

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DONALD REITH, individually and on	:
behalf of all others similarly	:
situated,	:
Plaintiff,	:
	:
v	:
	:
	: C. A. No.
	: 2018-0277-MTZ
WARREN G. LICHTENSTEIN, GLEN M.	:
KASSAN, WILLIAM T. FEJES, JR.,	:
JACK L. HOWARD, JEFFREY J. FENTON,	:
PHILIP E. LENGYEL, JEFFREY S. WALD,	:
STEEL PARTNERS HOLDINGS L.P.,	:
STEEL PARTNERS, LTD., SPH GROUP	:
HOLDINGS LLC, HANDY & HARMAN LTD.,	:
and WHX CS CORP.,	:
Defendants,	:
	:
and	:
	:
STEEL CONNECT, INC., a Delaware	:
corporation,	:
Nominal Defendant.	:

- - -
Chancery Court Chambers
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Friday, September 23, 2022
3:19 p.m.
- - -

BEFORE: HON. MORGAN T. ZURN, Vice Chancellor

- - -

TELEPHONIC SETTLEMENT HEARING AND RULINGS OF THE COURT

CHANCERY COURT REPORTERS
Leonard L. Williams Justice Center
500 North King Street - Suite 11400
Wilmington, Delaware 19801
(302) 255-0524

1 APPEARANCES:

2 TRAVIS J. FERGUSON, ESQ.
McCarter & English, LLP

3 -and-

4 ELIZABETH K. TRIPODI, ESQ.
of the District of Columbia Bar
Levi & Korsinsky, LLP
5 for Plaintiff

6 JOHN M. SEAMAN, ESQ.
Abrams & Bayliss LLP

7 -and-

8 GEORGE M. GARVEY, ESQ.
of the California Bar
Munger, Tolles & Olson LLP
9 for Defendants Warren G. Lichtenstein, Glen
M. Kassan, William T. Fejes, Jr., Jack L.
10 Howard, Steel Partners Holdings L.P., and
SPH Group Holdings LLC
11

12 MATTHEW D. PERRI, ESQ.
Richards, Layton & Finger, P.A.
13 for Defendants Jeffrey J. Fenton and
Jeffrey S. Wald
14

15 ANDREA S. BROOKS, ESQ.
Wilks Law, LLC
16 for Nominal Defendant

17 ERIC M. ANDERSEN, ESQ.
Andersen Sleater Sianni
18 -and-

19 JESSICA SLEATER, ESQ.
of the New York Bar
Andersen Sleater Sianni
20 for Objector Mohammad Ladjevardian
21

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1 THE COURT: Good afternoon. This is
2 Morgan Zurn.

3 May I have appearances, please,
4 beginning with counsel for the plaintiffs.

5 ATTORNEY FERGUSON: Good afternoon,
6 Your Honor. Travis Ferguson of McCarter & English on
7 behalf of the plaintiff. Also with me is
8 Elizabeth Tripodi of Levi & Korsinsky.

9 THE COURT: Thank you.
10 And counsel for the Steel Holdings
11 defendants.

12 ATTORNEY SEAMAN: Good afternoon,
13 Your Honor. You have John Seaman at Abrams & Bayliss.
14 I'm joined by George Garvey from Munger, Tolles &
15 Olson.

16 THE COURT: Thank you.
17 And counsel for Mr. Fenton and
18 Mr. Wald.

19 ATTORNEY PERRI: Good afternoon,
20 Your Honor. Matthew Perri, Richards, Layton & Finger.

21 THE COURT: And counsel for the
22 nominal defendant.

23 ATTORNEY BROOKS: Good afternoon,
24 Your Honor. Andrea Brooks from Wilks Law.

1 THE COURT: Thank you.

2 Counsel for Mr. Ladjevardian.

3 ATTORNEY ANDERSEN: Good afternoon,
4 Your Honor. This is Eric Andersen, and also with me
5 is Jessica Sleater, also with my firm.

