

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ALSUP, JUDGE

IN RE PINEREST DERIVATIVE LITIGATION) LEAD CASE
_____) NO. 20-cv-08331-WHA

San Francisco, California
Thursday, May 26, 2022

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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Reported By: **BELLE BALL, CSR 8785, CRR, RDR**
Official Reporter, U.S. District Court

Thursday - May 26, 2022

7:29 a.m.

P R O C E E D I N G S

THE COURTROOM DEPUTY: Calling Civil Action 20-8331,
In Re Pinterest Derivative Litigation.

Counsel, please approach the podium and state your
appearances for the record, beginning with counsel for
plaintiffs.

MS. REISER: Good morning, Your Honor. July Reiser on
behalf of the interim lead plaintiff, Employees Retirement
System of Rhode Island. And with me is Louise Renne, liaison
counsel.

THE COURT: Welcome.

MS. RENNE: Good morning, Your Honor.

MR. FELDMAN: Good morning, Your Honor. Boris Feldman
and Doru Gavril for the defendants.

THE COURT: Thank you. Welcome.

All right. Are there any objectors that wish to be heard?
(No response)

THE COURT: Was notice given to the objectors of
today's hearing at 7:30?

MS. REISER: Yes, Your Honor.

THE COURT: It was? You're sure.

MS. REISER: I'm sure that -- may I approach?

THE COURT: Please. If you're fully vaccinated you
can -- when you're speaking, you can take your mask off. It's

1 up to you.

2 **MS. REISER:** Your Honor, my father is in rehab care
3 and I'm going to visit him, so I'm trying to be safe so that I
4 can see him. So if it's okay I would appreciate leaving the
5 mask on.

6 **THE COURT:** That's fine. Just speak more slowly. I
7 can't hear you.

8 **MS. REISER:** I apologize.

9 So when the 7:30 time change happened, we immediately
10 updated our website. We received a number of calls because of
11 the direct mail notice. Dozens -- more than dozens. Maybe
12 closer to a hundred. And there was some confusion about
13 whether there were claim force or if this was a securities
14 case.

15 And in each of those instances, we made sure that people
16 knew that it was a 7:30 a.m. start. Our websites have all been
17 updated.

18 **THE COURT:** Well, I worry, you know, this collusion
19 among you two, you're all in agreement, but the people who
20 might care about this might not even be here. So --

21 **MS. REISER:** Your Honor?

22 **THE COURT:** Yes.

23 **MS. REISER:** One other thing that we have done is that
24 we have told people they are free to object all the way through
25 today. So I don't know, Mr. Feldman, if you were going to make

1 a proposal.

2 But I want to be clear that every single person also has
3 heard there was no -- even though there was a Court-ordered
4 cutoff date, that we are not observing it. And we would
5 recommend that the Court also allow time.

6 **THE COURT:** All I know about right now is one
7 objection. Is that what's the case?

8 **MS. REISER:** That's correct.

9 **THE COURT:** All right. All right. Let's get down to
10 business here.

11 I have an uneasy feeling about the -- I know what you've
12 represented to me. But I have an uneasy feeling that there's
13 no objection by -- on the attorneys' fees. There's not. So, I
14 understand you are telling me you have no, quote, agreement.

15 Mr. Feldman, I'm going to ask you this. Was there ever at
16 any time any communication, whether it was an agreement or not,
17 any communication, direct, indirect, implication, that you
18 would stand mute when it came to attorneys' fees?

19 **MR. FELDMAN:** Not at all.

20 **THE COURT:** Then why haven't you objected? Why
21 haven't you objected to their attorneys' fees request?

22 **MR. FELDMAN:** Because we are in your courtroom,
23 Your Honor. Because I know it was going to be up to you.

24 **THE COURT:** Yeah, but people -- anyone in your
25 position is free to object in a filing, and say the lodestar is

1 too big; no multiplier. I've had that many times. Maybe not
2 you, but other large companies that are represented by firms
3 like yours.

4 Now, if you thought I would not allow, that I misled you
5 somehow.

6 **MR. FELDMAN:** No. I had no doubt that you would allow
7 it. You've been clear in prior orders, and you were clear in
8 this case that you didn't want us negotiating a fee. You
9 didn't want Magistrate Judge Spero to recommend one. We
10 adhered to that, scrupulously.

