

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU: TRIAL TERM PART 9

ORIGINAL

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IN RE:

AEROFLEX, INC. SHAREHOLDER LITIGATION,

INDEX NO.
003943/07

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Mineola, New York
June 30, 2009

B E F O R E: HON. IRA B. WARSHAWSKY,
Supreme Court Justice

A P P E A R A N C E S:

ATTORNEYS FOR PLAINTIFFS:

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JANINE KREBS, CSR, RPR
Official Court Reporter

JUL - 8 2009 jdk

1 THE COURT: The matter before the court today
2 has been pending for just about two years. My clerks will
3 be happy to see it go because there has been this really
4 large pile of papers sitting up -- is that all them?

5 COURT CLERK: Yes.

6 THE COURT: It's about two feet tall. Actually
7 I think there were open motions which have been
8 continuously adjourned until I guess the preliminary class
9 certification took place somewhere in April, I believe, and
10 the court has been informed and provided with all the
11 appropriate documentation to move forward.

12 Before the court makes the preliminary rulings
13 that it has to make, is anyone going to speak on behalf of
14 the motion itself, certification and settlement that has
15 been proposed to the court?

16 MR. MILLER: Your Honor, I think I am able to do
17 the job, but Mr. Russello is able to speak on behalf of the
18 settlement.

19 THE COURT: Okay. One second, Mr. Russello, and
20 I will then proceed with my ruling up until the point of
21 the legal fees and then you can speak before I get to that
22 point.

23 MR. RUSSELLO: Okay, your Honor, I am sure that
24 the court is fully well aware of the hard-fought litigation
25 that took place in this case which began with the March 2,

1 2007, transaction proposal in which General Atlantic and
2 Francisco Partners had offered to acquire each share of
3 Aeroflex for \$13.50 in cash per share. After that occurred
4 several class actions were commenced in this court and
5 prior to a consolidation of those actions plaintiffs
6 thought that it was wise to move under the Trugman action
7 and sort of push that case forward.

8 As your Honor is aware there was a motion for
9 expedited discovery. In that particular case there was an
10 amended complaint filed in this case which was then
11 applicable at the time by agreement to all of the other
12 actions that were before the court. Several conferences
13 took place on that motion, telephone calls took place with
14 the court.

15 THE COURT: Was that the expedited discovery
16 motion?

17 MR. RUSSELLO: That's right. Papers were
18 exchanged and then as that progressed another proposal
19 emerged and that was the Veritas Capital proposal. At the
20 time that had emerged it was initially termed a leverage
21 recapitalization in which a dividend of \$14.00 per share
22 would have been offered to shareholders and shareholders
23 would have been able to retain a continuing equity interest
24 of 21.2 percent.

25 THE COURT: Off the record.

1 (A discussion was held off the record.)

2 THE COURT: Back on the record.

3 MR. RUSSELLO: But of course, your Honor, the
4 one drawback with that transaction would have been that
5 Aeroflex itself would have been significantly leveraged and
6 so that would have been the drawback with that particular
7 transaction. But as that was winding through plaintiffs at
8 each and every step attempted to ensure that the board of
9 directors of Aeroflex was adequately considering
10 alternative proposals, including the Veritas proposal, and
11 otherwise ensuring that disclosure was full and adequate to
12 shareholders which obviously was a predominant concern in
13 this litigation. Two injunction motions were filed, one
14 with regard to the General Atlantic Francisco Partners
15 transaction and that motion was filed while the Veritas
16 Capital proposal was sort of working it's way. After the
17 board elected to terminate the General Atlantic Francisco
18 Partners transaction and proceed with Veritas Capital,
19 plaintiffs then still elected to press forward to seek
20 additional disclosure, but at that time as your Honor may
21 recall the court had determined that all material
22 information had been disclosed with respect to the proxy
23 statements, in particular the definitive proxy statement
24 issued in connection with the General Atlantic Francisco
25 Partners transaction.