6 THE COURT: Thank you. I have some
7 remarks to share. If you could all mute your lines, I
8 would appreciate it.

9 On August 18th, 2022, I issued
10 guidance to the parties in this case regarding the
11 proposed settlement of derivative and class claims in
12 the matter captioned Reith v. Lichtenstein, 2018-0277.
13 On that call, I explained that based on the
14 information the parties had provided to me, I
15 struggled to find that the settlement was fair to the
16 stockholders. For purposes of my ruling today, I
17 incorporate those remarks.

18 The concerns I expressed on that call
19 focused on a lack of information provided to the
20 Court. The plaintiff had largely prevailed in
21 opposing defendants' motion to dismiss and completed
22 document discovery. At the settlement hearing, and in
23 the supporting filings, plaintiff suggested that
24 discovery demonstrated proving the claims would be

1 difficult, and that the claims were worth less than
2 plaintiff originally believed. I was not provided
3 with those documents, and it was unclear to me how
4 plaintiff reached the conclusion that his claims were
5 now worth less.

6 Because this Court favors settlements,
7 I allowed the parties to supplement the record. In
8 particular, I asked the parties to provide: (1) a more
9 meaningful valuation of plaintiff's claims and the
10 settlement consideration, (2) guidance on how to value
11 the return of the equity grants and corporate
12 governance reforms in light of the pending merger
13 vote, (3) clarification on the issue of whether the
14 claims should be discounted because plaintiff may lose
15 standing, and (4) documentary support for the position
16 that plaintiff's claims were weaker than originally
17 thought. I stated the parties could negotiate the
18 settlement and present stronger terms, or submit
19 supplemental papers explaining why the settlement is
20 fair. The parties attempted both.

21 On September 6th, defendant filed a
22 supplemental memorandum. Plaintiff submitted one of
23 his own on September 12th, and the objector submitted
24 one on September 13th.

1 On Friday, September 16th, the parties
2 informed the Court they were working to improve the
3 settlement, and they "hoped" to have a revised
4 agreement by the morning of Monday, September 19th.
5 The parties submitted that revised offer the night of
6 Wednesday, September 21st.

7 The revised settlement stipulation
8 provides for an additional \$250,000 cash payment,
9 increasing the total cash consideration to \$3 million.
10 The revised terms also provide that after plaintiff's
11 attorneys' fees are deducted, this cash would be
12 distributed to the minority stockholders, if, and only
13 if, they approved the pending merger. If the merger
14 is not approved, the cash would stay with
15 Steel Connect.

16 I will now turn to whether the
17 settlement should be approved in light of the
18 information provided and the revised settlement terms.

19 I will start with the most significant
20 development: the parties citing and attaching the
21 documents produced in discovery that they contend
22 undermine plaintiff's claims. On review, these
23 documents most plausibly strengthen, rather than
24 weaken, the plaintiff's case.

1 Plaintiff was equivocal as to whether
2 the documents demonstrated Steel Holdings controlled
3 the company in late 2017; defendants' supplemental
4 memorandum contends Steel Holdings did not control the
5 Steel Connect board that approved the transactions at
6 issue. The documents supplied support the position
7 that Steel Holdings controlled the company at least
8 with regard to the IWCO transaction, the preferred
9 stock issuance, and the equity grants. Specifically,
10 it appears Steel Holdings controlled the IWCO
11 transaction process and made demands on the special
12 committee with little or no pushback, and without
13 needing to provide a serious rationale for any of its
14 demands. These documents include Plaintiff's Exhibits
15 11, 12, 13, and 14, and Defendants' Exhibit 3.

