



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: APPRAISAL OF DELL INC.

Consol. C. A. No. 9322-VCL

**SETTLING DISSENTERS' MOTION FOR
APPROVAL OF SETTLEMENT AND AN AWARD OF
ATTORNEYS' FEES AND EXPENSES**

Global Continuum Fund, Ltd., Morgan Stanley Defined Contribution Master Trust, AAMAF, LP, Wakefield Partners, LP, CSS, LLC, Merlin Partners, LP, William L., Martin, Terence Lally, Arthur H. Burnet, Darshanand Khusial, Donna H. Lindsey, Douglas J. Joseph Roth IRA, Douglas J. Joseph Roth & Thuy Joseph, Joint Tenants, Geoffrey Stern, James C. Aramayo, and René A. Baker (collectively, the "Settling Dissenters"), through their undersigned counsel and pursuant to 8 *Del. C.* § 262, move this Court for an order (1) approving the proposed settlement ("Settlement"), as set forth in a settlement agreement and release dated July 5, 2018 ("Settlement Agreement") that will fully resolve the above-captioned action as to the Settling Dissenters (the "Action"), and (2) awarding attorneys' fees to Lead Counsel. Respondent Dell Inc. ("Dell") does not oppose the motion. The grounds for this motion are set forth in the accompanying brief.

For these reasons, Moving Petitioner requests that the Court order (1) approval of the proposed Settlement as to Settling Dissenters, and (2) an award of attorneys' fees to Lead Counsel.

Dated: September 10, 2018

Respectfully submitted,

/s/ Christine M. Mackintosh _____

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CERTIFICATE OF SERVICE

I, Christine M. Mackintosh, hereby certify that on the 10th day of September, 2018, I caused a copy of the foregoing *Settling Dissenters' Motion for Approval of Settlement and An Award of Attorneys' Fees* and supporting *Transmittal Affidavit of Christine M. Mackintosh* to be filed and served via File & ServeXpress on the following counsel of record:

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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE APPRAISAL OF DELL INC.

Consol. C.A. No. 9322-VCL

**PUBLIC VERSION AS
FILED ON SEPT. 17, 2018**

**SETTLING DISSENTERS' BRIEF IN SUPPORT OF
THEIR MOTION FOR APPROVAL OF SETTLEMENT AND
AN AWARD OF ATTORNEYS' FEES**

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Statutes

8 *Del. C.* § 262*passim*

Lead Counsel Grant & Eisenhofer P.A. (“Lead Counsel”),¹ for and on behalf of former Dell Inc. (“Dell”) stockholders Global Continuum Fund, Ltd., Morgan Stanley Defined Contribution Master Trust, AAMAF, LP, Wakefield Partners, LP, CSS, LLC, Merlin Partners, LP, William L., Martin, Terence Lally, Arthur H. Burnet, Darshanand Khusial, Donna H. Lindsey, Douglas J. Joseph Roth IRA, Douglas J. Joseph Roth & Thuy Joseph, Joint Tenants, Geoffrey Stern, James C. Aramayo, and René A. Baker (collectively, the “Settling Dissenters”), respectfully submits this brief in support of (1) approval of the proposed settlement (“Settlement”), as set forth in a settlement agreement and release dated July 5, 2018 (“Settlement Agreement”)² that will fully resolve the above-captioned action (the “Action”), and (2) an award of attorneys’ fees to Lead Counsel. Dell does not oppose the motion.

PRELIMINARY STATEMENT

This appraisal action arises out of a transaction (the “Merger”) in which Dell was taken private. The Merger became effective on October 29, 2013 (the “Effective Date”). As a result of that Merger, Dell’s non-dissenting stockholders became entitled to receive \$13.75 per share in cash (the “Merger Price”).

¹ Grant & Eisenhofer P.A. was appointed Lead Counsel for all Dell stockholders who had submitted demands for appraisal, including the Settling Dissenters, in the Court’s April 10, 2014 Consolidation Order (“Consolidation Order”).

