



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: APPRAISAL OF DELL INC.

Consol. C. A. No. 9322-VCL

**PETITIONER'S MOTION FOR AN AWARD OF ATTORNEYS'
FEES AND REIMBURSEMENT OF EXPENSES
PURSUANT TO 8 DEL. C. § 262(j)**

Petitioner Morgan Stanley Defined Contribution Master Trust ("Moving Petitioner"), through its undersigned counsel and pursuant to 8 *Del. C.* § 262(j), moves this Court for an order charging the attorneys' fees and expenses it incurred in securing a judgment that the fair value of the common stock of Dell Inc. ("Dell" or the "Company") was \$17.62 as of the effective date of a transaction in which Dell founder Michael S. Dell took the Company private (the "Merger") pro rata against the value of all shares entitled to an appraisal. The grounds for this motion are as follows:

1. By Order dated April 10, 2014, all petitions for appraisal of Dell stock were consolidated into the above-captioned action (the "Consolidation Order").
2. Under the Consolidation Order, Moving Petitioner's chosen counsel, Grant & Eisenhofer P.A. ("G&E"), was appointed Lead Counsel for all former stockholders of Dell who had complied with the requirements of Section 262 and who had become entitled to appraisal rights (the "Appraisal Class").

3. The Appraisal Class¹ is comprised of the following former beneficial owners of Dell common stock:

Verified List Number	Beneficial Owner	Appraisal Shares
4	Magnetar Global Event Driven Master Fund Ltd.	1,694,581
6	Magnetar Capital Master Fund, Ltd.	1,267,231
14	Global Continuum Fund	706,012
16	Spectrum Opportunities Master Fund Ltd.	587,598
20	Morgan Stanley Defined Contribution Master Trust	357,500
25	Blackwell Partners LLC	316,410
31	AAMAF, LP	201,000
36	Wakefield Partners, LP	120,000
40	CSS, LLC	100,000
41	Merlin Partners, LP	100,000
52	William L. Martin	4,943 ²
54	Terence Lally	22,000
63	Arthur H. Burnet	12,000
75	Darshanand Khusial	5,559
78	Donna H. Lindsey	4,000
80	Douglas J. Joseph Roth IRA	3,365

¹ See Stipulated Joint Pre-Trial Order, at ¶¶ 31-35 (Morgan Stanley Defined Contribution Master Trust); ¶¶ 55-59 (Geoffrey Stern); ¶ 60 (balance of the appraisal demands that remained outstanding as of the appraisal hearing).

² While the Verified List states that William L. Martin had demanded appraisal for 3,091 shares, Dell “concedes Mr. Martin’s entitlement to appraisal as to 4,943 shares represented by various certificates identified in the Company’s papers . . . as reflected on the records of the Company as of the Transaction Date.” Stipulated Joint Pre-Trial Order at ¶ 61.

93	Douglas J. Joseph & Thuy Joseph, Joint Tenants	1,800
102	Geoffrey Stern	1,000
125	James C. Aramayo	424
152	Thomas Ruegg	200
168	Cavan Partners LP	100
207	René A. Baker	7
TOTAL APPRAISAL SHARES:		5,505,730

4. G&E diligently prosecuted this action on behalf of the Appraisal Class for more than two years, culminating in a four-day trial before the Court in October 2015 that was followed by substantial post-trial briefing and argument. As a result of its efforts, G&E secured a judgment finding that the fair value of Dell as of the effective date of the Merger was \$17.62 – **28% higher** than the \$13.75 Merger consideration.

5. To obtain this judgment, G&E incurred \$4,035,787.18 in out of pocket expenses. A true and correct copy of G&E’s expenses is attached hereto as Exhibit A.

6. Section 262(j) provides that “[u]pon application of a stockholder, the Court may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney’s fees and the fees and expenses of experts, to be charged pro rata against the value of all the shares entitled to an appraisal.”

7. Moving Petitioner asks that the Court order that the \$4,035,787.18 in expenses it incurred in securing a judgment in favor of the Appraisal Class be shared pro rata, at \$0.733 per share, among the 5,505,730 appraisal shares held by the members of the Appraisal Class.

