



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: APPRAISAL OF DELL INC.

Consol. C. A. No. 9322-VCL

**LEAD COUNSEL'S OPPOSITION TO THE MAGNETAR FUNDS'
RENEWED MOTION FOR APPOINTMENT AS CO-LEAD PETITIONERS
AND FOR APPOINTMENT OF THEIR CHOICE OF CO-LEAD COUNSEL**

Grant & Eisenhofer, P.A. ("G&E"), appointed as Lead Counsel in this Consolidated Action by Order dated April 20, 2014, responds to The Magnetar Funds' Renewed Motion For Appointment As Co-Lead Petitioners And For Appointment Of Their Choice Of Co-Lead Counsel (the "Motion") as follows:

1. Magnetar's renewed Motion should be denied. By Order dated April 20, 2014, this Court appointed G&E as Lead Counsel for purposes of prosecuting the appraisal on behalf of the Appraisal Class. No individual petitioner asserting appraisal rights under Section 262 was appointed "lead" or "co-lead" petitioner by that Order. In fact, since being appointed Lead Counsel, G&E has diligently and successfully prosecuted this appraisal action on behalf of *all* appraisal petitioners, securing a determination that the fair value of Dell Inc. on the date of the merger was \$17.62 per share, approximately 28% higher than the merger price of \$13.75. G&E has demonstrated the kind of commitment and devotion to the Appraisal Class that should be encouraged, not undermined by a motion to change the established leadership structure that serves no legitimate purpose.

2. Magnetar's Motion serves no legitimate purpose at this stage of the proceedings. The litigation before this Court is largely over. The parties have exchanged drafts of the proposed final judgment, which will be submitted shortly to the Court for its consideration. Altering the established leadership structure at this point makes no sense.

3. Magnetar's Motion is nothing but a strategic play to gain some kind of leverage supporting its opposition to Lead Counsel's motion for an award of fees and costs under Section 262(f). Magnetar has argued that fees it agreed to pay its counsel, Lowenstein Sandler, should be offset against any fee award to G&E that this Court may deem appropriate arising from G&E's successful prosecution of the action. We surmise that by attempting to have the Lowenstein Sandler firm appointed as "Co-Lead Counsel" at this late date, Magnetar will seek to gain leverage on its set-off request. But rather than engaging in this kind of gamesmanship, Magnetar should simply respond substantively to G&E's motion for an award of fees and costs and not try to distort the record by having its chosen counsel characterized as "Co-Lead" with this firm.

4. No harm will result to Magnetar by denying this Motion. Magnetar *always* has had the right to settle its claim to appraisal directly with Dell. And after entry of the final judgment, Magnetar can decide on its own whether to appeal the Court's final judgment, to seek to enforce the final order or to settle its claims.

5. In contrast, granting the Motion would cause significant harm to the Appraisal Class, Lead Counsel, Dell, and the efficient administration of justice. There is a strong negative adversary relationship between G&E and the Lowenstein Sandler firm that prevents the firms from working together in an orderly fashion in this matter. G&E believes that Lowenstein Sandler has breached confidences by revealing settlement communications in an effort to promote the financial interests of itself and its individual client. To explain, in accordance with its responsibilities as Lead Counsel, G&E kept Lowenstein Sandler apprised of certain discussions with Dell. Lowenstein Sandler then used the existence of those discussions as the basis for discovery requests it served as part of its effort to oppose G&E's request for an award of fees and expenses. G&E, accordingly, will not work with the Lowenstein Sandler firm in this matter on a going-forward basis.

6. Granting Magnetar's Motion also will not serve the interests of all Petitioners. While the Lowenstein Sandler firm has demonstrated that it will sacrifice the interests of the Appraisal Class for the financial interests of Magnetar exclusively, G&E has demonstrated its continuing commitment to represent the interests of *all* petitioners -- including Magnetar. Indeed, G&E filed the motion to amend the judgment to *increase* the Court's determination of fair value *after* this Court already had determined that almost all of the individual petitioners that retained G&E directly were ineligible to pursue appraisal rights and therefore

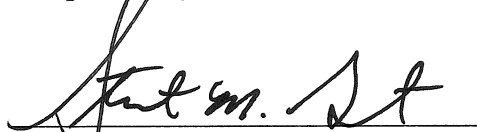
would not have benefited by any increase in the appraised value. G&E has never shown any indication that it would slow in its vigorous protection of the rights of all members of the Appraisal Class.

7. Finally, Lowenstein Sandler is simply ill-equipped to make informed decisions about the entry of the final order, the last task before this Court. Lowenstein Sandler provided no useful assistance during the actual prosecution of this case, and has provided no reason to believe that it can add any value at this point when the only thing left to accomplish is the negotiation of a proposed form of final judgment to implement the Court's prior decisions.

8. For these reasons, we respectfully submit that Magnetar's renewed Motion should be denied.

Dated: June 23, 2016

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Christine M. Mackintosh, hereby certify that on June 23, 2016, *Lead Counsel's Opposition to The Magnetar Funds' Renewed Motion for Appointment as Co-Lead Petitioners and for Appointment of Their Choice of Co-Lead Counsel* was filed and served via File & ServeXpress on the following counsel of record:

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