IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE INTERMUNE, INC., STOCKHOLDER LITIGATION	:	CONSOLIDATED C.A. No. 10086-VCN

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Chancery Courtroom #2
38 The Green
Dover, Delaware
Wednesday, July 8, 2015
2:00 p.m.

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BEFORE: HON. JOHN W. NOBLE, Vice Chancellor

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SETTLEMENT HEARING

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CHANCERY COURT REPORTERS
410 Federal Street
Dover, Delaware 19901
(302) 739-3934

APPEARANCES:

BRIAN D. LONG, ESQ.
Rigrodsky & Long, P.A.
-and-
PETER B. ANDREWS, ESQ.
Andrews & Springer LLC
for Co-Lead Counsel for Plaintiff
and the Class

DANIEL A. DREISBACH, ESQ.
Richards, Layton & Finger, P.A.
-and-
LAWRENCE PORTNOY, ESQ.
of the New York Bar
Davis Polk & Wardwell LLP
for Defendants Klee Acquisition Corp.
and Roche Holdings, Inc.

MATTHEW DAVIS, ESQ.
Potter Anderson & Corroon LLP
for Defendants InterMune, Inc., Daniel Welch, Jean-Jacques Bienaime, Louis Drapeau, Lars Ekman, James Healy, David Kabakoff, Angus Russell and Frank Verwiel

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THE COURT: Good afternoon. We have a settlement.

MR. ANDREWS: Correct, Your Honor. Peter Andrews, Andrews & Springer on behalf of the plaintiffs. Like you said, today we are here for the final approval hearing in the In Re InterMune Stockholder Litigation case. Number 10086 is the consolidated caption.

I would like to note that there are no objectors in this case, so no one has appeared to attend today, and we haven't received, as of today, any objections on the record.

So let me start at the beginning. The facts of the case; tender offer. A tender offer was announced on August 24th, or actually August 22nd is when the merger was accomplished.

A 14D-9 was filed on August 29. A tender offer. InterMune was being acquired by Roche Holdings. My client, Mr. Wagner, a shareholder of approximately 30,000 shares of InterMune, contacted us after the deal was announced, and I filed the complaint after the 14D-9 came out. I think our complaint was filed on September 5th.

The tender offer was for $74 per share

cash. So it was implicating what we believed some Revlon duties since it was a cash-out situation. When we filed our complaint, we were initially focused more on the analyses of Centerview and Goldman Sachs which are the financial advisors advising the company on the sale.

There were some process items that we were concerned with, but in general, one of the factors that -- I guess the process factor that we were concerned with upon announcement of the deal was the timing, it being a very short window.

According to the 14D-9, I believe it was on July 14th Roche approached Mr. Welch of InterMune, and by August 22nd, they had inked a deal. So we saw that as a very short window.

One of the things that we were trying to concentrate on in bringing this case and looking at the deal in general is was there sufficient marketability of InterMune itself out there considering there wasn't a go-shop on this. It was a tender offer. It seemed to move pretty rapidly.

Admittedly, in discovery, you start hearing the story about why they did the deal the way they did, and part of it has to do with the timing of

the approval of the FDA. Their main product, main drug in this case, is pirfenidone which treats a chronic lung condition, basically a scarring of your lung tissues, and that drug had received approval in Europe and in Canada and was in I guess what we call like a stage three trial in the United States.

Then what happened was, I believe in late July, they got an indication from the FDA that they were upping the approval process. The FDA was upping the approval process, so it was kind of speed-through, and they expected it possibly to go to market by the fourth quarter of 2014.

So at that time I think Roche capitalized on the press releases going that the contact came -- Roche had been partnering with InterMune in the prior years, so they were well aware of the drug stage I believe going forward, and they were trying to capitalize, I believe, on the news that was going to see if they could bring a deal pretty quickly.

So what we focused on as plaintiffs in this case, my client was concerned, obviously, as to whether or not that $74 was properly shopped out there in the market. We initially -- there was three other

cases filed. We consolidated by agreement. Your Honor entered an order consolidating the cases. We worked rapidly with the defendants to execute a confidentiality agreement.