11 We have no idea what fee the plaintiffs would request,
12 until we saw their filing. We never discussed it. And when
13 the defendants looked at the request, it seemed reasonable to
14 us. We have no obligation to object to it.

15 **THE COURT:** Even the multiplier. Even the multiplier.

16 **MR. FELDMAN:** The fee, as a whole, seemed reasonable
17 to us, Your Honor. And we knew that you would be making the
18 decision. So there was no reason for us gratuitously to weigh
19 in.

20 **THE COURT:** Well, I very much appreciate your respect
21 for my views on attorneys' fees. So, thank you for that.

22 **MR. FELDMAN:** You're welcome, Your Honor.

23 **THE COURT:** What I -- but now, all of the work is
24 placed on me. How am I supposed to do this without some
25 critique from the defense?

1 Here, I have a lodestar that's quite high, plus a request
2 for a multiplier. No depositions were ever taken. Not a
3 single deposition. But -- so I -- I'm left to do it my self.

4 **MR. FELDMAN:** Let me try to --

5 **THE COURT:** That's not fair to the judge. In 35
6 minutes, I have to pick a jury in a murder-for-hire criminal
7 case. And that -- I mean, I've got a lot of other work to do.
8 And now I have to do the work that normally the defense would
9 do, which is to -- even if there's no agreement.

10 That's -- you can still come in and say, wait, the
11 lodestar -- now, possibly your firm charged twice as much.
12 Sometimes that happens. So you're afraid for me find out how
13 much you charged. So that's why this amount seems reasonable
14 to you.

15 All right. I want to be clear. At no time -- you're
16 telling me that at no time was there ever even an implication
17 that you would stand mute.

18 **MR. FELDMAN:** Correct, Your Honor.

19 **THE COURT:** Not an agreement, not an agreement. I
20 know there was no agreement. But, a representation of any
21 type. Is that --

22 **MR. FELDMAN:** Right. Correct, Your Honor.
23 Absolutely.

24 **THE COURT:** I know you very well; I accept your word.
25 And thank you for that.

1 **MR. FELDMAN:** Thank you, Your Honor.

2 **THE COURT:** All right. You can have a seat.

3 **MR. FELDMAN:** Thank you.

4 **THE COURT:** I want to give the plaintiffs -- there's
5 no question this is an important subject. That's not the --
6 that's not the issue. The question is whether or not this --
7 what does this add to the special committee.

8 **MS. REISER:** (Nods head)

9 **THE COURT:** All right. So here is a chart you gave me
10 once before (Indicating). One of my concerns is -- this is
11 true in almost all the derivative actions. They never want --
12 I mean it used to be that, a derivative action, there was real
13 money on the table, that defendants would pony up real money.
14 And I could see that. But now there's no money changing hands
15 here. This is all cosmetic. Maybe. That's what concerns me.

16 And they say they will allocate in the future \$50 million,
17 over ten years. We have no way of knowing whether that's going
18 to happen now. It's just -- it's easy to say.

19 I'm afraid that you'll get your fees, and walk out the
20 door, and leave the problem behind. And we will never know
21 whether your case did any -- really conferred any benefit.

22 So why don't you just stay in the case for the next ten
23 years, monitor the company. And every year we'll have a little
24 report come to me, and then I'll say: Okay I'm going to give
25 you X dollars in attorneys' fees for the work, because at that

1 point I can see there's been a benefit.

2 **MS. REISER:** (Nods head)

3 **THE COURT:** All right. Now I'm going to give you a
4 chance to react to -- that's my main concern.

5 **MS. REISER:** I understand, Your Honor.

6 **THE COURT:** And it would have to be a benefit beyond
7 what the special committee had already conferred on the
8 company.

9 **MS. REISER:** Let me start with what we think the
10 special committee conferred. I recognize there's time
11 constraints. And I also talk fast. But what I --

12 **THE COURT:** Please, go ahead.

13 **MS. REISER:** -- think the special committee conferred
14 was to say: We have a problem; we need to have a more
15 respectful environment. They asked for coaching to be done.
16 And they focused very, very carefully on the investigation
17 process, and hiring more individuals to do the investigations.

