COURT OF CHANCERY
OF THE
STATE OF DELAWARE

LEO E. STRINE, JR.
CHANCELLOR

COURT OF CHANCERY
NEW CASTLE COUNTY COURTHOUSE
WILMINGTON, DELAWARE 19801

Date Submitted: March 14, 2013
Date Decided: April 18, 2013

Peter B. Ladig, Esquire
Morris James LLP
500 Delaware Avenue, Suite 1500
Wilmington, DE 19807

Peter J. Walsh, Jr., Esquire
Ryan T. Costa, Esquire
Daniel A. Mason, Esquire
Potter Anderson & Corroon LLP
1313 North Market Street
Wilmington, DE 19801

RE: Edgewater Growth Capital Partners L.P. v. H.I.G. Capital, Inc.
C.A. No. 3601-CS

Dear Counsel:

On February 28, 2013, this court issued its post-trial opinion adjudicating the claims between counterclaim plaintiff Colorado Commercial Finance LLC, an affiliate of H.I.G. Capital, Inc. ("HIG"), and counterclaim defendant Edgewater Growth Capital Partners ("Edgewater").[1] In that opinion, I addressed HIG's counterclaim for breach of contract under the Amended and Restated Limited Guaranty ("Limited Guaranty").[2] After determining that Edgewater breached the Limited Guaranty, I had to address Edgewater's maximum liability under Section 6 of that agreement. I held that Section

[1] *Edgewater Growth Capital P'rs v. H.I.G. Capital, Inc.*, – A.3d –, 2013 WL 749375 (Del. Ch. Feb. 28, 2013) ("Opinion").
[2] *See* JX 36 (the "Limited Guaranty").

6(b) did not grant HIG interest on the principal amount owed to it,[3] but that HIG was entitled to all of its attorneys' fees, costs, and expenses under Section 6(c).[4] On March 7, 2013, HIG filed a motion for reargument of this court's decision not to award it interest under Section 6(b) of Limited Guaranty.[5] On March 19, 2013, Edgewater raised its objections to HIG's fee and expense request for $2,601,976.19 under Section 6(c).[6] In this opinion, I address both HIG's motion for reargument and Edgewater's objection to the reasonableness of HIG's fee award. I will resolve the motion for reargument first.

I. Motion For Reargument

As is well-known, the court may grant a motion for reargument when it appears to the court that it overlooked or misapprehended the factual or legal principles governing the disposition of an issue.[7] "This standard is a highly flexible one, permitting reargument if it can be shown that the court's misunderstanding of a factual or legal principle is both material and would have changed the outcome of its earlier decision."[8] Because this court misapprehended the meaning of Section 6(b) of the Limited Guaranty within the context of the contract as a whole, and because its error is material and would have changed the outcome of its earlier decision, I grant HIG's motion for reargument.

---

[3] *See* Opinion at *24 n.225.
[4] *Id.* at *26.
[5] *See* Countercl. Pl. Mot. Rearg.
[6] *See* Ladig Aff. (Mar. 19, 2013).
[7] *Ramon v. Ramon*, 963 A.2d 128, 135 (Del. 2008).
[8] *VGS, Inc. v. Castiel*, 2003 WL 1794210, at *1 (Del. Ch. Mar. 27, 2003).

Section 6 of the Limited Guaranty provides that:

> 6. **Maximum Liability of Guarantor**. Notwithstanding any other provision of this Guaranty, the liability of Guarantor under this Guaranty shall not exceed the total of (a) . . . *Four Million Seventy-Two Thousand and No/100 Dollars ($4,072,000),* ***(b) all interest on such part of the Indebtedness as shall not exceed the Maximum Principal Amount****, (c) attorneys' fees, costs and expenses . . . .*[9]

The court, in construing Section 6(b), interpreted it to mean that interest was only available to the extent that the principal amount owed was less than $4,072,000.[10] But, upon reflection, I misinterpreted Section 6(b).