We worked on an expedited schedule, so there wasn't a disputed expedited process in this because we all know that tender offers move pretty quickly, and if we're going to get things done and have a review of the case, it has to be done in short order. So we did agree on an expedited schedule. We took two depositions pre-MOU in this case. The depositions were of Centerview and Mr. Welch who is the CEO of InterMune.

Focusing on those depositions, we were looking at multiple issues. I guess the primary focus -- I had been in consultation with my expert early on. He was concerned with the valuations. Obviously, the valuations on drug cases can be very difficult because it is somewhat speculative, not any more speculative than any other type of merger in these cases, but there are different analyses that are done with regard to drug pipelines and what has been done.

So I think if we look at some of the

disclosures which I'll talk about in a little bit, one of the aspects that we were concerned with was there was -- in the discounted cash flow analysis that they had done, they had some additional information about projecting their developmental stage drugs.

So this is a real important factor as far as how much cash can be carried forward on what is expected in the drug pipeline. I think they had just merely stated numbers of about 134 million. There was no real background on that. So we were concerned to see whether or not that was explored sufficiently by Centerview and Goldman and whether or not there was a particular analysis that was doing that.

Ultimately, despite there not being a market canvas by InterMune, the proxy was pretty fulsome with regard to the background of the merger, so we weren't particularly interested in getting much information. We found it was pretty sufficient in that respect as far as how it played out.

There were four companies that actually ended up bidding and -- not even bidding, let's say, because there was two bids, two actual bids after the initial Roche indication, and then the board made a determination -- they formed an executive

committee because one of the bids was coming from -- I apologize this name always -- Jean Jacques Bienaime. He is the CEO of BioMarin. BioMarin had also provided an indication of interest, and he recused himself from the proceedings after that.

So we talked and did the depositions and explored these things. Aside from Biomarin, there was also indications from Pfizer and Biogen. Biogen was referred to as Company D in the 14D-9, but the Biogen offer came in a little bit late, and there was questions about whether or not that was actually considered on a fulsome level.

However, I think Mr. Welch and the Centerview people provided the context in which the Biogen offer was. So it was sufficient for a "reasonable process" in our mind.

The Biogen offer came kind of 11th hour. They were saying that they wanted to wait until FDA approval, and I think, therefore, it was rational for the board to sit back and say, "You know what, that's not a realistic offer considering there's $74 on the table, and we have Roche willing to pay the $74 and it's a tender offer at this point." So there wasn't a topping bid offered in this case.

So despite the fact that we were initially looking as to whether or not the go-shop -- the lack of a go-shop in this case was something that should really be a focus, we found that there was. Biogen -- not Biogen. Biomarin's first offer was in the 53-dollar range. Roche obviously came in at 70.

Ultimately, a second bid was made by Roche at 74, and what that did is it reflected that really Roche was the bidder that had more interest in the company. So then it came down to whether or not the analyses by Centerview and Goldman Sachs were sufficient to support the $74 or should it be higher.

Ultimately, my expert was consulted many times in this case. I actually paid more in expert fees than I normally sustain on a tender offer being such a short term. We worked closely with them because there were some things that we really didn't understand about the offer itself and how they were valuing some of the aspects of this case.

What we ended up doing is when we got closer and we realized that there was one or two pricing issues that we were concerned with within the analysis by Centerview and Goldman Sachs, that it was probably going to be a disclosure case.

So we sought to work with the defendants to get some of the information specifically that my expert was concerned with, and I believe that is reflected by the disclosures that we have, and I'll just kind of highlight the reasons why I think the disclosures are material in this case.

Normally I don't sit up here and tout multiples and say that a multiple analysis or additions of multiples in a proxy is going to be helpful in this case. I had to look back at this one and rethink why I normally don't think that's something that is really rational to a shareholder or material to a shareholder.

In this case, it's a little bit different. The reason why the multiples are a little bit different in this case is we were focusing on Centerview's -- some of the parts of -- in the selected comparable public companies analysis by Centerview, the multiples weren't originally included in the 14D-9, and once we saw the multiples as they were done in the analysis by Centerview, we started to recognize that, first, in the selected comparable public companies analysis, they excluded three out of eight multiples as too high.

