IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE DELAWARE PUBLIC SCHOOLS LITIGATION	)	C.A. No. 2018-0029-JTL
	)	**COUNTY TRACK**

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

1. The plaintiffs are non-profit, non-partisan, civic-oriented institutions with a strong interest in Delaware's public schools.[1] Lawyers from the ACLU Foundation of Delaware (the "ACLU"), the Delaware Community Legal Aid Society, Inc. ("CLASI"), and Arnold & Porter Kaye Scholer LLP ("Arnold & Porter") represented the plaintiffs in this litigation (together, "Plaintiffs' Counsel"). By order dated March 28, 2022, the court ruled that Plaintiffs' Counsel are entitled to an award of attorneys' fees and costs under the common benefit doctrine. Dkt. 464. This order quantifies the award.

2. When crafting an award of attorneys' fees and expenses, the court applies the so-called *Sugarland* factors. *See Korn v. New Castle Cty. (Korn III)*, 2007 WL 2981939, at *3 (Del. Ch. Oct. 3, 2007). The factors are: "1) the results achieved; 2) the time and effort of counsel; 3) the relative complexities of the litigation; 4) any contingency factor; and 5) the standing and ability of counsel involved." *Americas Mining Corp. v. Theriault*, 51 A.3d 1213, 1254 (Del. 2012) (citing *Sugarland Indus., Inc. v. Thomas*, 420 A.2d 142, 149 (Del. 1980)). Ordinarily, a court applying the *Sugarland* factors assigns "the greatest

[1] The background of this action is described in the post-trial decision issued on May 8, 2020 (the "Opinion"). *In re Del. Pub. Sch. Litig.* (*DEO III*), 239 A.3d 451 (Del. Ch. 2020). This order recites only those facts directly relevant to the plaintiffs' motion for attorneys' fees and expenses. Capitalized terms not defined herein have the meaning given to them in the Opinion.

weight to the benefit achieved in litigation." *Id.* at 1254. But a court will consid agreements when determining the appropriate amount of an award. *See Wis. Inv. Bd. v. Bartlett*, 2002 WL 568417, at *6 (Del. Ch. Apr. 9, 2002), *aff'd*, 808 A.2d 1205 (Del. 2002). "Fee agreements cannot absolve the Court of its duty to determine a reasonable fee; on the other hand, an arm's-length agreement, particularly with a sophisticated client . . . can provide an initial 'rough cut' of a commercially reasonable fee." *Id.*

3. In this case, Plaintiffs' Counsel agreed on how they would value their services. Defs.' Opp. Br., Ex. 1 (the "Fee Agreement"). The Fee Agreement states:

> In the event that costs and/or attorneys' fees may be recovered from the opposing party under applicable law, [the ACLU], CLASI, and [Arnold & Porter] shall cooperate in filing a joint motion for court-awarded costs and attorneys' fees. The attorneys' fees sought shall be based upon the reasonable number of hours devoted to the relevant part of the litigation, by all of the attorneys participating, multiplied by a reasonable hourly rate for each attorney.

Id. § 2. The Fee Agreement also provides that each party is "responsible for keeping its own contemporaneous written or computerized record of hours incurred by attorneys." *Id.* (the "Recordkeeping Requirement"). Finally, the Fee Agreement states that "[s]uch records [would] be the basis for the information presented to the court in connection with a request for the award of attorneys' fees and the basis for allocation of attorneys' fees obtained by settlement or court order." *Id.*

4. Through the plain language of these provisions, Plaintiffs' Counsel agreed to bill their time by the hour and to seek an award based on their hours worked and time spent in the event they prevailed "by settlement or court order." The counties are not third party beneficiaries of the Fee Agreement and they cannot enforce it, but the court can consider

the Fee Agreement as the baseline for what the attorneys themselves viewed as a reas fee. Because of the Fee Agreement, the starting point for determining a reasonable fee is not the benefit conferred, but rather the amount counsel billed based on time spent at their hourly rates.

