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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

POST-TRIAL ANSWERING BRIEF

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GLOSSARY

Bank Case	Set of projections of Dell prepared by Silver Lake in January 2013, as modified in August 2013 and as presented to investors in September 2013
Bank Case With Cost Savings	Bank Case with impact of $1 billion in incremental cost savings as identified by Silver Lake
BCG	The Boston Consulting Group, Inc.
Company	Dell Inc.
DCF	Discounted cash flow
Dell	Dell Inc.
EBITDA	Earnings before interest, taxes, depreciation and amortization
Evercore	Evercore Group LLC
ESS	Enterprise solution and services
EUC	End-user computing
FCF	Free cash flow
FY	Fiscal Year
IDC	International Data Corporation
JPM	JP Morgan
KKR	Kohlberg Kravis Roberts & Co. L.P.
LBO	Leveraged buyout
MBO	Management buyout

Merger Agreement	The Agreement and Plan of Merger by and among Denali Holding Inc., Denali Intermediate Inc., Denali Acquiror Inc., and Dell Inc., dated February 5, 2013 (as amended on August 2, 2013)
MoM	Multiple of invested capital
MSD	Michael Dell
PC	Personal computer
PGR	Perpetuity growth rate
PTO	Stipulated Joint Pre-Trial Order (Transaction ID 57892025)
S&D	Support and deployment
Silver Lake	Silver Lake Management LLC
Southeastern	Southeastern Asset Management
Transaction	Transaction in which Michael Dell took Dell private with two funds affiliated with Silver Lake, as effected through the Merger Agreement
WACC	Weighted average cost of capital

FORM OF CITATIONS TO THE RECORD

Citations in the form "JX[●]:[●]" are to the corresponding Joint Exhibit and page number.

Citations in the form "TT[●](Surname)" are to the corresponding page numbers of the trial transcript and identify the witness providing the testimony.

Citations in the form "JX[●]:[●](Surname)" are to the deposition transcript of the named witness and identify the page(s) of the testimony being cited.

Citations in the form "COR¶●" are to the Revised Expert Report of Bradford Cornell (JX897A), with identification of the cited paragraph number(s).

Citations in the form "CRR¶●" are to the Revised Rebuttal Expert Report of Bradford Cornell (JX908A), with identification of the cited paragraph number(s).

Citations in the form "Cornell Demonstrative:[●]" are to the demonstrative slides used during Professor Cornell's testimony and the cited page number.

Citations in the form "HOR¶●" are to the Revised Expert Report of Glenn Hubbard (JX896A), with identification of the cited paragraph number(s).

Citations in the form "HRR¶●" are to the Rebuttal Expert Report of Glenn Hubbard (JX907) and the Supplement To Rebuttal Expert Report Of Glenn Hubbard (JX907A), with identification of the cited paragraph number(s).

Citations in the form "PPB:[●]" are to Petitioners' Pretrial Brief and identify the page(s) being cited.

Citations in the form "POB:[●]" are to Petitioners' Post-Trial Opening Brief and identify the page(s) being cited.

Citations in the form "ROB:[●]" are to Respondent Dell Inc.'s Post-Trial Opening Brief and identify the page(s) being cited.

Citations in the form "SRR¶●" are to the Rebuttal Expert Report of Guhan Subramanian (JX909), with identification of the cited paragraphs number(s).

Citations in the form "Subramanian Demonstrative:[●]" are to the demonstrative slides used during Professor Subramanian's testimony and the cited page number.

Citations in the form "PTO¶●" are to the Stipulated Joint Pretrial Order, with identification of the cited paragraph number(s).

PRELIMINARY STATEMENT

Dell begins its post-trial brief by chastising Petitioners for analogizing the Dell MBO process to an unwinnable game that prevented the Special Committee from reaching a sale price that was truly reflective of Dell's fair value as a going concern. But in the pages that follow, Dell ignores crucial undisputed evidence and misrepresents key facts, such as: (1) a massive acknowledged disconnect between the Company's fair value and its stock price; (2) that MSD spent $14 billion to "transform" the business while sacrificing short-term profits for long-term value; (3) the opportunistic timing of the buyout proposal; and (4) post-closing performance that saw MSD and Silver Lake ***double*** the value of their investment in Dell in less than a year without making any material changes to the Company's business. Dell also repeats its fabricated assertion that MSD was "required" to work with alternative suitors, and continues to falsely assert that Professor Cornell's valuation somehow suggests that the Company needs no capital to fund operations. Neither assertion is true. And while touting the deal process as a justification for using the merger price to impose some kind of "ceiling" on fair value, Dell ignores the economic realities of an MBO and the significant hurdles presented to potential alternative bidders as explained by Professor Subramanian, without rebutting ***any*** of the underlying facts demonstrating these points. Finally, Dell's proffered valuation expert, Professor

Hubbard, ***rejected*** the projections that were commissioned and relied upon by the Special Committee, and instead created his own set of litigation-driven projections by making "adjustments" to the BCG model ***that Professor Hubbard admits he was not qualified to make and that were rejected by both BCG and the Special Committee***. In doing so, Professor Hubbard crossed the line from expert to advocate. His opinion is the product of a result-oriented process designed to achieve a pre-destined value below the deal price.

Petitioners agree that Dell's MBO involved "real money."[1] But so did the billions of dollars invested by Petitioners and the rest of Dell's public stockholders who watched the value of their investments decline while MSD invested $14 billion of the stockholders' money with the promise that the long-term results would make up for the short-term pain. Petitioners trusted MSD, and were entitled to share in the benefits created by their investment capital. MSD took the Company private at a trough in the Company's stock price created by his decision to manage the enterprise for the long term. Delaware's appraisal remedy promises Petitioners the fair value of their stock in the Company as a going concern as of the closing of the transaction, without regard to the financial engineering that drives an MBO process. A properly constructed valuation model using a DCF of the

[1] ROB:1.

projections adopted by the Special Committee and written by the buyers establishes that fair value to be $28.61 per share.

As an alternative, to address concerns expressed by the Court during trial, Petitioners offered a valuation based on Professor Hubbard's model but using the Bank Case projections (without cost savings) showing a valuation of $20.24 per share. Dell's response is that the alternative valuation is unreliable because it "remains above the merger price by $11 billion."[2] But by tying its criticism to the deal price, Dell reveals the fundamental problem with its entire defense. Dell's argument hinges on the false premise that the deal price presents an irrebuttable presumption of fair value. That is just not the case. MSD knew that the market price did not reflect Dell's true value. Silver Lake knew that the deal price it negotiated would allow it to triple its investment in just a few years without any change to the Company's existing business model. And even the Special Committee was advised that the price negotiated through an MBO model would not approach the fair value of the Company as determined by a DCF analysis. There is simply no legal or economic support for Dell's argument that an MBO deal price is a "ceiling" on fair value. It is not.

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[2] ROB:60.

ARGUMENT

I. THE MERGER PRICE DOES NOT REPRESENT THE FAIR VALUE OF DELL AS A GOING CONCERN

Dell's opening brief ignores the admission of MSD and Silver Lake that the price they paid for Dell had ***nothing to do with what the Company was worth as a going concern***.[3] The failure to address this undisputed fact is critical. Dell does not – and cannot – dispute that the issue for this Court is the fair value of Dell as a going concern, not the highest price someone was willing to pay in a sale transaction.[4] For that reason, evidence that the price paid was set without regard to the Company's fair value powerfully refutes the claim that the negotiated sales price should set a ceiling on fair value. There is nothing "circular" about this point, and it makes perfect economic sense.[5]

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[3] PTO¶132;JX894:67-68(Durban); JX894:11-12(Durban)(in evaluating an investment Silver Lake is "***not concerned at all … with the intrinsic value analysis of business***")(emphasis added); JX894:13-14(Durban)(Silver Lake set a price it was willing to pay based on a financial model that set the maximum price it could pay and still hit a targeted IRR within a five-year window); TT465-467(Dell)(MSD had no view on what Dell was worth as a going concern and deferred to Silver Lake to set an appropriate price).

[4] *See, e.g.*, *In re Appraisal of Orchard Enters., Inc.*, 2012 WL 2923305, at *5 (Del. Ch. July 18, 2012)("[T]his is an appraisal action, not a fiduciary duty case, and although I have little reason to doubt Orchard's assertion that no buyer was willing to pay Dimensional $25 million for the preferred stock and an attractive price for Orchard's common stock in 2009, an appraisal must be focused on Orchard's going concern value.").

[5] ROB:26.

JPM's October 2012 presentation informed the Special Committee that while a DCF showed an intrinsic value of the Company as a going concern between $20 and $27 per share,[6] a purchase price from a sponsor in an LBO would max out at $14.13 per share[7] – representing a discount of between 25% and 48%. Dell *does not dispute* this, and in fact ***concedes that the MBO model is not "oriented toward solving for enterprise value."***[8] Dell's attempt to dismiss JPM's MBO analysis by pointing out differences between JPM's DCF and MBO models just highlights the fact the MBO model does not purport to arrive at the intrinsic value of the enterprise.[9] Dell's concession in this regard, with the undisputed

[6] JX162:15.

[7] JX162:27.

[8] ROB:27("Because both models rely on the same cash flows, a MBO model should support the same enterprise value result on a risk-adjusted basis as a DCF model, ***if the MBO model were oriented toward solving for enterprise value*****, *which it is not.*"** (emphasis supplied)). *See also* DONALD M. DEPAMPHILLIS, MERGERS, ACQUISITIONS, AND OTHER RESTRUCTURING ACTIVITIES (7th ed. 2014)("[T]he DCF analysis solves for the present value of the firm, while the LBO model solves for the internal rate of return.").

[9] The MBO model is built to assume that "exit multiple equals entry multiple," and calculates an ability to pay based on assumed growth rates, holding leverage and required IRR constant. JX162:27(calculating ability to pay based on assumed growth rates from (0.2%) to 6.8%, based on 3.1x leverage, 20% IRR and "assum[ing] exit multiple equals entry multiple"); *see also* JX874:107-108(Rajkovic). With a typical 5 year exit, the MBO model excludes any value in a DCF model of the terminal period. Likewise, with respect to the "repatriation tax," JPM's Rajkovic explained that because Dell did not have any plans to repatriate its foreign cash, the potential tax implications from repatriation were only relevant in the MBO context where the cash would be used to pay down the debt created from the going private deal. JX874:52-54(Rajkovic).

evidence that Silver Lake arrived at the deal price using an MBO model and without regard to Dell's fair value, flatly refutes any suggestion that the deal price is a "ceiling" on the fair value of Dell as a going concern. As JPM correctly points out: an MBO price is not even the floor.[10]

Moreover, the fact that Dell can imagine changes to JPM's MBO model that could, in theory, bring an "ability to pay" analysis more in line with the fair value implied through a DCF[11] is irrelevant. JPM explained that the MBO model it presented to the Special Committee was the same[12] for any equity sponsor,[13] and

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[10] That an LBO price would come in below a DCF valuation is not unique to the Dell MBO, but is widely known within the investment banking community. *See, e.g.,* JOSHUA ROSENBAUM & JOSHUA PEARL, INVESTMENT BANKING: VALUATION, LEVERAGED BUYOUTS, AND MERGERS & ACQUISITIONS (2d ed. 2013)("Traditionally, the valuation implied by LBO analysis is toward the lower end of a comprehensive analysis when compared to other methodologies, particularly precedent transactions and DCF analysis. This is largely due to the constraints imposed by an LBO, including leverage capacity, credit market conditions, and the sponsor's own IRR hurdles.").

