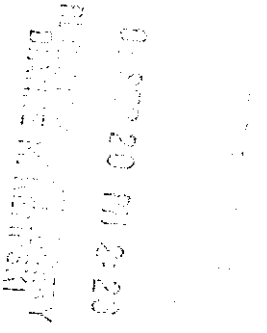
ORIGINAL 136

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

LISA SANDERS, Plaintiff, v. CHARLES B. WANG, SANJAY KUMAR, RUSSELL M. ARTZT, WILLEM F.P. deVOGEL, RICHARD A. GRASSO, IRVING GOLDSTEIN, and SHIRLEY STRUM KENNY, Defendants, and COMPUTER ASSOCIATES INTERNATIONAL INC., Nominal Defendant.	)	C.A. No. 16640
EDWARD BICKEL, derivatively on behalf of COMPUTER ASSOCIATES INTERNATIONAL INC., Plaintiff, v. CHARLES B. WANG, SANJAY KUMAR, RUSSELL M. ARTZT, WILLEM F.P. deVOGEL, IRVING GOLSTEIN, and RICHARD A. GRASSO, Defendants, and COMPUTER ASSOCIATES INTERNATIONAL, INC., Nominal Defendant.	)	



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Submitted: August 20, 200 1
Decided: September 18, 2001

MEMORANDUM OPINION

Grover C. Brown of Gordon, Fournaris & Mammarella, P.A., Wilmington, Delaware; Pamela S. Tikellis of Chimicles & Tikellis LLP, Wilmington, Delaware. OF COUNSEL: Daniel W. Krasner, Fred Taylor Isquith and Adam Gonnelli of Wolf Haldenstein Adler Freeman & Herz LLP, New York, NY.

Norman M. Monhait of Rosenthal Monhait Gross & Goddess, P.A., Wilmington, Delaware; OF COUNSEL: Blank Rome Comisky & McCauley LLP, New York, NY and Garwin Bronzaft Gerstein & Fisher LLP, New York, NY.

STEELE, Justice (by designation)

This opinion resolves a dispute regarding attorneys' fees following the settlement of a shareholder derivative suit brought on behalf of Computer Associates International, Inc.. At issue is the proposed allocation of 900,000 shares of Computer Associates common stock awarded as attorneys' fees and expenses by a June 22, 2000 Order of this Court which granted plaintiffs Motion for Judgment on the Pleadings and resulted in a benefit to the plaintiff shareholders and Computer Associates.'

The 900,000 shares were to be allocated among plaintiffs' counsel according to the terms of the parties' settlement agreement. That settlement agreement provided that Delaware Plaintiffs' Counsel' would allocate any award of attorneys' fees. It did not, however, specify the percentage distribution. Two firms involved in the litigation, Wolf, Haldenstein, Adler, Freeman & Hertz LLP and Chimicles & Tikellis LLP, oppose the proposed allocation. They contend that the proposed allocation is unfair because it does not accurately or fairly reflect their contribution to the successful litigation. Because counsel can not agree on what constitutes a

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[1] ***See United Vanguard Fund, Inc. v. Takecare, Inc.,*** Del. Supr., 693 A.2d 1076, 1079 (1997). In a letter opinion dated May 24, 2001, the Court denied Jerry Krim's application for attorney's fees for his counsel, Harvey Greenfield, finding that Greenfield had not shown that his efforts contributed any benefit to the shareholders or the corporation that may have been derived from the settlement. ***Sanders v. Wang***, Del. Ch., C.A. No. 16640, Steele, Justice by designation, let. op. at 8 (May 24, 2001).

[2] While the five law firms involved in this fee dispute all represented plaintiffs in the derivative suit, the settlement agreement defined "Delaware Plaintiffs' Counsel" as Martin P. Unger, Esq. of Blank, Rome, Comisky & McCauley LLP and Bruce Gernstein, Esq. of Garwin, Bronzaft, Gernstein & Fisher, L.L.P. *See* Compendium of Exhibits, Tab 28, page 11, para. O.

fair allocation of the shares awarded as attorneys' fees, I must make that determination.

Background

This case began in July 1998 when Wolf Haldenstein and Chimicles & Tikellis tiled derivative actions in the United States District Court for the Eastern District of New York. In September 1998, Blank Rome filed a similar derivative action in the Delaware Court of Chancery on behalf of Lisa Sanders.