² Attached hereto as Ex. A

Prior to the Merger, each of the Settling Dissenters was a holder of Dell common stock. Dissenting stockholders – including certain of the Settling Dissenters – initiated this Action pursuant to 8 *Del. C.* § 262 to obtain a judicial determination of the fair value of their Dell shares as of the Effective Date.

After discovery, trial, and post-trial briefing and argument, appraisal claimants obtained a judgment determining that the fair value of their Dell shares on the Effective Date was \$17.62, an increase of 28% over the Merger Price.

Dell appealed, arguing, *inter alia*, that this Court had erred and abused its discretion in failing to weight the negotiated deal price in determining Dell’s fair value. On appeal, the Supreme Court reversed the \$17.62 fair value conclusion, finding that the “trial court’s key reasons for disregarding the market data were erroneous.”³ Thus, the Supreme Court found that this Court had abused its discretion in failing to weight the deal price in determining Dell’s fair value and reversed the judgment.

On remand, this Court scheduled a status conference for May 9, 2018, to discuss with counsel for the parties the path forward. The night before the hearing, Dell’s counsel advised the Court that it had reached a settlement with the appraisal claimants who held the vast majority of the shares for which appraisal had been

³ *Dell Inc. v. Magnetar Global Event Driven Master Fund Ltd.*, 177 A.3d 1, 37 (Del. 2017).

sought.⁴ Under the proposed settlement, claimants holding 3,865,820 of the total 5,505,630 shares remaining in the appraisal class would receive the \$13.75 deal price, plus statutory interest.⁵ This proposed settlement severely undermined Lead Counsel’s ability to continue to litigate this appraisal. With only 1,639,810 shares remaining, a Supreme Court that had stopped just short of instructing this Court to enter an award at deal price,⁶ a “maximum possible” recovery of \$6,346,064.70⁷ that was (as a practical matter) impossible to achieve, and expenses of \$4,341,275.98 million already incurred, Lead Counsel faced an uphill battle in obtaining anything more than the \$13.75 deal price that the holders of the other 3,865,820 dissenting shares had agreed to accept.

Nonetheless, following the May 9, 2018 hearing, Lead Counsel pushed for a settlement above Merger Price. After several weeks of negotiations, Dell offered to settle with the remaining appraisal claimants for [REDACTED]

⁴ May 8, 2018 Ltr. to Vice Chancellor Laster from G. Williams, Trans. I.D. 62009489.

⁵ *Id.* This settlement was approved on June 11, 2018. *See* Stipulation and Order Approving Settlement and Granting Dismissal Solely as to Certain Petitioners, Trans. I.D. 62125066.

⁶ *Dell*, at *44. (“Despite the sound economic and policy reasons supporting the use of the deal price as the fair value award on remand, we will not give in to the temptation to dictate that result. That said, we give the Vice Chancellor the discretion on remand to enter judgment at the deal price if he so chooses, with no further proceedings.”).

⁷ $(\$17.62 - \$13.75) \times 1,639,810$.

██████████ Lead Counsel continued to press ██████████, and Dell ultimately agreed to pay ██████████

██████████.

Settling Dissenters respectfully ask that the Court approve the Settlement as fair and reasonable, and award Lead Counsel ██████████ in attorneys' fees to compensate them for their efforts in procuring the Settlement.

STATEMENT OF FACTS

A. THE GO-PRIVATE TRANSACTION

In 2013, Dell founder and CEO Michael Dell joined forces with private equity firm Silver Lake Partners to take Dell private. Stockholders who did not dissent received \$13.75 in cash for each of their shares.

At the time of the Merger, Dell was in the midst of a multi-year transformation. It had invested \$14 billion in making acquisitions to reposition itself from a personal computer company to a full-scale, integrated enterprise services company.⁸ Dell expected to reap the benefits of this transformation in the years to come.⁹ But just as the Michael Dell's strategy was beginning to show results, he decided to take the Company private. Unwilling to be cashed out at a price that did not reflect the value of Dell's transformation and its tremendous upside potential, a

⁸ See May 31, 2016 Op. at 2 (Trans. ID. 59072455).