[11] ROB:27-28

[12] TT751:11-17(Rajkovic)("Q. So among the big boys in private equity, and I know you don't want to hear this, they basically have the same models, the same hurdle rates, the same returns and, in fact, often the same clients. Correct? A. They come fairly close unless - they come fairly close in most situations. Yes they do."); JX874:108(Rajkovic)("Q. This isn't Michael Dell or Silver Lake[] specific? A. Just for anybody. …").

[13] TT749-750(Rajkovic)("Q. And you guys have a lot of experience with LBOs there at JPMorgan. Right? A. We do. Q. And you know what kind of IRRs these firms try to achieve. Right? A. We do. Q. And you know the time frame at which they try to get out. Correct? A. We do. Q. And you know the leverage that they try to put on, both their ability to get the amount of leverage but also the amount of leverage they need to get certain returns. Correct? A. Yes. Q. And you took all

Silver Lake confirmed that it calculated the deal price using the same MBO parameters that JPM presented in October 2012.[14] So Silver Lake's concession that it did not even consider Dell's intrinsic value is fatal to Dell's argument that the deal price is a ceiling.

MSD and Silver Lake took Dell private in an opportunistically timed buyout designed to capitalize on a long-recognized disconnect between the Company's fair value and its trading price. Long-term stockholders, such as T. Rowe Price,[15] having footed the $14 billion bill for Dell's transformation, were cashed out at the trough and prevented from sharing in the massive upside MSD and Silver Lake

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that into account, and you said based on the September 21 most current management forecasts, with no inversions, that the implied maximum price to pay would be $14.13 in an LBO. Right? … A. Yes. Correct. Q. Okay. And so you basically told the board, 'Look, in an LBO, don't expect anything that's going to come in above that.' Right? A. We told them that using this model and with the assumptions around leverage and return, that is what value the model would indicate …").

[14] Before it submitted its initial indication of interest, Silver Lake projected that it would earn a return of 32% (a 3x MoM) on its investment in Dell, assuming a $12 per share purchase price and a January 2017 exit at a 4.0x trailing EBITDA. JX716:61. Before it submitted its $13.65 offer, Silver Lake projected that it would earn an annual return of 34% (a 2.8x MoM) on its investment, assuming a $13 per share purchase price and a January 2017 exit at a 4.0x trailing EBITDA. JX293:58.

[15] T. Rowe Price and/or its clients who seek appraisal here have been Dell stockholders for more than five years leading up to the MBO, believing in MSD's promise to transform the business through the sacrifice of short-term performance in favor of long-term value.

reaped in less than a year of taking the Company private.[16] Dell's assertion that "Petitioners simply cannot explain why investors walked away from more than $26 billion value above the merger price" is just wrong.[17] JPM's analysis proves this point. JPM's analysis showed a valuation disconnect of over $22 billion between the intrinsic value of Dell as reflected through a DCF and what a leveraged buyout bidder would be willing to pay.[18] This is consistent with the disconnect in the market price that Dell's board and management had acknowledged existed in the months preceding the Transaction.[19]

Absent significant planned changes in a business, MBO participants do not pay a price that reflects the intrinsic value of the enterprise, because to do so would preclude them from achieving the outsized returns demanded by private equity sponsors. To explain, an investor seeking to increase the value of an enterprise can do so either by growing revenues through increased sales or value-accreting acquisitions, or by cutting costs (thus increasing profits) either organically or

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[16] POB:5-13.

[17] ROB:28.

[18] Dell had 1,758,001,669 outstanding shares prior to the merger. *See* Exhibits 1-3 to Transmittal Affidavit of Christine M. Mackintosh In Support of Certain Petitioners' Brief In Support Of Motion For Summary Judgment Regarding Entitlement To Appraisal, And In Opposition To Respondent's Motion for Summary Judgment (Transaction ID 58398103). $27.00 - $14.13 = $12.87; $12.87 x 1,758,001,669 = $22,496,781,480.03.

[19] *See*, *e.g.*, JX97:16(acknowledging $25 billion "valuation discount").

through strategic combinations that create synergies.[20] Either option, however, requires changes to an otherwise static business model. In other words, if an investor pays a price truly reflective of the intrinsic value of an enterprise, that investor does not increase the value of its investment merely by executing on a company's existing business strategy and meeting its forecasted projections. Instead, the investor must make changes to that strategy that either increase the projections or allow for inorganic growth or synergistic savings. An investor participating in an LBO, therefore, can make a return on its investment in one of two ways. It can either (a) implement the kind of strategic initiatives necessary to change the existing business model and increase an enterprise's intrinsic value, or (b) acquire the company at a price below the intrinsic value and thereafter sell the asset a time when the intrinsic value can be realized.[21]

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[20] JOSHUA ROSENBAUM & JOSHUA PEARL, INVESTMENT BANKING: VALUATION, LEVERAGED BUYOUTS, AND MERGERS & ACQUISITIONS, p. 184 (2d ed. 2013).

[21] *See, e.g.,* Brian Ayash, Robert P. Bartlett, III, and Annette B. Poulsen, "The Determinants Of Buyout Returns: Does Transaction Strategy Matter?" (UC Berkeley Public Law Research Paper No. 1712393, 2010)(describing three types of LBOs: (1) the agency-cost reducing or "classic" LBO – "an LBO is considered 'shock therapy designed to cut back wasteful investment, force sale of underutilized assets, and generally strengthen management's incentive to maximize value'"; (2) the growth-oriented or "entrepreneurial" LBO – building "operational value" by bringing "CEO-style thinking, with a focus on top-line growth and boosting profitability in ways that nurture, rather than gut, businesses"; and (3) the market timing or "opportunistic LBO" – achieving returns "by means of transaction structures that have little to do with improving a company's operating efficiency" in a transaction "designed primarily to sell quickly (or 'flip') what is perceived to be an under-priced asset").

Here, neither MSD nor Silver Lake intended to make *any* fundamental changes to Dell's business as a private company. MSD explained to the Special Committee the strategies that he would pursue with Dell as a private company,[22] and the evidence is clear that each of these strategies could have been accomplished in a public company setting.[23] In fact, Dell's Vice Chairman and President of Global Operations confirmed that the Company *already was implementing* these strategies as of June 2013.[24] Well before the close of the Transaction, both MSD and Silver Lake viewed Dell's $14 billion transition from an EUC business to an ESS business as ***complete***.[25] Neither MSD nor Silver Lake

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[22] PTO¶146("On December 6, 2012, the Board held an in-person meeting, at which Mr. Dell made a presentation during which he outlined the strategic initiatives he would cause the Company to undertake as a private company, including (1) seek to become more competitive in the global PC industry; (2) hire thousands of salespeople, particularly in the mid-market segment of the Company's enterprise business; (3) seek to compete more effectively in China; (4) accelerate changes in the Company's business model from a configure-to-order model to a built-to-stock model; and (5) continue the Company's transformation into a broad IT solutions business.").

[23] *See, e.g.*, JX865:196-198(Gladden)(Gladden acknowledges that "absolutely" each of the strategies MSD identified "could have physically been done" in a public company); JX877:149-150(Ning)(same).

[24] JX552(June 21, 2013 Forbes article, "Dell's PC Growth Strategy: In It To Win It"; summarizing speech by Dell Vice Chairman and President of Global Operation Jeff Clark outlining Dell's "comprehensive plan" to succeed "in every country, every channel and at every price point"); JX865:199-205(Gladden)(confirming that Dell had already begun implementing MSD's initiatives, as stated by Jeff Clark and reported in Forbes).

[25] JX:530:6("Today's Dell is a customer-inspired end-to-end solutions provider. One that has evolved from a PC manufacturer to a true IT solutions partner.");

contemplated any necessary future acquisitions,[26] and in presentations to rating agencies and debt investors, they emphasized that Dell's strategy going forward was to continue to execute on the strategy that had been implemented by Dell prior to the closing of the Transaction.[27]

Indeed, BCG explained to the Special Committee that the *only* advantages MSD could realize by taking Dell private that were not otherwise available to the public company were (1) accessing offshore cash tax efficiently (to pay down debt incurred in the acquisition), and (2) ***arbitraging the value of Dell itself***, or in BCG's words "***buy low, sell high.***"[28] This, again, proves Petitioners' point.

A private equity sponsor participates in an LBO expecting to make returns that are vastly greater than those generally available in the public markets. JPM's

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JX894:59(Durban)(Durban admits that Dell "had transformed itself into an enterprise company at the time of the closing").

[26] JX877:133(Ning)(as of December 2012, Dell was not contemplating additional acquisitions in furtherance of transformative strategy);JX894:327-329(Durban)(Silver Lake did not plan to make any specific acquisitions after Dell went private and there was nothing that Dell "had to absolutely buy after the closing" to complete the transformation);JX706(in response to question about acquisitions, MSD stated, "We're in pretty good shape. There's not big areas where we're missing things. We feel pretty good about the portfolio that we have. … There aren't any huge deals that we need to do.").

[27] JX669:8(Ratings Agency Presentation notes: "Future acquisitions are expected to be complementary rather than transformational in nature."); JX239:8(Silver Lake draft presentation to banks to secure financing on the deal dated December 2012: "Transformation completed. Acquisitions have filled key capability gaps.").

[28] JX229:60.

Rajkovic testified that the typical demand for private equity is at least a 20% IRR over five years.[29] Silver Lake here was projecting returns significantly higher than that.[30] If neither MSD nor Silver Lake contemplated any significant changes to Dell's business model and strategies as a private company, the only way to obtain a 20%+ five-year IRR is to have the MBO acquisition price below the intrinsic value of the enterprise.

"The basic concept of value under the appraisal statute is that the stockholder is entitled to be paid for that which has been taken from him, *viz.*, his proportionate interest in a going concern. By value of the stockholder's proportionate interest in the corporate enterprise is meant the true or intrinsic value of his stock which has been taken by the merger." *Tri-Continential Corp. v. Battye*, 74 A.2d 71, 72 (Del. 1950) (cited with approval in *Weinberger v. UOP, Inc.*, 457 A.2d 701, 713 (Del. 1983) ("This is not only in accord with the realities of present day affairs, but it is thoroughly consonant with the purpose and intent of our statutory law.")). Dell concedes that a price determined through an MBO model does not reflect the enterprise value of the acquired corporation.[31]

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[29] JX874:56(Rajkovic).

[30] *Supra* n.14.

[31] ROB:27(admitting that MBO model is not "oriented towards solving for enterprise value").

