IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

GARY STAFFIERI and ADRIA CHARLES STAFFIERI,	:	
Plaintiffs,	:	
v.	:	C.A. No. 7439-VCL
HENRY BLACK, MARY LOU BLACK, RAYMOND BUCHTA, BLACKBALL PROPERTIES, LLC, PAUL MILLER, CANDY MILLER, W. SCOTT BLACK, and GAKIS PROPERTIES II, LLC,	:	
Defendants.	:	

CERTAIN DEFENDANTS' ANSWERING BRIEF IN OPPOSITION TO PLAINTIFFS' COST AND FEE APPLICATION

Richard L. Abbott, Esquire (I.D. #2712)
ABBOTT LAW FIRM
724 Yorklyn Road, Suite 240
Hockessin, DE 19707
(302) 489-2529

Attorneys for Certain Defendants

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STATEMENT OF NATURE AND STAGE OF PROCEEDINGS

This action was initiated pursuant to the filing of a Verified Complaint on April 18, 2012 (the "Complaint"). The Complaint asserted claims for: 1) Breach of Express Easement; 2) Tortious Interference with Easement; 3) Trespass; 4) Private Nuisance; and 5) Civil Conspiracy.

The Plaintiffs initially rushed into Court seeking a Temporary Restraining Order. The Court denied expedited treatment of the action on the grounds that the Plaintiffs had failed to diligently pursue Injunctive Relief; the conditions complained of at the site had already been in existence for over 7 months.

An Amended Complaint was filed pursuant to Order of the Court on June 6, 2012 (the "Amended Complaint"). In the Amended Complaint, the Plaintiffs asserted claims for: 1) Breach of Express Easement; 2) Breach of Easement by Prescription; 3) Breach of Easement by Necessity; 4) Tortious Interference with Easement; 5) Trespass; 6) Private Nuisance; 7) Civil Conspiracy; and 8) Declaratory Judgment. Notably, the Amended Complaint did not plead a Count claiming attorneys fees under the Bad Faith Exception To The American Rule (the "Bad Faith Exception").

The Court issued its Post-Trial Order deciding certain Claims and Counterclaims asserted by the parties in this action on October 24, 2012. On November 7, 2012, the Court issued two (2) Orders denying Certain Defendants' Motion For Reargument, Reconsideration And/Or New Trial, which addressed: 1) the Court's holdings regarding an "Express Easement" and the award of attorneys fees based on the Bad Faith Exception; and 2) the Court's failure to decide Certain Defendants' Counterclaims for Reformation and Abandonment of Easement.

On December 5, 2012, Certain Defendants filed a Notice of Appeal of the Court's Post-Trial Order and its Orders denying the Motion for Reargument, Reconsideration And/Or New Trial. On December 21, 2012, the Court of Chancery docket was transferred to the Delaware Supreme Court at 8:59 a.m. Three and a half (3½) hours later, the Plaintiffs filed a letter and four (4) Affidavits, which constituted an application for an award of attorneys fees and litigation expenses.

On December 26, 2012, the Plaintiffs' submitted a revised Affidavit regarding attorneys fees and expenses. The Plaintiffs filed a Supplemental Affidavit of Gary Staffieri in support of their request for fees and litigation expenses on January 25, 2013.

On February 18, 2013, the Court entered an Order vacating a previously granted fee and cost Order. The Delaware Supreme Court dismissed Certain Defendants' appeal as premature on March 13, 2013.

On April 1, 2013, the Plaintiffs filed a supplemental request for fees. The parties stipulated to a briefing schedule on the Plaintiffs' four (4) applications for an award of attorneys fees and litigation expenses, which was subsequently amended by Stipulated Order on May 16th. This is Certain Defendants' Answering Brief in opposition to the Plaintiffs' application for attorneys fees and litigation expenses.