1 The subsequent proxy statements in the Veritas
2 transaction incorporated all of those material disclosures
3 and so plaintiffs continued to press their case along.
4 During the course of litigation we had engaged several
5 financial experts including Lucent Benchuck, who is a
6 renowned professor, and we had submitted papers that
7 included his affidavit in support of an injunction motion.
8 Defendants every step of the way also responded in kind
9 extremely vigorously and aggressively and so this was as I
10 said initially a hard-fought litigation.

11 Ultimately we determined that it would make
12 sense to permit shareholders to decide for themselves
13 having received all material information as to whether the
14 revised Veritas Capital proposal was fair and adequate and
15 it indeed appeared to be. Indeed the price offered in that
16 transaction was \$14.50 in cash per share, so it was a
17 dollar above the initial proposal that we had brought suit
18 on, and so we thought that it was prudent to allow
19 shareholders to determine whether or not they wanted to
20 accept that, and in consultation with our financial experts
21 we determined that that price fell within a range of
22 reasonableness. So now shareholders have all the material
23 information and having the opportunity to consider a deal
24 that I believe was valued at \$1.1 billion as opposed to one
25 billion, which was the General Atlantic Francisco Partners

1 transaction, it certainly made sense at that point to
2 consider whether or not we wanted to settle the case and
3 you know at that point the shareholder vote went forward.
4 The shareholders of Aeroflex approved the transaction and
5 to our knowledge have received the consideration offered to
6 them.

7 In the interim we also had hard-fought
8 negotiations regarding settlement, the scope of the
9 release, the scope of the notice, the settlement class,
10 these sorts of things, and that took approximately
11 20 months to accomplish, and while that was ongoing we also
12 had several layers of approval certainly on the defense
13 side with regard to insurers, the board of directors.
14 Obviously they were each individually sued. Certain
15 directors were also executive officers, so we had all of
16 these different issues percolating and ultimately the case
17 was settled.

18 Your Honor preliminarily approved the settlement
19 and having made notice to the class, mailing and
20 publication form we have received no objections to date,
21 and so that's really a significant factor here. Not one
22 Aeroflex shareholder has announced an intention to object
23 to the settlement in any sense with regard to either the
24 consideration offered to them or the attorney's fees that
25 Mr. Miller will speak about shortly.

1 Your Honor, of course I could go into additional
2 detail on each and every aspect of this litigation, but the
3 court was certainly involved every step of the way as I
4 said previously with conferences, with motions, and judging
5 by the stack of papers in the corner, certainly it's still
6 something that is fresh in the court's mind.

7 THE COURT: It just creates a danger that it
8 will fall on my intern.

9 MR. RUSSELLO: Certainly that is a concern as
10 well, your Honor.

11 THE COURT: Yes.

12 MR. RUSSELLO: So if your Honor has any
13 questions I would like to defer to Mr. Miller to speak
14 about the fee.

15 THE COURT: No, I really don't. Let me just go
16 over a few things and then we will get to the fee issue.
17 Please be seated.

18 MR. RUSSELLO: Thank you.

19 THE COURT: As Mr. Russello has said the
20 substantive matters, what I consider the substantive
21 matters in this case, concern the parties, concerning the
22 parties were intently and hotly contested over
23 approximately a two and a half, maybe three-month period,
24 at least for my purposes the court's involvement with lots
25 of phone conferences and motions and quick responses to

1 those motions. It has taken nearly two years for the
2 litigation element of the matter, which became a class
3 action to reach this stage, the settlement stage. The
4 court is satisfied from the documents presented that
5 sufficient notice was sent out to all the appropriate
6 interested parties, most specifically the shareholders of
7 Aeroflex, who eventually did vote on this back in, their
8 vote came in June or was it July?