And the reason that's significant in this case is we're always looking for that "negative information" that the Court likes us to seek out. And the negative information that comes from the exclusion of three out of eight multiples as too high is the fact that a shareholder can now look at that and say, "You, know what, what if this should be the situation where this multiple should be in that too high range. What happens if you include all the multiples and don't exclude the ones above 25. Where does that bring our range of $74."

So if you were going to include those multiples, obviously, it would suppress the range for InterMune down. So this is negative information in this case that we provided.

The same for the selective precedent transactions analysis. They also had two exclusions in that case. And when you look at the overall pricing on that one, that would slide the range downward again. So there is a situation of maybe InterMune was worth a little bit more than the $74 as far as what the projected range of satisfaction is in this case.

Then we looked at -- I think the other

disclosure that's worth highlighting somewhat more is the illustrative present value future stock price analyses. And the reason why this one was important is. Once again. We're talking about negative information that we're looking for, something for the shareholders to judge. We just don't want confirmatory information that $74 is correct.

In this case, when we explored a little bit deeper about the future share price analysis done by Goldman, you saw that realistically they had projected out from the future share price for 2017, 2018, 2019, and if you did -- if you looked at that prior to our disclosure, they just provided a range of $33 to $124 for the future share price.

It didn't tell you how this was broken out. It didn't give you any indication of when or why there was a rational basis for this. So our disclosure basically now tells the shareholder that they were predicting that as of August 2017, the range would be 33 to $53; as August 2018, it would be 51.85, so that's above the range of the $74 already by 2018, and this is on a stand-alone basis. And then finally for 2019 it's a range of $74 to $124.

What that tells you by a five-year

projection is you have 40 percent growth in the stock if there's a stand-alone basis.

So, to me, that's real information for the shareholders to say, "You know what, I'm about to get cashed out at $74. I could hold on to this stock as a stand-alone if the tender doesn't go through. I could vote against the deal and achieve a 40 percent growth in five years," and looking at the stock market today, I think any of us would take a 40 percent return in five years.

So I think that is probably the most material of the disclosures in this case. I find that that was again negative information; i.e. something that would at least cause a rational shareholder to look at the information again within the proxy and say, "Did I analyze this correctly, have I looked at this correctly, am I going to tender my shares."

So ultimately we get to the point where we agree on the disclosures. We do a confirmatory deposition with Goldman Sachs people, and after fully vetting Goldman Sachs and their analyses here, we were comfortable that we had risks moving forward and there wasn't going to be much utility in trying to move the case forward on a pricing case;

that my expert was convinced that although we could draw some arguable discrepancies about the analyses and about the outputs that they had discovered that Goldman had eventually put in front of the board in this case, that he was satisfied that we're within that discretionary range where it would be very difficult for us to come in and make a pricing case.

So we ultimately decided that this would be the final settlement, the disclosures in this case, and that we weren't going to move forward on a pricing case.

Now, looking back at some of the other issues, obviously, if we moved forward, there was also risks to the litigation. If we were going to press some of the process claims, like I said, we had risk on our side that the directors -- that there wasn't much by way of conflicts. It seemed like they excused J.J. Bienaime once he made a bid with Biomarin. So he insulated himself.

They essentially formed an executive committee at that time to look at the deal closely even though it was a pretty quick process. After the depositions and reading the depositions, it became pretty clear that they did enough that for me pressing

a case on process and price forward was going to be difficult, and they were going to have significant defenses.

The termination fee fell within the three percent range, so there's not much there. So I'd have that to defend against also.

The defendants would also obviously raise various other aspects such that even though there was no go-shop, you had Biomarin, Pfizer, and Biogen coming in and then being addressed by the board at least initially.

I guess my one stronger point would be whether or not the assessment of the Biogen deal was enough or should they have waited for FDA approval. That would be another factual dispute that would be arguably -- we'd be arguing about business judgment rule on something because, in their estimation, there was some value to shareholders by pressing the tender offer before the FDA approval happened, and the reason that is is because in 2010 they had the FDA essentially reject the drug prior and say "We want another run of another test in the United States before we approve this for all markets." So there was always that risk to shareholders too.

