

EXHIBIT 8

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

IN RE GALENA BIOPHARMA, INC.) 3:14-CV-00382-SI
SECURITIES LITIGATION)
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) (Settlement Hearing)

TRANSCRIPT OF PROCEEDINGS

April 21, 2016

BEFORE THE HONORABLE MICHAEL H. SIMON
UNITED STATES DISTRICT COURT JUDGE

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1 (April 21, 2016)

2 P R O C E E D I N G S

3 (Open court:)

4 THE CLERK: Your Honor, this is the time set for a
5 settlement hearing in civil case 14-382-SI, In Re Galena
6 Biopharma, Inc., derivative litigation. For the record, we
7 have William Federman by phone.

8 Can I have counsel in court please identify
9 yourselves for the record.

10 MR. SLATER: Good morning, Your Honor. Christopher
11 Slater, local counsel for plaintiffs.

12 THE COURT: Good morning.

13 MS. CALDER: Good morning, Your Honor.
14 Cynthia Calder, Grant & Eisenhofer, for plaintiffs.

15 MR. HYNES: Good morning, Your Honor. Michael Hynes
16 on behalf of plaintiffs.

17 THE COURT: Good morning.

18 MR. STECKER: Good morning, Your Honor.
19 Brett Stecker from The Weiser Law Firm on behalf of plaintiffs.

20 THE COURT: Good morning.

21 MR. BESSETTE: Good morning, Your Honor. Paul
22 Bessette of King Spalding for Defendant Galena.

23 THE COURT: Good morning.

24 MS. ROSENBAUM: Good morning, Your Honor. Lois
25 Rosenbaum for Defendant Galena.

1 MR. ALDISERT: Good morning, Your Honor. Rob
2 Aldisert for the individual defendants other than Mr. Ahn.

3 THE COURT: Good morning.

4 MS. TRANETZKI: Good morning, Your Honor. Kristen
5 Tranetzki for Defendant Ahn.

6 THE COURT: One second. Mr. Federman, who do you
7 represent?

8 MR. FEDERMAN: William B. Federman with Federman
9 Sherwood on behalf of plaintiffs as well.

10 THE COURT: Which particular plaintiffs?

11 MR. FEDERMAN: For Rathore, R-A-T-H-O-R-E. I am
12 working with The Weiser Law Firm.

13 THE COURT: So you represent Mr. Rathore. Did you
14 also say Klein, Mr. Federman?

15 MR. FEDERMAN: I'm sorry, Your Honor. It is very,
16 very faint on this line. I have my volume turned up as loud as
17 I can.

18 THE COURT: I am about to suggest that we --
19 Mr. Stecker, are you affiliated with Mr. Federman?

20 MR. STECKER: No. I'm with The Weiser Law Firm. We
21 are counsel for lead plaintiff Klein.

22 THE COURT: So you have Mr. Klein. Who does
23 Mr. Federman represent? Is it Mr. Rathore? Anyone else?

24 MR. STECKER: No, only Plaintiff Rathore.

25 THE COURT: Only Plaintiff Rathore. Who is here on

1 behalf of Plaintiffs Fuhs and Spradling? Anyone?

2 MS. CALDER: Cynthia Calder.

3 THE COURT: Okay. Very good. Thank you.

4 Mr. Federman, we're having trouble hearing you as
5 well. So if it continues, I may ask to have you excused from
6 this telephone call. Right now, I think the static may have
7 died down, so we will proceed.

8 I think, Mr. Auby, we were with you.

9 MR. AUBY: Yes. Good morning. Scott Auby with
10 Debevoise & Plimpton, on behalf of Defendant Ahn.

11 THE COURT: Welcome. I apologize.

12 MR. FEDERMAN: Your Honor, The Weiser Law Firm will
13 be speaking on behalf of my case as well. I was just calling
14 to monitor and be available in case you had any questions for
15 me.

16 THE COURT: All right. As of right now, it looks
17 like our phone system may be under control.

18 Do we have any class counsel here from the securities
19 litigation?

20 MR. DAHLSTROM: Patrick Dahlstrom from Pomerantz on
21 behalf of class plaintiffs.

22 THE COURT: Welcome.

23 MR. RATLIFF: Jeff Ratliff, local counsel.

24 THE COURT: Welcome.

25 MR. HORNE: Good morning, Your Honor. Jonathan Horne

1 from The Rosen Law Firm.

2 THE COURT: Welcome. Thank you.

3 Mr. Federman, will you please mute your phone if it
4 is not already muted. That may help.

5 MR. FEDERMAN: Okay. I will mute it right now, Your
6 Honor.

7 THE COURT: All right. I have reviewed, I think,
8 everything that has been submitted here. I do have some
9 questions. If there are any preliminary comments that you all
10 would like to make, I would be delighted to hear them. We will
11 start with counsel in the derivative case.

12 For the plaintiffs.

13 MR. STECKER: Thank you, Your Honor. This morning we
14 are very pleased to present this settlement for final approval.
15 In preparing the papers for the Court and in preparing for this
16 hearing, we had the benefit of looking back in time to the
17 start of this case all the way up to where we are now. One
18 thing that occurred to me is that the very first thing that
19 happened in this case, when it was filed here in Oregon, the
20 defense lawyers basically told us that we should withdraw this
21 case based on the company's forum selection clause; that if we
22 didn't withdraw, they would seek sanctions against us. That's
23 kind of where we started.