9 MR. RUSSELLO: It was July, your Honor.

10 THE COURT: In fact, as far as the action goes
11 which is a separate of course part from the notices on the
12 vote, there were a series of notices sent out about the
13 class action, but eventually they totaled 25,000 and they
14 covered what I am told is approximately 75 million separate
15 shares, and then earlier this year, I believe it was April
16 the court found, preliminarily, that the matter qualified
17 for certified as a class action.

18 Now the first issue before the court which I
19 have to rule on which is pretty pro forma at this time
20 really is to certify the matter as a class action. The
21 requirement of numerosity is easily met. 75 million shares
22 of stock, even if there aren't 75 million shareholders
23 there are a heck of a lot out there, and as pointed out it
24 would be nearly impossible for any court or even multiple
25 courts to handle individual shareholder actions. Were we

1 to even join the individual shareholder actions it would
2 still be an unbelievable task.

3 The next factor required by 901 of the CPLR is
4 that of commonality. Commonality requires there to be
5 factual or legal issues common to all or at least a
6 substantial portion of the class members. Again, easily
7 met; the issues are identical. There are no different
8 issues, there are no separate side issues in this case and
9 so again easily met.

10 The third factor is that of typicality. These
11 have a lot more meaning in other cases, but in our case
12 they're once again pretty simplistic. It requires that the
13 plaintiff and the other class members, their claims arise
14 from the same course of conduct and are based on the same
15 legal theories. Clearly that is once again met in this
16 case. The defendants are charged with breaching their
17 fiduciary duty at one or more times at least from the
18 original offering and there was a lot much more -- there
19 was a lot more interesting information proffered in the
20 first part of this case before the Veritas offer was made
21 in April. I don't know whether it was to anyone's surprise
22 or not, but I think it was definitely to the plaintiffs'
23 surprise, unless you guys knew something that no one told
24 me about, that the Veritas offer came through, so again we
25 have the typicality of claims.

1 The fourth element is what is called adequacy of
2 representation. It requires the representative parties,
3 the plaintiffs, individual named plaintiffs will fairly and
4 adequately protect the interests of their class. There is
5 three sections or three elements to that; first being
6 qualifications of counsel, the second being the ability of
7 the class representative to assist their counsel, and the
8 third element being that of the relationship between the
9 interests of the class representative and the interests of
10 other class members that they do not conflict, that one
11 does not have a special interest in this going forward and
12 might pay attention to that, some personal payout versus
13 representing the whole class.

14 It is clear to the court from it's own contact
15 with the case, which Mr. Russello did set forth to some
16 degree, that the plaintiffs have been obviously represented
17 by skilled counsel as have the defendants.

18 The court has no personal knowledge of the
19 ability of any representatives of the class to assist
20 counsel. I don't know these people, but it is clearly not
21 been a problem here and no one has contended as many of us
22 have seen in other class actions that we are dealing with
23 someone who is a complete idiot and therefore you question
24 if you actually want to have some kind of an EBT of that
25 person and, Judge, the person can't speak English and has

1 no education even in their native tongue. That happens.
2 Usually it's at the time of settlement when that person
3 steps forward with a new lawyer. I think I view them as
4 bottom feeders, but that has not happened here and
5 obviously there is not a reference or any importance to our
6 situation here.

7 The class has been very well represented by the
8 parties that have brought it; in one case we have Mr.
9 Trugman, I believe in another case there was a union,
10 operating engineers, not shy individuals when it comes to
11 their investments, and they were not shy in this case as
12 well.

13 The court sees no apparent conflict or any kind
14 of conflict between the class representatives and the
15 members of the class that would prevent this court from
16 having them or considering them to be adequate
17 representatives of the class. Nothing the court has seen,
18 and it saw a lot in that three-month period, would preclude
19 the prosecution of the action by our individual class
20 representatives.

21 The fifth requirement is that of superiority and
22 is found in 901(A)(five). It requires that the class
23 action be superior to other available methods for the fair
24 and efficient adjudication of the controversy. I don't
25 recall whether I started the quote, but it's there

1 somewhere. There is no doubt that this class action was
2 the appropriate methodology to resolve the issues in this
3 case, as it usually is in a stock situation case, a
4 securities case.

