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

Date Submitted: January 3, 2013
Date Decided: January 7, 2013

Michael Hanrahan, Esquire
Paul A. Fioravanti, Jr., Esquire
J. Clayton Athey, Esquire
Kevin H. Davenport, Esquire
Prickett, Jones & Elliott, P.A.
1310 N. King Street
Wilmington, DE 19801

Collins J. Seitz, Esquire
Bradley R. Aronstam, Esquire
Eric D. Selden, Esquire
Seitz Ross Aronstam & Moritz LLP
100 S. West Street, Suite 400
Wilmington, DE 19801

Brock E. Czeschin, Esquire
Lisa A. Schmidt, Esquire
Steven J. Fineman, Esquire
Scott W. Perkins, Esquire
Susan M. Hannigan, Esquire
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801

William M. Lafferty, Esquire
John P. DiTomo, Esquire
Ryan D. Stottmann, Esquire
Morris, Nichols, Arsht & Tunnell, LLP
1201 North Market Street, 18th Floor
Wilmington, DE 19801

Kevin G. Abrams, Esquire
Abrams & Bayliss, LLP
20 Montchanin Road, Suite 200
Wilmington, DE 19801

RE: *In Re MoneyGram Int'l, Inc. S'holder Litig.*
C.A. No. 6387-VCL

Dear Counsel:

The plaintiffs challenged a recapitalization of MoneyGram International, Inc. ("MoneyGram" or the "Company") and sought pre-closing injunctive relief. In response to the injunction application, the agreement governing the recapitalization was amended to provide for a non-waivable and properly structured majority-of-the-minority voting condition. In addition, the defendants issued a sixteen-page disclosure supplement

containing a significant amount of material information. The remaining aspects of the plaintiffs' application could be remedied by post-closing relief, and the application was denied.

After the recapitalization closed, the plaintiffs pressed on with the litigation. On the eve of trial, the plaintiffs settled in exchange for the defendants' creation of a $10 million settlement fund. On October 10, 2012, I approved the settlement but reserved decision on the amount of the fee award.

By securing non-monetary benefits during the injunction phase, plaintiffs' counsel became entitled to a reasonable attorneys' fee award, and MoneyGram incurred a contingent liability in the form of its obligation to pay the award. *See In re First Interstate Bancorp. Consol. S'holder Litig.*, 756 A.2d 353, 357-58 (Del. Ch. 1999), *aff'd sub nom. First Interstate Bancorp v. Williamson*, 755 A.2d 388 (Del. 2000); *Richman v. DeVal Aerodynamics, Inc.*, 185 A.2d 884, 886 (Del. Ch. 1962) (Seitz, C.). If a fee application had been made at that point, the amount of the fee award could have been quantified and ordered paid on an interim basis, or the Court could have deferred in its discretion any decision on the amount of the fee award until the end of the case. *See EMAK Worldwide, Inc. v. Kurz*, 50 A.3d 429 (Del. 2012) (affirming propriety and amount of interim fee award); *In re Del Monte Foods Co. S'holders Litig.*, 2011 WL 2535256 (Del. Ch. June 27, 2011) (discussing factors warranting interim fee and granting interim award); *La. State Employees' Ret. Sys. v. Citrix Sys., Inc.*, 2001 WL 1131364 (Del. Ch. Sept. 17, 2001) (same). Plaintiffs' counsel did not pursue an interim fee application.

When negotiating the final settlement, plaintiffs' counsel sought both the creation of the settlement fund and to preserve their right to recover attorneys' fees separately. The defendants insisted on an "all-in" settlement in which any fee award, whether for creating the settlement fund or for the earlier non-monetary benefits, would be paid out of the settlement fund. From the defendants' standpoint, the merits payment and the fee award were interrelated and fungible. They could cause MoneyGram to pay any fee award for the non-monetary benefits directly, in which case they would offer a lesser amount for the settlement fund, or they could offer a greater amount for the settlement fund on the condition that the entire fee come out of the fund. One can readily envision scenarios in which the alternatives would not be functionally equivalent, but here they appear to be. The parties agreed on the "all-in" alternative.

When making their fee application, plaintiffs' counsel sought fees of $3 million plus expenses of $614,000. They justified these amounts as a percentage of the $10 million fund. As a practical matter, however, they did not really create a $10 million fund. The fund value was reduced by the contingent liability represented by the fee

award for the non-monetary benefits, which MoneyGram otherwise would have borne. A percentage-of-the-recovery award based on a $10 million fund would ignore this liability and overstate the value of the fund.

Plaintiffs' counsel argued persuasively that the non-monetary benefits achieved during the injunction phase support a fee award of $1.2 to $1.6 million. Having considered the nature of the relief and the other *Sugarland* factors, I find that an award of $1.2 million is appropriate. *See generally Sugarland Indus., Inc. v. Thomas*, 420 A.2d 142 (Del. 1980).

Because the $1.2 million award comes out of the common fund, the real amount of the common fund is $8.8 million, not $10 million. The costs of administration will be paid by MoneyGram, so the $8.8 million can be taken at face value.

The settlement was reached on the eve of trial, after substantial litigation efforts but at a time when significant work remained and the risk of a potentially negative outcome loomed. A percentage of 25% is appropriate for a settlement at this stage of a case. *See, e.g., In re Emerson Radio S'holder Deriv. Litig.* 2011 WL 1135006, at *3 (Del. Ch. Jan. 18, 2011). An aggregate award for both fees and expenses is more straightforward for the Court and rewards plaintiffs' counsel for being efficient. *See Brinckerhoff v. Texas E. Prods. Pipeline Co., LLC*, 986 A.2d 370, 396 (Del. Ch. 2010). After incorporating these factors into the balancing called for by *Sugarland*, I find that an award of $2.2 million fairly compensates plaintiffs' counsel for the creation of the $8.8 million common fund.

Plaintiffs' counsel are awarded a total of $3.4 million. As agreed by the parties, the total award will be paid from the common fund.

Very truly yours,

/s/ J. Travis Laster

J. Travis Laster
Vice Chancellor

JTL/krw