5. When calculating a fee award based on hourly rates and time expended, a court looks to whether (i) the time was devoted to tasks "thought prudent and appropriate in the good faith professional judgment of competent counsel," and (ii) the rates were comparable to the rates "charged to others for the same or comparable services under comparable circumstances." *Delphi Easter P'rs Ltd. P'ship v. Spectacular P'rs, Inc.*, 1993 WL 328079, at *9 (Del. Ch. Aug. 6, 1993).

6. In this case, Plaintiffs' Counsel generally satisfied the first element of the *Delphi* standard: Plaintiffs' Counsel devoted time to tasks thought prudent and appropriate in the good faith professional judgment of competent counsel. The litigation team for Plaintiffs' Counsel comprised competent lawyers led by Richard Morse, the Legal Director of the ACLU. Morse has over forty-seven years of experience. He had the knowledge and competence to exercise good faith professional judgment regarding the tasks that were prudent and appropriate for the litigation.

a. Where that general requirement is met, a court will not second-guess the specific time entries that counsel have logged for particular tasks. Determining a reasonable fee award "does not require that this court examine individually each time entry and disbursement." *Aveta Inc. v. Bengoa*, 2010 WL 3221823, at *6 (Del. Ch. Aug. 13, 2010); *accord Blank Rome, LLP v. Vendel*, 2003 WL 21801179, at *8–10 (Del. Ch. Aug.

5, 2003) (rejecting alleged requirement of line-item review). Analyzing specific entries typically "would neither be useful nor practicable." *Weichert Co. of Pa. v. Young*, 2008 WL 1914309, at *2 (Del. Ch. May 1, 2008).

b. The rationale for line-by-line review fades further when attorneys have an incentive not to overcharge. Often that incentive will flow from a client who is overseeing the billing process and may have to pick up the freight. *See Aveta*, 2010 WL 3221823, at *6 (holding that Aveta had "sufficient incentive to monitor its counsel's work and ensure that counsel did not engage in excessive or unnecessary efforts" because Aveta could not be certain that it would be able to shift expenses at the time the expenses were incurred). Although that was not the case here, the time that Plaintiffs' Counsel expended had an opportunity cost. The attorneys from Arnold & Porter could not work for paying clients. The attorneys from the ACLU and CLASI could not work on other public interest matters. While admittedly not as strong a check as in other cases, there was an incentive for Plaintiffs' Counsel to make reasonable judgments about the tasks to pursue and the amount of time to spend on them.

c. The counties have raised numerous objections to the billing records that Plaintiffs' Counsel submitted to support their time. Most would require the court to conduct a line-item review of the time entries that Plaintiffs' Counsel submitted, which is unnecessary in this case. Several of the counties' objections are unfounded. To take one example, the counties claim that Peta Gordon submitted a series of duplicative time entries. The timesheet on which the counties rely includes a time entry for Gordon at the top of each page. *See* Dkt. 495, Ex. B, PFP0200–0207. The entries all contain the same

information, repeating the narrative and the hours submitted. *Id.* Spreadsheet program Microsoft Excel permit users to freeze panes so that one row remains at the top of the spreadsheet while the user scrolls down the sheet. That function is usually used for a header row, and the frozen panes do not count multiple times in the spreadsheet calculations. If the user prints the spreadsheet, the frozen panes may appear at the top of every page. The repetitive Gordon entries represent a frozen pane issue. On the first page of the timesheet, the Gordon entry appears first. *Id.* at PFP0200. Someone likely tried to freeze the row above the Gordon entry, which contained headers like "Date" and "TKPR Name." *Id.* Human error resulted in the freezing of the Gordon entry and its repetition throughout the timesheet.

d. With no basis to question the good faith judgment of Plaintiffs' Counsel, the court declines to pour over the individual time entries. Instead, the court will check the reasonableness of the fees and expenses that Plaintiffs' Counsel seek by considering the other *Sugarland* factors.

