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Transaction ID 59698837
Case No. 9322-VCL

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

MOTION OF PETITIONER CAVAN TO CLARIFY AND ENFORCE ORDER APPROVING SETTLEMENT

Petitioner Cavan Partners LP ("Cavan"), by and through its undersigned counsel, hereby moves the Court for clarification and enforcement of its June 29, 2016 Order approving a settlement between Respondent Dell Inc. ("Dell") and certain petitioners who were deemed ineligible for appraisal rights due to having voted in favor of the merger, or, alternatively, for having failed to maintain continuous ownership of their shares of Dell stock (the "Settling Petitioners").[1]

INTRODUCTION

As explained during a teleconference with the Court, the settlement consideration was 88 cents per share in exchange for a release of appeal rights. The transcript of this teleconference is the only source of information as to the contents of the underlying settlement agreement, which has not been produced or lodged with the Court. At this teleconference, the Court observed that due to the quasi-class nature of an appraisal action, fairness concerns are implicated when the largest group of petitioners receive a settlement payment. The Court thus

[1] "Settling Petitioners" is defined in the Order Approving Settlement, dated June 29, 2016 (the "Order"), ¶ B.

conditioned approval of the settlement on notice and an opportunity to participate being presented to certain claimants. Cavan was not informed of this opportunity, and is therefore addressing its interests now.

While it is true that the settling parties' dialogue with the Court during the referenced teleconference focused on the economics of the settlement and why, supposedly, such a settlement would be palatable only to ineligible petitioners like the ones party to the settlement agreement, the record does not, on its face, limit the settlement offer to only such claimants. Even if the Court concludes that the settlement offer is so limited, there remains a problem. There are at least three claimants on the verified list who were deemed ineligible for reasons similar to the settling petitioners, yet Cavan has reason to believe that none of those claimants were informed of the settlement or presented with an opportunity to receive the same consideration as the nearly identically situated petitioners represented by lead counsel.

BACKGROUND

On June 27, 2016 the Court held a teleconference with counsel for Dell and for various petitioners, at which time counsel asked the Court to approve a settlement agreement under which Dell agreed to pay "88 cents per share" or "$28

million in the aggregate"[2] to a group of 19 petitioners whose claims had been denied because they failed to satisfy the requirements of the Delaware General Corporation Law with regard to continuous ownership of shares or because they had voted for the transaction in question. *See* Order Approving Settlement, dated June 29, 2016 (the "Order").[3]

The text of the settlement agreement was not filed with the Court, and the parties have not made it public. Thus, the only evidence in the record about the contents of that agreement and the rationale for the 88 cents/share figure is the oral summary of counsel during that June 27th teleconference. During that call, counsel explained that 88 cents/share was the amount Dell had agreed to pay Settling Petitioners willing to give up their right to an appeal. For example:

> [Counsel for Dell]: "And what we have done is agreed that we will pay these folks [the Settling Petitioners"] in exchange for releases where they release their appeal rights. We have agreed to pay them an amount of interest. It's not the statutory interest, it's – I think it works out to be between 2 and 3 percent, but the grand total is 88 cents per share, and it's $28 million in the aggregate." (6/27 Tr. at 4-5.)

In approving the settlement, the Court noted that this type of appraisal action was in the nature of a class action and that it was incumbent on a court to "mak[e] sure that other folks have notice and an opportunity to take the same deal." (6/27

[2] *See* Transcript of June 27, 2016 teleconference regarding settlement agreement ("6/27 Tr.") at p. 5.

[3] Attached as Exhibit 2 to the Affidavit of Gary Lutin in Support of Motion of Cavan to Clarify and Enforce Order Approving Settlement ("Lutin Aff.").

Tr. at 7.) The court added that "the offer does have to be open to these other people because you're taking out the largest group in the proceeding." (6/27 Tr. at 7-8.) [4] Based on explanations of timing urgency for quarterly financial reporting and risks of confusion that might delay consummation of the settlement if a process of offering the same settlement had to be conducted prior to approval, the Court agreed to a conditional approval based on the condition that the settling parties inform other petitioners "as soon as you can" of the proposed settlement and of the Court's willingness if requested to conduct another hearing prior to considering approval. (6/27 Tr. at 16-17, 18, 21.) A subsequent written order stated: "The court required that the parties promptly inform counsel to the other appraisal claimants who have participated actively in this proceeding about the conference and the Settlement Agreement." (Order ¶ 3.)

There is no certification in the record that these active claimants (however defined) ever received any notice. In fact, Cavan did not learn about the teleconference until the next day when its representative saw a report that a judicial action form had been filed reporting the ex parte teleconference relating to a settlement. (Lutin Aff. ¶ 2.) Within a few hours, the representative sent an email

[4] *See also* 6/27 Tr. at 10 ("But as far as I'm concerned, I think that you-all can proceed with the settlement between you-all, as long as Dell advises the other people on the verified list of the offer being made and makes the offer to the other people"), a position that was modified based on concerns about confusion to limit prior notification to other petitioners.

to Stuart M. Grant of Grant & Eisenhofer, who had been identified in the judicial action form as a participant in the conference, addressing him in his capacity as Lead Counsel, requesting information about the reported settlement proposal. Without any indication that he was responding in any capacity other than as Lead Counsel, Mr. Grant stated in an email response at the end of the day that "This has nothing to do with you…" and refused to provide any information. (Lutin Aff. ¶ 2.) Cavan was able to learn what was being addressed only from the Court's Order issued the following day, after it was too late to request a hearing, and from a copy of the June 27 teleconference transcript ordered by Cavan's representative on July 6, 2016. (*Id.* at ¶ 4.)

Prevented from addressing its interests and responsibilities as a petitioner prior to the Order, and eventually informed by Grant & Eisenhofer that the firm was acting only on behalf of the Settling Petitioners in this matter and not acting as Lead Counsel to support the interests of other claimants, Cavan has made efforts to resolve issues directly with the settling parties. In these communications, Dell has not disputed its obligation to make the approved 88 cents/share settlement offer available to former stockholders that had demanded appraisal ("claimants"), provided, however, that such claimants accept the $13.75 merger price ("Merger Price Offer") (Lutin Aff., Ex. 6.) In addition, Dell advised that it has not entered into settlement agreements with any other claimants, (*id.* at ¶ 8), from which it is

assumed that no offer of any kind, including even Dell's Merger Price Offer, has been extended to claimants such as those that were determined ineligible for similar reasons as the "Non-Continuous Ownership Petitioners" identified in paragraph A of the Order.[5]

Finally, Cavan asked Dell to either offer 88 cents/share to any claimant willing to release its rights to appeal, as the terms were orally summarized and approved, or to provide a copy of its written settlement evidencing an alternative definition of settlement. Dell has declined to do either.