On November 8, 1999, the Court of Chancery issued a memorandum opinion determining that Computer Associates' compensation committee exceeded its authority by awarding 9.5 million shares of CAs' stock to certain executives in the corporation.[3]

On March 31, 2000, the parties stipulated to a settlement which sought to resolve the derivative actions that had been tiled in both the Eastern District of New York and the Delaware Court of Chancery. Part of the settlement agreement addressed the payment of attorney's fees. Specifically, paragraph twelve of the settlement agreement conferred authority on Delaware Plaintiffs' Counsel to allocate the Court's fee and expense award.[4]

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[3] *See* ***Sanders v. Wang,*** Del. Ch., C.A. No. 16640, Steele, V.C., order (Nov. 18, 1999).

[4] Paragraph twelve reads in relevant part:

> The attorneys' fees and expenses awarded by the Chancery Court shall be paid or issued in the name of such individual plaintiffs' counsel as Delaware Plaintiffs' Counsel shall jointly direct upon the later of (a) receipt of such joint directions,

In an Order dated June 22, 2000, I dismissed the Delaware derivative action and accepted the settlement agreement. In the Order, I awarded 900,000 shares' of Computer Associates common stock as fees and expenses to be distributed "in accordance with the terms of the Stipulation."' Blank Rome and Garwin Bronzaft then presented a proposed allocation of attorney's fees. Of the 900,000 shares, they allocated to themselves 789,606 or 88% of the shares. They allocated to Rosenthal, Monhait, Gross & Goddess, Blank Rome's local counsel, 45,194 or 5% of the shares. They allocated to Wolf Haldenstein 25,000 or 2.8% of the shares, and they allocated to Chimicles & Tikellis 40,000 or 4.4% of the shares.

Claims

A. Opposition to the Current Allocation

Wolf Haldenstein and Chimicles & Tikellis oppose the proposed allocation. They contend that the proposed allocation is based on two erroneous assumptions. Their first contention is that Blank Rome and Garwin Bronzaft erred in stating that Wolf Haldenstein and Chimicles & Tikellis had only minimal involvement in the Delaware litigation. They allege that the second erroneous assumption is that the actions filed in New York contributed only nominally to the settlement.

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and (b) ten (10) business days after the return of shares provided in paragraph 1 hereof, or as soon thereafter as is practicable.

[5] 900,000 shares represents 20% of the amount of shares returned to Computer Associates pursuant to the settlement agreement referenced *infra*.

[6] ***Sanders v. Wang***, Del. Ch., C.A. No. 16640, Steele, V.C., order at 7-8 (June 22, 2000).

Wolf Haldenstein and Chimicles & Tikellis contend that their efforts which contributed substantially to the settlement included:

– the initiation and consolidation of the proceedings in federal court, which not only proved to be viable but ultimately exerted significant pressure on the defendants to settle the actions;

– substantial involvement and responsibility for the intervention in the Delaware proceedings;

– substantial involvement in pursuing the successful Motions for Judgment on the Pleadings in Delaware;

– continued efforts to obtain discovery in the federal action after successfully obtaining partial judgment on the pleadings in Delaware, an effort they construe to have brought significant pressure on the defendants to settle:

– active involvement behind the scenes in the settlement efforts; and

– extensive efforts since the June 22, 2000 approval of the settlement in Delaware to secure dismissal of the Federal Derivative Action, a condition precedent to the consummation of the Delaware settlement.

Wolf Haldenstein and Chimicles & Tikellis request that the Court allocate the 900,000 shares as follows:

Wolf Haldenstein/Chimicles & Tikellis	300,000
Rosenthal Monhait	45,194
Blank Rome	282,951
Garwin Bronzaft	271,855

B. Argument in Support of the Current Allocation

Blank Rome and Garwin Bronzaft support their proposed allocation on two principal bases. First, they argue that the New York litigation contributed only

minimally to the eventual settlement of the Delaware litigation. They contend that the vast majority, "if not all," of the benefit conferred upon Computer Associates and its shareholders directly resulted from their efforts in the Delaware action. Second, Blank Rome and Garwin Bronzaft allege that their successful efforts include the following:

> – Garwin Bronzaft first developed the Delaware claim and first asserted it in the New York federal action. Blank Rome first asserted the ultimately successful theory of recovery in this proceeding;
>
> – Blank Rome initiated the procedural device (the Motions for Judgment on the Pleadings) that expedited the favorable result in this litigation;
>
> – Garwin Bronzaft and Blank Rome separately briefed and argued plaintiffs' successful Motions for Judgment on the Pleadings;
>
> – Garwin Bronzaft prepared the draft appellate brief on the one claim plaintiff Bickel lost before this Court (seeking the return of additional shares, over and above the 9.5 million shares that this Court ordered defendants to return). This strategy, they claim, aided the plaintiffs in settlement negotiations;
>
> – Garwin Bronzaft and Blank Rome negotiated the terms of the settlement agreement after this Court's opinion granting plaintiffs' motions and resolved the difficult tax issues attendant to that judgment; and
>
> – Garwin Bronzaft and Blank Rome negotiated the terms of the settlement and participated with the defendants in drafting the papers in support of the settlement, including the Stipulation of Settlement and drafted the brief and affidavit submitted to this Court in support of the settlement.

Finally, Blank Rome and Garwin Bronzaft contend that the settlement agreement grants them the authority and unfettered discretion to allocate the shares among plaintiffs' counsel.

Discussion

"An attorney fee is not a pot of nectar available to any attorney who represents any shareholder."[7] It is available to attorneys in some cases based on the principles of equity. "The adoption of a mandatory methodology or particular mathematical model for determining attorney's fees in common fund cases would be the antithesis of the equitable principles from which the concept of such awards originated."* Thus each case presents a unique set of facts.

Nonetheless, in evaluating fee requests and awards, this Court generally applies a multifaceted approach consisting of the following factors:

1. time and effort expended by counsel;"
2. difficulty and complexity of the litigation;"
3. counsel's standing and ability;"

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[7] ***In re Resorts Int'l Shareholders Litig.,*** Del. Ch., C.A. Nos. 9470, 9605 (consolidated), Hartnett, V.C., mem. op. at 4 (Oct. 11, 1990).
[8] ***Goodrich v. E.F. Hutton Group, Inc.,*** Del. Supr., 681 A.2d 1039, 1046 (1996).
[9] ***Stroud v. Milliken Enters., Inc.,*** Del. Ch., C.A. No. 8969, 1990 WL 113345, Hartnett, V.C. (Aug. 2, 1990).
[10] ***Weinberger v. U.O.P., Inc.,*** Del. Ch., C.A. No. 5642, Berger, V.C. (Mar. 10, 1987).
[11] ***J.L. Schiffman & Co., Inc., v. Standard Indus., Inc.***, C.A. No. 11267, 1993 WL 271441, Allen, C., at *4 (July 15, 1993).

4. the contingent nature of the fee;[12]

5. stage at which the litigation ended;[13]

6. the amount of the benefit that can fairly be attributed to the efforts of the requestor of the fees;[14]

7. causation;"

8. size of benefit conferred.[16]

Of those factors, in determining whether any fee at all is appropriate, Courts regularly give the size of the benefit conferred the greatest weight.[17] Here, however, there are no issues about whether counsel's efforts conferred a sizable benefit, that substantial work was done by highly visible competent counsel, that the ultimate prevailing theory was pursued vigorously in a difficult, if not complex case, and that counsel expended time and effort at the risk of no reward. What is in issue is the extent to which each participating firm's efforts directly resulted in what portion of the sizable benefit conferred. Accordingly, I will closely examine

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[12] ***In re Caremark Int'l Inc. Derivative Litig.,*** Del. Ch., C.A. No. 13670 (consolidated), Allen, C. (Sept. 25, 1996).
[13] ***See, e.g., In re MAXXAM Group, Inc. Stockholders Litig.,*** Del. Ch., C.A. No. 8636, Jacobs, V.C., mem. op. at 33-34 (April 16, 1987).
[14] ***See, e.g. MAXXAM Group,*** mem. op. at 15.
[15] ***See, e.g., In re Anderson Clayton Shareholders Litig.***, Del. Ch., C.A. No. 8387, Allen, C., ltr. op. at 7 (Sept. 19, 1988).
[16] ***Goodrich v. E.F. Hutton Group, Inc.,*** Del. Supr., 681 A.2d 1039, 1048 (1996); ***In re Golden State Bancorp Inc. Shareholders Litig.***, Del. Ch., C.A. No. 16175, Chandler, C. (Jan. 7, 2000).
[17] ***See, e.g., In re Appraisal of Shell Oil,*** Del. Ch., C.A. No. 8080 (consolidated), Hartnett, V.C., 1992 LEXIS 228 at 11-12 (Oct. 30, 1992); ***Anderson Clayton*** ltr. op. at 3, 7; ***In re Dr. Pepper/Seven Up. Cos., Inc. Shareholders Litig.***, Del. Ch., C.A. No. 13109, 1996 WL 74214, Chandler, V.C., at *5 (Feb. 9, 1996, as amended Feb. 27, 1996), *aff'd*, Del. Supr., 683 A.2d 58 (1996).