24 THE COURT: I remember.

25 MR. STECKER: Now we are here with what I would

1 submit is an outstanding derivative settlement. It is the rare
2 derivative settlement that includes both substantial financial
3 relief and substantial corporate governance relief. Here, we
4 were able to accomplish that because -- despite the fact that
5 the defendants tried to throw up roadblock after roadblock from
6 the start of the case, we were able to first defeat that motion
7 based on forum selection clause and then defeat a motion to
8 stay based on the company's special litigation committee and
9 then a motion to dismiss and a motion that sought to stay this
10 case indefinitely in favor of the federal securities class
11 action and the Delaware litigation, which is now coordinated
12 with this litigation.

13 So through these hard-fought victories we established
14 the right to prosecute these claims on behalf of Galena, and
15 that's the context in which defendants communicated to us that
16 they were interested in exploring a resolution of this case.

17 To be candid, Your Honor, when the defendants first
18 reached out to us about resolving this case, at that time we
19 were not interested. Only when it became clear to us that the
20 company was in such a state that it might not be able to
21 survive protracted litigation, both in this case and in the
22 securities class action, at that point it became clear to us
23 that we should engage in good-faith efforts to try to resolve
24 these claims, but we were in an interesting position where we
25 had to balance certain interests. We had very strong claims,

1 or at least we believed we had very strong claims, and we were
2 not willing to settle those claims on terms that were not
3 extremely favorable to the company.

4 At the same time we recognize that resolving these
5 cases -- both this case and the securities class action -- was
6 critical for Galena's future moving forward. To that end a
7 very experienced mediator, Layn Phillips, was brought in to
8 oversee the global mediation of this action and the securities
9 class action. What I would say, Your Honor, is that the
10 negotiations, at least on our side, on the derivative side,
11 were every bit as contentious and hard fought as the litigation
12 was on our side, and we negotiated every bit as aggressively as
13 we litigated.

14 Through that, we were able to secure \$16.3 million of
15 financial relief for the company as well as a series of robust
16 corporate governance reforms that are directly tied to the
17 allegations that were made in this case and which are designed
18 to prevent the type of events that gave rise to this case from
19 happening again at Galena, and, we submit, leave Galena as a
20 better governed company moving forward, which will provide
21 substantial value to Galena for years to come.

22 So in striking that balance between trying to get
23 outstanding relief for strong claims and at the same time
24 resolving this case quickly so that the company could survive
25 and hopefully thrive, there were a number of issues that came

1 to the forefront, one of which was that there were disputes
2 regarding insurance coverage. There were disputes with the
3 carriers. Again, with the assistance of an experienced
4 mediator, we were able to eventually succeed.

5 Basically we believe that this case is a shining
6 example of what motivated stockholders and their counsel are
7 capable of doing on behalf of companies. I don't just litigate
8 for a living. I also speak to our clients and consult with
9 them about their options as stockholders.

10 One of the things that I will typically tell a
11 stockholder, with respect to a derivative case, is that the
12 company that they hold stock in usually faces some other
13 exposure. There could be a securities class action. There
14 could be a government investigation or a government
15 prosecution, or both of those things.

16 What I tell those stockholders is that it is
17 important to bring derivative claims to protect the company's
18 interest, because the company is exposed through these other
19 litigation matters. This is a case where, through very
20 aggressive, hard-fought litigation victories and very
21 aggressive negotiations, we were able to protect the company's
22 interest in a way that we are very proud of.

23 Thank you, Your Honor

24 THE COURT: Thank you, Mr. Stecker.

25 Any preliminary comments? I will start with Galena,

1 the corporation, either from Mr. Bessette or Ms. Rosenbaum.
2 Anything preliminary you wish to say?

3 MR. BESSETTE: Just briefly, Your Honor. I just want
4 to echo counsel's comments, to the extent this was a
5 hard-fought litigation, a hard-fought litigation, and the
6 resolution of both the derivative and class actions are
7 certainly in the best interest of the corporation.

8 THE COURT: Thank you.

9 Anything for any of the individual defendants at all?

10 Mr. Aldisert.

11 MR. ALDISERT: I have nothing to add on behalf of the
12 individual defendants, unless you have any questions,
13 Your Honor.

14 THE COURT: I do have a few questions later, but we
15 will get to those when we get to those.

16 MR. AUBY: Nothing to add for Mr. Ahn.

17 THE COURT: I know I'm going to want to hear later
18 from the class counsel in the securities case, but we will wait
19 for that, unless somebody feels the need to make a preliminary
20 comment.

21 MR. DAHLSTROM: We will hold off, Your Honor.

22 THE COURT: Very good.

23 I have three questions really. The first relates to
24 the provision in the amended stipulation and agreement of
25 settlement relating to incentive awards. I see that there are

1 incentive awards of \$5,000 apiece that have been requested for,
2 I believe it is Plaintiffs Klein and Rathore.

3 Could someone very briefly tell me what they did to
4 earn those incentive awards of \$5,000 each.

5 MR. STECKER: Your Honor, we submit that plaintiffs
6 in derivative cases who step forward to bring these claims on
7 behalf of the company, without whose participation we could not
8 have obtained these benefits, should receive nominal incentive
9 awards as a matter of public policy really to encourage
10 shareholders to step forward.

11 Your Honor, in my opening remarks, I just discussed
12 how I do speak with shareholders about their options and the
13 benefits of bringing derivative claims and stepping forward to
14 bring claims on behalf of the company, not even on behalf of
15 themselves. We think it is critical as a matter of public
16 policy to offer nominal incentive awards, or at least apply for
17 those awards in cases like this, especially in a case that
18 produces an uncommonly good result of both financial relief for
19 the corporation and corporate governance relief.

