

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: APPRAISAL OF DELL INC. :
: Consolidated
: C.A. No. 9322-VCL

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Chancery Court Chambers
New Castle County Courthouse
500 North King Street
Wilmington, Delaware
Monday, June 27, 2015
9:30 a.m.

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BEFORE: HON. J. TRAVIS LASTER, Vice Chancellor.

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TELECONFERENCE REGARDING PROPOSED SETTLEMENT

CHANCERY COURT REPORTERS
New Castle County Courthouse
500 North King Street - Suite 11400
Wilmington, Delaware 19801
(302) 255-0523

1 APPEARANCES:

2 STUART M. GRANT, ESQ.
3 Grant & Eisenhofer, P.A.
4 for Petitioners

4 GREGORY P. WILLIAMS, ESQ.
5 Richards, Layton & Finger, P.A.
6 -and-

7 JOHN L. LATHAM, ESQ.
8 of the Georgia Bar
9 Alston & Bird LLP
10 for Respondent Dell Inc.

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1 THE COURT: Good morning. This is
2 Travis Laster speaking. Who's on the line for the
3 petitioners?

4 MR. GRANT: Good morning, Your Honor.
5 Stuart Grant.

6 MR. WILLIAMS: And, Your Honor, for
7 the respondents, Greg Williams and John Latham.

8 THE COURT: All right. Well, welcome
9 to you all. Now, there's other petitioners on whom I
10 am probably more focused now than I might otherwise
11 be, because of the various motions that are pending.
12 Is anybody from those groups on?

13 MR. GRANT: No, Your Honor.

14 THE COURT: Did they get notice of
15 this, do you know?

16 MR. GRANT: I don't believe so, Your
17 Honor.

18 MR. WILLIAMS: And, Your Honor, maybe
19 we could just explain a little bit. The settlement
20 that we have agreed to is a partial settlement. It is
21 just the former stockholders who were affected by the
22 continuous ownership decision of last year, and then
23 the voting rights decision. All of those former
24 stockholders are represented by Mr. Grant, the ones

1 who, you know, still have appeal rights because they
2 haven't exchanged their shares for the merger
3 consideration. It's all Mr. Grant's clients, and so
4 this really doesn't affect anyone else. And so we
5 certainly didn't think -- and I take it Mr. Grant
6 didn't think, either -- that this was the kind of
7 thing that needed to involve counsel for other
8 petitioners.

9 THE COURT: All right. Well, why
10 don't you guys tell me what's going on, and then I'll
11 let you know what, if anything, I need you to do in
12 that regard.

13 MR. WILLIAMS: Sure. Your Honor, it's
14 Greg Williams. I'll just start, and then I'm sure
15 Mr. Grant can join in. But we have reached a
16 settlement, as I say, with the former stockholders who
17 are, in essence, still out there, in the sense that
18 they still have appraisal rights. These are shares
19 that were -- I'm sorry. They still have appeal
20 rights.

21 These are shares that were excluded by
22 the continuous ownership decision and/or the voting
23 decision of a few weeks ago. And what we have done is
24 agreed that we will pay those folks in exchange for

1 releases where they release their appeal rights. We
2 have agreed to pay them an amount of interest. It's
3 not the statutory interest, it's -- I think it works
4 out to be between 2 and 3 percent, but the grand total
5 is 88 cents per share, and it's \$28 million in the
6 aggregate.

7 And so they will be getting the merger
8 consideration and they will get some modicum of
9 interest, and in exchange, they will be releasing
10 their appeal rights with respect to continuous
11 ownership and the voting decision. And as I say,
12 these are the -- you know, Mr. Grant represents all of
13 the former stockholders who are out there who are in
14 this position. And as to the remaining former
15 stockholders who are still in the case and have been
16 awarded 17.62, certainly this settlement would have no
17 interest to them.

18 THE COURT: All right.

19 Mr. Grant, anything you'd like to add?

20 MR. GRANT: Yes, Your Honor. I agree
21 with everything that Mr. Williams said. I think one
22 of the other critical components for us was that
23 payment would be made by June 30th so that it could be
24 accounted for in the second quarter for all of my

1 clients, which, understanding that they are various
2 funds, quarters matter to them.

