

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

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

**ORDER GRANTING IN PART MOTION TO COMPEL DISCOVERY**

WHEREAS:

A.     On June 2, 2016, petitioner Morgan Stanley Defined Contribution Master Trust (the “Moving Petitioner”) moved for entry of an order pursuant to Section 262(j) of the Delaware General Corporation Law (the “Fee Motion”). Under Section 262(j), a petitioner who litigates an appraisal proceeding may apply to the court to have its expenses charged pro rata against the value of the shares entitled to an appraisal (the “Appraisal Class”).

B.     The Fee Motion sought to charge the Appraisal Class with (i) \$3,964,125.60 in attorneys’ fees (the “Fee Portion”) and (ii) \$4,035,787.18 in out-of-pocket expenses (the “Expense Portion”).

C.     The Fee Motion represented that the Fee Portion was determined using the payment terms that the Moving Petitioner agreed to in its engagement letter (the “Engagement Letter”) with Grant & Eisenhofer, P.A.: 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 and excluding any interest on the merger consideration itself. The Fee Motion represented that the Fee

Portion constituted a substantial discount compared to counsel's loadstar of \$7,776,899.

D. Petitioners Magnetar Capital Master Fund Ltd., Magnetar Global Event Driven Master Fund Ltd., Spectrum Opportunities Master Fund Ltd., and Blackwell Partners LLC (collectively, "Magnetar") are members of the Appraisal Class. They oppose the Fee Petition.

E. Magnetar sought discovery from (i) the petitioners affiliated with T. Rowe Price (the "T. Rowe Petitioners" or "TRP") and (ii) Grant & Eisenhofer, P.A. ("Lead Counsel" or "G&E"). The T. Rowe Petitioners and G&E declined to provide the discovery sought.

F. On June 20, 2016, Magnetar moved to compel responses to its discovery requests (the "Motion").

NOW THEREFORE IT IS ORDERED:

1. Magnetar has identified eight subject-matter areas where it sought discovery. *See* Motion to Compel at 6-7. Magnetar has not shown why topics (g) and (h) are relevant to the Fee Motion. To the extent it relates to those topics, the Motion to Compel is DENIED.

**I. MOTION TO COMPEL TOPIC A**

2. Under topic (a), Magnetar grouped the requests that sought discovery into "[w]hether the T. Rowe Petitioners and Lead Counsel understood or agreed

that Lead Counsel would advance expenses or the T. Rowe Petitioners were obligated to pay them.” Motion at 6. Section 262(j) states that the Appraisal Class may be charged its proportionate share of expenses that were “incurred by any stockholder.” 8 *Del. C.* § 262(j). In at least one decision, the Delaware Supreme Court has interpreted the term “incurred” narrowly. *See Scion Breckenridge Managing Member, LLC v. ASB Allegiance Real Estate Fund*, 68 A.3d 665, 683 (Del. 2013). Both the nature of any payment arrangement and the amounts, if any, that have been paid are thus relevant topics for discovery.

3. Magnetar contends that “T. Rowe Document Request #1” sought discovery under this topic.

**a. Request:**

Your engagement letter with G&E concerning G&E’s representation of You in the Action, and any Documents and Communications concerning the negotiation of any of the terms of the engagement letter or letters.

**b. Response:**

TRP objects to this Request as it is not related to any issue before the Court. TRP further objects to this request to the extent it seeks documents and communications protected by the attorney-client privilege and attorney work product doctrine. In its Motion for an Award of Attorneys’ Fees and Expenses, G&E set forth the relevant terms agreed to by TRP concerning fees and expenses. . . . TRP refers the Magnetar Funds to that document. TRP will not produce any documents in response to Request No. 1.