At the end of the day, I approached my client about this, and we talked in depth, and obviously with 30,000 shares, he's close to 2 million in on this case as far as share count, and we talked about even proceeding for an appraisal process, and ultimately he is supporting this settlement as sufficient in this case.

We ultimately decided to speak with the defendants about a final resolution, and we agreed to a fee of $470,000. Obviously, the company, like you always say, does want some sort of peace of mind and we have inked a final approval which we think is sufficient in this case. We believe we provided material information.

If we run through the factors -- would you like me to run through the factors?

THE COURT: I think I know what they are, but the podium is yours.

MR. ANDREWS: Your Honor, I know you know well what they are. I just don't know how much more I want to bother you with my time at this point.

THE COURT: You're not bothering me.

MR. ANDREWS: At this point, do you have any questions in detail? I tried to cover as

much information as I could, but at the same time, I am more than willing to answer any questions that Your Honor may have.

THE COURT: Why do these facts justify a broad release? Why shouldn't the release simply be limited to disclosure claims? That may be a question more for Mr. Davis than anybody else.

MR. ANDREWS: I think I would like to -- I'll answer this in a somewhat hypothetical, but in this situation, I understand the obligation of just getting a disclosure release, but is there anything additional that I would have gotten -- let's say I didn't do a -- let's say I do just a disclosure release at this point, and I had to press it for damages so ultimately either get a final judgment or we have some sort of settlement prior to where you can be more satisfied that there's a proper release of all pricing claims or any other type of pricing claim, process or price claim that might be there.

I don't come into this case looking at it as a disclosure case because, one, there's not -- there's value to it, but at the same time, I would rather have a pricing case at the end of the day. I would rather run a case through its course.

But when I looked through depositions, when I looked through the documents, when I had my expert review it down and dirty and I look at all the factors that are coming in, the risks and the benefits of doing everything, would you look at me any different if I walked up at the end of the day on a motion to dismiss or a motion for summary judgment, and we had the same set of facts, and we had the same set of analyses that are here?

I don't know that there is going to be any difference because I don't come into it saying I'm only settling it for disclosures because that's all we investigated. I investigated price. I wanted this to be a price claim.

So that's where I get comfort in at least recommending, on behalf of the class, that we are here to finally resolve the matter; that I am comfortable that if other people were to look back at the case and look at the pricing and other mechanisms here, that we have satisfied our obligations as far as class, representing the class, and that we are sophisticated people analyzing the deal on a sophisticated level.

We're in Delaware doing these breach

of fiduciary duty cases every day, and I think -- I would like to think that as of right now that I can analyze a case and represent a class in a proper way so that I give the Court comfort that we're just not wiping away pricing claims because I wanted to walk away at disclosures.

That's my long and the short of it. It may not be correct, but that would be my explanation as far as representation of the class at this point. There's always risk. Someone can always come in -- and it's happened in the past. Someone can always come in and dispute what we've done in the past.

Your Honor might be overturned by the Supreme Court on some judgment that he passes. There's no difference. We all have the risk.

So what we've presented is a final resolution. It offers finality to the defendants because then they don't have to arguably defend cases against the pricing at $74. Ultimately, they're going to lose it over time.

What do they get; three years where they buy peace of mind, or they get peace of mind now. If there was real objections to the pricing in this

case, I think the courtroom would probably be full of people willing to take this case on forward. A lot of people have probably had the same analyses in the long run that $74 was probably the best they could do at the time.

That's my explanation as to what goes on. I don't know if I answered Your Honor's question, but that would be my short hand but not really shorthand notes.

THE COURT: You tell me, and if this comes out harshly, I don't mean it to be harsh, you tell me that the $74 was a price that really couldn't be challenged. You came to that conclusion afterwards. I read the complaint, and it read to me like a complaint that probably didn't have legs, but who knows what you'll find in discovery. I understand that.

But if $74 is really such a good price, why is it that the defendants -- and I'm not picking on the defendants here. This is a universal problem. The defendants want total peace. They do some -- again, I don't mean to put rabbits in the hat, relatively minimal disclosures, and they buy deal insurance.

