



Charles Almond, et al. v. Glenhill Advisors LLC, et al.

2019 | Cited 0 times | Court of Chancery of Delaware | April 10, 2019

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CHARLES ALMOND AS TRUSTEE FOR THE ALMOND FAMILY 2001 TRUST, ALMOND INVESTMENT FUND LLC, CHARLES ALMOND, and ANDREW FRANKLIN,

Plaintiffs, v.

GLENHILL ADVISORS LLC, GLENHILL CAPITAL LP, GLENHILL CAPITAL MANAGEMENT LLC, GLENHILL CONCENTRATED LONG MASTER FUND LLC, GLENHILL SPECIAL OPPORTUNITIES MASTER FUND LLC, JOHN EDELMAN, GLENN KREVLIN, JOHN MCPHEE, WILLIAM SWEEDLER, WINDSONG DB DWR II, LLC, WINDSONG DWR, LLC, WINDSONG BRANDS, LLC, HERMAN MILLER, INC. and HM CATALYST, INC.,

Defendants,

and

DESIGN WITHIN REACH, INC.,

Intervenor and Counterclaim-Petitioner.))))))) C.A. No. 10477-CB

MEMORANDUM OPINION Peter B. Ladig and Sara E. Bussiere of BAYARD, P.A., Wilmington, Delaware; David H. Wollmuth and Michael C. Ledley of WOLLMUTH MAHER & DEUTSCH LLP, New York, New York. Attorneys for Plaintiffs Charles Almond as Trustee for the Almond Family 2001 Trust, Almond Investment Fund LLC, and Charles Almond.

David A. Jenkins of SMITH, KATZENSTEIN & JENKINS LLP, Wilmington, Delaware; Scott J. Watnik of WILK AUSLANDER LLP, New York, New York; Thomas A. Brown of MOREA SCHWARTZ BRADHAM FRIEDMAN & BROWN LLP, New York, New York. Attorneys for Plaintiff Andrew Franklin.

Andrew D. Cordo and F. Troupe Mickler IV of ASHBY & GEDDES, Wilmington, Delaware; Adrienne M. Ward and Brian Katz of OLSHAN FROME WOLOSKY LLP, New York, New York; John B. Horgan of ELLENOFF GROSSMAN & SCHOLE LLP, New York, New York. Attorneys for Glenhill Advisors LLC, Glenhill Capital LP, Glenhill Capital Management LLC, Glenhill



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Concentrated Long Master Fund LLC, Glenhill Special Opportunities Master Fund LLC, Glenn Krevlin, William Sweedler, Windsong DB DWR II, LLC, and Windsong DWR LLC.

Douglas D. Herrmann of PEPPER HAMILTON LLP, Wilmington, Delaware; Paul B. Carberry, Joshua Weedman, and Erin Smith of WHITE & CASE LLP, New York, New York. Attorneys for John Edelman and John McPhee.

Frederick B. Rosner, Scott J. Leonhardt, and Jason A. Gibson of THE ROSNER LAW GROUP LLC, Wilmington, Delaware; S. Preston Ricardo of Golenbock Eiseman Assor Bell & Peskoe LLP, New York, New York. Attorneys for Windsong Brands, LLC.

John D. Hendershot, Susan M. Hannigan, and Brian F. Morris of RICHARDS, LAYTON & FINGER, P.A., Wilmington, Delaware; Bryan B. House of FOLEY & LARDNER LLP, Milwaukee, Wisconsin. Attorneys for Defendants, Counterclaim Petitioners Herman Miller Inc. and HM Catalyst, and Intervenor and Counterclaim Petitioner Design Within Reach, Inc.

BOUCHARD, C. In August 2018, the court issued a post-trial decision and entered judgment in

favor of defendants and against two stockholder plaintiffs on all claims that were

tried in this action arising out of acquisition of Design Within

Reach, Inc. in a transaction that involved a short-form

merger. Despite losing on all claims, plaintiffs filed a motion after trial for an award

of \$1 million.

The court was rewarded for conferring

a corporate benefit on DWR and Herman Miller by identifying certain defective

corporate acts that the court judicially validated after trial under 8 Del. C. § 205.

Herman Miller made the request for judicial validation in a counterclaim it filed after

learning about the defective corporate acts that plaintiffs had discovered in this case.

The court's decision in investigating the matter removed a cloud over the validity of the

merger.