c. **Ruling:** As stated above, the nature of the payment arrangements are relevant. “Communications regarding fee arrangements are typically discoverable because fee arrangements are considered incidental to the attorney-client relationship and do not usually involve the disclosure of confidential communications arising in the context of the professional relationship.” *Grunstein v. Silva*, 2010 WL 1531618, at \*2 (Del. Ch. Apr. 13, 2010); see *Oliver B. Cannon & Son, Inc. v. Fid. & Cas. Co. of N.Y.*, 519 F. Supp. 668, 680 (D. Del. 1981) (“[I]n the absence of special circumstances, . . . information relating to billing and payment of attorney’s fees does not fall within the scope of the attorney-client privilege.”). The T. Rowe Petitioners shall produce the Engagement Letter with Lead Counsel in unredacted form. The T. Rowe Petitioners shall also produce any other documents that reflect or relate to agreements about payment or expense arrangements. The T. Rowe Petitioners may withhold as privileged any documents or communications reflecting advice regarding the payment or expense arrangements received from counsel other than G&E. The T. Rowe Petitioners may not invoke privilege for documents addressing their own negotiations with G&E over the terms of its engagement. The T.

Rowe Petitioners shall produce a privilege log identifying any documents they withhold.

4. Magnetar contends that “[G&E] Interrogatory #9” sought discovery under this topic.

a. **Interrogatory:**

Please Identify and Describe the terms of Your engagement with T. Rowe Price, including but not limited to the terms applicable to Your attorneys’ fees and reimbursement of any or all out-of-pocket expenses.

b. **Response:**

G&E objects to this Interrogatory on the basis that it seeks information not relevant to any issue before the Court. G&E further objects on the basis that it seeks information protected by the attorney-client privilege and the work product doctrine. Subject to and without waiving the foregoing objection, G&E confirms that it will provide The Magnetar Funds with access to the complete backup of all expenses incurred during the prosecution of this case. In addition, G&E confirms that neither T. Rowe Price nor any other person or entity has reimbursed G&E for any of the expenses incurred during the prosecution of this case, nor will anyone do so except through the pending motion. G&E will not further respond to Interrogatory No. 9.

c. **Ruling:** G&E’s objections are overruled. This interrogatory does not seek the backup expenses themselves. It seems a description of the terms of the engagement, including the terms governing attorneys’ fees and reimbursement of any or all out-of-pocket expenses. It is not relevant whether Lead Counsel has actually

been reimbursed for any expenses. The relevant issue is whether Lead Counsel had agreements regarding the allocation of expenses in the event of specified eventualities. G&E shall answer the interrogatory.

5. Magnetar contends that “[G&E] Document Request #1” sought discovery under this topic.

a. **Request:**

Your engagement letter or letters with T. Rowe Price concerning Your representation of T. Rowe Price in the Action, and any Documents and Communications concerning the negotiation of any of the terms of the engagement letter or letters.

b. **Response:**

G&E objects to this Request as it is not related to any issue before the Court. G&E further objects to this request on the basis that it seeks documents and communications protected by the attorney-client privilege and attorney work product doctrine. In its Motion for an Award of Attorneys’ Fees and Expenses, G&E set forth the relevant terms agreed to by T. Rowe Price concerning fees and expenses. . . . G&E refers the Magnetar Funds to that document. G&E will not produce any documents in response to Request No. 1.

c. **Ruling:** This request duplicates T. Rowe Document Request #9.

The same ruling applies.

## II. MOTION TO COMPEL TOPIC B

6. Under topic (b), Magnetar grouped the requests that sought discovery into “[w]hether the T. Rowe Petitioners and Lead Counsel had any understanding or agreement by which expenses would be allocated in the event that the T. Rowe Petitioners were found to be entitled to appraisal or not, or if they were found to be entitled to statutory interest or not.” Motion at 6. This topic is a more specific version of topic (a). The topic is relevant for the same reasons.

7. Magnetar contends that “T. Rowe Document Request #2” sought discovery under this topic.

a. **Request:**

All documents concerning how expenses incurred by G&E in the Action would be allocated to You, including but not limited to in the event that the Court determined that Your Dell, Inc. shares were or were not entitled to appraisal.