Petitioner Cavan thus files this motion in an effort to clarify and enforce the Court's June 29, 2016 Order. The statements from the teleconference quoted above suggest that the offer of 88 cents/share was based solely on a willingness to release one's right to an appeal. Rather than focus on what was being given up, however, Lead Counsel (on behalf of the Settling Petitioners) focused more narrowly on the economic value of the 88 cents/share offer specifically to the Settling Petitioners, whose claims had been dismissed on voting or ownership grounds. In this narrow context, Lead Counsel argued that an 88 cents/share offer made economic sense only for these Settling Petitioners and that there was no

[5] *See* Order Granting Respondent's Motion for Partial Summary Judgment on Entitlement Issues, dated July 28, 2015. Referring to the T Rowe petitioners: "1. For the reasons set forth in the Court's Memorandum Opinion dated July 13, 2015, the Motion is GRANTED as to verified list numbers 21, 27, 30, 44, and 50." And to other claimants holding aggregate 752,691 shares: "2. For similar reasons, the Motion is also GRANTED as to verified list numbers 19, 28 and 37."

circumstance under which the dollar amount they would receive (the $13.75 per share merger price to which the Court had determined they were entitled plus 88 cents) would be "more favorable to other appraisal claimants than an adverse outcome on appeal." (Order, ¶ 3.)

But is that all that the settlement agreement said? The representations made at the teleconference can be read to indicate that the 88 cents/share offer is based on a petitioner's willingness to release any appeal rights, not just restrictively the two eligibility decisions relating to ownership and voting, and there are petitioners *other than* the Settling Petitioners who have valid appeal rights, notably the eligible petitioners who retain the option of appealing the determination of $17.62/share.

The issue is thus the interpretation of this non-public settlement agreement. If the sole consideration for payment of 88 cents/share was the waiver of appeal rights, then consistent with the quasi-class action nature of this proceeding and the obligations of Lead Counsel to all claimants, all claimants should receive the same offer, and the Order should be clarified accordingly. To be sure, the Settling Petitioners would be starting any appeal from a different baseline ($13.75/share) than an eligible claimant ($17.62 plus statutory interest). For present purposes, however, the difference is irrelevant. If the value of surrendering one's appeal

rights in this case is 88 cents/share, the value of that waiver does not depend on the point from which an appeal is taken.

We ask that the Court review the settlement agreement to determine its specific terms,[6] whether the sole consideration for the 88 cents/share offer is the waiver of any appellate rights or if it involved other conditions, and then amend the Court's Order to ensure that the same offer is made available to all claimants who had a right to consider the settlement offer as of June 27, 2016.

ARGUMENT

The settlement agreement was defined in an oral summary as a payment by Dell of 88 cents/share as the price of foregoing an appeal. While the focus of the discussion during the settlement hearing was on the economics particular to the Settling Petitioners, the record does not specifically limit payment in exchange for waiver of appeal rights either to specific claimants or to specific decisions that are subject to appeal. Rather, the record can be read to fairly support the conclusion that releasing rights to appeal could be applicable to any one or a combination of decisions. At least three issues for appeal stand out:

- Settling Petitioners who were determined to be ineligible because of non-continuous ownership could have argued that they are entitled to

[6] Additionally, Cavan requests that the Court order the settling parties to produce a copy of the settlement agreement to the parties in this action. There has been no claim that anything in the agreement is commercially sensitive. On the other hand, the settlement has been at the heart of multiple disputes in this action, and disclosure of the agreement may prove useful in resolving such disputes.

appraisal, for the reasons suggested by the Court in its July 13, 2015 Memorandum Opinion or for other reasons, and are therefore entitled to the award of $17.62/share plus statutory interest;

- Settling Petitioners who were determined to be ineligible because they voted in support of the merger could have argued, on some basis not yet identified, that they are entitled to the award of $17.62/share plus statutory interest, notwithstanding their support of the transaction; and

- Either category of Settling Petitioner could have argued that the award of $17.62 was error and that this Court should have awarded a higher figure (plus statutory interest), to which the Settling Petitioner would be entitled if the applicable determination of entitlement was reversed on appeal

But these are not the only claimants who presently have appeal rights and could raise issues on appeal.

- Eligible claimants might argue that the Court erred in determining that $17.62 was the correct figure.

- On the present record it appears that there are other claimants who are in the exact same legal position as the Settling Petitioners, i.e., the three claimants (Nos. 19, 28 and 37) whose claims were dismissed by order dated July 28, 2015 for the same reasons as some of the Settling Petitioners.[7] Because that July 2015 order explicitly resolved the rights of those three claimants, it would appear that they have a right to appeal that order; thus, they had a right to receive notice of the settlement and the same 88 cents/share offer that was tendered to the Settling Petitioners. There is no evidence in the record that this occurred, and as previously noted Dell has stated that there have been no other settlements.

[7] Counsel for Dell stated that ""Mr. Grant represents all of the former stockholders who are out there who are in this position." (6/27 Tr. at 5.) Counsel did not explain why these three claimants identified above were not in an identical situation as the Settling Petitioners, nor was there any explanation as to whether any claimants ruled ineligible on one or both of the grounds as the Settling Petitioners no longer had any appeal rights.