STATEMENT OF FACTS

A. **The First 2 Wasteful Efforts**: The Plaintiffs Improvidently Wasted Money On A Preliminary Injunction And An Attorney Who Could Not Litigate In Delaware

At the outset of this proceeding, the Plaintiffs hurriedly pressed the Court for intermediate, emergency Injunctive Relief despite the fact that the circumstances complained of had been existence for over 7 months. This caused the Plaintiffs to incur significant expenses on an endeavor which had no reasonable probability of success (the "1st Wasteful Effort"). Not surprisingly, the Court denied interim injunctive relief. *See* App. 1.[1]

Additionally, the Plaintiffs unwisely decided to retain a Pennsylvania attorney to putatively act as "local counsel" for their primary Pennsylvania counsel, despite the fact that neither was permitted by Delaware law to prosecute the case (the "2nd Wasteful Effort"). *See* App. 2. This wasted thousands of dollars on attorney time necessary to become familiar with both the procedural and substantive requirements to pursue the litigation. K. Kirk Karagelian, Esquire was not authorized to litigate the action since he had no legitimate office in the State of Delaware as required by Delaware Supreme Court Rule 12(d). This ultimately led to Mr. Karagelian's withdraw from the case.

B. **Four (4) Additional Wasteful Efforts**: The Plaintiffs Wastefully Pursue Futile Causes, Make Impermissible Filings, And Rely On Inexperienced Out Of State Counsel

Not long after a Delaware attorney was retained by the Plaintiffs, they filed an Amended Complaint which expanded the number of easement related claims beyond the original express easement cause. *See* App. 3. This was despite the fact that they had no

[1] References herein to "App. __" are to the exhibits contained in the "Appendix To Certain Defendants' Answering Brief In Opposition To Plaintiffs' Cost And Fee Application."

legitimate evidence to support an Easement By Prescription or Easement By Necessity claim (the "3rd Wasteful Effort"). No adverse use over an uninterrupted 20 year period was presented. And the Plaintiffs' property had direct road frontage and access.

Given the New Business Rule and Delaware Damages *jurisprudence*, which combine to prohibit a monetary award based upon a speculative guesstimate of future profits from an as-yet unopened business, the Plaintiffs' claim for money damages was legally unwarranted (the "4th Wasteful Effort"). Indeed, extensive resources and time were expended by both sides in what was a futile endeavor from the outset.

The Plaintiffs also wasted substantial time and money preparing a motion and brief seeking Summary Judgment; it was not permitted by the Scheduling Order (the "5th Wasteful Effort"). Ms. Cherry billed $13,400 for this doomed exercise. The Court promptly ignored the filing, yet the Plaintiffs want to be paid for this total spendthrift undertaking.

Further, the Plaintiffs unwisely decided to use their Pennsylvania attorney, who was unfamiliar with Delaware procedure and substantive law, to bear the laboring oar in the litigation (the "6th Wasteful Effort"). It clearly made better sense to have Delaware counsel perform many of the tasks, which would have been accomplished in less time and at significantly less expense. Indeed, Delaware counsel even billed at an hourly rate $50 lower than the less experienced Pennsylvania counsel.

Counsel for Certain Defendants pleaded with the Plaintiffs' new Delaware counsel to limit the scope of the litigation to the Express Easement claim in a bifurcated approach to more economically and efficiently litigate the action to a conclusion. In the end, all legitimate efforts by Certain Defendants' counsel to get the Plaintiffs and their

counsel to limit and focus the litigation were to no avail. Instead, the Plaintiffs wanted to litigate the case with virtually no limitations – *i.e.* "the sky's the limit." As a result, Certain Defendants were caused to unnecessarily and needlessly expend tens of thousands of dollars to defend against claims that had no legitimate potential for success, and which could have been easily been avoided by a reasonable, rational approach to the litigation (as opposed to the no-holds-barred approach of the Plaintiffs).

