

## Corporate Finance/M&A - USA

### Delaware Chancery Court describes standards for attorneys' fees

Contributed by **Ropes & Gray LLP**

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#### Facts Decision

In *In re Jefferies Group, Inc Shareholders Litigation*<sup>(1)</sup> Chancellor Bouchard discussed the appropriate amount of attorneys' fees and held that attorneys' fee awards should be calculated based on the gross settlement value.

#### Facts

The action arose from a 2013 stock-for-stock merger of Jefferies Group, Inc and Leucadia National Corporation. The shareholder plaintiffs alleged that certain directors of Jefferies had been conflicted in the transaction and negotiated for leadership positions with the combined company at the expense of Jefferies' stockholders. The plaintiffs argued that as a result of that conflict, the directors had to demonstrate that the transaction satisfied the entire fairness standard, while the defendants contended that the business judgement rule should apply. Ultimately, the parties settled five weeks before trial was scheduled to begin, after the plaintiffs had survived a motion to dismiss and a motion for summary judgment. The defendants' Delaware counsel sought attorneys' fees of \$27.5 million, which would have been approximately 27.5% of the gross value of the settlement, after taking into account the requested fees and expenses. The defendants argued that the fee award should be based instead on the net value of the settlement, and that an award of 22.5% of such amount was appropriate.

#### Decision

Bouchard determined that the award should be based on the gross settlement value, which, in his view, is how the Delaware Chancery Court has traditionally determined awards. However, he noted that defendants are typically indifferent to the percentage of a gross settlement awarded for plaintiffs' counsel, as defendants' exposure is typically capped at an agreed maximum fee award. From a policy perspective, the court found that it is preferable for parties to agree on a net payment to stockholders without an agreement on the maximum fee award – because defendants will have an incentive to oppose fee requests – and that the amount of such awards would be "subject to adversarial inquiry to provide the Court with a better record with which to evaluate the *Sugarland* factors, in particular the quality of the benefit achieved in a proposed settlement".

The court then turned to determining the amount of fees to be awarded to the plaintiffs' counsel, relying on the *Sugarland* factors, namely: "(1) the results achieved; (2) the time and effort of counsel; (3) the relative complexities of the litigation; (4) any contingency factor; and (5) the standing and ability of counsel involved." After evaluating each factor, the court noted that fee awards "usually max out at one-third" of a settlement fund, and that the typical fee award for a case that settles at the same stage as *In re Jefferies* ranges from 22.5% to 25% of the benefit conferred. Ultimately, the court awarded the plaintiffs' counsel 23.5% of the gross value of the award (\$21.5 million).

For further information on this topic please contact [Marko S Zatylny](#) or [Zachary Blume](#) at Ropes & Gray LLP by telephone (+1 617 951 7000) or email ([marko.zatylny@ropesgray.com](mailto:marko.zatylny@ropesgray.com) or [zachary.blume@ropesgray.com](mailto:zachary.blume@ropesgray.com)). The Ropes & Gray website can be accessed at [www.ropesgray.com](http://www.ropesgray.com).

#### Endnotes

(1) *In re Jefferies Group Shareholders Litigation*, Cons CA No 8059-CB (Del Ch, June 5 2015).

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#### Authors

**Marko S Zatylny**



**Zachary R Blume**



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