18 We were very cautious to make sure what we did was
19 additive. It's why we put the chart toge- -- well, you asked
20 for the chart, Your Honor.

21 But, we put this together to show that we were putting a
22 funding commitment behind it; that the board had to be
23 accountable at all levels. So the talent development
24 compensation committee has to oversee the training. The audit
25 committee has to recognize this as a material risk, and perform

1 the job of making sure that each piece of this settlement
2 actually is implemented.

3 And that's a very important thing when you're saying that
4 the board of directors breached their fiduciary duty, or you're
5 charging them with that, to --

6 **THE COURT:** But that's not you, that's the audit
7 committee.

8 **MS. REISER:** Of the board of directors -- meaning --

9 **THE COURT:** Yeah, right. So what if they don't do
10 their job? What if they laugh it off, and say ha, ha, we got
11 rid of that case, ha, ha, we just...

12 And how do we know they're going to do this over the next
13 ten years?

14 **MS. REISER:** I hope I'm not going to sound
15 Pollyanna-ish when I say this. But I generally believe that it
16 is in Pinterest's interest to recruit talent, to retain talent,
17 to increase its user base.

18 **THE COURT:** Yes, yes. Of course. That's true. But
19 they -- well, they weren't doing it before. So maybe they'll
20 go back to their old ways.

21 **MS. REISER:** I think -- so, one of the things
22 Your Honor asked for and we proposed was a two-year monitoring,
23 which would have the effect for us, candidly, of having a
24 feedback loop. We have set up these types of structures. They
25 aren't as good as the one we're proposing to Your Honor, but we

1 set up with Alphabet, with L Brands. And it's very hard to
2 know if it's working. Or what is working, and what isn't
3 working. Judge --

4 **THE COURT:** Why are we fooling around with this? If
5 you can't tell that it's done any good, why are you proposing
6 it?

7 **MS. REISER:** Well, that's why we're proposing a
8 two-year monitoring -- settlement counsel monitoring period.

9 **THE COURT:** How about ten years? I mean, you say this
10 50 million is over ten years.

11 **MS. REISER:** It is.

12 **THE COURT:** So, so two years is only 20 percent of the
13 period.

14 **MS. REISER:** My recollection is the settlement term is
15 up to ten years. Meaning if Pinterest spends the 50 million in
16 five years, then the 50 million is spent.

17 **THE COURT:** That's a good point.

18 **MS. REISER:** But other terms of the settlement are
19 five years. So we have proposed a two-year term because the
20 idea was that Pinterest directors would be engaged in this, and
21 self-sufficient, and we would make sure that that was happening
22 and progress was being made.

23 It could be extended for another three, if that is
24 Your Honor's thinking on it. But I genuinely believe that the
25 settlement, itself, the features that we have in place -- so

1 things like having pay scales become transparent to people,
2 they know the job families. Things like telling people who are
3 applying what the interview process will look like. And having
4 a feedback loop for them to make sure that the slate is
5 diverse. Those are things that we think will attract talent.
6 And we think that, reputationally, Pinterest will benefit from
7 having these systems in place.

8 The benefit of having council of civil rights groups who
9 can talk about how on are the internet people with special
10 categories are being affected, or how agreements aren't
11 capturing representation I believe is a huge benefit to
12 Pinterest. And these are systems that we have set up that are
13 conferring this benefit.

14 **THE COURT:** So let's look two years out for a moment.
15 Give me some specific metrics that, in two years, you can come
16 back here and say: Okay Judge, remember that day, I told you
17 that we have would have 43 women on the board of directors.
18 Or, you know, whatever the right -- you know, officers. And
19 I'm here to tell you that we've got 47.

20 And I would say: That's tremendous; you get an extra
21 bonus.

22 Well, what if you come in and say: Oh, Judge, we told you
23 43, and we didn't get any.

24 Then I might say to you: You get zero for bonus.

25 **MS. REISER:** Understood.

1 **THE COURT:** So give me the metrics that we can look at
2 two years from now, to -- to measure whether we have done any
3 good here.

4 **MS. REISER:** I understand. One of this things I would
5 look for are the pulse survey responses, and the ombud's
6 response.

7 **THE COURT:** Say it again?

8 **MS. REISER:** The pulse survey. So where you're
9 polling people, and you're breaking it out by protected
10 category.