The presentation by Lead Counsel at the teleconference did not indicate how the settlement agreement addresses the rights of the latter two groups of claimants and why their right to an appeal was not also worth 88 cents/share. Moreover, if 88 cents/share is a reasonable figure to prevent an appeal of eligibility based on a petitioner's vote in support of the merger, should not that offer be extended to every claimant with the right to an appeal, regardless of the specific ground?[8]

Moreover, the focus by Lead Counsel at the teleconference on why eligible petitioners would not accept the proposed offer presented the Court with a false choice. Specifically, Lead Counsel argued that if they offered 88 cents/share to eligible claimants who were willing to accept only the merger price, these claimants "would laugh at it and reject it." (6/27 Tr. at 10.) Perhaps so, but that argument ignores the fact that the interests of the Settling Petitioners and the eligible claimants are identical in one key regard: Both groups recovered less than what they thought their shares were worth, albeit for different reasons. Both groups of claimants thus have a right to appeal those determinations and to seek a higher recovery. Yes, the starting point in any appeal would be different depending on one's recovery (i.e., $17.62 vs. $13.75, respectively), but the

[8] An appeal from the Court's ruling on continuous ownership would also be available to some of the Settling Petitioners. It should be noted, however, that the five Settling Petitioners deemed ineligible on this ground were subsequently discovered to have voted in favor of the merger. Thus the value of an appeal on ownership grounds would be small unless the voting decision were to be reversed.

difference does not matter, because the relief sought in either case is similar – a higher award than that which this Court awarded to each claimant based on the law and the facts. The settlement agreement is not public, and there is nothing in the record to suggest that an eligible claimant might value an appeal at less than (or more than) the 88 cents/share that was offered to claimants who forego a right to appeal their lack of continuous ownership or their ability to recover based on the fact that they voted for the merger.

Given that this case is "in the nature of" a class action, with the need for consideration of the rights of any non-settling parties, and given the lack of clarity about whether it is fair to offer 88 cents/share only to some petitioners who have appeal rights, Cavan respectfully requests that the Court clarify the scope of its Order with regard to non-settling claimants, both eligible and ineligible – such as the three non-continuous ownership claimants who were not clients of Lead Counsel. If it was the Court's intention that all claimants with a right to an appeal should receive notice of the settlement and the 88 cents/share offer, we respectfully ask the Court to clarify and enforce its Order to require that Dell (a) notify any claimant who on June 27, 2016 had the right to an appeal that Dell has agreed to pay 88 cents/share to the Settling Petitioners, (b) offer that sum to any such clamant who is willing to sign a release foregoing a right to appeal, with that sum to be paid on top of the amount that the Court determined that the claimant is due,

and (c) to file with the Court a certification that the offer has been transmitted to all such claimants. If the Court did not intend that every claimant with the right to an appeal should receive notice and an offer, it would be useful to clarify that point as well as to address why the three claimants determined ineligible for the same non-continuous ownership reasons as Lead Counsel's clients (and possibly others) do not have rights to the same offer.

CONCLUSION

For the foregoing reasons Cavan respectfully asks that this motion be granted.

CHIPMAN BROWN CICERO & COLE, LLP

/s/ *Paul D. Brown*

Paul D. Brown (No. 3903)
1313 N. Market Street, Suite 5400
Wilmington, Delaware 19801
Telephone: (302) 295-0191
Facsimile: (302) 295-0199
Email: brown@chipmanbrown.com

OF COUNSEL:

Cornish F. Hitchcock
Hitchcock Law Firm PLLC
5614 Connecticut Avenue, N.W.
No. 304
Washington, D.C. 20015-2604
Telephone: (202) 489-4813
Facsimile: (202) 315-3552

Dated: October 14, 2016

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

In re: APPRAISAL OF DELL, INC.	)	C.A. No. 9322-VCL

AFFIDAVIT OF GARY LUTIN IN SUPPORT OF
MOTION OF CAVAN TO CLARIFY AND ENFORCE ORDER APPROVING SETTLEMENT

Gary Lutin, having been duly sworn, hereby declares and states as follows.

1. My name is Gary Lutin. I am chairman of The Shareholder Forum, located at 575 Madison Avenue, New York, NY 10017. I have been acting as representative of the petitioner Cavan Partners, LP, in relation to its shareholder interest in Dell since March 2013, and have been following the proceedings in this case on Cavan's behalf and reporting on them to other Shareholder Forum participants. I have accordingly signed my agreement to the Court's Confidentiality Order.

2. Cavan did not learn about the teleconference held on June 27, 2016 until the next day, when I, as Cavan's representative, saw a report that a judicial action form had been filed for an ex parte teleconference relating to a settlement. Shortly after noon that day, I sent an e-mail to Stuart M. Grant of Grant & Eisenhofer, who had been identified in the judicial action form as a participant in the conference. I addressed him in his capacity as Lead Counsel and requested information about the reported settlement proposal. Mr. Grant refused to provide any information, stating in an e-mail response at the end of the day that "This has nothing to do with you…." A copy of my June 28, 2016 email exchanges with Mr. Grant is attached as Exhibit 1.

3. On the following afternoon, June 29, 2016, the Court issued a written order memorializing the Court's instructions at the teleconference, by which point it was too late to request a hearing. A copy of that "Order Approving Settlement" is attached as Exhibit 2.

4. Cavan was thus prevented from addressing its interests and responsibilities as a petitioner prior to the Court's June 29, 2016 Order Approving Settlement. Unable to learn anything other than public reports that Dell had paid T. Rowe Price $28 million for an undefined settlement, I finally ordered a transcript of the June 27 teleconference directly from the court reporter on July 7, 2016. A copy of that transcript, which I believe to be the same as what was filed in the Court's records on July 12, 2016, is attached as Exhibit 3.

5. Cavan then undertook efforts to resolve issues directly with the settling parties, but to no avail. I sent Mr. Grant a letter by email on July 11, 2016, a copy of which is attached as Exhibit 4, addressing him again in his capacity as Lead Counsel, informing him of my understanding from the transcript of the June 27 teleconference that Dell was obligated to offer all claimants a settlement of $.88 per share to release liens, and requesting a copy of the written agreement so that I could understand the specific provisions. I also asked him as Lead Counsel to initiate negotiations for such a settlement on behalf of Cavan, and advised him of my belief that other claimants would also be interested in considering the offer. Mr. Grant responded by telephone on the morning of July 11, 2016, and in a conversation that was explicitly understood to be non-confidential he stated that he would not provide the requested copy of the written agreement for the settlement he had negotiated with Dell on behalf of his T Rowe Price clients since the agreement was confidential. In response to my view that Cavan and other claimants should be able to review what the Court approved, he stated that the Court had not been given a copy, and had relied upon only the verbal explanations he and Dell's counsel had provided during the June 27 teleconference. I summarized my understanding of that conversation shortly afterward in an email to Mr. Grant, attached as Exhibit 5, asking him to inform me of any misunderstanding and inviting his further comments. Mr. Grant did not respond.