5 Now, in deciding whether to verify the class for
6 settlement purposes the court is directed to consider an
7 additional five factors in 902, I guess it's 902, yes. The
8 court has considered all those factors listed in section
9 902 and finds that none of these would or should prevent
10 this action from proceeding as a class action.

11 It's perfectly appropriate to concentrate this
12 litigation in this form considering the location of
13 Aeroflex, which I believe is or at least was in Nassau
14 County, I don't know if it still is, business offices.
15 There are no difficulties to be encountered in the
16 management of this type of class action, especially since
17 the stipulation of settlement has been worked out. We
18 don't have any kind of problems of parties being able to
19 come from one place or another which might be a problem in
20 other class actions, witnesses. We don't have that
21 problem. And even if there was no stipulation of
22 settlement we still would not have had that problem in this
23 case.

24 So the court having considered all those factors
25 in 902 finds that none of them would prevent the class

1 action from going forward or being settled, certified, and
2 therefore the court certifies the class.

3 Now, the court was quite familiar with the
4 action which took place two years ago as I said, and I
5 became familiar with the actions of the parties on an
6 ongoing basis, and the court was complete agreement with
7 the parties that their position was that the action is fair
8 and settlement is fair, reasonable and is adequate to
9 settle the issues of the case, and from what I have read,
10 and I did read the entire settlement and all it's little
11 clauses, the court finds that the settlement is fair to all
12 the parties in the case and the class as a whole and
13 furthermore perhaps most importantly the magic words are it
14 is in the best interests of the class members. The court
15 so finds.

16 What makes this case settlement more unusual
17 than the average consumer class action case is that the
18 benefit to the class members occurred within a three-month
19 period of time in 2007. Our class members here do not
20 receive coupons for use of future purchases of CD's or
21 books or free shipping at the local tape club or CD club,
22 whatever it became. They do not receive refunds off their
23 title insurance policy premiums. In our case it was the
24 action of the attorneys on behalf of the class in
25 requesting full disclosure by the defendants in offering

1 statements that were made to the shareholders, which
2 eventually resulted in several rounds of amendments to the
3 complaint. I don't know how many amended complaints you
4 had, three?

5 MR. RUSSELLO: Approximately three. If we
6 include the initial complaint, your Honor, four complaints.

7 THE COURT: So one and then two others.

8 MR. RUSSELLO: I believe we had three others.
9 We had a consolidated amended complaint, a first
10 consolidated a commended complaint, I believe, three or
11 four.

12 THE COURT: So as the landscape changed, the
13 complaints changed.

14 MR. RUSSELLO: That's right.

15 THE COURT: Sometimes overnight. It was the
16 plaintiffs' goal throughout the litigation to ensure that
17 the board of directors of Aeroflex provided the
18 shareholders with full information allowing them to make a
19 knowledgeable decision involving the third party buy-out,
20 which eventually ended up as being, was it a division of
21 Veritas, is that the way it was that bought out Aeroflex?

22 MR. RUSSELLO: Your Honor, I am not quite sure.

23 THE COURT: I don't recall what the actual
24 terminology of the third party was, but we just called it
25 Veritas.

1 MR. RUSSELLO: Veritas was a private equity.

2 THE COURT: Now initially this related to the
3 transaction involving the private equity firms. We had one
4 we call General Atlantic and Francisco Partners, II, Roman
5 numeral II, which sought to acquire the company for the
6 13.50 per share, as Mr. Russello set forth earlier. Then
7 with respect to a transaction involving the affiliate, and
8 I think that's what it's called in the papers, an affiliate
9 of the private equity firm, which we know as Veritas
10 Capital Management Fund, LLC, and that's when it went to
11 14.50.

