



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: APPRAISAL OF DELL INC.

Consol. C. A. No. 9322-VCL  
**PUBLIC VERSION FILED**  
**MAY 16, 2018**

**EMERGENCY MOTION FOR ENTRY OF CHARGING LIEN**

Grant & Eisenhofer, P.A. (“G&E”), as court-appointed lead counsel for the appraisal class in this case, requests the imposition of a charging lien on the proceeds from the proposed settlement of the appraisal claims of Magnetar Global Event Drive Master Fund Ltd., Magnetar Capital Master Fund Ltd., Spectrum Opportunities Master Fund Ltd., and Blackwell Partner LLC (collectively, the “Magnetar Petitioners”), as disclosed in the letter to the Court from counsel for Respondent Dell Inc. dated May 8, 2018 (Transaction ID 62009489). The reasons justifying the imposition of a charging lien are as follows:

1. The “right of an attorney to a charging lien is well established at common law.”<sup>1</sup> Delaware courts routinely recognize the right of an attorney “to recover compensation for his services from a fund recovered by his aid, and also the right to be protected by the court to the end that such recovery might be effected.”<sup>2</sup>

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<sup>1</sup> *Doroshov, Pasquale, Krawitz & Bhaya v. Nanticoke Mem’l Hosp., Inc.*, 36 A.3d 336, 340 (Del. 2012).

<sup>2</sup> *Id.* (quoting 2 Edward Mark Thornton, *A Treatise on Attorneys at Law* § 578 (1914)).

2. Because the recently announced settlement between Respondent Dell Inc. (“Dell”) and the Magnetar Petitioners arose as the result of the services of Grant & Eisenhofer, P.A. (“G&E”)—Lead Counsel for the appraisal class—G&E is entitled to a charging lien against any settlement amount to be paid to the settling petitioners.

3. On April 22, 2014, the Court appointed G&E as sole Lead Counsel to represent a class of appraisal claimants seeking a judicial valuation of their shares of Dell common stock pursuant to 8 *Del. C.* § 262(k). Among the appraisal petitioners that G&E came to represent were the Magnetar Petitioners.

4. For more than four years, G&E has served as Lead Counsel in this challenging and complex appraisal litigation.<sup>3</sup> G&E has prosecuted this case at the trial level—which this Court recognized involved “significant effort”<sup>4</sup>—and at the appellate level. G&E also has incurred out-of-pocket expenses in excess of \$4.32 million in connection with the prosecution of this action. Pursuant to the Order of the Supreme Court dated December 14, 2017, on remand this Court is to determine an appropriate allocation of such expenses among all appraisal petitioners, including the Magnetar Petitioners.

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<sup>3</sup> See Trans. ID 55284281 (Apr. 10, 2014 Order Granting Consolidation).

<sup>4</sup> Oct. 21, 2016 Memorandum Opinion (“Fees & Expenses Op.”) at 31.

5. In addition, G&E has over \$8.3 million in lodestar in this action. This Court previously has awarded fees in this action based on the original recovery at trial.

6. On May 8, 2018, at approximately 11:00 p.m., Dell filed a letter with the Court indicating that it had reached a settlement with the Magnetar Petitioners whereby it would pay those petitioners \$13.75 per share plus interest accrued at the statutory rate from the date of the merger until the date of the payment.<sup>5</sup> That recovery includes over \$16.76 million in statutory interest.

7. The Magnetar Petitioners' recovery of statutory interest was only possible because of G&E's efforts vigorously pursuing this case on behalf of the Magnetar Petitioners and others.

8. The Magnetar Petitioners “should not be permitted to profit by the result of litigation”<sup>6</sup> “without paying thereout for the services of an attorney in obtaining such a” result.<sup>7</sup> A charging lien is appropriate to ensure that, when the Court ultimately resolves the question of costs and attorneys' fees, G&E right to

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<sup>5</sup> Trans. ID 62009489 (May 8, 2018).

<sup>6</sup> *Doroshov*, 36 A.3d at 340 (quoting 2 Edward Mark Thornton, *A Treatise on Attorneys at Law* § 580 (1914)).

<sup>7</sup> *Katten Muchin Rosenman LLP v. Sutherland*, 153 A.3d 722, 728 n.34 (Del. 2017) (quoting 7A C.J.S. *Attorney & Client* § 523 (Westlaw 2016)).

recover compensation for its services and reimbursement for its expenses is protected.<sup>8</sup>

9. G&E has expressed its concern to both counsel for Dell and special counsel for the Magnetar Petitioners that the disbursement of any funds pursuant to the proposed settlement between Dell and the Magnetar Petitioners would impair G&E's right to collect attorneys' fees and an allocation of expenses from the Magnetar Petitioners, and have requested assurances that sufficient funds will be held in escrow pending resolution of this issue. Despite our requests, G&E has been provided with no assurances that any such efforts will be made to preserve the funds for payment of fees and expenses.