the extent to which each of the plaintiffs' counsel can be credited with causing the return of shares wrongfully issued and the settlement of the Delaware litigation in which plaintiffs achieved an unprecedented victory after obtaining a partial judgment on the pleadings.

The first question that must be addressed asks what each firm respectively contributed to the Delaware litigation that led to the settlement. The second question is what effect did the New York litigation have on the settlement of the Delaware litigation. Finally, I must ask what of plaintiffs' counsel's efforts should I should consider in applying any secondary (non-benefit-based) factors. Based on the answers to these three questions, I will allocate the shares as fairly as the objective facts and appropriate subjective judgments allow.'*

A. Contribution to the Delaware Litigation

Counsel dispute the significance of the contribution each made to the Delaware litigation that led to the settlement. Blank Rome and Garwin Bronzaft contend that they allocated only 25,000 shares to Wolf Haldenstein because:

– Wolf Haldenstein had no role in developing the Delaware claim

– Wolf Haldenstein, unlike Garwin Bronzaft, did not assert the Delaware state law claim in its New York federal complaint and in fact made

[18] This Court does not accept the assertion of Garwin Bronzaft and Blank Rome that their allocations are entitled to "substantial deference." The nature of the equity jurisdiction of this Court requires that it make "an independent determination of reasonableness…before making or approving an attorney's fee award." ***Goodrich, 681*** A.2d at 1046.

allegations directly contrary to the core allegation of the Delaware Action, resulting in this Court denying it's client's Motion to Intervene;

– Wolf Haldenstein had no role in briefing plaintiff Bickel's successful Motion for Judgment on the Pleadings and played only a tangential role in briefing plaintiff Bickel's opposition to defendant's cross-motion;

– Wolf Haldenstein did not orally argue the cross-motion;

– Wolf Haldenstein had no role in resolving the complex and difficult tax issues arising from the judgment after this Court granted plaintiffs' motions; and

– Wolf Haldenstein had no role in negotiating the settlement or drafting the substantive provisions of the settlement papers.

Blank Rome and Garwin Bronzaft next contend that they allocated only 40,000 shares to Chimicles & Tikellis because:

– Chimicles & Tikellis played a supporting role in the unsuccessful Motion to Intervene;

– Chimicles & Tikellis played a minor role in the dormant New York action;

– Chimicles & Tikellis made minor, non-substantive edits to the briefs regarding the Motions for Judgment on the Pleadings;

– Chimicles & Tikellis had no role in developing the Delaware claim; no role in crafting the arguments on the Motions for Judgment on the Pleadings; no role in negotiating the settlement; and no role in drafting the settlement agreement.

The self-serving and self-interested nature of the pleadings and affidavits provided by both sides render them next to useless in determining the actual amount and substance of each side's contribution to the litigation and, more

importantly, the benefit each rendered for their respective shareholder clients and the corporation. Therefore, I must look to what little extrinsic evidence is available in order to resolve counsel's dispute over fees.

Wolf Halderstein and Chimicles & Tikellis jointly contend that they worked extensively on all aspects of the Delaware litigation. They contend that their efforts included significant work on the Motion to Intervene as well as on the plaintiffs' Motions for Judgment on the Pleadings. The billing records submitted by the joint opposition to the allocation do not support this assertion. Neither Wolf Halderstein nor Chimicles & Tikellis have recorded significant activity related to any portion of the Delaware litigation. The submitted records contain very few explicit references to the Delaware litigation. Moreover, they reveal little activity surrounding key events in this litigation, most notably the near total absence of any activity on the dates proximate to the filing of and argument on plaintiffs' Motions for Judgment on the Pleadings.'"

In addition, under any form of causation analysis, there is no support for Wolf Halderstein's and Chimicles & Tikellis' contention that their work on the Motions to Stay and Intervene in the Sanders litigation directly contributed to the success of the litigation in this Court. As noted *supra*, only Bickel's motion

[19] I note that the billing records provided by both Wolf Halderstein and Chimicles & Tikellis are poorly drafted and vague, making it extremely difficult not only to determine the actual nature of

succeeded based upon his contract theory, an innovative, unprecedented theory of recovery developed by Bickel's counsel.