11 **THE COURT:** Uh-huh.

12 **MS. REISER:** Do they feel included? Do they feel
13 heard? Do they feel like they have equal job opportunities?
14 Are those percentages increasing, year over year? That's
15 important.

16 We would want to make sure that the pay equity results are
17 going in the right direction. If there's any discrepancy, we
18 want to see that the company corrected them.

19 We would want to see -- this is counter-intuitive, but we
20 would want to see more complaints to HR, because it means
21 people aren't afraid of being retaliated against.

22 And it's counter-intuitive because it suggests there's a
23 problem, when in fact, what it suggests --

24 **THE COURT:** Sounds like you're making lemonade out of
25 a lemon.

1 **MS. REISER:** No, I think --

2 **THE COURT:** I mean, if they're complaining -- all
3 right.

4 **MS. REISER:** You understand. The fear of retaliation
5 was very significant. It was throughout our complaint that
6 people felt gaslighted, they felt like they couldn't speak up.

7 And so when we have consulted with experts, what they say
8 is if you see an uptick in complaints and they're handled
9 through the investigation process well, that means the
10 processes that you've set up are working.

11 I don't think anyone thinks we are going to eradicate all
12 of the feelings of being discriminated against or not being
13 able to succeed in the workplace for Pinterest in one year or
14 two years. I think we're going to create systems and a respect
15 for inclusion in the workforce. And also, we're trying to
16 create a business reason for Pinterest to embrace it, overall.

17 So for me, another thing I would look for, the inclusive
18 product program. Do they have a new project on the horizon?
19 What is it? How inclusive is it? Where did they get the ideas
20 from? Was it from --

21 **THE COURT:** Use that as an example.

22 **MS. REISER:** Yes.

23 **THE COURT:** Give me a hypothetical of how and what you
24 mean by "product."

25 **MS. REISER:** Sure. Product is skin tone hairstyles.

1 Hairstyles, probably the easiest, right?

2 So normally, algorithms would go and trend towards white
3 straight people when you're searching on -- when you're
4 searching on Pinterest for hairstyles for prom. Hairstyles for
5 weddings. Hairstyles for -- name your event.

6 What they have to do is go through and rework the
7 algorithm in order to have representation, so that it would
8 reflect hairstyles for Eid, hairstyles for Gay Pride Day. That
9 sort of thing, that will enable representation, so that all
10 people of all types, interests, are going on Pinterest and
11 seeing something that looks like them. Something they can
12 relate to.

13 And so, it clearly has a business imperative for them.
14 They get more users, they get more revenue, more ad revenue.
15 But it also gives user, internet users, the feeling that when
16 they go to Pinterest it's there for them, too. Not just a
17 typical white straight heterosexual user.

18 **THE COURT:** Let me ask a different question. Does
19 this release -- I'm concerned that one of the typical things --
20 maybe not Mr. Feldman, but -- defense do in derivative cases is
21 wipe out future derivative actions with a broad release.

22 **MS. REISER:** This release is not broad. It will allow
23 us to release -- I think -- was there a 220 action pending in
24 Delaware? Or is that stayed?

25 **THE COURT:** I'd like to know how prejudicial the

1 release is.

2 **MS. REISER:** It's limited to the allegations arising
3 from Ms. Brougher, Ozoma, and Shimizu Banks's claims, as well
4 as other things that led to the employee walkout in August of
5 2020. It is not a forever blanket: You are released from any
6 sort of employment discrimination claim. It doesn't get to
7 securities fraud; it doesn't get to consumer. It is straight
8 that: This releases the allegations set forth in our
9 complaint. And other derivative -- they've probably got
10 demands on the board that would be released as well.

11 I think Your Honor had a note in the preliminary approval
12 order that it was not too broad, at the time that the Court
13 reviewed it.

14 **THE COURT:** Okay. In a derivative action, on
15 attorneys fees, is there a decision by the Court of Appeals
16 that says you can get a multiplier?

17 **MS. REISER:** I think the *Vizcaino* decision in the
18 Ninth Circuit sets forth a 1-to-4 range for reasonable
19 attorneys' fees. Some of the categories are the riskiness of
20 the litigation, the contingent nature of the litigation.
21 Benefit conferred is a really big deal.

22 **THE COURT:** But this is a derivative case.