e. Although the court will not re-assess individual time entries, the counties advance two broader arguments that warrant consideration. First, the counties observe that two attorneys from the ACLU—Ryan Tack-Hooper and Karen Lantz—did not support their hours with any contemporaneous record keeping. For purposes of the fee application, they estimated their hours by recalling the tasks they performed and taking into account their roles in the litigation. *See* Defs.' Opp. Br., Ex. 2 at RFA 86–87. That approach did not comply with the Recordkeeping Requirement. The effort also fell short of the documentation required to support a full fee award.

f. At the same time, the court cannot eliminate all of the hou Tack-Hooper and Lantz submitted. The court knows personally that they worked on the case, because they frequently appeared in court. Tack-Hooper made several arguments early in the case before his role concluded. He doubtless prepared outside of court for those appearances as well. Lantz was omnipresent. She appears to have been one of the principal attorneys on the litigation team. The counties' counsel candidly conceded the significance of Lantz's involvement.

g. When asked about this conundrum and how to address it, the counties' counsel responsibly offered a solution, which the court appreciates: split the baby between the hours claimed and zero. For Tack-Hooper, that is reasonable, and the court credits Tack-Hooper with 150 hours.

h. For Lantz, that solution would be too draconian. Morse claimed 1,326.8 hours, and Lantz's total hours were likely much closer to Morse's than to the 300 hours she claimed. Under the circumstances, the court will discount Lantz's hours by 10% and credit her with 270 hours.

i. Next, the counties argue that Plaintiffs' Counsel prolonged the litigation during the remedial phase. Going through the back and forth of what occurred would be tedious, and it suffices to note that after December 7, 2020, the remedial phase became unnecessarily prolonged. By that point, the only reasonable remedy was reassessment. *See* Pls.' Opening Br. at 20. But in an email sent on that date, Plaintiffs' Counsel refused to respond to the counties' invitation to propose a remedy. *See* Defs. Opp. Br. at 9. Plaintiffs' Counsel could and should have agreed to reassessment and pointed out

that the timeline for completing the reassessment remained at issue. Instead, the parties spun their wheels on remedy. There were other reasons for the prolonged remedy phase, and the counties share some of the blame, but it is fair to discount the hours that Plaintiffs' Counsel claimed during the remedy phase by 25%.

j. The court has applied these considerations in determining the number of hours to credit for purposes of a fee award. Table 1 identifies each attorney who worked on the matter for Plaintiffs' Counsel, the number of hours claimed, and the number of hours that the court will use for purposes of the award.

Table 1

Attorney	Organization	Claimed Hours	Accepted Hours
Richard Morse	CLASI	1,326.80	1,262.35
Saul Morgenstern	A&P	20.90	20.90
Peta Gordon	A&P	388.10	379.90
Abigail Langsam	A&P	20.60	20.60
Karen Lantz	ACLU	300.00	270.00
Ryan Tack-Hooper	ACLU	300.00	150.00
Dwayne Bensing	ACLU	30.00	30.00
Jessica Laguerre	A&P	118.40	118.40
Travis Clark	A&P	260.40	260.40
Krithika Santhanam	A&P	21.80	21.80
Meredith B. Walsh	A&P	9.80	9.80
Geoffrey Andreu	A&P	8.10	8.10
Kathleen Dallon	A&P	28.30	28.30
Cole Kroshus	A&P	11.70	11.70
Ryan Holmes	A&P	39.20	32.75
Paralegal & Support Staff	A&P	207.80	207.80

7. The second element under the *Delphi* standard is whether the fees were incurred at rates charged to others for the same or comparable services under comparable

circumstances in the jurisdiction. The ACLU and CLASI are not organizations th clients by the hour, so their attorneys do not have regular hourly rates. Arnold & Porter is an organization that bills clients by the hour and their attorneys have regular hourly rates, but Arnold & Porter insisted on redacting its hourly rates, claiming they were confidential and competitively sensitive information. *See* Defs.' Opp. Br. at 17; Pls.' Reply Br., Ex. 15. Attorney fee petitions routinely provide rates, whether in this court, in bankruptcy court, or elsewhere. By redacting its rates, Arnold & Porter deprived the court of important information. Although the court suspects that the hourly rates that Arnold & Porter attorneys actually charge would provide further support for the reasonableness of the fee award, without that information, the court does not consider it.