8. Moving Petitioner further asks that the Court order that \$3,964,125.60³ in attorneys' fees be shared pro rata, at \$0.72 per share, among the 5,505,730 appraisal shares held by the members of the Appraisal Class.⁴

9. As a result of Moving Petitioner's efforts, the Appraisal Class will receive \$24,731,137.09 more than they would have received absent this action.⁵ Section 262(j) entitles Moving Petitioner to share the expenses it incurred in securing this result with the other members of the Appraisal Class. *See, e.g., In re Appraisal of Shell Oil Co.*, 1992 WL 321250, at *2 (Del. Ch. Oct. 30, 1992) (assessing \$8,050,000 in attorneys' fees and expenses pro rata against all shares entitled to share in the appraisal award).

³ Moving Petitioner's requested award of attorneys' fees is calculated as of May 31, 2016. To the extent the judgment is paid after May 31, 2016, Moving Petitioner requests that these attorneys' fees accrue interest at the same rate as the judgment.

⁴ Moving Petitioner seeks to charge each member of the Appraisal Class for attorneys' fees on the same terms as it will be charged by G&E in accordance with its retainer (*i.e.*, 15% on the first \$2 in uplift over the \$13.75 deal price and 17% on the additional \$1.87 over \$15.75, with any award of interest following the principal). G&E notes that the total \$3,964,125.60 for which it seeks recovery in attorneys' fees represents a substantial discount to its \$7,776,899.00 lodestar.

⁵ This uplift amount, as well as G&E's fee, does not include interest on the Merger consideration of \$12,165,239.62.

For these reasons, Moving Petitioner requests that the Court order \$3,964,125.60 in attorney's fees and \$4,035,787.18 in expenses to be charged pro rata against the value of all shares entitled to an appraisal.

Dated: June 2, 2016

Respectfully submitted,

/s/ Stuart M. Grant

Stuart M. Grant (#2526)

Michael J. Barry (#4368)

Christine M. Mackintosh (#5085)

Rebecca A. Musarra (#6062)

GRANT & EISENHOFER P.A.

123 Justison Street

Wilmington, DE 19801

(302) 622-7000

Counsel for Moving Petitioner

CERTIFICATE OF SERVICE

I, Christine M. Mackintosh, hereby certify that on June 2, 2016, *Petitioner's Motion for an Award of Attorneys' Fees and Reimbursement of Expenses Pursuant to 8 Del. C. § 262(j)* was filed and served via File & ServeXpress on the following counsel of record:

John D. Hendershot
Gregory P. Williams
Susan M. Hannigan
Andrew Peach
RICHARDS LAYTON & FINGER
One Rodney Square
920 North King Street
Wilmington, DE 19801

Jeremy D. Anderson
FISH & RICHARDSON PC
222 Delaware Ave., 17th Floor
Wilmington, DE 19801

Thomas A. Uebler
COOCH & TAYLOR, P.A.
The Brandywine Building
1000 West Street, 10th Floor
Wilmington, DE 19801

Samuel T. Hirzel, II
Melissa N. Donimirski
PROCTOR HEYMAN ENERIO LLP
300 Delaware Avenue, Suite 200
Wilmington, DE 19807

/s/ Christine M. Mackintosh
Christine M. Mackintosh (#5085)



Exhibit A



Grant & Eisenhofer P.A.

485 Lexington Avenue
New York, NY 10017
Tel: 646-722-8500
Fax: 646-722-8501

1747 Pennsylvania Avenue, N.W., Suite 875
Washington, DC 20006
Tel: 202-386-9500
Fax: 202-386-9505

30 N. LaSalle Street, Suite 1200
Chicago, IL 60602
Tel: 312-214-0000
Fax: 312-214-0001

123 Justison Street Wilmington, DE 19801 Tel: 302-622-7000 Fax: 302-622-7100

05/31/16
Account No. 18590

T. Rowe Price Associates, Inc.
100 East Pratt Street
Baltimore, MD 21202

Dell Appraisal

RECAPITULATION

<u>Timekeeper</u>	<u>Total Hours to Date</u>	<u>Rate</u>	<u>Total to Date</u>
Stuart M. Grant	464.90	995.00	\$462,575.50
Stuart M. Grant	253.20	975.00	\$246,870.00
Stuart M. Grant	93.70	925.00	\$86,672.50
Cynthia A. Calder	3.30	750.00	\$2,475.00
Megan D. McIntyre	1.70	775.00	\$1,317.50
Megan D. McIntyre	0.60	750.00	\$450.00
Geoffrey C. Jarvis	0.40	750.00	\$300.00
Michael J. Barry	867.50	825.00	\$715,687.50
Michael J. Barry	626.60	795.00	\$498,147.00
Michael J. Barry	66.80	775.00	\$51,770.00
Michael J. Barry	119.10	750.00	\$89,325.00
Nathan Cook	0.60	695.00	\$417.00
Christine Mackintosh	2.40	695.00	\$1,668.00
Christine Mackintosh	1,123.50	680.00	\$763,980.00
Christine Mackintosh	841.10	660.00	\$555,126.00
Christine Mackintosh	152.30	625.00	\$95,187.50
Kimberly Evans	0.50	695.00	\$347.50
Kimberly Evans	3.30	475.00	\$1,567.50