6. Following communications among counsel, I was informed that Dell was willing to offer the settlement to other claimants and that I should communicate directly with Dell's counsel to negotiate an agreement. I therefore sent Dell's counsel an email requesting a proposed form of agreement, and he responded saying that "Dell is willing to settle with Cavan, and any other claimant on the verified list who has not been disqualified, for the $13.75 merger price plus an additional approximately 88 cents," but that Dell was "not willing to settle with Cavan or anyone else for the $17.62 price in the Court's post-trial opinion plus approximately 88 cents." I replied with an email copied to Mr. Grant that the oral summary in the transcript did not support Dell's proposed terms, and renewed my request for a copy of the actual settlement agreement to resolve the definition of settlement terms. In the absence of any further communication, I sent Mr. Grant a letter on September 6, 2016, copied to Dell's counsel, attaching the exchanges of email and asking Mr. Grant to tell me within a few days how he proposed to "address your responsibilities as Lead Counsel according to the Court's Consolidation Order in relation to the rights of claimants other than your T. Rowe Price clients to the settlement payment you negotiated with Dell." That letter with its copy of the referenced email exchanges is attached as Exhibit 6.

7. In the absence of any response from Mr. Grant, I sent a letter by email on September 14, 2016, addressed to both Mr. Grant and counsel for Dell stating that "In the absence of any response by Mr. Grant to the September 9 letter I addressed to him as Lead Counsel, I must assume he has determined that his firm will not be representing the interests of claimants other than his T. Rowe Price clients in relation to any settlement offered by Dell," and that I was therefore addressing him "as a representative of only his T. Rowe Price clients" to ask him and Dell's representative (1) whether Dell would voluntarily provide a copy of the written

settlement agreement, or, alternatively provide a reason why the Court should not be asked to compel disclosure, (2) whether the Court was provided any other written definition of the settlement, and (3) whether claimants other than Mr. Grant's T. Rowe Price clients had agreed to any settlements or otherwise waived their rights to appeal Court decisions in the Dell case. A copy of that letter is attached as Exhibit 7.

8. In subsequent exchanges of email, Dell's representative responded on September 21, 2016 with advice that the settlement agreement was by its terms confidential, and that Dell saw no reason for the Court to order disclosure "since the Court did not order its disclosure when the settlement was approved." He further stated that "Dell has not entered into any other settlement with dissenting shareholders in connection with the going private transaction." Later that day, Mr. Grant responded with advice that his T Rowe Price clients were willing to provide a copy of the settlement agreement but that "[s]ince we are bound by a confidentiality agreement, absent Dell's consent, we cannot do so." I replied the next day in an email to Dell's representative, copied to Mr. Grant, stating that Cavan "would not need to see the written settlement agreement if you are willing to proceed with a definition of the terms Dell (or T Rowe Price) is obligated to offer all claimants based only on the existing public records, in the transcript record of your oral summary to the Court and in other Court and SEC filings." I also stated my view, as an investment professional, that "these available public records cannot support any definition of terms other than either (a) a payment by Dell of $.88 per share for a claimant's waiver of rights to appeal the Court's determination of what Dell is obligated to pay that claimant, or (b) participation in the $28 million that Dell paid T Rowe Price and Lead Counsel to waive appeals." I therefore encouraged Dell to make its own choice "between proceeding with an offer defined by the currently available definition of terms or, alternatively,

providing credible support of a different definition," rather than imposing the burden of that choice on the Court. A copy of those email exchanges is attached as Exhibit 8.

9. There has been no further communication.

Signed this 13th day of October, 2016

By: _____

State of New York
County of New York | s.s.

Sworn to before me on this 13th day of October, 2016.

FARRAH DUPLESSIS
Notary Public, State of New York
No. 01DU6176848
Qualified in Kings County
Commission Expires Nov. 05, 2019

Exhibit 1

From: Gary Lutin
To: Stuart M. Grant (sgrant@gelaw.com)
Cc: Jeremy D. Anderson (janderson@fr.com)
Subject: FW: Reported conference addressing proposed settlement
Date: Tuesday, June 28, 2016 6:58:00 PM

Stu -

I asked you in my first email, included in this string below, to let me if anything you provided in response should be considered confidential. In my last email, I further offered you the opportunity tell me what you want reported.

Since you've told me many times that attorney-client communication is very important to you, I did not think it would be necessary for me to explain to you that these statements meant that I am asking you for information that can - and should - be reported to the claimants who are relying upon you to represent their interests.

Please let me know if you want me to explain anything else. Again, I will not consider this communication to be confidential unless you tell me there is a reason it should be.

- GL

Gary Lutin
575 Madison Avenue, New York, New York 10022
212-605-0335
gl@shareholderforum.com

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-----Original Message-----
From: Stuart Grant [mailto:sgrant@gelaw.com]
Sent: Tuesday, June 28, 2016 5:41 PM
To: Gary Lutin
Cc: Jeremy D. Anderson
Subject: Re: Reported conference addressing proposed settlement

You can add that the attorney client relationship is not one that is well fostered by having everything that is said by the attorney broadcasted by the client.

On Jun 28, 2016, at 5:35 PM, Gary Lutin
<gl@shareholderforum.com<mailto:gl@shareholderforum.com>> wrote:

Stu -

I'm going to need to report something on this tomorrow morning. Is your response below what you want me to use?

I believe that at least some of the appraisal claimants might also like to know why a court conference with counsel representing them would concern only the parties that were denied entitlement. Please let me know if you want to provide an explanation.

I will not consider this communication confidential unless you tell me there is a reason it should be.

- GL

Gary Lutin
Chairman, The Shareholder Forum
c/o Lutin & Company, 575 Madison Avenue, New York, New York 10022

212-605-0335
gl@shareholderforum.com<mailto:gl@shareholderforum.com>
www.shareholderforum.com<http://www.shareholderforum.com>

-----Original Message-----
From: Stuart Grant [mailto:sgrant@gelaw.com]
Sent: Tuesday, June 28, 2016 4:59 PM
To: Gary Lutin
Cc: Jeremy D. Anderson
Subject: Re: Reported conference addressing proposed settlement

This has nothing to do with you and only with those who were denied entitlement to appraisal.