a. To establish hourly rates for the plaintiffs' attorneys, Plaintiffs' Counsel submitted the affidavit of Elizabeth M. McGeever, who is an experienced Delaware practitioner and a director of the law firm of Prickett, Jones & Elliott, P.A. Dkt. 442, Affidavit of Elizabeth M. McGeever ("the McGeever Affidavit") ¶ 1. McGeever opined on the rates charged in corporate litigation in this court and in bankruptcy proceedings in the District of Delaware. She further opined that those rates provided an appropriate measure of the hourly rates for Plaintiffs' Counsel, and she identified rates ranging from $250 to $980 per hour depending on the attorneys' level of experience. *See* Pls.' Opening Br. at 20.

b. The counties contend that rates charged in corporate litigation and bankruptcy proceedings are not comparable. *See* Defs.' Opp. Br. at 26. The counties submitted the affidavit of Kathleen M. Miller, who is a partner at Smith, Katzenstein &

Jenkins LLP in Wilmington, Delaware. Dkt. 495, Ex. A (the "Miller Affidavit") ¶ 1. opined that hourly rates ranging from $250 to $550 per hour were reasonable, depending on the attorneys' experience level. *See* Defs.' Opp. Br. at 19. To construct this range, she examined the rates submitted in the plaintiffs' application for attorneys' fees and expenses in *Korn III*, and the rates charged by outside counsel to New Castle County in two recent Court of Chancery cases involving New Castle County. Miller Aff. ¶¶ 23–30. In *Korn III*, taxpayers sued New Castle County to recover a refund due to an unauthorized tax surplus. 2007 WL 2981939, at *1. The two recent Court of Chancery cases against New Castle County involved a land use dispute and a challenge to landfill legislation. *See Croda, Inc. v. New Castle Cty.*, 2021 WL 5027005, at *1 (Del. Ch. Oct. 28, 2021) (landfill dispute); *New Castle Cty. v. Pike Creek Recreational Servs., LLC*, 82 A.3d 731, 734 (Del. Ch. 2013) (land use dispute).

c. What set of rates to use requires an exercise of judicial judgment. *See In re Am. Real Est. P'rs*, 1997 WL 770718, at *7 (Del. Ch. Dec. 3, 1997) (exercising judicial discretion to set one reasonable hourly rate "attributable to a partner, associate, or paralegal"); *see also Dickerson v. Castle*, 1992 WL 205796, at *2 (Del. Ch. Aug. 21, 1992), aff'd, 622 A.2d 1094 (Del. 1993) (exercising judicial discretion under a *quantum meruit* approach to award fees without calculating an hourly rate). The United States Court of Appeals for the Third Circuit has noted that when determining rates to use for public interest law firms, a court should look to "the community billing rate charged by attorneys of equivalent skill and experience performing work of similar complexity." *Student Pub. Int. Rsch. Grp. of New Jersey, Inc. v. AT&T Bell Lab'ys*, 842 F.2d 1436, 1450 (3d Cir.