12 There was some nuances and bells and whistles
13 but eventually, as you have stated Mr. Russello, the
14 plaintiffs made the decision after having received
15 extensive material information relating to the stock
16 buy-out offer and the different banks involved, I believe
17 earlier it was the different funders that were an
18 interesting part of this. I don't recall, was Goldman
19 Sachs part of the first part?

20 MR. RUSSELLO: Your Honor, I believe actually
21 what the interesting part was was the financial advisors
22 and the information that they had given, but yes Goldman
23 Sachs at some point did enter the fray, but I believe as a
24 financing bank, but as the disclosures later revealed Bank
25 of America and Bear Stearns were both engaged as financial

1 advisors when the initial financial advisor was terminated.

2 THE COURT: And then there was the issue of the
3 relationship of certain board members of Aeroflex to the
4 different financial advisors.

5 MR. RUSSELLO: The relationships, your Honor,
6 related to two of the directors who were also executive
7 officers and the benefits that they may receive, and after
8 further reflection we determined that the litigation of
9 those sorts of claims may be extremely difficult to be
10 successful upon because at their base they related to terms
11 of compensation and since Delaware law applied there may be
12 some intricacies that would have made it quite difficult to
13 press those claims to conclusion.

14 In addition, your Honor, as defendants
15 appropriately raised there could be a concern as to whether
16 or not those claims should be brought in a derivative
17 capacity. Of course, we disagree with that and we believe
18 that we did bring them in the correct capacity, but that
19 was another issue that would have been hotly litigated had
20 we continued and there was no guarantee of success on it.

21 THE COURT: Then you have the overall business
22 judgment rule that would influence all of those decision
23 making elements of process as it went forward.

24 MR. RUSSELLO: Quite possibly, your Honor.

25 THE COURT: So what we really have now, what is

1 happening now is not a benefit to the shareholders, but is
2 what happened two years ago that was obviously and clearly
3 benefit to the shareholders.

4 An affirmation submitted by Mr. Rosenfeld sets
5 forth very fully the actions of counsel on behalf of the
6 plaintiffs and their extensive efforts to vet Aeroflex's
7 sale process to ensure that a sale maximized shareholder
8 value was achieved, and we have discussed some of that on
9 the record this morning.

10 On July 26, 2007, the stockholder votes took
11 place, went forward, stockholders approved the agreement
12 and plan merger. That was the title it was given and I
13 think it was originally dated May 25, 2007, but it was two
14 months later that the vote actually took place. Then on
15 August 15th, the Veritas transaction closed. We,
16 therefore, no longer had shareholders of Veritas.

17 From what you have told me all payments at the
18 14.50 level have gone forward and all shareholders have
19 been paid on their shares.

20 MR. RUSSELLO: Well, your Honor, I can speak to
21 the fact that we haven't received any objections. I am
22 presuming that shareholders have received their payment by
23 now certainly and it's certainly something defendants would
24 be more appropriately able to address.

25 There was one point though that I wanted to

1 address briefly with regard to the claims about which we
2 just spoke, the compensation based claims of course.
3 Plaintiffs do feel that they conferred with respect to the
4 vetting of the compensation and the terms of that
5 compensation. In fact, we had engaged financial
6 consultants to assist us in ascertaining whether or not
7 those payments would indeed be harmful to the class, but
8 ultimately there was some legal grounds that we felt could
9 be difficult to litigate and might at some point frustrate
10 the receipt of payment offered in connection with the
11 Veritas transaction.

12 THE COURT: And very expensive to litigate
13 without a concomitant benefit at opposite end. Thus it is
14 since August 15th, moving forward, I remember receiving a
15 call or e-mail or a fax saying that the parties wish to
16 adjourn the Aeroflex case and my only response was, I
17 didn't know I still had an Aeroflex case. I thought it was
18 over. I was obviously mistaken and quickly realized what
19 was not over which was negotiating a final settlement on
20 all grounds that still remained open, and all the things
21 that you have just mentioned still could have been open
22 even after the actual sale had taken place, which included
23 the scope of the release, the scope of the settlement
24 class, the terms of the notice to the class and other
25 attendant matters which normally follow.

