IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE GARDNER DENVER, INC. SHAREHOLDER LITIGATION	:	Consolidated C.A. No. 8505-VCN

- - -

Chancery Court
38 The Green
Dover, Delaware
Wednesday, September 3, 2014
10:00 a.m.

- - -

BEFORE: HON. JOHN W. NOBLE, Vice Chancellor

- - -

SETTLEMENT HEARING

- - -

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

APPEARANCES:

JOEL FRIEDLANDER, ESQ.
JEFFREY M. GORRIS, ESQ.
Friedlander & Gorris, P.A.
-and-
RANDALL J. BARON, ESQ.
of the California Bar
Robbins Geller Rudman & Dowd LLP
Co-Lead Counsel for Lead Plaintiff and the Class

ARTHUR R. BOOKOUT, ESQ.
Skadden, Arps, Slate, Meagher & Flom LLP
for Gardner Denver, Inc., Diane Schumacher, Michael Larsen, Michael Arnold, Donald Barger, John Craig, Raymond Hipp, David Petratis, Charles Szews and Richard Thompson

LISA A. SCHMIDT, ESQ.
Richards, Layton & Finger, P.A.
-and-
PETER E. KAZANOFF, ESQ.
of the New York Bar
Simpson Thacher & Bartlett LLP
for Kohlberg, Kravis Roberts & Co. L.P., Renaissance Parent Corp., and Renaissance Acquisition Corp.

- - -

THE COURT: Good morning, everyone. Mr. Friedlander.

MR. FRIEDLANDER: Good morning, Your Honor. I'm pleased to be before the Court this morning to present the proposed settlement of this litigation, the Gardner Denver stockholder litigation for $29 million.

We filed the declaration of Carol Sylvester who oversaw the distribution of 28,242 packages to class members, and no objections of any sort have been filed with the Court or served on any counsel.

We have before the Court the standard issues of approval of the settlement, the plaintiff allocation, the class action determination and the fee application.

As far as the approval of the settlement is concerned, just thinking back when we first appeared before the Court, it was May 23rd, 2013 in a contested hearing on class leadership. At that time, I tried to impress on the Court a couple of points. One was that our complaint focused on what made this transaction unique and suspicious in our minds, such as the fact that the recently resigned

former CEO had turned up as a consultant for the winning bidder. And the second point was that our firm and Robbins Geller had a track record of success in obtaining significant monetary relief, which is unusual compared to other firms.

Your Honor granted our leadership application on the basis that our complaint was more thorough and more focused, and from that point forward, we undertook document discovery and took depositions focused on the issues that originally were identified in our complaint.

Relatively quickly, we learned a great deal about the interaction between Barry Pennypacker, the former CEO, KKR and the company and how KKR emerged as the sole final bidder in the sale process that was triggered, in part, by Pennypacker's resignation as CEO and KKR's unsolicited expression of interest in the company.

The pre-closing -- the depositions we took before the closing of the transaction were substantive. They were adversarial. They were videotaped. They were not window dressing for a pre-closing settlement. Our amended complaint summarized what we learned in discovery. Five of the

depositions we took were integral to the amended complaint.

From our perspective, our current pleading summarizes the key evidence which, if necessary, if the case went that far, we would present at trial.

We obtained documentary evidence and videotaped testimony on several issues that we identified in the motion to strike. One was did Barry Pennypacker discuss contractually-protected confidential information with KKR before it put in its bid; whether KKR disclosed to Gardner Denver that Pennypacker had been advising them prior to them making their unsolicited expression of interest as the board was informed to the contrary that Pennypacker was not involved; did KKR have transaction-related discussions with Pennypacker that violated KKR's confidentiality agreement in the fourth quarter of 2012; did Pennypacker possess unique knowledge about the company not known to the other bidders; whether KKR obtained permission to consult with Pennypacker by threatening to drop out of the sale process; was the board fully informed about the process, because there was a tremendous gap in time when there was no

meetings of the board and there was no special committee; and was the interim CEO and then the new CEO, Michael Larsen, motivated by his career prospects and the various steps he took in his management of the process as an officer of the company.