23 **MS. REISER:** Correct.

24 **THE COURT:** What's the name of it, again?

25 **MS. REISER:** *Vizcaino* -- oh, I'm sorry, I'm not sure

1 -- *Vizcaino* is just talking about plaintiff multipliers. The
2 case we were using for derivative litigation in particular was
3 the *Sugarland* case, which is a Delaware-based case, but it's
4 one that was cited, I believe, in the *Wells Fargo* derivative
5 decision. Trying to think of other -- it also might have been
6 in the *Alphabet* Canadian pharmacy decision.

7 We tend to all rely on benefit conferred as the best way
8 of assessing what the attorneys' fees should be, with a
9 lodestar cross-check. And here, because my client deferred to
10 what New York state and New York City required of plaintiffs'
11 counsels in the lowest fee ever paid to plaintiffs' lawyers for
12 these types of what I'll call "me-too shareholder" cases, we
13 went to the lowest possible number. And she put a cap on it,
14 and said: I don't want you asking for more than a 2
15 multiplier.

16 And that fee, because I represented --

17 **THE COURT:** But oftentimes I never give -- I shouldn't
18 say never; I have given multipliers. But I'm not thinking --
19 not in derivative cases, but in other kinds of cases.

20 In doing your lodestar -- here -- it seems like a lot of
21 money on your lodestar. You took no depositions. I think you
22 interviewed 17 people. The special committee interviewed 350.
23 And you had quite a number of timekeepers on this case.

24 **MS. REISER:** So I would say --

25 **THE COURT:** Was there a reduction for inefficiency?

1 **MS. REISER:** We did everything, Your Honor -- I don't
2 know if you remember, but early on in one of our status
3 meetings, Your Honor asked us not to ever staff anything with
4 more attorneys than Mr. Feldman had. We held to that. So our
5 working group was just my firm and Ms. Renne.

6 **THE COURT:** But how many timekeeper -- didn't you have
7 a lot of lawyers, like 17 or 18 lawyers on this case?

8 **MS. REISER:** There were, from my firm -- gosh -- there
9 are lawyers on this case, for sure. There are lawyers. But
10 when you talk about the core of the work that was performed,
11 that was myself, Laura Posner, and Molly Bowen who's an
12 associate at my firm and Louise Renne, and what we did was we
13 negotiated every aspect. We spent our time there. We
14 negotiated.

15 So this is not about the invest- -- the investigation took
16 time, for sure. But what I would say is we did depose
17 WilmerHale. It wasn't a formal transcript, but we went
18 through, question by question: What did you find? Why did you
19 find it? Was this an issue? Why didn't you look to see if
20 there were business goals that Pinterest should also be
21 adopting?

22 We wanted to make sure that the reforms that we were
23 proposing were additive, but were also designed to create a
24 long-term corporate culture that Pinterest could be proud of.
25 And then we showed Your Honor -- I went through all of these

1 studies, including Vice-Chancellor Strine published, saying
2 that there should be a premium placed on companies that have
3 the governance, and companies that don't have these corporate
4 traumas. And investors will pay more. Blackrock. State
5 Street. All are making human capital management -- which is a
6 fancy way of saying "HR" -- stronger. People want to see
7 everybody be able to succeed in the workplace.

8 So, Pinterest has embraced that. And they haven't just
9 embraced it; they've agreed to put \$50 million behind it.

10 Pinterest is a company --

11 **THE COURT:** Well, again --

12 **MS. REISER:** Yes.

13 **THE COURT:** It's not appropriated. It's like the
14 difference between -- you know, when Congress appropriates the
15 money, that's one thing. But when they -- they have a budget,
16 that's -- it's not funded yet. So remember --

17 **MS. REISER:** Actually, what --

18 **THE COURT:** That's what they say they'll do, but they
19 haven't done it yet. Forgive me for being so suspicious. But
20 a lot of this is in the future. We're yet to know. Let me
21 jump, because time is short. I want to hear from the other
22 side for a minute.

23 My main concern -- and I want to see if you have all can
24 help me reach a way to do this. My main concern is -- first,
25 you never answered my question. Did you reduce for any

1 inefficiency in your lodestar?

