



**GRANTED WITH MODIFICATIONS**

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

COLLEEN WITMER, individually and )  
on behalf of all others similarly )  
situated, )

Plaintiff, )

v. )

BARRY H. GOLSEN, STEVEN L. )  
PACKEBUSH, MARK T. )

C.A. No. 2024-0351-PAF

BEHRMAN, JONATHAN S. BOBB, )

KANNA KITAMURA, RICHARD )

SANDERS, JR., RICHARD W. )

ROEDEL, LYNN F. WHITE, DIANA )

M. PENINGER, LSB INDUSTRIES, )

INC., and COMPUTERSHARE )

TRUST COMPANY, N.A., )

Defendants. )

**STIPULATION AND [PROPOSED] ORDER CONCERNING PLAINTIFF’S  
COUNSEL’S APPLICATION FOR AN AWARD OF ATTORNEYS’ FEES  
AND REIMBURSEMENT OF EXPENSES**

WHEREAS:

A. On May 31, 2024, plaintiff Colleen Witmer (“Plaintiff”) filed her application for an award of attorneys’ fees and reimbursement of expenses (the “Fee and Expense Application”) in connection with the mooted claims in the above-captioned action; and

B. On May 31, 2024, the Court instructed the parties to provide “appropriate notice to stockholders” in a form “approved by the court” (the “Notice”).

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned parties, subject to the approval of the Court, that:

1. The Notice, appended hereto as Exhibit A, is approved.
2. On or before August 2, 2024, Defendants shall file any omnibus brief in opposition to the Fee and Expense Application.
3. On or before September 17, 2024, Plaintiff shall file any reply in further support of the Fee and Expense Application.
4. The Court will hear oral argument on the Fee and Expense Application on October 4, 2024, at 1:30 p.m. in Wilmington, Delaware.

Dated: June 20, 2024

OF COUNSEL:

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*Attorneys for Defendants Barry H. Golsen, Steven L. Packebush, Mark T. Behrman, Jonathan S. Bobb, Kanna Kitamura, Richard Sanders, Jr., Richard W. Roedel, Lynn F. White, Diana M. Peninger, and LSB Industries, Inc.*

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Vice Chancellor Paul A. Fioravanti, Jr.

This document constitutes a ruling of the court and should be treated as such.

**Court:** DE Court of Chancery Civil Action

**Judge:** Paul A Fioravanti Jr

**File & Serve  
Transaction ID:** 73439256

**Current Date:** Jul 02, 2024

**Case Number:** 2024-0351-PAF

**Case Name:** Colleen Witmer v. Barry H. Golsen, et al.

**Court Authorizer:** Paul A Fioravanti Jr

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**Court Authorizer  
Comments:**

The notice shall be posted on the websites of the corporate defendant and the websites of all plaintiffs' counsel starting no later than July 8, 2025, and continuing through the date of the hearing on the fee application.

**/s/ Judge Paul A Fioravanti Jr**



# Exhibit A

A putative stockholder class action complaint, styled as *Witmer v. Golsen, et al.* C.A. No. 2024-035-PAF (the “Action”) was filed on April 3, 2024 in the Delaware Court of Chancery (the “Court”) along with a motion for expedited proceedings and entry of temporary restraining order. The plaintiff claims, among other things, that the that the board of directors of LSB Industries, Inc. (the “Company”) breached their fiduciary duty by adopting a Section 382 stockholder rights plan with antitakeover and entrenching measures designed to protect the Board’s incumbency. Specifically, the plaintiff maintains that the Company’s Section 382 rights plan (the “Amended NOL Rights Agreement”) was not narrowly tailored as it carried a 4.9% trigger and an allegedly overbroad definition of “Beneficial Ownership” that aggregated shares subject to “agreements, arrangements or understandings” between stockholders related to voting or influencing the Company. According to the plaintiff’s allegations, the Amended NOL Rights Agreement also had a daisy chain feature that aggregated shares owned by stockholders potentially unaware of each other’s existence.