The Court's ruling on our motion to strike was significant. It was, of course, just a procedural motion, but it had a lot of impact on how -- certainly how we looked at the case and we believe on how the defendants looked at the case.

THE COURT: It was one of the most interesting motions that I've ever worked on.

MR. FRIEDLANDER: Well, I don't know if we were going for interesting, but I know --

THE COURT: Your job is not to entertain me; I understand that.

MR. FRIEDLANDER: But it was important, I thought, because the defendants had a certain tactic that they wanted to employ by sort of taking advantage of the fact that we had taken the depositions we had taken and used them to their own advantage.

But by the Court making clear it was not going to reconcile the testimony and not try to

reconcile the facts, we thought that was significant because it undermined the strategy that they wanted to employ and meant that it would be hard for the defendants to prevail on a pretrial motion, whether it's a motion to dismiss or motion for summary judgment.

A lot of the stuff would have to be hashed out at trial, and as I said, we had deposed all of the key players in the transaction, and some of what they said was -- frankly, it was conflicting, conflicted with each other, and, we submit, with the documents.

Shortly after the Court ruled on that motion, Vice Chancellor Laster ruled on In Re Rural Metro which was important because it discussed the legal basis for a claim of aiding and abetting a breach of the duty of care which we thought undermined KKR's motion to dismiss.

So it was only after we had a resolution of both motions in the two cases that we scheduled a mediation in the matter, because until that point, we never wanted to negotiate, from our perspective, under the cloud of negotiating a case -- a settlement at a time when there's a chance a motion

to dismiss could get denied and therefore, the value of the case is diminished.

We personally thought the defendants had virtually no chance on which to dismiss. They could view it differently, but we thought between those two rulings, the settlement negotiations would be unclouded by folks having a real realistic prospect of thinking they could prevail on a motion to dismiss, and that that would really affect the numbers that were being discussed.

Now, of course, the defendants preserved all their arguments. They preserved all their defenses. But we thought that there was a high likelihood of our aiding and abetting case remaining in the case through trial and a high likelihood, whether it was a Revlon claim or due care claim at least against Mr. Larsen and Mr. Schumacher, of surviving as well.

The mediation process was extensive. We hired a top guy. We met -- counsel met with him in New York, and then we had a two-day session in Chicago attended by many, many people. Both sides had financial advisors. It was a lengthy process. Out of that came the $29 million proposed settlement.

According to the study we submitted, it's the largest settlement to date for any deal that was put together in 2012, 2013 or 2014, and it's the seventh largest settlement for any deal over the past several years. Of course, only in a small fraction of transactions is there a monetary settlement of any size whatsoever.

On an interim basis, we obtained waivers of the many don't ask/don't waive standstill agreements that were entered into with the prospective bidders as well as supplemental disclosures.

Now, typically, it's those kind of waivers and standstills and disclosures that would be a sufficient basis to resolve the case. Here, that wasn't settlement consideration at all. Here, the settlement consideration was the $29 million. So I would submit I don't think there's any real question that the settlement consideration is sufficient to support the releases.

As far as the plaintiff allocation is concerned, it's the standard form of -- the distribution would be made to the ultimate holders of the shares who submit claim forms, which I guess a logical connection to the claim is that a higher

consideration would have been paid to those ultimate holders in a merger if the claims succeeded.

THE COURT: What does it work out to; about 40 cents a share?

MR. FRIEDLANDER: I believe it's 59 cents per share on a gross basis.

THE COURT: I'm talking about after -- assuming you get some attorneys' fees out of this.

MR. FRIEDLANDER: Well, let's just start with 59 and then whatever percentage we deduct.

THE COURT: How are you planning to provide notice to the shareholders?

MR. FRIEDLANDER: Well, the notice has already been -- those packages have already gone out.

THE COURT: So they have the proofs of claim in them?

MR. FRIEDLANDER: Yes. Actually, they called them claim packages because that's -- I guess from the perspective of the claims administrators, that's probably the document they're most focused on; is the proof of claims. There's a deadline in there. Actually, I got a call from a stockholder yesterday. I was saying, "Oh, my gosh, why am I getting a claim right before the hearing."