⁹ *Id.* at 75.

number of Dell stockholders dissented from the Merger and sought a judicial determination of the fair value of their shares.

B. LITIGATION BEFORE THE CHANCERY COURT

Prior to the Merger, each of the Settling Dissenters held Dell common stock. Each of the Settling Dissenters made a demand for appraisal pursuant to 8 *Del. C.* § 262 and pursued its claims in this Action with respect to the following number Dell shares (the “Settling Shares”):¹⁰

Demand	Settling Dissenter	Number of Shares
14	Global Continuum Fund, Ltd.	706,012
20	Morgan Stanley Defined Contribution Master Trust	357,500
31	AAMAF, LP	201,000
36	Wakefield Partners, LP	120,000
40	CSS, LLC	100,000
41	Merlin Partners, LP	100,000
52	William L. Martin	4,943
54	Terence Lally	22,000
63	Arthur H. Burnet	12,000
75	Darshanand Khusial	5,559
78	Donna H. Lindsey	4,000
80	Douglas J. Joseph Roth IRA	3,365
93	Douglas J. Joseph Roth & Thuy Joseph, Joint Tenants	1,800
102	Geoffrey Stern	1,000
125	James C. Aramayo	424
207	René A. Baker	7
	Total	1,639,610

¹⁰ As discussed *supra*, the Settlement was offered to dissenter Thomas Ruegg, Demand No. 152, who had demanded appraisal with respect to 200 Dell shares. During telephone conversations with Lead Counsel, Mr. Ruegg orally assented to the Settlement, but thereafter failed to execute the Settlement Agreement.

Lead Counsel – on behalf of all of the appraisal claimants – engaged in extensive discovery concerning the Merger and Dell’s value. During discovery, Lead Counsel conducted twelve depositions (ten fact witnesses and two expert witnesses) and reviewed over 250,000 documents produced by Dell, Silver Lake, lenders, and financial advisors. Lead Counsel engaged three experts, prepared them for and defended them at depositions, and assisted with the preparation of their expert and rebuttal reports.

The Court held a four-day trial in this matter beginning on October 5, 2015. At trial, the parties introduced more than 1,200 exhibits and put on 12 witnesses. They submitted a 542-paragraph pre-trial order and 369 pages of pre- and post-trial briefing. The Court heard post-trial oral argument on March 2, 2016.

On May 31, 2016, the Court issued an opinion determining that Dell’s fair value was \$17.62 per share.

C. THE SUPREME COURT REVERSES THE FAIR VALUE DETERMINATION

On November 22, 2016, Dell appealed the fair value ruling. On December 14, 2017, the Supreme Court reversed, finding that the Court abused its discretion in not weighting the deal price in determining Dell’s fair value. Specifically, the Supreme Court noted: “[W]hen the evidence of market efficiency, fair play, low barriers to entry, outreach to all logical buyers, and the chance for any topping bidder to have the support of Mr. Dell’s own votes is so compelling, then failure to give the

resulting price heavy weight” “abuses even the wide discretion afforded the Court of Chancery in these difficult cases.”¹¹ The Supreme Court remanded, with instructions that the Court determine Dell’s fair value taking into account the Supreme Court’s ruling. The Supreme Court strongly signaled what it expected the Court to do on remand:

Despite the sound economic and policy reasons supporting the use of the deal price as the fair value award on remand, we will not give in to the temptation to dictate that result. That said, we give the Vice Chancellor the discretion on remand to enter judgment at the deal price if he so chooses, with no further proceedings. If he decides to follow another route, the outcome should adhere to our rulings in this opinion, including our findings with regard to the DCF valuation. If he chooses to weigh a variety of factors in arriving at fair value, he must explain that weighting based on reasoning that is consistent with the record and with relevant, accepted financial principles.¹²

On remand, it was clear that Lead Counsel would face an uphill battle in securing anything above the deal price.

D. PROCEEDINGS ON REMAND

On January 3, 2018, the Court asked Lead Counsel for its position on the appropriate next steps following the Supreme Court’s reversal. On February 22, 2018, Lead Counsel informed the Court that it believed that the record should be re-opened to allow the parties to present additional on fair value, including, *inter alia*,

¹¹ *Dell*, *35.