## **ARGUMENT**

### **A. GRANT & EISENHOFER IS ENTITLED TO A CHARGING LIEN**

10. The Delaware Supreme Court repeatedly has recognized the right to a charging lien. As recently as January 2017, the Supreme Court reconfirmed the availability of charging liens as a matter of common law. According to the Supreme Court, "a charging lien is 'an equitable right to have costs advanced and attorney's

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<sup>8</sup> See *Doroshov*, 36 A.3d at 340 (quoting 2 Edward Mark Thornton, *A Treatise on Attorneys at Law* § 578 (1914)).

fees secured by the judgment entered in the suit wherein the costs were advanced and the fee earned.”<sup>9</sup>

11. Here there is no question that G&E has expended a great deal of time, effort and money in this appraisal litigation. As the Court noted in its October 17, 2016 opinion granting fees and expenses,

G&E pursued fact discovery, including document production requests, interrogatories, and depositions. G&E obtained, processed, and hosted a total of 473.5 gigabytes of valuation-related documents and took or defended seventeen depositions. G&E also retained three experts and pursued expert discovery from Dell’s two experts. The litigation culminated in a four-day trial during which the parties introduced over 1,200 exhibits and presented live testimony from seven fact witnesses and five experts.<sup>10</sup>

12. Since then, G&E has expended additional time and effort defending an appeal, including a series of appellate briefs and argument. On remand, G&E has focused on protecting the rights of the appraisal claimants in the wake of the Supreme Court’s decision. To date, G&E has spent over **18,000 hours** pursuing this case on behalf of the appraisal class, including the Magnetar Petitioners.<sup>11</sup>

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<sup>9</sup> *Katten Muchin*, 153 A.3d at 726.

<sup>10</sup> Fees & Expenses Op. at 31.

<sup>11</sup> The total number of hours expended by G&E attorneys and paralegals—to date—on this matter is 18,016.90. Over 700 of those hours have been expended since the Court issued its May 31, 2016 Post-Trial Memorandum Opinion Determining Fair Value.

13. In addition, over the last four years, G&E has also expended more than **\$4.32 million** in costs. G&E also seeks a charging lien against the settlement fund for its expenses. In its December 14, 2017 opinion remanding this case, the Delaware Supreme Court directed the Court to re-allocate expenses among all of the appraisal petitioners, including the Magnetar Petitioners. The appropriate amount to be afforded to G&E out of the Magnetar Petitioners' settlement fund would be determined when the Court resolves the issue of the apportionment of expenses, as directed by the Supreme Court in its opinion.<sup>12</sup>

14. Now the Magnetar Petitioners stand to receive significant value in the form of statutory, compounded interest, as a consequence of G&E's persistent efforts on their behalf. This presents the very scenario for which the charging lien exists: to ensure that a party does not profit from litigation advanced by counsel it does not pay.<sup>13</sup> G&E has an "equitable right to have costs advanced and attorney's fees secured" by the settlement "in the suit wherein the costs were advanced and the fee earned."<sup>14</sup> It is undisputed that G&E advanced costs and earned fees in the appraisal litigation on behalf of the Magnetar Petitioners. "Justice and equity,"

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<sup>12</sup> Dec. 14, 2017 Opinion (Del. S. Ct.) at 82 (Trans. ID 61467411).

<sup>13</sup> See *Doroshov*, 36 A.3d at 340 (quoting 2 Edward Mark Thornton, *A Treatise on Attorneys at Law* § 578 (1914)).

<sup>14</sup> *Katten Muchin*, 153 A.3d at 723 (quoting 7A C.J.S. *Attorney & Client* § 523 (2016)).

therefore, compel the imposition of a charging lien on the Magnetar Petitioners' settlement fund.<sup>15</sup>

## CONCLUSION

For the foregoing reasons, G&E respectfully requests that the Court enter a charging lien against any settlement fund to be paid by Dell to the Magnetar Parties, and grant such other and further relief as may be just and proper under the circumstances.

Dated: May 9, 2018

Respectfully submitted,

/s/ Stuart M. Grant

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**WORDS: 1,358**

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<sup>15</sup> *Id.* at 726.