3 And as Your Honor may or may not have
4 read in the newspaper, you know, T. Rowe is also
5 having to take a charge this quarter to make up for
6 funds that it is paying to its clients to make up for
7 the voting issue, and so part of the agreement here,
8 the timing is critical. And I think Mr. Latham
9 recognized this very early, and I think it was an
10 important point for all of my clients. But that's
11 also sort of why we're coming to you on somewhat short
12 notice, was so that this deal could actually close in
13 the second quarter.

14 THE COURT: Got you.

15 All right. So, look, I get where
16 you-all are coming from. Here's what I'd like you-all
17 to do. In terms of the ultimate substance of the
18 settlement, I think that once you comply with this
19 minor procedural requirement that I'm going to impose,
20 that's ultimately something for Mr. Grant's clients
21 and you-all to agree to. I'm not going to tell anyone
22 on this call anything they don't already know. And in
23 fact, the likelihood is that, given the people on the
24 call, whatever I say, one of you guys will view it as

1 erroneous, since I've ruled against your interests on
2 both sides already in this case. So you both know how
3 deeply fallible I am.

4 But appraisal is in the nature of a
5 class action. It's not a class action. It's in the
6 nature of a class action. And so what that means is
7 someone like me has to watch out for surreptitious
8 buy-offs or taking out the big holder or sweetheart
9 deals, or things like that. And the main way we
10 police against that is just by making sure that other
11 folks have notice and the opportunity to take the same
12 deal.

13 Here, given the nature of what you're
14 talking about and the type of unique situation that
15 Mr. Grant's clients, who have been adversely affected
16 by my rulings, are in, I don't think there's any way
17 at all that there's any concern that anybody else
18 might take this deal or want to take this deal, or
19 anything like that.

20 But what I need you to do, because
21 this is "in the nature of" a class action, is to at
22 least reach out to the Magnetar folks and the other
23 folks on the verified list and let them know that this
24 offer has been made. I think the offer does have to

1 be open to these other people, because you're taking
2 out the largest group in the proceeding. And while it
3 probably seems, when you add up both of your-all's
4 assessments of rulings, it's probably beyond unlikely,
5 but there is at least a nontrivial possibility that I
6 got everything wrong; namely, that Mr. Grant's clients
7 are still entitled to their appraisal rights and that
8 my decision on fair value was actually too low.

9 And one theoretically could have a
10 situation where people wanted to follow that route, as
11 opposed to doing this. You could also have the flip
12 side, which is that anybody and their brother ought to
13 see that my decision on fair value was too darned
14 high, and that rather than risking getting the merger
15 consideration on appeal, people would want to get
16 something like this.

17 Now, I don't think that's economically
18 rational. I don't think it makes sense, the way the
19 numbers pan out. But I think you have to at least
20 reach out to the other folks on the verified list and
21 say, "We have made this offer to the people that were
22 cut out of the appraisal class. Laster thinks that
23 because this appraisal proceeding is in the nature of
24 a class action, the offer needs to be extended to

1 you-all." But what I'm not going to do is I'm not
2 going to condition what you-all are proposing on
3 waiting to get responses from any of these people.

4 In other words, you guys can go ahead
5 with your settlement, which I think addresses the
6 timing issue. But what I don't think we can have -- I
7 think there needs to be the information given to the
8 other folks, and even though I think that the offer,
9 for their standpoint, should be noneconomic, I think
10 our precedents do say that when you're taking out who
11 is, theoretically, the largest holder, you have to
12 extend the same offer to the other people to guard
13 against the theoretical sweetheart deal.

14 MR. GRANT: Your Honor --

15 THE COURT: The other thing, I think,
16 that this affects -- and this is part of the reason
17 why I need, Mr. Grant, really you to coordinate with
18 the Magnetar folks on this -- is I think it has to
19 affect the allocation of costs. And so I think that
20 the Magnetar people are going to -- well, maybe they
21 won't want it. Maybe they won't see the same
22 connection that I see. But it seems to me to have an
23 obvious connection to the allocation of costs and the
24 degree to which some portion of the T. Rowe Funds'

1 costs ought to be carved out of the allocation, or
2 something like that.

3 So there's got to be some
4 informational exchange, if they want it, on that. But
5 that's another reason why I don't think you guys can
6 just do this without letting these guys know and
7 giving them the opportunity to ask questions about it.