(footnote omitted).

b. **Response:**

TRP objects to this Request on the basis that it seeks information not relevant to any issue before the Court. TRP further objects to this Request to the extent it seeks documents and communications protected by the attorney-client privilege and attorney work product doctrine. In its Motion for an Award of Attorneys’ Fees and Expenses, G&E set forth the relevant terms agreed to by TRP concerning fees and expenses. . . . TRP refers the Magnetar Funds to that document. TRP further objects to this Request on the basis that the terms of 8 *Del. C.* § 262(j), the terms of the Court’s April 10, 2014 Consolidation Order, and the discussion by the Court during the April 10, 2014 teleconference are equally available to the Magnetar Funds.

TRP will not produce any documents in response to Request No. 2.”

(footnote omitted).

- c. **Ruling:** TRP’s objections are overruled. The existence of documents reflecting any agreement or understanding regarding the allocation of expenses is relevant to whether the Expense Portion can be recovered and whether the amount is reasonable. The T. Rowe Petitioners shall produce responsive documents.

8. Magnetar contends that “[G&E] Interrogatory #9” sought discovery under this topic. The court ruled on this interrogatory as part of its discussion of topic (a). The same ruling applies.

9. Magnetar contends that “[G&E] Interrogatory #12” sought discovery under this topic.

a. **Interrogatory:**

Please Identify and describe all Communications (and Documents related to those Communications) between You and any other Person, including internal personnel and Persons at T. Rowe Price, regarding how expenses would be allocated to the T. Rowe Price shares in the [sic] Court determined that those shares were not entitled to appraisal.

b. **Response:**

G&E objects on the basis that this Interrogatory seeks information not relevant to any issue before the Court. G&E further objects to the extent that the Interrogatory seeks information protected by the attorney-client privilege and



the attorney work product doctrine. G&E will not further respond to Interrogatory No. 12.

- c. **Ruling:** G&E's objections are overruled. G&E has placed its communications at issue by filing the Fee Motion. The information is relevant. G&E shall answer the interrogatory.

10. Magnetar contends that "[G&E] Document Request #4" sought discovery under this topic.

- a. **Request:**

All Documents concerning how, if at all, expenses would be allocated among the appraisal petitioners in the Action, including but not limited to how expenses would be allocated to the T. Rowe Price shares in the event that the Court determined that those shares were or were not entitled to appraisal.

- b. **Response:**

G&E objects to this Request as it seeks information not relevant to any issue before the Court. G&E further objects to this Request on the basis that it seeks documents and communications which, to the extent they exist, are protected by the attorney-client privilege and attorney work product doctrine. G&E further objects to this Request on the basis that the terms of 8 *Del. C.* § 262(j), the terms of the Court's April 10, 2014 Consolidation Order, and the discussion by the Court during the April 10, 2014 teleconference are equally available to the Magnetar Funds. G&E will not produce any documents in response to Request No. 4.

- c. **Ruling:** This request is the document-seeking version of the discovery request manifested by G&E Interrogatory #12. The same

ruling applies. G&E's objections are overruled. G&E shall produce responsive documents.

### **III. MOTION TO COMPEL TOPIC C**

11. Under topic (c), Magnetar grouped the requests that sought discovery into “[w]hether the T. Rowe Petitioners in fact have already paid any expenses to Lead Counsel.” Motion at 6. This topic goes to the issue of whether fees were incurred and is therefore relevant.

12. Magnetar contends that “T. Rowe Document Request #3” sought discovery under this topic.

**a. Request:**

Documents sufficient to demonstrate any or all monies that have been paid by You to G&E for any fees and expenses incurred by G&E in connection with the Action.

**b. Response:**

TRP objects to this Request on the basis that it seeks information not relevant to any issue before the Court. TRP further objects to the Request to the extent it seeks documents and communications protected by the attorney-client privilege and the attorney work product doctrine. Subject to and without waiving the foregoing objections, TRP responds that no responsive documents exist. TRP will not produce any documents in response to Request No. 3.

**c. Ruling:** TRP's objections are overruled. The answer that “no responsive documents exist” is responsive, but because TRP answered subject to its objections, it is not clear whether the

answer would remain true now that the objections have been overruled. TRP shall answer the request without interposing its objections.