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they seek to be rewarded for conferring a benefit that they fought to prevent throughout this litigation. Rather than work constructively with defendants to correct what should have been obvious to plaintiffs to be a series of technical mistakes, plaintiffs chose a path of opposition.

Plaintiffs opposed counterclaim, opposed at trial judicial validation of certain of the defective corporate acts for the evident purpose of attempting to procure a windfall for themselves, and even now hold open ruling on appeal.

Given these unusual circumstances, and for other reasons explained below, the court concludes that even though plaintiffs have made a prima facie showing to support a fee award under the corporate benefit doctrine, it would be inequitable to grant their fee application. Accordingly, the application will be denied.

I. BACKGROUND

The background of this action is described extensively in the post-trial

1 This decision recites only

2

Plaintiffs are two former stockholders of the Company. In December 2014,

plaintiffs filed this a group of

investment funds known as Glenhill and the directors of DWR who approved

acquisition of the Company, which closed in July 2014. In

simplified terms, the transaction was structured so that Herman Miller would acquire

then acquire the remainder of the shares in a short-form merger effectuated under 8



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1 See *Almond v. Glenhill Advisors LLC*, 2018 WL 3954733 (Del. Ch. Aug. 17, 2018). 2 Capitalized terms not defined herein have the meaning given to them in the Opinion. Del. C. § 253. the Merger. The total

equity value of the transaction was approximately \$170 million.

In their initial Complaint, plaintiffs challenged a number of transactions preceding the Merger that allegedly reduced their percentage ownership of the Company improperly and deprived them of a greater share of the Merger of Series A preferred stock into shares of common stock in October 2013. According to plaintiffs, this conversion was wrongful because Glenhill purported to convert more shares of Series A preferred stock than were authorized at the time and thus received more shares of common stock than it was entitled to receive. 3 The initial Complaint did not assert, however, that the Merger was invalid. Plaintiffs subsequently amended their initial Complaint four times but they never challenged the fairness of the Merger consideration.

In their Second Amended Complaint, filed in November 2015, plaintiffs added Herman Miller as a defendant and asserted for the first time that the Merger was void as a result of defects concerning (i) the implementation of a 50-to-1 reverse (ii) the conversion in 2013 of the Series A

3 See Verified Complaint ¶¶ 56-58 (Dkt. 1). preferred stock and of a convertible note into shares of common stock As explained in the Opinion, unknown to anyone at the time, the Reverse Stock Splits were implemented in a defective manner that had the effect of diluting the number of shares of common stock into which the Series A preferred



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stock could be converted by a factor of 2500-to-1 instead of the plainly intended result of a 50-to-1 adjustment. According to plaintiffs, because of the defects t-form merger

under 8 Del. C. § 253 and was therefore invalid. 4

In February 2016, after the filing of the Second Amended Complaint, Herman Miller took action under 8 Del. C. § 204 to ratify certain defective corporate acts and putative stock relating to the Reverse Stock Splits and 2013 Conversions. Herman Miller then filed a counterclaim asking the court to validate seven defective corporate acts under 8 Del. C. § 205. In July 2016, Herman

Miller moved for summary judgment on its counterclaim, which plaintiffs opposed.

Given the technical nature of the Defective Acts and the need for context concerning the implementation of the underlying transactions, the court denied the motion for

4 Second Amended Complaint ¶¶ 96-104, 112 (Dkt. 61). summary judgment so that a full factual record could be developed before

adjudicating the request for judicial validation under Section 205. 5

In August 2017, a few months before trial, plaintiffs filed their Fourth

Amended Complaint, which asserted twelve claims, including a newly added claim for aiding and abetting against Herman Miller. Three of the twelve claims proceeded from the premise that defendants unlawfully benefited from, or converted to their own benefit, a Merger as a result of the Defective Acts.

In connection with the trial, plaintiffs dropped their opposition to judicial



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validation of five of the Defective Acts. Plaintiffs continued to oppose, however, validation of two of the Defective Acts that were at the heart of the double dilution mistake arising from the Reverse Stock Splits. In other words, plaintiffs continued to achieve

their intended result of reducing by a factor of 50-to-1 the number of shares of common stock into which the Series A preferred stock could be converted instead of a 2500-to-1 adjustment.