8 But as far as I'm concerned, I think
9 that you-all can proceed with the settlement between
10 you-all, as long as Dell advises the other people on
11 the verified list of the offer being made and makes
12 the offer to the other people. Although, as I say, to
13 me, at least, I don't think it's an offer that any of
14 them, other than Mr. Grant's clients, rationally would
15 accept.

16

17 MR. GRANT: Your Honor --

18 THE COURT: Yeah. Go ahead.

19 MR. GRANT: I have one concern about
20 this. I have no problem with letting the Magnetar
21 people know and letting the Lowenstein Sandler people
22 know and giving them full information. You know, Greg
23 and John can make the offer to them. Of course
24 they're going to laugh at it and reject it.

1 I have a concern, and it's sort of the
2 same concern that people have when, every once in a
3 while, these funds, or whatever you want to call them,
4 make these below-market tender offers to people.

5 THE COURT: Yeah. I get you. It's a
6 mini tender problem.

7 MR. GRANT: Yes. And so the problem
8 is there are 15 or 20 folks -- and that's a
9 ballpark -- who are on the verified list who, you
10 know, have not been challenged, or, if they've been
11 challenged, the challenges have been rejected. But
12 they're entitled, according to your rulings, to
13 appraisal. They are entitled to the 17.62. And with
14 interest, through the end of May, that's at 20.40 and
15 mounting from here.

16 I'm afraid that if this offer is made
17 to them -- and I don't necessarily, you know, have
18 contact with them -- that some of them could say, oh,
19 well, I guess there's what's being given to me after
20 the Court's decision, and they do accept it. And it
21 would be not just not economical. It would be beyond
22 the pale that that could be rational. Because as Greg
23 mentioned, the interest that my clients are getting is
24 between 2 and 3 percent.

1 Even if Your Honor's decision was
2 completely wrong and went up on appeal and the Supreme
3 Court said, "I'm sorry. All you get is merger
4 consideration," these folks would still be getting,
5 you know, 6 percent, compounded quarterly, on all
6 their money. And even on a sort of complete reversal,
7 they'd still be way better off than taking this deal
8 now.

9 And so I'm just concerned this could
10 put a lot of confusion, without any real benefit
11 whatsoever, to the individuals. Whereas I understand
12 why Your Honor wants this information to get to
13 Magnetar and to Lowenstein Sandler, I don't
14 necessarily agree that this has any effect on the
15 allocation of costs, because of reasons that we'll
16 argue to Your Honor. I think the statute is clear
17 that, you know, if you're not entitled to appraisal,
18 then you don't have to share in the costs. And I
19 think that's by statute.

20 But having said that, you know, when
21 Lowenstein Sandler puts in their opposing brief on
22 July 1, they'll make whatever arguments they make that
23 this 28 million costs should be taxed against it, and
24 we'll respond accordingly. But I'm just not sure

1 getting the offer to anyone else really has any
2 benefit. In fact, may back fire. And I know you're
3 supposed to be protect the class, but I think you may
4 be harming the class by having this go out.

5 THE COURT: I want to hear
6 Mr. Williams' views on this, but before I do, what if
7 you write the letter?

8 MR. GRANT: I'm just nervous, because,
9 I mean, write a letter that says, you know, "The Court
10 has required the defendants to make you this offer.
11 It's a really horrible offer for you to take, for all
12 the following reasons, but the Court said you have to
13 have the opportunity." I could do that, but it's sort
14 of like a very bizarre letter to receive.

15 THE COURT: No, I hear you. It is a
16 bizarre letter to receive. All right.

17 Well, Mr. Williams, what are your
18 thoughts?

19 MR. WILLIAMS: Well, Your Honor, look,
20 I certainly appreciate what you're struggling with,
21 particularly given that we have these -- you know,
22 this ongoing briefing with respect to who should be
23 lead counsel going forward. So I understand where
24 you're coming from.

1 I will say that as a very practical
2 matter, I do think that I agree with Mr. Grant. Look,
3 it would be in my client's interests -- it would be a
4 windfall to us, really -- if people who are in the
5 "class" at this point and have the right, subject to
6 appeal, to 17.62 plus statutory interest -- if some of
7 them took, you know, the merger price plus a fraction
8 of statutory interest, that would be an amazing thing
9 for us.