1 When these matters were concluded the parties
2 proceeded to negotiate a fee. Now the fee did not impact
3 upon the work done by plaintiffs and their counsel in the
4 spring of 2007. In fact, the 14.50 was not impacted by any
5 fee that would be paid to plaintiffs' counsel in this case.
6 So with that in mind, Mr. Miller, on the issue of the fee.

7 MR. MILLER: Thank you, your Honor.

8 THE COURT: And expenses.

9 MR. MILLER: Right. Counsel is seeking \$850,000
10 in fees and expenses and typically, Judge, as you know at
11 this point the discussion usually centers around the
12 appropriate multiplier to be applied to counsels' fees. In
13 this case we are actually seeking a negative multiplier.
14 What I mean by that is the actual fees and expenses
15 incurred by counsel are approximately \$79,605 more than the
16 \$850,000 that we are seeking, and that fee is fair and
17 reasonable for a number of reasons which are in our papers,
18 but which I can summarize briefly for the court.

19 THE COURT: I thought that the number came up to
20 838,000. I got that from --

21 MR. MILLER: Those are the actual fees but that
22 does not include non-litigation -- not notice litigation
23 expenses which are a little over \$71,000 and expenses
24 relating to the notice of the class action settlement which
25 are about 30,000.

1 THE COURT: Thank you.

2 MR. RUSSELLO: Your Honor, if I may just add one
3 thing to that, defendants did agree to cover the cost up to
4 \$30,000 in notice costs. We are talking about now the
5 costs that are exceeding that \$30,000 which will be borne
6 solely by plaintiffs' counsel.

7 MR. MILLER: That's right.

8 THE COURT: Go ahead.

9 MR. MILLER: So there are a number of factors
10 which I can briefly summarize. First, this settlement was
11 agreed to by the defendants after an arms length
12 negotiation with sophisticated counsel, and as the case law
13 provides courts should provide great deference to a
14 settlement which is negotiated in that way.

15 Second, as your Honor already mentioned the fees
16 being paid by Aeroflex, it's not coming out of the class.

17 Third, no one from the class has objected
18 despite receiving notice.

19 Fourth, a great benefit was conferred upon the
20 counsel. We have spent the first --

21 THE COURT: Benefit conferred upon the -- would
22 you like me to strike counsel? Strike counsel and replace
23 the word counsel with class, please.

24 MR. MILLER: Conferred upon the class, I should
25 say. We spent the first several minutes of the hearing

1 discussing the benefits of this settlement and the work,
2 vigorous work done by counsel to produce the settlement,
3 and produce the settlement of the class action, and the
4 legal fee portion was only negotiated after the class
5 action settlement was negotiated and finalized.

6 In addition, your Honor, even under the Lodestar
7 approach which is usually analyzed in terms of the
8 multiplier that counsel is seeking even under the factors
9 in the Lodestar, this settlement is fair and reasonable.

10 I would be happy to go through all of them, but
11 just to mention a few, the magnitude and complexity of this
12 litigation; the extraordinary amount of time and labor
13 spent by counsel on the case; the fact that this case was
14 taken as a contingency matter without any certainty of
15 payment; the fact that the fee would be reasonable to a
16 victorious plaintiff, which is one of the standards under
17 the Lodestar approach, and finally and very important the
18 strong public interest in encouraging private attorneys to
19 bring matters like this, and particularly in this case when
20 counsel is seeking a negative multiplier, less than the
21 amount of money that was spent in terms of counsel fees and
22 expenses in this case, that is a very strong important
23 factor.

24 I would be happy to rest on our papers unless
25 you'd like to hear more, your Honor.

1 THE COURT: I have nothing that I would ask you
2 about. Is it Ms. Hellmann?

3 MS. HELLMANN: That's right.

4 THE COURT: Is there anything you wish to add to
5 either the -- I didn't ask you to be heard on the
6 certification issue, as to the fees issue. I know this was
7 a settlement or agreed upon fee eventually.

