

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

ALDEN SMITH and JOHN W.)
GOSSELIN,)

Plaintiffs,)

vs.)

Civil Action No. 6342

JEROME W. VAN GORKOM,)
BRUCE S. CHELBERG, WILLIAM)
B. JOHNSON, JOSEPH B.)
LANTERMAN, GRAHAM J. MORGAN,)
THOMAS P. O'BOYLE, W. ALLEN)
WALLIS, SIDNEY H. BONSER,)
WILLIAM D. BROWDER,)
TRANS UNION CORPORATION, a)
Delaware corporation, MARMON)
GROUP, INC., a Delaware)
corporation, GL CORPORATION,)
a Delaware corporation,)
and NEW T CO., a Delaware)
corporation,)

Defendants.)

- - -

Courtroom No. 1
Public Building
Wilmington, Delaware
Monday, October 7, 1985
10:05 a.m.

- - -

BEFORE: HON. CAROLYN BERGER, Vice Chancellor.

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HEARING ON MOTION FOR APPROVAL OF PROPOSED SETTLEMENT
AND ALLOWANCE OF ATTORNEYS' FEES, EXPENSES AND DISBURSEMENTS

- - -

CHANCERY COURT REPORTERS
135 Public Building
Wilmington, Delaware 19801
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APPEARANCES:

WILLIAM PRICKETT, ESQ. and
JAMES L. HOLZMAN, ESQ.
Prickett, Jones, Elliott, Kristol & Schnee

-and-

IVAN IRWIN, JR. and
BRETT A. RINGLE, of the Texas Bar
Shank, Irwin & Conant

-and-

ARTHUR T. SUSMAN, ESQ., of the Illinois Bar

-and-

AARON S. WOLFF, ESQ., of the Illinois Bar

-and-

THOMAS R. MEITES, ESQ., of the Illinois Bar

-and-

ROBERT D. ALLISON, ESQ., of the Illinois Bar

-and-

THOMAS P. SULLIVAN, ESQ., of the Illinois Bar
Jenner & Block
for Plaintiffs

ROBERT K. PAYSON, ESQ. and
PETER M. SIEGLAFF, ESQ.
Potter, Anderson & Corroon
for Defendants Van Gorkom, Chelberg, Johnson,
Lanterman, Morgan, O'Boyle, Wallis, Bonser and
Browder

A. GILCHRIST SPARKS, III, ESQ.
Morris, Nichols, Arhst & Tunnell
for Defendants Marmon Group, GL Corporation,
New T Co., and Trans Union Corporation

1 MR. PRICKETT: Good morning, Your
2 Honor.

3 THE COURT: Good morning.

4 MR. PRICKETT: Your Honor, we are
5 here this morning to present two matters to the
6 Court: An application made jointly by the parties
7 for the approval of the settlement in Smith v.
8 Pritzker or Van Gorkom, and also in the case of
9 Ridings vs. Canadian Bank.

10 Prior to presenting the motion for
11 the approval of the settlement and the petition for
12 attorneys' fees and expenses may I present to the
13 Court and move their admission pro hac vice some of
14 the attorneys that have represented the plaintiffs.

15 I believe the Court has a list of
16 the attorneys, and I will present them. I have also
17 given a copy of the list to Mrs. Brown.

18 First, I would reintroduce to the
19 Court Ivan Irwin and Brett Ringle, of the Shank,
20 Irwin & Conant firm of Dallas, Texas. They have
21 previously been admitted pro hac vice by another
22 judge of this Court.

23 THE COURT: Good morning.

24 MR. IRWIN: Good morning, Your Honor.

1 MR. RINGLE: Good morning, Your
2 Honor.

3 MR. PRICKETT: I would then introduce
4 and move their admission pro hac vice the following
5 Chicago attorneys, who have ably represented the
6 plaintiff class in the District Court in Chicago:
7 Arthur T. Susman, Aaron S. Wolff, and Robert
8 Allison.

9 Finally, Your Honor, I would
10 introduce and move the admission pro hac vice of
11 Thomas P. Sullivan, of the Chicago firm of Jenner &
12 Block. He is of counsel to the federal petitioners.

13 MR. SULLIVAN: Good morning, Your
14 Honor.

15 THE COURT: Good morning.

16 MR. PRICKETT: Your Honor, my federal
17 colleague alerts me that I overlooked Thomas R.
18 Meites, also one of the Chicago attorneys who
19 represented and does represent the plaintiff class in
20 the Chicago action.

21 We hand up to the Court the form
22 that the Court uses in connection with admissions pro
23 hac vice, and we ask that these attorneys be admitted
24 for purposes of these motions today.

1 THE COURT: You are all admitted,
2 and welcome to the Court.

3 MR. MEITES: Thank you, Your Honor.

4 MR. ALLISON: Thank you, Your Honor.

5 MR. WOLFF: Thank you, Your Honor.

6 MR. SULLIVAN: Thank you, Your Honor.

7 MR. SUSMAN: Thank you, Your Honor.

8 MR. PRICKETT: Your Honor, I would
9 also like to introduce, though not move his
10 admission, Mr. Alden Smith, the original class
11 action plaintiff in the state action. He is the man
12 who started all this.