1988). The court should not discount the community rates to reflect what underprivi individuals might be able to pay. *Id.* As Plaintiffs' Counsel correctly point out, public interest work often is just as complex and challenging as corporate and commercial litigation in this court, if not more so because the Supreme Court of the United States frequently modifies or changes the governing law, and the issues are not principally financial but rather involve significant policy questions. That authority counsels for not imposing too large a discount on the rates in the McGeever Affidavit.

d. At the same time, the counties have argued persuasively that when litigating cases involving or against the county or the state, attorneys do not charge the lofty rates billed by practitioners in fights between billion-dollar corporations or billionaire individuals. For those engagements, practitioners discount their rates. *See Dover Hist. Soc'y v. City of Dover Plan. Comm'n*, 2007 WL 3407263, at *3 (Del. Super. Ct. June 4, 2007) (noting that practitioners charged discounted rates), *aff'd*, 2007 WL 3407263 (Del. Nov. 15, 2007). The data in the Miller Affidavit shows that the attorneys in *Korn III* discounted their customary rates by 12.5% to 23.9%. Miller Aff. ¶¶ 23–25, Ex. C. The county also submitted a decision in which the court discounted the rates that attorneys from a public interest firm sought by amounts ranging from 25% to 50%, albeit in the admittedly different context of a worker's compensation case. *See Weddle v. BP Amoco Chem. Co.*, 2020 WL 5049233, at *3-4 (Del. Super. Ct. Aug. 26, 2020) (reducing attorney hourly rate of $600 to $450, attorney hourly rate of $400 to $300, attorney hourly rate of $275 to $200, and paralegal hourly rate of $100 to $50).

e. To determine reasonable hourly rates, the court will start with the identified by McGeever and discount them by 25%. That reduction is a hair above the high end of the range of the discounts in *Korn III* and at the low end of the range of discounts in *Weddle*.

8. The following table identifies the attorneys who performed work on the case, their organization, the rate that Plaintiffs' Counsel sought, and the adjusted rate after the 25% calculation.

Table 2

Attorney	Organization	Rate	Adjusted Rate
Richard Morse	CLASI	$980.00	$735.00
Saul Morgenstern	A&P	$880.00	$660.00
Peta Gordon	A&P	$700.00	$525.00
Abigail Langsam	A&P	$650.00	$487.50
Karen Lantz	ACLU	$650.00	$487.50
Ryan Tack-Hooper	ACLU	$500.00	$375.00
Dwayne Bensing	ACLU	$375.00	$281.25
Jessica Laguerre	A&P	$350.00	$262.50
Travis Clark	A&P	$300.00	$225.00
Krithika Santhanam	A&P	$300.00	$225.00
Meredith B. Walsh	A&P	$300.00	$225.00
Geoffrey Andreu	A&P	$300.00	$225.00
Kathleen Dallon	A&P	$275.00	$206.25
Cole Kroshus	A&P	$275.00	$206.25
Ryan Holmes	A&P	$250.00	$187.50
Paralegal & Support Staff	A&P	$100.00	$75.00

9. Putting it all together requires multiplying the hours claimed by the applicable rate. Table 3 identifies the attorney, organization, adjusted hours, adjusted hourly rate, and the amount attributable to each attorney.

Table 3				
Attorney	**Organization**	**Adjusted Hours**	**Adjusted Hourly Rate**	**Amount Attributed to Attorney**
Richard Morse	CLASI	1,262.35	$735.00	$927,827.25
Saul Morgenstern	A&P	20.90	$660.00	$13,794.00
Peta Gordon	A&P	379.90	$525.00	$199,447.50
Abigail Langsam	A&P	20.60	$487.50	$10,042.50
Karen Lantz	ACLU	270.00	$487.50	$131,625.00
Ryan Tack-Hooper	ACLU	150.00	$375.00	$56,250.00
Dwayne Bensing	ACLU	30.00	$281.25	$8,437.50
Jessica Laguerre	A&P	118.40	$262.50	$31,080.00
Travis Clark	A&P	260.40	$225.00	$58,590.00
Krithika Santhanam	A&P	21.80	$225.00	$4,905.00
Meredith B. Walsh	A&P	9.80	$225.00	$2,205.00
Geoffrey Andreu	A&P	8.10	$225.00	$1,822.50
Kathleen Dallon	A&P	28.30	$206.25	$5,836.88
Cole Kroshus	A&P	11.70	$206.25	$2,413.13
Ryan Holmes	A&P	32.75	$187.50	$6,140.63
Paralegal & Support Staff	A&P	207.80	$75.00	$15,585.00

10. The total fee is $1,476,001.88, which is a reasonable fee. The effective blended hourly rate is $521.04, which is a reasonable blended rate for the type of work performed in this case. Compared to corporate and commercial litigation, the blended hourly rate is low.