8 MS. HELLMANN: That's right. The defendants in
9 the settlement agreement signed by all the parties on
10 March 2, 2009, agree not to oppose the fee application for
11 fees up to \$850,000, and this application is clearly in
12 line with that and so we have no objection, your Honor.

13 THE COURT: I know I didn't give you a chance
14 before because I can always change my mind, and I am sure
15 you are not going to object to what I have done, was there
16 anything you wanted to add as far as the settlement itself?

17 MS. HELLMANN: No, your Honor.

18 THE COURT: All right. Fine, thank you.

19 This is the type of case, and I remember going
20 to a seminar held at the Brookings Institute where one
21 speaker must have spent a good hour and a half talking
22 about private Attorney General cases. I had no idea what
23 the man was talking about until I figured out he meant
24 private attorneys doing this and it's the type of case
25 where the role of plaintiffs' counsel is often called that

1 of a private Attorney General.

2 The courts generally look with favor upon
3 awarding counsel fees in an action such as this where the
4 private attorney takes on the role of protecting the public
5 investor who might otherwise be victimized. Of course, let
6 us not be Pollyanish about our situation. Plaintiffs'
7 counsel knew they may be compensated for their work. This
8 was not exactly a pro bono assignment, but it was still a
9 gamble. It was taking the case as a contingency which Mr.
10 Miller has very carefully set forth, and it was obvious
11 this is a case which easily could have turned out into a
12 losing -- turn into a losing proposition for the
13 plaintiffs' counsel in this case, any one or more of them.

14 According to plaintiff the amount of time put in
15 on this matter pursuant to the affirmation that was
16 presented was over 1,600 hours, and that when you add the
17 hours times a reasonable hourly rate and then you add costs
18 and expenses, that would put us over \$838,000, and that
19 doesn't include as pointed out by counsel the class action
20 notice costs that are being picked up here by the
21 plaintiffs' counsel.

22 Thus, under the Lodestar approach when comparing
23 that amount plus the notice costs with the fees the parties
24 have agreed upon, the cap as pointed out by Ms. Hellmann,
25 which of course is subject to the approval of the court, we

1 would have a negative multiplier, which is very rare as Mr.
2 Miller very carefully and pointedly pointed out to the
3 court.

4 As a witness to the proceedings, that's me, I am
5 a witness to these proceedings more so than probably most
6 class action settlements, I was also a witness to the speed
7 with which the case unfolded and how counsel adopted to the
8 changing landscape of the case, as I have spoken to Mr.
9 Russello about earlier, so it was easy for me to see how
10 the hours mounted up dramatically in this case. There must
11 have been a war wound someplace in one of these law firms
12 as this matter proceeded. It would appear that plaintiffs'
13 counsel must have worked through the night to produce some
14 of these papers which were served upon the court and their
15 adversaries in rapid fire fashion, and I am also of course
16 speaking to the defense counsel's firm as well. I don't
17 know whether you were in that weekend assignment, counsel,
18 were you?

19 MS. HELLMANN: Your Honor, as I mentioned to
20 counsel earlier, I was about seven months pregnant actually
21 when I was last before your Honor. I briefed all those
22 motions there and the baby is now 21 months old, so I have
23 great sympathy for your clerks and can understand why they
24 want to get this matter closed.

25 THE COURT: We would be very happy to just give

1 it back to all of you. I know we have to do something with
2 it. Normally we would make the litigants take back their
3 exhibits purposefully, but the work was tremendous work and
4 it was done very, very quickly as I pointed out and I was
5 just shocked by -- I think I read in Newsday, because it is
6 a local case, I read in Newsday about this Veritas offer
7 before I heard it from any of you, and then the next day or
8 within a 24-hour period there was an amended complaint. We
9 moved forward very quickly here. Rapid fire fashion I
10 think is the terminology I have used.