The clause in Section 6(b) stating that HIG is entitled to "all interest . . . as shall not exceed the Maximum Principal Amount" is not reasonably read to mean that interest is only available to the extent that the Guarantor owed less than $4,072,000 and that the total amount of principal plus interest could be no more than $4,072,000. Section 6(b) specifically carves out interest as a component of the Guarantor's maximum liability. Thus, the contracting parties recognized that if the Guarantor breached its obligation to pay, the lenders would not be made whole unless their recovery included the principal amount plus interest. The court's interpretation—that HIG was not entitled to interest because it sought the Maximum Principal Amount—was therefore inconsistent with the objective intent of the parties.[11] Indeed, it is plain that subsection (b) caps the amount of

---

[9] Limited Guaranty § 6 (emphasis added in bold and italics).
[10] Opinion at *24 n.225.
[11] *AT&T Corp. v. Lillis*, 953 A.2d 241, 252 (Del. 2008) ("Under Delaware law, when interpreting a contract, the role of a court is to effectuate the parties' intent."); *see also Dowling v. Chi.*

interest itself that may be awarded to $4,072,000 in addition to the principal amount owed.

Moreover, Edgewater's assertion that HIG waived its right to litigate its entitlement to interest is without merit. HIG maintained throughout this litigation that it was entitled to the entire principal amount, interest on the principal amount owed, and its attorneys' fees, costs and expenses.[12] Edgewater, on the other hand, contended that even if the "Court enters judgment in HIG's favor on its Counterclaim, *$1,800,000 is the limit on liability*."[13] If $1.8 million was Edgewater's limit on liability under the Limited Guaranty, then HIG was not entitled to its interest. Therefore, as part of its decision on the merits, the court had to address whether the Limited Guaranty provided for interest under Section 6(b).

Not only is it clear that HIG asserted that it had the right to collect interest under the Limited Guaranty, but the court's misapprehension of Section 6(b) does not preclude

---

Options Assocs., Inc., 875 N.E.2d 1012, 1023 (Ill. 2007) ("When construing a contract, the court's primary objective is to give effect to the intent of the parties, as revealed by the language they used in their agreement."); 11 Williston on Contracts § 32:2 (4th ed.) ("Consistent with the notion that a contract represents the parties' private agreement as to their legal relationship, liabilities and rights, the primary purpose and function of the court in interpreting a contract is to ascertain and give effect to the parties' intention.").

[12] *See* Defs.' Mot. Summ. J. 46-47; Defs.' Opening Pre-Tr. Br. 48-49; Defs.' Ans. Pre-Tr. Br. 31; Trial Tr. vol. 1, 180:11-18, Oct. 8, 2012 (Ozbolt); Defs.' Opening Post-Tr. Br. 48.

[13] Pls.' Pre-Tr. Br. 49-50 (emphasis added).

HIG from using the appropriate procedural mechanism (Rule 59) to reargue its position.[14] Because Edgewater had sufficient notice of the claim and took the opportunity to defend against it by arguing that its liability was limited to the Maximum Principal Amount, HIG has not waived its argument that it was entitled to interest.[15]

As relief, the court will issue a revised opinion and enter a final judgment providing that HIG is entitled to recover interest at the statutory rate, compounded quarterly, on the $1.8 million due to HIG on June 25, 2008.[16]

II. Edgewater's Objection To HIG's Contractual Fee Award

I now turn to Edgewater's objection to HIG's attorneys' fees, costs, and expenses. Edgewater has sought to challenge HIG's fees and expenses, not on the basis that they were unreasonable in terms of the total cost of the legal and expert witness services purchased, but rather on the basis that they do not stand up to the result achieved. Edgewater's objection is remarkable. I noted in my post-trial opinion that HIG's attorneys' fees were likely to be disproportionate to the amount HIG recovered because

---

[14] *See Salgado v. Mobile Services Int'l, LLC*, 2012 WL 1021066, at *1 (Del. Ch. Mar. 22, 2012) (granting a motion for reargument based on circumstances noted for the first time in the motion for reargument because the court misapprehended a material fact).

[15] *See PharmAthene, Inc. v. SIGA Technologies, Inc.*, 2011 WL 6392906 (Del. Ch. Dec. 16, 2011) ("The general rule . . . that a party waives any argument it fails properly to raise shows deference to fundamental fairness and the common sense notion that, to defend a claim or oppose a defense, the adverse party deserves sufficient notice of the claim or defense in the first instance.").

[16] *See Gotham P'rs, L.P. v. Hallwood Realty P'rs, L.P.*, 817 A.2d 160, 173 (Del. 2002).