13 THE COURT: Good morning.

14 MR. PRICKETT: Mr. Gosselin, the
15 other class action plaintiff in the Delaware action,
16 regrets that he is unable to be present, but like Mr.
17 Smith he has been fully informed and unqualifiedly
18 approves the proposed settlement and joint petition
19 for fees and expenses.

20 Turning to preliminary matters,
21 there are two in number before we get to the
22 motions. First are the affidavits showing that
23 notice has been given pursuant to the Court's order.
24 In that connection let me present first the affidavit

1 of Richard L. Segrin, who with Terri Osborne from the
2 Delaware Trust Company is present in the Court.

3 This affidavit of Mr. Segrin, dated
4 September 20, 1985, indicates that notice pursuant to
5 the Court's order was mailed to the shareholders of
6 TU for the period September 30 through February 10,
7 1981. And I hand that up and ask that the clerk file
8 that affidavit showing that notice by mail was given
9 to that class of shareholders.

10 Secondly, I present two affidavits,
11 one from The Wall Street Journal, and one from The
12 Chicago Tribune. These affidavits show that
13 pursuant to the Court's order notice by publication
14 on August 13 and August 20 was given to the
15 shareholders who had sold shares in the period from
16 September 19 through September 30, 1980. As Your
17 Honor may remember and as the record should show,
18 publication was ordered as to this small group of
19 stockholders since dailies and other stock records
20 were not available as to these stockholders. And
21 therefore, notice by publication was ordered, and
22 these two affidavits indicate that the order was
23 complied with and notice was given to those
24 stockholders by publication.

1 Your Honor, so far as we know,
2 therefore, the Court's order was complied with in
3 terms of giving notice of these motions. If the
4 Court has no questions about the notice requirement,
5 I turn to three other preliminary matters.

6 Your Honor may recall that the
7 Court's order provided that on September 23, 1985
8 three things had to be done. First of all, any
9 stockholder wishing to be excluded or, to use the
10 popular phrase, to opt out of this settlement, had to
11 do so by giving written notice of his intention by
12 September 23, 1985. I am happy to report that only a
13 very small number of stockholders have chosen to
14 exclude themselves from receiving their pro rata
15 share of the settlement fund.

16 I hand up another affidavit of Mr.
17 Segrin, of Delaware Trust Company, that, in effect,
18 indicates that as of the date of the affidavit,
19 October 4, 1985, only 15,838.5 shares had exercised
20 the right that they had to opt out of the
21 settlement.

22 In that connection, Your Honor, we
23 would ask leave of Court at the appropriate time to
24 recanvass some of those who have opted out, because

1 their notices of opt-out show clearly that they
2 continue to be under a misapprehension, and some of
3 them believe that in opting out they are avoiding
4 expense or avoiding trouble, et cetera. They don't
5 understand, even though the notice seemed clear, that
6 what they are doing is simply giving up their right
7 to a pro rata share. Of course, there are others who
8 have opted out who clearly understand the nature of
9 their act, and we would do nothing further so far as
10 they are concerned.

11 Now, the second thing that had to
12 take place as of September 23 was for the record
13 holders who held shares for the benefit of beneficial
14 holders were required to file a list of the names and
15 addresses of their beneficial holders. We have made
16 tremendous progress in getting that accomplished in
17 spite of the reluctance and the inertia on the part
18 of some record holders. This has been done with the
19 help of Delaware Trust Company and with shareholders
20 communications. It is not completely accomplished,
21 and we may need to come back to the Court for
22 additional time to complete that administrative
23 task. However, it is well on the way to being
24 completed.

1 We may also need to apply to the
2 Court for some modicum of additional time for those
3 shareholders who were sellers in the period from
4 September 19 through September 30 to file proofs of
5 claim. There has been notice to them by
6 publication. They were required to file by September
7 23, but there may be some who have not done it and as
8 to whom we would see no reason why they should not be
9 given additional time. We will apply to the Court
10 for additional time on that if it seems appropriate.

11 The final item, and perhaps the most
12 important for the proceedings today, was the
13 requirement in the Court's order that objectors to
14 the settlement give notice by serving and filing
15 their objections as of that date. I am happy to
16 report to the Court that there were no written
17 objections either in this Court or in the federal
18 court as of September 23, 1985, and there have been
19 no objections served and filed since that time.
20 Beyond that, the attorneys for the parties know of no
21 person or entity who objects or has filed any
22 opposition to the settlement.

23 That means, to translate in other
24 words, out of the 10,000 former shareholders of

1 Trans Union, not one has seen fit to object to the
2 settlement.

3 Your Honor, that brings me, then, to
4 the first of the two motions or matters that are
5 before the Court for the Court's consideration
6 today. The first is the joint motion of all of the
7 parties for approval by this Court of the settlement.

8 It has been more than five years
9 since the Trans Union board first acted on the merger
10 proposal, and it would be a great waste of this
11 Court's precious time to review orally and in detail
12 the complex and arduous course of the two cases; that
13 is, Smith v. Van Gorkom in this Court and in the
14 Delaware Supreme Court, and its companion case,
15 Ridings vs. Canadian Bank in the federal court.
16 Furthermore, the highlights of these two cases have
17 been delineated in the papers filed with the Court.

