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Re: In re Cablevision/Rainbow Media Group Tracking Stock Litigation
Consolidated C.A. No. 19819-VCN
Date Submitted: January 9, 2009

Dear Counsel:

Back in 2002, Cablevision Systems Corporation ("Cablevision") exchanged its then-outstanding tracking stock in certain assets of its Rainbow Media division for Cablevision common stock. Shareholder actions challenging the transaction, based primarily on the inadequacy of the consideration, were filed in Delaware and

later in New York. Although the allegations in both actions were similar, the New York Action contained additional claims.

The Delaware Action did not proceed with any great dispatch. It was the better part of two years before the Delaware Plaintiffs began to move forward with their litigation here. The New York Plaintiff in its latter-filed action took discovery, but was eventually confronted by a stay of that action. Thereafter, the New York Plaintiff moved to intervene in the Delaware Action seeking a stay of the Delaware Action in favor of the New York Action, or seeking its designation as the lead plaintiff in the Delaware Action. The New York Plaintiff was permitted to intervene in the Delaware Action but the balance of its application was denied.

The Court directed counsel for both the Delaware Plaintiffs and the New York Plaintiff to work together to pursue cooperatively the interests of the class. Apparently, that request was not implemented. Counsel for the plaintiffs in the two actions have offered varying explanations as to why the anticipated efficient working structure did not evolve. Assessing responsibility for that breakdown from the distance of the Court would not likely be an accurate enterprise.

* * *

Eventually, in 2007, Cablevision reported to the Court that a settlement in principle had been reached with respect to the Delaware Action. The potential settlement was achieved without any participation by the New York Plaintiff, even though the parties in the Delaware Action anticipated that the release emanating from settlement of the Delaware Action would conclude the New York Action as well. The proposed settlement provided for a payment to the class of \$8.25 million, inclusive of attorneys' fees. The proposed settlement supported a fee award of 30% of the common fund recovery.

The New York Plaintiff, however, made known its objections to the proposed settlement and succeeded in negotiating an increase of \$1.5 million in the settlement proceeds to \$9.75 million. The New York Plaintiff asserts that the Delaware Plaintiffs settled "on the cheap" and that its ability to negotiate an even greater settlement was severely hampered as a result.

The Court has approved the settlement with a payment of \$9.75 million by or on behalf of the Defendants.¹ Thus, the Court has concluded that the sum of \$9.75

¹ Transcript of Settlement Hearing (Sept. 3, 2008) at 43-53.

million is fair and reasonable under the circumstances as a settlement amount. Remaining for resolution is the question of attorneys' fees.

* * *

Counsel for the Delaware Plaintiffs seek an award of 30% of the \$8.25 million settlement that they negotiated, or \$2.475 million. Counsel for the New York Plaintiff urges the Court to reduce the total award to \$1.75 million (thus increasing the amount to be distributed to the class) and then to divide that amount equally between counsel for the Delaware Plaintiffs and counsel for the New York Plaintiff.

* * *

In determining an appropriate award of attorneys' fees, the Court may consider factors such as the time and effort devoted to the case by Plaintiffs' counsel, the relative complexities of the litigation, the skills necessary to pursue the litigation, whether the fee is contingent, the standing and ability of counsel, and the benefit achieved.² Of these factors, the benefit conferred is generally the most important. In this case, a specific fund was created and tying the fee award to the

² *Sugarland Indus., Inc. v. Thomas*, 420 A.2d 142, 149 (Del. 1980).

amount of the recovery is common practice. For all of the contentiousness among Plaintiffs' counsel, the amount of effort directed at the Defendants was relatively minimal.³ Discovery was undertaken; it was not extensive; the case was settled before reaching the summary judgment or trial stage. Indeed, and this is an appropriate factor to consider, the Delaware Action was marked by an extended period of inaction. Counsel are all experienced and proficient in this area of practice. The issues were complex, especially those dealing with valuation. The Plaintiffs were confronted by skilled adversaries.