Dell Appraisal

Traci Goins	0.30	260.00	\$78.00
Paige Alderson	1.50	140.00	\$210.00
Caitlin Moyna	13.80	625.00	\$8,625.00
Bernard C. Devieux	0.50	360.00	\$180.00
Bernard C. Devieux	107.20	325.00	\$34,840.00
Jennifer A. Williams	323.00	400.00	\$129,200.00
Jennifer A. Williams	224.10	380.00	\$85,158.00
Jennifer A. Williams	630.30	350.00	\$220,605.00
Jennifer A. Williams	39.10	325.00	\$12,707.50
Rebecca Musarra	22.50	450.00	\$10,125.00
Rebecca Musarra	833.50	425.00	\$354,237.50
Rebecca Musarra	1,144.60	410.00	\$469,286.00
Rebecca Musarra	70.80	350.00	\$24,780.00
Ann M. Kashishian	212.60	400.00	\$85,040.00
Ronald E. Wittman	352.50	200.00	\$70,500.00
Alesha Walker	14.90	200.00	\$2,980.00
Valisity Beal	0.90	200.00	\$180.00
Valisity Beal	5.90	190.00	\$1,121.00
Beatrice Smith	1.50	200.00	\$300.00
Robyn Finnimore-Pierce	6.30	200.00	\$1,260.00
Sara Haggerty	0.10	190.00	\$19.00
Meghan Leyh	460.10	200.00	\$92,020.00
Cathy Aldinger	26.50	200.00	\$5,300.00
Larry Silvestro	2.00	200.00	\$400.00
Trineka Schuster	2.10	200.00	\$420.00
Karen Campbell	638.60	250.00	\$159,650.00
Greg Goodman	754.20	250.00	\$188,550.00
Michael McFarlin	408.90	375.00	\$153,337.50
Michael McFarlin	78.60	100.00	\$7,860.00
Michael McFarlin	408.10	375.00	\$153,037.50
Michael McFarlin	29.50	250.00	\$7,375.00
Adam Block	420.50	375.00	\$157,687.50
Adam Block	31.50	100.00	\$3,150.00
Elizabeth Desmond	25.00	140.00	\$3,500.00
Marc Grobler	1.00	250.00	\$250.00
Richard Gartman	253.70	360.00	\$91,332.00
Richard Gartman	1,700.70	340.00	\$578,238.00
Tracy Sepehriazar	332.60	360.00	\$119,736.00
Tracy Sepehriazar	1,714.40	340.00	\$582,896.00
Carolynn A. Nevers	0.50	240.00	\$120.00
Carolynn A. Nevers	9.60	235.00	\$2,256.00
Carolynn A. Nevers	0.20	225.00	\$45.00
Shannon Somma	93.70	325.00	\$30,452.50
Shannon Somma	1,011.80	310.00	\$313,658.00
Steven Cotter	107.50	375.00	\$40,312.50
	17,138.70		\$7,776,899.00

Disbursements

Expert	\$3,393,353.02
Filing Fee	\$21,267.78
Meeting Expense	\$1,884.70
Outside Counsel	\$787.34
Travel	\$37,880.53
Case-Related Publication	\$32.00

Dell Appraisal

Duplication Services	\$265,864.33
Postage & Delivery	\$3,351.32
Service Fees	\$39.99
Telephone	\$1,269.45
Transcription Services	\$42,807.45
Case-Related Research	\$20,729.37
E-Discovery Data Processing Services	\$55,954.95
E-Discovery Data Hosting Services	<u>\$190,564.95</u>
	\$4,035,787.18
TOTAL	<u>\$11,812,686.18</u>



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[PROPOSED] ORDER

AND NOW, this ____ day of _____, 2016, upon consideration of Petitioner Morgan Stanley Defined Contribution Master Trust's Motion for an Award of Attorneys' Fees and Reimbursement of Expenses Pursuant to 8 *Del. C.* § 262(j), it is hereby Ordered that Petitioner's Motion is GRANTED.

SO ORDERED

Vice Chancellor J. Travis Laster