The plaintiff further alleged that the Board did not adopt the Amended NOL Rights Agreement solely to protect the Company’s net operating loss (“NOL”) carryforwards, which are subject to limitation and eventual loss under relevant provisions of the Internal Revenue Code (the “IRC”). It is the plaintiff’s position that although trading in Company shares of 5% or greater holders implicates the tax provisions, those relevant provisions are concerned with “economic ownership”—that is, the right to dividends and stock sale proceeds. The plaintiff alleged that the aspects of the Amended NOL Rights Agreement challenged in the Action were, accordingly, broader than necessary to protect the Company’s NOLs under the IRC. The plaintiff further alleged that the Board also issued a false and misleading proxy statement when soliciting stockholder approval of the Amended NOL Rights Agreement. The Company disagrees with the plaintiff’s positions.

The Company disagreed with plaintiff’s allegations about the definition of Beneficial Ownership contained in the Amended NOL Rights Agreement and the application of Section 382 of the IRC thereto. The Company’s position is that the terms of the Amended NOL Rights Agreement, including the definition of Beneficial Ownership contained therein, is a proportionate response to the threat of the occurrence of an “ownership change” under Section 382 of the IRC and the resulting risk of substantial impairment to its ability to benefit from its NOLs and its other tax attributes. Further, regulations under Section 382 of the IRC entitle the Company to rely on the existence and absence of Schedules 13D and 13G as of any date to identify all of the Company’s stockholders who have a direct ownership interest of 5% or more on such date. As a result, it is the Company’s position that the definition

of beneficial ownership under Rule 13d-3, which looks to both voting and investment power (and, therefore, captures the agreements, arrangements and understandings objected to by the plaintiff), is in fact very relevant to the Section 382 analysis. The plaintiff disagrees with the Company's position.

After the plaintiff filed her complaint, the parties began discussing potential resolution of the plaintiff's claims. On May 14, 2024 the parties stipulated to dismissal, which the Court so-ordered, based on their agreement that the Company's actions discussed immediately below would moot the plaintiff's claims. Specifically, the Board voluntarily approved limited technical amendments (the "Amendment") to the Amended NOL Rights Agreement to clarify further that the definition of "Beneficial Owner" is limited by the applicable tax regulations.

On May 3, 2024, the Company filed a Form 8-K with the Security and Exchange Commission in which it disclosed the Amendment.

Also on May 3, 2024, the Company filed an amendment to the Definitive Proxy (the "Proxy Amendment") in which it disclosed the Amendment and additional background information related to the adoption of the Amended NOL Rights Agreement. The Company disclosed, amongst other things: (i) the existence of this Action; (ii) that the prior NOL rights agreement expired on July 6, 2023, and information concerning how and why it expired.

On May 14, 2024, the Court entered a stipulated order pursuant to which the Action was dismissed as moot. The Court retained jurisdiction solely for the purpose of deciding any application of the plaintiff's counsel for an award of attorneys' fees and expenses. On May 31, 2024, the plaintiff's counsel filed their motion for an award of attorneys' fee and expenses for benefits they contend were conferred on the Company and its stockholders in connection with the Stockholder Actions (the "Fee Application"), seeking an award of attorneys' fee and expenses in the amount of \$2,400,000. The Company and the defendants in the Action oppose such relief and will file any brief in opposition to the Fee Application on or before August 2, 2024. The plaintiff may file a reply brief in further support of the Fee Application on or before September 17, 2024. The Court has scheduled a hearing to consider the Fee Application at 1:30 PM ET on October 4, 2024 before the Honorable Paul A Fioravanti, Vice Chancellor, in person at the Court of Chancery of the State of Delaware, Leonard L. Williams Justice Center, located at 500 North King Street Wilmington, DE 19801 (the "Hearing").