16 Plaintiff argued that discovery
17 demonstrated the special committee had a defensible
18 basis for awarding the equity grants. I disagree.
19 These documents show that the equity grants were
20 proposed by Steel Holdings, and that Steel Holdings
21 determined the amounts of the awards and the basis for
22 awarding them. For example, Plaintiff's Exhibit 11
23 contains an email from Steel Holdings' president,
24 Jack Howard, to the special committee, in which Howard

1 responds to the committee's request for "a detailed
2 proposal listing the services to be rendered,
3 personnel to provide the services and the goals to be
4 accomplished," as follows: "The purpose of providing
5 the shares are for Warren's past services as Executive
6 chairman, finding the acquisition and structuring and
7 for Bill and myself, it will be for future service and
8 work done on this acquisition." Lichtenstein, as
9 Steel Holdings' executive chairman, was cc'ed on that
10 email. The documents also show that the special
11 committee based its decision to approve the grants, in
12 part, on the fact that the monetary value of the
13 equity grants was less than what the company would
14 have paid an investment banker. Both facts seem to
15 bolster plaintiff's case.

16 The documents strengthen plaintiff's
17 case in other ways. For example, these documents
18 appear to show that the special committee lacked
19 independence or that it did not function effectively.
20 Additionally, the documents appear to show that
21 Steel Holdings made demands of the committee, and that
22 the committee gave into those demands without any
23 significant pushback. For example, after its fourth
24 meeting -- out of seven total -- the special committee

1 asked Steel Holdings why the company needed a
2 \$35 million investment. Steel Holdings appeared to
3 provide an informal, two-paragraph written answer,
4 which the special committee accepted without question.
5 This, too, is in Plaintiff's Exhibit 11. The fact
6 that the special committee was asking the party it was
7 negotiating against for an explanation as to why the
8 company should enter into the transaction at all is
9 concerning, and reflects poorly on both the
10 committee's disinterestedness and effectiveness."

11 I now turn to broader means of valuing
12 plaintiff's claim. This is an important anchor to
13 analyzing the give and the get: The Court must have
14 some sense of what a plaintiff could recover at trial.
15 On the August 18th call, I asked the parties to
16 provide a more meaningful valuation of plaintiff's
17 claims so that I could assess the value of the "give"
18 here. One of my concerns was that the proffered
19 valuation omitted any control premium and relied on
20 the company's stock price without any indication that
21 the stock price reflected the company's fair value,
22 especially considering the presence of a controller.

23 I want to pause on why I have looked
24 for more on the use of the stock price. There are

1 instances when stock price can be an appropriate proxy
2 for the company's value in the settlement context. I
3 do not expect parties seeking settlement approval to
4 retain experts. But here, as explained in August, the
5 context of the looming merger warrants greater care in
6 ensuring the settlement is fair. And there were
7 several reasons to believe the stock price did not
8 accurately reflect the company's value. The parties
9 did not address any of these problems.

10 The parties have both failed to
11 provide a reasonable proxy for value on which the
12 Court can rely. Both parties' experts rely on the
13 \$1.49 pre-December 18th 8-K filing stock price on the
14 basis that it was unaffected by the announcement of
15 the IWCO transaction. This necessarily requires an
16 assumption that the fair market value of the company's
17 stock reflects its intrinsic value, and that the
18 increase in the stock price on the IWCO announcement
19 to \$2.19 had nothing to do with the value of that
20 transaction. Despite my raising this as a concern in
21 August, the parties again provided no basis for
22 assuming the preannouncement stock price reflects the
23 underlying value of the company, including even any
24 suggestion that the stock trades in an efficient

1 market. The value of the company embarking upon the
2 IWCO transaction is likely close to \$2.19.

3 Defendants complain that they did not
4 have a "crystal ball" at the time the preferred stock
5 was issued, and could not anticipate that the stock
6 would rise with the IWCO announcement. This is both
7 irrelevant and inconsistent with plaintiff's theory of
8 wrongdoing, which remains viable in my view. Our law
9 requires that the Court look to the fair price of a
10 transaction at the time it was entered into, and here
11 the fair price should account for the added value of
12 the IWCO transaction. And according to plaintiff, the
13 preferred issuance was unfair because Steel Holdings
14 was able to invest at a lower stock price and obtain a
15 lower conversion price, knowing the transaction was in
16 the works but not yet announced. Indeed, assuming
17 \$2.19 approximates the stock's value, the \$1.96
18 conversion price represents a 10.5 percent discount --
19 a far cry from the premiums the parties point to in
20 comparable transactions.