Accordingly, the Court should not defer to the deal price that Silver Lake determined through its MBO model in determining the fair value of Dell here.[32]

II. DELL'S BRIEF IGNORES CRUCIAL EVIDENCE

In its Opening Brief, Dell advances two themes: (1) at the time of the merger, Dell was a company in peril that was struggling to maintain its position in the contracting PC market and failing in its bid to transition to an ESS provider; and (2) the Special Committee "rescued" the stockholders from the sinking Dell ship by overseeing a robust sales process that netted the stockholders a healthy premium over Dell's lackluster trading price. But the evidence at trial, set forth at length in Petitioners' opening brief, paints an entirely different picture.

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[32] While Dell makes much of the fact that the Chancery Court looked to the merger price in determining fair value "[i]n four appraisal cases this year," none of the cases it cites was an MBO and thus none involved the structural hurdles Professor Subramanian identified. Further, in three of the four cases – *In re Appraisal of Ancestry.com, Inc.*, 2015 WL 399726, at *6 (Del. Ch. Jan. 30, 2015); *Merlin Partners LP v. AutoInfo, Inc.*, 2015 WL 2069417, at *3 (Del. Ch. Apr. 30, 2015); and *LongPath Capital, LLC v. Ramtron Int'l Corp.*, 2015 WL 4540443, at *6 (Del. Ch. June 30, 2015) – the company had never prepared multi-year projections before, rendering reliance on a DCF problematic. And in the final case – *Merion Capital LP v. BMC Software, Inc.*, 2015 WL 6164771 (Del. Ch. Oct. 21, 2015) – the court found that "the sales process was sufficiently structured to develop fair value of the Company"– a far cry from the facts here, where, as Professor Subramanian explained, institutional details and practical realities impeded the submission of a topping bid. *Id.* at *16.

A. DELL IGNORES EVIDENCE THAT THE BUYOUT WAS OPPORTUNISTICALLY TIMED

Dell ignored the following evidence that the buyout was opportunistically timed:[33]

- MSD managed the Company for the long-term, making strategic decisions that he knew would drive the stock price down in the short-term;[34]

- MSD approached the Board to suggest a going-private deal when Dell's stock price had fallen sufficiently that he believed it was possible to take the Company private;[35]

- A long-standing, widely noted valuation gap existed between Dell's public price and what insiders – including Dell management and

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[33] Despite the substantial time Petitioners devoted both at trial and in their opening brief to establishing that the Dell MBO was opportunistically timed, Dell's sole acknowledgement that such a theory is at issue here was its assertion that ***Professor Subramanian*** had "distanced himself" from a claim of opportunistic timing. ROB:20. Dell's assertion is nonsense. And in fact, Professor Subramanian made clear in his report that he was not going to "express an opinion" ***one way or the other on this issue*** – something fundamentally at odds with the notion that he was "distancing himself" from such a claim. SRR¶87.

[34] JX96:2(MSD "committed to accelerating [the] transformation" by continuing to "sacrifice short term results"); TT463(Dell)(acknowledging that decisions to manage for long-term had effect of driving down stock price).

[35] JX891:15(Dell)(prior to the time he approached the Board in August 2012, MSD did not think it was possible to take the Company private, so he did not give it much consideration); TT457(Dell)(at the time MSD decided to explore taking the Company private, he believed Dell's shares were undervalued); TT463(Dell)(MSD admits it is "easier to buy out a company if the stock price is lower" and that the "strategic decisions [he] made wound up having the effect of driving down the stock price").

advisors – thought the Company was actually worth at the time of the transaction;[36]

- MSD ***admitted*** that he had paved the path for an opportunistic buyout by putting the Company in play when its stock was at historic lows[37] and at a time when he believed that the Company's shares were significantly undervalued;[38] and

- The Company's stock chart, plotted against internal historic valuations, and MSD's decision to take Dell private:

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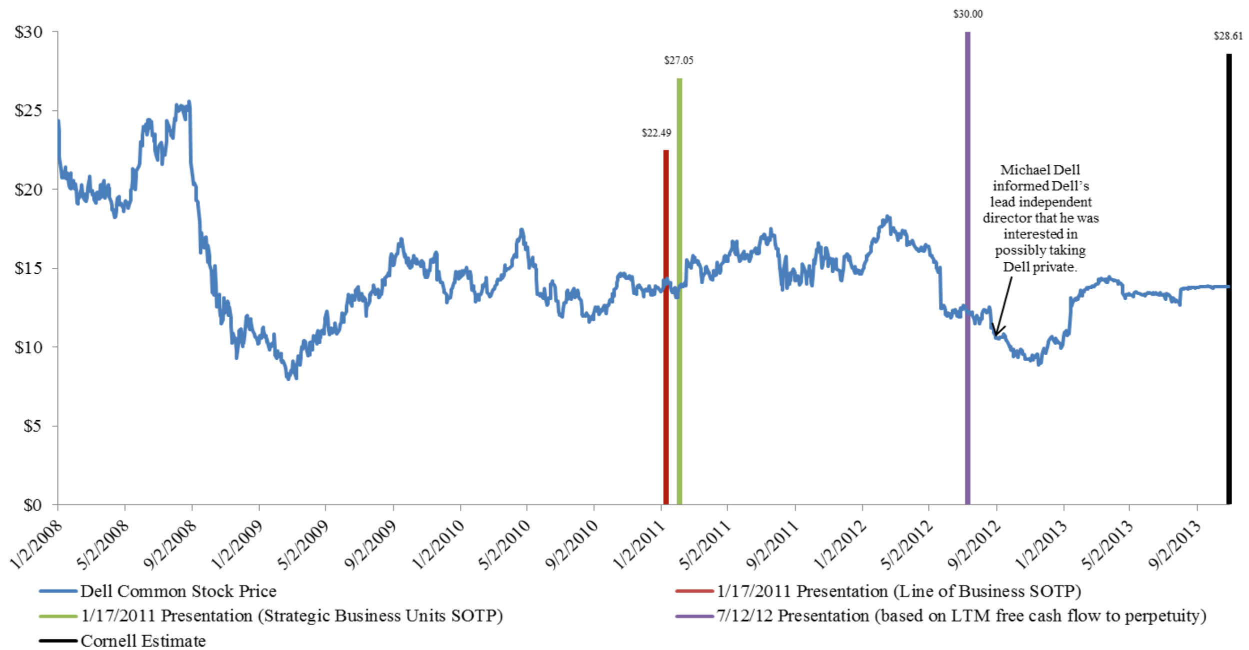
[36] JX45:1(January 2011 sum-of-the-parts analysis by Dell management valuing Dell much higher than its trading price);JX97:10, 16(market valuing Dell as if it would have 20% FCF decline into perpetuity; $25 billion "valuation discount"); JX170:4,6(Goldman Sachs told Special Committee that Dell's stock price and trading multiples lagged peers due to "a broad disconnect from valuation fundamentals" and that companies "at the center of industries undergoing major structural changes often suffer from depressed valuations that seem 'disconnected' from fundamentals" "for protracted periods"); JX344:42(BCG told Special Committee that Dell's "<u>low valuation</u> does not match apparent company strengths" and that "[a]t consensus profitability, [Dell] will generate its own market cap in free cash flow in 3.2 years … with zero terminal value implied").

[37] TT453-454(Dell)(MSD put Company in play when the stock price was "certainly comparatively low to where it had been the previous five years"); TT463(Dell)("Q: When you're doing a buyout, it's easier to buy out a company if the stock price is lower, correct?; A: Yes.; Q: And so these strategic decisions that you made wound up having the effect of driving down the stock price, correct?; A: Yes."); JX437:5($13.65 represented "less than eight times earnings";"[n]o major company has ever gone private at such a low valuation"); JX891:47(Dell)(MSD aware that "multiples of revenue for a company like ours would be at the lower end of all companies, whether they were public or private or going private").

[38] TT457(Dell)("Q: Now, prior to you deciding that you want to explore taking Dell public – private, you believed that Dell's shares were significantly undervalued; correct?; A: Correct.").

Dell Inc.
Market Price and Intrinsic Value of Common Shares Outstanding
January 2, 2008 - October 29, 2013



Sources: Bloomberg L.P.; Dell Investor Relations Sum of the Parts Analysis, January 17, 2011 (DELLE00148383); Dell Inc. Board of Directors Meeting, July 12, 2012 (DELL00017558); Revised Cornell Report, ¶ 46.

B. DELL IGNORES THAT THE MBO GROUP MANAGED TO DOUBLE ITS MONEY IN LESS THAN A YEAR OF TAKING DELL PRIVATE, EVEN THOUGH IT MADE NO SIGNIFICANT CHANGES TO THE COMPANY'S STRATEGY

Petitioners introduced evidence that MSD and Silver Lake doubled their money inside of a year[39] – without making ***any*** significant changes to the Company's strategy[40] – to support their claim that MSD and Silver Lake had

[39] TT479-480(Dell)(Silver Lake May 2014 sum-of-the-parts analysis confirmed that MSD and Silver Lake "basically had doubled [their] investment"); JX892:387-388(Dell)(*Bloomberg* report that value of equity stake had nearly doubled was "reasonably accurate").

[40] TT463-464(Dell)(same strategy as a private company).

bought the Company on the cheap. Dell does not dispute this evidence and offers no response.

C. DELL IGNORES EVIDENCE THAT THE COMPANY'S POOR SHORT-TERM PERFORMANCE WAS NOT REFLECTIVE OF ITS LONG-TERM EARNING POTENTIAL

In noting the Company's allegedly "bleak" performance in the time leading up to the merger,[41] Dell ignores that (1) MSD had made a conscious choice to trade margin for share, which he knew would cause the Company to perform poorly in the short term;[42] and (2) BCG found that Dell's revenue misses did not evidence a "fundamental shift in earnings power" but were "due to mix shift" (*i.e.*, shifting to higher volume in lower margin products).[43]

In fact, after Dell announced the deal with MSD and Silver Lake, and while the Company was actively (and to a large extent unsuccessfully) soliciting shareholder support for the Transaction, MSD made managerial decisions that he knew would drive down the Company's revenue in the short term by lowering prices on computers.[44] Although consistent with MSD's "manage for the long

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[41] ROB:7.

[42] *Supra*, n.34.

[43] JX512:5.

[44] TT509-510(Ning)(describing Dell's "strategic choice to switch from pursuing margins … to pursuing share and ceding price" during the first quarter of FY14);JX531:23(May 31, 2013 BCG presentation to the Special Committee: "Price was traded off for share ahead of cost reductions in Q1, decreasing EUC profitability.").

term" strategy, it is disingenuous for Dell to ignore this undisputed fact in arguing that the BCG forecasts were somehow "optimistic"[45] when the Company's cost savings in fact were on track to exceed even the BCG 75% Case[46] and MSD himself made strategic decisions that drove down revenue while soliciting support for his buyout. *Delaware Open MRI Radiology Assocs. v. Kessler*, 898 A.2d 290, 315 (Del. Ch. 2006) (strategic decision that negatively impacted valuation should not be taken into account in valuing corporation in appraisal action).