18 Suffice it to say that after the
19 receipt of the three-to-two decision of the Delaware
20 Supreme Court and at a critical juncture in the
21 federal court case and at a time when the plaintiffs
22 faced the difficult and dangerous task of trying to
23 establish damages and the defendants also were
24 clearly at risk, settlement negotiations were

1 initiated by the defendants. No useful purpose would
2 be served by reviewing in detail the protracted and
3 complex negotiations between all of the various
4 parties as between themselves and with their
5 adversaries. In the end a settlement totaling
6 \$23,500,000 was hammered out. And while this amount
7 is considerably less than the theoretical amount that
8 might have been recovered if this court or the
9 federal court were totally persuaded by plaintiffs'
10 view on the issue of damages, \$23,500,000 is a great
11 deal more than zero dollars, which is what the
12 stockholders of Trans Union would receive if the
13 plaintiffs had not been successful at trial or on
14 appeal on this difficult issue either in this court
15 or in the federal court.

16 This settlement, therefore, like all
17 settlements, is a compromise. However, it is a
18 compromise that results in a huge settlement for the
19 shareholders of Trans Union. It is a reasonable
20 settlement. It is a fair settlement. It is a good
21 settlement, and it is a settlement that should be
22 approved by this Court and subsequently by the
23 federal court.

24 Succinctly, what are the reasons why

1 this court and the federal court should approve this
2 settlement? First, there is a large monetary benefit
3 for the former shareholders of Trans Union, \$18
4 million plus the interest that accrues on that fund
5 until it is paid out.

6 Second, if this settlement is not
7 approved, it is the professional judgment of all the
8 attorneys for the Trans Union shareholders that
9 there is something like an even chance that these
10 shareholders will receive absolutely nothing.

11 Third, this settlement obviates all
12 the many remaining litigation risks both in this
13 court and in the federal court. Fourth, nearly five
14 years have elapsed since these lawsuits were filed.
15 This settlement means that the shareholders will be
16 paid their share of the \$18 million settlement fund
17 here and now. There will be no further delay in
18 payment.

19 Fifth, motion for approval of this
20 settlement is a joint motion. This is not a
21 settlement presented by the plaintiffs to which the
22 defendants have been forced to give reluctant or
23 grudging approval. On the contrary, all of the
24 parties are in favor of this settlement and all wish

1 to end the claims and litigation.

2 Sixth, there is no objection by
3 anyone, including the 10,000 former Trans Union
4 shareholders.

5 Seventh, on the contrary, there are
6 letters as well as oral approbation from shareholders
7 for all that has been done in their behalf without
8 any risk on their part and without any cost to them
9 in the state and federal litigation and in this
10 settlement.

11 In addition to the letters from
12 satisfied shareholders that are presently on record,
13 I would like to hand up a letter received over the
14 weekend from Harold Kohn, Esquire of Philadelphia.
15 He writes as a representative of the former Trans
16 Union shareholders and expresses his total
17 approbation not only for the settlement here
18 presented but for the fee application that will be
19 presented hereafter.

20 As this Court well knows, the
21 approval of a settlement is addressed to the sound
22 discretion of this court and to the federal court.
23 In this context neither the attorneys for the
24 plaintiffs nor the defendants know of any reason

1 whatsoever why this Court should not exercise its
2 discretion in favor of this settlement, especially
3 since the stated policy of the law and both of these
4 courts is in favor of the settlements.

5 If the Court were for some reason to
6 disapprove the settlement, it would literally be a
7 disaster not only for all the former TU shareholders
8 but for the defendants as well. Thus, all in the
9 courtroom join in earnestly requesting that this
10 Court exercise its discretion to approve the
11 settlement here presented.

12 As I have indicated, the motion for
13 approval of this settlement is a joint motion made
14 on behalf of all parties to the litigation, both
15 here and in the District Court case in Chicago. I
16 have spoken in favor of the joint motion that the
17 settlement be approved. However, since we are
18 considering making a record in this court and this
19 record will be considered by the federal court on
20 October 15 in considering whether to exercise its
21 discretion as to whether to approve the settlement,
22 it is most appropriate that Mr. Payson and Mr.
23 Sparks rise and speak on behalf of the defendants
24 and that Mr. Susman speak on behalf of the federal

1 plaintiffs in stating their position for the record.
2 Before they do so, however, there are two final
3 matters that I would like to raise.

4 First, does the Court have any
5 questions of me or, indeed, anybody else about the
6 terms of the settlement or about the approval of the
7 settlement itself? If so, I would clearly want to
8 answer those before yielding the rostrum to the
9 others.

10 THE COURT: I have one very
11 fundamental question, which would apply both to the
12 settlement and to the application for fees, and that
13 is to what extent is this Court being asked to give
14 -- I suspect it would be an advisory view -- on the
15 appropriateness of the settlement as to the federal
16 action or the appropriateness of the fee application
17 as to the federal action?

18 MR. PRICKETT: Your Honor, let me
19 take that in two bites. This settlement is addressed
20 to both courts, and if either one of the courts
21 disapproves the settlement, the settlement will not
22 go through. So that each court independently must
23 approve the settlement. And when both of them have,
24 the settlement becomes final.

1 So that in terms of the settlement
2 it is not advisory. It is a concurrent action that
3 results in the settlement.

4 As I say, if either court disapproves
5 the settlement for any reason, then the entire
6 settlement is off, and we are back in a litigation
7 posture in both cases.