And there's something about that that has always troubled me. For some reason, it really bubbled up in this case.

MR. ANDREWS: It's unusual that we are on the reverse here because normally Your Honor is pointing at the plaintiffs side saying "you guys are walking away on the cheap" or some other -- not to belittle the plaintiffs bar. I certainly don't do that.

But we're often more the focus of attention, and it's unusual for us to see that Your Honor has also questioned buying peace on their side. Maybe it is a question better left for the defendants.

I would urge that this is one of those instances where we try not to upset the apple cart; that the defendants and us have negotiated. The parties have negotiated at arm's length. I guess the Court would have to question the judgment of all the parties in this case should this be seen as troubling with global resolution on this level.

And then that troubles me moving forward as far as the next case that I face where I believe that, yeah, there's value to disclosure claims but I don't think there's a pricing claim at the end

of the day, do I have to come in on a mootness fee every time in front of Your Honor and waste judicial resources because they want a global release and I don't have it.

I guess we could change the landscape in Delaware and start arguing about mootness fees all the time and the corporate benefit provided on a limited release. So it would just be changing the landscape a little bit with regard to that aspect.

I think if there was really -- on the defendants buying a global resolution to the whole thing, if there was really an issue with it, there would be more people here challenging the deal and them buying global resolution that someone ultimately would think that there was a problem with the deal as it's done.

I don't know that we can ever -- I mean, look, I'm in a situation where I'm a plaintiffs' attorney, and I look at these things from -- I have to be somewhat of a gatekeeper for the shareholders because the SEC can't protect everybody that's out there. So we do our best to look at the deals on a closer level.

We don't come in just to make a buck,

as most people think that the plaintiffs bar does in this situation. In Delaware, we're looking at these things closely, and we're looking at them because there is an important gatekeeping function.

Otherwise, the CEOs keep on ratcheting their pay. Otherwise, the committees don't really meet. Otherwise, you have deals being done on a back room deal. You have insider transactions. You have loans being made.

If we didn't have the protections of the plaintiffs' bar, we wouldn't be able to sit here and litigate in front of Your Honor all the time. If we can't buy global peace at some point where everyone is satisfied on every situation, we're just going to become more litigious. That would be my two cents on the whole thing.

If Your Honor doesn't have anything further, I will step away from the podium and I would request the Court approve this.

THE COURT: Do you want to talk about attorneys' fees?

MR. ANDREWS: I can talk about attorneys' fees if you'd like, Your Honor.

In this case we're asking for

$470,000. I think we presented sufficient evidence of -- the Court -- we can go back to the Court and the precedents and, yes, we've all been sliding downwards. I think that's been the push on the Court's part to push the fees downward.

This was an agreed fee. I think you saw from the hours spent, there was 625 hours roughly spent by all the attorneys in this case. There were four law firms really working in this case on a very short-term basis.

I don't belittle any of the work that we've done. Ultimately, it works out to $848 an hour. It's not that much when you look at historical precedents as far as hourly fees. You're smirking at me and I --

THE COURT: I am not smirking. All I'm simply doing is reflecting upon the fact that I don't get paid anything close to that, but that's my lot in life. That's not your fault.

MR. ANDREWS: Well, I'm sure Your Honor, if Your Honor decides to leave the bench, he is going to make plenty of money at the end of the day when one of these big Delaware defense firms picks him up if that's what you so choose to do at the later

part of your career.

THE COURT: I tell judges all the time if you don't like what you get paid, go back to work. That's not my concern.

MR. ANDREWS: $848 is not outside the range. I was roughly doing the math this morning. Just including the lead plaintiffs' time, the lead plaintiffs' firm time, which was -- the multiplier is 3.24, and that's not considering the other three law firms that were working on this.

That's not a crazy multiplier at the end of the day on this type information. I do believe we got at least three material disclosures that provided sufficient negative information that gets you into that realm of 450,000.

Everyone hates when we mention Sauer Danfoss or Celera or any of the other cases that kind of ballpark the ranges that we have. But I think justification of $470,000 is out there.

