

and Steven E. Schwartz, Civ. No. 19-5820 (D. N.J.) (the “SEC Action”), *In Re Cognizant Technology Solutions Corporation Securities Litigation* Civ. No. 16-6509 (D. N.J.) (the “Class Action”), and *In Re Cognizant Technology Solutions Corporation Derivative Litigation* Civ. No. 17-1248 (D. N.J.) (the “Derivative Action” and, together with the Criminal Action, the SEC Action, and the Class Action, the “Proceedings”), both as to previously submitted invoices that had not been paid by Defendant and invoices to be submitted in the future in connection with the Proceedings;

WHEREAS, on January 3, 2020, the Court held a hearing on Plaintiff’s Motion for Expedited Proceedings and granted the Motion for Expedited Proceedings;

WHEREAS, on January 7, 2020, Defendant filed its Answer and Affirmative Defenses to Plaintiff’s Verified Complaint for Advancement;

WHEREAS, on January 22, 2020, Plaintiff filed a Motion for Summary Judgment seeking an order: (i) compelling payment of the Bohrer firm’s unpaid invoices in connection with the Proceedings for the period from September 2019 through December 2019 (the “Disputed Invoices”); (ii) declaring that Defendant is required to comply with the Indemnification Agreement, without further conditions going forward; and (iii) compelling Defendant to pay Mr. Schwartz’s “fees on fees”;

WHEREAS, Plaintiff's Motion for Summary Judgment was argued on February 19, 2020;

WHEREAS, the Court requested two rounds of supplemental briefing following the hearing;

WHEREAS, on April 7, 2020, the Court granted in part Plaintiff's Motion for Summary Judgment in a bench ruling (the "Summary Judgment Ruling");

WHEREAS, the parties have conferred and agreed to submit the below form of order implementing the Court's Summary Judgment Ruling;

IT IS HEREBY ORDERED this _____ day of April 2020, that:

1. Plaintiff's Motion for Summary Judgment on Count I (Advancement) of Plaintiff's Verified Complaint for Advancement is granted in part and denied in part.

- a. Subject to the reservation of rights identified in subpart 1(c) below, within ten (10) business days of the date of this Order, Cognizant shall advance all fees and expenses reflected on the Disputed Invoices for the Proceedings totaling \$2,892,311.01 less the \$245,195.00, identified in subpart 1(b) below, plus pre-judgement interest in the amount of \$43,100.04 as of April 16, 2020. Post-judgment interests shall run at the statutory rate (\$380.75 per day).

- b. Plaintiff's Motion for Summary Judgment on Count I is denied as to invoiced amounts submitted by Bohrer PLLC for contract attorneys included in the Disputed Invoices. For avoidance of doubt, the invoiced amounts reflected on the Disputed Invoices for contract attorneys total \$245,195 of the Disputed Invoices. Plaintiff's right to advancement of such invoiced amounts shall be determined at trial.
- c. Nothing in this order shall affect Cognizant's right to discovery with respect to the issues for trial.

2. Plaintiff's Motion for Summary Judgment on Count II (Declaratory Judgment) of Plaintiff's Verified Complaint for Advancement is granted in part and denied in part.

- a. All fees and expenses for the Criminal Action and the SEC Action certified by affidavit of Plaintiff's counsel as being reasonable shall be presumed conclusively to be reasonable for purposes of advancement.
- b. Within ten (10) business days of the date of this Order, Cognizant shall advance all fees reflected on the Bohrer firm's January and February invoices for the Criminal Action and the SEC Action pursuant to the terms of the Indemnification

Agreement, including without limitation Section 10 and Section 2(b)(vi)(g) of the Indemnification Agreement, except as set forth in subpart 2(f) below. The Bohrer firm shall submit backup documentation for all expenses consistent with the type of information it provided to Cognizant for the Disputed Invoices, and Cognizant shall advance all expenses reflected on the Bohrer firm's January and February invoices within ten days of receipt of such backup documentation.

- c. Cognizant shall advance all fees and expenses reflected on invoices submitted after the date of this Order to Cognizant for the Criminal Action and the SEC Action pursuant to the terms of the Indemnification Agreement, including without limitation Section 10 and Section 2(b)(vi)(g) of the Indemnification Agreement, except as set forth in subpart 2(f) below. Cognizant shall pay all fees and expenses for the Criminal Action and the SEC Action certified by affidavit of Plaintiff's counsel as being reasonable within thirty (30) calendar days after receipt by Cognizant of: (i) a statement or statements requesting such advances; (ii) a certified affidavit of Plaintiff's counsel as to the reasonableness of the fees, except as provided

in provided in subpart 2(f) below; and (iii) backup for all expenses consistent with the type of information it provided to Cognizant for the Disputed Invoices in advance of the summary judgment hearing. Plaintiff shall not submit and Cognizant will not pay any expenses for which Plaintiff does not provide the backup.

- d. Cognizant shall advance fees and expenses reflected on future invoices and any previously submitted invoices that are not included in the Disputed Invoices for the Class Action and the Derivative Action pursuant to the Bylaws except as set forth in subpart 2(f) below.
- e. Cognizant shall not withhold advancement of any fees or expenses incurred in the Criminal Action or the SEC Action supported by backup documentation submitted after the date of this Order. If Cognizant determines that Plaintiff submitted expenses for payment without backup it shall notify Mr. Schwartz within ten (10) calendar days of receiving the request to advance that expense. Upon receiving such notice, Mr. Schwartz will provide Cognizant with the missing backup within five (5) days, otherwise the expense(s) in question will

be paid the following month (if backup is provided at that time). If Cognizant provides notice of missing backup for any expense(s) after ten (10) days have passed since receiving a request for advancement for such expense(s), it will pay that expense in the current month, but Mr. Schwartz will still be obligated to provide backup.

- f. Plaintiff's Motion for Summary Judgment on Count II is denied as to invoiced amounts by Bohrer PLLC for contract attorneys on future invoices (if any). Plaintiff's right to advancement of such fees and expenses shall be determined at trial.

3. Plaintiff's Motion for Summary Judgment on Count III (Fees-on-Fees) of Plaintiff's Verified Complaint for Advancement is held in abeyance pending the outcome of further proceedings.

4. Further, nothing in this order makes any determination as to whether or not Plaintiff is (i) entitled to indemnification, or (ii) whether or not any of the costs for which advancement has been sought are reasonable.

5. The parties shall meet and confer promptly regarding setting a trial date and a scheduling order governing interim proceedings, which shall include the right to discovery, on the following issues:

- a. whether Plaintiff is entitled to advancement in whole or in part as to (i) the remaining unpaid fees and expenses reflected on the Disputed Invoices for contract attorneys; and (ii) any future invoices reflecting billings for contract attorneys;
- b. the applicability of Cognizant's affirmative defenses of the implied covenant of good faith and fair dealing and unclean hands for fees and expenses relating to contract attorneys; and
- c. whether the fees and expenses incurred by Plaintiff in the Derivative Action must be advanced pursuant to the terms of the Indemnification Agreement or the Bylaws; and
- d. Plaintiff's request for an order awarding his attorneys' fees and expenses incurred in connection with prosecuting this action.

IT IS SO ORDERED.

Chancellor Bouchard

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: Andre G Bouchard

File & Serve

Transaction ID: 65584364

Current Date: Apr 17, 2020

Case Number: 2019-1004-AGB

Case Name: CONF ORDER Steven E. Schwartz v. Cognizant Technology Solutions Corporation

Court Authorizer: Bouchard, Andre G

/s/ Judge Bouchard, Andre G