C. The Plaintiffs' Pennsylvania Counsel Claims Astronomical Amounts Of Time, Which Exceed The Bounds Of Reasonableness

Sharon Cherry, Esquire submitted billing statements which are for excessive amounts of time.[2] For example, she claims to have worked: a) almost 8 hours on January 24, 2012 for a site visit and meeting with the Staffieris before litigation was even contemplated; b) 8.25 hours on February 9, 2012 for "Phone call with Staffieris; draft of Complaint," which was before Certain Defendants even advised Plaintiffs of their position by letter dated February 13, 2012; c) 10+/- additional hours revising the Complaint; d) over 7 hours to review, and draft a response to, Certain Defendants' counterclaims; e) 62+ hours for work on Pretrial Briefs; and f) more than 68 hours for "Trial preparation."

Through August of 2012, the Plaintiffs asserted that their attorneys fees were $85,000. Pre-Trial Brief (Plaintiffs) at 43, citing Exhibit 46. Those fees alone exceed any reasonable, awardable amount. But it is impossible to believe that the Plaintiffs incurred another $75,000+ in legal fees in just 2 months after that (September and October, 2012). Thus, the fee application is excessive on its face.

[2] That is why her total time reached the exorbitant and unbelievable amount of 404 hours, which would equal 2½ months of full-time work.

In the Second Supplemental Affidavit of Gary Staffieri, the Plaintiffs request payment for time supposedly spent by Ms. Cherry on a Supreme Court Brief and related appeal matters. She contends that she spent approximately 14 hours on the Brief alone. But the Plaintiffs filed their Supreme Court Answering Brief *Pro Se*, which means that either: 1) Ms. Cherry is not telling the Court the truth about preparing that Brief; or 2) she has committed the Unauthorized Practice of Law.[3] Either way, the Court should not countenance such misconduct by granting her an award of fees for her misdeeds.

D. Plaintiffs' Pennsylvania Counsel Does Not Provide Detailed Billing Task Descriptions Necessary To Confirm That Her Claims For Fees Are Credible

All "billing statements" submitted by Ms. Cherry contain overly general descriptions of block billing time installments which are woefully inadequate for the Court to award any fees based on her request. Her "bills" amounts to little more than a sum-total of hours multiplied by Ms. Cherry's hourly rate. Indeed, her amorphous block billing items are insufficient for the Court to conduct judicial review to determine the reasonableness of her fees. Billing entries such as "phone call J. Wolcott," "revisions to complaint," and "preparation for trial" are far too general. And block billing in multiple hour installments does not sufficiently break down her tasks performed in order to adjudge the reasonableness of the time expended.

E. Ms. Cherry Submitted Bills For Non-Litigation Legal Work; They Are Not Awardable

The legal bills submitted by the Plaintiffs' Pennsylvania counsel request payment for fees incurred regarding non-litigation work. First, Ms. Cherry includes billings totally $2,875 regarding a title insurance claim pursued on behalf of the Plaintiffs. Second, she

[3] Ms. Cherry was not admitted *pro hac vice* in the Delaware Supreme Court Appeal.

submits billings totaling $6,475 for lobbying and representation regarding the Plaintiffs' efforts to obtain a Change of Use Permit from the New Castle County Department of Land Use. A title insurance claim and County Permit negotiations are completely unrelated to this litigation.

STATEMENT OF QUESTIONS INVOLVED

I. Whether The Plaintiffs' Request For An Award Of Litigation Expenses And Attorneys Fees In The Amount Of Approximately $185,000 Is Awardable And/Or Reasonable Under The Circumstances In The Instant Action And As A Matter Of Law?