10 That being said, the numbers of people
11 who would do it would be zero or very small,
12 consisting of someone who just didn't understand what
13 was happening. And I think that, really, to best
14 serve the interests of justice here -- I understand
15 why Your Honor would like us to contact Magnetar's
16 counsel. That makes sense to me. I personally think
17 that this offer is so low, compared to what people
18 have in their hands right now, even under any
19 scenario, assuming we win on appeal, I think if you
20 did the calculation, even if we won on appeal and
21 somehow we hit the grandest of all grand slams, and
22 the valuation number turned out to be what our expert
23 had said, 12.68, I think it was, something like that,
24 still, when you add statutory interest, you're going

1 to be above the number that we're talking about here,
2 is my guess. I can't say I've done that calculation.
3 But --

4 THE COURT: Yeah. Mr. Williams, as
5 usual, you've made a really good point. And that's
6 just what I was thinking about here and had turned to
7 my clerks to ask them.

8 So essentially, just so I understand
9 what you and Mr. Grant are saying, or at least what
10 you're saying, assuming the floor is the merger price,
11 there's no situation where any stockholder would be
12 better off taking the T. Rowe deal, as opposed to
13 taking the appeal, getting the merger consideration,
14 and getting the statutory interest through the date of
15 payment; correct?

16 MR. WILLIAMS: That's right.

17 THE COURT: And the point that you've
18 just made is that even if, on appeal, you guys
19 convinced the Delaware Supreme Court to go Hubbard,
20 even going Hubbard plus statutory interest is better
21 than the T. Rowe deal?

22 MR. WILLIAMS: I haven't done that
23 math, Your Honor. My instinct is that that's correct,
24 but we'd have to confirm that.

1 THE COURT: Well, I'm looking at --
2 I'm looking at the brain trust, and the brain trust is
3 nodding their heads as well.

4 All right. Let's do this, then. In
5 terms of your-all's deal, I'm fine with you guys going
6 ahead with it. The only thing that caused me agita
7 was this case law that says, as I've articulated,
8 you're supposed to make the same offer to the rest of
9 the class so as to avoid, or at least mitigate, the
10 buyout problem.

11 We'll do the math, and I will have my
12 clerk call you guys at the end of the day. If you-all
13 would also do the math, and if you get the math done
14 first -- which is probably likely, since you have
15 access to super-duper Ph.D. type people, and all I've
16 got is two super-smart young law clerks and an Excel
17 spreadsheet -- call us and tell us.

18 And as long as the idea that
19 Mr. Williams has just articulated is correct --
20 namely, that Hubbard plus statutory interest is worse
21 for everybody than the T. Rowe deal -- then I don't
22 think that I need to condition this and I don't think
23 we need to have notice to people on the verified list.

24 I still want you guys to inform the

1 Magnetar folks of the world about this as soon as
2 possible, and if they scream and yell about the fact
3 that they weren't on this call, let's have another
4 call.

5 I'm dealing with this insurance case
6 right now that you guys aren't involved in, and it
7 brings back these painful memories to me of this
8 situation in which I held an ex parte hearing
9 involving the Insurance Commissioner under a statute
10 that specifically authorizes an ex parte hearing. And
11 I then, because it was ex parte, instructed the
12 parties to give notice to the party who wasn't present
13 for the hearing. And I then had a full hearing at
14 which I revisited all the rulings that I made at the
15 prior hearing so that everybody would have a chance to
16 be heard.

17 And what I endured after that was
18 three appeals to the Delaware Supreme Court, including
19 some of -- although I wouldn't say the most -- but
20 some of the most ad hominem attacks on me for
21 violating people's due process rights that one could
22 read and, at least seemingly, a receptive audience
23 among at least one of the Delaware Supreme Court
24 Justices for the idea that that had all been

1 improperly done under the circumstances.

2 So if you're sensing in me some
3 reticence about us having this call without the
4 Magnetar and other folks on the line, it's because
5 I've been working for the past month on this insurance
6 case which has brought back to me all the wonderful
7 joys of that Cohen matter and the due process notice
8 issues that were so front and center for such an
9 extended period of time.

10 So please do the following: Do the
11 math. Call my chambers -- or my chambers will call
12 you, whoever gets it done first -- and let's confirm
13 the math. Assuming the math is right, go forth and
14 settle without needing to extend this to anybody else.
15 Tell the Magnetarians and the other folks as soon as
16 you can that we've had this call. Tell them that I'm
17 more than happy to have another call with them, and
18 then we'll go forward from there.