D. Dell Ignores That The Realities Of The MBO Process Rendered The Sale Of Dell At A Below-Fair-Value Price A Foregone Conclusion

In addition to the uncontested fact that a price determined through an MBO model is not reflective of the intrinsic value of the Company as a going concern, Petitioners' opening brief recounted other evidence explaining why the Special Committee's decision to sign a deal with Silver Lake rendered a sale of Dell at a below-fair-value price a *fait accompli*.[47] Dell ignores all of the following:

- The Special Committee's banker testified that a take-private of Dell at a level within the DCF value range would have been ***impossible***, because a buyer "would have to [take on] leverage that you could not get in the marketplace to [offer] $19 per share";[48]

[45] ROB:30.

[46] *Infra* n.117.

[47] POB:8-9, 10-12.

[48] JX874:106-107(Rajkovic).

- The Special Committee was told that if it accepted a deal with Silver Lake, it would have to deliver that deal or subject the stockholders to further harm;[49]

- The Chair of the Special Committee admitted that the Committee's awareness that a failed deal could subject the stockholders to greater harm created a perverse incentive for the Committee to cling to the Silver Lake deal ***regardless of its price*** for fear that the stockholders would end up worse off if the deal did not close;[50]

- The deal price was so low that the Special Committee's financial advisors had to use negative perpetuity growth rates (i.e., they had to assume the "***perverse sort of outcome that [Dell] is assumed to go down to basically zero over time***")[51] to find the deal price fair;[52] and

- Even though the Special Committee did not think it was reasonable to assume that Dell would to go zero over time,[53] ***they agreed to a deal that could only be considered "fair" under that assumption.***

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[49] JX411:3(25 withdrawn take-privates from 2005-2012: 60-day average share price decline of 21%, 2-year average share price decline of 34%; 112 voted down transactions from 2005-2012: average 1-year price decline of 27%, average 2-year price decline of 60%).

[50] JX867:172(Mandl)("Q: Did this analysis that J.P. Morgan provided to the special committee create an incentive for the committee to hold onto [MSD]'s offer, regardless of its price, out of fear of what could happen if it was withdrawn or taken or voted down?; A: It was, of course, part of the consideration."); TT234(Mandl)(same).

[51] JX874:227(Rajkovic).

[52] JX300:25-26(EBITDA exit multiples JPM used in fairness opinion presentation translated into negative perpetuity growth rates); TT410(Hiltz)(terminal multiples Evercore used in its DCF for its fairness opinions all implied negative perpetuity growth rates).

[53] TT235(Mandl)("Q: [Y]ou didn't really think that, in perpetuity, that Dell was going to get smaller and smaller and smaller and go out of business, did you?; A: An unlikely scenario, no.").

E. Dell Ignores Evidence That A Strategic Buyer Was Unlikely To Emerge

Dell attempts to refute Petitioners' arguments about the realities of the MBO process by noting that a strategic purchaser would be immune to them.[54] Dell ignores, however, that the very banker it brought in to run the sales process admitted that it was "unlikely that any strategic acquirer would want to acquire all of Dell's business."[55] Dell's suggestion that this Court should "just ignore" the realities of how the MBO game is played because "a strategic buyer *could* have emerged" is baseless.

III. DELL IMPROPERLY DISMISSES SIGNIFICANT EVIDENCE CONFIRMING THAT THE SALES PROCESS WAS NOT AN ADEQUATE TOOL FOR DISCOVERY OF FAIR VALUE

Dell argues that the deal price represents a "ceiling" on fair value based entirely on Professor Hubbard's assertion that the Special Committee implemented "restrictions and safeguards [that are] consistent with a process that aligns the incentives of all parties to achieve a fair price for non-continuing stockholders and also allows bidders other than those initially involved to participate on an equal basis."[56] Dell's argument is misplaced.

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[54] ROB:26.

[55] TT368(Hiltz). *See also* TT551(Nicol)("[P]ursuing a strategic buyer, there were few to be found.").

[56] HOR¶113.

First, Professor Hubbard was not offered as an expert in deal process design.[57] Professor Subramanian is the only "expert in deal process design" in this case,[58] and he explained in detail how the institutional details and practical realities of a go-shop in the MBO context create an unlevel playing field, thereby preventing the sales process from serving as a valid tool of price discovery.[59] Second, while Professor Hubbard alleges that the sales process was fair because (1) it "align[ed] the incentives of all parties to achieve a fair price for non-continuing stockholders" and (2) its "allow[ed] bidders … to participate on an equal basis,"[60] the evidence is to the contrary. Although Dell appears to have abandoned its claim that the sale of Dell took place on a level playing field,[61] Dell persistently misrepresents or omits critical facts concerning the sale of Dell in

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[57] Professor Hubbard's attempt to dress up a deal process opinion in valuation clothing should be disregarded. HOR¶125("***From a finance perspective***, [the sale process] was designed to attract multiple qualified buyers and obtain maximum value for existing stockholders.")(emphasis added). Professor Hubbard is not qualified to opine on deal process design.

[58] TT769(Subramanian)(Professor Subramanian qualified as an expert in deal process design).

[59] *See generally* SRR¶¶37-57(institutional details and practical realities of MBO go-shop processes);¶¶81-133(examination of how these institutional details and practical realities impacted Dell sale process).

[60] HOR¶113.

[61] *Compare* HOR¶113(restrictions and safeguards in sales process "allow[ed] bidders other than those initially involved to participate on an equal basis") *with* JX915:391(Hubbard)("I'm not answering that there was or wasn't a level playing field …").

urging this Court to ignore whatever "unlevelness" may have existed in the Dell playing field as immaterial.[62]

Professor Subramanian's report identifies four features of an MBO go-shop process that create an unlevel playing field (valuable management; information asymmetries; ticking clock; and managerial incentives to discourage third-party bids) and explains how each of these features was present in the Dell go-shop. Dell mischaracterizes the evidence in arguing that Professor Subramanian's "theories" about these factors was "untethered to actual evidence in this case."[63]

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[62] Dell's repeated criticism of Professor Subramanian's failure to "quantify" the structural hurdles that he identified misses the mark. ROB:2,25. Professor Subramanian was called to rebut Professor Hubbard's opinion that the strength of the sales process allows the Court to use the merger price as a fair value ceiling. Professor Subramanian's task, accordingly, was not to "quantify" anything but, rather, to offer an opinion on whether the Court should rely on the sales process as "an effective tool of price discovery" given the institutional details and practical realities of MBO go-shops. SRR¶35. Professor Subramanian's conclusion that "the lack of formal third-party bids in the Dell MBO go-shop process should not be considered as evidence in favor of the fairness of the Dell/Silver Lake Offer" does not depend in any way on his ability to "quantify" the degree to which any of the structural impediments he identified impacted the sales process (assuming, *arguendo*, that such a "quantification" would even be possible). SRR¶35(c); JX917:69(Subramanian)(Subramanian did not spend significant time quantifying the deterrent impact of the four factors "because [he] was simply responding to Professor Hubbard's claim that it was an equal playing field" and his "response is it's not an equal playing field").

[63] ROB:20.

A. MSD'S FINANCIAL INCENTIVES DETERRED HIGHER BIDS

Professor Hubbard's claim that the incentives of all parties were "aligned" to achieve a fair price for Dell's stockholders is belied by Professor Subramanian's testimony that MSD's status as a net buyer gave him a powerful incentive to discourage an overbid.[64] Dell offers no meaningful response to Professor Subramanian's "net buyer" point; it ***does not even attempt to contest*** Professor Subramanian's analysis establishing that each $1 increase in deal price would cost MSD ***$250 million*** if debt and equity contributions increase proportionately, or over ***$1 billion*** if debt was held constant.[65] Instead, Dell (1) weakly notes that this analysis would not apply to strategic bidders (who, as set forth above, were not seriously expected to emerge as competing bidders) and (2) argues that a bidder looking to overcome this hurdle could get around it by ***paying more money for Dell***.[66] Far from refuting it, Dell's "pay more money" suggestion proves that MSD's financial incentives served as a deterrent.

Importantly, the deterrent impact of MSD's financial incentives existed regardless of MSD's subjective beliefs. A third party evaluating a potential

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[64] SRR¶¶54-57.

[65] Subramanian Demonstratives:9;TT794-796(Subramanian).

[66] ROB:24-25("Even a bidder looking to partner with [MSD] would not be meaningfully deterred from doing so because it could always offer [MSD] the same economics simply by increasing the value for his exchanged shares, adjusting the equity structure or by increasing the amount of debt undertaken in the transaction.").

overbid would recognize that compensating MSD to gain his support for an overbid would impact that third party's ability to achieve targeted returns.[67] As Professor Subramanian explained, each one dollar increase in the deal price would cost MSD $1,123 million in order to maintain the same 75% stake he had in his deal with Silver Lake.[68] A third party bidder seeking to match Silver Lake's deal with MSD but provide an additional dollar in consideration to the public shareholders, therefore, would have to pay $2,900 million[69] as compared to Silver Lake's $1,400 million contribution. This means that this hypothetical third party would be contributing over 41%[70] of the total equity in a topping bid, but still

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[67] TT791-92(Subramanian)("[T]his creates the concern for a third party to say that 'If I made an overbid, I am not going to be pleasing Michael Dell.' I mean, to put it bluntly, it's going to cost him money. And 'So either I partner with him and I'm costing him money or I don't have him in the mix, in which case I lose the value he brings to the table.' … As a matter of math, you could essentially give Michael Dell free shares and compensate him, make him whole and say 'You will be no worse off in our deal compared to your deal with Silver Lake,'; but obviously when you do that, you're going to be reducing your own returns as a private -- so it's another impediment.").

[68] TT794-796(Subramanian); Subramanian Demonstratives:10("The cost to MSD for each dollar increase in the deal price is $1,123MM").

[69] An additional $1,123M from MSD to maintain a 75% stake implies an additional $1,500M is required for each dollar increase in the merger price ($1,123M/.75). $1,500M+$1,400M=$2,900M.

[70] MSD/MSDC's total equity contribution in the Transaction was $4,169M, with Silver Lake's contribution at $1,400M. *See* Subramanian Demonstratives:8; JX1003(at F:42-47). Increasing an equity sponsor's contribution to fund a dollar increase reveals the following: $2,900M÷($4,169M+$2,900M)=41.02%.

would only receive the same 25% stake that Silver Lake had. That is not exactly a level playing field.

B. MSD WAS NOT "REQUIRED" TO WORK WITH ALTERNATIVE BIDDERS

As Professor Subramanian noted in his report, because "Dell is worth more with [MSD] than without him," "third-party bidders cannot simply 'bid a nickel more' because they don't necessarily have [MSD]."[71] Fear that they might not have access to MSD served as a powerful deterrent to the submission of a competing bid. To sidestep this critical issue, Dell falsely claims that MSD was "required" to work with all bidders. The uncontroverted evidence establishes that he was not.