20 THE COURT: I have no problem with that. That makes
21 perfect sense. Then what is confusing to me is why
22 Plaintiffs Fuhs and Spradling did not apply for similar
23 incentive awards? Can someone explain that to me?

24 MR. STECKER: Your Honor, I cannot.

25 THE COURT: Well, then you can sit down.

1 All right. Ms. Calder.

2 MS. CALDER: Yes, Your Honor. They did not primarily
3 because a great deal of what was achieved in the combined
4 litigation occurred before they joined the combined litigation.
5 They felt they would give deference to the other plaintiffs.

6 THE COURT: All right. I accept that explanation.
7 That answers that.

8 The next question that I have relates to my reading
9 of the settlement agreement -- what is released and what is not
10 released. My understanding of how derivative actions generally
11 work, in my review we just grabbed -- it turned out we found
12 like 17 federal court derivative settlements just in a
13 relatively easy search, things relatively recent, but we just
14 wanted to grab some of those cases. I compared this settlement
15 to that settlement.

16 Let me share with you my confusion and then invite
17 you to explain.

18 Mary, will you pass this out to all counsel and one
19 is for Dennis.

20 Mr. Federman, we are having too much feedback on this
21 telephone system. You can order a copy of the transcript, but
22 we are going to have to terminate this connection.

23 MR. FEDERMAN: Okay. I understand, Your Honor. I
24 will leave it with The Weiser Law Firm.

25 THE COURT: Very good. I apologize.

1 MR. FEDERMAN: Thank you.

2 THE COURT: All right. Let me take you through what
3 I've passed out and what my question is and what my concerns
4 are. I looked at the amended stipulation and agreement of
5 settlement. Section IV, as you know, contains the terms of the
6 stipulation and agreement of settlement. 1 contains
7 definitions, as you know. 4 contains release. I highlighted
8 in this paper that I passed out some of the key definitions.
9 It defines "defendants" to include both the individual
10 defendants and the nominal Galena defendant.

11 "Defendants release persons" means each defendant,
12 which, of course, include Galena, the corporation.

13 "Plaintiffs" mean only the four individuals -- Klein,
14 Rathore, Spradling, and Fuhs.

15 "Plaintiffs released claims" contain their
16 definition.

17 Then "released parties" means all of the defendants'
18 released persons and the plaintiffs' released persons.

19 I didn't include on this page the definition of
20 "defendants' released persons," but you all know what that is.

21 I then take a look at the actual substantive releases
22 itself in IV. 4.1 states, and I'll paraphrase, "Plaintiffs'
23 released persons release defendants' released persons." So
24 basically we have Klein, Rathore, Spradling, and Fuhs on behalf
25 of themselves and others derivatively release the defendants.

1 "Defendants' released persons release the plaintiffs' released
2 persons." But nowhere in this release does nominal defendant
3 Galena Corporation, namely Galena, release any other individual
4 defendant, which I suppose that's your business. You can put
5 whatever you want in the settlement agreement.

6 However, the proposed final order that you want me to
7 sign states that Galena shall be deemed to have released the
8 individual defendants. That's in your proposed final order.
9 That's Exhibit E to Docket 108-1. That's paragraph 7, and I'll
10 paraphrase. That's down at the bottom of this page. "Upon
11 effective date, Galena and current stockholders shall be deemed
12 to have released all of the released parties," and that
13 includes the individual defendants.

14 I thought that I was used to seeing in these types of
15 cases where an order releases other individual defendants by
16 the corporation itself, then the stipulation or the settlement
17 agreement expressly contains a statement in the settlement
18 agreement that the corporation, the nominal defendant, releases
19 basically all released parties.

20 Just to double-check to see if that was a unique
21 experience on my part, I asked my law clerk to investigate it.
22 If you turn to the other side of the page, there were no cases
23 to the contrary. Here are about 17 cases that we found. We
24 limited ourselves to federal court, so we are dealing with
25 23.1. You will see the jurisdictions, the case numbers.

1 Working backwards really from the right to the left,
2 wherever there was an order where the judge signs that the
3 company has released or will be deemed to release the other
4 defendants, there also contains an exactly parallel provision
5 in the stipulation or in the settlement agreement -- that's the
6 second column from the right -- that says that the corporation
7 releases all of its claims related to this action against all
8 of the other individual defendants, every single one of them.
9 We could not find any of case to the contrary.

10 So why is this case different? By the way, that's an
11 appropriate question to ask right before Passover, but that's
12 okay.

13 Why is this case different?

14 MR. STECKER: Your Honor, this case is not different.
15 What I would say is that this was perhaps an oversight on the
16 part of the parties. Clearly it was the intent of all of the
17 parties that Galena would be releasing claims against the
18 individual defendants. What I would note --

19 THE COURT: You know what, we can shortcut everything
20 if I just now ask and get confirmation from Galena on the
21 record, and that's going to be good enough for me.

22 Does Galena release all of the claims that are
23 related to the underlying action in the derivative case that it
24 could have asserted against any of the individual defendants?

25 MR. BESSETTE: Yes, Your Honor, and that was always

1 the intent.

2 THE COURT: That's good enough for me, and that could
3 have been the response to the order that I requested that I
4 sent. I'm satisfied with that. I will now, based upon that
5 stipulation -- just belt and suspenders -- I take it,
6 Mr. Bessette, you have authority from your client to make that
7 statement?