He said, "Is there a claim form? Where is it?" I said it's already there. It's on the website. And I think it's due in October at some point for people to put in their claim forms, October 16th.

THE COURT: I'm always worried about folks who innocently and inadvertently miss deadlines, but I guess the way this is set up, they're just out of luck.

MR. FRIEDLANDER: Well, in a technical sense, in terms of missing a deadline, I think if you get it in late, it probably still gets considered. I think they made it under their discretion to consider it. If you do a Google search, you'll find it. It helps to know the names of the claims administrator. But it's right on the web. You don't have to have it in the mail. You don't have to have kept it. It's pretty easy to find it to submit a form.

It does make it more efficient because then there's no lost -- there's no leakage out of the settlement fund. Everybody who -- the administrator has the luxury of having forms submitted and mailing out to those people, so everyone who's mailed a check will actually cash it. At least that's the idea, as

opposed to sending out some list from a couple years ago and not knowing if a bunch of people have moved or those addresses are no good and avoiding having multiple rounds of -- I can't say we have a huge preference one way or the other, but it's certainly been done numerous times this way.

THE COURT: I worry about it. I will confess I don't have a better solution.

MR. FRIEDLANDER: Of course, it's the same notice process that we always have for people who want to object for any reason for purposes of a step in the litigation.

So I think that there have been 28,000 some odd packages, and I think that people are readily able to get them, fill them out and track them down.

As far as the class action determination, I couldn't think of any unusual issue at all worth mentioning in terms of the elements of Rule 23. It is certainly numerosity, typicality, commonality and conduct by the defendants that's equally applicable to the class as a whole.

Your Honor, should I turn to the fee application? Do you have any questions about the settlement of the class action?

THE COURT: Back to distribution. The concept is there will probably be a second distribution, and when you get below $10,000, you give it to charity? Is that the approach?

MR. FRIEDLANDER: I didn't doublecheck. I would think there should not be a second distribution.

MR. BARON: Your Honor, I don't think there will be. The way this works is to avoid that. I think that there should not be because they are going to make the claims, and I think that if there is some residual checks don't get cashed, there could be a second distribution, but my experience is they don't usually have to get to that.

THE COURT: Because in paragraph 2.8 of the settlement document, "These distributions shall be repeated until the balance remaining of the net settlement fund," and I was a little surprised that since we're essentially going to take the pot of money, divide by the number of shares for which claims were submitted, and send the money out, I wasn't exactly sure where the balance was going to come from unless --

MR. BARON: People who don't cash

checks.

THE COURT: I understand that.

MR. BARON: I think that's the only expectation that the claims administrators are concerned about; is that those checks don't get cashed, and they're stuck with a fund, and what do they do with that at that point.

THE COURT: How are you going to pick the non-profit organization for the balance? There's some thought that these funds ought to be escheated. I'm not going to push that because as far as I'm concerned, as long as this is agreed upon up front, I think it's okay, although there are those who would disagree with me.

MR. BARON: Our anticipation would be that we would -- we haven't picked it yet. If it were to happen, we would pick the fund and we would actually present it to the Court and make sure it was sufficient with the Court.

THE COURT: I'm not looking for more work. I was just curious how you were planning to go about it.

MR. FRIEDLANDER: Sometimes we have that stipulated in advance. This one we don't. But

there shouldn't -- as I mentioned, there really -- it only should be a nominal amount that doesn't get distributed in the first distribution. So it's hard to imagine a need for a second one.

In terms of the fee application, Your Honor, we made it in two components; first, for a 25 percent of the common fund which would be inclusive of expenses which exceeded $100,000, and then a second component from the company not from the fund of $1 million for the standstill waivers and the disclosures.

As far as the common fund is concerned, I think 25 percent is an appropriate number. This is a case in which there was substantial litigation effort. Those are magic words in any of the cases. There were six depositions. There were over 30,000 documents which was over 200,000 pages.