HIG had to spend so much time and money on countering Edgewater's meritless affirmative claims. I wrote:

> Edgewater's primary motivation for this litigation was to exert leverage over HIG in hopes that HIG would walk away from demanding payment under the Limited Guaranty.
>
> . . .
>
> HIG is entitled to collect on all of its attorneys' fees, costs, and expenses associated with defending against all of Edgewater's affirmative claims. Successfully defending these claims was necessary for HIG to collect on the guaranty, because, as Edgewater itself admits, it has refused to make payment under the Limited Guaranty until these claims were adjudicated. Likewise, HIG is entitled to collect on all of its attorneys' fees, costs, and expenses associated with prosecuting its Counterclaim.[17]

I also observed that, even if there were not a contractual fee-shifting provision, HIG would be able to make a good case to recover all of its fees and costs, because there were colorable grounds to assert that Edgewater had not been litigating in good faith:

> I need not address HIG's request for fee shifting under the bad faith exception to the American Rule. When there is no need to make a finding of bad faith, I see no basis to do so. My decision not to reach the issue should not be construed as a ruling that fee shifting would not be appropriate under that theory. There is plenty of plausibility, regrettably, to the notion that Edgewater made this litigation unduly expensive and advanced factual theories inconsistent with its own understanding of reality. HIG's contention that Edgewater was using the costly nature of civil litigation to force HIG to concede its economic demands for non-meritorious reasons has plenty of apparent color.[18]

---

[17] Opinion at *25-26.
[18] *Id*. at *26.

Thus, Edgewater's fee objection comes in the face of the reality that (i) I explained to the parties why awarding all of HIG's fees and expenses was reasonable in light of Edgewater's proliferation of claims to prevent HIG from collecting the payment due under the Limited Guaranty, and (ii) HIG had a plausible case for obtaining a recovery under the bad faith exception to the American Rule. To be sure, I recognized that Edgewater had the right to object to HIG's fees and expenses if they were unreasonable, although I also held out the hope that the parties could resolve any dispute over fees without the court's involvement.[19] But the parties have not resolved their dispute. And so, here we are.

Edgewater's objection focuses on the fact that the amount recouped by HIG in this litigation was only $1.8 million, but HIG's counterclaim sought $4,072,000, the maximum principal amount under the Limited Guaranty. The difference between these figures is $2.2 million, a sum that HIG has always admitted it owed Edgewater under a separate agreement.[20] But Edgewater claims that it was unaware that HIG admitted it

---

[19] *Id.* at *27. I wrote:

> Delaware counsel for Edgewater and lead non-Delaware counsel for Edgewater shall each file an affidavit stating the reasons each believes that there is a good faith basis to dispute the reasonableness of HIG's fees and expenses, in light of Edgewater's own fees and expenses and its proliferation of claims. If such affidavits are filed, the parties shall discuss an expedited briefing schedule to resolve the dispute and shall establish what, if any, discovery should precede such briefing.

[20] Although the parties use the term "setoff" to describe why HIG was not entitled to the maximum principal amount, the netting under a set of contracts is not technically a setoff. *See Seibold v. Camulos P'rs, L.P.*, 2012 WL 4076182, at *24 n.233 (Del. Ch. Sept. 17, 2012).

owed Edgewater $2.2 million, and speculates that if it had known that the maximum principal amount that Edgewater would have to pay out was $1.8 million, "this certainly would have influenced Edgewater's settlement position."[21] Edgewater also complains that "some portion of [HIG's] fees were expended supporting its position that it was entitled to $4,072,000."[22] For these reasons, Edgewater blames HIG for the fact that the lawyers' fees in this litigation have exceeded the amount HIG recovered under the Limited Guaranty, and thus contends that HIG's fees and expenses are unreasonable.