8 So far as the fee application is
9 concerned, I will address that later, but let me
10 take up that question. There is an application in
11 terms of an overall fee that is addressed to this
12 court and is addressed, I suppose, in some sense to
13 the federal court. The joint application is for a
14 total of \$5,500,000 for both fees and expenses for
15 all attorneys in both cases. It was deemed
16 appropriate to present an application overall to
17 this court for approval of the overall fee
18 application in terms of both cases here. The
19 federal court will not pass on the fee application
20 applicable to the state court attorneys. Rather, it
21 will address itself to the application of the
22 attorneys in the federal court action. But in some
23 sense, in approving the overall settlement,
24 necessarily the Court is going to have to consider

1 the overall application of fees.

2 So far as the federal court
3 application is concerned, Judge Hart indicated that
4 it would be a help to the federal court in
5 considering the application of the federal court
6 plaintiffs if in making our application to this
7 court there was included in that material relevant
8 to the standard that is germane and governs in the
9 federal court, so that this Court in reviewing the
10 overall settlement initially and the fee
11 applications would be in a position to express an
12 advisory opinion, if you like, to the federal court
13 its views of whether the application, so far as the
14 federal attorneys are concerned, appears to meet the
15 standard of the federal court.

16 The ultimate determination of whether
17 Sixth Circuit standards have been met rests with the
18 District Court, but the Court did impose on us the
19 obligation to request respectfully that as this Court
20 was reviewing the matter overall, that the standards
21 be presented so that the Court could in its overall
22 consideration give some consideration to a standard
23 that is not that of Delaware but is that of the
24 federal court, and that thus the federal court in

1 receiving the record, the transcript of what we say
2 here and the papers that are here, would have the
3 benefit of judicial advice from this Court with its
4 expertise on these matters in terms of the federal
5 standards.

6 So that there is a request, as I
7 understand it, from the federal court that Your Honor
8 consider it and state your views on that matter so
9 that the federal court as it comes to the ultimate
10 determination which it has got to make has the
11 benefit of whatever views Your Honor can give on that
12 question.

13 Let me say that we recognize with
14 considerable pleasure that the Court has not adopted
15 Lindy, but the standard in Lindy is not too far from
16 the alternative standard that Delaware does consider
17 where no monetary benefit has been conferred. So
18 that we do request that the Court honor to the
19 extent it can Judge Hart's request for whatever
20 guidance or advice this Court can give on that
21 collateral matter.

22 I don't know whether that answers
23 the question, but it is the best I can do.

24 THE COURT: Thank you.

1 MR. PRICKETT: The other thing that
2 I think I would like to do before I cede the podium
3 is to make certain on the record there is a
4 reflection that present in the courtroom there is no
5 objector to the settlement, and I would suppose that
6 we would do the same thing when we come to consider
7 the application or petition for fees.

8 Looking about the courtroom, I
9 believe that I am familiar with everybody in the
10 courtroom and why they are here, but I do think that
11 the record would be well served if the clerk were
12 asked, if the Court doesn't want to do it, as to
13 whether there is any objector to the settlement. I
14 don't know how Your Honor handles that. Sometimes
15 the clerk does it and sometimes the Court does it.
16 But we do want to establish on the record that there
17 is no objector.

18 THE COURT: Is there anyone here to
19 raise an objection either as to the application for
20 settlement or for attorneys' fees in this matter?

21 (There was no response.)

22 THE COURT: There being no response,
23 I will have to conclude that your observation is
24 correct, Mr. Prickett, and there is no objection.

1 MR. PRICKETT: Thank you. I would
2 then cede first to Mr. Susman and then to Mr. Payson
3 and Mr. Sparks. Thank you, Your Honor.

4 THE COURT: Thank you.

5 MR. SUSMAN: May it please the Court,
6 my name is Arthur Susman. I am one of the attorneys
7 in the federal action pending in the United States
8 District Court for the Northern District of
9 Illinois.

10 I will just make a very few short
11 points.

12 First, I would like the record to
13 reflect that the materials presented in support of
14 both the motion to approve and the attorneys' fees
15 were presented to Your Honor or delivered to Your
16 Honor last Wednesday, I believe. As far as the
17 record reflects at this point, they were just handed
18 up to you. In fact, that is not so. You have had
19 them for upwards of a week.

20 When listening to the address by Mr.
21 Prickett, there were two factors in support of the
22 settlement which Your Honor may take into account.
23 One is the thoroughness of preparation. I think that
24 it goes without saying that preparation here has been

1 as thorough as you could possibly get, since it has
2 been through a trial and through an appeal, and since
3 the only thing left was the trial on damages. Tens
4 of thousands of pages were reviewed by both counsel
5 in the state and federal actions, and I think, Your
6 Honor, the record reflects that this was not a
7 settlement made without thorough preparation.

8 The only other point, probably
9 through modesty, that Mr. Prickett did not address
10 himself to was the experience of counsel. If counsel
11 recommend a settlement, as we are here, that
12 recommendation in order to to be gauged properly has
13 to be viewed in the background of the experience of
14 counsel.

15 I am sure you are familiar with the
16 experience of Mr. Prickett. He is one of the, well,
17 most elder practitioners in the field, and well
18 respected here.

