitration award was unopposed tells only half the story. While no Defendant actively challenged confirmation, no Defendant consented to the immediate entry of judgment in Plaintiffs'

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for summary judgment; (5) a two-page letter to the Court regarding the absence of any opposition to the motion for summary judgment and Plaintiffs' opposition to the Olympus Parties' request that judgment in Plaintiffs' favor be withheld pending resolution of the Olympus Parties' cross-claim; and (6) a four-page proposed order granting the motion for summary judgment.

[9] The evidence indicates that counsel for the Olympus Parties alone billed fees in excess of $8 million over the course of the arbitration proceeding. Pls.' Reply Br. ("PRB") Ex. B at 14.

favor either. The answers Defendants filed all initially raised affirmative defenses to Plaintiffs' Complaint for confirmation of the arbitration award.[10] At no point before the oral argument was it clear that Plaintiffs promptly would receive the relief they requested without a challenge. Thus, it was not unreasonable for Plaintiffs' Chicago counsel to prepare for and attend the argument on October 6, 2009. Instead, I find that Plaintiffs had good reason "to take every procedural step, submit every pleading, and file every motion, brief, and affidavit" to obtain confirmation," as they claim to have done.[11]

As to the third factor under Rule 1.5(a), "the fee customarily charged in the locality for similar legal services,"[12] the caliber of Plaintiffs' lawyers and law firms were commensurate with the amount at issue and the expertise of Defendants' counsel. Both sides employed experienced partners at some of the best known law firms in the country.[13] The relatively high hourly rates charged reflect that fact. Moreover, in light of

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[10] The Olympus Parties, however, dropped those defenses in their amended answer, filed on May 18, 2009, and no Defendant filed an opposition to Plaintiffs' motion for summary judgment. Nevertheless, the Olympus Parties effectively sought a stay of proceedings on Plaintiffs' claim by requesting that the Court refrain from entering judgment in favor of Plaintiffs pending the Court's resolution of their cross-claim against CJR and certain related parties. Such a stay could have lasted a substantial period of time.

[11] PRB 2.

[12] Del. Lawyers' Rules of Prof'l Conduct R. 1.5(a)(3).

[13] In this respect, factor 7 under Rule 1.5(a), "the experience, reputation, and ability of the lawyer or lawyers performing the services," also supports approval of Plaintiffs' request for fees. Del. Lawyers' Rules of Prof'l Conduct R. 1.5(a)(7).

the Olympus Parties' fee request of over $8 million in the arbitration proceeding, I cannot say that the fees requested in this follow-on proceeding are unreasonable.[14]

As for "the amount involved and the results obtained,"[15] both suggest that Plaintiffs' fees were reasonable. That approximately $9 million was at stake was largely a result of Defendants' actions, as the Olympus Parties evidently have not paid anything toward the arbitration award yet.[16] Plaintiffs' counsel also obtained positive results at every stage of this matter, securing over $15 million at arbitration and successfully obtaining confirmation of this award in the Court of Chancery.

Regarding "the nature and length of the professional relationship with the client,"[17] I note that between the arbitration and confirmation proceedings, Plaintiffs' lead counsel, Bushofsky, has represented Plaintiffs for over two years, even though he changed firms during the early stages of the confirmation proceeding. Based on the importance of the underlying dispute and the interrelatedness of the arbitration and this

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14 *Dunlap v. Sunbeam Corp.*, 1999 WL 413299, at *1 (Del. Ch. June 7, 1999) (citing *Coal. to Save Our Children v. State Bd. of Educ.*, 143 F.R.D. 61, 64 (D. Del. 1992)) (evidence of fees and expenses incurred by other parties relevant in determining the reasonableness of a fee request).

15 Del. Lawyers' Rules of Prof'l Conduct R. 1.5(a)(4).

16 Also, CJR allegedly has not paid anything toward the arbitration panel's fraud award for over $7 million in damages, on which CJR is jointly and severally liable.

17 Del. Lawyers' Rules of Prof'l Conduct R. 1.5(a)(6).

action, I find reasonable Plaintiffs' continued use of Bushofsky as lead counsel in this proceeding.

I also have reviewed the affidavits submitted by Plaintiffs, the redacted time sheets, and the summaries in Plaintiffs' reply brief of the activities and services performed by all of their firms (the Bushofsky Firms and Prickett Jones) on a month-by-month basis throughout the course of this litigation.[18] Although the amount charged for obtaining confirmation of the arbitration award is relatively high, I do not find it unreasonable in view of the size of the judgment at stake, the legal resources Defendants arrayed against Plaintiffs in this proceeding, and Defendants' efforts to delay confirmation while they sorted out various disputes among themselves, regarding, for example, their relative degrees of fault as to the fraud judgment. The bulk of the time expended by the Bushofsky Firms was spent in March and April 2009 and in July 2009. I therefore have limited my more detailed comments to those two time periods.