¹² *Dell*, *44.

(1) the appropriate weighting to give to the various possible indicators of fair value in the record; (2) the efficiency of the market for Dell's stock; and (3) the relationship between Dell's stock price at the time the market learned of Michael Dell's plans to take Dell private and the Company's fair value as of the Effective Date. Thereafter, the Court set a conference for May 9, 2018 for the parties to discuss the path forward.

On May 8, 2018 – the literal eve of the scheduled conference – Dell informed the Court that it had reached a settlement with the holders of over 70% of shares seeking appraisal (3,865,820 out of 5,505,630) under which these claimants would accept the deal price, plus statutory interest.

During the May 9, 2018 hearing, Dell argued that the Court did not have any discretion to re-open the record to receive additional evidence and that the Court should enter a judgment at the \$13.75 deal price. The Court itself questioned “the point” of the remand proceedings given the Supreme Court's unambiguous signal that it expected the Court to determine Dell's fair value to equal the \$13.75 deal price.¹³

While the holders of the overwhelming majority of the dissenting shares had rolled over and accepted the result the Supreme Court had all but ordered, Lead Counsel persisted.

¹³ May 9, 2018 Conf. Tr. at 32.

E. NEGOTIATIONS AND SETTLEMENT TERMS

During the months of May and June 2018, Lead Counsel engaged in hard-fought negotiations with Dell. Dell initially offered [REDACTED] [REDACTED] Lead Counsel pressed for more, [REDACTED] [REDACTED] [REDACTED] conditioned on all dissenting stockholders accepting the offer.

On July 5, 2018, counsel reached an agreement in principle concerning the settlement terms. The Settlement provides, *inter alia*, that Dell will make a cash payment of [REDACTED] per share for each of the Settling Shares, consisting of [REDACTED] for each share [REDACTED] [REDACTED].

On July 6, 2018, Dell remitted to Lead Counsel settlement proceeds in the amount of [REDACTED], representing [REDACTED] per share payable under the Settlement Agreement, [REDACTED] [REDACTED], and [REDACTED] [REDACTED].¹⁴ This amount contemplated that each dissenting

¹⁴ [REDACTED] [REDACTED].

stockholder entitled to settle its demand for appraisal would execute the Settlement Agreement.

Subsequently, Lead Counsel set about obtaining all of the appraisal claimants' signatures on the Settlement Agreement. While all had assented to the terms, one – Thomas Ruegg – did not execute the Settlement Agreement. Mr. Ruegg, who demanded appraisal with respect to 200 shares, originally indicated his assent to the Settlement in telephone conversations with Lead Counsel, but thereafter failed to execute the Settlement Agreement.¹⁵

Lead Counsel's inability to secure Mr. Ruegg's signature on the Settlement Agreement has worked a hardship on the Settling Dissenters. Under the terms of the Settlement Agreement, Lead Counsel is unable to distribute the [REDACTED] that Dell transmitted to it on July 6, 2018 until such time as the Court approves the Settlement (Mr. Ruegg's *pro rata* portion of this [REDACTED] is [REDACTED]). Because it was contemplated that Mr. Ruegg would be a party to the Settlement, Lead Counsel have been unable to present the Settlement to the Court for approval

¹⁵ During the week of May 28, 2018, Lead Counsel contacted Mr. Ruegg to notify him about a proposed settlement under which Dell would pay [REDACTED]. Mr. Ruegg indicated that he would accept that offer price. On June 12, 2018, Lead Counsel wrote to Mr. Ruegg to notify him that Dell had agreed [REDACTED]. Ex. B. On July 5, 2018, Lead Counsel sent Mr. Ruegg a copy of the Settlement Agreement for execution. Ex. C. Despite repeated written follow ups and dozens of phone calls, Lead Counsel were unable to secure Mr. Ruegg's signature on the Settlement Agreement. Exs. D - G.

without his signature. To attempt to bring this matter to a resolution, on August 9, 2018, Lead Counsel sent a letter by UPS, which was delivered to Mr. Ruegg's home on August 10, 2018, explaining that Lead Counsel were not able to distribute settlement funds to any of the Settling Dissenters until Lead Counsel received his signed agreement.¹⁶ Lead Counsel notified Mr. Ruegg that if he did not return an executed copy of the Settlement Agreement by September 4, 2018, Lead Counsel would have to proceed with the Settlement without him. Lead Counsel have still not received the signed agreement, nor have they heard back from Mr. Ruegg.