8 MR. BESSETTE: I believe I do. My client is here.
9 General counsel is here.

10 MR. KNAPP: Good morning, Your Honor.

11 THE COURT: Good morning. Your name, please.

12 MR. KNAPP: Thomas Knapp on behalf of Galena.

13 THE COURT: On behalf of Galena, do you agree with
14 what Mr. Bessette just said? Galena releases its claims
15 against the individual defendants?

16 MR. KNAPP: Yes, I do, Your Honor.

17 THE COURT: I'm satisfied. I will enter the order in
18 that fashion.

19 Okay. The third issue that I have for you all
20 relates to the question of fees. As I understand, the benefits
21 that have been brought into this settlement, there is a cash
22 settlement of \$15 million that comes from the D&O carrier.
23 There is the forfeitures by Mr. Ahn that -- I thought when I
24 read the settlement agreement it said 1.38 million. People are
25 talking about 1.3. I don't think it really matters to me.

1 Which is it? Is it valued at 1.38 or 1.3?

2 MR. STECKER: I believe they are collectively valued
3 at 1.3 approximately.

4 THE COURT: That's close enough for what my purposes
5 are right now.

6 Then I know that the same D&O carrier separately
7 agreed to pay \$5 million toward the attorney's fees of the
8 plaintiffs in the derivative case; am I correct?

9 MR. STECKER: That's correct, Your Honor -- I'm
10 sorry, Your Honor. It is not the same D&O carrier that is
11 paying the fee.

12 THE COURT: Okay. But \$5 million is coming in from a
13 D&O carrier?

14 MR. STECKER: That is correct, Your Honor.

15 THE COURT: For plaintiffs' fees?

16 MR. STECKER: Yes.

17 THE COURT: And that brings under the derivative case
18 a collective of benefit that has been monetized -- I will talk
19 about the non-monetized benefits in a few minutes -- of
20 \$21.3 million. I know there is some non-monetized benefits:
21 The forfeiture of stock options by Hillsberg, Kreigsman, Nisi,
22 Galliker, Chin, and Ashton. They are forfeiting stock options.
23 I know that there is some corporate governance measures that
24 have been agreed to. There is the cancellation of the Lidingo
25 options, but those were not monetized for me.

1 So I look at the monetized benefit, and I see
2 \$21.3 million, maybe \$21.38 million, and the plaintiffs are
3 seeking \$5 million of that. But now I also take a look at the
4 proposed settlement in the securities case.

5 Mary, will you pass these out to everyone.

6 So the top half of this page just recites what I've
7 described, approximately \$21.3 million, maybe 21.38 million
8 benefits that comes in on the derivative action. Then I also,
9 in looking at the securities case, and I know I have a proposed
10 settlement there. I have given preliminary approval. I
11 scheduled a fairness hearing in the securities case for
12 June 23rd, 2016 at 3:30 in the afternoon.

13 When I look at that settlement, I see they represent
14 the gross settlement fund. By the way, that's in case 14-367.
15 The stipulation of settlement can be found in that case at
16 Docket 167. Section 2 describes the gross settlement fund. As
17 you know, and I'm confident everybody on both cases know all of
18 these details, there is cash coming in of \$16.7 million,
19 additional cash coming in of \$2.3 million, the company is
20 contributing freely tradeable shares of \$1.0 million, for a
21 total benefit there of \$20 million.

22 Now, it would be an error to assume that that means
23 there is a \$41 million benefit coming in here, because
24 \$15 million are on both sides of this ledger. So the real
25 benefits to Galena and its shareholders is \$26.3 million, maybe

1 \$26.38 million, depending upon that \$80,000. But \$26.3 million
2 is what's going on to really the monetized benefit of the
3 Galena shareholders.

4 By the way, I agree with Mr. Stecker. That is a very
5 admirable result for these shareholders. I commend you all. I
6 think that's a very good result. I also think it is fair, and
7 I'm planning on approving that general concept. You are not
8 going to have a problem with me on that.

9 But then I look at the attorney's fees being sought.
10 I see in the derivative case there is \$5 million being sought.
11 I see in the securities case there is one-third of \$20 million
12 being sought. I take it I'm correct in that calculation?

13 MR. DAHLSTROM: Your Honor, it is up to one-third,
14 but the benchmark in the Ninth Circuit is 25 percent. I doubt
15 we're going above 25 percent. In fact, I can tell you today,
16 when we file, which I think it's due in about three or four
17 weeks, it is only going to be the benchmark.

18 THE COURT: That means if you ask for 25 percent of
19 20 million, that's \$5 million.

20 MR. DAHLSTROM: That's correct.

21 THE COURT: So we have \$5 million sought by the
22 derivative plaintiffs. \$5 million sought by the securities
23 plaintiffs. That's a total of \$10 million to achieve
24 \$26.3 million worth of benefits to the shareholders. As you
25 know, 10 divided by 26.3 is 38 percent.

1 I forgot your name, sir. I'm sorry.

2 MR. DAHLSTROM: Patrick Dahlstrom.

3 THE COURT: As Mr. Dahlstrom just said, and I'm sure
4 you all know this, the benchmark in the Ninth Circuit is
5 25 percent. Now, a benchmark is a benchmark. I could consider
6 perhaps going up above 25 percent for the right reasons, but
7 I'm not going to go to 38 percent, and I certainly wasn't going
8 to go to 44 percent.

9 So my question for all of you, and I guess we will
10 start with plaintiffs' counsel in the derivative case. I don't
11 know whether defendants' counsel wants to weigh in on this or
12 remain silent. I will leave that to you. I will hear from
13 Mr. Dahlstrom or anyone else on behalf of plaintiffs in the
14 securities case.