There was intense litigation activity in those couple of months after -- upon getting leadership, and then taking those depositions and going through those documents, and then we filed a brief on a preliminary injunction which got resolved on the basis of rather substantial pre-closing relief in terms of the waiver of the standstills and the

supplemental disclosures.

We then went through everything one more time to file the amended complaint. I think we were accused at one point of just repeating what was in the brief, although at the time we filed our brief, we still had a couple of depositions left to go. So there actually was quite significant re-working and additional facts to put into the complaint, the amended complaint.

We briefed that motion. It was resolved in a manner, we think, on the merits of the case in a very helpful way. 25 percent, we submit, is within a range of reasonableness. It's in the bracket of when there is substantial litigation effort and some motion practice. The hourly rate is on the high side but within the range. I think that's a function of any time there's large common funds, they can yield high implied hourly rates, Southern Peru being the most notable example on that front.

Also, I think when something is litigated in an efficient and effective manner, that also increases the implied dollars per hour. Robbins Geller and our firm have been litigating for several years together. I can assure the Court when we

litigate, we're really litigating as a single law firm. There's no process of coordinating with multiple people and duplicative work and multiple people attending depositions. So it was pretty efficiently done.

There was a serious commitment of resources to pursue novel claims. I think this was a legitimately novel claim. I can't think of a case that was really directly on point to this situation posed by Mr. Pennypacker's interaction with the private equity firm and how that then bore on the board process.

Certainly lots of firms passed on challenging this transaction. This is a multibillion dollar transaction in which the board was advised by Skadden Arps and Goldman Sachs, which I think for a lot of people think that's not necessarily the best kind of case to go after that you're going to find basis for a claim, especially one that can yield monetary relief.

The litigation is the sole cause of the monetary relief, unlike lots of other situations. And I think we lived up to our advertised track record at the outset of getting substantial monetary relief

in the type of case in which it's very rare to do that. As I mentioned, there were no objections to the fee or to the settlement for that matter.

As far as the $1 million for the standstill waivers and the disclosures, that was litigated just two weeks before Your Honor's ruling in LSI Corp. awarding $2.2 million for similar relief. I think the disclosures alone or the standstill waivers alone could justify the amount requested.

There were 14 standstills waived, including favored bidders who had been frustrated by the lack of full due diligence during the process. So they had the ability to reassess the case and whether to bid in light of any recent events of the company or recent events in the economy. At the time the debt markets were wide open. I think it was advertised that KKR got the lowest bond rates of just about any LBO in recent memory in financing a transaction.

The disclosures raised questions about the process. They weren't -- they were disclosures, I think, that should give shareholders pause about the transaction. The fact that it was disclosed that KKR had met with Pennypacker before KKR put in its initial submission, and before it signed the consulting

agreement; that Gardner Denver had initially refused then to allow KKR to talk to Pennypacker about the company, and it was also an acknowledgment that the lack of full due diligence by the bidders, the lack of not getting all the information they had requested and the meetings they requested was the stated reason for the bidders leaving.

So a disclosure, I think, was -- a previously misleading disclosure was corrected to say the company was unaware that that was the primary reason why bidders left. But it certainly was a stated reason why some of the bidders dropped out at the end and only KKR was left as the sole bidder.

So I think those are meaningful disclosures and the standstill was also meaningful. Obviously, the standstill was itself disclosed, the fact that the standstills had been waived.

Does Your Honor have any questions?

THE COURT: I do not.

Do counsel for defendants have anything to add?

MR. BOOKOUT: No, Your Honor.

MS. SCHMIDT: No, Your Honor.

THE COURT: This hearing was scheduled

to address settlement of litigation arising from the acquisition of Gardner Denver by KKR, one of its affiliates. Notice was duly given in accordance with certification of Miss Sylvester. No written opposition was filed, and I note that no one has appeared in the courtroom today in opposition.

I have four tasks; class certification, approval of the proposed settlement, approving a plan for allocation and distribution of the settlement fund and an award of attorneys' fees and expenses.