When the go-shop began in February 2013, MSD had been working with his chosen partner, Silver Lake, on a transaction for ***nearly six months***.[72] Although Dell repeatedly asserts that MSD's longstanding affiliation with Silver Lake would not have deterred prospective bidders because MSD was ***required*** to "work in good faith" with potential competing bidders,[73] this is simply false. MSD was

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[71] SRR¶100; *see generally* SOR¶¶46-53, 100-104(explaining valuable management factor and how fear of lack of access to MSD would have served as an impediment to the submission of a competing offer).

[72] PTO¶91(MSD and Silver Lake begin to discuss going private in August 2012); PTO¶183(go-shop begins on February 5, 2013).

[73] *See, e.g.*, HOR¶111(asserting that "safeguards" in the sales process included "requiring [MSD] to" "work[] in good faith with other potential sponsors if

never required to work with any competing bidder,[74] but, rather, only "to ***explore*** in good faith the ***possibility*** of working" with other parties.[75] In fact, MSD at all times retained full *discretion* to refuse to work with anyone but Silver Lake.[76]

Dell's contention that "the record is unequivocal that [MSD] was prepared to work with any potential bidder" is similarly false.[77] It is clear that at least one prospective bidder, Southeastern Asset Management, was completely frozen out of the process.[78] Further, Dell refused to grant Carl Icahn's request for the same type of expense reimbursement agreement that it had granted to Blackstone ***unless*** Mr. Icahn agreed to drop his proxy contest.[79] This creates significant doubt about MSD's willingness to work with the famed activist investor. In light of this

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requested to do so by the Special Committee"); ROB:1(Special Committee "required [MSD] … to work in good faith with potential suitors"); ROB:9-10("[MSD] was required to enter into a restrictive confidentiality agreement requiring that he work in good faith with other potential sponsors[.]").

[74] Nor could he have been. U.S. CONST. amend XIII, §1 (barring involuntary servitude).

[75] JX945:2(emphasis added).

[76] *Id.*

[77] ROB:23.

[78] JX892:471-472(Dell).

[79] JX451:3("After discussion, the Committee determined that that Messrs. Rosen and Sard should draft a letter to Icahn Enterprises, declining its expense reimbursement request and detailing certain conditions under which the request would be reconsidered.").

evidence, Dell's claim that MSD was "prepared to work with any potential bidder" strains credulity.

Dell's observation that Professor Subramanian "did not question the subjective good faith of [MSD]" "in working with potential bidders" is irrelevant.[80] This issue is not whether MSD "might have" been willing to jettison Silver Lake in favor of another partner, but what a potential bidder who was contemplating getting in the line to pay the eight-figure, multi-thousand hour cover charge to try to crash the MSD/Silver Lake party would have believed.

C. INFORMATIONAL ASYMMETRIES PRESENTED A SIGNIFICANT HURDLE

Dell claims that the information asymmetry noted by Professor Subramanian was not a real impediment to a competing bid because any informational asymmetry could be negated by sufficient due diligence; and Petitioners "do not identify any bidder who was deterred" by the information asymmetry.[81] Dell is wrong.

First, Dell fails to respond to the most obvious point – that if a third party ***successfully*** bids against MSD, who presumably knows more about the Company

[80] ROB:24.

[81] ROB:21.

than anyone, that bidder likely has paid too much.[82] This "winner's curse" problem exists with respect to any third party considering a bid against an MBO.

Second, Dell's claim that "due diligence can bridge the gap" misses the mark, because it ignores the substantial time and effort needed to mount a diligence effort on a deal the size of Dell.[83] To put the effort needed to overcome the information asymmetries into context, one need look no further than the efforts that Blackstone needed to expend to reach "excluded party" status. The evidence established that Blackstone – who Dell's own banker acknowledged is one of the "most powerful private equity firms … in the world"[84] – assembled a due diligence

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[82] TT782 (Subramanian)("Management knows more about the company than any third party. As a third party, the implication is if you bid and you win, you've just learned that you think this company is worth more than management. Now, maybe you're really smart. Maybe you have some source of synergy or something else that makes you smarter than management; but absent that kind of edge, as I describe it in my class, you'd have to say to yourself, 'I've almost certainly overpaid because the inside bidder, they looked at my offer and the decided not to match it. So either I'm very smart, smarter than the inside people,' which is unlikely to be the case, 'or I've just overpaid.'").

[83] As detailed at length in Petitioners' Opening Brief and in Professor Subramanian's report, Dell's post-hoc agreement to reimburse Blackstone for up to $25 million is irrelevant to the decision a bidder standing at the starting line would have faced. POB:50-52; SRR¶¶126-129. And, in any event, this reimbursement agreement "represented only a portion of Blackstone's costs" and "was a lot less than they had, in fact, asked for." TT382(Hiltz);JX421(reimbursement to cover only external (*i.e.*, not in-house) costs and would not be used for financing commitment fees).

[84] TT399-400(Hiltz).

team so large that it filled a ballroom and needed to be microphoned to be heard[85] and expended in excess of $25 million[86] in out of pocket costs in connection with its diligence effort. The possibility that the information asymmetry "could be" bridged if a bidder were only willing to expend tens of millions of dollars and thousands of man-hours is no answer.

Dell similarly ignores the fact that "[p]otential strategic purchasers did not have access to all of the documents to which financial sponsors had access"[87] and that even Blackstone, which signed a confidentiality agreement and became an "excluded party," had to fight hard to get access to the documents that were voluntarily provided to Silver Lake.[88] Under these circumstances, Dell's suggestion that due diligence could "negate"[89] the deterrent effect of the information asymmetry rings hollow.

Finally, Dell cites no authority that requires Petitioners to "identify" any bidder who was deterred by the information asymmetry for the Court to accept Professor Subramanian's opinion that this was a real factor at play here. And, in any event, short of taking the deposition of every potential bidder to find out

[85] TT446-447(Dell).

[86] PTO¶196.

[87] PTO¶187.

[88] TT377-378, 405(Hiltz).

[89] ROB:21.

exactly why it decided not to enter the Dell MBO fray, Petitioners cannot conceive of how they could be expected to "identify" a bidder who was deterred by the real (or perceived) information asymmetry.[90]

D. THE TIME CONSTRAINTS WERE REAL

Faced with the undeniably real ticking clock problem, Dell mischaracterizes Professor Subramanian's testimony and ignores the actual evidence about just how much work it took to get to excluded party status.

Dell's claim that Professor Subramanian "disclaimed knowledge whether the 45-day go-shop window was a deterrent to anyone 'with the capital and sophistication to buy an asset as large and as valuable as Dell'" misstates his testimony. During cross examination, counsel for Dell asked Professor Subramanian to accept as "fair" counsel's assertion that getting to excluded party status is "not that hard" for "anybody with the capital and sophistication to buy an asset as valuable as Dell." Professor Subramanian responded that he did not know.[91] But he also explained that although a 45 day go-shop may not be uncommon in deals generally, the Dell MBO was 25 times larger than the average deal in his sample:

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[90] *See also* JX917:191(Subramanian)("You're asking me is there a bidder out there who decided not to participate … By definition, it's a non-event. How would I know about a non-event?").

[91] TT863-864(Subramanian).

> So if it's a billion-dollar deal, maybe 45 days is enough. But for a deal that's an order of magnitude larger, it becomes a lot more complicated to get to the finish line, or at least to excluded party status, by the time the 45 days has expired. And just to reiterate, that's true not just because of the size of the deal but because of the fact that you'd want to almost certainly consider a consortium bid.[92]

Dell's claim that Professor Subramanian "would not opine as to the difficulty of forming a consortium to purchase Dell"[93] is based on yet another mischaracterization of his testimony. In the cited testimony, Professor Subramanian merely explained that he was *not* "expressing an opinion about how likely it would have been that any bidder in particular could have formed a consortium to purchase Dell."[94] But he nevertheless explained that a consortium bid "takes time to line up and that exacerbates the ticking clock problem," because issues including "governance rights," "ownership," and "exit rights" that "tend to be heavily negotiated" need to be dealt with during the 45-day window, exacerbating the ticking clock problem.[95]

Finally, (1) the 45 day window was much less time than Silver Lake had with Dell before it submitted its bid and (2) Silver Lake continued to have access to Dell during the go-shop, creating "this constant question how do we play catch

[92] TT803(Subramanian).

[93] ROB:22.

[94] TT847(Subramanian)(cited in ROB:22n.62).

[95] TT780-781(Subramanian).

up."[96] So the 45 day window served as a very real obstacle to alternative bids, despite Dell's insistence to the contrary.

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Given the true facts surrounding the sales process, Professor Subramanian reasonably concluded that "***if there was ever a situation in an MBO where you would say this deck is stacked or this train has left the station, this is pretty much as close as you can get to that***."[97] The Dell playing field was not level.[98]

IV. PROFESSOR CORNELL PROPERLY RELIED ON THE PROJECTIONS PREPARED BY BCG AND ENDORSED BY THE SPECIAL COMMITTEE, AS WELL AS THE PROJECTIONS PREPARED BY SILVER LAKE

Dell's attacks on Professor Cornell's valuation are wrong. The record establishes that Professor Cornell's valuation is based on the most reasonable projections available, applies inputs that most closely reflect Dell's operative

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[96] JX917:198(Subramanian).

[97] TT895(Subramanian). In light of this testimony, Dell's complaint that Professor Subramanian "did not attempt to evaluate whether [the structural impediments] represent 'a big hill or a small one, big speed bump, little speed bump" is just silly. ROB:25.

[98] Dell's assertion that Professor Subramanian "acknowledged that the Special Committee took affirmative steps" to level the playing field by "providing expense reimbursement to bidders, limiting Silver Lake to a single match right, and incentivizing Evercore to obtain a superior proposal" is misleading. ROB:25. Professor Subramanian, in fact, opines that these efforts "were not sufficient to create a level playing field" and that "some aspects [of these efforts] potentially made the problem worse." SRR¶¶113; 114-133.

reality, and is faithful to valuation theory. Dell's critiques of this methodology misstate or ignore key aspects of the record.

A. DELL'S ASSERTION THAT PROFESSOR CORNELL DID NOT CONSIDER THE REASONABLENESS OF THE PROJECTIONS IS BASELESS

Dell portrays Professor Cornell as having abandoned his duty to evaluate the reasonableness of the projections. Not so. Professor Cornell performed a "review of the evidence in the record"[99] and determined that of all of projections, it would be most reasonable to rely on the BCG 25% and 75% Cases and the Bank Case. He explained clearly in his Opening Report that the BCG Cases were reasonable because they represented a "bottoms-up" approach and there was "ample evidence" in the record – which Professor Cornell cites – as to the achievability of the cost savings.[100]

Professor Cornell similarly assessed the reasonableness of the Bank Case, taking into account that it was the forecast created most closely in time with the merger itself;[101] that Dell's new owners relied on it to obtain buyout financing;[102]

[99] COR¶91.

[100] COR¶92.

[101] COR¶93.