As support for its objection, Edgewater invokes the Delaware Lawyers' Rules of Professional Conduct 1.5(a).[23] Although Edgewater admonished the court to consider the eight factors under Rule 1.5(a) to determine the reasonableness of HIG's fee and expense request,[24] Edgewater's argument itself only relies on the fourth factor under Rule 1.5(a), "the amount involved and the results obtained."[25] Edgewater believes that this factor

---

[21] Ladig Letter 5 (Mar. 29, 2013).
[22] *Id.*
[23] *See Lillis v. AT&T Corp.*, 2009 WL 663946, at *2 (Del. Ch. Feb. 25, 2009) (explaining that when "a contract entitles a party to recover attorneys' fees and expenses from an adversary party, the court is obliged *when an objection is made* to examine the requested fees and expenses for reasonableness" under Rule 1.5(a)) (emphasis added).
[24] Ladig Letter 4 (Mar. 29, 2013) (telling the court that "[a]lthough the award was based in contract, the reasonableness of the amount sought by [HIG] is still subject the factors set forth in Rule 1.5(a)").
[25] Del. Lawyers' Rules of Prof'l Conduct R. 1.5(a)(4).

alone justifies a reduction of HIG's fees and expenses because HIG misrepresented the amount at stake and recovered only a fraction of the principal amount sought.[26]

Edgewater's request that I reduce HIG's fees and expenses upon considering only *one* of the eight Rule 1.5(a) factors is on shaky legal ground. Not only is the court supposed to "weigh" the various factors in determining the reasonableness of the fee award, but Edgewater's singular emphasis on Rule 1.5(a)(4) in a contractual fee shifting case is inconsistent with Delaware law.[27] Our Supreme Court has repeatedly held that the amount involved and results obtained is *only one* factor to consider in determining if a fee is reasonable, because a contractual fee shifting case "should be assessed by reference to legal services purchased by those fees, not by reference to the degree of success achieved in the litigation."[28] Thus, Edgewater, by not even mentioning the other seven factors, has failed to properly analyze the reasonableness of HIG's contractual fee award.

Unlike Edgewater's singular emphasis on factor 4 in arguing the unreasonableness of HIG's fee and expense request, I consider all of the relevant Rule 1.5(a) factors and I am entitled to give weight to the factors other than the results achieved.

---

[26] Ladig Aff. ¶ 3 ("Edgewater [] objects to [HIG's] [f]ee [r]equest to the extent that the amount of fees sought is unreasonable in relation to the success achieved, which is one of the factors to consider pursuant to Delaware Rule of Professional Conduct 1.5(a)(4) . . . .").

[27] *See Sternberg v. Nanticoke Mem'l Hosp., Inc.*, —A.3d—, 2013 WL 772651, at *7 (Del. 2013) (reinforcing that "a litigant's success in the proceeding is but *one factor* to be considered in determining the amount of the attorney's fee award, and this factor may be outweighed by the other factors") (emphasis added).

[28] *Mahani v. EDIX Media Group Inc.*, 935 A.2d 242, 248; *see also Sternberg*, 2013 WL 772651, at *7 ("[A] litigant's success in the proceeding is but one factor to be considered in determining the amount of attorney's fees to award, and this factor may be outweighed by the other factors.").

With that framework in mind, I will analyze the relevant factors. I first discuss the fourth factor, Edgewater's preferred method of attacking the fee award. I then discuss three other factors of the eight-factor Rule 1.5(a) test that are relevant and that Edgewater might have cited in objecting to this fee award, even though it has not done so. I find that all of the relevant Rule 1.5(a) factors weigh against Edgewater's objection.

A. Factor 4: The Amount Involved And The Results Obtained

Edgewater's argument that HIG spent money on seeking a recovery to which it knew it was not entitled and achieved little in this litigation is without factual or legal merit. HIG achieved virtually complete success in this litigation. Edgewater's only excuse to paying on the Limited Guaranty was that had HIG not committed the breaches Edgewater accused it of, no money would have been due from the guarantors, including Edgewater. Thus, to recover *any* money under the Limited Guaranty, HIG had to defend against *all* of Edgewater's unsuccessful claims. Because Edgewater made many claims, it was costly for HIG to defend against them. HIG did that successfully and thus factor 4 supports the reasonableness of awarding HIG all of its attorneys' fees, costs, and expenses.[29] Although HIG's fee award of about $2.6 million is greater than the principal amount HIG ultimately recovered for Edgewater's breach of contract, HIG cannot be blamed for that result, because it was Edgewater's own proliferation of claims to

[29] *See, e.g.*, *ASB Allegiance Real Estate Fund v. Scion Breckenridge Managing Member, LLC*, 50 A.3d 434, 446 (Del. Ch. 2012) (finding a fee award to be reasonable because although the prevailing party's attorney's fees were larger, that party's attorneys had to work more hours to address the other party's claims).