In August 2018, the court issued the Opinion and entered judgment in favor

5

See Tr. 97-101 (Jan. 31, 2017) (Dkt. 225). counterclaim under Section 205. Relevant to the counterclaim, the court found that

zero evidence in the record that anyone involved intended for the Reverse

Stock Splits to cause . . . Defective Acts. 6

to validation of the [Defective Acts] . . . (i.e., not opposing validation of the Reverse

Stock Splits but opposing validation of the issuances to preserve the double dilution

problem) betrays an intention to obtain a windfall for 7

and expenses

II. T

Plaintiffs argue that they are entitled to a fee award under the corporate benefit

-priced due diligence

in the Opinion under Section 205. 8



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t validation

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6 Almond, 2018 WL 3954733, at *1, *17. 7 Id. at *21. 8 Mot. ¶ 2 (Dkt. 390). 9 Id. ¶ 3. The many lawyers representing plaintiffs in this action were compensated at

their standard hourly rates and did not work on a contingent basis. 10 Plaintiffs assert

11 but the affidavits submitted by their counsel, which

catalogue a wide variety of issues and tasks counsel performed, 12 make no effort to

estimate the amount of time devoted to identifying the defective corporate acts

alleged in their original Complaint or the Second Amended Complaint. 13

Plaintiffs note in the Motion that, for purposes of their fee application, they

they

Delaware Supre 14

elements of the corporate benefit doctrine. Defendants instead oppose the

10 Brown Aff. ¶ 2; Ladig Aff. ¶ 4; Ledley Aff. ¶ 4; Monhait Aff. ¶ 4; Watnik Aff. ¶ 2 (Dkt. 390). 11 Mot. ¶ 2. 12 Brown Aff. ¶¶ 3, 8; Ladig Aff. ¶ 2; Ledley Aff. ¶ 2; Monhait Aff. ¶ 2; Watnik Aff. ¶¶ 3, 9. 13 See Brown Aff.; Ladig Aff.; Ledley Aff.; Monhait Aff.; Watnik Aff. In total, plaintiffs 8,000 of expenses. Brown Aff. ¶¶ 4, 10, 11; Ladig Aff. ¶¶ 5, 7, 9, 11; Ledley Aff. ¶¶ 5, 7; Monhait Aff. ¶¶ 5, 7; Watnik Aff. ¶¶ 4, 5, 11, 12. 14 Mot. ¶ 3 n.5. application on essentially two grounds. First, defendants argue that it would be

ine than confer a benefit on DWR. 15

Second, defendants argue that plaintiffs did not

subjected DWR

to a trial on the defective capital structure allegations that they now claim to have

saved DWR from 16



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like plaintiffs do not quantify the amount of expenses they incurred in connection with any particular part of this litigation, including the effort devoted to obtaining judicial validation of the Defective Acts, and they provide no supporting documentation concerning any of the expenses they incurred. 17 excessive and that, if any award were to be granted, \$15,000 would be adequate to compensate plaintiffs fairly.

III. ANALYSIS

ware are generally responsible for paying their own counsel fees, absent special circumstances or a 15 Defs. n Br. ¶ 14. 16 Id. ¶ 20. 17 Id. ¶ 22. 18 One special circumstance is that this whose efforts result in the creation of a common fund . . . or the conferring of a 19 The power to award fees in this based on the historic power of the Court of Chancery to do equity in particular

20

Under the corporate benefit doctrine, a litigant may receive an award of ascertainable group received a substantial benefit, and (c) a causal connection existed between the 21 Plaintiffs assert that each of these elements has been satisfied here. Defendants do not contend otherwise. The court agrees with plaintiffs that they have satisfied each of these elements.

18 Scion Breckenridge Managing Member, LLC v. ASB Allegiance Real Estate Fund, 68 A.3d 665, 686 (Del. 2013) (internal quotation marks omitted). 19 Tandycrafts, Inc. v. Initio P rs, 562 A.2d 1162, 1164 (Del. 1989). 20 Id. at 1166; see also -Ins. Corp. foundation for the historic practice of granting reimbursement for the costs of litigation



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other than the conventional taxable costs is part of the original authority of the Chancellor , 307 U.S. 161, 166 (1939)). 21 , 902 A.2d 1084, 1089 (Del. 2006). The Supreme Court in *Dover Historical Society* rchangeable. meritorious when filed, the complaint must have

been able to have survived a motion to dismiss, whether or not such a motion was

22 Amended Complaint identified many (but not all) of the Defective Acts for which

Herman Miller sought judicial validation under Section 205. In particular, the

Second Amended Complaint identified defective corporate acts relating to the

implementation of the Reverse Stock Splits, which caused the double dilution

mistake that imperiled the validity of the Merger. In the Opinion, the court entered

asserting claims based on defective

corporate acts that were judicially validated in the Opinion were meritorious when

filed.