2 **MS. REISER:** We can took out timekeepers who billed
3 less than ten hours. We took out timekeepers where we felt the
4 billing was too unspecified to be able to claim it. And every
5 firm did that, across the board. So, yes. We did go through
6 and check for those things.

7 **THE COURT:** All right. So let's say -- you know,
8 let's -- if I do adjust it, it would be a small amount in terms
9 of lodestar.

10 But let's say I award the lodestar now, and I award the
11 multiplier later. But I don't know what the multiplier should
12 be.

13 **MS. REISER:** (Nods head)

14 **THE COURT:** This is where Mr. Feldman comes in. I
15 would like to have -- to come back in one year, two years,
16 three for me, all the way up to five, and monitor the progress
17 to see how much true benefit there has been. And let's say
18 there's a lot of benefit. Then you get a bigger multiplier.
19 But we don't know what it is yet. Let's say it turns out
20 there's not much of a benefit. Then maybe you get a multiplier
21 anyway. But it would still be -- it would be less. And, it
22 gives the benefit of we -- we -- we find out if this is really
23 working.

24 I noticed in the settlement, which I did read, there's
25 quite a number of reports that are supposed to be given to the

1 board, to the audit committee, to -- well, a couple times they
2 don't say who it's -- doesn't say. It just says that you will
3 publish. I guess that means in the newspapers? I'm not sure
4 where it gets published.

5 But the -- and then there's an I&D team, and there's quite
6 a number of reports. It would be good for me to see those
7 reports.

8 So I'm asking Mr. Feldman. Do you see the problem that
9 I'm trying to wrestle with? I'd like to be able to see if
10 there's a true corporate benefit conferred. And we won't know
11 that for a while. I believe there is going to be some
12 corporate benefit. But how much is very much up in the air.
13 And the multiplier turns on that.

14 So what do you say to coming back every year, and having a
15 status conference on how much good is coming out of this
16 agreement?

17 **MR. FELDMAN:** Thank you, Your Honor. I understand.

18 Everyone's perspective is shaped by prior experience.
19 Such as, for example, corporations that don't carry through on
20 their commitments.

21 Here, there is a built-in structural safeguard against the
22 board ignoring the commitments here, which is that a future
23 shareholder could bring a future derivative suit.

24 So on your question about a release, the settlement
25 agreement does not release violations of the settlement

1 agreement. So, to take your specific example, let's say that
2 at the end of Year 3, Year 2, Year 1, there's a requirement for
3 a particular report to be published. Either in an SEC filing,
4 or on the company's website. If the company were not to comply
5 with that, then any shareholder could file an action for
6 violation of the settlement agreement. So it's not the case
7 that if Your Honor approves the agreement, the company can do
8 whatever it wants.

9 I can tell you, from having worked with the board, that
10 it's a very responsible board. But there's no reason you
11 should take my word for it. Because what you will be approving
12 in the judgment will enable any shareholder to come forward.

13 This case is different from a lot of derivative suits that
14 Your Honor may have seen where somebody who owns ten shares,
15 they're really responding to the lawyers. We have
16 institutional pension funds here, the Rhode Island Public
17 Employees Pension Fund, that have been very active.

18 And I hope the Court doesn't have doubt. If we don't
19 spend the money, Rhode Island will be back here with a new
20 derivative -- or the New York City --

21 **THE COURT:** I don't want a new derivative suit.
22 You're not answering my question. I'd like for us to come back
23 on an annual basis, in this case, to see how much good is being
24 and how much compliance there is.

25 **MR. FELDMAN:** Yes. I think that would be

1 inappropriate, Your Honor. This is not a situation where --

2 **THE COURT:** Wait, it would be appropriate?

3 **MR. FELDMAN:** Would be inappropriate.

4 **THE COURT:** Inappropriate.

5 **MR. FELDMAN:** Not appropriate.

6 **THE COURT:** Why is that?

7 **MR. FELDMAN:** Because you shouldn't retain ten years
8 of jurisdiction over a consensual settlement between private
9 parties with no -- no one died here. No towns were burnt down.
10 This is a settlement where institutional shareholders have
11 approved. There are remedies if it's not violated.

12 But, Your Honor and the Court, respectfully, should not be
13 our corporate overseer for the next ten years.

14 **THE COURT:** Well, I don't want to be. But I have to
15 decide how much benefit has been conferred here. And a lot of
16 it is on the come.