It's been mentioned specifically in our brief, and I'm not going to belabor you with that, because I know you know it all too well. I think everyone knows it all too well. And it's whether or not we justified the presence of the award in this

case. The defendants are willing to pay it. If they really thought that this was a pepper corn case, then they would be offering us a pepper corn. I probably would be in here on a disputed fee.

So that is how I will leave it on the attorneys' fees issue unless you have another question for me.

THE COURT: I may have already asked too many questions. Thank you.

MR. ANDREWS: Your Honor, you never ask too many questions. I appreciate your time today. Thank you.

THE COURT: Ordinarily, I ask defense counsel if they have anything to add, and the answer is generally no, but I did raise a topic today that I would assume some of you would want to address, and that is what would your reaction be if I approved a settlement but only with a release that went to the disclosure claims and didn't provide the, for want of a better phrase, global peace.

MR. DREISBACH: Your Honor, Larry Portnoy from Davis Polk representing Roche.

THE COURT: Good afternoon.

MR. PORTNOY: Good afternoon, Your

Honor.

The reaction, quite simply, is that's not what we bargained for. The release and the scope of release is important to us. It's important to the client. We did not and never did think much of the price and process claims here.

Nonetheless, we do want total peace. We do not want to be bothered with additional litigation with respect to this deal, so we bargained. We bargained hard, and we won that broad release.

Without that broad release, it is an entirely different settlement. So it's not something I think, Your Honor, we could agree to the Court doing. It would simply, I think, be a question of not having a settlement, and then both sides would have to think about what they do at that point.

But in terms of simply carving back the release, that is a significant and important issue for the defendants.

THE COURT: I'm not surprised by that answer, but thank you.

Would you want to have an opportunity, because I realize I raised it this afternoon, to submit something in writing as to why I should approve

this with the full release?

MR. PORTNOY: Certainly, Your Honor.

THE COURT: I'm not asking you to do it. I'm just asking if you are interested in the opportunity.

MR. PORTNOY: The fact of the matter is, Your Honor, I'm not sure I have anything to offer on that question that hasn't already been discussed.

On the particular question of a more narrow release versus the one negotiated, I think I do have a clear answer. If the question is, broadly, would defendants like to advocate for approval of the settlement, I think the fact of the matter is we don't have arguments to offer you beyond what you've already heard from the plaintiffs' side.

THE COURT: Again, you weren't anticipating this, so it's an unfair question, but we have a case that, at least as I looked at it from the beginning, did not have -- I hate the phrase "legs," but that's as good as any phrase I've got, and it looked like a case that would end up as a disclosure settlement, which is what happened.

So I view it, even though there were price and process strings, as it was always a

disclosure case, and if it's a disclosure case, why shouldn't the release go to what the case was destined to be, which is disclosure?

I don't want to make this too personal, but I have in private moments said I sell deal insurance, and that's perhaps too cynical, but that's what I'm worried about here. You all have offered to pay a substantial fee, but what do you get out of it? You get peace and quiet, which is a wonderful thing which may well be worth $470,000 to your clients.

MR. PORTNOY: Right. Your Honor, I completely understand the concern. I understand the issue. I think --

THE COURT: I'm sure you understand the issue.

MR. PORTNOY: It reflects, I think, a more structural problem in how to deal with these cases than I have -- it suggests a structural problem that I don't really have a solution to offer the Court.

If the rule of law were to develop that negotiated releases have to, in some way, be parallel or reflect the actual credible strong leggy

claims that are brought, that's a different rule than the one under which we operate.

Under the rules in which we currently operate, defendants want to bargain for the strongest release possible. Plaintiffs clearly here made the judgment that the price and process claims did not have legs after doing discovery. They made that judgment, and we're willing to agree to a release of those claims.

So I do think Your Honor is suggesting a different and perhaps better paradigm, but it's not the paradigm that we lived in and with with this case, and I don't think I have further wisdom on it.

THE COURT: This is something which I have struggled with over many years, and I finally decided this was the one that I wanted to raise the issue in. I apologize to all of you because nobody was anticipating that.