To balance the parties' competing interests, Lead Counsel propose the following: The Court approve the Settlement as the Settling Dissenters and permit Lead Counsel to disburse Settling Dissenters' *pro rata* portions of the [REDACTED] that they have been holding in escrow since July 6, 2018. Should the Court grant this motion, within three days of entry of the accompanying order, Lead Counsel will send to Mr. Ruegg by both regular and certified mail copies of the accompanying order and the Settlement Agreement. Mr. Ruegg will thereafter have 30 days from entry of the order to either (i) agree to the Settlement and execute the Settlement Agreement, or (ii) advise the Court of his intent to reject the Settlement

¹⁶ Ex. H.

and to request permission to proceed with the appraisal litigation pursuant to 8 *Del. C.* § 262(h).

Should Mr. Ruegg not respond within those 30 days, the Court would dismiss the matter with prejudice. Thereafter, Lead Counsel would continue to hold his *pro rata* portion of the [REDACTED] in escrow through and including December 31, 2018. If Mr. Ruegg does not return the executed Settlement Agreement or petition the Court for relief on or before December 31, 2018, the unclaimed proceeds would be deemed “unclaimed property” within the meaning of N.J.S.A. 46:30B1-109¹⁷ and would become subject to escheat as provided by law. In the event that Mr. Ruegg executes the Settlement Agreement on or before December 31, 2018, Lead Counsel will remit Mr. Ruegg’s portion of the Settlement, less attorneys’ fees (as discussed *supra*), to Mr. Ruegg. In either case, Lead Counsel will advise the Court within five business days after December 31, 2018, as to whether Mr. Ruegg executed the Settlement Agreement.

I. THE SETTLEMENT SHOULD BE APPROVED AS FAIR AND REASONABLE

A. THE STANDARD FOR APPROVING THE SETTLEMENT

Delaware has long favored the voluntary settlement of contested claims. *See Kahn v. Sullivan*, 594 A.2d 48, 58-59 (Del. 1991); *Nottingham Partners v. Dana*,

¹⁷ Mr. Ruegg, on information and belief, is a New Jersey resident.

564 A.2d 1089, 1102 (Del. 1989); *Rome v. Archer*, 197 A.2d 49, 53 (Del. 1964). In reviewing a settlement, the Court’s role is to determine in its own business judgment whether the settlement is fair, reasonable and adequate. The Court is “not required to decide any of the issues on the merits.” *Polk v. Good*, 507 A.2d 531, 536 (Del. 1986). Rather, the Court’s duty is to consider the nature of the claims, the possible defenses, the legal and factual obstacles to be faced by plaintiffs at trial, and the delay, expense and complexity of litigation. *Kahn*, 594 A.2d at 58-59. Balancing the strength of the claims being compromised against the benefits secured by the settlement for class members is of particular importance. *Barkan v. Amsted Indus., Inc.*, 567 A.2d 1279, 1284 (Del. 1989); *Polk*, 507 A.2d at 35.

B. BENEFITS ACHIEVED

As a consequence of this litigation and Lead Counsel’s efforts, Settling Dissenters will receive [REDACTED]

[REDACTED].¹⁸ This is a significant benefit under the unique facts of this case. In reversing this Court’s fair value determination, the Supreme Court all but instructed the Court to award the deal price

¹⁸ The interest accrued on the [REDACTED] uplift totaled [REDACTED] per share, for a total increase of [REDACTED] per share.

on remand.¹⁹ In light of this, stockholders representing the overwhelming majority of the shares for which appraisal had been sought agreed to accept the \$13.75 deal price as settlement on the literal eve of the remand hearing. The additional recovery obtained here is due solely to the tenacity of Lead Counsel.