15 What are we going to do about this problem? Because
16 I'm not going to give 44 percent. I doubt I'm even going to
17 give a 38 percent collective attorney's fees award, when there
18 is a \$26.3 million monetization of benefits to these
19 shareholders. If I were to give \$5 million today, that
20 wouldn't leave very much for the securities folks.

21 So what's the right way to handle it? I have got
22 some thoughts, but I would first like to hear counsel's
23 position, starting with plaintiffs' counsel in the derivative
24 case.

25 MR. STECKER: Thank you, Your Honor. The first thing

1 I would like to say with respect to the fee, this is a fee
2 award for the derivative plaintiffs, which is not strictly
3 based on the financial relief that the derivative plaintiffs
4 recovered. This fee is based on substantial benefits to the
5 company both now and moving forward based on the governance
6 relief.

7 Your Honor, we respectfully submitted authority for
8 fees larger than the fees than the derivative plaintiffs here
9 are applying for in cases where there was only corporate
10 governance obtained in the settlement, and there was no
11 financial component. Your Honor, we respectfully submit that
12 the \$5 million fee award for derivative plaintiffs' counsel
13 would be fair and reasonable even absent the financial
14 component of the derivative settlement.

15 Beyond that, I would also suggest that this is a fee
16 award that was recommended by a highly experienced securities
17 mediator in Judge Phillips. It is something that all of the
18 parties accepted. It is even something that the board of
19 directors of Galena approved expressly in an exercise of its
20 independent business judgment.

21 Respectfully, Your Honor, we think that the Court
22 should respect the board's business judgment and should not
23 disturb it, absent evidence of bad faith or unfair dealing or
24 something that would cause a rebuttal of the presumption
25 attached to business judgments by an independent board of

1 directors.

2 I would also submit that it is very important here
3 that the fee in the derivative case is separate and apart from
4 the money that is being paid to the company in the derivative
5 case. There is \$15 million from two insurers that is being
6 paid to the company. There is \$5 million from yet another
7 insurer that is proposed to be paid to the derivative
8 plaintiffs' counsel as the fee.

9 THE COURT: In theory, could some of that \$5 million
10 have been available to be paid to the company ultimately to go
11 to the escrow account on the securities case had plaintiffs
12 sought less than \$5 million in the mediation?

13 MR. STECKER: Your Honor, I cannot divulge
14 information that was exchanged confidentially.

15 THE COURT: That's why I'm asking "in theory."
16 Anything that would legally preclude that?

17 MR. STECKER: No. But in this instance, this is
18 money that if the Court does not approve the fee in full, that
19 money is not going to go to shareholders; that money is not
20 going to go back to the company. It is going to go back to the
21 insurer.

22 THE COURT: I understand how you structured it. I
23 just wanted to know if there was a legal impediment.

24 MR. STECKER: Not that I'm aware of.

25 THE COURT: I'm sorry. I interrupted you.

1 MR. STECKER: I would also submit, to my knowledge,
2 there is no reported case that measures a derivative.
3 Counsel's fee based on the collective benefits of a derivative
4 case and a securities case.

5 Under the Ninth Circuit, there are enumerated factors
6 for evaluating a fee as being fair and reasonable under a
7 derivative case, and we respectfully submit those factors
8 strongly approve final fee approval here, even absent the
9 Board's business judgment and even absent the mediator's
10 proposal, which, again, was accepted by all of the parties.

11 I'm happy to run through those factors with you if
12 the Court would deem it to be helpful.

13 THE COURT: I have read everything you've submitted.

14 MR. STECKER: Fair enough. Then the final thing I
15 would submit is that our lodestar cross-check here is fair. We
16 collectively invested \$3.3 million in time and another \$150,000
17 worth of expenses. So this \$5 million fee for derivative
18 plaintiffs' counsel, Your Honor, respectfully, it is a lot of
19 money. It is no windfall. There were a lot of firms involved
20 here. There was a lot of work was done on this case. We
21 respectfully submit the fee is fair and reasonable, and it
22 should be approved in full. Again, any reduction to the fee
23 here does not benefit the company and does not benefit the
24 class.

25 Thank you, Your Honor.

1 THE COURT: Thank you.

2 Does defendant want to be heard on any of this?

3 MR. BESSETTE: I do, Your Honor. I think it is
4 important for the company to make a couple of points. One, the
5 Board, through the exercise of its business judgment, including
6 the independent director, looked at the entirety of this
7 shareholder litigation -- both the class and the derivative --
8 and approved the \$5 million fee. It is important because that
9 money was part of the D&O policy for one of the insurers, and
10 it would be potentially at play with the SEC still being out
11 there. So that's point one.

12 Point two, and it is not in the papers, and I can't
13 really go into too much detail because of the
14 mediation/confidentiality, but I can point out for the Court
15 that this global settlement, the interconnected settlement of
16 the class and derivative, was vitally important to the company.
17 Without the agreement for this \$15 million pass-through
18 structure, we wouldn't have been able to break any logjam with
19 the carriers. We wouldn't have been able to settle either of
20 the cases. Because of that logjam, it was required that both
21 cases be settled. Even, on top of that, certain insurance
22 policies are being released between the company and the
23 insurers, so the company is giving up some insurance because of
24 the very hard-fought coverage exclusions that these carriers
25 had.