Litigation surrounding this $3.9 billion acquisition turned on a somewhat unusual set of issues; whether KKR was allowed to employ the services of Gardner Denver's then recently resigned CEO, Mr. Pennypacker, during the competitive bidding process, and how was Gardner Denver's board not aware of Mr. Pennypacker's consulting arrangement with KKR in a timely fashion and what did it do about it. Also, there were a number of don't ask/don't waive standstills that the defendants agreed to eliminate.

The litigation took place in two stages. Before a scheduled preliminary injunction hearing, there was the waiver of the don't ask/don't

waive provisions, and additional disclosures were made.

Next, after closing, the plaintiff pursued a claim for damages for which he was able, after mediation, to obtain $29 million.

I start with class certification. Certification is sought for a class consisting generally of all persons who owned Gardner Denver stock at any point between July 13, 2012 when Mr. Pennypacker's resignation was announced -- and some view that point as the moment that Gardner Denver was put in play -- and July 30, 2013 when the merger was consummated.

Only shareholders as of the merger date will share in the settlement fund. Those shareholders who are defendants, their family members and entities controlled by them and their successors in interest will not be part of the class.

I start with Court of Chancery Rule 23(a) and its requirements of numerosity, commonality, typicality and adequacy of representation. In this case, these four requirements are readily satisfied.

Joinder here is impracticable because

of the number of shareholders in Gardner Denver which was publicly traded on the New York Stock Exchange and had roughly 49 million shares outstanding.

Commonality is satisfied because there is a single question of law or fact or at least a single question. The allegations of breaches of fiduciary duty and the related aiding and abetting claims suffice. Both the plaintiffs' and the class' claims arise out of the same operative facts and share a common legal theory.

Typicality is satisfied because the claims of the class representative are typical of the claims of the class which he seeks to represent and has represented. That the claims arose from the same event and course of conduct that gives rise to the class members' claims satisfies the typicality requirement.

Finally, adequacy of representation is satisfied because the named plaintiffs' interests are consistent with the interests of the class, and there is no conflict, and plaintiffs' attorneys are qualified, experienced and able to pursue litigation of this nature.

Certification also requires

consideration of Court of Chancery Rule 23(b). Both (b)(1) and (b)(2) are satisfied. Without the class structure, there would be the risk of inconsistent adjudication. Also, the defendants are alleged to have engaged in a single course of conduct that affected all members of the class, and any damages that might be recovered are owed to the class generally because of the alleged violation of fiduciary duties. Accordingly, the class, as has been defined, will be certified.

Next I am satisfied that the settlement is fair, reasonable and adequate. That conclusion is based on consideration of a number of factors, including the probable validity of the claims, the difficulties in enforcing the claims, collectability of any judgment, the delay and expense of litigation, the amount of compromise in context with other considerations, and the views of the parties involved.

The plaintiff had challenges that warranted trying to find a settlement. The merger was with a third-party buyer at a 46 percent premium to the unaffected stock price. Gardner Denver's charter contained an exculpatory provision under Section

102(b)(7). Of Gardner Denver's nine-person board, only one director was arguably conflicted.

The director defendants were advised by able advisors. KKR's retention of Mr. Pennypacker created a concern because KKR was apparently threatening to drop out of the process if it could not retain Mr. Pennypacker.

Similarly, putting aside the problems in general with pursuing an aiding and abetting claim, it would have been difficult for the plaintiff to have proved the damages resulted from any conduct of KKR. Complicating all this further was that Gardner Denver's financial projections had been reduced in early 2013. In spite of all this, the plaintiff was able to secure a $29 million cash settlement. That, frankly, is an outstanding result.

In addition, elimination of the don't ask/don't waive standstill provision to allow more than ten potential bidders greater freedom to participate in the process was a benefit for which the plaintiff can properly take credit.

Certain disclosures were secured by plaintiff, including the relationship of KKR and Mr. Pennypacker and various factors related to that

association. Also, there was disclosure that some bidders did not proceed because they had not received all the information which they had sought.

All of this warrants approval of the settlement. The risks of continued litigation do not in any way approach suggesting that further efforts would have been appropriate or productive.

I also note that the settlement was reached after mediation by a skilled and experienced practitioner.