specifically avoid payment on the Limited Guaranty that caused the litigation to be so time-consuming and expensive.[30]

As important, Edgewater's argument seems to have no plausible basis in fact. Its story—that Edgewater would have settled or would have been less aggressive in this litigation if it had known that HIG took a setoff against the Limited Guaranty—is inconsistent with the evidence in the case. Edgewater bases its argument on the following claims:

- "Edgewater did not know for months whether the foreclosure sale had been consummated, let alone at what price."
- "Edgewater had no information about the structure of the sale . . . ."
- "Edgewater did not know if it was entitled to proceeds from the sale, or if so, in what amount."
- "Edgewater was unaware that [HIG] had applied the funds to which Edgewater was entitled from the sale to pay down amounts [HIG] claimed under the Limited Guaranty."[31]

All four statements are inconsistent with the facts in the record. In July 2008, *one month* after the foreclosure sale, HIG sent a letter notifying Edgewater about the final sale price, the structure of the sale, that Edgewater was entitled to proceeds from the sale,

---

[30] *See Mahani*, 935 A.2d at 248 (affirming a fee award, in a contractual fee shifting case, when the prevailing party fees ($103,454.50) were greater than the amount recovered for the breach of contract ($16,500) because the complaining party took actions that made the litigation expensive).
[31] Ladig Letter 3-4 (Mar. 29, 2013).

and that HIG set off Edgewater's proceeds from the sale against the amount Edgewater owed it under the Limited Guaranty. That letter clearly articulates these facts:

> On June 24, 2008, [HIG] sold substantially all of the assets of the Loan Parties pursuant to Article 9 of the Uniform Commercial Code . . . for a sale price of $41,000,000 (the "UCC Sale"). As of such date, the amount of the Obligations owing to [HIG] and the other Lenders was $92,557,024.56 . . . and, immediately following the closing of the UCC Sale and the application of the consideration therefrom, there existed a deficiency of $51,557,024.56 with respect to the Obligations owed by the Loan Parties to [HIG] and the other Lenders.
>
> On June 25, 2008 [HIG] delivered a notice to [Edgewater] . . . making demand under the [Limited] Guaranty for full and prompt payment, pursuant to Section 6 of the Guaranty, of the Maximum Liability (as defined in the Guaranty). Edgewater has not made such payment to [HIG] as requested and as required under the Guaranty.
>
> [HIG] *hereby informs Edgewater . . . that, as a result of Edgewater's failure to pay [HIG] the amounts owed by Edgewater pursuant to the Guaranty, [HIG] has setoff a portion of the amounts owed by Edgewater to [HIG] pursuant to the Guaranty against any and all amounts owing to Edgewater by virtue of the repayment of a portion of . . . the proceeds of the UCC sale and by virtue of Edgewater's participation interest in the Special Accommodation Loans*.[32]

Thus, from this letter forwarded at the latest in July 2008, Edgewater knew the amount it was owed by HIG, the amount it owed HIG, and about the setoff. Instead of

---

[32] JX 396 (Notice of Setoff from HIG to Edgewater) (emphasis added). Edgewater says that HIG "never sent this letter to Edgewater," but I reject that contention. Ladig Letter 3 (Mar. 29, 2013). I find that the trial testimony of Sean Ozbolt (HIG's representative) to be credible and reliable on this point. *See* Trial Tr. vol. 1, 179:19-180:5, Oct. 8, 2012 (Ozbolt) ("At the foreclosure sale closing, Edgewater would have been owed its pro rata share of that $5 million participation, which was roughly $2.2 million. *We sent them a notice of offset saying because they didn't fund $4 million of the guaranty, we were setting off 2.2 of that, and the net amount they owed was just over $1.8 million plus accrued interest* since then and . . .. Q: Let me ask you if you would turn to JX-396. Is that the offset notice you mentioned? A: Yes, it is.") (emphasis added).

attempting to end the litigation by offering to pay what it owed under the Limited Guaranty and discuss with HIG what amount that was, Edgewater decided, as it has done consistently in this litigation, to try to "delay the day of reckoning as long as possible,"[33] by aggressively pressing affirmative claims to avoid paying anything on the Limited Guaranty.