[102] *See Owen v. Cannon*, 2015 WL 3819204, at *20 (Del. Ch. June 17, 2015) (noting that "projections that are provided to a financing source are typically given 'great weight'" because of criminal penalties associated with false representations).

that the CEO implicitly endorsed the projections;[103] that the Dell finance team agreed with the projection's key assumptions;[104] and that the model "provide[s] sufficient segment level detail to allow for an analysis of the growth rates and profitability of Dell's segments."[105]

Professor Cornell thus ***very clearly*** made a reliability determination when he chose the BCG and Bank Cases on which to base his DCF valuation. Dell's attempt to ignore this evidence by noting that Professor Cornell would not confirm the projections were "correct"[106] misses the mark. Because projections, by their very nature, are estimates of what will happen in the future, no expert – indeed, no truthful witness – would testify that any projections are "correct." And Professor Cornell explained at trial that his deposition testimony that he had not made a "determination as to the reasonableness"[107] of the projections was meant to convey only that he had not created his own set of projections to which to compare the

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[103] JX891:216-217(Dell)(MSD "looked at" the multiyear projections used in the Bank Case and "they looked fine").

[104] COR¶93.

[105] COR¶93.

[106] TT104:2-3(Cornell).

[107] ROB:36n.117.

BCG and Bank Cases[108] and he made clear that he *had in fact* assessed whether the projections were reasonable.[109]

Dell does not cite a single authority – judicial or academic – to suggest that a valuation expert must attest to the accuracy in every respect of the projections he uses. And for good reason: that is not an expert's role.[110] Professor Cornell did just what a valuation expert is supposed to do: consider the record and determine which, if any, projections were reasonable enough to rely on. What he did not do – unlike Professor Hubbard – was effectively create his own set of projections. As more fully described below, although offered as a valuation expert, Professor Hubbard made substantial modifications to the extant projections, despite admittedly lacking the expertise to do so, effectively assuming the role of an advocate.[111]

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[108] TT84:23-85:12(Cornell);TT87:7-12(Cornell).

[109] TT87:13-22(Cornell confirmed that he had performed the "type of assessment" that would allow him to note that "'Dell has in here that they're going to generate a bajillion dollars in top-line revenue. There is no way that any company can generate a bajillion dollars. I regard that as unreasonable.'").

[110] *See Cede & Co. v. JRC Acquisition Corp.*, 2004 WL 286963, at *2 (Del. Ch. Feb. 10, 2004)("[T]his Court…holds a healthy skepticism for post-merger adjustments to management projections or the creation of new projections entirely."); *Arganoff v. Miller*, 791 A.2d 880, 891 (Del. Ch. 2001)(rejecting a set of projections that reflected "a substantial negative revision" to management projections that he developed after the valuation date).

[111] TT687-88(Hubbard).

B. THE RECORD SUPPORTS PROFESSOR CORNELL'S RELIANCE ON THE BCG PROJECTIONS

Dell suggests that Professor Cornell's valuation is unreliable because he "did not assess whether a 50% Case was reasonable or realistically achievable."[112] He did. Professor Cornell specifically considered that "[t]here is ample evidence in the record regarding the implementation of the cost savings initiatives and actual results during the fiscal year 2014 to support the conclusion that management could reasonably be expected to achieve ***at least*** 50% of its projected cost savings as of the Appraisal Date."[113] ***BCG itself*** testified that it would be reasonable to rely on the 50% Case if Dell had in fact achieved 50% of its projected cost savings,[114] which it did.[115] In fact, because the Company successfully had implemented $1.6 billion in cost savings in FY14, and had plans to execute on an additional $1.5 billion in FY15,[116] Dell's success in achieving the cost savings

[112] ROB:39.

[113] COR¶92(Cornell)(citing by internal reference numerous depositions and documents); *see also* TT17:8-12(Cornell)("BCG didn't, in fact, have a 50 percent case, but given what they had done and given other facts I had seen in this case, I felt it was fair to weight their two cases 50/50.");TT:23:20-22(Cornell)("If [Dell] had been achieving savings to [the 50%] level, and the evidence indicates that they had, then a 50 percent case is reasonable.").

[114] JX877:268-69(Ning). Notably, Ning's conclusion made no reference to whether the cost savings resulted in an immediate 1:1 EBITDA increase. *Id.*

[115] JX807:5("Productivity program on target – realized $1.6B [of $3.3B] in FY14").

[116] *Id.*

exceeded even BCG's 75% Case.[117] Professor Cornell was entirely justified in applying the equivalent of a BCG 50% Case.

C. PROFESSOR CORNELL DID NOT NEED TO "UPDATE" THE BCG PROJECTIONS IN LIGHT OF THE AUGUST 2013 IDC FORECASTS

Dell is wrong when it claims that Professor Cornell erred by declining to "update" the BCG models to account for IDC's August 2013 PC forecasts. Professor Cornell's approach was entirely consistent with the record. After all, BCG considered whether to "update" its forecasts by reducing them further, and chose not to because there was no evidence of market price declines below what BCG had already modeled.[118] Dell's assertion that BCG never had the opportunity to consider the appropriateness of an update because it was never "asked" to update the projections is also wrong. BCG ***admitted*** that it "actually thought about whether [it] needed to update" the projections in light of macro changes to the PC market, including updated IDC forecasts, and concluded that no update to the BCG projections was appropriate.[119] As it explained in a presentation to the Special

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[117] Cornell Demonstratives:11(showing projected savings FY14-17; BCG 75% Case projected FY14 savings of $251M and FY15 savings of $1.256M); *see also* JX908A; JX650(Tab:BCG-Total).

[118] TT528(Ning).

[119] TT527-528(Ning);TT585(Nicol)("Q: And BCG had already projected what wound up occurring. Correct?; A: Correct.; Q: And, therefore, there was no need to update BCG's projections with new industry data. Correct? A: That is correct.").

Committee – with whom it conferred weekly[120] – "recent market developments [are expected] to have limited impact on Dell earnings power."[121] In fact, when a member of the Special Committee specifically inquired as to whether changes in the PC market impacted the continued viability of the BCG projections, BCG responded that *they did not*.[122]

Dell is also wrong in arguing that Professor Cornell's analysis is unreliable because he did not dilute cost savings to account for price competition.[123] Dell made a decision to lower prices in order to increase market share.[124] Dell's

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[120] JX919:111(Nicol).

[121] JX499:4.

[122] JX497:1("We are saying that for ***EUC our base case is consistent with the current situation and, per your point, is in line with the range of estimates that the Committee has incorporated***. On the ESS business, the impact is again a matter of where we assume we are in the range.")(emphasis supplied); JX919:116(Nicol)("I understood what Laura was asking, and I clarified that we're saying that our EUC Base Case, which was created at the -- the first engagement, is consistent with the current situation. It's also consistent with why I asked Lutao [Ning] to seasonally adjust the data to make sure that that data -- that this was not a -- an out of the ordinary reduction; and so, therefore, was in line with the estimates that we did. On the ESS business, the impact again is a matter of where we assume we are in the range. So [Laura Conigliaro] does make a good point about the alternative platforms, but it just implies that it should be in the lower end of the range, which we already had it in.").

[123] Dell's assertion that Professor Hubbard testified that "declines in Dell's pricing exceeded the total amount of the cost savings" is wrong. ROB:33. In the cited testimony, Professor Hubbard acknowledged only that the price reduction "appears to have been a fairly large consumer, if you will, of cost savings." TT628(Hubbard).

[124] TT463:17-20(Dell).

strategy reflects a choice to suffer short-term harm (in the form of lower margins and operating income) in the interests of a long-term expansion of its sales base.[125] The effects of this strategic decision made in the context of a MBO process[126] should not be considered in the determination of the value of Dell as a going concern.[127]

But more importantly, BCG considered this issue as well, and after realizing that Dell was cutting prices to gain share[128] it determined that Dell's strategic decision in this regard did not impact long-term earning power as forecasted in its original projections.[129] Accordingly, BCG again advised the Special Committee that an "update" *was not necessary.*[130] The Special Committee agreed.[131] Professor Cornell justifiably came to the same conclusion.

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[125] And, in fact, its pricing strategy began to have the intended effect within a year of the close. JX807:17(noting that "[a]ggressive pricing and optimized go-to-market coverage yielded Dell higher share and newly acquired customers").

[126] TT463(Dell).

[127] *Delaware Open MRI,* 898 A.2d at 315 (strategic decision by controller before a merger that negatively impacted valuation should not be taken into account in valuing corporation).

[128] JX520.

[129] JX536:19.

[130] JX512:5("[Q1] [r]esults more due to mix shift, not a fundamental shift in earnings power").

[131] JX919:163-164(Nicol)("Q: [A]t this meeting in May – on May – in May of 2013, did the Special Committee agree with your assessment – with BCG's assessment that it didn't fundamentally impact the Base case model? A: I don't recall whether they agreed or not. We were presenting this and they understood

D. PROFESSOR CORNELL REASONABLY RELIED ON THE BANK CASE

At trial, Professor Hubbard conceded that the Bank Case is a reasonable set of projections.[132] While he asserts that the Bank Case was generated to reflect a private company setting, he could not identify one significant item in the forecasts that would have been different in a public company context.[133] Dell entirely ignores the record evidence on this point, which establishes that the buyers were going to keep the same management, maintain the same strategy, and engage in projects that Dell admittedly could have accomplished as a public company.[134] To suggest ***without any evidentiary support*** that the buyers' own set of projections –

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what we said." "Q: Did the Board or Special Committee ask BCG to update its Base Case forecasts? A: No, because the point of this – of this slide was to say that there had been a change in the performance of the business, but it was driven by a management action that was really affecting the volume and price of the units, that we didn't think there was any underlying change in the business model." "Q: But [the Special Committee] didn't ask you to update the BCG Base Case forecast, right? A: Not that I recall.").

[132] TT664(Hubbard).

[133] JX915:105-106(Hubbard)("Q: And you understood that the business plan that was being executed as a private company was the same business plan that was being executed as a public company, correct? A: I think more or less that's true, yes.");JX915:328-329(Hubbard)(In response to questioning as to whether the Bank Case considered the implementation of the same business plan as the public company had in place, Hubbard responded "I suppose at the highest level, yes."); JX915:466(Hubbard)(discussing the fact that Dell as a public company used both long-term incentives and stock based compensation and that "both components are there" in the Bank Case);TT664-665(Hubbard).

[134] TT463-464(Dell).

the assumptions of which Dell's CEO endorsed[135] – is somehow unreliable because it was modeled for Dell as a private company is baseless.

Dell's attack on the Bank Case –which Professor Hubbard himself uses for corroboration – also neglects rulings of this Court that parties cannot simply choose to ignore projections they present to banks for the purposes of financing.[136] Yet that is exactly what Dell asks this Court to do.

E. PROFESSOR CORNELL PROPERLY SUPPORTS HIS 1% PGR

Dell also repeatedly misrepresents Professor Cornell's position as to the investment necessary to sustain a 1% perpetual growth rate. Professor Cornell does not, as Dell suggests, assume that investment is needed to support growth in the Bank Case but not the BCG 50% Case. Professor Cornell calculates the amount of investment needed to support growth in both the Bank and BCG 50% Cases ($451 million and $415 million respectively).[137] He then analyzed the projections, and considering the amount of investment and changes in net working capital already baked into each of the cases, he concluded that the forecasted investment amounts were "more than enough" to sustain a 1% PGR.[138] Professor

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[135] *Supra*, n.103.

