

PRECEDENT FEE AWARDS FOR DISCLOSURE-BASED SETTLEMENTS

IN THE DELAWARE COURT OF CHANCERY

The settlements and descriptions below are taken from the appendices set forth in the Court of Chancery’s opinion in *In re Sauer-Danfoss Inc. S’holders Litig.*, C.A. No. 5162-VCL, mem. op. (Del. Ch. Apr. 29, 2011).

Appendix A: Fee awards “for one or two meaningful disclosures, such as previously withheld projections or undisclosed conflicts faced by fiduciaries or their advisors.”

<u>Case</u>	<u>Fee Award</u>	<u>Plaintiff’s Efforts</u>	<u>Principal Disclosures/Benefit</u>
<i>Continuum Capital v. Nolan</i> , C.A. 5687-VCL (Del. Ch. Feb. 3, 2011)	\$525,000	<ul style="list-style-type: none"> • Three depositions (all pre-MOU) • Settled without an injunction hearing 	<ul style="list-style-type: none"> • Management projections • Information about advisor’s buy-side conflict • Information about advisor’s fee
<i>In re Burlington N. Santa Fe S’holder Litig.</i> , C.A. 5043-VCL (Del. Ch. Oct. 28, 2010)	\$450,000	<ul style="list-style-type: none"> • Three depositions (all confirmatory) • Settled without an injunction hearing 	<ul style="list-style-type: none"> • Management projections • Details about negotiation process
<i>In re Zenith Nat’l Ins. Corp. S’holders Litig.</i> , C.A. 5296-VCL (Del. Ch. July 26, 2010)	\$400,000	<ul style="list-style-type: none"> • Four depositions (all post-disclosures, but contested) • Briefed and argued motion for preliminary injunction • Injunction denied 	<ul style="list-style-type: none"> • Management projections • Details about negotiation process • Details about advisor’s prior work for bidder
<i>In re Wyeth S’holders Litig.</i> , C.A. 4329-VCN (Del. Ch. June 29, 2010)	\$460,100	<ul style="list-style-type: none"> • Three depositions (one pre-MOU, two confirmatory) • Settled without an injunction hearing 	<ul style="list-style-type: none"> • Details about management projections • Details about negotiation process • Details about contingent value right

			<ul style="list-style-type: none"> • Details of advisors' methodology
<p><i>In re Sepracor Inc. S'holders Litig.</i>, C.A. 4871-VCS (Del. Ch. May 21, 2010)</p>	\$550,000	<ul style="list-style-type: none"> • Three depositions (two pre-MOU, one confirmatory) • Settled without an injunction hearing 	<ul style="list-style-type: none"> • Management projections • Additional multiples for comparable companies analysis • Precedent transaction analysis used for negotiation but not valuation
<p><i>IBEW Local Union 98 v. Noven Pharms. Inc.</i>, C.A. 4732-CC (Del. Ch. Dec. 8, 2009)</p>	\$450,000	<ul style="list-style-type: none"> • Two depositions (both confirmatory) • Filed opening brief for preliminary injunction • Settled without an injunction hearing 	<ul style="list-style-type: none"> • Management projections • Details about negotiation process • Details of fairness analysis
<p><i>In re Nat'l City Corp. S'holders Litig.</i>, 2009 WL 2425389, at *6 (Del. Ch. July 31, 2009), <i>aff'd</i>, 998 A.2d 851 (Del. 2010) (TABLE)</p>	\$400,000	<ul style="list-style-type: none"> • Three depositions (one pre-MOU, two confirmatory) • Settled without an injunction hearing 	<ul style="list-style-type: none"> • Details about alternative transactions • Additional details about potential participation in TARP • Details about advisors' potential conflict
<p><i>N.J. Bldg. Laborers Pension and Annuity Funds v. Applebee's Int'l, Inc.</i>, C.A. 3124-CC (Del. Ch. Feb. 27, 2008)</p>	\$358,185	<ul style="list-style-type: none"> • Four depositions (all confirmatory) • Settled without an injunction hearing 	<ul style="list-style-type: none"> • Management projections • Details about advisors' potential conflict
<p><i>In re James River Gp., Inc. S'holders Litig.</i>, 2008 WL 160926 (Del. Ch. Jan. 8, 2008)</p>	\$400,000	<ul style="list-style-type: none"> • Four depositions (all confirmatory) • Settled without an injunction hearing 	<ul style="list-style-type: none"> • Management projections • Details of activity during the 'go-shop' period • Details about advisor's prior work for bidder