On Jun 28, 2016, at 12:44 PM, Gary Lutin <gl@shareholderforum.com<mailto:gl@shareholderforum.com><mailto:gl@shareholderforum.com>> wrote:

Stu -

I'll appreciate your sending me a copy of the proposed settlement agreement referenced in the attached court report of its discussion yesterday morning. Anything you can tell me about the court process for considering the settlement will also be appreciated.

Please provide Jeremy Anderson with copies of whatever you send me so that I can discuss the Cavan petitioner's interests with him. You should of course tell us whether any of the information you send is considered confidential.

- GL

Gary Lutin
Chairman, The Shareholder Forum
c/o Lutin & Company, 575 Madison Avenue, New York, New York 10022
212-605-0335
gl@shareholderforum.com<mailto:gl@shareholderforum.com><mailto:gl@shareholderforum.com>
www.shareholderforum.com<http://www.shareholderforum.com><http://www.shareholderforum.com<>>>

<20160627 In re Appraisal of Dell - Judicial Action - Telephone conference with Lead Counsel for Petitioners and Respondent relating to proposed settlement.pdf>

Exhibit 2

EFiled: Jun 29 2016 03:02PM EDT
Transaction ID 59210594
Case No. 9322-VCL

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

ORDER APPROVING SETTLEMENT

WHEREAS:

A. On July 13, 2015, the court issued a memorandum opinion granting a motion for summary judgment filed by respondent Dell Inc. ("Dell") as to the appraisal claims asserted by petitioners (i) Northwestern Mutual Series Fund, Inc. Equity Income Portfolio (Verified List No. 21), (ii) T. Rowe Price Funds SICAV US Large Cap Value Equity Fund (Verified List No. 27), (iii) Manulife US Large Cap Value Equity Fund (Verified List No. 29), (iv) the Milliken Retirement Plan (Verified List No. 44), and (v) Curtiss-Wright Corp. Retirement Plan (Verified List No. 50) (collectively, the "Non-Continuous Ownership Petitioners).

B. On May 11, 2016, the court issued an opinion granting Dell's motion for summary judgment as to the appraisal claims asserted by petitioners (i) T. Rowe Price Equity Income Fund, Inc. (Verified List No. 1), (ii) T. Rowe Price Science and Technology Fund, Inc. (Verified List No. 2), (iii) John Hancock Variable Insurance Trust - Equity Income Trust (Verified List No. 5), (iv) John Hancock Funds II - Equity Income Fund (Verified List No. 7), (v) T. Rowe Price Equity Income Trust, a sub-trust of T. Rowe Price Institutional Common Trust

Fund (Verified List No. 9), (vi) T. Rowe Price Institutional Equity Funds, Inc., on behalf of T. Rowe Price Institutional Large Cap Value Fund (Verified List No. 10), (vii) John Hancock Funds II - Science & Technology Fund (Verified List Nos. 13 & 39), (viii) T. Rowe Price Equity Income Series, Inc., on behalf of T. Rowe Price Equity Income Portfolio (Verified List No. 15), (ix) John Hancock Variable Insurance Trust - Science & Technology Trust (Verified List No. 18), (x) T. Rowe Price U.S. Equities Trust (Verified List Nos. 23 & 24), (xi) Prudential Retirement Insurance and Annuity Co., on behalf of Separate Account SA-5T2 (Verified List No. 26), (xii) John Hancock Funds II - Spectrum Income Fund (Verified List No. 42), (xiii) Tyco International Retirement Savings and Investment Plan Master Trust (Verified List No. 43), and (xiv) The Bureau of National Affairs, Inc. (Verified List No. 45) (collectively with the Non-Continuous Ownership Petitioners, the "Settling Petitioners").

C. On June 24, 2016, Dell and the Settling Petitioners entered into a Settlement Agreement.

D. During a teleconference with the court on June 27, 2016, counsel to the Settling Petitioners and Dell described the consideration being provided to the Settling Petitioners, and the court discussed with the parties whether the Settling Petitioners and Dell could consummate the settlement on the terms described.

NOW THEREFORE IT IS ORDERED:

1. Section 262(k) precludes the dismissal of an appraisal proceeding without court approval. 8 *Del. C.* § 262(k). The requirement of court approval exists because an appraisal proceeding is in the nature of a class action and should be treated as such for purposes of dismissal or compromise. Jesse A. Finkelstein & John D. Hendershot, *Appraisal Rights in Mergers & Consolidations*, 38–5th C.P.S. § VI(S), at A-94 n.201 (BNA). The requirement of court approval "ensures that a shareholder does not settle out of the [appraisal class] at a premium, thereby abandoning the prosecution of the action to the detriment of other class members." *Ala. By-Products Corp. v. Cede & Co.*, 657 A.2d 254, 260 (Del. 1995).

2. During the teleconference on June 27, 2016, the court determined that on the facts presented, there was no risk that the Settling Petitioners were "abandoning the prosecution of the action to the detriment of the other [appraisal] class members." *Id.* The court further determined that Dell did not have to extend the same offer to appraisal claimants other than the Settling Petitioners and that lead counsel did not have to provide notice of the settlement to appraisal claimants other than the Settling Petitioners. *Cf. Lutz v. A.L. Garber Co.*, 357 A.2d 746, 751 (Del. Ch. 1976) (permitting parties to forgo notice given facts of case).

3. The court made these determinations in light of the parties' agreement, which was consistent with the court's calculations, that under no set of circumstances would the consideration being provided to the Settling Petitioners be

more favorable to other appraisal claimants than an adverse outcome on appeal, in which the non-settling petitioners would receive the amount advocated by Dell at trial plus an award of interest at the statutory rate. Given that reality, accepting the settlement consideration was not economically rational for any appraisal petitioner other than the Settling Petitioners, and extending the offer to other appraisal petitioners or providing notice of the settlement would risk confusion. The court required that the parties promptly inform counsel to the other appraisal claimants who have participated actively in this proceeding about the conference and the Settlement Agreement.

