



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

WILLIAM B. CHANDLER III  
CHANCELLOR

COURT OF CHANCERY COURTHOUSE  
34 THE CIRCLE  
GEORGETOWN, DELAWARE 19947

Submitted: June 11, 2010  
Decided: June 23, 2010

Ronald A. Brown, Jr.  
Prickett, Jones & Elliott, P.A.  
1310 King Street  
Wilmington, Delaware 19801

Allen M. Terrell, Jr.  
Lisa M. Pietrzak  
Richards, Layton & Finger, P.A.  
One Rodney Square  
P.O. Box 551  
Wilmington, Delaware 19899

Re: *Berger v. Pubco Corp., et al.*  
Civil Action No. 3414-CC

Dear Counsel:

I have reviewed the briefs on plaintiff's petition for attorneys' fees and expenses. On the issue of the amount to be awarded in attorneys' fees and expenses, I deem \$1.2 million (or approximately 26% of the value of the cash recovered for Pubco's former minority shareholders) to be a fair award, both to the shareholder class and to its counsel. There has been a tremendous benefit to the shareholder class, totaling \$4,543,433. This benefit will be realized only at the conclusion of lengthy and thorough litigation by counsel, litigation that resulted in a final judgment and not a quick settlement, and which, as plaintiff notes, involves a final recovery that is more than double the merger consideration for the class. As plaintiff also notes, a 26% fee is at the bottom of the 25-33% range that is found in many Court of Chancery cases, and the hourly rate to which the fee translates (approximately \$3,450 per hour, as I calculate based on the information in plaintiff's petition) is nestled within the range of hourly rates found among Court of Chancery monetary-benefit cases. Given these considerations as well as the

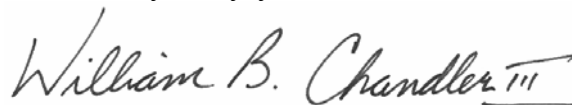
somewhat complex nature of this litigation, the demonstrated skill of counsel in achieving a significant benefit for their client and the shareholder class, and the contingency basis of counsel's work, I conclude that \$1.2 million in attorneys' fees and expenses is an award fair to all.

On the issue raised by defendants in their response to plaintiff's petition for attorneys' fees and expenses—whether the \$250,000 paid as an initial award in this litigation should be considered an advance on the fees ultimately awarded to plaintiff's counsel—I believe the initial award should not be so considered. The initial award related to the breach of fiduciary duty by Pubco's controlling shareholder, as well as to the relief resulting in heightened disclosure. Defendants argue that the initial award was charged against the controlling shareholder rather than the shareholder class because at the time of the award there was no certified class. I believe the more appropriate and accurate perspective on this matter is the one plaintiff has adopted: that Pubco's controlling shareholder was charged for the initial award not because there was no certified class to charge at that time but because a fiduciary in breach of its duties should bear the cost of litigation. Such was the tenor of my earlier ruling in this case, and such is the basis for my ruling on plaintiff's petition for attorneys' fees and expenses—that \$250,000 was an appropriate award for earlier efforts, fees, and expenses relating to the establishment of a breach of fiduciary duty, and that \$1.2 million is a fair award for the efforts, fees, and expenses of counsel in securing more than \$4.5 million in cash value for the shareholder class.

Pursuant to the parties' Stipulation, this ruling now concludes all outstanding issues requiring adjudication.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in black ink that reads "William B. Chandler III". The signature is written in a cursive style with a horizontal line underlining the name.

William B. Chandler III

WBCIII:bjt