21 I conclude the plaintiff has failed to
22 provide a good-faith estimate of what he could have
23 recovered at trial. The positions taken by the
24 parties and their experts with regard to the preferred

1 stock transaction are so flawed that I cannot
2 reasonably rely on them. Where, as here, a plaintiff
3 is this reticent to provide an accurate estimation of
4 the value of her claims, the Court should proceed
5 cautiously. And I suspect the likely recovery exceeds
6 what the plaintiff claims it is.

7 I also continue to struggle with
8 considering the surrender of the equity grants as part
9 of the "get." This is for two independent reasons.

10 First is the fact that the grants were
11 surrendered without Court approval or leave. The
12 August 26th, 2021 MOU provided the grants should be
13 surrendered no later than seven days after the
14 settlement was approved and the time to appeal was
15 expired or an appeal was exhausted. But the grants
16 were surrendered in August and December of 2021,
17 before the settlement stipulation was even signed.
18 And there is no plan to claw back the grants, as
19 defendants' counsel made clear during the August 12th
20 hearing.

21 This Court's decisions in
22 *Chickering v. Giles* and *In re SS & C Technologies,*
23 *Inc.* make clear that where parties perform settlement
24 obligations without seeking Court approval of the

1 settlement, the parties improperly circumvent the
2 protections afforded to class members and stockholders
3 by Rules 23 and 23.1. Those cases find that in such
4 circumstances, the settlement is untimely presented,
5 and the Court should not consider those aspects of a
6 settlement in determining whether a settlement is fair
7 and reasonable.

8 When asked about why certain
9 defendants surrendered equity grants in mid to late
10 2021, defendants' counsel responded that it was his
11 understanding that the decisions were "driven by some
12 adverse tax consequences that might have followed if
13 they waited another year." He then proceeded to
14 provide other benefits from their surrendering shares
15 earlier, such as making it easier for the special
16 committee negotiating against Steel Holdings to
17 negotiate a merger price. Defendants then argued that
18 cases such as *Polk* and *Barkan* stand for the
19 proposition that a party may perform settlement
20 obligations before seeking Court approval so long as
21 what they give up is a bargained-for part of the
22 settlement.

23 On this point, I believe defendants
24 misstated the law. It is true that the surrender of

1 the equity grants must be a bargained-for part of the
2 settlement. But the law requires more to consider
3 settlement components that were performed before the
4 Court approved them: there must be a sufficient
5 justification for fulfilling those obligations at the
6 time. Both cases cited by plaintiff applied this
7 exception because the settlement consideration at
8 issue was being paid out in the form of increased
9 merger consideration.

10 I see no such sufficient justification
11 here. I understood defendants' answer to my question
12 to be that the defendants surrendered their shares at
13 the time they did to avoid adverse tax consequences,
14 but that there were also certain other collateral
15 benefits. That is, based on the information the
16 parties have presented to me, I believe that any
17 increase in merger consideration that occurred over a
18 year later was not an intended benefit of this aspect
19 of the settlement, but rather an incidental one.
20 Indeed, defendants themselves described the impact of
21 the surrenders on the merger negotiations as a
22 "beneficial effect." The special committee was not a
23 party to the settlement negotiations, and the parties
24 have steadfastly contended the settlement was

1 negotiated in isolation from the merger (a contention
2 which I doubt, as I explained on August 18th). And
3 plaintiff's counsel simply did not know why the equity
4 grants were surrendered when they were. I conclude
5 the timing of the grant surrender was to benefit the
6 surrendering defendants, not the settlement
7 implementation and not the minority in the merger.

8 A party to a settlement stipulation
9 may not avoid the obligations of Rules 23 and 23.1 so
10 that they may obtain favorable tax treatment. In the
11 absence of a sufficient justification for the timing
12 of the surrender, these defendants have assumed the
13 risk that the surrender would not be considered as
14 part of the settlement consideration, as recognized
15 might come to bear in *In re Amsted Industries*. I do
16 not consider the surrender of the 3.3 million equity
17 grants as part of the "get" for purposes of settlement
18 approval.