13. Magnetar contends that “T. Rowe Document Request #7” sought discovery under this topic.

a. **Request:**

Documents sufficient to demonstrate whether or not You paid any expenses or costs in connection with the Action, and if You paid such expenses or costs the reasons for doing so.

b. **Response:**

TRP objects to this Request on the basis that it seeks information not relevant to any issue before the Court. TRP further objects to this Request to the extent it demands documents ‘sufficient to demonstrate . . . reasons’ for paying costs or expenses on the basis that it is vague. TRP further objects to this Request to the extent it seeks documents and communications protected by the attorney-client privilege and attorney work product doctrine. Subject to and without waiving the foregoing objections, TRP responds that it does not possess any responsive documents.

c. **Ruling:** TRP’s objections are overruled. The answer that TRP “does not possess any responsive documents” is responsive, but because TRP answered subject to its objections, it is not clear whether the answer would remain true now that the objections

have been overruled. TRP shall answer the request without interposing its objections.

14. Magnetar contends that “[G&E] Interrogatory #13” sought discovery under this topic.

a. **Interrogatory:**

Please Identify and describe all monies that have been paid or will be paid to You by T. Rowe Price for any fees and expenses incurred by You in connection with the Action.

b. **Response:**

G&E objects on the basis that this Interrogatory seeks information not relevant to any issue before the Court. G&E further objects to the extent that the Interrogatory seeks information protected by the attorney-client privilege and the attorney work product doctrine. Subject to and without waiving the foregoing objection, G&E confirms that it will provide the Magnetar Funds with access to the complete backup of all expenses incurred during the prosecution of this case. In addition, G&E confirms that neither T. Rowe Price nor any other person or entity has reimbursed G&E for any of the expenses incurred during the prosecution of this case, nor will anyone do so except through the pending motion. G&E will not further respond to Interrogatory No. 11 [sic].

c. **Ruling:** G&E’s objections are overruled. The statement that

“neither T. Rowe Price nor any other person or entity has reimbursed G&E for any of the expenses incurred during the prosecution of this case, nor will anyone do so except through the pending motion” is partially responsive, but because the answer

was given subject to objections, it is not clear whether the answer would remain true now that the objections have been overruled.

G&E shall answer without interposing its objections.

15. Magnetar contends that “[G&E] Document Request #5” sought discovery under this topic.

a. **Request:**

Documents sufficient to demonstrate any or all monies that have been paid or will be paid to You by T. Rowe Price for any fees and expenses incurred by You in connection with the Action.

b. **Response:**

G&E objects to this Request as it is not relevant to any issue before the Court. G&E further objects to the extent it seeks documents and communications protected by the attorney-client privilege and attorney work product doctrine. Subject to and without waiving the foregoing objection, G&E responds that neither T. Rowe Price nor any other pension or entity has reimbursed G&E for any of the expenses incurred during the prosecution of this case, nor will anyone do so except through the pending motion.

c. **Ruling:** G&E’s objections are overruled. The statement that “neither T. Rowe Price nor any other person or entity has reimbursed G&E for any of the expenses incurred during the prosecution of this case, nor will anyone do so except through the pending motion” is partially responsive, but because the answer was given subject to objections, it is not clear whether the answer

would remain true now that the objections have been overruled.

G&E shall answer without interposing its objections.

#### **IV. MOTION TO COMPEL TOPIC D**

16. Under topic (d), Magnetar has collected the requests that sought discovery into “[w]hether the T. Rowe Petitioners and Lead Counsel communicated about allocating their proportionate share of expenses to the Non-G&E Shareholders.” Motion at 6. This topic is a more specific version of topic (a). The topic is relevant for the same reasons.

17. Magnetar contends that “T. Rowe Document Request #4” sought discovery under this topic.

**a. Request:**

All documents and communications concerning the Non-G&E Shareholders or their counsel.

**b. Response:**

TRP objects to this Request on the basis that it is overbroad and seeks documents not relevant to any issue in this Action. TRP further objects on the basis that it requests documents, to the extent they exist, that are protected by the attorney-client privilege and the attorney work product doctrine. TRP will not produce any documents in response to Request No. 4.