1 This is a long way of saying one of the tangible real
2 benefits to the company that the derivative plaintiffs
3 brought -- besides the money -- is the agreement to a
4 pass-through structure, as to the class plaintiffs, without
5 which we wouldn't be able to be here in front of you without
6 the final approval settlement hearing.

7 THE COURT: I do appreciate that. I do appreciate
8 that. I'm not quite sure what I'm going to do about it, but I
9 understand it. And I appreciate it.

10 Do you know of any situation -- I think you've got
11 more class action and derivative experience than I do -- do you
12 know of any situation where there has been a total benefit
13 package to a company facing both securities litigation and
14 derivative litigation where the combined attorney's fees have
15 been in the range of 38 to 44 percent?

16 MR. BESSETTE: I can't say that I have, Your Honor,
17 because primarily I haven't looked at it that way.

18 THE COURT: We've looked and couldn't find it.

19 MR. BESSETTE: Frankly, I have only done of the
20 dozens and dozens of settlements over these years very few of
21 these pass-through types because they present issues that the
22 Court is now dealing with. I can only tell you that without
23 that structure in this case we would not be here.

24 THE COURT: I appreciate that the total benefits
25 package is good for the shareholders. It is good for the

1 corporation. It is good for the defendants. I get it. I'm
2 just trying to figure out what I'm going to do about attorney's
3 fees, because, frankly, and I'll announce it in a few minutes,
4 that's really the only problem I have now.

5 We solved the Galena release problem. We have taken
6 care of that. I now understand why only two out of the four
7 plaintiffs will be seeking incentive awards. I have no other
8 questions about the basic fairness of this agreement. I note
9 that we have had no objections. We will see whether we get any
10 objections on the securities case. It looks like a very
11 good/very fair set of benefits to the shareholders, to the
12 company, and to the individual defendants. We will find a way
13 to make this work.

14 Now, if the securities class counsel wish to address
15 any of these issues, you are certainly welcome to.

16 Step forward, Mr. Dahlstrom.

17 MR. DAHLSTROM: Thank you, Your Honor, for allowing
18 us to be heard on this matter. I think there are a couple of
19 issues.

20 THE COURT: Mary, do we have a microphone on up
21 there?

22 Speak up a little bit.

23 MR. DAHLSTROM: I just think we need to preface a few
24 things here, Your Honor.

25 With respect to the way these cases were settled,

1 there was no joint mediation. There was no idea that we all
2 sat down in a room and started negotiating these cases. As a
3 matter of principle and as a rule, when we settle cases, we do
4 not sit down with derivative counsel. We ask defendants, we
5 ask the mediator not to even have them present, but we can't
6 dictate to the defendants if they want to have someone off in
7 another room and mediate simultaneously, which happens -- that
8 happens.

9 THE COURT: I know that happens.

10 MR. DAHLSTROM: And that's what happened here. We
11 did not, when we mediated this case, ever consider a
12 pass-through. We said we don't want a pass-through. We don't
13 agree with pass-throughs. This is one of the reasons why.

14 We never mediated the case with a sense that there's
15 15 here, then there is money here, and there's money over
16 there. That's not how this mediation occurred.

17 We mediated the case to settle on behalf of the class
18 on the claims of the class. I can tell you we created the fund
19 that the class received. We were aware of these problems. You
20 can see from our stipulation of settlement why we had the
21 company and the settling defendants stipulate and
22 acknowledge -- more than just acknowledge -- that our case was
23 settled prior to the derivative case; that the way this whole
24 thing progressed and the numbers in this case were settled, and
25 we agreed at our number before there ever was any issue with

1 the derivative case.

2 It is also a fact that this idea of having the class
3 case dependent on the settlement to the derivative and vice
4 versa was a major, major sticking point to us. I'm sure
5 Mr. Bessette understands this. I believe it was the last issue
6 that we probably agreed to, because, again, we could foresee
7 this kind of issue coming up.

8 We have put in an enormous lodestar into our case.
9 We are actually in the process of negotiating with the
10 remaining defendants and litigating against them. We are
11 putting in more work. We believe that whatever settlement that
12 we achieve is a result of our work both in litigating this case
13 and in mediating the case. Quite frankly, I have seen cases in
14 the past where courts have combined the fees from both cases
15 based on what was recovered.

16 THE COURT: I have too.

17 MR. DAHLSTROM: They are old cases. They are old
18 cases. I can quote you some cases from judges that say some
19 negative things about derivative cases that follow on to
20 security cases.

21 THE COURT: Well, I'm not planning on doing that.

22 MR. DAHLSTROM: And I'm not going that way either.
23 I'm saying, though, it occurs where courts have done it. I was
24 involved in a case that was prior to the benchmark being
25 established such as it is in the Ninth Circuit, and it was a

1 greater percentage.

2 Here, though, Your Honor, we're very sensitive to
3 this issue; otherwise, we would not file an amicus. We would
4 not intervene in someone else's case. Whatever the value and
5 the benefits of this case is not for us to opine on. I wasn't
6 in the mediation. I wasn't litigating the case.

7 I do know, though, that for our case, we created a
8 fund of \$16.7 million from the D&O carriers plus the additional
9 money in cash from the company, and we believed that we should
10 have a right to that full 25 percent if the Court approves it.
11 We should have the right to at least ask for that much, with
12 the Court understanding that we did the work to achieve that.