11. The counties point out that Arnold & Porter agreed to donate half of its share of any fee award to the ACLU and CLASI, and they argue that those organizations will receive a windfall as a result. Once the fee award is paid, Arnold & Porter's share belongs to the firm, and it can use the money as it sees fit. *Cf. Protech Mins., Inc. v. Dugout Team, LLC*, 284 A.3d 369, 372 (Del. 2022) (determining that distributions from spendthrift trust

became personal property, available for use by recipient and garnishment by credi

Arnold & Porter is donating the other half of its fee to the Arnold & Porter Foundation, a tax exempt charitable foundation that provides fellowships and grants. Arnold & Porter's laudable generosity does not mean that the firm's foundation is receiving a windfall from the fee award, and the same reasoning applies to the ACLU and CLASI.

12. When applying the *Sugarland* factors, the court starts with the benefit conferred and determines a fee based on a percentage of the benefit. The court then considers the other *Sugarland* factors to determine if the fee should be adjusted upward or downward. Last, the court uses the rates and hours submitted by the parties as a cross-check "to guard against windfall compensation." *In re Sauer-Danfoss Inc. S'holders Litig.*, 65 A.3d 1116, 1139 (Del. Ch. 2011).

13. In this case, the process operates in reverse. The court starts with the calculated fee of $1,476,001.88, then checks it for reasonableness against the benefit conferred and against the other *Surgarland* factors.

14. The first factor under *Sugarland* is the benefit conferred. The court values the benefit, then applies a percentage based on the stage of the case. *See Theriault*, 51 A.3d at 1259–60. When a case settles just before or after trial, the court frequently awards around 30% of the benefit conferred.[2]

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[2] *See Theriault*, 51 A.3d at 1259 ("Delaware case law supports a wide range of reasonable percentages for attorneys' fees, but 33% is the very top of the range of percentages.") (internal quotation marks omitted); *see also Berger v. Pubco Corp.*, 2010 WL 2573881 (Del. Ch. June 23, 2010) (awarding a total fee of 31.5% where "lengthy and thorough litigation by counsel ... resulted in a final judgment and not a quick settlement");

a. The plaintiffs have shown that the litigation created a yearly b by increasing annual revenue by roughly $51,000,000 for the school districts and vocational-technical school districts in New Castle County, Kent County, and Sussex County. The plaintiffs have valued the benefit using the net present value of five years of the annual tax benefit, or roughly $243,000,000.

b. The counties have renewed arguments to the effect that the benefit is too attenuated, but under the law of the case, that issue has been decided. *See* Dkt. 464. The counties are free to pursue the matter on appeal, as they have said they will do. During this phase, the court invited the parties to focus on the amount of the benefit. The counties have advanced the same arguments to assert that the value of the benefit is zero. They have not disputed the mathematical calculation or suggested another means of assessing the benefit. Plainly, as this court has held, the litigation was the sole cause of meaningful benefits. Dkt. 464. The method proposed by Plaintiffs' Counsel for valuing those benefits stands alone.

c. Using the calculation provided by Plaintiffs' Counsel, the fee award of $1,476,001.88, is only 0.6% of the benefit conferred. Even if the court only uses one year of the benefit, the fee award is less than 3% of the benefit conferred. That is barely one-tenth of the percentage of the benefit to which Plaintiffs' Counsel could have been

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Gatz v. Ponsoldt, 2009 WL 1743760 (Del. Ch. June 12, 2009) (awarding 33% in case litigated extensively, including through an appeal in the Delaware Supreme Court); *Tuckman v. Aerosonic Corp.*, 1983 WL 20291 (Del. Ch. Apr. 21, 1983) (awarding 29% where litigated through trial and two appeals).

entitled if this were a corporate case in which they had litigated on contingency. Unde factor, the award is quite low and eminently reasonable.

