COURT OF CHANCERY
OF THE
STATE OF DELAWARE

J. TRAVIS LASTER
VICE CHANCELLOR

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

March 2, 2010

Joel Friedlander, Esquire
Bouchard Margules & Friedlander
222 Delaware Avenue, Suite 1400
Wilmington, DE 19801

Stephen E. Jenkins, Esquire
Ashby & Geddes
500 Delaware Avenue
P.O. Box 1150
Wilmington, DE 19899

Lisa A. Schmidt, Esquire
Richards Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801

Collins J. Seitz, Jr., Esquire
Connolly Bove Lodge & Hutz LLP
1007 North Orange Street
P.O. Box 2207
Wilmington, DE 19899

RE: Kurz, *et al.* v. Holbrook, *et al.*, C.A. No. 5019-VCL

Dear Counsel:

I will defer considering plaintiffs' application for an interim award of fees and expenses until after the Delaware Supreme Court rules in the now-pending appeal from my Rule 54(b) Order dated February 9, 2010. Defined terms are used as in my opinion of the same date.

Although interim fee applications are disfavored, this case offers the rare situation where one is appropriate. The facts surrounding the mooting of the application for injunctive and other equitable relief against the Exchange Transaction have been established and are not subject to revision. The benefits from mooting that transaction can be evaluated. The appropriate amount of a fee award based on those benefits can be determined. *See Louisiana State Employees' Retirement Sys. v. Citrix Sys., Inc.*, 2001 WL 1131364, at *4 (Del. Ch. Dec. 19, 2001) (granting interim fee award). For purposes of moving forward with the liability phase of this litigation, it will be helpful to have quantified the fee award so the parties can address concretely whether the amount should be incorporated in the calculation of damages suffered by the Company.

That said, the interim fee petition does not need to be litigated immediately, while the appeal is pending. Doing so would require me to contemplate procedural issues that I may never need to address.

Assume, for example, that the current board remains in place and takes no position on the fee application. Is notice to stockholders required? Plaintiffs say no, pointing out that companies frequently agree not to take a position on a fee award up to a given amount. They do so, however, in the context of negotiated settlements when notice is provided to stockholders, who then have an opportunity to object. Here, the Company's decision not to contest the plaintiffs' fee application more closely resembles the voluntary payment of a fee in connection with a mootness dismissal, where notice to stockholders and an opportunity to object would be required. *See In re Advanced Mammography Sys, Inc. S'holders Litig.*, 1996 WL 633409 (Del. Ch. Oct. 30, 1996) (Allen, C.).

Answering the notice issue raises a related question. Plaintiffs have made a cogent argument why Crown should be fully incentivized and able to oppose the fee application, which they say obviates the need for notice. At the present time, I am not convinced that the presence of one potential objector necessarily displaces a mechanism designed to allow multiple stockholders to object.

Now assume that the Delaware Supreme Court reverses my decision such that the current board is unseated. At that point, I expect the Company would oppose the fee application. Under those circumstances, I do not believe that notice to stockholders would be required, and I would not have to consider either permutation of the notice issue. Moreover, the Company would save the cost of sending out notice. Crown also would save costs. Under the plaintiffs' proposal, Crown would have to expend its own resources to oppose the fee application. Yet it is possible that the Company may undertake the job.

Nothing about the schedule for the damages portion of this case necessitates a ruling on the interim fee application prior to the issuance of the Delaware Supreme Court's decision on appeal. I do not want this matter to drag, but I do not see any reason for expedition. Because considering the interim fee application after the Delaware Supreme Court's decision will avoid potentially unnecessary expenditures of judicial and party resources, it is the course I adopt. After the Delaware Supreme Court rules, the parties will be in a position to determine how they will align on the interim fee application, to consider whether notice is required, and to negotiate an appropriate stipulation or seek my assistance.

Very truly yours,

/s/ J. Travis Laster

J. Travis Laster
Vice Chancellor

JTL/krw