With respect to the element of causation, Delaware law presumes that a

re 23

Defendants made

22 , 1993 WL 133211, at *2 (Del. Ch. Apr. 7, 1993) (citing *Chrysler Corp. v. Dann*, 223 A.2d 384, 387 (Del. 1966)). 23 *United Vanguard Fund, Inc. v. TakeCare, Inc.*, 693 A.2d 1076, 1080 (Del. 1997). no effort to rebut the presumption of causation, and for good reason. The trial record

reflects that, notwithstanding the extensive due diligence it undertook before

acquiring the Company, Herman Miller (i) was unaware of any of the Defective Acts

plaintiffs ratify and seek judicial validation of them only after plaintiffs filed their Second

Amended Complaint. 24

Finally, plaintiffs argue that DWR and Herman Miller received a corporate



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benefit as a result of judicial validation of the Defective Acts they identified because

25 The court agrees with this statement as

far as it goes. 26 Judicial validation of the Defective Acts, particularly those relating

to implementation of the Reverse Stock Splits, ensured that Herman Miller had

-

form merger under 8 Del. C.

In other words, the relief Herman Miller obtained under Section 205 removed a

cloud hovering over the validity of the Merger and thus its ownership of DWR.

24

See Almond, 2018 WL 3954733, at *13-14. 25 Mot. ¶ 3. 26 As discussed below, what this statement omits, and what is relevant to the overall equities

for judicial validation. doctrine to stockholders on a number of occasions where corporations have taken

actions to remedy defects in their capital structures, including through the use of

27 But the

granting of a fee award is not automatic just because the three basic elements of the

corporate benefit doctrine have been satisfied. As this court explained in *In re*

Orchard Enterprises, Inc. Stockholder Litigation, satisfying those elements is

tain a fee award. 28 This is because the corporate

benefit doctrine is rooted in the application of equitable principles, 29 and there are

27 See *In re Xencor, Inc.*, C.A. No. 10742-CB, at 4-5, 52-54 (Del. Ch. Dec. 10, 2015) (TRANSCRIPT) (awarding \$950,000 for settlement of class-action claim challenging validity of recapitalization transactions and certificate amendments judicially validated under Section 205); *In re Colfax Corp.*,



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C.A. No. 10447-VCL, at 3-4, 36 (Del. Ch. Apr. 2, 2015) (TRANSCRIPT) (awarding counsel for derivative plaintiffs \$375,000 for claim involving violation of certificate of designations that was mooted by judicial validation under Section 205); *In re Cheniere Energy, Inc.*, C.A. No. 9710-VCL, at 10, 98, 104 (Del. Ch. Mar. 16, 2015) (TRANSCRIPT) (awarding counsel for class and derivative plaintiffs \$1 million for settlement of claim challenging approval of share issuance that was judicially validated under Section 205); *Olson v. ev3, Inc.*, 2011 WL 704409, at *6-8, *15 (Del. Ch. challenging statutory validity of top-up options that were resolved by amending merger

agreement). counsel worked on a contingent basis. Recently, the court awarded a fee to a party that identified defective corporate acts that were judicially validated where counsel worked on a non-contingent basis. See *Cirillo Family Tr. v. Moezinia*, C.A. No. 10116-CB, at 32-43 (Del. Ch. Feb. 19, 2019) (TRANSCRIPT) (awarding plaintiff \$70,000 for identifying defects in written consents). 28 2014 WL 4181912, at *3 (Del. Ch. Aug. 22, 2014). 29 See *Tandycrafts* counsel fees in equity is not inclusive of all occasions when such fees may be sought. The concept is a flexible one based on the historic power of the Court of Chancery to do equity circumstances where it would be inappropriate or fees even when the basic elements of the doctrine ostensibly have been satisfied.

In *Orchard*, for example, the court denied a fee request by appraisal claimants

who contributed to the settlement of later-filed fiduciary duty claims brought by

other stockholders at a price higher than the appraisal claimants achieved at trial.