19 Mr. Grant, does that make sense to
20 you?

21 MR. GRANT: It does, except I will
22 tell you that my back-of-the-envelope math may differ
23 from everyone else's. I think it's going to be very
24 close, but I think if you go, you know, all Hubbard --

1 which, by the way, I don't think is now possible,
2 given the Court's rulings, because I think that's
3 abuse of discretion. If --

4 THE COURT: Well, if there's one thing
5 that I'm known to be able to do, it's abuse
6 discretion.

7 MR. GRANT: Okay. Anyway, I think if
8 you wait another month or two, the numbers will be
9 such that the answer would be yes, it is -- even if
10 you went all Hubbard, it would. So in that regard, if
11 someone were to wait now and go to the Supreme Court,
12 the Supreme Court could not come back with a decision
13 that would be worse off than taking -- if you were,
14 you know, to take this deal if you were someone who is
15 unentitled to appraisal. If the Supreme Court would
16 decide today, I think it's very close, but I think
17 this number is going to tuck just under the 14.60
18 people are going to get.

19 So I heard what you said. I'm on
20 board. I think if it tucks, you know, a few cents
21 under, it shouldn't change what Your Honor's doing.
22 But I'm not sure that bottom number is going to do
23 that.

24 MR. WILLIAMS: But I think we could

1 also, Stuart, reasonably assume, because it's just the
2 reality, that a Supreme Court decision couldn't under
3 any circumstance happen, you know, quicker than in
4 five or six months, I think is the reality.

5 MR. GRANT: I don't even think you'll
6 need that much. I think it's two or three months
7 before it does. But since we don't even have a final
8 judgment to enter to the Court and the Court can't
9 enter a final judgment, and it's 30 days before an
10 appeal would ever take place, I think practically, it
11 is impossible for this to be a good deal. But having
12 said that, if you're looking at it as of today, I
13 think you're going to miss by a few cents.

14 THE COURT: Tell you what --

15 MR. WILLIAMS: One of the things I
16 don't think it would make sense to look at as of
17 today, because --

18 THE COURT: Yeah. I hear you,
19 Mr. Williams. And what you're saying, in terms of the
20 practical timing of how long it will take for the
21 Supreme Court to do something, even accepting that
22 they'll move expeditiously, I think you're right. And
23 I think you'd have to analyze this, given that being
24 the alternative as to how you calculate the full

1 Hubbard alternative.

2 But let's do the math, and if that's
3 all good, then you've convinced me. If the math turns
4 out to be otherwise, let's get back on the phone. And
5 as I say, please let the Magnetarians know as soon as
6 you can.

7 MR. GRANT: Will do, Your Honor.
8 Thank you, Your Honor.

9 THE COURT: All right. Thank you,
10 everyone. I appreciate you giving me a head's up
11 about this.

12 Oh, and you know, somebody ought to
13 point out, and it's not necessarily you guys, but you
14 guys are always at conferences about these things, and
15 things like that. You know, all the same people who
16 for years were carping about how appraisal interest is
17 such a negative thing, it's a pretty good example it's
18 not a risk-free exercise.

19 It's also a pretty good example that
20 it works both ways, since having what I guess will be
21 a 2 to 3 percent loan of T. Rowe's capital is a pretty
22 good deal in this for Dell, in terms of a benefit of a
23 below-cost-of-capital loan. So it's not here or there
24 with respect to this call, but having been someone who

1 has never understood how people could blithely say
2 that the appraisal interest rate is purely an
3 above-market rate, as if it were a risk-free federal
4 funds obligation, is a pretty obvious example of how
5 that was something, to use the S word, stupid.

6 All right. Good to talk to you all.
7 Bye-bye.

8 MR. GRANT: Thanks, Your Honor.

9 MR. WILLIAMS: Thank you, Your Honor.

10 (Hearing concluded at 9:59 a.m.)

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CERTIFICATE

I, JULIANNE LaBADIA, Official Court Reporter for the Court of Chancery of the State of Delaware, Registered Diplomate Reporter, Certified Realtime Reporter, and Delaware Notary Public, do hereby certify the foregoing pages numbered 3 through 22, contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing before the Vice Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF, I have hereunto set my hand at Wilmington this 29th day of June, 2016.

/s/ Julianne LaBadia

Julianne LaBadia
Official Court Reporter
Registered Diplomate Reporter
Certified Realtime Reporter
Delaware Notary Public