Any current Company stockholder may object to the Fee Application (“Objector”); provided, however, that no Objector shall be heard or entitled to object unless, on or before August 20, 2024, such person: (1) files his, her, or its written objection, together with copies of all other papers and briefs supporting the objection, with the Register in Chancery at the address set forth below; (2) serves such papers (electronically by File & ServeXpress, by hand, by first-class U.S. mail, or by express service) on the plaintiff’s counsel and defendants’ counsel at the addresses set forth below; and (3) emails a copy of the written objection to:

christopher.orrico@blbglaw.com  
 houston@abramsbayliss.com

ckupka@fksfirm.com  
 randall.bodner@ropesgray.com

<b>REGISTER IN CHANCERY</b>	
Register in Chancery Court of Chancery of the State of Delaware New Castle County Leonard L. Williams Justice Center 500 North King Street Wilmington, Delaware 19801	
<b>PLAINTIFF’S COUNSEL</b>	
Christopher J. Orrico BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP 1251 Avenue of the Americas 44th Floor New York, New York 10020	Christopher J. Kupka FIELDS KUPKA & SHUKUROV LLP 141 Tompkins Ave Suite 404 Pleasantville, New York 10570
<b>DEFENDANTS’ COUNSEL</b>	
E. Wade Houston ABRAMS & BAYLISS LLP 20 Montchanin Road, Suite 200 Wilmington, Delaware 19807	Randall W. Bodner ROPES & GRAY LLP 800 Boylston Street Prudential Tower Boston, MA 02199

Any objections must: (i) identify the case name and civil action number, “*Witmer V. Golsen, et al.* C.A. No. 2024-035-PAF”; (ii) state the name, address, and telephone number of the Objector and, if represented by counsel, the name, address, and telephone number of the Objector’s counsel; (iii) be signed by the Objector; (iv) contain a specific, written statement of the objection(s) and the specific reason(s) for the objection(s), including any legal and evidentiary support the Objector wishes to bring to the Court’s attention, and if the Objector has indicated that he, she, or it



intends to appear at the Hearing, the identity of any witnesses the Objector may call to testify and any exhibits the Objector intends to introduce into evidence at the hearing; and (v) include documentation sufficient to prove that the Objector is a current Company stockholder. Documentation establishing that an Objector is a current Company stockholder must consist of copies of monthly brokerage account statements, a screen shot of an official brokerage account, or an authorized statement from the Objector's broker containing the transactional and holding information found in an account statement. The plaintiff's counsel may request that the Objector submit additional information or documentation sufficient to prove that the Objector is a current Company stockholder.

An Objector may file a written objection without having to appear at the Hearing. An Objector may not, however, appear at the Hearing to present his, her, or its objection unless the Objector first files and serves a written objection in accordance with the procedures described above, unless the Court orders otherwise.

If an Objector wishes to be heard orally at the Hearing in opposition to the approval of the Fee Application (assuming the Objector timely files and serves a written objection as described above), the Objector must also file a written notice of his, her, or its intention to appear with the Register in Chancery and serve it on the plaintiff's counsel and on defendants' counsel at the mailing and email addresses set forth above so that the notice is received on or before September 13, 2024. Persons who intend to object and desire to present evidence at the Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such persons may be heard orally at the discretion of the Court.

Objectors are not required to hire an attorney to represent them in making written objections or in appearing at the Hearing. However, if an Objector decides to hire an attorney, it will be at the Objector's own expense, and that attorney must file a notice of appearance with the Court and serve it on the plaintiff's counsel and Defendants' counsel at the mailing and email addresses set forth above so that the notice is received on or before September 13, 2024.

The Hearing may be adjourned by the Court without further written notice to Company stockholders. If an Objector intends to attend the Hearing, the Objector should confirm the date and time with the plaintiff's counsel.

Unless the Court orders otherwise, any Company stockholder who does not object in the manner described above will be deemed to have waived any objection

(including the right to appeal) and shall be forever foreclosed from making any objection to the Fee Application.

Company stockholders who do not wish to object do not need to appear at the Hearing or take any other action.