ARGUMENT

I. THE PLAINTIFFS' APPLICATION FOR AN AWARD OF LITIGATION EXPENSES SHOULD BE LARGELY DENIED; IT PRIMARILY EXCEEDS THE SCOPE OF REIMBURSEABLE COSTS

A. The Legal Standard For Costs; Only Limited Court Related Costs Are Awardable

Pursuant to 10 *Del. C.* § 5106, the Court of Chancery may enter an Order regarding costs "as is agreeable to equity." Costs awardable under the statute are incidental damages awarded to reimburse a prevailing party for expenses necessarily incurred in asserting his or her rights in Court. *Peyton v. Williams C. Peyton Corp.*, 8 A.2d 89, 91 (Del. 1939). *See also Donovan v. Del. Water & Air Resources Com'n*, 358 A.2d 717, 723 (Del. 1976). Consequently, costs are only awarded for charges incurred in achieving a successful result on the particular claim or claims in the litigation.

In addition, the category of awardable "costs" under § 5106 has been held to be quite narrow. The limited extent of awardable costs is partly based on Court of Chancery Rule 54(b), which expressly prohibits costs from including certain transcript and deposition charges. Indeed, Delaware Courts have previously refused to award costs for items such as photocopying, transcripts, travel expenses, and computer research. *All Pro Maids, Inc. v. Layton*, 2004 WL 3029869, *3, Parsons, V.C. (Del. Ch., Dec. 27, 2004), citing *Comrie v. Enterasys Networks, Inc.*, 2004 WL 936505, *4, Lamb, V.C. (Del. Ch., April 27, 2004). *See also Tanyous v. Happy Child World, Inc.*, 2008 WL 5424009, *1, Noble, V.C. (Del. Ch., Dec. 19, 2008).

In *All Pro Maids, Inc.*, this Court denied a cost request for matters including: 1) overnight mail charges; 2) long distance telephone calls; 3) photocopying; 4) postage; 5) computer research; 6) litigation support in the form of conversion of images, digital

prints, and document retrieval; 7) expert fees; 8) transcript expenses; and 9) seven other costs associated with depositions or the trial. Instead, the Court limited its award to costs charged by the Register In Chancery, efiling, and service of Summonses and Subpoenas. Accordingly, only those costs which are directly related to interaction with the Court fall within the purview of "awardable costs."

B. The Plaintiffs' Application For An Award Of Costs Exceeds The Narrow Scope Of Direct, Court-Related Charges Awardable

Certain discreet cost requests contained in the Plaintiffs' application are unawardable as a matter of law since they were incurred regarding losing claims. The Plaintiffs' demand for reimbursement of $1,750 for their auto detailing expert witness is completely barred on the grounds that the claim did not prevail. In addition, costs related to expert witnesses and deposition transcripts in the amounts of $2,700 and $937.20, respectively, fall outside the bounds of direct court-related costs which are awardable.[4]

The billing submissions presented by Josiah R. Wolcott, Esquire also contain non-cost amounts which are not awardable pursuant to Rule 54(d) and 10 *Del. C.* §5106. The categories "Disbursements" and "Expenses" at the conclusion of his bills primarily include charges for transcripts, printing, copying, postage, legal research, hand deliveries, and the like. Indeed, it is probably easier to point out the total charges that are actually reimbursable "costs": LexisNexis and Register In Chancery filing fees totaling $2,215.50 from the December, 2012 submission.

[4] The claim for $1,750 for the supposedly "free" money damages expert is likewise unawardable on the grounds that it constitutes a non-reimbursable expert fee.

Mr. Karagelian's legitimate "costs" total $1,405. But some of them were for futile Permanent Injunction and unnecessary dual counsel filings. So that amount should be reduced by half, to $702.50.

Certain Defendants do not object to an award of costs in the amount of $511.53, as requested in the Second Supplemental Affidavit of Gary Staffieri. Consequently, the Court should award no more than $3,429.53 as "costs" under Rule 54 and § 5106.