**c. Ruling:** This request is overly broad in that it is not limited to matters relevant to the Motion. The Motion is denied as to this request.

18. Magnetar contends that “[G&E] Interrogatory #10” sought discovery under this topic.

a. **Interrogatory:**

Please Identify and describe all Communications (and Documents related to those Communications) between You and any other Person, including internal personnel and Persons at T. Rowe Price, regarding Moving Petitioner’s decision to request that all expenses be shared pro rata among the 5,505,730 appraisal shares entitled to appraisal in the Action.

b. **Response:**

G&E objects to this Interrogatory on the basis that it seeks information not [sic] protected by the attorney-client privilege and attorney work product doctrine. G&E further objects to this Interrogatory on the basis that the terms of 8 *Del. C.* § 262(j), the terms of the Court’s April 10, 2014 Consolidation Order, and the discussion by the Court during the April 10, 2014 teleconference are equally available to the Magnetar Funds. G&E will not further respond to Interrogatory No. 10.

(footnote omitted).

c. **Ruling:** This information is protected by the work product doctrine. The Motion is denied as to this interrogatory.

19. Magnetar contends that “[G&E] Interrogatory #11” sought discovery under this topic.

a. **Interrogatory:**

Please Identify and describe all Communications (and Documents related to those Communications) between You

and any other Person, including internal personnel and Persons at T. Rowe Price, regarding the Non-G&E Shareholders, including but not limited to any Communications regarding the allocation of expenses to such Shareholders.

**b. Response:**

G&E objects on the basis that this Interrogatory seeks information not relevant to any issue before the Court. G&E further objects to the extent that the Interrogatory seeks information protected by the attorney-client privilege and the attorney work product doctrine. G&E will not further respond to Interrogatory No. 11.

- c. Ruling:** This request is overly broad in that it is not limited to matters relevant to the Motion. The portion of the request addressing “any Communications regarding the allocation of expenses to such Shareholders” would have been a fair request, but that information is protected by the work product doctrine. The Motion is denied as to this interrogatory.

20. Magnetar contends that “[G&E] Document Request #3” sought discovery under this topic.

**a. Request:**

All Documents and Communications concerning Moving Petitioner’s decision to request that all expenses be shared pro rata among the 5,505,730 appraisal shares entitled to appraisal in the Action.

**b. Response:**



G&E objects to this Request on the basis that it seeks documents and communications which, to the extent they exist, are protected by the attorney-client privilege and attorney work product doctrine. G&E further objects to this Request on the basis that the terms of 8 *Del. C.* § 262(j), the terms of the Court’s April 10, 2014 Consolidation Order, and the discussion by the Court during the April 10, 2014 teleconference are equally available to the Magnetar Funds. G&E will not produce any documents in response to Request No. 3.

(footnote omitted).

- c. **Ruling:** This information is protected by the work product doctrine. The Motion to compel as to this request is denied.

## V. MOTION TO COMPEL TOPIC E

21. Under topic (e), Magnetar collected the requests that sought discovery into “[w]hether the T. Rowe Petitioners and Lead Counsel had any understanding or arrangement with Lead Counsel in respect of how expenses should be allocated as between the entitlement and the valuation issues in this case.” Motion at 6. The topic is relevant because fees and expenses incurred addressing the entitlement issues are not subject to recovery under Section 262(j).

22. Magnetar contends that “T. Rowe Document Request #5” sought discovery under this topic.

- a. **Request:**

Documents sufficient to demonstrate the allocation of G&E’s costs and expenses concerning G&E’s litigation of

the Entitlement issue on Your behalf and litigating the Valuation issue on Your behalf.

b. **Response:**

TRP represents that it has no documents responsive to this Request.

c. **Ruling:** This answer is responsive and sufficient.