19 Your Honor does not know us very
20 well, the Chicago contingent. However, our
21 experience is reflected in one of the appendices to
22 the fee petition. And we are not without our
23 experience in both federal and state securities class
24 actions, most of them in the Chicago area as well as

1 in other cities, not so many in Delaware, but we hope
2 to be here more often. But we are experienced, and
3 we do recommend the settlement wholeheartedly.

4 Thank you.

5 THE COURT: Thank you.

6 MR. PAYSON: Good morning, Your
7 Honor.

8 THE COURT: Good morning.

9 MR. PAYSON: As the Court is aware, I
10 represent the individual defendants, the former
11 directors of Trans Union. The negotiations which led
12 to the settlement are probably the most intense that
13 I have ever been party to. We have worked very hard
14 to bring the settlement about, and my clients
15 wholeheartedly support it.

16 THE COURT: Thank you.

17 MR. SPARKS: Your Honor, I stand as
18 the counsel for the corporate defendants both in this
19 action and in the action in the Northern District of
20 Illinois. Insofar as Mr. Payson's comments are
21 concerned, I can only echo them and state that the
22 settlement negotiations in this matter were the most
23 intense that I have ever participated in in settling
24 numerous class and derivative actions. And I believe

1 that both sides got for their respective clients the
2 best possible deal that could be achieved in a
3 settlement.

4 With respect to the merits of the
5 case, I think Mr. Prickett aptly described to Your
6 Honor that this was, I believe, after the Supreme
7 Court's decision, a case that literally had to be
8 settled from the perspective of both the defendants
9 and the plaintiffs, since putting the two cases
10 together, it posed great risk on both sides, A, of
11 substantial damages on the part of the defendants,
12 but equally, there was a risk on the part of the
13 plaintiffs that they would receive little if no
14 damages when all was said and done.

15 Indeed, from the corporate
16 defendants' point of view, that was a concern to
17 some extent even more in the federal action than in
18 this action, but in both actions there were very
19 sophisticated and novel questions that were raised
20 with respect to the type of liability that would
21 flow after a decision such as the Supreme Court's,
22 which was to a large extent unprecedented in modern
23 corporate annals. And I believe if Your Honor would
24 recall, there was pending before Your Honor, and I

1 guess is pending at this time, some very novel legal
2 questions raised in cross-motions by counsel for the
3 Delaware plaintiffs and counsel for the corporate
4 defendants.

5 I would also like to say one other
6 word, and this is with reference to the plaintiffs
7 and their attorneys, plaintiffs' attorneys in the
8 Northern District of Illinois action, with which
9 this Court is not as familiar as you are with Mr.
10 Prickett, whose work in this matter speaks for
11 itself. And that is that over a course of
12 approximately five years I believe I have counted
13 that there were something like 25 or 26 briefs filed
14 by the respective sides in the Northern District of
15 Illinois action. Motions were very hard fought, and
16 I found the quality of the legal work done by the
17 plaintiffs' counsel in the Northern District of
18 Illinois to be uniformly high, as high as I have
19 experienced in battling against some of the
20 distinguished members, most distinguished members of
21 our Bar.

22 And I thought I would just add that
23 as a sidelight, because it certainly played a part in
24 our consideration of the global settlement, knowing

1 that we were against very worthy opponents in terms
2 of legal counsel both here in Delaware and in the
3 Northern District of Illinois.

4 My clients support the settlement,
5 Your Honor.

6 THE COURT: Thank you.

7 MR. PRICKETT: Unless Your Honor has
8 further questions or inquiries about the settlement
9 itself, that would conclude the oral presentation in
10 support of the joint application that the settlement
11 be approved. As Mr. Susman reminds me, we do rely on
12 the papers that were filed in support of the
13 settlement on last Wednesday.

14 Would Your Honor now be prepared for
15 us to address ourselves to the fee petition?

16 THE COURT: Please do.

17 MR. PRICKETT: In presenting to the
18 Court the application for the fee petition, my
19 position necessarily changes. I now rise to move
20 that the Court grant the fee petition filed on
21 behalf of the attorneys for the former TU
22 shareholders in both this action and in the Ridings
23 case pending in the Northern District of Illinois.
24 In doing so, my zeal and enthusiasm is a little bit

1 different, since it is motivated by our obvious
2 self-interest in the outcome. That is, in
3 enthusiastically urging the Court to approve the
4 settlement, I do so on behalf of the former
5 shareholders of TU, and that is not motivated in any
6 way by my self-interest but by their obvious interest
7 in having the Court exercise its discretion in favor
8 of the settlement.

9 Here, however, as I say, we are
10 presenting a petition on our own behalf. But having
11 said that, I and the other attorneys for the former
12 Trans Union shareholders firmly believe that by any
13 standard our joint application for attorneys' fees
14 and expenses is fair and reasonable and should be
15 approved by this Court and by the federal court.

16 What are the reasons for this?
17 First, it was only through our diligent, persistent
18 and, above all, successful efforts that the former
19 shareholders of Trans Union will enjoy any recompense
20 whatsoever. If we had not made the effort, they
21 would have gotten nothing, though the Supreme Court
22 has determined that they were not fairly dealt with.
23 Thus, against very heavy legal odds and a battery of
24 able and determined defense attorneys both here and

1 in Chicago, the attorneys for the Trans Union
2 shareholders have hung in, so to speak, persisted and
3 finally achieved a victory on liability in Delaware
4 and forced the defendants to seek a global settlement
5 of both cases, greatly to the benefit of the Trans
6 Union shareholders.

