COURT OF CHANCERY
OF THE
STATE OF DELAWARE

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VICE CHANCELLOR

New Castle County Court House
500 N. King Street, Suite 11400
Wilmington, Delaware 19801

Submitted: December 19, 2007
Decided: January 8, 2008

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RE: In re James River Group, Inc. Shareholders Litigation
Consolidated Civil Action No. 3173-VCL

Dear Counsel:

On December 18, 2007, I approved the settlement of this class action. The consideration on which the settlement rested consisted entirely of additional and revised proxy statement disclosures. Those disclosures included, most significantly, details of activity during a "go shop" period and the projections underlying the company's investment banker's fairness analysis. There now remains for decision the amount of the appropriate fee to pay to the plaintiffs' counsel for their efforts in prosecuting the claim and achieving this result. The

plaintiffs' counsel asks for an award totaling $450,000 in fees and expenses, and have shown that they devoted over 500 hours of time and incurred over $20,800 in expenses prosecuting the action. The defendants urge the court to award a significantly lower, but unspecified, amount.

The standard governing the award of fees in representative litigation in Delaware is well known. While the amount of an award is committed to the sound discretion of the court, it must be reasonable under the circumstances and ordinarily reflects the court's assessment of a number of factors.[1] The principal factors for the court to consider are: (1) the benefits achieved by the litigation; (2) efforts of counsel and amount of time spent on the case; (3) the contingent nature of the fee; (4) the difficulty of the litigation; and (5) the standing and ability of counsel.[2]

The defendants make a series of arguments in opposition to the fee request. First, they note that the plaintiffs abandoned their initial *Revlon* claims and then agreed to a disclosure based settlement within a month of filing their complaint. While these observations are true and would afford a basis for the court to reduce any patently excessive fee request, they have less force where, as is true here, the fee requested is not patently unreasonable. Next, the defendants point out that a

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[1] *Sugarland Indus. v. Thomas*, 420 A.2d. 142 (Del. 1980).
[2] *Id.* at 149-50.

large proportion of the hours devoted to this case by the plaintiffs' counsel were spent after the Memorandum of Understanding was reached and the contingent nature of the undertaking changed. This again is true and certainly cautions against an overly generous award.

The defendants also make an unusual and potentially troubling argument that, taken on its face, tends to undercut the legitimacy of the settlement process itself. The defendants argue that, while the most significant of the additional or revised proxy statement disclosures that provide the consideration for the settlement were material, the defendants fully intended to provide similar disclosure in the final proxy material anyway and, therefore, the litigation and the efforts of the plaintiffs' counsel accomplished little. This argument is supported by an affidavit of J. Adam Abram, CEO of the company at the relevant time. According to Mr. Abram, while these disclosures were omitted from the preliminary proxy material, the defendants always intended to include them in the final version.

The defendants' argument in this regard is strikingly at odds with the language of paragraph 1 of the Stipulation of Settlement in which the defendants (including Mr. Abram) stipulated and agreed that the pendency of this action and the efforts of the plaintiffs' counsel were substantial contributing factors in the

defendants' decision to include the additional disclosures in the final proxy material. Oddly, Mr. Abram's affidavit makes no reference to this earlier agreed statement of fact. The court relied upon the representation found in the Stipulation of Settlement in approving the settlement as fair, reasonable, and adequate and is not now willing to entertain a plainly contradictory suggestion in determining the amount of fee to award.[3]

The defendants also urge the court to discount the significance of the other supplemental disclosures that form the basis of the settlement. Finally, they point out that, while there was the threat of an objection from a plaintiff who first filed a related action in North Carolina[4] and then filed suit in this court,[5] no objection materialized after the latter complaint was consolidated with this one and the lawyers appearing in that action participated in the confirmatory discovery process.[6]

For their part, the plaintiffs stress the materiality of the added disclosures and the complication added to the case by the presence of the *Levy* plaintiffs who

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[3] *Cf. In re Chips and Techs., Inc. S'holders Litig.*, 1998 WL 409155 at n.2 (Del. Ch. June 24, 1998).
[4] *Levy Investments v. James River Group, Inc.*, Case Number 07CVS000820 (N.C. Bus. Ct. 2007).
[5] *Levy Investment v. James River Group, Inc.*, C.A. 3299-VCL (Del. Ch. 2007).
[6] Evidently, the *Levy* plaintiffs' North Carolina counsel, who spent 314 hours, including 226 hours in their Delaware action, expect to be compensated out of the award made in this case, although they have not formally joined the settlement and the formal fee application does not include time spent by the *Levy* attorneys.

threatened to object, took part in confirmatory discovery and, only in the end, made their peace. They point out that they filed a motion for expedited proceedings, undertook an extensive document review, and retained a valuation expert to assist their review of the record. In response to the court's request for detailed information about the time spent by them on this litigation, the plaintiffs' counsel submitted a December 19, 2007 letter in which they report that they devoted 113.3 hours to this case before the MOU was signed, an additional 313.6 hours through the end of confirmatory discovery, another 20.7 hours between the end of confirmatory discovery and the preparation of papers in support of the settlement and the fee application and, finally, 81.2 hours in preparing the settlement and fee application papers. In addition, the December 19, 2007 letter reports that the *Levy* plaintiffs spent 87.6 hours on their North Carolina litigation and 225.9 hours on the litigation in this court.

Taking all relevant factors into consideration, I conclude that an award of $400,000 in fees and expenses is fair and reasonable in the circumstances. This conclusion is predicated substantially on the significance of the added disclosures and the total number of hours spent by counsel on this case. I recognize that this court has awarded higher or lower fees in somewhat similar cases.[7] Nevertheless,

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[7] *Compare In re Genencor Int'l, Inc. S'holders Litig.*, Cons. C.A. No. 1052-N, Lamb, V.C. (Del. Ch. June 2, 2005) (ORDER) ($450,000 fees and expenses awarded for disclosures) *with Augenbaum v. Forman*, 2006 WL 1716916 (Del. Ch. June 21, 2006) ($225,000 fees and expenses awarded for disclosures).

each case stands on its own, and the court is called upon, in the exercise of its discretion, to make an award that furthers the policy objectives of encouraging monitoring behavior by stockholders and protecting the assets of Delaware corporations from unreasonable opportunistic demands.

Thus, I have today entered the form of order submitted by the plaintiffs' counsel with the fee and expense award noted thereon.

/s/ Stephen P. Lamb
Vice Chancellor