19 There is a second independent reason
20 for my doubts about the value of the equity grant
21 surrender in evaluating the settlement. The parties'
22 substantive support for their valuation of the
23 surrender did not improve in supplemental briefing.
24 The valuation suffers from the same flawed reliance on

1 the \$1.49 per share as fair value.

2 Both expert affidavits value and
3 justify a portion of the equity grants as if they were
4 compensation paid to an investment banker.
5 Plaintiff's expert concludes that because an
6 investment banker would have received approximately
7 \$5.3 million and because he valued the equity grants
8 that were not surrendered at \$3.12 million, the equity
9 grants were fair. Defendants took the same approach,
10 but found that an investment banker would have been
11 paid \$3.377 million.

12 I do not believe that comparing the
13 equity awards to what an investment banker would have
14 received is a useful exercise because the men who
15 received the grants are not investment bankers. I do
16 not understand why saving on an investment banker
17 warrants paying an investment banker's rate to people
18 who are not investment bankers. The best explanation
19 for the payments remains that the recipients are
20 affiliates of a controller.

21 I now turn to what is probably the
22 most confusing aspect of this settlement: the value of
23 the corporate governance reforms. These are reforms
24 that will essentially have no value if the pending

1 merger is approved. In the absence of any indication
2 of whether the merger is likely to close, I suggested
3 discounting the value of these reforms by 50 percent,
4 but asked for additional guidance from the parties.
5 The parties have both acquiesced to the application of
6 that discount.

7 Initially, plaintiff contended these
8 reforms were worth "at least hundreds of thousands of
9 dollars." In response to my August 18th guidance,
10 plaintiff agreed the reforms should be discounted by
11 50 percent but now contends the reforms are worth
12 \$2.6 million. Plaintiff argues this valuation is
13 supported by this Court's decision in *In re Emerson*
14 *Radio*.

15 In that case, the Court assessed the
16 proper fees to be paid to the plaintiff's counsel
17 after the settlement of a derivative action
18 challenging related-party transactions. The
19 settlement reached by the parties contained a
20 \$3 million cash component as well as reforms intended
21 to prevent the challenged conduct from recurring. For
22 purposes of assessing the value of the nonmonetary
23 benefit from these reforms, the Court first determined
24 the underlying conduct caused the company to suffer

1 damages of \$3.9 million, measured by the cash
2 consideration, and another \$900,000 recovered for the
3 same conduct following an internal investigation. The
4 Court assumed that if the same conduct were to recur,
5 the company would suffer damages in the same amount.
6 The Court then determined that if the reforms were not
7 in place, there was a 25 percent chance the same
8 conduct would recur. So by discounting the
9 \$3.9 million by 75 percent, the Court found those
10 reforms conferred a benefit of \$1 million.

11 This case does not provide a helpful
12 metric by which to value the corporate governance
13 reforms here. Plaintiff's theory of liability about
14 the equity grants is that Steel Holdings caused the
15 company to issue the grants so that it could obtain
16 majority control, despite that issuance being a
17 violation of the company's stock plan. I do not see
18 any reason, and plaintiff suggests none, why
19 Steel Holdings would do this again, given this
20 settlement allows Steel Holdings to maintain majority
21 voting control of the company. Plaintiff also
22 conspicuously ignores the fact that the *Emerson Radio*
23 court discounted the value of the therapeutics to
24 adjust for the likelihood of recurrence.

1 Nevertheless, *Emerson Radio* provides
2 some guidance here. The Court noted that "[f]or
3 defendants, therapeutic benefits ... are cheap and
4 easy gives," and cautioned against "allowing
5 plaintiffs to claim significant incremental credit for
6 therapeutic benefits when (i) the defendants have paid
7 a fixed amount of tangible consideration and (ii)
8 awarding fees for the therapeutic benefits will
9 increase the plaintiffs' attorneys' share of that
10 consideration." The Court also reasoned that
11 "[i]deally, plaintiffs' lawyers should be seeking to
12 enlarge the total settlement pie by extracting more
13 tangible consideration from defendants, not finding
14 ways to argue for a bigger share of the existing pie."