17 **MR. FELDMAN:** But in derivative suits, benefit -- this
18 is not an ongoing retainer for plaintiffs' counsel. Courts,
19 every day, Federal Courts, Delaware courts, make a decision,
20 based on the evidence before them: How much benefit has this
21 conferred. I don't know of a single case in which the fee was
22 made contingent on future events.

23 So I understand that you have to make a judgment about the
24 value of the settlement, although, you are not unaided. There
25 were lead-plaintiff institution shareholders who have made that

1 judgment which, respectfully, the Court could defer to if it
2 chose to.

3 **THE COURT:** I could. Yes, I could do the easy way
4 out, and rubber-stamp what you have presented.

5 **MR. FELDMAN:** No --

6 **THE COURT:** And that's what most judges would do.
7 Because we've got a lot -- like I said, in 15 minutes I'm going
8 to start picking a jury for a murder-for-hire case, and I've
9 got a lot to do. And the easy thing to do would be to
10 rubber-stamp this.

11 But I have been around too long. I practiced almost 25
12 years, and now I've been in this job more than 20 years. And
13 I've seen too many derivative cases, and I know the abuse.
14 Cosmetic settlement, with a big request for attorneys' fees.

15 Now, this is a little bit different here. Okay. But it's
16 still all in the future. Corporate reforms. Promise down the
17 road. Will it happen? God knows. I don't. I would like to
18 find out, for once, whether anything good comes out of this or
19 not.

20 If I have to decide it on -- it's going to affect -- if I
21 decide right now, it will affect the attorneys' fees. Because
22 too much of this is duplicative of the special committee. And
23 too much of this is yet to be determined. I would like to see
24 it determined. And I would -- in a way, I would be your
25 corporate overseer. Yes. I would be there, asking you

1 questions: How come up only got 43 on the board, instead of
2 41, like you promised?

3 I've got to move on. I'm not going to decide now. I'm
4 going to -- I may reject your deal, and say -- I don't know.
5 Because I don't see the way in which I can determine if it is
6 doing much good.

7 Of course, you two say it's going to do a lot of good,
8 because you want the deal. But I have seen too many derivative
9 actions that are cosmetic, and I'm not sure yet. I'm not
10 saying no to this. But I'm not saying yes to it yet, either.

11 I would like for you two to confer. I think it would be
12 in both of your interests to agree on a schedule -- maybe not
13 ten years -- but some schedule where I can take a look at it
14 every -- at the end of each year, to see how much good is
15 coming out of this. Mainly to see how much fee -- bonus -- you
16 would get.

17 **MS. REISER:** Your Honor?

18 **THE COURT:** You should look at this. Yes.

19 **MS. REISER:** May -- I just personally and
20 professionally want the Court to know that I come up from a
21 Title VII civil rights class action background. I know
22 Ms. Renne does too. I appreciate the Court's skepticism. But
23 it is -- it's difficult to hear it, candidly, where we worked
24 so hard to come up with new things that -- I mean, there's
25 three dozen things on that chart that were not recommended by

1 the special committee. None of it went to board
2 accountability. And this is a board derivative suit, saying
3 the board needs to own this. The board needs to manage it.

4 **THE COURT:** All right. If you were asking for a lower
5 fee, I would say: Okay, good.

6 **MS. REISER:** I understand.

7 **THE COURT:** But you are asking for a large fee. And I
8 feel some responsibility, even though Mr. Feldman is not
9 objecting to your fee.

10 **MS. REISER:** (Nods head)

11 **THE COURT:** I feel some responsibility to say that's a
12 lot of the money. That's a lot of money. And some of the
13 shareholders are going to bear that. Even if Mr. Feldman
14 doesn't care, I care. And I want to make -- but if there is a
15 substantial benefit, it's worth it.

16 **MS. REISER:** I understand. It just --

17 **THE COURT:** If it's only of a small benefit in the
18 long run, then I'm going feel like I was a fool, later.

19 **MS. REISER:** I understand.

20 **THE COURT:** If it turns out that this doesn't solve
21 the problem, and I hear that later down the road there are
22 still problems. And then I'll come and say, what happened to
23 Ms. Reiser?