There, unfortunately, is no bright-line test to apply in this situation. Under these circumstances, I am satisfied that an award of 22.5% of the fund,⁴ after taking into account the size of the fund, is appropriate. That would amount to an award of fees and expenses of \$2,193,800.⁵

³ Counsel for Delaware Plaintiffs report that 4,646.6 hours were expended in pursuit of this action before settlement and 226.8 hours thereafter. Counsel for Delaware Plaintiffs incurred expenses of \$122,321.44. Counsel for the New York Plaintiff report that 1,317.55 hours pre-settlement and 239.7 post-settlement were directed in pursuit of similar claims. Counsel for the New York Plaintiff incurred expenses of \$72,533.15.

⁴ The Court acknowledges that the New York Plaintiff's agreement with its counsel used this percentage. That, however, in this instance, is coincidental.

⁵ For convenience, some numbers are rounded.

* * *

Allocation of attorneys' fees among plaintiffs' lawyers pursuing substantially the same claims in different jurisdictions can be problematic.⁶ In short, "a litigant who confers a common monetary benefit upon an ascertainable stockholder class is entitled to an award of counsel fees and expenses for its efforts in creating the benefit."⁷ The Delaware Plaintiffs negotiated an \$8.25 million settlement. The New York Plaintiff was able to secure an additional \$1.5 million. In addition, the New York Plaintiff was able to persuade the Court to reduce the fee award from 30% to 22.5% by vigorously contesting the award of fees sought by the Delaware Plaintiffs. Thus, in this somewhat unusual context, it is fair to credit the New York Plaintiff with the increase in the recovery actually delivered to the class.⁸

The additional payment to the class resulting from the reduction in the percentage awarded amounts to \$618,750.⁹ Thus, out of a total award of fees and

⁶ See, e.g., *Alaska Elec. Pension Fund v. Brown*, 941 A.2d 1011 (Del. 2007); *Infiniti Broad. Corp. S'holders Litig.*, 802 A.2d 285 (Del. 2002).

⁷ *Alaska Elec. Pension Fund*, 941 A.2d at 1015.

⁸ This is not to suggest that an award of attorneys' fees should routinely follow this rubric when someone achieves a reduction in attorneys' fees to be paid by the class. This simply reflects the Court's best calculation of the benefits directly attributable to counsel for the New York Plaintiff.

⁹ The difference between 30% and 22.5% is not properly applied to the \$1.5 million additional recovery achieved by the New York Plaintiff.

expenses, the New York Plaintiff is entitled to \$476,800 (i.e., 22.5% of \$2,118,750, which is \$1.5 million plus \$618,750). The balance of \$1,717,000 is awarded to the Delaware Plaintiffs. This is 22.5% of the initial \$8.5 million recovery reduced by the additional amount paid to the class from what would have been fees paid to the Delaware Plaintiffs if the proposal of the 30% fee award from the common fund had been approved.¹⁰

The Court finds that both awards are fair and reasonable under the circumstances.¹¹ Therefore, Delaware Plaintiffs are awarded \$1,717,000 in fees and expenses. New York Plaintiff is awarded \$476,800 in fees and expenses.

¹⁰ The Delaware Plaintiffs are entitled to credit for the \$8.25 million fund in the first instance. The New York Plaintiff asserts that the New York Action encouraged the Defendants to settle the Delaware Action. That, according to the New York Plaintiff, shows that the initial settlement of the Delaware Action—without regard to the additional value added later by the New York Plaintiff—was enhanced by its efforts in New York. Two answers suffice. First, the impact of the New York Action on the Delaware Action is a matter of conjecture. Second, as a general matter, the settlement of the Delaware Action should be taken at face value for what it purports to be—a settlement achieved by counsel for the Delaware Plaintiffs—at least in the absence of a sufficient evidentiary basis to the contrary. *See Alaska Elec. Pension Fund*, 941 A.2d at 1013.

¹¹ The New York Plaintiff belittles the settlement obtained by the Delaware Plaintiffs. Admittedly, the New York Plaintiff was able to achieve additional settlement consideration. It is not clear, however, that the final settlement can fairly be demeaned or somehow blamed on counsel for the Delaware Plaintiffs. The settlement, as the Court already has concluded, is fair and reasonable under the circumstances, given the difficulties associated with the class claims. Perhaps trial would have yielded a greater reward to the class. One may doubt that outcome, but no one really knows what the outcome would have been. The Court's objective here is to determine a fair and reasonable fee and to allocate it appropriately. That task must be based upon a common fund of \$9.75 million, not some other amount that might (or might not) have been achieved.

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IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap

cc: Register in Chancery-K