15. The second *Sugarland* factor considers the difficulty and complexity of the case. *Theriault*, 51 A.3d at 1256. This litigation involved the types of legal and factual issues that warrant an award in the magnitude sought. Under this factor, the award is reasonable.

16. The third *Sugarland* factor looks to the contingent nature of the litigation. *Theriault*, 51 A.3d at 1256. The court assesses whether the plaintiffs' counsel "incurred all [or some portion] of the classic contingent fee risks, including the ultimate risk—no recovery whatsoever." *Id.* Plaintiffs' Counsel had no guarantee of repayment. They took on the "classic contingent fee risk" that the litigation would result in "no recovery whatsoever." *Theriault*, 51 A.3d at 1256. But for the Fee Agreement, the contingent nature of the representation could support a fee based on the benefit conferred. This factor makes the actual fee award all the more reasonable.

17. The fourth *Sugarland* factor examines the standing and ability of Plaintiffs' Counsel. *Theriault*, 51 A.3d at 1256. No one disputes their standing or ability or argues that the award should be adjusted downward because of this factor. This supports the reasonableness of the award.

18. Considered as a whole, the other *Sugarland* factors confirm the reasonableness of an award of fees in the amount of $1,476,001.88. If anything, the other *Sugarland* factors make the award appear quite low.

19. Plaintiffs' Counsel separately seek reimbursement of $73.470.0 expenses. The counties do not contest this amount.

20. Plaintiffs' Counsel are awarded fees and expenses in the amount of $1,549,471.90.

21. The counties plainly do not want to pay any fee award, much less one of this magnitude. They have only themselves to blame. They could have conducted reassessments within the past three decades and used a method for assessing real property that complied with applicable law. After Plaintiffs' Counsel filed suit, they could have rendered the litigation moot by committing to conduct a reassessment. After the case survived a motion to dismiss, they could have done the same thing, or acted promptly to settle. Instead, they litigated through a trial on the merits and only settled after an adverse, post-trial ruling. Having forced Plaintiffs' Counsel to expend substantial resources to generate the benefits that the settlement conferred, the counties are not well positioned to object to a fee award that offsets those expenditures.

22. The Delaware Supreme Court previously denied the counties' application for interlocutory appeal from the court's determination that Plaintiffs' Counsel had created a benefit and could seek a fee award. The court had reassured the counties that they would have the opportunity to appeal that ruling after the court quantified that award. Because the settlement of the case imposes ongoing obligations on the parties, this order could be deemed interlocutory. As to the fee award, however, there are no further issues that need to be addressed. Under Rule 54(b), the court enters partial final judgment as to Plaintiffs' Counsel's ability to seek a fee award and the amount awarded, having determined expressly

that there is no just reason for delay. This determination allows the counties to noti appeal as of right from both this order and the earlier order in which the court determined that Plaintiffs' Counsel were entitled to a fee award.

23. Absent a stay pending appeal or an agreement by the parties as to a payment structure, the counties shall pay the amount of the fee award within sixty days. If the counties post a supersedeas bond or other security in the amount of the award, then a stay pending appeal will be granted. If the counties fulfill that condition, then the parties can save everyone some time by stipulating to a stay pending appeal.

24. In accordance with 10 *Del. C.* § 4734, certified copies of this order may be entered by the Prothonotary of the Superior Court in each county of this State in the same amount and form and in the same books and indices of judgment and order as judgments and orders of the Superior Court. After the entry thereof, the portions of this order calling for the payment of money shall have the same force and effect as though the judgment had been entered by the Superior Court.

Vice Chancellor Laster
March 29, 2023

CERTIFIED:
AS A TRUE COPY:
ATTEST:
REGISTER IN CHANCERY
BY:
May 24, 2023