11 As I pointed out the adversaries here, the
12 highly professional manner in which the case was defended,
13 which of course resulted in more work for the plaintiffs'
14 counsel, appropriately so. There is no doubt that the law
15 firms involved in this matter represented in my opinion the
16 cream of the crop of class action business law and mergers
17 and acquisition litigators, and from a judicial point of
18 view it was a pleasure working with them.

19 It's been two years, they have haven't come
20 back. I don't know what that means, but I guess they
21 haven't found their way back into Nassau County. Mr.
22 Miller I think just waits downstairs and waits for an
23 opportunity to pop into a commercial part but the rest of
24 you just don't.

25 In the court's opinion the fee requested, the

1 product as pointed out of what is known as arms length
2 negotiation, which was a cap put on it by the defendants
3 and you want to come in under the cap, fine, you want to go
4 over the cap, we object. Simplistically put that sums it
5 up. It really reflects the risks taken by plaintiffs'
6 counsel which is part of the fee in a case like this and
7 the rapidly increasing legal bills and the expenses and the
8 matter progressed all were dramatically geometrically
9 increasing as well as the efforts used by the defendants to
10 independently determine, actually by the plaintiffs to
11 independently determine and confirm the propriety of the
12 sales process for the benefit of the shareholders, and Mr.
13 Russello spoke to that earlier in his opening remarks.

14 Therefore, the court grants the application of
15 the plaintiff in it's entirety awarding plaintiffs' counsel
16 \$850,000 in fees and expenses, finding said amount to be
17 fair and reasonable under all circumstances.

18 The court has been presented with an order and
19 judgment. If you want to follow along the date that is
20 filled in surprisingly enough is today's date. On page six
21 paragraph 11 the court has put in the appropriate, what I
22 think the appropriate amount of \$850,000, which is the
23 requested amount. The court finds it to be appropriate and
24 fair under the circumstances and the court now signs the
25 order. To be very clear about that big pile of papers over

1 to my right, those are motions which had been made,
2 responded to or not responded to and therefore adjourned,
3 continuously adjourned. I must be very clear about this.
4 I don't even remember what they were for beyond the fact
5 that can we now assume that each of those motions is
6 considered as withdrawn?

7 MS. HELLMANN: Yes, your Honor.

8 THE COURT: I don't know, were they your
9 motions?

10 MS. HELLMANN: I believe at least one of them.

11 THE COURT: I didn't track them after awhile.

12 MR. KAUFMAN: They can be denied as moot or
13 withdrawn, however you want.

14 MR. RUSSELLO: Your Honor, I believe the pending
15 motions were a pending motion to dismiss and possibly also
16 motion to strike our expert affidavit, but I am not
17 positive on that.

18 THE COURT: I remember the motion to dismiss. I
19 don't recall the details of the other one, which if you are
20 telling me it was a motion to strike, does that sound
21 right?

22 MS. HELLMANN: It sounds right.

23 MR. RUSSELLO: I am not sure if that related to
24 our injunction motion or the motion to dismiss, but I
25 checked yesterday and saw there is a motion to dismiss that

1 still appears to be open.

2 THE COURT: In that case the court will find
3 that all open motions in this case are withdrawn and anyone
4 who made them is sitting in this room so you all agree with
5 that?

6 MS. HELLMANN: Yes, your Honor.

7 MR. RUSSELLO: Yes, your Honor.

8 MR. KAUFMAN: Yes.

9 THE COURT: Good. All right ladies and
10 gentlemen. Thank you.

11 CERTIFICATION

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13 I, JANINE KREBS, CSR, Official Court Reporter,
14 do hereby certify that the above is a true and accurate
15 transcript of the proceedings.

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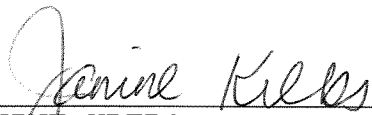
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JANINE KREBS, CSR
Official Court Reporter