I also note that HIG's representative admitted in a deposition, two years before trial, that HIG took a $2.2 million setoff in response to Edgewater's refusal to respond to its demand for payment under the Limited Guaranty.[34] In fact, the next year, at oral argument on motions for summary judgment in 2011, HIG candidly acknowledged that it took a $2.2 million setoff in response to questioning from the court.[35] Thus, despite the notice in 2008, despite HIG's representative deposition testimony in 2010, and despite HIG's statement during oral argument on the motion for summary judgment in 2011,

---

[33] JX 258 (Tolmie's Handwritten Notes). Edgewater also admitted that it retained board observations rights giving it access to board materials through June 2008, which kept it well-informed of the situation it now claims it had ignorance of. *See, e.g.*, Second Am. Compl. ¶ 57 ("Edgewater retained the contractual right to observe board meetings and obtain board materials so that it would be informed of actions taken by the board of directors."); JX 325 (Minutes of the Meeting of the Board (Mar. 3, 2008)) (noting that "Michael Nemeroff of Vedder Price" and "Dave Tolmie of the Edgewater Funds" attended the meeting in which Tolmie asked questions, and the parties were updated on the sale process and structure of the foreclosure sale); JX 343 (Minutes of the Meeting of the Board (Mar. 12, 2008)) (stating that "Michael Nemeroff of Vedder Price . . . counsel to Edgewater Funds" attended the board meeting the day before the foreclosure sale auction and noting that the board got an "update regarding the foreclosure sale process").

[34] Ozbolt Dep. 197:1-6 (explaining that HIG "retained a portion of Edgewater's proceeds, which is about $2.2 million from the foreclosure sale as a setoff against the $4 million, roughly, that Edgewater owed the lenders under the fund guaranty it had provided.").

[35] *Edgewater Growth Capital P'rs, L.P. v. H.I.G. Capital, Inc.*, C.A. No. 3601-CS, at 9:8-14:3 (Del. Ch. Oct. 5, 2011) (TRANSCRIPT).

which all clearly and repeatedly informed Edgewater's of HIG's setoff, Edgewater chose to aggressively litigate its position that Edgewater owed HIG nothing under the Limited Guaranty.

Nor is there the slightest hint that Edgewater *ever* offered to pay $1.8 million, and drop all of its claims. Rather, Edgewater always sought to pay nothing. Therefore, as I noted, HIG had to defend against all of Edgewater's claims to recover anything. In these circumstances, Edgewater's claim that HIG's recovery was disproportionate to the amount HIG's lawyers are claiming in fees and expenses is meritless.

B. The Other Relevant Rule 1.5(a) Factors

I now move on to the other Rule 1.5(a) factors that Edgewater says I am bound to consider but failed to do so itself. I do not analyze all seven of these other factors. Instead, I focus on the relevant factors here:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> . . .
>
> (3) the fee customarily charged in the locality for similar legal services;
>
> . . .
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services . . . .[36]

[36] Del. Lawyers' Rules of Prof'l Conduct R. 1.5(a).

1. Factor 1: The Time And Labor Required, The Novelty And Difficulty Of The Questions Involved, And The Skill Requisite To Perform The Legal Service Properly

HIG employed a legal team and expert advisors for a burdensome, difficult assignment. Dave Tolmie, Edgewater's representative at trial, admitted that it went after HIG "with everything" from the beginning.[37] In March 2008, Edgewater sought an injunction to prevent HIG from selling a company at a foreclosure sale under the Uniform Commercial Code.[38] HIG prevailed on that motion defending against some very strained theories, including a federal RICO claim.[39] Edgewater continued to hotly contest the commercial reasonableness of the sale for years while requiring HIG to overcome objections to discovery and Edgewater's own failures to produce evidence.[40] After four years of litigation, a four day trial was held. HIG's legal team had to tackle diverse legal issues involving Illinois and Delaware law and articulate why Edgewater's claims were devoid of factual and legal merit. After that trial, HIG prevailed on all of its counterclaims. HIG's legal team was thus successful in a burdensome, time-consuming, and complex matter.