II. THE ATTORNEYS FEE APPLICATION IS MOSTLY UNREASONABLE, EXCESSIVE, AND UNAWARDABLE

A. The Legal Standard For Attorneys Fees Awards; Must Be Reasonable And DLRPC Rule 1.5 Compliant

It is well-settled that an award of attorneys fees under the Bad Faith Exception must be in a reasonable amount. *Ableman v. Katz*, 481 A.2d 1114, 1121 (Del. 1984). In evaluating the reasonableness of an attorneys fee award, the Court relies upon the factors contained in Rule 1.5(a) of the Delaware Lawyers' Rules Of Professional Conduct and relevant case law. *Mahani v. Edix Media Group, Inc.*, 935 A.2d 242, 247 (Del. 2007).

Rule 1.5 contains eight (8) factors:

> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) The fee customarily charged in the locality for similar legal services;
> (4) The amount involved and the results obtained;
> (5) The time limitations imposed by the client or the circumstances;
> (6) The nature and length of the professional relationship with the client;

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
(8) Whether the fee is fixed or contingent.

Of the 8 criteria, the ones most relevant in this instance are: 1) the results obtained; and 2) the experience and ability of the lawyer. In addition, the Court should also consider whether the number of hours devoted to the litigation was excessive, redundant, duplicative, or otherwise unnecessary. *Mahani* at 247-48.

A party may not seek an award of attorneys fees under 10 *Del. C.* § 5106. Applications for attorneys fees are based solely upon the Court of Chancery's inherent equitable powers. *Scion Breckenridge Managing Member, LLC v. ASB Allegiance Real Estate Fund,* __ A.3d __, 2013 WL 1914714, *11-12 (Del., May 9, 2013)(en Banc).[5]

B. Excessive, Duplicative, Unnecessary Fee Amounts Abound In The Plaintiffs' Application; Significant Amounts Of Time Should Be Disallowed

1. Only One-Half Of The Final, Reduced Amount Of "Reasonable Fees" Should Be Awarded; Plaintiffs Prevailed On Only Half Of Their Case At Best

The Plaintiffs only prevailed on one (1) of eight (8) claims asserted: Express Easement.[6] The Plaintiffs improvidently pursued numerous alternative and additional claims, most of which were unnecessary and had no legitimate prospect of success on the merits. As a result, considerable time was chewed up in the litigation chasing farfetched, "shotgun approach" causes. On these grounds alone, the Court should reduce the fess

[5] The Court expressly held that "[a]ny contrary precedent, we expressly overrule." at *11.

[6] Attorneys fees were not claimed in a specific cause of action. Fees were only generally, parenthetically prayed for in *ad damnum* clauses regarding some of their causes of action.

awarded to the Plaintiffs to no more than one-half (½) of the final "reasonable" amount of fees. The "results obtained" were at most 50% favorable to Plaintiffs.

The Court frequently awards only a percentage of total fees incurred. *See e.g. Auriga Capital Corp. v. Gatz Props., LLC*, 48 A.3d 839, 881-82 (Del. Ch. 2012)(awarding one-half of reasonable attorneys fees based upon opposing party's "less than ideal" litigation efforts); *Beck v. Atlantic Coast PLC,* 868 A.2d 840, 856 (Del. Ch. 2005)(awarding $25,000 of approximately $60,000 in fees as an estimate of costs incurred for actions of counsel); and *Acierno v. Goldstein*, 2005 WL 3111993, *4, Parsons, V.C. (Del. Ch., Nov., 16, 2005)(awarding 25% of attorneys fees in defending against claimant who made certain misrepresentations in support of an ultimately abandoned adverse possession claim).

The Court should award no more than 50% of the Plaintiffs' "reasonable" attorneys fees on the grounds that they only succeeded on one (1) of their two (2) main requests for relief. They lost their claim for Damages. Indeed, the New Business Rule and Delaware Damages *jurisprudence*, which bar an award of damages based upon an un-opened business which has no track record of profits and losses, should have signaled to the Plaintiffs that their time-consuming money damages cause would ultimately prove to be futile as a matter of law. The Plaintiffs at best won one-half of the case. Accordingly, no more than 50% of their "reasonable" fees should be awarded.