13 THE COURT: Thank you very much, Mr. Dahlstrom.

14 Mr. Bessette.

15 MR. BESSETTE: Your Honor, I just want to clarify,
16 and the settlement papers are very specific on this for a
17 reason. I was involved with all the discussions in both rooms
18 and multiple phone calls later. The class plaintiffs
19 certainly -- the \$20 million both from insurance money and the
20 company's contribution, cash and stock, was driven by the class
21 plaintiffs' work, the risks, and the valuation of that case.
22 There's no question.

23 But when counsel says they created the fund, they did
24 not create the fund. They created the amount -- the 20. The
25 company didn't have that until it negotiated with the carriers,

1 with the derivative plaintiffs, came up with a pass-through.
2 We told the class plaintiffs we needed to do this; otherwise,
3 we wouldn't have global peace. They didn't like it, but they
4 agreed to it.

5 So they didn't create the fund because we didn't have
6 the money, but the amount, the 20 million, was certainly their
7 number. That was a hard-fought negotiation with Judge Phillips
8 and with the class plaintiffs. But once that 20 was arrived
9 at, there was more work to be done to fund -- to actually get
10 that -- and I wanted to clarify that.

11 THE COURT: I understand. I have a question for you.
12 I don't know why, but right now I'm just drawing a blank on
13 this. It is a simple question, and I'm confident in the
14 answer. I would rather ask you than go look it up later.

15 In a pure securities class action against a company
16 and its directors and officers where the company has D&O
17 insurance, isn't that D&O insurance oftentimes or sometimes
18 available to fund a class settlement?

19 MR. BESSETTE: Yes.

20 THE COURT: Then I wasn't that far off. Thank you.

21 MR. BESSETTE: A point on that, Your Honor. There
22 was a question I believe you asked of derivative plaintiffs'
23 counsel about, well, if you had asked for lesser, would that
24 have allowed more money? I can say, because I know, that is
25 not the case, because the carriers had their own coverage

1 issues. We were negotiating as hard with them as with the
2 derivative plaintiffs and the class plaintiffs. This was a
3 touch-and-go throughout.

4 THE COURT: I understand how that works as well.

5 Okay. Responsive comments from plaintiffs' counsel
6 in the derivative case?

7 MR. STECKER: Thank you, Your Honor.

8 I would like to talk about the timeline of the
9 settlements here, because, frankly, the briefing by the
10 securities plaintiffs doesn't make a whole lot of sense to us.

11 We negotiated in good faith at all times. We were
12 invited to participate in a global mediation, which took place
13 on September 19, 2015. We began our settlement negotiations
14 prior to that, but we participated in that mediation.

15 The securities plaintiffs were not privy to our
16 negotiations with the defendants and our discussions with the
17 mediator, and we were not privy to theirs. We negotiated,
18 again, in good faith at that mediation. We negotiated in good
19 faith following that mediation for weeks.

20 The stipulation of settlement in the class action
21 provides that they receive a confidential mediator's proposal
22 on November 6th, 2015, which the parties to the class action
23 accepted. The same thing happened in the derivative action,
24 Your Honor. It is not before the Court presently. If I may, I
25 would like approach and provide an e-mail --

1 THE COURT: Of course.

2 MR. STECKER: -- to the Court, which demonstrates
3 that the confidential mediator's proposals were made on the
4 same day. That is the confidential mediator's proposal that
5 the parties to the derivative action also accepted. The
6 company's current report on Form 8-K filed on December 4, 2015,
7 which, again, I would like to approach the Court, if I may.

8 The company's current report on form 8-K states, "On
9 December 3, 2015, the company agreed in principle to resolve
10 and settle the consolidated shareholder derivative action." It
11 also says, "On December 3, 2015, the company agreed in
12 principle to resolve and settle the securities disputed class
13 action lawsuit."

14 Your Honor, as far as we know, the company's current
15 report on Form 8-K is accurate. Both cases were resolved at
16 the same time. This notion that the securities case was
17 settled first is, frankly, news to us. We were never told that
18 in negotiations. It is inconsistent with the company's own
19 public filings. It is inconsistent with the settlement
20 documents in our case.

21 Frankly, the notion that the derivative plaintiffs
22 played no role in securing the \$15 million payment for the
23 company that's the consideration in our case is preposterous.
24 This is not a simple follow-on derivative case where the case
25 was stayed pending developments in the securities class action.

1 This case was only stayed after we first defeated a motion to
2 dismiss pending the subsequent ruling on the motion to dismiss
3 in the securities class action. We litigated this case
4 incredibly aggressively, and we placed an enormous amount of
5 pressure on the defendants to this case that led to this
6 settlement and this benefit.

7 Frankly, we are offended that the securities
8 plaintiffs would cast doubt on the benefits that we created or
9 the timeline that was created.

10 THE COURT: Whether or not you are offended -- first
11 of all, if I offended you, I apologize. I didn't mean to.

12 MR. STECKER: No, Your Honor.

13 THE COURT: If you are offended by something else
14 that somebody else said, that's not relevant to me.

15 All right. Anything else?

16 MR. STECKER: Yes. The final point I would like to
17 make is that the financial benefit to the company is the
18 financial benefit no matter what it is subsequently used for.

19 THE COURT: I agree. I think there is \$26.3 million
20 in monetized financial benefit that is very, very valuable and
21 does warrant millions of dollars in attorney's fees.