Further, there is no evidence to substantiate the contention of Wolf Halderstein and Chimicles & Tikellis that after the denial of their Motions to Intervene that they remained active in the Delaware proceeding. Not only is there little support for the claims in the billing records, the firms have failed to offer adequate reasoning as to why they would expend substantial resources on behalf of another firm's client in litigation in which the Court had found their own clients to lack standing.

The joint opposition to the allocation stresses that Wolf Halderstein and Chimicles & Tikellis were actively involved in the settlement process. Again, one must look to extrinsic evidence for an unbiased view. The one affidavit filed by a non-party to this fee contest – defense attorney David Nachman – states that he was unaware of any involvement in the negotiation or settlement process by Wolf Halderstein or Chimicles & Tikellis.[20] The billing records submitted by the opposition to the allocation once again fail to indicate any substantial involvement in the settlement negotiations until after March 31, 2000 – the date the stipulation was agreed upon. Specifically, the billing records of Isquith and Krasner of Wolf

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the work being claimed, but also wholly inadequate to determine in which jurisdiction the efforts were made.

[20] Affidavit of David Nachman, November 7, 2000 at ¶ 12.

Halderstein indicate that they spent approximately 42 hours combined on the settlement process. The attorneys for Chimicles & Tikellis appear to have spent approximately 3.5 hours in settlement review." By contrast, the records provided by both Garwin Bronzaft and Blank Rome indicate the extensive nature of their respective involvement. Garwin Broznaft's attorneys list over 120 hours spent on settlement of the case alone. Blank Rome spent a minimum of 80 hours on issues relating to settlement. There is no record support for the opponents' claim that they directly impacted settlement efforts. Settlement in this Delaware action could not have been easy to achieve. Substantial tax issues clouded any prospect that defendants' would perceive that settlement would benefit them. They faced significant adverse tax consequences from the virtual unscrambling of the exercise of the option "egg." Similar cases in the past focused on waste claims and the independence of directors or committee members authorized explicitly or implicitly to reprice options. Viable appealable issues had to be compromised. Without vigorous and robust settlement negotiations, the merits of the parties' contentions would still be unresolved, I suspect, in both jurisdictions. Wolf

[21] Again, I find difficulty in ascertaining the exact amount of work performed by Wolf Halderstein and Chimicles & Tikellis due to the ambiguity of their records. The fact that this discrepancy could merely be a function of the proponents' shoddy methods of billing and record keeping is a question that I am unable to resolve based upon the information before me. Therefore, I cannot make a ruling based almost solely upon the self-serving, contradicted but unsupported claims of the opponents to the allocation.

Halderstein and Chimicles & Tikellis offer no evidence to support their contention that they played a significant "background" role in these critical negotiations.

Wolf Halderstein and Chimicles & Tikellis further state that they are entitled to a larger portion of the attorneys' fees than proposed because of their mere willingness to participate in the Delaware litigation and settlement if they had been so asked. No matter how fervently a law firm may desire to participate in the prosecution of a suit, that zeal, in order to be compensable must directly generate a benefit to shareholders or the corporation as a result of actual development of and successful advocacy of a winning legal strategy. Any award of attorneys' fees in equity is to be made in proportion to actual work done from which a benefit is derived. A mere willingness to do work, however laudable, is not among those factors considered in analyzing an equitable claim for attorneys' fees and contributes nothing directly benefiting a plaintiff or the corporation.

B. The Role of the New York Litigation

The next question to be addressed is the relative impact of the Delaware and New York actions on the eventual settlement. Specifically, the Court must look to whether or not the existence and prosecution of the New York litigation directly benefited the plaintiffs and the corporation. No one denies that both Wolf Halderstein and Chimicles & Tikellis were actively involved in the complaints filed and later consolidated in the United States District Court for the Eastern

District of New York. At issue is whether or not those two firms' work in that Court contributed meaningfully to the settlement of the overall litigation.

This Court has recognized that the relevant factor in determining the role of litigation is not simply that a benefit is achieved after litigation is commenced, but whether that benefit was actually accomplished because of the litigation in question." Therefore, the Court must determine to what extent the New York derivative action conferred a benefit on the plaintiffs or the corporation and in part precipitated settlement or a more beneficial settlement.