[136] *Supra*, n.102.

[137] CRR¶¶27-28.

[138] CRR¶¶27-28. Professor Cornell's calculations assume that the annual reinvestment amount would grow by 1% each year in the terminal period, consistent with a 1% growth in free cash flows. CRR¶28n.62.

Cornell agrees that investment is necessary for growth. He also recognizes that such investment is sufficiently accounted for in each of the cases, and that adding additional investment is unnecessary and would artificially reduce Dell's value.

V. PROFESSOR HUBBARD'S ANALYSIS WAS METHODOLOGICALY UNSOUND, FACTUALLY UNSUPPORTED, AND EXCEEDED HIS EXPERTISE

Dell's assertion that Professor Hubbard's analysis "struck a balance between management optimism and market realism reflecting the operative reality of the Company on the merger date"[139] belies the fact that Professor Hubbard created his own set of unreliable projections through adjustments made outside the realm of his expertise, outside the realm of sound valuation methods, and outside the realm of Delaware law. Accordingly, Professor Hubbard's valuation is neither credible nor supported by the evidence and should not be adopted by the Court.

A. OPERATING OUTSIDE HIS ADMITTED REALM OF EXPERTISE, PROFESSOR HUBBARD CREATED HIS OWN SET OF PROJECTIONS THAT SHOULD NOT BE ADOPTED BY THE COURT

"Delaware courts are generally skeptical of projections created by an expert during litigation." *Owen*, 2015 WL 3819204, at *21; *see also Cede & Co.*, 2004 WL 286963, at *2 (courts "hold[] a healthy skepticism for post-merger adjustments to management projections"). This skepticism exists because "[t]he possibility of hindsight bias and other cognitive distortions seems untenably high." *Doft & Co.*

[139] ROB:3.

v. Travelocity.com Inc., 2004 WL 1152338, at *6 (Del. Ch. May 20, 2004) (citing *Agranoff*, 791 A.2d at 892). Here, contrary to Dell's assertion that Professor Hubbard "selected projections prepared by BCG,"[140] Dell concedes that Professor Hubbard ***rejected*** the BCG projections as prepared and opted to "bring it forward" to account for the August 2013 IDC forecast.[141] Far from, "selecting projections prepared by BCG," Professor Hubbard effectively ***created his own projections*** by making post-merger, litigation-driven adjustments that are outside of his expertise and are unsupported by the record evidence. These improper adjustments must be rejected.

Professor Hubbard ***admitted*** that he lacks the expertise necessary to determine what effect the IDC industry-wide PC projections would have on Dell specifically:

> Q: You don't have the expertise to make the determination on your own as to what effect a macro change in the industry will have on Dell specific[ally]. Correct?
>
> A: ***That's correct***.[142]

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[140] ROB:29.

[141] ROB:31n.98. Professor Hubbard's decision to "update" the forecast with the August 2013 IDC numbers necessitated an adjustment of S&D revenue, such that this decision resulted in multiple adjustments to the BCG Case he claims to have relied upon. HOR¶¶195-196.

[142] TT687-88(Hubbard)(emphasis supplied).

Despite this admitted lack of expertise, or perhaps because of it, Hubbard did not (1) take into account the fact that Dell's PC shipments went up in 2013, contrary to the IDC industry projections;[143] (2) speak to anyone at Dell to determine how they thought that the August 2013 IDC forecasts would impact Dell;[144] or (3) discuss with BCG how they thought the August 2013 IDC forecasts would have affected their projections.[145] Professor Hubbard, therefore, used his own personal subjective judgment to adjust the BCG model without any expertise or factual basis to do so.

Moreover, Professor Hubbard's adjustments are not supported by the record evidence. To the contrary, the record makes clear that these adjustment were improper for at least two reasons: (1) BCG specifically considered whether it was necessary to revise the BCG forecasts to account for updated IDC numbers and concluded that it was not, because BCG had already anticipated the market decline the IDC number projected in its Base Case;[146] and (2) even if it were appropriate to update the BCG Case to reflect the August 2013 IDC numbers, it was not

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[143] TT688-689(Hubbard).

[144] TT689(Hubbard).

[145] *Id.*

[146] *Supra,* n.119.

possible[147] to engage in the simple "plug-and-play" exercise Professor Hubbard claims to have performed.[148]

The IDC forecasts are industry-wide, and do not relate to Dell specifically.[149] Professor Hubbard's admission that he was not qualified to "update" the BCG projections based on the industry-wide August 2013 IDC forecasts renders his entire analysis unreliable and it should be disregarded.[150]

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[147] TT522-523(Ning)("Q. But you didn't just plug in IDC's forecasts, did you? A. No. Q. This wasn't like a plug-and-play where you could just take IDC, put it in there, and that would make your model work. Right? A. No. Q. And you couldn't just decide to pull out whatever IDC had in there and put in a new [set of] IDC [projections] and that would all of the sudden make your model work. Right? A. No. ***Q. So definitiely not a plug-and-play job. Right? A. Definitely not a plug-and-play job***." (emphasis supplied)).

[148] TT686(Hubbard)("Q. So what you did is you pulled out the IDC forecasts that BCG had used in their model and you plugged in the new IDC forecast. Correct? A. That's correct and well put, so I'm literally just changing an assumption in BCG's model.").

[149] TT688(Hubbard).

[150] *Gray v. Cytokine Pharmasciences, Inc.*, 2002 WL 853549, at *8 (Del. Ch. April 25, 2002)(disregarding proffered expert's DCF analysis where he "did not provide valid reasons" to warrant his adjustments to management projections; "I cannot accept that Penny, with his limited experience with the company, was better equipped to make future financial projections that PSI's management. Consequently, I find Penny's litigation-driven projections to be unreliable, and thus, disregard his DCF analysis."); *In re Emerging Comm'cns, Inc. S'holders Litig.*, 2004 WL 1305745, at *15 (Del. Ch. May 3, 2004)(rejecting defendant's expert's selected projections as a starting point for a DCF where the expert "unilaterally increase[d] forecasted CapEx" based on claim that "managements 'typically' underestimate capital expenditures," finding that this argument "amount[ed] essentially to Bayston substituting his personal judgment of what CapEx should be for the non-litigation business judgment of ECM's management").

B. PROFESSOR HUBBARD'S USE OF A THREE-STAGE MODEL IS UNSOUND

A transition period (creating a three-stage model) is appropriately used to "trend towards normalized growth rates or margins" when a company is new or is experiencing excessive growth, but is inappropriate where the company is mature and has moderate growth prospects.[151] Dell has yet to identify ***any reason*** why a three-stage DCF is needed here.[152] The fact that Professors Cornell and Hubbard assume 1% and 2% PGRs, respectively, belies any suggestion that Dell is expected to experience the type of excessive growth that would justify the use of a three-stage DCF. Moreover, Professor Hubbard ***does not even use*** his transition period to normalize anything. To the contrary, Professor Hubbard's transition period ***holds constant*** the operating margins from the projection period[153] - a fact which Dell does not refute.

C. THE BLIND APPLICATION OF A MARGINAL RATE IN THE TERMINAL PERIOD WITHOUT CONSIDERATION OF DELL'S OPERATIONAL REALITY IS CONTRARY TO DELAWARE LAW

Dell attacks Professor Cornell for not using the marginal tax rate in the terminal period of his DCF. Such an attack is baseless. First, Dell's assertion that "Petitioners presented no evidence justifying" use of the historical 21% tax rate

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[151] CRR ¶20.

[152] ROB:34

[153] TT701(Hubbard).

during the terminal period is wrong.[154] Petitioners cite the following evidence demonstrating that use of the historical tax rate rather than the marginal tax rate would be more consistent with Dell's operative reality: (1) Dell's historical effective tax rates in the years leading up to the Transaction were substantially below the marginal rate;[155] (2) Dell's historical cash tax rates (*i.e.*, the percent of its income that it actually paid out in cash)[156] were ***even lower*** than its effective tax rates;[157] (3) Dell instructed Houlihan Lokey to assume a 17% tax rate in conducting post-closing valuations of Dell;[158] and (4) Dell spent millions of dollars on tax lawyers and accountants each year to ensure that it would continue to pay far less than the federal marginal rate.[159]

Second, Dell still fails to explain why use of the U.S. marginal tax rate makes any sense at all in the context of a multinational corporation that earns most

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[154] ROB:44.

[155] PTO¶¶287-292(23% in 2008; 25.4% in 2009; 29.2% in 2010; 21.3% in 2011; 17.6% in 2012; 16.5% in 2013).

[156] TT321(Sweet);JX921:58(Sweet).

[157] PTO¶¶294-298(20% in 2008; 24.1% in 2009; 21.4% in 2010; 13% in 2011; 9.6% in 2012).

[158] JX757. Dell asserts that Rajkovic testified that JPM "stepped it up [the tax rate] to the marginal 35% tax rate" in the terminal period in its DCF of Dell. ROB:45(citing TT766(Rajkovic)). Rajkovic's actual testimony was that he "can't recall" whether JPM assumed payment of the marginal rate in the terminal period (TT766-67)(Rajkovic) and, in fact, the evidence shows that JPM used the full marginal rate only in a sensitivity analysis, not in the DCF it presented to the Special Committee. HRR¶45. *Compare* JX329 *with* JX639.

[159] JX921:64-66(Sweet).

of its income overseas.[160] Although Dell asserts that Professor Damodaran's *Investment Valuation* text supports uses of a marginal rate in the terminal period, Damodaran concedes that this approach is "conservative" and the tax effect of repatriating offshore cash is "not so clear in the long term" due to the potential for tax holidays and changes in the tax rate.[161] And, in any event, the practice of using the marginal tax rate in the terminal period for multinational corporations is disputed in valuation textbooks.[162] Moreover, Dell does not distinguish between the marginal tax rates in foreign countries, which Dell *does* pay, and the marginal rate in the United States, which Dell has managed to avoid for at least the last quarter century.[163]

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[160] Dell offers no response at all to Petitioners' explanation of why Dell's reliance on *In re Appraisal of Ancestry.com*, 2015 WL 399726 (Del. Ch. Jan. 30, 2015) is misplaced. PPB:39.

[161] DAMODARAN, INVESTMENT VALUATION, at 427-28, Wiley (1995).

[162] *See* KOLLER, GOEDHARD, AND WESSELS, VALUATION: MEASURING AND MANAGING THE VALUE OF COMPANIES, at 550 (McKinsey & Company, 5th ed. 2010)("In actuality, many companies will never pay (or at least will significantly delay paying) accrual-based taxes. Consequently, a cash tax rate (one based on the operating taxes actually paid in cash to the government) represents value better than accrual-based taxes."); HOLTHAUSEN AND ZMIJEWSKI, CORPORATE VALUATION: THEORY, EVIDENCE & PRACTICE, at 149-50 (Cambridge Business Publishers, 1st ed. 2013)("Multinational companies sometimes do not repatriate earnings (cash) back to their home country in order to defer taxation on that income.").