2. The Attorney Time And Fees Should Be Reduced To A "Reasonable" Amount

It is well settled that an application for an award of attorneys fees should be copiously examined to ferret out wasteful and legally unawardable time/fees. In *Richmont Capital Partners I, L.P. v. J.R. Invs. Corp.*, 2004 WL 1152295, *3, Lamb, V.C.

(Del. Ch., May 20, 2004), the Court held that reducing the fee amount requested is appropriate for: a) time attributable to two (2) lawyers being present in a courtroom or conference when one (1) would do; and b) excessive, redundant, duplicative, or otherwise unnecessary hours. Indeed, our Supreme Court has held that attorney time which is excessive, redundant, duplicative, or otherwise unnecessary is not awardable. *Mahani, supra.*

(a) Excessive Amounts Of Time & Lack Of Detailed Task Descriptions

The Court should deny a substantial portion of the Plaintiffs' fee demand on the grounds that the amount of time expended is excessive and exceeds the bounds of what is "reasonable." The assertion by Ms. Cherry that she spent 60+ hours preparing a brief and 60+ hours preparing for trial is outlandish and excessive. And her fees incurred performing non-litigation work are simply not awardable.

The fact that Ms. Cherry's bills do not provide the degree of specificity customary in Delaware practice and necessary for the Court to evaluate the legitimacy of her time is additional cause to significantly reduce the hours awarded. Ms. Cherry did not do the recordkeeping necessary to entitle the Plaintiffs to the amount she has demanded. A substantial reduction in her bill is warranted due to the paucity of proof that her hours are reasonable and justified.

(b) Duplication Of Time And Ms. Cherry's Lack Of Experience/Ability In Delaware & Real Property Law

The Court should deny some of the fees requested by Mr. Wolcott and Ms. Cherry on the grounds of duplication. Significant attorney time was allegedly spent speaking to

one another over the telephone, which could and should have been avoided by Plaintiffs' use of Delaware counsel. The Plaintiffs should not be rewarded for exceeding the bounds of reasonableness, to-wit: expending thousands of dollars for the luxury of having Mrs. Staffieri's high school friend (Ms. Cherry) serve as their attorney rather than a Delaware attorney who was much more familiar with the procedural and substantive law – *i.e.* Court of Chancery Practice and Real Estate Law.

Additionally, the six (6) separate Wasteful Efforts evidence Ms. Cherry's inefficient and misguided handling of the litigation. Futile Preliminary Injunction and Summary Judgment practice undoubtedly wasted tens of thousands of dollars in time. Associating with a supposed "local" counsel who could not legally litigate the action wasted even more money. And pursuing numerous claims which were obviously destined to fail as a matter of fact and/or law was a further waste.

Further, fees charged by Mr. Wolcott to attend the trial should be denied in their entirety: a total of 14.8 hours or $3,700. Ms. Cherry tried the entire case and was admitted *pro hac vice*, thereby rendering Mr. Wolcott's presence at the 2+ day trial mere surplusage. Ms. Cherry could and should have obtained permission from the Court to try the case without Mr. Wolcott's presence, thereby eliminating thousands of dollars in unnecessary and wasteful attorneys fees incurred by the Plaintiffs.[7]

Finally, Mr. Karagelian unnecessarily incurred fees on the ill-fated Preliminary Injunction request. Specifically, his bill reflects about 9.3 hours at $300 per hour, or $2,790, was wasted on the 1st Wasteful Effort.

[7] In the alternative, the Plaintiffs could have had Mr. Wolcott try the case. Either way, unnecessary double attorney time would have been avoided.

(c) Ms. Cherry Cannot Legally Be Awarded Fees For Appeal Work; She Was Not Authorized And The Plaintiffs Represented Themselves

The Court should deny Ms. Cherry's supplemental claim for fees regarding her supposed involvement in appeal matters on behalf of the Plaintiffs. She was not admitted *pro hac vice* in the Supreme Court appeal. And the Plaintiffs submitted their Answering Brief on appeal *pro se*, which constitutes a representation that they did not utilize Ms. Cherry's services for purposes of that brief; otherwise it would constitute an ethical breach.[8] Ms. Cherry claimed post-appeal time of 22.3 hours, which equates to fees of $6,690.