7 Actually, as delineated in our
8 papers, the sequence was the proper one. We first
9 negotiated a settlement in the amount of \$18 million
10 for the shareholders of Trans Union. Once that was
11 secure, then negotiations started as to attorneys
12 fees. And in the end the defendants agreed to a
13 total fee in both cases for all attorneys amounting
14 to \$5,500,000 in addition to that which had
15 previously been negotiated for the benefit of the
16 Trans Union shareholders.

17 In this connection the petition is
18 one for fees and expenses. However, it should be
19 noted that the \$5,500,000 includes all of the
20 out-of-pocket expenses and disbursements that were
21 made both by the class action plaintiffs, Mr. Smith
22 and Mr. Gosselin, as well as the federal plaintiffs,
23 and by their attorneys in order to fund this case.

24 To put it another way, legal

1 determination was not alone sufficient to stay in
2 the field. It was necessary to put out funds both
3 by the class action representatives and by the law
4 firms that amounted to almost a quarter of a million
5 dollars.

6 In the usual case the petition for
7 attorneys' fees is one that seeks an award from the
8 fund created. In this case that is not so, nor is
9 the fund that has been created to be further depleted
10 by the reimbursement of the disbursements of the
11 attorneys. Rather, all of these disbursements will
12 come out of the fees that are hereby petitioned for.

13 As has been shown in the two
14 memoranda submitted in support of the petition for
15 fees, not only is the \$5,500,000 fee justified under
16 the benefit standard but it is justified under other
17 standards as well.

18 Turning first to the benefit
19 standard, in Delaware the courts have focused their
20 inquiry in fee applications on demonstrated benefits
21 as virtually the sole basis for fees. Here it is
22 perfectly clear the total benefit to the Trans Union
23 shareholders is \$23,500,000, of which \$18 million
24 plus any interest that accrues on the \$18 million

1 will go directly and entirely to the Trans Union
2 shareholders. No part of that will go back to the
3 defendants. It will go entirely to the Trans Union
4 shareholders.

5 The fee applied for of \$5,500,000 is
6 about 23.4 percent of the total benefit. The cases
7 cited in our memorandum show that such a percentage
8 has been frequently approved by the courts of
9 Delaware even in cases where there has not been a
10 trial after discovery and an appeal, including three
11 arguments, such as was the case in the Delaware
12 case.

13 In the federal case, as the
14 memorandum shows, there was five years of consistent
15 and persistent litigation that led the defendants to
16 initiate settlement discussions in the spring of
17 this year.

18 The fee petition is a joint fee
19 petition filed on behalf of all attorneys who have
20 represented the former TU shareholders both in
21 Delaware and in Chicago. In our case it includes
22 the Texas firm Shank, Irwin, who has participated
23 with us in the Delaware action.

24 It should be noted that neither of

1 these cases are ones where at the very outset shortly
2 after litigation was initiated there was an agreement
3 by the defendants to a cosmetic or therapeutic
4 corporate reform that then formed the basis for a fee
5 application. On the contrary, these cases both in
6 Chicago and the state courts were heavily litigated
7 for five years. Plaintiffs fought long and hard and
8 successfully.

9 Furthermore, there was no duplication
10 of effort either in the cases themselves internally
11 nor in the two cases. That is, there were not hordes
12 of attorneys from the federal cases attending the
13 state court depositions, nor did the state court
14 attorneys go to Chicago to sit in federal courtrooms
15 in connection with the extensive federal motion
16 practice. The two cases proceeded separately without
17 any duplication. And thus, the stockholders of TU
18 benefited from the fact that there were two cases
19 vigorously prosecuted in two separate courts.

20 The result was not a theoretical,
21 cosmetic or theoretical one. The settlement is cold,
22 hard dollars, which will quite rightfully go
23 virtually immediately into the pockets of all of the
24 former Trans Union shareholders.

1 Now, Vice Chancellor Hartnett
2 recently reiterated in his General Cinema opinion
3 that where no fund has been created but a monetary
4 benefit has resulted from the action of the
5 attorneys, the courts of Delaware will utilize eight
6 factors set out in DR 2-106(b) in passing on a fee
7 petition. We will not take the time to go over each
8 of these eight factors. They are set out in our
9 brief. Nor will we show why when measured by these
10 factors the present fee application is reasonable and
11 fair. However, we do think that even if the Court
12 were to utilize this alternate measure of the eight
13 factors, it would conclude or it should conclude that
14 the fee application is fair and reasonable.

15 Beyond all of the foregoing, the
16 defendants themselves take the position that the fee
17 application is fair and reasonable. As indicated,
18 the fee was separately negotiated with the defendants
19 following the conclusion of negotiations on the
20 settlement for the stockholders.

21 In addition, there is, as the Court
22 now knows, no objection whatsoever to the joint
23 petition for fees. On the contrary, as the papers
24 filed show, some TU stockholders, particularly those

1 knowledgeable in these sort of matters, have taken
2 the trouble affirmatively to indicate their written
3 approval of the fee application.