4. By letter dated June 29, 2016, counsel to the Magnetar Funds requested that approval of the Settlement Agreement be conditioned on the Settling Petitioners placing in escrow their share of the $0.733 per share in expenses that Lead Counsel is currently seeking pursuant to Section 262(j). That is unnecessary. Lead Counsel represents the Settling Petitioners. The order implementing any Section 262(j) award can make any necessary adjustment by reducing the amount of the award or adjusting the allocation.

5. In light of these determinations, the settlement between the Settling Petitioners and Dell is approved for purposes of Section 262(k).

Vice Chancellor J. Travis Laster
Dated: June 29, 2016

Exhibit 3

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

- - -

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

- - -

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

- - -

TELECONFERENCE REGARDING PROPOSED SETTLEMENT

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

APPEARANCES:

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

GREGORY P. WILLIAMS, ESQ.
Richards, Layton & Finger, P.A.
-and-
JOHN L. LATHAM, ESQ.
of the Georgia Bar
Alston & Bird LLP
for Respondent Dell Inc.

- - -

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

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

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

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

MR. GRANT: No, Your Honor.

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

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

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

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

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

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

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

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

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

THE COURT: All right.

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

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

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

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

THE COURT: Got you.

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

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

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

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

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

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

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

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

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

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

MR. GRANT: Your Honor --

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

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

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

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

MR. GRANT: Your Honor --

THE COURT: Yeah. Go ahead.

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

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

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

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

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

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

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

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

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

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

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

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

Well, Mr. Williams, what are your thoughts?

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

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

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

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

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

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

MR. WILLIAMS: That's right.

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

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

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

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

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

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

I still want you guys to inform the

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

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

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

improperly done under the circumstances.

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

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

Mr. Grant, does that make sense to you?

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

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

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

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

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

MR. WILLIAMS: But I think we could

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

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

THE COURT: Tell you what --

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

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

Hubbard alternative.

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

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

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

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

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

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

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

MR. GRANT: Thanks, Your Honor.

MR. WILLIAMS: Thank you, Your Honor.

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

- - -

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

Exhibit 4

THE SHAREHOLDER FORUM, INC.

WWW.SHAREHOLDERFORUM.COM
575 MADISON AVENUE – 10TH FLOOR, NEW YORK, NEW YORK 10022
TELEPHONE: (212) 605-0335

July 11, 2016

By email

Stuart M. Grant, Esquire
Grant & Eisenhofer P.A.
123 Justison Street, 7th Floor
Wilmington, DE 19801

Re: *In Re: Appraisal of Dell, Inc.*
(Consol. C. A. No. 9322-VCL)

Dear Stu:

Assuming the "Settlement Agreement" between Dell and your client "Settling Petitioners" that was approved by the Court in its June 29, 2016 Order has by now been documented and executed, I will appreciate your providing a copy of it. You should of course tell me if it is considered confidential and subject to the Court's Stipulation and Order Governing the Production and Exchange of Confidential and Highly Confidential Information, my 2014 signed agreement to which you have on file.

My recent review of the transcript of your June 27, 2016 teleconference with the Court suggests a need to reexamine your assumptions about the interests of the other appraisal claimants you are serving as Lead Counsel. If the executed Settlement Agreement shows that what you summarized in the teleconference is in fact a payment in consideration of a claimant's release of appeal rights, I will ask that Cavan and all other eligible claimants be offered a payment of at least the same amount in excess of what the court determined is due.

We may also want to consider your initiation of negotiations to seek a higher payment by Dell for the eligible claimants than what was offered to your Settling Petitioner clients, since (a) there are no questions about the eligible claimants' rights to appeal, while those rights of most Settling Petitioners could have been challenged as having expired 30 days after the May 11, 2016 Opinion entered a judgment that they were not eligible to participate in the case, and (b) what can be appealed by the eligible claimants involves a potentially higher cost per share to Dell as well as a higher probability of success than the rights of appeal waived by Settling Petitioners.

I look forward to discussing this with you after reviewing the Settlement Agreement.

Sincerely,

Gary Lutin

cc: Jeremy D. Anderson, Esquire
Samuel T. Hirzel, II, Esquire

Exhibit 5

From: Gary Lutin [mailto:gl@shareholderforum.com]
Sent: Wednesday, July 13, 2016 1:22 PM
To: Stuart M. Grant (sgrant@gelaw.com)
Subject: Confirming this morning's discussson

Stu –

Thank you for your verbal summary of the settlement, which as noted was consistent with what I'd read in the transcript of your presentation of its terms to the Court. I understand, though, that you will not be providing me with a copy of the agreement that was executed.

This is what I have drafted to report to Forum participants tomorrow about our conversation, and as discussed I will be pleased to consider any advice you provide by the end of the day to clarify or correct my statements:

> Responding to Monday's letter, Mr. Grant told me by telephone yesterday [meaning today, since this statement will be presented tomorrow] morning that he would not provide the requested copy of the written agreement for the settlement he had negotiated with Dell on behalf of his T Rowe Price clients. He explained that the agreement was confidential, and in response to my view that we should be able to review what the Court approved stated that the Court had not been given a copy, and had relied upon the verbal explanations he and Dell's counsel had provided during the June 27 teleconference.
>
> Mr. Grant also stated that considers my Forum reports of these issues to be "misleading and destructive." I therefore invited him to send me a statement of any views he wants to offer, and assured him that they would be presented without editing. [statement either referring to what you have presented, or indicating that you had not presented anything]

As indicated during our discussion, and as stated in the draft above, I encourage you to provide a statement of your views and promise that it will be presented to Forum participants without editing.

Please let me know if you think of anything else I can be doing to address the interests of Dell appraisal claimants.

- GL

Gary Lutin
Chairman, The Shareholder Forum
c/o Lutin & Company, 575 Madison Avenue, New York, New York 10022
212-605-0335
gl@shareholderforum.com
www.shareholderforum.com

Exhibit 6

THE SHAREHOLDER FORUM, INC.