3. Calculations Of "Reasonable" Awardable Fees: No More Than $41,412.50 Should Be Awarded

Ms. Cherry's initial request was for $114,000 in fees and her supplemental request was for $7,450, for a total of $121,450. Specific deductions for unawardable time in the form of a title insurance claim, representation *vis a vis* New Castle County, and the appeal justifies a reduction in her billings of $16,040, to $105,410. That amount should be reduced by 50% based on the other 6 Wasteful Efforts, the Excessive and Duplicative nature of her bills, and her overly general block billing. This results in maximum "reasonable" fees of $52,705. A further 50% reduction based upon the fact that the

[8] Even assuming *arguendo* that Ms. Cherry did actually prepare the appeal brief, the Court should deny her request for fee reimbursement for those services on the grounds that she committed the serious offense of Unauthorized Practice of Law in this jurisdiction in doing so. This Court of Equity should not countenance the blatant disregard for the Rules of the Courts of this State committed by Ms. Cherry under the circumstances.

Plaintiffs prevailed, at best, on only one-half of their main claims in the action would result in a maximum fee award in the amount of $26,352.50 for Ms. Cherry's work.

Mr. Wolcott's fee applications totaling $27,370 should be reduced by $3,700, to $23,670 (for duplicative trial time). A 50% reduction due to the 50% positive result obtained results in a maximum award for his time of $11,835.

Mr. Karagelian's fee application seeking $9,240 should be reduced by $2,790 to $6,450 due to the unnecessary Preliminary Injunction request. Halving that amount due to one-half success/results equals $3,225.

The $26,352.50, $11,835, and $3,225 amounts of awardable fees for Ms. Cherry and Messrs. Wolcott and Karagelian make for a grand total of $41,412.50. That number equates to the legally awardable, reasonable, non-excessive, non-duplicative, and necessary attorneys fees incurred. Consequently, no more than $41,412.50 in attorneys fees should be awarded.

CONCLUSION

Based on the foregoing, Certain Defendants respectfully request that this Court: 1) deny the request for reimbursement of costs in excess of $3,429.53; and 2) deny attorneys fees of more than $41,412.50. The limited, narrow scope of costs that are awardable under Court of Chancery Rule 54(d) and 10 *Del. C.* § 5106 are far exceeded by the amount applied for by the Plaintiffs; it is well-established that numerous charges and unrelated costs are not awardable because they: 1) arise either from claims upon which Plaintiffs did not prevail; or 2) are for expenses that are not within the purview of "costs" that equity may award. In addition, the attorneys fee demand should be significantly reduced by: 1) winnowing the fee application down to a "reasonable" amount; and 2) further reducing the "reasonable" amount by 50% since the Plaintiffs prevailed on no more than one-half of their main claims. Accordingly, the Court should award costs and fees of no more than $44,842.03 under the circumstances.[9]

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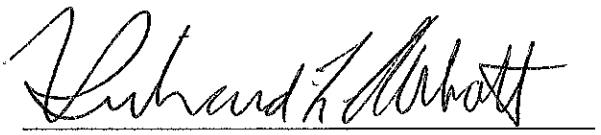

Richard L. Abbott, Esquire (I.D. #2712)
724 Yorklyn Road, Suite 240
Hockessin, DE 19707
(302) 489-2529

Attorneys for Certain Defendants

Dated: May 20, 2013

[9] Certain Defendants reserve all rights to appeal the Court's award of attorneys fees in its entirety, and by no means waive any right to challenge whether the Bad Faith Exception To The American Rule applied under the circumstances so as to justify any award of attorneys fees.