[163] TT987-988(Shay)(Shay is unable to "point to any evidence" that "Dell will suddenly do what it's managed to avoid for at least the last quarter of a century, and that is pay the full federal marginal rate");JX921:60(Sweet)(Sweet "unaware"

VI. PROFESSOR CORNELL PROPERLY CONVERTED ENTEPRISE VALUE TO EQUITY VALUE; PROFESSOR HUBBARD DID NOT

Dell misrepresents Petitioners' arguments and the record as to the conversion from enterprise value to equity value.

A. WORKING CAPITAL

The evidence does not support Professor Hubbard's decision to deduct $5 billion of Dell's cash at closing in calculating enterprise value based on his argument that it was necessary for "working capital." Dell CFO Thomas Sweet testified that Dell's required working capital was included in its budgets and projected cash flows, and that Dell typically generated sufficient free cash flow from operations to fund its working capital needs.[164] Because Dell historically funded working capital from operational cash flows, there is no reason to make *any* deduction from Dell's cash balance in order to account for the Company's working capital requirements.[165] Further, as Professor Damodaran explains, "even cash

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of any year in his "eighteen-year history at Dell" in which the Company "actually paid the federal 35% marginal rate").

[164] JX921:251(Sweet)("Q: Dell's working capital needs were baked into the company's budgets and other financial plans. Correct? A: Yes. Clearly working capital considerations would have been done, yes. Q: And that would have also been baked into the company's projected cash flows? A: Yes.");JX921:254(Sweet)("Q: Did Dell typically generate enough free cash flow from its business operations to fund its own operation[al] needs? A: Generally, yes. Absent specific extraordinary – general operating activities, generally, yes.").

[165] COR¶¶62-65.

needed for operations can be invested in near-cash investments such as treasury bills or commercial paper."[166] So long as that cash earns above a market rate, considering the attendant risk, it should not be considered part of working capital and instead should be added to the value of the firm.[167] Professor Damodaran notes that, "[g]iven the investment opportunities that firms (and individual investors) have today, it would require an incompetent corporate treasurer for a big chunk of the cash balance to be wasting cash."[168] There is no evidence that Dell's finance team was incompetent. There is also no evidence that Dell's held cash was earning below a fair market rate for short-term investments. There is, thus, no reason to make any deduction from Dell's cash balance to account for "working capital" needs.

Professor Hubbard's $5 billion deduction for working capital also ignores undisputed evidence establishing that Dell needed far less than $5 billion in cash to run its business.[169] Dell also ignores that the Company dramatically reduced the

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[166] Damodaran, *Dealing with Cash, Cross-Holdings and Other Non-Operating Assets: Approaches and Implications*, at 13, Stern School of Business (Sept. 2005). *See also* DAMODARAN, DAMODARAN ON VALUATION: SECURITY ANALYSIS FOR INVESTMENT AND CORPORATE FINANCE, Wiley (2d ed. 2006).

[167] *Id.*

[168] *Id.*

[169] JX921:246(Sweet)(at time of closing Dell "generally needed somewhere around 3 billion to 3.2 to 3.4 billion, in that range, of liquid cash – of cash that we would need to run the global operation of Dell").

working capital it did need through initiatives that it could have implemented as a public company.[170] Indeed, *even before the merger closed*, Dell "[s]ecured access to Restricted (illiquid) cash" that provided $0.8 billion in additional liquidity.[171] It also could – and did – make use of a credit line to smooth cash flow fluctuations.[172]

B. FIN 48

Dell cites nothing to support the deduction of contingent liabilities reserved under FIN 48. Dell's supposition that such authority would not exist because FIN 48 is "new" is no answer to Dell's burden to establish the propriety of its valuation methodology.[173] FIN 48 is not the only type of contingent liability that exists. Dell's failure to cite support for the deduction of any type of contingent liability speaks volumes.

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[170] TT338(Sweet)("There was nothing that would have prohibited me" from implementing the working capital initiatives as a public company.).

[171] JX807:20. As to trapped cash, Dell argues that there is "no evidence that" regulatory changes in China "were known or knowable as of the merger date." ROB:53 n.183. This simply is not true. In an August 2013 presentation, management made clear that "Notice 168" from the China's central bank liberalized cross-border fund transfers, which Dell had clear plans to exploit to the tune of nearly half a billion dollars. JX626:15-17.

[172] JX339:8-15. Indeed, the day the merger closed, Dell obtained a credit facility specifically to support fluctuating working capital needs. JX822:16("On October 29, 2013, Dell entered into a secured ABL credit facility to support its working capital needs.").

[173] *M.G. Bancorporation, Inc. v. Le Beau*, 737 A.2d 513, 520 (Del. 1999)("In a statutory appraisal proceeding, both sides have the burden of proving their respective valuation positions by a preponderance of evidence.").

C. RESIDUAL U.S. TAXES

Faced with uncontroverted evidence that the Company had *no* plans to repatriate its foreign cash, Dell just ignores the Company's operative reality. Instead, it hypothesizes that this cash must be considered worthless if Dell does not someday plan to return foreign earnings.[174] From this, Dell concludes that Dell will have to begin repatriating cash beginning in 2023.[175] However, even Dell's experts admit they have no evidence to suggest this.[176] Moreover, Dell's theory ignores the reality that Dell could – and did – use earnings from foreign subsidiaries to facilitate intercompany transfers[177] and make additional investments

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[174] ROB:58. Dell cites Professor Cornell's testimony to the effect that eventually the spendable cash stream must be returned to shareholders. *Id.* at n.205. But it omits critical parts of that testimony. Professor Cornell explains that "if the company's reinvesting, it may be decades before you see any actual cash," and a company would still be valuable "as long as they have opportunities to invest overseas and that at some point they can get it back." TT82:19-21, 22-24(Cornell);TT83:22-24(Cornell).

[175] TT980(Shay)(Shay is "asking the Court to believe that Dell will inexplicably begin to repatriate off-shore earnings and profits in 2023 and will begin to do so precisely in 2023 and it will do so over a 25-year horizon and at the full marginal rate").

[176] TT975(Shay)(Shay has "no idea" when Dell will begin to repatriate).

[177] JX626:16.

in foreign markets.[178] When considering Dell's actual operative reality, imposing a $6.3 billion haircut as Professor Hubbard does[179] is speculative and unjustified.[180]

VII. DELL'S DISMISSAL OF THE ALTERNATE VALUATION IS NOT SUPPORTED BY EVIDENCE OR DELAWARE LAW

Dell challenges Petitioners' alternate valuation on the grounds that it is "grounded in Dell's operation as a private company" and "improperly exceed[s] the merger price."[181] Both of these arguments rely on assumptions for which Dell has no support and ignore both testimony at trial and Delaware precedent.

First, noting that the "alternate valuation is grounded in Dell's operation as a private company" is meaningless. The uncontroverted evidence establishes that the buyout group planned to make no material changes to Dell's operations after the closing of the transaction[182] and, in any event, Professor Cornell made the

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[178] TT332:16-18(Sweet)(acknowledging that there was no shortage of overseas investment opportunities).

[179] HOR ¶269.

[180] *Ng v. Heng Seng Realty Corp.*, 2004 WL 885590, at *6 (Del. Ch. Apr. 22, 2004) ("In determining fair value, this Court cannot consider speculative future tax liabilities."); *see also Montgomery Cellular Holding Co., Inc. v. Dobler*, 880 A.2d 206, 222 (Del. 2005)("Delaware law requires that in an appraisal action, a corporation must be valued as a going concern based on the operative reality of the company as of the time of the merger" excluding any speculative elements concerning future value)(internal quotations and citations omitted).

[181] ROB:60-61.

[182] TT463-464(Dell)(same strategy as a private company).

adjustments necessary to the Bank Case to take out private company costs and add back public company costs.[183] Dell offers no rebuttal to these adjustments.

Second, Dell's complaint – that the alternate valuation yields a price that "exceed[s] the merger price" – is based on the false premise that Dell's fair value is necessarily coextensive with the deal price. Dell's attempt to require that the Court defer to the merger price is directly contradicted by Delaware law and should be rejected.[184]

Dell's criticisms of the individual components of the alternate valuation are also baseless.

A. TERMINAL TAX RATE

Use of a 21% tax rate in the terminal period is appropriate, as set forth *Supra,* Section V.C.

B. DISCOUNT RATE

Petitioners calculated the 9.17% WACC by simply replacing Professor Hubbard's 6.41% ERP with a supply-side 6.11% ERP. Petitioners acknowledge,

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[183] COR¶91n.237.

[184] *See Golden Telecom, Inc. v. Global GT LP*, 11 A.3d 214, 218 (Del. 2010) ("Requiring the Court of Chancery to defer – conclusively or presumptively – to the merger price, even in the face of a pristine, unchallenged transactional process, would contravene the unambiguous language of the statue and the reasoned holdings of our precedent.").

however, that using a 6.11% ERP *and* changing Professor Hubbard's 35.8% tax rate to the 21% in the alternative model yields a WACC of 9.34%.[185]

C. REQUIRED CASH

Dell's actual cash needs were substantially less than $5 billion. Dell's supposition that Petitioners do not account for "trapped cash" in China makes no sense; the fact that the cash is "trapped" shows that it could not possibly have been needed for working capital to fund current operations. And Dell still has yet to respond to the evidence that Dell's working capital needs were baked into its projections. Under these circumstances, Petitioners' use of $2.2 billion represents a generous compromise position.

D. RESIDUAL TAXES

Petitioners' Opening Brief explained that a deduction for residual taxes was inappropriate, because such tax liabilities are entirely speculative. "Splitting the difference" between the appropriate deduction – $0 – and Professor Hubbard's proposed $2.2 billion deduction is reasonable.

E. FIN 48

As explained above and in Petitioners' Opening Brief, there is no basis for taking any deduction for contingent liabilities, whether FIN 48, its predecessor, or

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[185] Running the same alternative value calculation using a WACC of 9.34% yields a DCF value of $18.63 and an equity value of $19.88, since the post-DCF adjustments are not impacted by WACC.

any other such contingent liability. As a compromise, in the alternative valuation Petitioners suggested deducting the $650 million that was added to Dell's FIN 48 reserves ***after*** CFO Gladden certified that Dell expected to pay only $650 million of the then-total $2.35 billion FIN 48 reserve in the near-term (which amount was baked into the Bank Case). Although Dell denies that such a settlement occurred,[186] the evidence de such a settlement *was* part of Dell's operational plans at the time of the merger.[187] Petitioners' alternative approach to the FIN 48 issue strikes a fair balance between the proper FIN 48 deduction – $0 – and Professor Hubbard's proposed $3 billion deduction.

CONCLUSION

Petitioners respectfully submit that they are entitled to an award of a price of $28.61 per share for their Dell stock, plus applicable interest at the statutory rate, compounded quarterly, pursuant to 8 *Del. C.* § 262(h).

Dated: January 25, 2016

Respectfully submitted,

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[186] ROB:63

[187] JX165:22("Settlement on tax liability expected to be ~ $0.6bn or less (lower than reserve of ~ $2.5bn)").

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

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