23. Magnetar contends that “[G&E] Document Request #7” sought discovery under this topic.

a. **Request:**

Documents sufficient to demonstrate the allocation of costs and expenses incurred by You litigating the Entitlement issue and the costs and expenses incurred by You litigating the Valuation issue.

b. **Response:**

G&E objects to this Request on the basis that it is overbroad, as it seeks documents concerning costs incurred by clients of G&E that were not incurred by G&E. G&E will produce documents sufficient to demonstrate the expenses for which G&E seeks reimbursement in this Action.

c. **Ruling:** This request is not overbroad. The information sought is relevant to the reasonableness of the fees and expenses sought on the Fee Motion. G&E shall produce responsive documents.

## VI. MOTION TO COMPEL TOPIC F

24. Under topic (f), Magnetar grouped requests that sought information regarding “[h]ow much of the expenses being sought by Lead Counsel in fact were

attributable to the entitlement issue.” Motion at 7. This topic is relevant because the entitlement issues are not appropriately subject to recovery under Section 262(j), but Magnetar chose to go about exploring this issue in a backwards way. Magnetar is entitled to understand the amounts being sought on the Fee Motion and to explore whether any of those items related to the entitlement issues. There is no need to start from the opposite direction by conducting discovery into what G&E did to litigate the entitlement issues, then matching that up against the Fee Motion.

25. Magnetar contends that “T. Rowe Document Request #6” sought discovery under this topic.

a. **Request:**

Documents sufficient to demonstrate all costs, including but not limited to consulting fees, expert fees, duplication costs and travel costs, incurred by G&E to litigate, investigate, or defend against the Entitlement issue on Your behalf.

b. **Response:**

TRP represents that it has no documents responsive to this Request.

c. **Ruling:** This answer is responsive and sufficient.

26. Magnetar contends that “[G&E] Interrogatory #6” sought discovery under this topic.

a. **Interrogatory:**

Please Identify and describe any and all actions taken by You to litigate, investigate, or defend against the Entitlement issue.

**b. Response:**

G&E objects to this Interrogatory on the basis that it is overbroad and unrelated to any issue presently before the Court. G&E has submitted an exhibit reflecting the aggregate costs and fees incurred by G&E on behalf of appraisal claimants and G&E refers the Magnetar Funds to that exhibit. *See* Fee Application Ex. A. G&E will not further respond to Interrogatory No. 6.

- c. Ruling:** This interrogatory is overbroad. As noted, Magnetar is entitled to explore what is covered by the Fee Motion and whether those items related to the entitlement issues. This interrogatory seeks to conduct discovery into what G&E did to litigate the entitlement issues, presumably so that Magnetar can then match that up against the Fee Motion. The Motion is denied as to this interrogatory.

27. Magnetar contends that “[G&E] Interrogatory #7” sought discovery under this topic.

**a. Interrogatory:**

Please Identify and describe, by timekeeper, the total number of attorney hours spent by You litigating the entitlement issue. With respect to each timekeeper, please state that Person’s: total hours to date; rate; and total amount of attorneys’ fees in dollars attributable to that timekeeper to date.

**b. Response:**

G&E objects to this Interrogatory on the basis that it seeks information not relevant to any issue before the Court. G&E's fee request is based on a percentage of the common financial benefit conferred through the prosecution of the Action, and not on the time devoted by G&E personnel on the case. Accordingly, time records are not relevant. G&E has submitted an exhibit reflecting the aggregate costs and fees incurred by G&E on behalf of appraisal claimants and refers the Magnetar Funds to that exhibit. See Fee Application Ex. A. G&E will not further respond to Interrogatory No. 7.

**c. Ruling:** This is another way of asking for the information sought in G&E Interrogatory #6. The same ruling applies.

28. Magnetar contends that "[G&E] Interrogatory #1" sought discovery under this topic.

**a. Interrogatory:**

Please Identify and describe all costs, including but not limited to consulting fees, expert fees, duplication costs, and travel costs, incurred by You or any of Your Clients to litigate, investigate, or defend against the Entitlement issue.

**b. Response:**

G&E objects to this Interrogatory on the basis that it is overbroad, as it seeks information concerning costs incurred by clients of G&E, regardless of whether the costs were paid by G&E itself. G&E further objects to this Interrogatory on the basis that it is overly burdensome. G&E has submitted an exhibit reflecting the aggregate costs incurred by G&E on behalf of appraisal claimants and refers the Magnetar Funds to that exhibit. . . . G&E represents that it will produce

documentation concerning expenses G&E paid prosecuting the Action. G&E will not further respond to Interrogatory No. 1.