WWW.SHAREHOLDERFORUM.COM
575 MADISON AVENUE – 10TH FLOOR, NEW YORK, NEW YORK 10022
TELEPHONE: (212) 605-0335

September 6, 2016

By email

Stuart M. Grant, Esquire
Grant & Eisenhofer P.A.
123 Justison Street, 7th Floor
Wilmington, DE 19801

Re: *In Re: Appraisal of Dell, Inc.*
(Consol. C. A. No. 9322-VCL)

Dear Stu:

Please let me know by this Friday, June 9, how you propose to address your responsibilities as Lead Counsel according to the Court's Consolidation Order in relation to the rights of claimants other than your T. Rowe Price clients to the settlement payment you negotiated with Dell.

As indicated in the attached string of August 26-31 email correspondence with Dell's counsel that was copied to you, I need to know what support Cavan and other Dell appraisal claimants should expect from your firm. There has been no further communication from Dell about providing a copy of the actual settlement agreement, so it is assumed that Cavan – and also the Court – must rely exclusively on the SEC reports to which you had referred me for a definition of the settlement provisions. Cavan and the other Dell appraisal claimants, presumably including your two remaining eligible petitioner clients, should therefore expect to be offered either (a) the same $.88 per share payment by Dell, or more, to waive whatever rights they may have to appeal what the Court decided Dell should pay them, or (b) an allocation of the $28 million paid to T. Rowe Price based on some reasonable analysis of the relative values of rights to appeal.

I will of course welcome either your support or your advice of any alternative views of the interests the Court ordered you to serve.

Sincerely,

Gary Lutin

Attachment

cc: Paul C. Brown, Esquire
John D. Hendershot, Esquire
Samuel T. Hirzel, II, Esquire

From: Gary Lutin [mailto:gl@shareholderforum.com]
Sent: Wednesday, August 31, 2016 3:13 PM
To: John D. Hendershot (Hendershot@RLF.com)
Cc: Paul D. Brown (brown@chipmanbrown.com); Stuart M. Grant (sgrant@gelaw.com); Samuel T. Hirzel (shirzel@proctorheyman.com)
Subject: FW: Settlement offer in Dell appraisal

Mr. Hendershot –

Respectfully, you should understand that your description of "the $13.75 merger price plus an additional approximately 88 cents" as "the terms on which we settled with the T. Rowe entities who had been disqualified" would in fact be consistent with an agreement that defines the consideration for settlement as "$.88 per share in excess of the payment the Court determined was due," either in those exact words or in explanations that if applied to all initial claimants, whether disqualified or eligible, result in the same thing.

Please note, too, that there does not appear to be anything supporting your narrower definition of settlement terms in the transcript of the June 27 conference with the Court, during which the proposed settlement was summarized.

If you wish to establish a narrower definition of settlement terms than what I have assumed is available to all claimants, I encourage you to reconsider my request for a copy of the actual settlement agreement between Dell and the T. Rowe entities.

On the subject of my assumption that the offer, however it is defined, will be made available equally to all claimants, I am sending Mr. Grant a copy of this email to ask him to tell me whether he considers it appropriate for Lead Counsel to support Cavan's attention to this matter.

- GL

Gary Lutin
Chairman, The Shareholder Forum
c/o Lutin & Company, 575 Madison Avenue, New York, New York 10022
212-605-0335
gl@shareholderforum.com
www.shareholderforum.com

From: Hendershot, John [mailto:Hendershot@RLF.com]
Sent: Tuesday, August 30, 2016 7:18 PM
To: Gary Lutin
Cc: Paul D. Brown
Subject: RE: Settlement offer in Dell appraisal

Mr. Lutin –

Thank you for your email. To avoid potential misunderstanding, Dell is willing to settle with Cavan, and any other claimant on the verified list who has not been disqualified, for the $13.75 merger price plus an additional approximately 88 cents. Those are the terms on which we settled

with the T. Rowe entities who had been disqualified, subject to their right to appeal. Dell is not willing to settle with Cavan or anyone else for the $17.62 price in the Court's post-trial opinion plus approximately 88 cents. If Cavan is interested in proceeding at the $13.75 plus approximately 88 cents price, please advise, and we will send over a draft settlement agreement.

Regards,
John Hendershot

John D. Hendershot
Richards, Layton & Finger, P.A.
(302) 651-7679 (direct dial)
Hendershot@RLF.com

From: Gary Lutin [mailto:gl@shareholderforum.com]
Sent: Friday, August 26, 2016 1:53 PM
To: Hendershot, John
Cc: Paul D. Brown
Subject: Settlement offer in Dell appraisal

Mr. Hendershot –

Understanding from your communication forwarded by Michael Barry of Grant & Eisenhofer that Dell is willing to offer Cavan the same $.88 per share in excess of the payment the Court determined was due for Cavan's agreement not to appeal the decision, I am advising Cavan to accept. Please send copies of your proposed form of agreement to me and to Paul Brown, Cavan's counsel.

Cavan is of course assuming that Dell is making this offer available equally to all claimants in the appraisal case.

- GL

Gary Lutin
Chairman, The Shareholder Forum
c/o Lutin & Company, 575 Madison Avenue, New York, New York 10022
212-605-0335
gl@shareholderforum.com
www.shareholderforum.com

Exhibit 7

THE SHAREHOLDER FORUM, INC.

WWW.SHAREHOLDERFORUM.COM
575 MADISON AVENUE – 10TH FLOOR, NEW YORK, NEW YORK 10022
TELEPHONE: (212) 605-0335

September 14, 2016

By email

Stuart M. Grant, Esquire
Grant & Eisenhofer P.A.
123 Justison Street, 7th Floor
Wilmington, Delaware 19801

and

John D. Hendershot, Esquire
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19801

Re: *In Re: Appraisal of Dell, Inc.*
(Consol. C. A. No. 9322-VCL)

Dear Messrs. Grant and Hendershot:

In the absence of any response by Mr. Grant to the September 9 letter I addressed to him as Lead Counsel, I must assume he has determined that his firm will not be representing the interests of claimants other than his T. Rowe Price clients in relation to any settlement offered by Dell. I therefore ask Mr. Grant as a representative of only his T. Rowe Price clients and Mr. Hendershot as a representative of Dell to respond as appropriate to the following questions:

1. Will Dell voluntarily provide a copy of the settlement agreement that both of you asked the Court to approve? If not, can either of you provide a reason why the Court should not be asked to compel disclosure?