As for the plan of allocation, it will be approved. In essence, the net settlement amount will be distributed to Gardner Denver shareholders of record as of the closing of the merger, and it will be allocated on a per share basis among settlement payment recipients who submit claims.

The net settlement amount will reflect the cost of notifying the class and processing the claims as well as compensating plaintiffs' counsel.

The timing of stock ownership in order to participate in the settlement is appropriate because the harm as such; that is, the failure to maximize consideration, occurred at the time of the merger. Trying to allocate the proceeds among various

shareholders who may have held Gardner Denver stock at different times during the class period would be expensive, cumbersome and most likely an uncertain endeavor. I note that plaintiffs' counsel have approved this allocation methodology.

Finally, we come to the question of attorneys' fees. The defendants have agreed to pay $1 million for the therapeutic benefits, the waiver of the don't ask/don't waive provision and the supplemental disclosures. The plaintiff also seeks a 25 percent award of the $29 million settlement, or $7.25 million.

Awarding fees requires the Court to balance the Sugarland factors, including the benefits achieved, the efforts of counsel and the time spent, the contingent nature of the fee, the difficulty of the litigation and the standing and ability of counsel.

The litigation caused a substantial benefit for the class. It is unusual to see a $29 million recovery. Also, we do award attorneys' fees for the therapeutic benefits. The don't ask/don't waive provisions that were set aside were limiting or restricting some once-interested parties

possibly from pursuing a bid. That no bids were forthcoming after the waiver of the standstills does not demonstrate that elimination of the standstills was not helpful.

The disclosures which were identified earlier should have helped the stockholders to understand the process, and understanding the process should help them to appreciate whether a fair price had been achieved.

Plaintiffs' counsel reviewed some 30,000 documents and took I think it was six depositions. They briefed a preliminary injunction motion. They pursued an interesting motion to strike defendants' brief in support of their motion to dismiss. They filed an amended complaint.

They spent approximately 1800 hours. They incurred approximately $100,000 in expenses. The fee was contingent. The litigation was not easy. Some of it may be fairly characterized as novel. The standing and ability of counsel cannot be questioned.

When the requested fees are combined, the effective hourly rate comes to more than $4400. A 25 percent contingency without trial, or even being close to trial, is yet another reason to pause. In

isolation, maybe I would not have gotten to $1 million for the don't ask waivers result accompanied by some helpful but not critical disclosures. The defendants agreed to the fee after arm's length negotiations at an appropriate time, and that is worthy of consideration.

When I first looked at the case, I concede that I did not expect plaintiff to recover anything along the lines of the cash settlement presented today. Recoveries of this size don't just happen. The lawyers took a case and made something of it. It is the work and the capability of the lawyers to serve the class so well that, in my mind, justifies the large numbers in terms of both the hourly rate and the percentage of the common recovery.

Running hours simply for the sake of running hours is not something we should encourage. Instead, we should look at the benefits achieved. Efficiency is not a bad thing. That there were substantial litigation efforts, the benefits achieved by plaintiffs' counsel in this case cannot be ignored. They have earned the right to be fairly compensated, and their request is consistent with that consideration.

Trying to figure out an appropriate attorneys' fee is certainly not an exact science. I am satisfied, as a result of the exercise of my discretion, that the request by plaintiff is fair and reasonable. Accordingly, inclusive of expenses, I will award plaintiffs' counsel a total of $8.25 million consisting of $1 million for the therapeutic benefit and $7.25 million as its share of the class recovery.

I have the order and final judgment that was submitted, and unless there are changes or concerns about it, I will go ahead and fill in the amount of the attorneys' fees awards and the --

MR. FRIEDLANDER: There's also the date of the scheduling order.

THE COURT: There's a date as well. The date is at the beginning. I'm just going down my list of things, and the date, just because I'm starting from the back, comes second or third or whatever it is.

I have signed the order. I am handing it to the clerk. I thank you all very much. I believe we are done for this morning.

With that, safe travels. Recess Court

please.

MR. FRIEDLANDER: Thank you, Your Honor.

(The Court adjourned at 10:40 a.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 30 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 3rd day of September, 2014.

/s/Maureen M. McCaffery

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