- c. **Ruling:** This is another way of asking for the information sought in G&E Interrogatory #6. The same ruling applies.

29. Magnetar contends that “[G&E] Interrogatory #4” sought discovery under this topic.

- a. **Interrogatory:**

Please Identify the investigator or investigators, if any, whom You have consulted with or You retained or who have been consulted with or retained by Your Clients to conduct an investigation into the Entitlement issue.

- b. **Response:**

G&E objects to this Interrogatory on the basis that it seeks information outside the scope of permissible discovery under Court of Chancery Rule 26(b)(3) and (b)(4). G&E further objects to this Request to the extent it seeks information protected by the attorney-client privilege and attorney work product doctrine. G&E further objects to this Interrogatory on the basis that it is overbroad, as it seeks information, if any exist, relating to any investigators who consulted with or were retained by G&E clients, regardless of whether they were retained or paid by G&E. G&E will not further respond to Interrogatory No. 4.

- c. **Ruling:** This is a more specific version of G&E Interrogatory #6.

The same ruling applies.

30. Magnetar contends that “[G&E] Request for Admission #1” sought discovery under this topic.

a. **Request:**

Admit that You engaged a consultant or consultants to advise or consult on, or help defend against, or help with litigation concerning, the Entitlement issue.

b. **Response:**

G&E objects to this Request for Admission on the basis that it seeks information not relevant to any issue before the Court. G&E further objects to this Request for Admission on the basis that it seeks information protected by the attorney-client privilege and the attorney work product doctrine. G&E will not further respond to this Request for Admission.

c. **Ruling:** This request for admission is a more specific version of G&E Interrogatory #6. The same ruling applies.

31. Magnetar contends that “[G&E] Interrogatory #5” sought discovery under this topic.

a. **Interrogatory:**

Please Identify the legal counsel, if any, whom You have consulted with or You retained or who have been consulted with or retained by Your Clients to conduct an investigation into the Entitlement issue.

b. **Response:**

G&E objects to this Interrogatory on the basis that it seeks information not relevant to any issue before the Court. G&E further objects to this Interrogatory on the basis that it is overbroad, as it seeks information, if any exist, relating to any investigators who consulted with or were retained by G&E clients, regardless of whether they were retained or paid by G&E. G&E will not further respond to Interrogatory No. 5.

c. **Ruling:** This interrogatory is a more specific version of G&E Interrogatory #6. The same ruling applies.

32. Magnetar contends that “[G&E] Interrogatory #8” sought discovery under this topic.

a. **Interrogatory:**

For the following disbursements listed in Exhibit A to Petitioner’s Motion for an Award of Attorneys’ Fees and Reimbursement of Expenses, filed in the Action on or about June 2, 2016 (the ‘Fee Motion’), please Identify and describe each individual disbursement, including but not limited to the date of each disbursement and its amount in dollars:

- a) Expert;
- b) Filing Fee;
- c) Meeting Expense;
- d) Outside Counsel;
- e) Travel;
- f) Case-Related Publication;
- g) Duplication Services;
- h) Postage & Delivery;
- j) Service Fees;
- k) Telephone;
- l) Transcription Services;
- m) Case-Related Research;
- n) E-Discovery Data Processing Services;
- o) E-Discovery Data Hosting Services.

b. **Response:**

G&E has submitted an exhibit reflecting the aggregate costs incurred by G&E on behalf of appraisal claimants and refers the Magnetar Funds to that exhibit. *See* Fee Application Ex. A. G&E represents that it will produce documentation



concerning expenses G&E paid prosecuting the Action. G&E will not further respond to Interrogatory No. 8.

- c. **Ruling:** This interrogatory is a cumbersome means of exploring the expenses sought in the Fee Petition. Magnetar is entitled to a break-out of specific expenses and supporting documentation. Once that is provided, Magnetar can inquire about particular expenses. As framed, the interrogatory is disproportionate. The Motion is denied as to this interrogatory.