Mr. Dreisbach, do you have something to add?

MR. DREISBACH: If you wouldn't mind, Your Honor.

THE COURT: Absolutely.

MR. DREISBACH: I'm sorry it's us that

you chose to bring this up with.

I guess the difference I see is that all these corporate cases bring typically the three claims; the process, the price and disclosure. We get those all the time. Other types of cases can bring three other claims; conversion, trespass, and I don't operate in that area so I can't think of the third.

But if there's a settlement in the conversion or trespass area and all the facts go towards those types of claims, just because you're only getting relief from one of those claims typically doesn't mean you can't get rid of everything else, particularly when all the claims were looked into.

Here, before the MOU was signed, there was confirmatory discovery looking toward the preliminary injunction hearing. It wasn't that they just kicked the tires after an MOU was signed. They were discovered. They looked into the price. They looked into the process. And they looked into disclosure. We settled on one of those.

I understand that the only release, the only settlement consideration, was disclosure, but the fact that they brought claims that didn't ultimately have enough legs to go forward, to me,

doesn't mean that you have to only limit the release to the one claim that you offered at settlement consideration for.

So I think it's a little bit different to say -- from the situation where they bring three claims, they only focus on one, ignoring the other two, and then try and release all three. Here, they brought three claims. They pursued all three. So that's why I think our release relating to all three would be appropriate.

THE COURT: Thank you.

I want to reflect upon what I ought to do with approval of the settlement, or perhaps more specifically approval of the release because that's really what I have focused on, the scope of the release.

I have approved a lot of settlements where the disclosures were no better or no worse than the disclosures here. But this is more of, as I suggested, more of a structural question that I'm struggling with.

I will gather you by phone to let you know what I figure out I am going to do, and I will also address the attorneys' fees question at that time

because until I figure out whether there's a settlement to approve, I don't think I ought to address the question of attorneys' fees, although I'm not sure the attorneys' fees that I would award pursuant to a settlement versus the attorneys' fees I would award pursuant to a mootness outcome would be different.

I do believe I can take care of one item on the agenda today which was the certification of the class, something I have to go through. I might as well go ahead and get that done.

I also note that notice of today's hearing and of the proposed settlement was duly given in accordance with the Court's scheduling order as evidenced by the affidavit of Miss Thurin. No objection to the settlement has been received from any former InterMune shareholder.

Class certification, of course, is governed by Rule 23. Numerosity is the first requirement. There were roughly 96 million shares of InterMune common stock as of the merger. There were hundreds, probably thousands, of shareholders. Joinder would have been impracticable.

As for commonality, there were common

questions of law and fact. The primary issues involved an alleged breach of fiduciary duty by InterMune's directors. Commonality is satisfied.

As for typicality, the position and interest of the class representatives are consistent with those of the former common stockholders. All suffered the same injury, if there was an injury, and all possessed the same claims, if there were claims.

As for adequacy of representation, there is no suggestion of any conflict between plaintiffs and other potential class members. They chose competent counsel. The adequacy of the representation prong is satisfied.

That leaves Rules 23(b)(1) and (b)(2). These standards are satisfied because of the risk of inconsistent adjudications if the class approach had not been undertaken. The same injunctive or declaratory relief would have been available to and appropriate for all class members.

In short, a class consisting of owners of InterMune common stock between August 22, 2014 and September 29, 2014 inclusive, including successors and heirs and anyone else who might claim through them, is certified on a non-opt-out basis.

Based on what I have said, that, unfortunately perhaps, is all that I can accomplish this afternoon. I will try to get back to you in a timely fashion after I figure out what I want to do about approving a broad general release.

With that, thank you all very much. Safe travels.

Recess court please.

(The Court adjourned at 2:45 p.m.)

CERTIFICATE

I, MAUREEN M. McCAFFERY, Official Court Reporter of the Chancery Court, State of Delaware, do hereby certify that the foregoing pages numbered 3 through 35 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF, I have hereunto set my hand at Dover, this 13th day of July, 2015.

/s/Maureen M. McCaffery

Maureen M. McCaffery
Official Court Reporter
of the Chancery Court
State of Delaware