The first step in this analysis is to examine the settlement agreement itself. The language of the document suggests that the New York litigation was at best a secondary factor in the decision of the defendant directors to settle the case. In its discussion of motivating factors behind the settlement, the stipulation states that the New York Court had given leave for the defendants to move for dismissal based on several defenses, among them failure to make demand before filing the litigation.[23] While it notes the possibility of reversal of this Court's order on appeal, the focus of the statement on plaintiffs' motivation in settling stressed that the results in New York were uncertain at best and that the risks associated with

[22] ***Anderson Clayton*** ltr. op. at 3.

[23] To this end, it should be noted that this Court's decision to excuse demand was based on the contract theory advanced solely by Bickel and Sanders. While no judgment was made about the independence of the directors here, it is on this basis that any demand decision likely would have to be made in the federal action.

the continued prosecution of these claims were far outweighed by the benefits of a global settlement in Delaware. The settlement stipulation containing the above statements was signed not only by Garwin Bronzaft and Blank Rome, but also by counsel now contesting the allocation of fees. Wolf Halderstein and Chimicles & Tikellis now claim, I believe inconsistently, that the threat posed to the defendants by the New York litigation was vital to the successful negotiation of the settlement.

The settlement agreement's implication that the New York litigation was insignificant in the settlement negotiations is supported by the statements of defense counsel. As noted ***supra,*** Nachman's lack of interest in the outcome of this dispute lends substantial credibility to the statements contained in his affidavit. He has stated that it would be incorrect to infer that "the claims in both actions were of equal significance to the resolution ultimately achieved."[24] Indeed, he further stated that the contract claim that was the basis of this Court's November 1999 decision "played by far the predominant role in the defendants' decision to settle and the terms upon which the lawsuit were resolved.[25]" Nachman also averred that it was this Court's ruling on the contract claim asserted by plaintiffs Bickel and Sanders that was the decisive influence on defendants' decision to

[24] Affidavit of David Nachman, November 7, 2000 at ¶ 9.
[25] *Id.*

settle.[26] Nachman neither credits nor even acknowledges any role played by the New York litigation in defendants' decision to settle this case.

Wolf Halderstein and Chimicles & Tikellis offer two arguments in support of the idea that the New York litigation spurred negotiations and the eventual adoption of the settlement agreement. The first is that the global feature of that agreement confirms the strength of their position. They offer no further evidence in support of this position. The plain, virtual boilerplate, language of the agreement contemplates a global settlement in order to resolve all overlapping claims and end all contentions between the parties in one final judgment. The second argument advanced by the opponents of the fee allocation is that their labors in opening discovery in the New York case after the Delaware order prompted the defendants to settle the case. Once again, Wolf Halderstein and Chimicles & Tikellis can offer no support for this claim intended to counter the assertions in the text of the stipulation that they signed and the affidavit of Nachman that the New York litigation had a minimal influence in the defendants' decision to settle.

Wolf Halderstein and Chimicles & Tikellis further argue that their involvement in the New York litigation after the settlement agreement, namely their active defense against the delaying tactics of Green'rield, constituted a

[26] *Id.* at ¶ 11.

significant contribution toward the benefit received as a result of the settlement agreement. This Court has previously expressed its disapproval of Greenfield's copycat attempts to wrest a portion of an award of fees earned by other counsel.[27] Nonetheless, the terms of the stipulated settlement agreement state that the settlement will not be concluded until both the action before this Court and the consolidated federal derivative actions in New York are dismissed. Greenfield's stubborn refusal to acquiesce in a dismissal of the action in New York was clearly designed to delay or obstruct this settlement in an attempt to convince active, contributing counsel, to make him go away by allocating to him an unearned portion of any fee award. The billing records of both Wolf Halderstein and Chimicles & Tikellis indicate a substantial amount of time spent in opposing Greentield's attempts to frustrate their goal of securing a timely benefit to their clients and the corporation contemplated by the settlement agreement. Therefore no matter how distasteful the need to combat Greenfield's tactics may be to the profession and this Court, disposing of Greenfield's obstinate, non-meritorious opposition to the global settlement must be considered a contributing factor advancing the benefit that resulted in the award of attorneys' fees.

[27] ***See Sanders v. Wang,*** Del. Ch., C.A. No. 16640, Steele, V.C., let. op. (May 24, 2001).

