Conclusions from Investigation of Reported Settlement

Response of Lead Counsel
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Business view of Lead Counsel's bill for $1.45 per share

The only thing that has been learned about the Dell settlement with the ineligible T Rowe Price petitioners since Tuesday's Forum report[1] about what we "need to know" is that we are not likely to get any information without court orders to require disclosure. We therefore need to consider whether those efforts would be justified.

Response of Lead Counsel

Responding to my Monday letter,[2] Stuart Grant of Grant & Eisenhofer ("G&E") told me by telephone yesterday 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, stating that the agreement was confidential. In response to my view that we 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.[3]

Mr. Grant also stated that he 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.[4] Nothing has been received, but anything Mr. Grant wishes to submit in the future will of course be presented and posted publicly on the Forum website.

Fair opportunity to consider a settlement that may not exist

The surprising report that no written agreement was provided to the court raises obvious questions on many levels about what, if anything, was actually settled.

As a practical business matter, though, eligible claimants may not need to concern themselves with the details of the supposed settlement. We can assume that Dell did in fact pay $28 million to T Rowe Price, since both of them report that amount in SEC filings.[5] If the purpose of that payment really was to eliminate risks of eligibility appeals that most professionals considered virtually worthless, we can assume that Dell will take the initiative itself to offer significantly more than that $.88 per share to persuade all the eligible claimants that they should give up their much more valuable rights to appeal.

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[1] See July 12, 2016 Forum Report: Investigating Opportunities to Negotiate an Extra $.88 per Share.

[2] See July 11, 2016 Shareholder Forum letter to Stuart M. Grant of Grant & Eisenhofer (1 page, 158 KB, in PDF format).

[3] See June 27, 2016 (reported June 29, 2016), *In Re: Appraisal of Dell, Inc.* (Consol. C. A. No. 9322-VCL): Transcription of Teleconference Regarding Proposed Settlement (23 pages, 67 KB, in PDF format).

[4] See July 13, 2016, Gary Lutin of Shareholder Forum email to Stuart Grant of Grant & Eisenhofer (1 page, 67 KB, in PDF format).

[5] See July 1, 2016, T. Rowe Price Group, Inc., SEC Form 8-K: Report of $28 million settlement reducing previous reserve for losses resulting from the denial of appraisal rights (3 pages, 145 KB, in PDF format) and July 5, 2016, Denali Holdings, Inc., SEC Form 8-K: Settlement of Certain Litigation (2 pages, 21 KB, in PDF format).

If Dell does not make such an offer to eligible claimants during the next week or two, it should simply be left to the court to determine why it was asked to approve a payment that appears to be for purposes other than the stated termination of rights to appeal. This inquiry could of course be important to the public interests that concern the court, but it is unlikely to result in any direct financial benefit to eligible claimants.

Business view of Lead Counsel's bill for $1.45 per share

Our attention to the reported settlement between Dell and T Rowe Price supports the view that G&E has served its T Rowe Price clients well, but has served the other appraisal claimants only to the extent that their interests coincided with those of T Rowe Price.

While the lawyers in the case may develop complicated arguments about the $1.45 per share that G&E wants to charge the non-client eligible claimants as their appointed Lead Counsel, the business analysis is very simple:

- G&E has chosen to provide services and opportunities to its clients that have not been provided to the non-client claimants the firm was obligated to serve as Lead Counsel.
- As reported in many pages of court filings, G&E had repeatedly refused to satisfy the obligations of Lead Counsel established by the Court's Consolidation Order, and will not provide any support of its charges.[6]

We can assume that G&E will in any event be well paid by its T Rowe Price clients, even if only for their negotiation of the miraculous $28 million settlement. Beyond that, as astute lawyers G&E can be expected to have rights under their engagement contract to require full payment of the fees they should have earned in reliance upon the affidavits T Rowe Price had signed for their petitioners verifying that they had "not voted in favor" of the transaction. And if G&E had been aware that they could not rely upon those stated voting positions that were presented to court, we would not need to be sympathetic to their loss of fees.

Based on this business analysis, there should no longer be any need for us to learn more about G&E's charges or about what T Rowe Price is paying them, or to be distracted by any other information demands that will delay the final resolution of the case and a distribution of payments to eligible claimants. If the Magnetar or Global petitioners that are already engaged in motions relating to the fee application adopt this business analysis to argue that the court should not impose any G&E charges on the eligible claimants, I will recommend the Cavan petitioner's support of their position.

GL – July 14, 2016

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[6] See the "Burdens of payments for legal services" section of the July 6, 2016 Forum Report: Preserving the Benefits of a Model Appraisal Rights Case.