22 MR. STECKER: Thank you, Your Honor.

23 THE COURT: Does anybody else have any comments on
24 this issue?

25 Mr. Dahlstrom.

1 MR. DAHLSTROM: Your Honor, I will keep it brief.
2 One thing is we don't go into the details of the mediation
3 because we signed a waiver that we won't do that. This e-mail,
4 we are not listed on, so I don't know the genesis or know what
5 it is about. I think there is a good reason why we don't go
6 into the details right now. There seems to be a disagreement
7 between Mr. Bessette and myself about what we agreed to and
8 what we didn't agree to. I'm not going to go into that because
9 it was part of the mediation, though I have my notes. I can
10 tell you the date and time when we said yes or no, but that's
11 beside the point.

12 I do think that this is an issue that, again, we
13 think is important. In our mediation we were sitting across
14 from defendants and their carriers. We went through a whole
15 series of numbers. It was never broken down this way. The
16 number they came up with was 16.7 million from the Ds and Os.
17 It is a term of art maybe of "creating the fund." We
18 negotiated 16.7 million for the class based upon our claims,
19 and we think in two months, when we appear in front of the
20 Court, that's the position we will be taking then too.

21 Thank you, Your Honor.

22 THE COURT: I do think that the hard, diligent work
23 done by plaintiffs' counsel in the derivative case and by class
24 counsel in the securities case, I think coupled with the
25 reasonableness and hard work of the defendants' counsel, both

1 the corporation and the defendants, I think are all
2 collectively to be commended for bringing in, as I said,
3 approximately it looks like \$26.3 million worth of benefit to
4 the shareholders. You're all to be commended for it. It is a
5 very good benefit.

6 I want to be careful about how I phrase what I'm
7 about to say, because the time I think has not yet expired for
8 there to be objections in the securities case; am I correct?

9 MR. DAHLSTROM: That's correct.

10 THE COURT: So everything that I'm now going to say
11 on this point is really just tentative. If I ever see any
12 objections, I'll look at them with an open mind. But from what
13 I have seen so far, it is my tentative conclusion, putting
14 aside attorney's fees issues, all of the terms -- now that we
15 have had the clarifications we have had this morning -- all of
16 the terms in both the derivative case and the class action case
17 appear to be fair, reasonable, quite appropriate, and worthy of
18 being approved.

19 Now, obviously in a footnote here, if there is an
20 objection that I hadn't thought about and it's called to my
21 attention, I'll look at that with an open mind. From what I
22 have seen so far, these are very fair, reasonable, and
23 appropriate terms, and it is my intention to approve those
24 terms.

25 What I haven't figured out what to do about yet is

1 the attorney's fee issues that I have been describing and we
2 have been discussing. So what I'm going to do right now is
3 continue this fairness hearing in the derivative of case and
4 reset the next hearing in this derivative case fairness hearing
5 for the same time that I am going to hear the fairness hearing
6 in the securities case.

7 So I'm resetting today's hearing in the derivative
8 case to be continued on Thursday, June 23rd, at 3:30 in the
9 afternoon. At that time, of course, I will hear any objections
10 to the securities case that may be raised and any responses, if
11 there are any, and I'll also entertain further argument from
12 everyone on what to do about the fee issue.

13 Toward that end, anyone and everyone, the derivative
14 plaintiffs, class counsel in the securities case, certainly the
15 defendants are invited to submit any further analysis,
16 thinking, comments to me on these issues and any legal
17 precedent, any other factual material you want me to consider
18 two weeks before June 23rd. So that's June 9th. So by
19 June 9th you're welcome to file any supplemental memoranda
20 regarding this attorney fee issue.

21 I suppose just to keep the file straight the
22 derivative plaintiff should file it in the derivative case; the
23 class plaintiffs should file it in the class case, although
24 you're also amicus in this case. I don't think it matters; I'm
25 looking at both. You will have access to everything. But do

1 whatever you feel you need to do also to preserve your
2 appellate rights.

3 So I'll be glad to look at any further analysis,
4 factual material, legal arguments, anything else that you all
5 might want to send to me about how we should resolve this
6 issue. I will tell you, and I think I've already signaled this
7 pretty clearly, unless somebody points out to me that I'm
8 looking at it legally incorrectly, I do intend to evaluate the
9 total package of collective benefits from both cases as part of
10 my consideration of the attorney's fees awards -- what is a
11 reasonable attorney fee -- in both cases.

12 Now, obviously if somebody can point out to me that
13 U.S. Supreme Court case law or Ninth Circuit case law tells me
14 that that is not a proper way to go, obviously I will follow
15 the law. If someone points out to me that there is non-binding
16 authority from other circuits that suggest a better approach or
17 a different approach, of course, I'll look at that for its
18 persuasive value. But other than that, I'll do what I think is
19 right, and I will listen to all of your arguments. Whoever
20 doesn't like what I do will be able to preserve your points and
21 take it up on appeal.

22 But that's what I'm going to do. I am continuing
23 this hearing to June 23rd, inviting anyone who is interested to
24 file any additional comments or materials or evidence or
25 argument by June 14th. I think that addresses everything that

1 I can and should address in this hearing.

2 Let me ask, first in the derivative case, Counsel, is
3 there anything else that you would like me to address at this
4 time?

5 MR. STECKER: No, Your Honor.

6 THE COURT: Thank you.

7 From defendants' counsel, either the corporation or
8 individual defendants?

9 MR. BESSETTE: No, Your Honor.

10 THE COURT: From the securities class plaintiffs?

11 MR. DAHLSTROM: No, Your Honor.

12 THE COURT: All right. Again, I commend all three
13 sides for their very hard, diligent, and expert work in
14 bringing this to a resolution. We will get it to a resolution.
15 We will figure out some way. Thank you.

16 COUNSEL: Thank you, Your Honor.

17 (Court adjourned.)

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