



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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IN RE: APPRAISAL OF DELL INC.) C.A. No. 9322-VCL
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ORDER APPROVING SETTLEMENT

WHEREAS:

A. On July 13, 2015, the court issued a memorandum opinion granting a motion for summary judgment filed by respondent Dell Inc. (“Dell”) as to the appraisal claims asserted by petitioners (i) Northwestern Mutual Series Fund, Inc. Equity Income Portfolio (Verified List No. 21), (ii) T. Rowe Price Funds SICAV US Large Cap Value Equity Fund (Verified List No. 27), (iii) Manulife US Large Cap Value Equity Fund (Verified List No. 29), (iv) the Milliken Retirement Plan (Verified List No. 44), and (v) Curtiss-Wright Corp. Retirement Plan (Verified List No. 50) (collectively, the “Non-Continuous Ownership Petitioners”).

B. On May 11, 2016, the court issued an opinion granting Dell’s motion for summary judgment as to the appraisal claims asserted by petitioners (i) T. Rowe Price Equity Income Fund, Inc. (Verified List No. 1), (ii) T. Rowe Price Science and Technology Fund, Inc. (Verified List No. 2), (iii) John Hancock Variable Insurance Trust - Equity Income Trust (Verified List No. 5), (iv) John Hancock Funds II - Equity Income Fund (Verified List No. 7), (v) T. Rowe Price Equity Income Trust, a sub-trust of T. Rowe Price Institutional Common Trust

Fund (Verified List No. 9), (vi) T. Rowe Price Institutional Equity Funds, Inc., on behalf of T. Rowe Price Institutional Large Cap Value Fund (Verified List No. 10), (vii) John Hancock Funds II - Science & Technology Fund (Verified List Nos. 13 & 39), (viii) T. Rowe Price Equity Income Series, Inc., on behalf of T. Rowe Price Equity Income Portfolio (Verified List No. 15), (ix) John Hancock Variable Insurance Trust - Science & Technology Trust (Verified List No. 18), (x) T. Rowe Price U.S. Equities Trust (Verified List Nos. 23 & 24), (xi) Prudential Retirement Insurance and Annuity Co., on behalf of Separate Account SA-5T2 (Verified List No. 26), (xii) John Hancock Funds II - Spectrum Income Fund (Verified List No. 42), (xiii) Tyco International Retirement Savings and Investment Plan Master Trust (Verified List No. 43), and (xiv) The Bureau of National Affairs, Inc. (Verified List No. 45) (collectively with the Non-Continuous Ownership Petitioners, the “Settling Petitioners”).

C. On June 24, 2016, Dell and the Settling Petitioners entered into a Settlement Agreement.

D. During a teleconference with the court on June 27, 2016, counsel to the Settling Petitioners and Dell described the consideration being provided to the Settling Petitioners, and the court discussed with the parties whether the Settling Petitioners and Dell could consummate the settlement on the terms described.

NOW THEREFORE IT IS ORDERED:

1. Section 262(k) precludes the dismissal of an appraisal proceeding without court approval. 8 *Del. C.* § 262(k). The requirement of court approval exists because an appraisal proceeding is in the nature of a class action and should be treated as such for purposes of dismissal or compromise. Jesse A. Finkelstein & John D. Hendershot, *Appraisal Rights in Mergers & Consolidations*, 38–5th C.P.S. § VI(S), at A-94 n.201 (BNA). The requirement of court approval “ensures that a shareholder does not settle out of the [appraisal class] at a premium, thereby abandoning the prosecution of the action to the detriment of other class members.” *Ala. By-Products Corp. v. Cede & Co.*, 657 A.2d 254, 260 (Del. 1995).

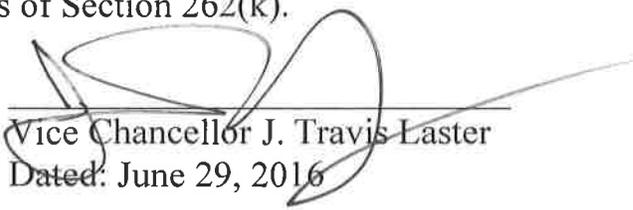
2. During the teleconference on June 27, 2016, the court determined that on the facts presented, there was no risk that the Settling Petitioners were “abandoning the prosecution of the action to the detriment of the other [appraisal] class members.” *Id.* The court further determined that Dell did not have to extend the same offer to appraisal claimants other than the Settling Petitioners and that lead counsel did not have to provide notice of the settlement to appraisal claimants other than the Settling Petitioners. *Cf. Lutz v. A.L. Garber Co.*, 357 A.2d 746, 751 (Del. Ch. 1976) (permitting parties to forgo notice given facts of case).

3. The court made these determinations in light of the parties’ agreement, which was consistent with the court’s calculations, that under no set of circumstances would the consideration being provided to the Settling Petitioners be

more favorable to other appraisal claimants than an adverse outcome on appeal, in which the non-settling petitioners would receive the amount advocated by Dell at trial plus an award of interest at the statutory rate. Given that reality, accepting the settlement consideration was not economically rational for any appraisal petitioner other than the Settling Petitioners, and extending the offer to other appraisal petitioners or providing notice of the settlement would risk confusion. The court required that the parties promptly inform counsel to the other appraisal claimants who have participated actively in this proceeding about the conference and the Settlement Agreement.

4. By letter dated June 29, 2016, counsel to the Magnetar Funds requested that approval of the Settlement Agreement be conditioned on the Settling Petitioners placing in escrow their share of the \$0.733 per share in expenses that Lead Counsel is currently seeking pursuant to Section 262(j). That is unnecessary. Lead Counsel represents the Settling Petitioners. The order implementing any Section 262(j) award can make any necessary adjustment by reducing the amount of the award or adjusting the allocation.

5. In light of these determinations, the settlement between the Settling Petitioners and Dell is approved for purposes of Section 262(k).



Vice Chancellor J. Travis Laster
Dated: June 29, 2016