Moreover, the Settlement restores to Settling Dissenters the use of their funds after more than four and a half years of hard-fought litigation and eliminates the time, expense, and risk involved in additional proceedings before this Court, including the very real risk that one of the parties would appeal any result issued by this Court to the Delaware Supreme Court.

C. ANALYSIS OF THE CLAIMS AND DEFENSES IN THIS ACTION

Absent this Settlement, the resolution of Settling Dissenters' claims would be highly uncertain. Given the shift in Delaware appraisal law generally and, specifically, the Supreme Court's guidance in the appeal in this action, there was a real risk that any final decision could mean that Settling Dissenters would receive only the Merger Price – or perhaps even less.

Given the many obstacles and uncertainties Settling Dissenters would have faced in this Action, the benefits of the Settlement outweigh the risks of continued litigation. *See, e.g., Frazer v. Worldwide Energy Corp.*, 1991 WL 74041, at *4 (Del.

¹⁹ May 9, 2018 Conf. Tr. at 32.

Ch. May 2, 1991, revised May 6, 1991) (explaining that the benefits of any settlement must be weighed against the risk of receiving nothing).

D. THE SETTLEMENT WAS REACHED THROUGH ARM’S-LENGTH NEGOTIATIONS

In reaching the Settlement, Lead Counsel engaged in multiple sessions of arm’s-length negotiations with opposing counsel. These negotiations began in late May 2018 and continued until late June 2018, when the parties agreed in principle on the Settlement. The parties then engaged in further discussions and negotiations with respect to the final terms of the Settlement and executed the Stipulation on July 5, 2018.

E. REACTION OF THE APPRAISAL CLAIMANTS

All of the dissenting stockholders support the Settlement. With the exception of Mr. Ruegg, all of the appraisal claimants executed the Settlement Agreement and returned it to Lead Counsel. A positive reaction of the claimants is a factor favoring its approval by the Court. *See generally Rome*, 197 A.2d at 58 (approving settlement agreement that was ratified by a very large majority of a class of stockholders).

F. THE EXPERIENCE AND OPINION OF COUNSEL FAVOR APPROVING THE SETTLEMENT

This Court considers the opinion of experienced counsel in determining a settlement’s fairness. *See generally Rome*, 197 A.2d at 53. Here, Lead Counsel are experienced and skilled shareholder advocates. Counsel believe that the Settlement

is fair, reasonable, adequate, and in the Settling Dissenters' best interest. Lead Counsel determined this only after conducting extensive discovery, including reviewing over 250,000 documents; conducting ten fact witness depositions; taking expert discovery, including taking two depositions and defending three; conducting a trial with more than 1,200 exhibits and 12 witnesses; engaging in pre- and post-trial briefing; briefing an appeal; making several submissions and oral argument concerning the issues to be resolved on remand; fully analyzing the strengths and weaknesses of the appraisal claim and Dell's defenses; and engaging in intense, arm's-length settlement negotiations with opposing counsel. Accordingly, Counsel's opinion is informed and supports approving the Settlement. *See Neponsit Inv. Co. v. Abramson*, 405 A.2d 97 (Del. 1979) (approving settlement based, in part, on plaintiffs' counsel's conclusion, reached after conducting pretrial discovery, that the settlement was fair and in the class's best interest).

II. THE REQUESTED FEE AWARD IS REASONABLE AND SHOULD BE GRANTED

A. LEGAL STANDARDS GOVERNING ATTORNEYS' FEE APPLICATIONS

Lead Counsel are entitled to an award of attorneys' fees under the appraisal statute itself and under the corporate benefit doctrine. The appraisal statute provides that the Court may order "reasonable attorney's fees . . . to be charged *pro rata* against the value of all of the shares entitled to appraisal." 8 *Del. C.* § 262(j).