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[18] Defendants rightly criticize Plaintiffs' failure to include such documentation in their application for attorneys' fees and expenses in the first place. Since the filing of Plaintiffs' reply brief, however, Defendants have not disputed any of the information provided or otherwise challenged its admissibility. I do not condone Plaintiffs' attempt to shortcut proper procedure by omitting this information from its initial application and strongly discourage such conduct in the future, absent agreement of the opposing counsel or authorization from the court in advance. Nevertheless, for purposes of this case, no prejudice to Defendants is evident or has been claimed. Accordingly, I have considered Plaintiffs' belated evidence in making the decisions reflected here.

In March and April, the Bushofsky Firms billed 52.75 hours strategizing for the confirmation proceeding, which included filing the Complaint, effecting service, and analyzing Defendants' affirmative defenses. I find this time to be justifiable based on the amount of money involved, the number of Defendants, and the vigor with which Defendants had contested the arbitration. In such a context, it is not unreasonable for a party and its counsel to spend in the range of 50 hours planning and initiating their efforts to enforce an outstanding judgment.

In July, the Bushofsky Firms billed 70.5 hours, the majority of which were spent working on Plaintiffs' summary judgment motion and the brief in support of this motion. The motion and brief were relatively short, four and eleven pages, respectively; still, they were appropriate and effective actions in the context of this litigation. As a result of those filings, Plaintiffs achieved their goal of an order confirming the arbitration award. Accordingly, I find that the hours the Bushofsky Firms billed to Plaintiffs in July were reasonable.

Thus, I find that Plaintiffs have shown that their requested attorneys' fees based on the work of the Bushofsky Firms are reasonable under the factors delineated in Delaware Lawyers' Rule of Professional Conduct 1.5(a).

As for Prickett Jones, the time it billed overwhelmingly related to making filings with the Court, commenting on drafts of Plaintiffs' filings, and reviewing Defendants' submissions. I find the 71.7 hours Prickett Jones billed to be modest and the work it did

to be necessary to the success of Plaintiffs' claim. Accordingly, I find Prickett Jones' fees to be reasonable.

Plaintiffs further bolster their claim by analogizing this situation to that in *EDIX v. Mahani*.[19] In *EDIX*, which also involved an inquiry into the reasonableness of a request for attorneys' fees under a contractual fee shifting provision, the court discounted a party's complaints about the hours worked by opposing counsel when many of the hours were necessitated by the intransigence of the complaining party. In reaching its conclusion, the court remarked, "[w]ith ample opportunity to minimize the costs of litigation, defendant at every step chose to draw out the conflict."[20] While the actions of Defendants here do not approach the degree of intransigence in *EDIX*, which involved the defendant obtaining a postponement on the eve of trial, effectively forcing opposing counsel to prepare for trial twice, Defendants' actions and the amount at issue created a situation in which Plaintiffs could not take anything for granted in their prosecution of this matter. Defendants could have minimized Plaintiffs' attorneys' fees by promptly consenting to confirmation of the arbitration award; instead, like the defendant in *EDIX*, they chose to draw out the conflict by raising defenses and seeking to delay entry of the judgment. Accordingly, I find that *EDIX* further supports an award of the full amount of fees requested by Plaintiffs in this case, $136,525.50.

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[19] *EDIX Media Gp. v. Mahani*, 2007 WL 417208 (Del. Ch. Jan. 25, 2007), *aff'd*, 935 A.2d 242 (Del. 2007).

[20] *Id.* at *2.

Finally, I find nothing objectionable about the expenses incurred by either the Bushofsky Firms or Prickett Jones. Therefore, I award the full amount of expenses incurred by all of Plaintiffs' law firms. This amounts to $3,689.07 for the Bushofsky Firms and $2,045.06 for Prickett Jones.

III. CONCLUSION

For the reasons stated, I conclude that the amount requested by Plaintiffs for costs and expenses, including attorneys' fees, for this action to enforce the arbitration award is reasonable and that Defendants' objections to that request are unfounded. Thus, I grant judgment in favor of Plaintiffs and against the Olympus Parties, CBW, and CJR for costs and expenses in the total amount of $142,259.63, consisting of $136,525.50 in attorneys' fees and $5,734.13 in expenses.

Plaintiffs shall submit an appropriate proposed form of judgment implementing this decision on five days notice to Defendants.

Sincerely,

/s/Donald F. Parsons, Jr.

Vice Chancellor

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