2. Since Mr. Grant has stated the Court was not provided with a copy of the settlement agreement, I must ask whether the Court was provided with any other written definition of the terms of settlement for its June 29, 2016 approval.

3. Have any other claimants agreed to this or other settlements, or otherwise waived their rights to appeal Court decisions in the Dell case?

Please let me know if you will need more than a couple of days to respond.

Sincerely,

Gary Lutin

cc: Paul C. Brown, Esquire
Samuel T. Hirzel, II, Esquire

Exhibit 8

From: Gary Lutin [mailto:gl@shareholderforum.com]
Sent: Thursday, September 22, 2016 11:39 AM
To: John D. Hendershot (Hendershot@RLF.com)
Cc: Paul D. Brown (brown@chipmanbrown.com); Stuart M. Grant (sgrant@gelaw.com); Samuel T. Hirzel (shirzel@proctorheyman.com)
Subject: FW: Requesting information about Dell settlement [IWOV-LEGAL.FID78856]

Mr. Hendershot –

Thank you for your response.

Please understand that we would not need to see the written settlement agreement if you are willing to proceed with a definition of the terms Dell (or T Rowe Price) is obligated to offer all claimants based only on the existing public records, in the transcript record of your oral summary to the Court and in other Court and SEC filings. As indicated in our past communications, however, these available public records cannot support any definition of terms other than either (a) a payment by Dell of $.88 per share for a claimant's waiver of rights to appeal the Court's determination of what Dell is obligated to pay that claimant, or (b) participation in the $28 million that Dell paid T Rowe Price and Lead Counsel to waive appeals.

Putting it simply, Dell can choose between proceeding with an offer defined by the currently available definition of terms or, alternatively, providing credible support of a different definition. But if Dell does not want to make the choice, we will have to ask the Court to do so.

Please let me know by September 26 if Dell wishes to make the choice.

- GL

Gary Lutin
Chairman, The Shareholder Forum
c/o Lutin & Company, 575 Madison Avenue, New York, New York 10022
212-605-0335
gl@shareholderforum.com
www.shareholderforum.com

From: Stuart Grant [mailto:sgrant@gelaw.com]
Sent: Wednesday, September 21, 2016 9:12 AM
To: 'Hendershot, John'; Gary Lutin
Cc: Paul D. Brown; Michael Barry
Subject: RE: Requesting information about Dell settlement [IWOV-LEGAL.FID78856]

Gary,

This is just to reiterate that we are willing to provide a copy of the settlement agreement to you if Dell agrees. Since we are bound by a confidentiality agreement, absent Dell's consent, we cannot do so.

Best regards,

Stuart

From: Hendershot, John [mailto:Hendershot@RLF.com]
Sent: Wednesday, September 21, 2016 8:29 AM
To: Gary Lutin
Cc: Paul D. Brown; Stuart Grant
Subject: RE: Requesting information about Dell settlement

Mr. Lutin,

This will acknowledge receipt of your letter dated September 14 to me and Mr. Grant, and will respond on behalf of Dell.

Please be advised that the settlement agreement between Dell and the T. Rowe funds is, by its terms, confidential. It is up to you whether to ask the Court to compel its disclosure, but we see no reason for the Court to do so, particularly since the Court did not order its disclosure when the settlement was approved. The summary of the settlement that was provided to the Court was done orally as reflected by the transcript of record. Dell has not entered into any other settlement with dissenting shareholders in connection with the going private transaction.

Regards,
John Hendershot

John D. Hendershot
Richards, Layton & Finger, P.A.
(302) 651-7679 (direct dial)
Hendershot@RLF.com

From: Gary Lutin [mailto:gl@shareholderforum.com]
Sent: Saturday, September 17, 2016 8:54 AM
To: Hendershot, John
Cc: Paul D. Brown
Subject: FW: Requesting information about Dell settlement

Thanks for letting me know. Can you give me a sense of how much time?

From: Hendershot, John [mailto:Hendershot@RLF.com]
Sent: Friday, September 16, 2016 7:51 PM
To: Gary Lutin
Cc: Paul D. Brown
Subject: Re: Requesting information about Dell settlement

We are going to need more time. Thanks.

Sent from my iPhone

On Sep 16, 2016, at 2:30 PM, Gary Lutin <gl@shareholderforum.com> wrote:

Mr. Hendershot –

Please let me know if you intend to respond to Wednesday's letter, attached again here, but need more time.

If I haven't received either a response or advice that you need more time by Monday morning, I will have to assume that you do not intend to respond.

- GL

Gary Lutin
Chairman, The Shareholder Forum
c/o Lutin & Company, 575 Madison Avenue, New York, New York 10022
212-605-0335
gl@shareholderforum.com
www.shareholderforum.com

From: Gary Lutin [mailto:gl@shareholderforum.com]
Sent: Wednesday, September 14, 2016 5:00 PM
To: Stuart M. Grant (sgrant@gelaw.com); John D. Hendershot (Hendershot@RLF.com)
Cc: Paul D. Brown (brown@chipmanbrown.com); Samuel T. Hirzel (shirzel@proctorheyman.com)
Subject: Requesting information about Dell settlement

Please find attached a letter addressed to Messrs. Grant and Hendershot.
<20160914 GL letter to Grant-G&E and Hendershot-RL&F.pdf>

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of October, 2016, a copy of the *Affidavit of Gary Lutin in Support of Motion of Cavan to Clarify and Enforce Order Approving Settlement* was caused to be served by File & Serve*Xpress* on the counsel of record indicated below:

John D. Hendershot Gregory P. Williams Susan M. Hannigan Andrew Peach RICHARDS LAYTON & FINGER One Rodney Square 920 North King Street Wilmington, DE 19801	Thomas A. Uebler COOCH & TAYLOR, P.A. The Brandywine Building 1000 West Street, 10th Floor Wilmington, DE 19801
Stuart M. Grant Michael J. Barry Christine M. Mackintosh GRANT & EISENHOFER P.A. 123 Justison Street Wilmington, DE 19801	Samuel T. Hirzel, II Melissa N. Donimirski PROCTOR HEYMAN ENERIO LLP 300 Delaware Avenue, Suite 200 Wilmington, DE 19807

/s/ Paul D. Brown
Paul D. Brown (#3903)