The court reasoned that y benefits of their 30

In reaching its conclusion, the court analyzed two groups of cases to demonstrate

31

The first group concerned hostile bidders who pursue breach of fiduciary duty

litigation against directors of the target corporation. 32 The *Orchard* court observed

generates relief that contributes causally to

the sale of the target corporation to a third party at a premium, thereby meeting the

30 2014 WL 4181912, at *13. 31 *Id.* at *9. 32 See *Mentor Graphics Corp. v. Quickturn Design Sys., Inc.*, 789 A.2d 1216, 1217 (Del. Ch. 2001) (denying fee award to hostile bidder whose efforts otherwise met requirements for fee award under corporate benefit doctrine), *Shapiro*, 818 A.2d 959 (Del. 2003); , 1990 WL



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189120, at *1 (Del. Ch. Nov. 27, 1990) (same). requirements for a fee award, the bidder lacks standing to recover its legal fees under

33 override the bidder's prima facie showing of entitlement to a fee award: (i) the

s potentially at odds with those of the class [i.e.,

e as possible for the target corporation whose shares

are held by the class], and (ii) the absence of any need to incent a bidder to bring

34

The second group of cases involved litigants who had made choices to pursue

35 In two of these

cases, the court found that stockholder plaintiffs lacked standing to pursue claims

against directors for breach of the duty of disclosure because the stockholders could

not be said to have relied on the disclosures at issue. 36 In the third case, which is

33 2014 WL 4181912, at *9. 34 Id. at *10. 35 Id. at *11. 36 See *In re Aristotle Corp.*, 2012 WL 70654, at *3 (Del. Ch. Jan. 10, 2012) (stockholder who pursued appraisal claim after short-form merger lacked standing to pursue breach of fiduciary duty claim against controlling stockholder for failure to disclose all material facts in connection with short- *Andra v. Blount*, 772 A.2d

183, 188-90 (Del. Ch. 2000) (stockholder who (i) abandoned motion for preliminary injunction to challenge disclosures made in a first-step tender offer, (ii) declined to tender her shares, and (iii) was merged out in a short-form merger, could pursue claim for unfair dealing but lacked standing to pursue claim for breach of the duty of disclosure because she had not been injured by any alleged disclosure violations). discussed in greater detail below, the Delaware Supreme Court found that a

stockholder entitlement to a

fee award. 37 Synthesizing these cases, the Orchard court explained that:

a court of equity can deny a plaintiff standing to receive a fee award, regardless of whether the plaintiff otherwise can establish a prima facie case supporting an award, if the plaintiff has proceeded in a manner designed to benefit the plaintiff individually rather than the class as a whole



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and any benefit achieved for the class has happened as an incidental by- -interested pursuit. 38

One of the cases addressed in Orchard that warrants further discussion is our

Crothall v. Zimmerman. 39 In that case, a unitholder

(Robert Zimmerman) of a limited liability company filed a derivative suit

40 After

trial, the Court of Chancery rejected that they violated the

operating agreement and awarded one dollar of nominal damages

because the breach caused no damage. 41

37 Crothall v. Zimmerman, 94 A.3d 733, 736-37 (Del. 2014). 38 2014 WL 4181912, at *12. 39 94 A.3d 733. 40 Id. at 734. 41 Id. at 734-35. Before the parties reached an agreement about the form of final judgment,

Zimmerman decided to abandon his lawsuit and sold his units, which deprived him of standing to continue as a derivative plaintiff. Defendants thereafter filed a motion to dismiss the case, which the trial court granted. Undeterred by these developments, pursue an

creating a corporate benefit. The trial court

permitted intervention and awarded Zimmer

been created in this case because any benefit that might have been created by continuing this suit to a final, appealable judgment disappeared when Zimmerman

42 Although the Supreme Court ultimately did not reach the

issue, Chief Justice Strine, writing for the high court, intimated that the trial court

also to



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the company:

The fee award also failed to consider whether a net benefit that would have actually been given that the former plaintiff had lost on most of his claims and had cost the company great expense and time defending those meritless claims. ⁴³

⁴² Id. at 738. ⁴³ Id. at 736. As defendants point out, these words echo those of then-Chancellor Allen who

commented in dictum almost an inquiry

into net benefit of the litigation to the corporation would not be a sound technique

for judging the equity of fee shifting in a case where defendants prevail on the most

central issues . . . ⁴⁴

None of the cases discussed above is directly on point with this case. The

equitable considerations animating those decisions, however, convince me that the conclusion.