4 In view of the immense litigation
5 risks taken, the fact that the cases were both
6 contingent, the results that were achieved and the
7 lack of objection, we believe that this Court and
8 subsequently the federal court should exercise its
9 discretion to approve the application for fees and
10 expenses for all of the attorneys in the amount of
11 \$5,500,000.

12 As indicated previously in the papers
13 and in what I have said before, Judge Hart, aware of
14 the Delaware Court of Chancery's expertise and the
15 fact that it deals regularly with fee petitions
16 arising from such corporate cases, has asked that the
17 attorneys for the parties request that the Court
18 consider that part of the application made for the
19 federal attorneys under federal standards. As to
20 this aspect of the fee application I would ask Mr.
21 Thomas Sullivan, from Jenner & Block, to address the
22 Court on this aspect of the fee application, unless
23 the Court has questions for me in connection with the
24 more general fee application or specifically any part

1 of it.

2 THE COURT: Please proceed. That
3 will be fine.

4 MR. SULLIVAN: May it please Your
5 Honor, my name is Thomas P. Sullivan, and I am a
6 partner in the Chicago law firm of Jenner & Block.
7 And I appear here today on behalf of the lawyers for
8 the plaintiffs in the federal case pending in
9 Chicago, Ridings vs. The Canadian Bank, insofar as
10 their application for fees is concerned.

11 As Mr. Prickett has mentioned to
12 you, Your Honor, Judge Hart has requested that we
13 request you to give him whatever guidance you deem
14 appropriate with respect to the question of whether
15 the application for fees of the federal plaintiffs'
16 counsel comport with the standards applicable in the
17 federal courts in the Seventh Circuit. And Judge
18 Hart has set a hearing next week to consider this
19 matter and has asked us to provide him not only with
20 the materials that we have submitted to you but also
21 with the transcript of today's hearing so he can
22 have the benefit of your wisdom on this issue,
23 should you care to express an opinion on the
24 subject. And the draft order that we have submitted

1 to you does contain the findings that we would like
2 entered in response to Judge Hart's request.

3 The federal courts in the Seventh
4 Circuit, the Court of Appeals for the Seventh
5 Circuit, has not specified a particular kind of
6 analysis to be applied in this sort of case with
7 respect to attorneys' fees, but the courts there have
8 applied one of two standards, either the so-called
9 lodestar multiplier analysis or the percentage of
10 benefit to the class analysis. And in the briefs
11 that we have submitted to you, Judge, we have set out
12 the cases relating to both of those standards and the
13 way in which we believe the facts of this case apply
14 to the law as adopted in the Seventh Circuit.

15 And if you like, I could summarize
16 orally what is in those materials with respect to
17 these two analyses.

18 THE COURT: I have reviewed the
19 memorandum carefully. Unless there is something you
20 care to point out to me, I don't think that would be
21 necessary.

22 MR. SULLIVAN: All right. Your
23 Honor, I would merely like to state, then, that with
24 respect to the efforts expended by the plaintiffs'

1 lawyers in the federal case in Chicago, they were
2 substantial. I believe Mr. Sparks has already
3 indicated the importance of the work done there. I
4 think the settlement achieved here was settled as a
5 settlement of both cases, and neither could have been
6 settled without the other. Judge Hart will himself
7 hear and determine next week whether he approves the
8 settlement, and under Paragraph 9 of the order that
9 has been submitted to you, this settlement is
10 conditioned upon his approval, too. So he will stand
11 and look independently at this matter.

12 So we believe that the findings
13 contained in the proposed order, Paragraph 6, with
14 respect to the time expended, the hourly rates, the
15 complexity and contingent nature of the case, the
16 substantial results achieved, the justification for
17 an enhancement of the lodestar and the apportionment
18 of the amounts in accordance with the settlement
19 agreement are fully warranted on the papers that have
20 been submitted to you by affidavit.

21 I am not familiar with your practice,
22 Your Honor. Should I offer these affidavits into
23 evidence?

24 THE COURT: I believe they are part

1 of the record already.

2 MR. SULLIVAN: All right. In that
3 case, unless you have some questions, that is my
4 presentation.

5 THE COURT: Thank you.

6 MR. PRICKETT: Your Honor, I would
7 then ask whether Mr. Payson and Mr. Sparks would
8 indicate on the record their position on the fee
9 application.

10 MR. PAYSON: Once again, Your Honor,
11 on behalf of the individual defendants, the
12 attorneys' fees were a part of this settlement,
13 negotiated in good faith by the parties, and my
14 clients do support the plaintiffs' application for
15 fees as stated in their papers.

16 THE COURT: Thank you.

17 MR. SPARKS: Your Honor, my clients
18 take exactly the same view as that just expressed by
19 Mr. Payson.

20 THE COURT: Thank you.

21 MR. PRICKETT: Your Honor, that,
22 then, completes the presentation of the two matters
23 coming before the Court. We have previously
24 presented to the Court a form of order and final

1 judgment. As I indicated to the Court in a letter
2 last week, there was a minor change in connection
3 with Paragraph (c) on Page 4 of the form of the
4 order, but it does not change the substance or thrust
5 of the order that was presented to the Court for
6 consideration of form back at the time the original
7 settlement was presented. I would suggest that in
8 considering that order the Court didn't pass on it.
9 It was simply part of the package that was approved.