This provision essentially codifies the equitable fund doctrine in appraisal cases. Under that doctrine, a litigant who confers a benefit upon a class is entitled to seek an award of fees and expenses from the others in the class, as “equity demands that those who share in the benefit share in the burden of the prosecution.” *In re Appraisal of Shell Oil Co.*, 1992 WL 321250, *3 (Del. Ch. Oct. 30, 1992).

B. THE COURT SHOULD AWARD THE REQUESTED ATTORNEYS’ FEES

1. Lead Counsel Are Entitled To Attorneys’ Fees Based On The Benefits Achieved In This Action

Lead Counsel are requesting a fee award of just 15% [REDACTED] [REDACTED] they achieved [REDACTED] in connection with the Settlement, to be allocated *pro rata* amongst the Settling Dissenters, for a total of [REDACTED].²⁰ Because Lead Counsel prosecuted this case to a conclusion benefitting the appraisal claimants, Lead Counsel are entitled to a fee award.

2. The Amount Of Lead Counsel’s Requested Fee Award Is Reasonable

“The standards governing the award of attorneys’ fees in an appraisal class action . . . are identical to those in other types of shareholder benefit litigation.” *Shell*

²⁰ In the event that Mr. Ruegg returns an executed copy of the Settlement Agreement to Lead Counsel on or before December 31, 2018, Lead Counsel shall deduct 15% from the [REDACTED] that it is currently holding in escrow for Mr. Ruegg for attorneys’ fees. In this event, the total attorneys’ fee payable to Lead Counsel will be [REDACTED].

Oil, 1992 WL 321250, at *3. The amount of a fee award is committed to the sound discretion of the Court. *In re Abercrombie & Fitch Co. S'holders Deriv. Litig.*, 886 A.2d 1271, 1273 (Del. 2005); *Tandycrafts*, 562 A.2d at 1165-66. In exercising its discretion, the Court should consider: (1) the benefits achieved; (2) the efforts of counsel and the time spent in connection with the case; (3) the contingent nature of the fee; (4) the difficulty of the litigation; and (5) the standing and ability of counsel. *Sugarland Indus., Inc. v. Thomas*, 420 A.2d 142, 149-50 (Del. 1980); *In re Plains Res. Inc. S'holders Litig.*, 2005 WL 332811 (Del. Ch. Feb. 4, 2005). These factors fully support the requested [REDACTED] in attorneys' fees.

**(a) The Litigation Conferred A Substantial Benefit
On Appraisal Claimants**

Following the Supreme Court's ruling in this Action, the Settling Dissenters faced a real risk of receiving Merger Price or less on remand. Because of Lead Counsel's persistent efforts, Settling Dissenters are receiving an above-Merger Price appraisal award. The Settlement also affords Settling Dissenters certainty and permits Settling Dissenters to have the use of their money for the first time in almost five years.

**(b) The Requested Fee Is Reasonable When
Measured Against The Efforts Of Counsel And
Time Spent On The Action**

The requested fee of [REDACTED] is more than reasonable given the time and effort Lead Counsel spent on this case over the last four and a half years. G&E spent 18,105.50 hours litigating this case. The value of the time incurred at customary rates would be \$8,370,514. The amount that G&E seeks is [REDACTED] of its lodestar. Thus, the lodestar cross-check supports the reasonableness of G&E's requested fee award.

Even more importantly, the actual efforts Lead Counsel made demonstrate the reasonableness of the fee award. The Settlement resulted only after significant effort over many years. Lead Counsel pursued this case aggressively, both at the trial level and on appeal, engaging in extensive discovery, a multi-day trial, pre- and post-trial briefing and argument, and appellate briefing and argument. Lead Counsel also made submissions and offered argument concerning the issues left to be resolved on remand. While holders of the majority of the shares that had sought appraisal rolled over and accepted deal price following the Supreme Court's reversal of this Court's fair value determination, Lead Counsel soldiered on and obtained an additional increase for the Settling Dissenters. These significant efforts more than amply support the requested fee award.

The reasonableness of this fee request is underscored by Lead Counsel’s election not to seek reimbursement from the Settling Dissenters of *any* of the \$4,341,275.98 in expenses incurred in connection with this litigation.