<i>In re Genencor Int'l, Inc. S'holders Litig.</i> , C.A. 1052-N (Del. Ch. June 2, 2005)	\$450,000	<ul style="list-style-type: none"> • Five depositions (all pre-MOU) • Filed opening brief for preliminary injunction • Settled without an injunction hearing 	<ul style="list-style-type: none"> • Disclosure of advisor's fee • Details about negotiations • Confirmed that advisor did not place any value on subsidiary
<i>In re Cardiac Sci., Inc. S'holders Litig.</i> , C.A. 1138-N (Del. Ch. Jan. 4, 2005)	\$300,000	<ul style="list-style-type: none"> • Five depositions (all pre-MOU) • Filed opening brief for preliminary injunction • Settled without an injunction hearing 	<ul style="list-style-type: none"> • Details of negotiation process • Details on value of certain assets • Additional details on CEO's interest in merger

Appendix B: Fee awards for “[d]isclosures of questionable quality.”

<u>Case</u>	<u>Fee Award</u>	<u>Plaintiff's Efforts</u>	<u>Principal Disclosures/Benefit</u>
<i>Brinckerhoff v. Tex. E. Prods. Pipeline Co.</i> , 986 A.2d 370 (Del. Ch. 2010)	\$80,000	<ul style="list-style-type: none"> • Sent pre-suit letter to board • Filed complaint in Texas • Objected to <i>Cox Communications</i> settlement • Moved to compel discovery about settlement negotiations 	<ul style="list-style-type: none"> • Details of discount rates used in fairness opinion
<i>In re BEA Sys., Inc. S'holders Litig.</i> , 2009 WL 1931641 (Del. Ch. June 24, 2009)	\$81,297	<ul style="list-style-type: none"> • Supplemental disclosure made before preliminary injunction briefing, hearing, and discovery • Injunction denied 	<ul style="list-style-type: none"> • Corrected typographical error • Corrected sequence of events regarding timing of press release
<i>Jeffrey Benison IRA v. Critical Therapeutics, Inc.</i> , C.A. 4039-VCL	\$175,000	<ul style="list-style-type: none"> • Two depositions (both confirmatory) • Settled without an injunction hearing 	<ul style="list-style-type: none"> • Details on value of merger consideration • Buyer's management projections of buyer's standalone

(Feb. 26, 2009)			earnings, as adjusted by target's management
<i>Augenbaum v. Forman</i> , 2006 WL 1716916 (Del. Ch. June 21, 2006)	\$225,000	<ul style="list-style-type: none"> • Three depositions (all confirmatory) • Settled without an injunction hearing 	<ul style="list-style-type: none"> • Details of negotiation process • Details of advisor's previous work for buyer
<i>In re Triarc Cos. S'holders Litig.</i> , 2006 WL 903338 (Del. Ch. Mar. 29, 2006)	\$75,000	<ul style="list-style-type: none"> • None beyond filing of complaint and amended complaint 	<ul style="list-style-type: none"> • Fact that chairman of special committee thought deal price was inadequate

Appendix C: Fee awards "reserved for plaintiffs who obtained particularly significant or exceptional disclosures."¹

<u>Case</u>	<u>Fee Award</u>	<u>Plaintiff's Efforts</u>	<u>Principal Disclosures/Benefit</u>
<i>In re Lear Corp. S'holder Litig.</i> , C.A. 2728-VCS (Del. Ch. June 3, 2008)	\$800,000	<ul style="list-style-type: none"> • Ten offensive depositions and two defensive depositions • Full briefing and argument on application for preliminary injunction • Preliminary injunction granted 	<ul style="list-style-type: none"> • Information about CEO's conflict of interest • Information about CEO's role in negotiations and sale process
<i>Globis Capital P'rs, LP v. SafeNet, Inc.</i> , C.A. 2772-VCS (Del. Ch. Dec. 20, 2007)	\$1,200,000	<ul style="list-style-type: none"> • Four depositions (all pre-MOU) • Full briefing and argument on application for preliminary injunction • Settled after injunction hearing 	<ul style="list-style-type: none"> • Extensive, detailed descriptions of bankers' fairness opinions and underlying analyses • Two complete bankers' books • More than 100 pages of disclosure

¹ For an additional fee award that falls in this category, see *In re Del Monte Foods Co. S'holders Litig.*, C.A. No. 6027-VCL (Del. Ch. June 27, 2011) (awarding \$2,750,000 for disclosures about the company's sale process and alleged activities of its financial advisor).