15 But that is exactly what plaintiff is
16 doing here: trying to find ways to argue for a bigger
17 share of this incredibly modest pie. Comparing
18 plaintiff's two briefs makes this plain. I adopt
19 plaintiff's initial valuation of the corporate
20 governance reforms, and value them at \$300,000.
21 Applying the 50 percent discount embraced by
22 plaintiff, the value of these reforms is \$150,000.

23 I will briefly dispose of the notion
24 that the revised settlement terms affect my view of

1 the settlement in any meaningful way. I have already
2 rejected the objector's suggestion that the settlement
3 was unfair because the cash consideration was going to
4 the company and not the minority stockholders. In
5 doing so, I made clear that I expected the cash
6 consideration to flow to the company's stockholders
7 and that the company had a legal obligation to ensure
8 that it did so in the merger. While a payment of
9 settlement consideration directly to stockholders can
10 be positive, the nature of the derivative payment here
11 was not, and still is not, the problem with this
12 settlement.

13 And the additional \$250,000 does not
14 appreciably adjust the scales on the give and the get
15 when the rest of the "get" is so ethereal in value as
16 to be nearly weightless.

17 In my view, the adjustment to the
18 settlement terms "sweetens" the merger for the
19 minority more than it does the settlement.

20 There are several other factors that
21 weigh against approving this settlement. The first is
22 plaintiff's credibility.

23 As suggested above, it is difficult
24 for me to rely on plaintiff's representations at this

1 point. Plaintiff appears to have aggressively and
2 intentionally undervalued his claims in an effort to
3 gain Court approval of this settlement. Further,
4 plaintiff has shifted positions on various issues
5 throughout the settlement approval process. It is
6 also not lost on me that plaintiff entirely
7 disregarded my earlier statement that plaintiff would
8 not be entitled to a fee of more than 15 percent.

9 And plaintiff's counsel has made
10 misrepresentations to the Court about documents
11 produced in discovery. One example speaks volumes.
12 In plaintiff's opening brief in support of the
13 settlement, he wrote, "discovery established a clear
14 basis for the award of these grants and offered a
15 defensible position to their size." That sentence
16 cited an incorrectly named affidavit, which stated in
17 paragraph 29, "The Special Committee viewed the Equity
18 Grants as compensation to [Defendants] for 'finding,
19 structuring, due diligence, financing and managing the
20 IWCO acquisition and future acquisitions and
21 financings.'" The affidavit quoted Exhibit 14
22 thereto, a standalone and puzzlingly informal and
23 unsourced document. For reasons that are now clear to
24 me, plaintiff omitted the cover email. The cover

1 email makes plain that Jack Howard, as president of
2 Steel Holdings and an equity grant recipient, "put
3 this [document] together," not the special committee.
4 Howard then sent the document to Wald at the special
5 committee, copying Lichtenstein, apparently to dictate
6 the amount of equity grants to issue to each defendant
7 and the reason the special committee should give for
8 awarding those grants. This cover email and
9 attachment are found at Exhibit 13 to plaintiff's
10 supplemental affidavit.

11 The document's basis for the equity
12 awards is Steel Holdings' idea of what the special
13 committee should say about them -- not necessarily the
14 special committee's view on the grants, as plaintiff's
15 counsel's affidavit stated. This becomes clear only
16 when the document is accompanied by its parent email.
17 Whether this was extraordinary carelessness or a
18 willful effort to mislead the Court, this conduct is
19 emblematic of how plaintiff has approached this
20 settlement approval process and demonstrates why it is
21 so difficult to rely on anything plaintiff has
22 represented to this Court.

