

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHARLES L. GRIMES,	§	
	§	No. 449, 1999
Plaintiff Below,	§	
Appellant,	§	
	§	
v.	§	Court Below:
	§	Court of Chancery of the
JAMES L. DONALD, CLEMENT M.	§	State of Delaware in and
BROWN, JR., FRANK J. CUMMISKEY,	§	for New Castle County
RAYMOND J. DEMPSEY, JOHN	§	C.A. No. 13358
FAIRCLOUGH, JAMES L. FISCHER,	§	
ROBERT S. FOLSOM, JAMES P.	§	
LEAKE, JAMES M. NOLAN, JIM A.	§	
WATSON,	§	
	§	
Defendants Below,	§	
Appellees,	§	
	§	
and	§	
	§	
DSC COMMUNICATIONS	§	
CORPORATION,	§	
	§	
Nominal Defendant	§	
Below, Appellee.	§	

Submitted: March 21, 2000

Decided: May 11, 2000

Before WALSH, HOLLAND and BERGER, Justices.

O R D E R

This 11th day of May, 2000, on consideration of the briefs and arguments of the parties, it appears to the Court that:

1) This is an appeal from a decision of the Court of Chancery denying attorneys' fees to a stockholder whose claims were mooted by a merger. Charles L. Grimes, a former stockholder of DSC Communications Corporation, filed several lawsuits against DSC and its directors complaining about DSC's employment agreements with James L. Donald, the company's CEO and chairman. Before all of the lawsuits were resolved on the merits, DSC merged with Alcatel Alsthom, and Grimes lost standing to pursue his litigation. The merger also resulted in Donald being replaced, which was one of the goals of Grimes' litigation.

2) It is settled in Delaware that a fee award may be justified where a stockholder's action benefits the corporation¹. "[E]ven without a favorable adjudication, counsel will be compensated for the beneficial results they produced, provided that the action was meritorious and had a causal connection to the conferred benefit."² "Once it is determined that action benefitting the corporation chronologically followed the filing of a meritorious suit, the burden is upon the corporation to demonstrate 'that the lawsuit did not in any way cause their action.'"³

¹ *Chrysler Corp. v. Dann*, Del. Supr., 223 A.2d 384 (1966).

² *Allied Artists Pictures Corp. v. Baron*, Del. Supr., 413 A.2d 876, 878 (1980).

³ *Tandycrafts, Inc. v. Initio Partners*, Del. Supr., 562 A.2d 1162, 1165 (1989)(quoting *Allied Artists*).

3) The Court of Chancery acknowledged this standard, but decided that in this case the corporation should not have the burden of demonstrating the absence of a causal connection unless Grimes could articulate “some reasonable or rational basis from which it could be inferred ... that the necessary causal connection exists....” Since Grimes was unable to meet this requirement, the trial court dismissed the fee petition.

4) The trial court never explained why it found the possibility of a causal connection so implausible. The court apparently accepted appellees’ argument that DSC would not enter into a \$4.6 billion merger in order to replace Donald and moot Grimes’ claims. But the Grimes litigation need not have had any connection to the merger itself. Assuming the merger was totally unrelated to the Grimes complaints, the question remains whether the litigation played any role in the decision to replace Donald as part of the corporate reshuffling that accompanied the merger. Appellees are the only parties who can answer that question, which is why they have the burden of establishing that there was no causal connection.

5) In sum, we see no need to modify existing law in the manner suggested by the Court of Chancery. It does not matter whether any facts about the corporate action suggest a causal connection to the litigation (or the absence of one). The fact that the corporate action came after the stockholder’s action is enough to create an inference that the two events were connected, and the corporate defendants have the burden of

rebutting that inference. Here, as in *Allied Artists*, it is “significant ... that no affidavit in opposition to the fee application has been filed by the [appellees] in which the inference of a causal connection between [Grimes’] suits and the decision to enter into a merger is expressly denied.”⁴

NOW, THEREFORE, IT IS ORDERED that the decision of the Court of Chancery be, and the same hereby is, REVERSED. Jurisdiction is not retained.

BY THE COURT:

/s/Carolyn Berger
Justice

⁴*Allied Artists Pictures Corp. v. Baron*, 413 A.2d at 880, n.4.