First, as in Orchard, the plaintiffs here did not pursue any claims on behalf of

a class and did not seek to extend the benefits of their efforts to any other

stockholders of DWR in any meaningful sense. ⁴⁵ To be sure, individual stockholders

have standing to seek an award of fees under the corporate benefit doctrine

⁴⁴ Thorpe v. CERBCO, Inc., 1997 WL 67833, at *2 n.1 (Del. Ch. Feb. 6, 1997), 703 A.2d 645 (Del. 1997) (TABLE). ⁴⁵ several assignors to share in the . Br. 5 n.4. The terms of the various assignments, however, reflect that the proceeds for the assignors would be used to reimburse Franklin for all of his legal expenses and that 60-75% of the net proceeds would then have gone to Franklin. See JX 463 at 1, 2 (entitling Franklin to 75% of the defined share of the proceeds after (same but entitling Franklin to about 65% of the proceeds after expenses); JX 476 at 1, 3 (same but entitling Franklin to 60% of the proceeds after expenses). as a general matter. ⁴⁶ But the decision plaintiffs made here to refrain from

representing the interests of similarly situated stockholders of DWR suggests that



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these plaintiffs who paid their counsel on a non-contingent basis needed no additional incentive to pursue this litigation because their motivation was to serve their personal interests and not the interests of DWR or any of its other stockholders. Second, and most importantly, it would be inequitable in my opinion to reward litigation. As explained above, rather than choosing to work constructively with defendants once Herman Miller sought judicial validation of the Defective Acts in order to promptly correct what should have been obvious to plaintiffs to be a series of technical mistakes, plaintiffs chose a path of opposition. Specifically, plaintiffs judicial validation, continued at trial to oppose judicial validation of the Defective Acts central to remedying the double dilution mistake underlying the Reverse Stock Splits, and even now have held open the prospect of further litigation over the Defective Acts on appeal.

As explained in the Opinion, given the lack of any evidence as well as any rational reason to support the notion that the Reverse Stock Splits were intended

46 See *Tandycrafts*, 562 A.2d at 1164-67 (holding that an individual stockholder had standing to seek an award of fees for conferring a benefit upon the corporation or its stockholders). to reduce the number of shares of common stock into which the Series A preferred

stock could be converted by a factor of 2500-to-1 (i.e., 98% dilution) instead of 50-to- mistake for

which they now seek to take credit betrays their intention to obtain an inequitable windfall for themselves. I decline to reward these actions with an award of



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Third, and unsurprisingly, plaintiffs have identified no precedent in which this rcumstances. Each of the four precedents on which plaintiffs rely involved the settlement or mooted of claims concerning defective corporate acts, where the corporations obtained the remedial benefits quickly, consensually, and without being forced to engage in protracted litigation. 48 In other words, each of these precedents involved pursuit of the path plaintiffs chose to eschew, i.e., to work cooperatively to correct technical defects in a prompt and efficient manner. Here, by contrast, the path of vigorous opposition plaintiffs chose unnecessarily caused delay in reaching a resolution and imposed significant costs on defendants that were entirely avoidable. 49

47 Id. at 1166. 48 See supra note 27. 49 analysis along the lines suggested in Crothall v. Zimmerman. As noted above, plaintiffs In sum, b steadfast

opposition to curing all of the Defective Acts in order to pursue an inequitable windfall for themselves, the court declines to exercise its equitable discretion to award fees to plaintiffs in this case.

IV. CONCLUSION

For the reasons explained above, implementing order that constitutes the final order in this action accompanies this decision.

made no effort to estimate the portion of the legal fees they incurred in identifying any of the Defective Acts. See PaineWebber R & D II, L.P. v. Centocor, Inc., 2000 WL 130632, at *5 (Del. Ch. Jan. 31, 2000) (objector that contributed to the creation of a benefit and was not entitled to any enhancement because counsel did not take the case on a



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contingent basis Defendants also did not attempt to estimate the amount of fees they incurred by being forced to go to trial to obtain Section 205 relief. Finally, plaintiffs expressly have which would result in the incurrence of additional fees that may need to be taken into

account.