10 We would hand this order up in its
11 present form, again, unless the Court has a copy of
12 it, and ask that the Court consider that order and
13 enter it if the Court approves the settlement and
14 approves the application for fees.

15 As I indicated, we have tentatively
16 -- we haven't tentatively. There is notice that
17 there will be a second hearing before Judge Hart on
18 Tuesday, October 15 in Chicago, and while that
19 hearing could be continued if this Court has not had
20 a sufficient opportunity to determine what it is
21 going to do on these applications, we would hope that
22 we would be able to appear before Judge Hart at that
23 time.

24 THE COURT: I would appreciate your

1 handing up the order.

2 I would make one request of you, Mr.
3 Prickett, and as a result of that request I am going
4 to defer ruling at this point, at the same time
5 bearing in mind the schedule with the federal court
6 and with the firm hope that I will be able to resolve
7 these matters in time for maintaining that schedule.
8 I don't want anyone to take any negative inferences
9 from this request that I am about to make or to get
10 the sense that I am considering in any way modifying
11 the Delaware approach to the award of attorneys'
12 fees. However, given the large absolute dollars
13 involved, although bearing in mind that the
14 percentage is not a tremendously large one, I would
15 appreciate a breakdown of total number of hours that
16 have been spent by plaintiffs' counsel in connection
17 with the Delaware action. Is that feasible?

18 MR. PRICKETT: It is feasible to
19 some extent, Your Honor. That is, I am not certain
20 that my Texas colleagues, having taken the case on a
21 contingent basis, kept precise track of hours, nor
22 are we entirely capable of reconstructing all hours,
23 simply because we recognized that in this case we
24 were working against a benefit standard, and we did

1 not attempt over the five years to collect all
2 hours. And therefore, I am not sure that we can give
3 you what the federal plaintiffs have done so
4 assiduously, because they knew that they were working
5 against a Lindy standard. But we can give you some
6 approximation of hours, and we can do that relatively
7 quickly.

8 THE COURT: Okay. I don't need
9 anything of the level of detail that one would
10 expect in an hourly-basis type approach, and to the
11 extent that it is your or your colleagues' good faith
12 estimates of various allotments of time as to which
13 no detailed records were kept, that will be
14 satisfactory as well. Obviously to the extent that
15 there is hard figures, that is preferable, but I am
16 not asking or expecting that the next two days solid
17 people spend going through archives and devoting 20,
18 30 hours to trying to put this together. And as I
19 say, it is not meant to suggest that this Court is
20 adopting any different standard. It is truly a
21 matter of my own sense that in an application of this
22 size it is incumbent upon the Court to have as much
23 information as is possible available to the Court in
24 reaching a decision. And that is not to suggest any

1 reluctance on the Court's part to reach a decision
2 favorable to the application that has been made.

3 So with that in mind, I will wait to
4 receive that information from you. I, as I said, am
5 very hopeful that if I can get that information in
6 the next day or two, that I in turn can either enter
7 an order or issue a short opinion by the end of the
8 week.

9 MR. PRICKETT: Thank you, Your
10 Honor. We will get that in very promptly.

11 THE COURT: Thank you.

12 MR. PAYSON: Your Honor, since the
13 Court appears to have no objections to the
14 settlement part of the settlement, we would ask that
15 the Court consider signing an order today approving
16 just the settlement, without allowance for counsel
17 fees.

18 MR. PRICKETT: Your Honor, we would
19 join in that application. If the settlement is
20 approved, our agreement provides for the banking of
21 funds within 48 hours thereafter and interest begins
22 to run. So that regardless of what the Court does on
23 that, it is in the interest of the stockholders to
24 have this approval, and I think all parties would

1 welcome that, though the Court reserves decision on
2 the application for attorneys' fees.

3 May we prepare an alternate order
4 that reserves decision on the attorneys' fees but
5 approves the settlement itself?

6 THE COURT: That would be fine. I
7 can state for the record that based upon my review
8 of the documents, which was done in advance of this
9 hearing and, in addition, the comments that were made
10 by counsel this morning, there is no doubt in my mind
11 but that this settlement is fair and reasonable and
12 in the best interests of the stockholders or the
13 former stockholders and should be approved.

14 MR. PAYSON: And I think Your Honor
15 understands, and we think that the plaintiffs'
16 attorneys should get the fees that they have asked
17 for, but if there is any reduction either by this
18 Court or by the Chicago court in those fees, the
19 difference would be paid to the shareholders of
20 Trans Union, so if the settlement is approved, the
21 funds will be created within 48 hours of that
22 approval.

23 MR. PRICKETT: That is correct, Your
24 Honor.

1 THE COURT: Fine. And if someone
2 can submit to me later today or tomorrow a revised
3 form of order, I will be happy to sign it.

4 MR. PAYSON: Thank you, Your Honor.

5 MR. PRICKETT: We will get that in
6 today. Thank you, Your Honor.

7 THE COURT: Thank you. We stand in
8 recess.

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(Court adjourned at 11:05 p.m.)

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CERTIFICATE

I, LORRAINE B. MARINO, Official Reporter for the Court of Chancery of the State of Delaware, do hereby certify that the foregoing pages numbered 3 through 41 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above-stated cause, before the Vice Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 7th day of October, 1985.

Official Reporter for the
Court of Chancery of the
State of Delaware