23 In the settlement context, the Court
24 must rely on the parties to provide information about

1 the strength of the case, and must rely on counsel's
2 representations. If a settlement is, in fact, fair
3 and reasonable, it should be easy to be forthright.
4 Duplicitous and inconsistent positions support the
5 conclusion that the truth is not helpful to the
6 parties.

7 Relatedly, I have concerns as to
8 whether plaintiff has adequately represented the other
9 stockholders and class members, which further
10 diminishes my confidence that this settlement is fair
11 and reasonable. In his opening brief, plaintiff
12 framed this settlement as favorable in light of the
13 pending merger vote, making statements such as
14 "Plaintiff understood that time was of the essence,"
15 and "[t]he fact that Plaintiff's claims could have
16 been easily extinguished with the going private
17 transaction further supports his basis for entering"
18 into the settlement. But this Court has made clear
19 that it should evaluate whether a settlement is fair
20 where the parties are "not under any compulsion to
21 settle." That's from *Forsythe v. ESC Fund Management*.

22 Further, the need to negotiate the
23 settlement in the shadow of a pending merger was a
24 crisis of plaintiff's own languid representation.

1 This case has languished on the docket for over four
2 and a half years, and plaintiff elected not to seek
3 expedition after learning of the potential acquisition
4 in November 2020. By saying he was compelled to
5 settle because of the pending merger vote, and by
6 implying that the merger vote diminishes the value of
7 his claims, plaintiff himself concedes that his lack
8 of urgency cost the other stockholders and class
9 members the favorable bargaining position afforded by
10 surviving a motion to dismiss in a case where entire
11 fairness very well may apply.

12 Lastly, by plaintiff's math, the
13 settlement consideration is predominantly nonmonetary,
14 and plaintiff sought to recover attorneys' fees
15 consisting of most of the cash consideration.
16 Specifically, plaintiff initially contended that the
17 "get" was worth \$9,977,000, with \$2,750,000 consisting
18 of cash consideration. Plaintiff sought a fee of
19 \$2,050,000 to be paid out of the cash payment. Based
20 on the structure of the settlement and defendants'
21 holdings in the company, only \$364,000 would have
22 flowed derivatively to the minority stockholders.

23 For the foregoing reasons, I cannot
24 conclude the settlement is fair. The "get" that was

1 properly and timely offered under Rules 23 and 23.1
2 comprises \$3 million in cash and \$150,000 in corporate
3 governance reforms as discounted for the likelihood of
4 the merger. The "give" is a release negotiated by
5 plaintiff's counsel who failed to protect, let alone
6 monetize, the claim when a loss of standing was
7 threatened, and who has repeatedly taken positions
8 that undermine their credibility. The parties have
9 utterly failed to offer a rational, supported, and
10 credible valuation of those claims, making me even
11 more skeptical in this *Brinckerhoff* arena that already
12 warrants heightened skepticism. My concerns expressed
13 on August 18th are unabated. As I stated, I
14 incorporate those remarks into the ruling here today.
15 I conclude the parties have failed to carry their
16 burden of demonstrating this settlement is fair and
17 reasonable. And the settlement is rejected.

18 The stockholder vote on
19 Steel Holdings' proposed acquisition of the company is
20 scheduled for September 30th, and that acquisition
21 must be approved by a majority of the minority.
22 Assuming the minority is properly informed, I will
23 leave it to them to decide the price at which they
24 will give up standing to pursue these derivative

1 claims.

2 I ask that counsel offer a status
3 update in 30 days. I hope everyone has a good
4 weekend. Thank you.

5 (Proceedings concluded at 3:45 p.m.)

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CERTIFICATE

I, DOUGLAS J. ZWEIZIG, Official Court Reporter for the Court of Chancery of the State of Delaware, Registered Diplomate Reporter, Certified Realtime Reporter, do hereby certify that the foregoing pages numbered 3 through 26 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated, except for the rulings, which were revised by the Vice Chancellor.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 26th day of September, 2022.

/s/ Douglas J. Zweizig

Douglas J. Zweizig
Official Court Reporter
Registered Diplomate Reporter
Certified Realtime Reporter