

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: APPRAISAL OF DELL INC.

Consol. C. A. No. 9322-VCL

**CERTAIN PETITIONERS' MOTION FOR AN
EQUITABLE AWARD OF INTEREST**

Petitioners T. Rowe Price Equity Income Fund, Inc., T. Rowe Price Equity Series, Inc., on behalf of T. Rowe Price Equity Income Portfolio, T. Rowe Price Equity Income Trust, a sub-trust of T. Rowe Price Institutional Common Trust Fund, T. Rowe Price Institutional Equity Funds, Inc., on behalf of T. Rowe Price Institutional Large Cap Value Fund, T. Rowe Price Science and Technology Fund, Inc., T. Rowe Price U.S. Equities Trust, The Bureau of National Affairs, Inc., John Hancock Funds II - Equity Income Fund, John Hancock Funds II - Science & Technology Fund, John Hancock Variable Insurance Trust - Science & Technology Trust, John Hancock Variable Insurance Trust - Equity Income Trust, John Hancock Funds II - Spectrum Income Fund, Prudential Retirement Insurance and Annuity Company, on behalf of Separate Account SA-5T2, and Tyco International Retirement Savings and Investment Plan Master Trust, Northwestern Mutual Series Fund, Inc. Equity Income, Manulife US Large Cap Value Equity Fund, T. Rowe Price Funds SICAV US Large Cap Equity Value Fund, the Milliken Retirement Plan, and Curtiss-Wright Corporation Retirement Plan (“Moving Petitioners”), through their undersigned counsel move this Court for an

award of interest on the value of the merger consideration payable with respect to the subject shares as identified on the verified list in this case. The grounds for this motion will be set forth in a brief to be filed pursuant to a briefing schedule that will be proposed by the parties, and in such reply papers and further written or oral submissions as the Court may allow, but is summarized as follows:

1. On July 13, 2015, this Court issued its Memorandum Opinion in which it held that Petitioners Northwestern Mutual Series Fund, Inc. Equity Income, Manulife US Large Cap Value Equity Fund, T. Rowe Price Funds SICAV US Large Cap Equity Value Fund, the Milliken Retirement Plan, and Curtiss-Wright Corporation Retirement Plan were not eligible to pursue appraisal rights under Section 262 of the Delaware General Corporation Law, 8 Del. C. § 262, because the record owner of the stock beneficially owned by these Petitioners had changed after these Petitioners demanded appraisal rights under the terms of the statute.

2. On May 11, 2016, the Court issued its Opinion wherein it held that the remaining Moving Petitioners were ineligible to pursue appraisal rights under Section 262 because a computer glitch caused voting instructions to be transmitted with respect to shares beneficially owned by Moving Petitioners that were inconsistent with their voting intentions. In addition, the Court ruled: “They

remain entitled to the merger consideration *without any award of interest.*” Opinion at 69 (emphasis supplied).

3. Whether Moving Petitioners are entitled to recover an award of interest from Respondent was not subject to briefing in connection with either the motions considered by the Court in connection with the July 2014 Memorandum Opinion or the cross-motions considered by the Court in connection with the May 2016 Opinion. This Court should allow further briefing on the Moving Petitioners’ right to interest from Respondent.

4. Moving Petitioners sought appraisal rights in good faith. As the Court has acknowledged, the owner of record of shares beneficially owned by certain Moving Petitioners changed without their knowledge or consent. And the Court’s determination that a glitch in the proxy plumbing that resulted in voting instructions being provided that were inconsistent with the voting intentions of the beneficial stockholders presented a novel issue of Delaware law. Moving Petitioners should not be further penalized for pursuing their rights under prevailing Delaware law by converting them to unsecured and uncompensated creditors of Respondent.

5. Since the close of the transaction when Mr. Dell and Silver Lake took Dell, Inc. private, the surviving corporation has retained the merger consideration that is owed to Moving Petitioners, and has had the use of such funds for over two

and a half years. Even if Moving Petitioners are not entitled to recover the fair value of their shares under Section 262, this should not bar them from recovering interest from Respondent at an equitable rate for the use of their cash.

6. Under Delaware law, an award of prejudgment interest is appropriate when a monetary award is made against a defendant. *See Am. Gen. Corp. v. Cont'l Airlines Corp.*, 622 A.2d 1, 13 (Del. Ch.). *aff'd*, 620 A.2d 856 (Del. 1992). “Delaware courts have held in a number of different contexts that prejudgment interest is awarded as a matter of right. The general rule is that interest starts on the date the payment should have been made.” *All Pro Maids, Inc. v. Layton*, No. Civ. A. 058-VCN, 2005 WL 82689 (Del. Ch. Jan. 11, 2005).

7. Here, Moving Petitioners should be entitled to an award of interest, if not under Section 262, then under principles of equity. They have served as uncompensated unsecured creditors for Dell for over two years, and are entitled to recover a commercially reasonable rate of interest on the funds that this Court has acknowledged is owed to them by Respondent.

For these reasons, as more fully set forth in briefing to be filed with the Court in accordance with a schedule to be agreed by the parties, the Court should amend its Opinion of May 11, 2016, to allow an award of interest payable to the Moving Petitioners.

Dated: May 18, 2016

Respectfully submitted,

/s/ Stuart M. Grant

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CERTIFICATE OF SERVICE

I, Michael J. Barry, hereby certify that on May 18, 2016, Certain Petitioners' Motion For An Equitable Award Of Interest was filed and served via File & ServeXpress on the following counsel of record:

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