---

[37] Trial Tr. vol. 4, 962:5-7, Oct. 15, 2012 (Tolmie-Cross) ("A: [Edgewater] came at [HIG] with everything. Q: You sure did. A: Mm-hmm.").
[38] Compl. Inj. Relief (Mar. 6, 2008).
[39] *Edgewater Growth Capital P'rs, L.P. v. H.I.G. Capital, LLC*, C.A. No. 3601-CS, 31:12-13 (Del. Ch. Mar. 12, 2008) (TRANSCRIPT).
[40] *Edgewater Growth Capital P'rs, L.P. v. H.I.G. Capital, LLC*, C.A. No. 3601-CS, 38-41, 68-72 (Del. Ch. Sept. 8, 2010) (TRANSCRIPT).

2. Factor 3: The Fees Charged For Similar Services

Edgewater makes no challenge to the hourly rates charged or the number of hours billed by HIG or any of its experts, which appear on their face to be reasonable. That conclusion is not surprising given that Edgewater admits that its fees and expenses were equal to or greater than those sought by HIG.[41] This admission reinforces that the legal services purchased by HIG were reasonable, especially in light of the fact that HIG had to do the hard work of cleaning up the mess from all the pizza Edgewater constantly threw at it. In fact, if the only issue was the plain language of the Limited Guaranty, then the hours and fees would have been minuscule because Edgewater had no defense under the terms of the contract. Thus, it was Edgewater that made this litigation unduly expensive, and HIG's fees and expenses were reasonable in terms of cost and justified given Edgewater's splatter of claims.

I also reject Edgewater's unsubstantiated claim that the bills from Proskauer Rose, Latham & Watkins, and the Griffing Group were not properly monitored and submitted by Potter Anderson to Edgewater. There appears to be no evidence in the record to support the allegation that Potter Anderson did not carefully review those bills and that HIG did negotiate a commercially reasonable price for the services of these providers.[42]

---

[41] Ladig Letter (Apr. 2, 2013) (confirming that Edgewater's "total fees and expenses incurred . . . were equal to or greater than those sought by [HIG]").
[42] *See Danenberg v. Fitracks, Inc.*, 58 A.3d 991, 997 (Del. Ch. 2012) (finding that "the reasonableness of [the] amount sought does not require that this Court examine individually each

After all, Potter Anderson and HIG hired these experts to address Edgewater's claims about the sales process and HIG paid their fees without any assurance that it could recover those fees at a later point.[43] Again, the reality that HIG's total fees and expenses for doing the more burdensome task of responding to Edgewater's plethora of continually changing arguments cuts strongly against finding that the hours and rates of these providers, which appear reasonable on their face for work of the kind required and justified by the case's requirements, should be reduced.[44]

3. Factor 7: The Experience, Reputation, And Ability Of The Lawyer Or Lawyers Performing The Services

HIG hired respected lawyers and experts with a record of accomplishment in the Court of Chancery and more generally in high-level corporate litigation. The results in this case—both in terms of costs and outcomes—demonstrate that HIG hired advisors well-equipped to efficiently litigate this case.

* * *

---

time entry and disbursement" because "arm's-length agreement[s], particularly with a sophisticated client . . . provide . . . [for] a commercially reasonable fee") (citations omitted).

[43] *See id.* (holding that invoices are commercially reasonable where the party "cannot be certain that it will be able to shift expenses") (citations omitted).

[44] To the extent that Edgewater still maintains its persnickety claim that HIG failed to meet the court's order by not providing a "summary of the hours and categories of expenses" for its experts, I find that HIG, after making additional disclosures in its reply to Edgewater's objection, has provided more than sufficient information to meet the court's order. *See* Walsh Letter 3 & 3 n.2, 4 & 4 n.3 (Mar. 29, 2013). Notably, Edgewater has not suggested that the rates or hours worked by these professionals are in any way unreasonable.

For all these reasons, I find that the fees, costs, and expenses HIG seeks are reasonable and owing under Section 6(c) of the Limited Guaranty. The parties shall submit a final judgment consistent with this opinion and the revised post-trial opinion, which I have enclosed. HIG is also entitled to its fees and expenses in addressing Edgewater's objection to its fee request, and the motion for reargument. Upon an affidavit filed by counsel for HIG certifying the amount of those fees and attesting to their reasonableness, those fees and expenses shall be added to the amount already sought.

Very truly yours,

/s/ Leo E. Strine, Jr.

Chancellor

LESJr/eb