24 Oh, she's off on her next case now. She's not around;
25 she's not monitoring this anymore.

1 So I would like to make sure some good comes of this. And
2 I think it's to your advantage and to Mr. Feldman's advantage
3 for you to meet and confer, and give me a proposal.

4 Now, if your proposal for monitoring, if you can't reach
5 one, then I'm going to decide based on this record. And I'll
6 give you a few days to see if you can consider what I have
7 requested. But --

8 **MR. FELDMAN:** May I have one sentence, Your Honor? I
9 know you have a lot going on.

10 **THE COURT:** Yeah. Go ahead.

11 **MR. FELDMAN:** You can sever the two decisions. The
12 reforms occur when the settlement becomes final. The Court
13 could approve the settlement so that the company begins
14 implementing it, and reserve judgment on the fee. It's not
15 either/or.

16 **THE COURT:** Well, I understand I could do that. But
17 in order for me to have the authority, under your agreement, to
18 come back on an annual basis, or even for me to get those
19 reports that I -- there's several reports mentioned, on an
20 annual basis. And then determine the fee later. Yeah.

21 But I would not want to have -- Mr. Feldman's an excellent
22 lawyer. Here's what he'll argue: Oh, Judge, you don't have
23 the authority to change one word in our agreement.

24 **MR. FELDMAN:** Have I said that, Your Honor?

25 **THE COURT:** No, you haven't yet, but that's what you

1 would say. If I were to say I'll approve this on the
2 contingent that I get those reports and we come back every year
3 and have a little conference about how much good this is doing,
4 you would say: Judge, you don't have the authority to change
5 our agreements, either yes or no, on the agreement.

6 **MR. FELDMAN:** I've never in my career told a judge she
7 didn't have the authority to do anything, Your Honor.

8 **THE COURT:** Well, not yet, but --

9 **MR. FELDMAN:** I'm not going to start today,
10 Your Honor.

11 **THE COURT:** Well, then I'm asking you to modify this
12 in a very slight way so that we -- it doesn't have to be ten
13 years. It could be four years. Four years would be enough for
14 me to see how this is working out. I'll be dead in five years,
15 anyway.

16 I know, I'm perfectly healthy, but I mean, I'm not going
17 to live forever. So, you won't need to have me along, around,
18 very long, but I would like too see that good is coming of
19 this.

20 Okay. Can you -- can you agree to that?

21 **MR. FELDMAN:** I have a client I have to talk to,
22 Your Honor. And I'll confer with counsel.

23 **THE COURT:** I don't think it's going to turn out to be
24 pain and suffering for your client. It might be -- there might
25 be some questions. And they can answer the questions.

1 But it will -- and I don't believe it will be an expensive
2 proposition for them. But it will be a public thing. Where
3 the public gets to see this reform. It would be educational to
4 know which of these reforms worked.

5 **MS. REISER:** Of course. Of course, it would.

6 **THE COURT:** So I think, to me, it's a good idea.

7 Okay. I'm -- with that cav- -- that's my caveat.

8 I'm not sure -- I want to be clear, Ms. Reiser. I'm not
9 sure about the -- I am sure that you deserve the lodestar, if
10 this deal is approved. How much of a multiplier turns on
11 factors that we've been discussing here.

12 So please, let me -- I've got to move on now, to get ready
13 for the criminal case. This is the best I can do right now.

14 **MR. FELDMAN:** Thank you.

15 **THE COURT:** How much time do you need to let me know?
16 Would a week be enough?

17 **MS. REISER:** Plenty, Your Honor. Thank you.

18 **THE COURT:** All right. I look forward to a letter or
19 something from you.

20 **MS. REISER:** Thank you, Your Honor.

21 **THE COURT:** All right.

22 Ms. Renne, I didn't hear much from you today. You know
23 how much I admire you. Thank you for being here, and helping
24 in this case.

25 **MS. RENNE:** Thank you, Your Honor.

THE COURT: All right.

MR. FELDMAN: Thank you.

THE COURT: Okay. We're in recess.

(Proceedings concluded)

CERTIFICATE OF REPORTER

I, BELLE BALL, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

A handwritten signature in black ink that reads "Belle Ball". The script is cursive and fluid.

/s/ Belle Ball

Belle Ball, CSR 8785, CRR, RDR

Saturday, May 28, 2022