**(c) The Contingent Nature Of Counsel’s Work,
The Complexity Of The Action, And Counsel’s
Experience All Support Awarding The
Requested Fee**

Given the complexity of the facts and the uncertain state of the law, there was a meaningful risk that Settling Dissenters would not prevail in obtaining a fair value award in excess of the Merger Price, and that Lead Counsel – who accepted this case on a fully contingent fee basis – would not recover the value of their time or reimbursement of their expenses. As the Court noted in its October 17, 2016 opinion in this Action, appraisal actions were becoming more complex and uncertain in the years leading up to *Dell*, as claimants were required to obtain evidence and develop arguments concerning the process by which the transaction occurred, as well as more standard valuation factors. The risk of no recovery in cases such as this is real, as the outcome of litigation is uncertain and success at trial is far from guaranteed.

Finally, the standing of Lead Counsel is well known to the Court (which has noted that Lead Counsel’s “track record stands out”²¹), as is the standing of Dell’s

²¹ Oct. 17, 2016 Opinion at 35.

counsel. The perseverance and skill of Lead Counsel allowed them to obtain the benefit of the Settlement for the Settling Dissenters.

CONCLUSION

The Settling Dissenters respectfully request that their Motion for Approval of the Settlement and an award of attorneys' fees be granted in its entirety.

Dated: September 10, 2018

GRANT & EISENHOFER P.A.

/s/ Christine M. Mackintosh _____

Michael J. Barry (#4368)

Christine M. Mackintosh (#5085)

Rebecca A. Musarra (#6062)

123 Justison Street

Wilmington, DE 19801

(302) 622-7000

Counsel for Moving Petitioner

WORDS: 4,662



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: APPRAISAL OF DELL INC.

Consol. C. A. No. 9322-VCL

[PROPOSED] ORDER

AND NOW, this ____ day of _____, 2018, upon consideration of Settling Dissenters' Motion for Approval of Settlement and an Award of Attorneys' Fees, it is hereby Ordered that:

1. Moving Settling Dissenters' Motion is GRANTED and the action is dismissed as to Settling Dissenters with prejudice;
2. Payment of the Settling Dissenters' *pro rata* shares of the settlement proceeds may take place immediately upon entry of this Order;
3. Lead Counsel is awarded \$26,239.47 in attorneys' fees, which shall be charged *pro rata* against the Settling Dissenters' Settling Shares;
4. Within three (3) business days of entry of this Order, Lead Counsel shall send to appraisal claimant Thomas Ruegg copies of this Order and copies of the proposed Settlement Agreement, sending one copy by regular mail and one copy by certified mail to Mr. Ruegg at his last known address;
5. Not later than 30 days following the date of this Order, Mr. Ruegg may (i) agree to the proposed Settlement and execute the Settlement Agreement, or

(ii) advise the Court of his intent to reject the Settlement and to request permission to proceed with the appraisal litigation pursuant to 8 *Del. C.* § 262(h);

6. In the event Mr. Ruegg does not respond within the time set forth in paragraph 5 of this Order, this action will be dismissed with prejudice as to Mr. Ruegg;

7. The parties shall report to the Court regarding the status of the settlement within five (5) business days of the expiration of the time period set forth in paragraph 5;

8. Lead Counsel shall hold in escrow \$3,688.88, until Mr. Ruegg returns the executed Settlement Agreement or December 31, 2018, whichever comes first, or until ordered by the Court;

9. If Mr. Ruegg returns the executed Settlement Agreement on or before December 31, 2018, Lead Counsel shall, after deducting 15% for attorney's fees, release the remaining proceeds to Mr. Ruegg; and

10. If Mr. Ruegg does not return the executed Settlement Agreement on or before December 31, 2018, unless the Court otherwise orders before such date, any unclaimed settlement proceeds will be deemed "unclaimed property" within the meaning of N.J.S.A. 46:30B1-109 and shall become subject to escheat as provided by law.

SO ORDERED

Vice Chancellor J. Travis Laster