

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

MAGNA-D GLOBAL	)	
HEALTHCARE NO. 1 PRIVATE	)	
EQUITY FUND,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 2024-0456-SEM
	)	
COIMMUNE, INC.,	)	
	)	
Defendant.	)	

**ORDER AWARDING FEES**

WHEREAS, this is a book-and-records proceeding through which Magna-D Global Healthcare No. 1 Private Equity Fund (the “Plaintiff”) sought inspection of the records of CoImmune, Inc. (the “Defendant”);<sup>1</sup>

WHEREAS, this action went to trial, proceeded to post-trial argument, and I issued my expedited post-trial ruling on September 9, 2024;<sup>2</sup> thereafter, the Defendant began to change its story and, after exceptions premised on that changed story were remanded to me, I found the Defendant had engaged in bad faith litigation and shifted fees related thereto in the Plaintiff’s favor;<sup>3</sup> in my June 3, 2025 decision shifting fees, I expressly declined to revisit my earlier denial of full case fee shifting;

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<sup>1</sup> Docket Item (“D.I.”) 1.

<sup>2</sup> See D.I. 57.

<sup>3</sup> D.I. 98.

WHEREAS, I directed the Plaintiff to submit a fee affidavit within two weeks of my report, and gave the Defendant two weeks to respond thereafter;<sup>4</sup> the Plaintiff's counsel submitted a Rule 88 affidavit on June 18, 2025, seeking to recover \$430,903.02 in fees and costs (the "Request");<sup>5</sup>

WHEREAS, on June 30, 2025, the Defendant opposed the Request, initially and primarily arguing that because of the Plaintiff's failure to provide itemization or supporting invoices, it could not assess reasonableness;<sup>6</sup> the Defendant further argued that the Request did not specify that the fees requested were billed and paid, nor that they were all within the scope of my order; the Defendant particularly challenged document review-related fees as not appropriately considered "post-trial conduct[;]"<sup>7</sup> finally, the Defendant asked that I consider its ability to pay the shifted fees, averring that it may be required to declare bankruptcy should the fees not be reduced "significantly[;]"<sup>8</sup>

WHEREAS, in its reply, the Plaintiff augmented the Request with itemized invoices and a supplemental affidavit, positing that they moot the Defendant's

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<sup>4</sup> *Id.* at 14.

<sup>5</sup> D.I. 99.

<sup>6</sup> D.I. 104.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

position regarding lack of itemization and actual liability;<sup>9</sup> through that supplemental affidavit, the Plaintiff seeks a total of \$488,638.16, reflecting time expended, and costs incurred, in connection with post-trial proceedings; the Plaintiff further argues that its fees sought are reasonable, and that, despite the Defendant's request that I reduce the amount significantly, the Defendant failed to demonstrate the amount (if any) that it can pay;<sup>10</sup>

WHEREAS, the Request as supplemented is far broader than the spirit of my fee-shifting ruling and reflects disappointing overreaching; for example, the Plaintiff included fees incurred for research relating to director appointment, which was conducted before I issued my September 9, 2024 ruling, and document review;<sup>11</sup>

WHEREAS, the Court "has broad discretion in determining the amount of fees and expenses to award[;]"<sup>12</sup>

WHEREAS, "Delaware law dictates that, in fee shifting cases, a judge determine whether the fees requested are reasonable[;]"<sup>13</sup> to assess reasonableness, fee applications are reviewed utilizing the factors enumerated in Rule 1.5(a) of the Delaware Lawyers' Rules of Professional Conduct:

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<sup>9</sup> D.I. 106.

<sup>10</sup> *Id.*

<sup>11</sup> *See id.*

<sup>12</sup> *Black v. Staffieri*, 2014 WL 814122, at \*4 (Del. Feb. 27, 2014) (TABLE).

<sup>13</sup> *Mahani v. Edix Media Gp., Inc.*, 935 A.2d 242, 245 (Del. 2007).

(1) [T]he time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.<sup>14</sup>

WHEREAS, “[d]etermining reasonableness does not require that this Court examine individually each time entry and disbursement”<sup>15</sup> or “require the Court to assess independently whether counsel appropriately pursued and charged for a particular motion, line of argument, area of discovery, or other litigation tactic[;]”<sup>16</sup> Rather, “[f]or a Court to second-guess, on a hindsight basis, an attorney’s judgment as to whether work was necessary or appropriate is hazardous and should whenever possible be avoided[;]”<sup>17</sup> “[t]he remedial nature [of an] award [of expenses for bad faith litigation tactics] commends putting primary emphasis on reimbursing the injured party [and] [t]he results achieved are of secondary importance[;]”<sup>18</sup>

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<sup>14</sup> *Black*, 2014 WL 814122, at \*4.

<sup>15</sup> *Aveta Inc. v. Bengoa*, 2010 WL 3221823, at \*6 (Del. Ch. Aug. 13, 2010).

<sup>16</sup> *Weil v. VEREIT Operating P'ship*, 2018 WL 834428, at \*12 (Del. Ch. Feb. 13, 2018) (citation modified).

<sup>17</sup> *Seidman v. Blue Foundry Bancorp*, 2023 WL 4503948, at \*8 (Del. Ch. July 7, 2023) (citation modified).

<sup>18</sup> *Id.*

WHEREAS, a party seeking to “establish extenuating circumstances” to evidence ability (or inability) to pay an award bears the burden of doing so;<sup>19</sup>

**IT IS HEREBY ORDERED**, this 23rd day of July 2025, as follows:

1. Fees are shifted in favor of the Plaintiff in the amount of \$314,167.26. This reflects a reduction of \$174,470.90 in fees and expenses that I removed as not directly related to the bad faith conduct for which fees were shifted.

2. **The Mooted and Overruled Objections.** The Defendant’s objections regarding lack of detail and whether the fees were actually incurred were resolved and mooted by the Plaintiff’s supplemental submission.<sup>20</sup> Further, the Defendant failed to meet its burden to prove any extenuating circumstances that would warrant a reduction of the fees and expenses in the Request; the Defendant’s objection to the Request on the basis of its purported limited financial resources is denied.

3. **Reasonableness Deductions.** The Defendant is correct, however, that the Request, as supplemented, includes activity and expenses outside the scope of my ruling. That ruling provided that the fees and expenses incurred in response to the Defendant’s bad faith conduct (the shifting stories)—and only those fees and expenses—were shifted. The Plaintiff improperly took a broader view and included

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<sup>19</sup> *Choupak v. Rivkin*, 2015 WL 2233996, at \*2 (Del. Ch. May 12, 2015) (ORDER), *aff’d*, 129 A.3d 232 (Del. 2015) (TABLE).

<sup>20</sup> D.I. 106.

what appears to be all fees and expenses it incurred after our trial. In doing so, the Plaintiff included several time entries and expenses that were not directly related to the bad faith conduct. Having reviewed the Request, as supplemented, and comparing every item therein to the limited scope of my shifting order, I find \$174,470.90 must be deducted. This amount consists of expenses incurred (a) before I issued my September 9, 2024 ruling, and (b) preparing, organizing, reviewing, and assessing electronic data and produced documents.

4. The Plaintiff shall file a proposed form of implementing order within five days and shall also file a status report within twenty days proposing next steps.

5. This is a final report, and expedited exceptions may be taken under Court of Chancery Rule 144.

**IT IS SO ORDERED.**

*/s/ Selena E. Molina*  
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Senior Magistrate in Chancery