33. Magnetar contends that “[G&E] Document Request #6” sought discovery under this topic.

a. **Request:**

Documents sufficient to demonstrate all costs, including but not limited to consulting fees, expert fees, duplication costs, and travel costs, incurred by You or any of Your Clients to litigate, investigate, or defend against the Entitlement Issue.

b. **Response:**

G&E objects to this Request on the basis that it is overbroad, as it seeks documents concerning costs incurred by clients of G&E that were not incurred by G&E. G&E will produce documents sufficient to demonstrate the expenses for which G&E seeks reimbursement in this Action.

- c. **Ruling:** This request is the document-seeking version of the discovery request manifested by G&E Interrogatory #6. The same ruling applies.

34. Magnetar contends that “[G&E] Document Request #8” sought discovery under this topic.

a. **Request:**

Documents sufficient to demonstrate, by timekeeper, the total number of attorney hours spent by You litigating the Entitlement issue.

b. **Response:**

G&E objects to this Request on the basis that it seeks information not relevant to any issue before the Court. G&E has submitted a Fee Application, which reflects the basis for G&E’s request for an award of fees, and G&E refers the Magnetar Funds to that document. G&E will produce documents sufficient to demonstrate the expenses for which G&E seeks reimbursement in this Action.

c. **Ruling:** This request is the document-seeking version of the discovery request manifested by G&E Interrogatory #7. The same ruling applies.

35. Magnetar contends that “[G&E] Document Request #9” sought discovery under this topic.

a. **Request:**

Documents sufficient to demonstrate the investigator or investigators, if any, whom You have consulted with or You retained or who have been consulted with or retained by Your Clients to conduct an investigation into the Entitlement issue.

b. **Response:**

G&E objects to this Request on the basis that it seeks information not relevant to any issue before the Court. G&E further objects to this Request to the extent it seeks documents and communications protected by the attorney-client privilege and attorney work product doctrine. G&E further objects to this Request on the basis that it is overbroad, as it seeks documents, if any exist, relating to any investigators who consulted with or were retained by G&E clients, regardless of whether they were paid by G&E. G&E will produce documents sufficient to demonstrate the expenses for which G&E seeks reimbursement in this Action.

- c. **Ruling:** This request is the document-seeking version of the discovery request manifested by G&E Interrogatory #4. The same ruling applies.

36. Magnetar contends that “[G&E] Document Request #10” sought discovery under this topic.

- a. **Request:**

Documents sufficient to demonstrate the legal counsel, if any, whom You have consulted with or You retained or who have been consulted with or retained by Your Clients to conduct an investigation into the Entitlement issue.

- b. **Response:**

G&E objects to this Request on the basis that it seeks information not relevant to any issue before the Court. G&E further objects to this Request on the basis that it seeks documents and communications which, to the extent they exist, are protected by the attorney-client privilege and attorney work product doctrine. G&E further objects to this Request on the basis that it is overbroad, as it seeks documents, if any exist, relating to any counsel who

consulted with or were retained by G&E clients, regardless of whether they were retained, consulted, or paid by G&E. G&E will not produce any documents in response to Request No. 10.

- c. **Ruling:** This request is the document-seeking version of the discovery request manifested by G&E Interrogatory #5. The same ruling applies.

## VII. NEXT STEPS

37. TRP and G&E shall comply with this order within ten days. The parties litigating the Fee Motion then shall have an additional thirty days to conduct any remaining discovery. Once that period of time is complete, briefing on the Fee Motion will resume with the parties who oppose the Fee Motion filing supplemental briefs in opposition. G&E shall reply within fifteen days.

38. Proceedings on the Magnetar Funds' Renewed Motion for Appointment as Co-Lead Petitioners and for Appointment of Their Choice of Co-Lead Counsel are stayed pending this court's ruling on the Fee Motion.

/s/ J. Travis Laster  
Vice Chancellor J. Travis Laster  
Dated: July 14, 2016