C. Evaluation of Time and Risk Factors

In addition, it must be noted that benefit and causation, while the most important, are but two of the factors the Delaware courts have considered in allocating attorneys fees. This Court has also held that the efforts of counsel, the contingent nature of the litigation, and the specialized nature of any services rendered are all significant, if secondary, factors in the allocation of attorneys' fees.[28]

The record indicates a substantial investment of time and resources by the opponents to the proposed allocation – Wolf Halderstein and Chimicles & Tikellis. Wolf Halderstein expended approximately 647 hours on the New York and Delaware litigation. This accounts for over 22% of the total hours billed by the four firms involved in this proceeding." Chimicles & Tikellis spent approximately 227 hours on this litigation. This is nearly 8% of the total hours expended. Blank Rome and Garwin Bronzaft together accounted for approximately 70% of the total hours billed. Moreover, counsel undertook measurable risk in tiling the New York litigation, before both Bickel and Sanders filed in Delaware. As did Garwin Bronzaft and Blank Rome, the firms of Wolf Halderstein and Chimicles & Tikellis

[28] ***Anderson Clayton***, ltr. op. at 3.

[29] Rosenthal, Monhait, Gross & Goddess have neither challenged nor defended the proposed allocation and did not file any billing records by which this Court could assess their involvement. Therefore they are not included the total percentages.

stood to gain only if there was a successful prosecution of the suit or a favorable settlement agreement. Moreover, a substantial portion of this work was completed before this Court's ruling on plaintiffs' Motions for Judgment on the Pleadings and they could not have reasonably foreseen that ruling's impact on the settlement process. Thus, it must be acknowledged that the opponents risked expending considerable effort with little guarantee of success. It is widely recognized that plaintiffs' counsel's pursuit of class and derivative actions play an important beneficial role in corporate governance. Absent an incentive to take the risks inherent in direct and derivative shareholder claims, untoward actions by corporate management might remain unchecked. This Court has held that it is "consistent with the public policy of this State to reward this sort of risk taking in determining the amount of a fee award."[30] Therefore, Courts should be as willing to award fair fees and thereby recognize substantial effort by competent counsel that results in a conferred benefit as they should be circumspect in denying fees for frivolous or copycat suits designed solely to extort compensation where little or no meaningful contribution is made to a benefit achieved. Therefore Wolf Halderstein and Chimicles &Tikellis are entitled to a fair allocation of any fee award based upon their efforts and the risk they incurred in pursuing claims for the benefit of Computer Associates and its shareholders.

[30] *In re First Interstate Bancorp Consolidated Shareholder Litig.,* Del. Ch., 756 A.2d 353, 365

Conclusion

I conclude as follows:

The theory of the claims before this Court and the judgment on the pleadings based upon the contract claim was the primary motivation for defendants to enter into a settlement agreement. Wolf Halderstein and Chimicles & Tikellis have failed to show that they contributed more than minimally to the Delaware litigation or to the subsequent settlement negotiations and thus played a minor role in procuring the benefits of the settlement to the plaintiffs and the corporation.

Wolf Halderstein and Chimicles & Tikellis did demonstrate that they expended significant effort in defending against Greenfield's attempts to obstruct the settlement by his antics here and in the United States District Court for the Eastern District of New York and thus helped to secure the benefit contemplated by the stipulation of settlement.

Garwin Bronzaft and Blank Rome failed to give adequate consideration to the substantial effort expended by Wolf Halderstein and Chimicles & Tikellis in their prosecution of the New York derivative suit, before proponents of the allocation achieved success in this Court. By pursuing litigation in New York, Wolf Halderstein and Chimicles & Tikellis attempted to bring a benefit to

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(1999).

Computer Associates and its shareholders at the risk of no compensation for those efforts. These two factors cannot and should not be ignored.

Rosenthal, Monhait, Gross & Goddess did not challenge the fee allocations, nor were their original allocations challenged by Wolf Halderstein and Chimicles & Tikellis.

Therefore, this Court ORDERS the following Allocation of Attorneys' Fees:

- Garwin, Bronzaft, Gerstein & Fisher LLP and the Blank Rome Group – 700,000 shares
- Wolf, Haldenstein, Adler, Freeman & Hertz LLP – 100,000 shares
- Chimicles & Tikellis LLP – 54,806 shares
- Rosenthal, Monhait, Gross & Goddess P.A. – 45,194 shares

IT IS SO ORDERED.

Justice Myron T. Steele (by designation)