IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

THE GLOBAL CONTINUUM PETITIONERS' BRIEF IN OPPOSITION TO PETITIONER MORGAN STANLEY DEFINED CONTRIBUTION MASTER TRUST'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES PURSUANT TO 8 *DEL. C.* SECTION 262(J)

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Dated: July 1, 2016

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Petitioners Global Continuum Fund, LTD and Wakefield Partners LP (the "Global Continuum Petitioners") are non-lead petitioners whose petition was consolidated pursuant to this Court's April 10, 2014 Consolidation Order (the "Consolidation Order").

The Global Continuum Petitioners agree that Grant & Eisenhofer P.A. ("G&E") will be entitled to a reasonable fee award and that the Global Continuum Petitioners will be responsible for their reasonable and equitable pro rata allocation of reasonable costs incurred G&E in this action pursuant to 8 *Del. C.* § 262(j). Petitioner [Morgan Stanley Defined Contribution Master Trust]'s Motion for an Award of Attorneys' Fees and Reimbursement of Expenses Pursuant to 8 *Del. C.* § 262(j) (the "G&E Fee Application"), however, is not reasonable or equitable to the Global Continuum Petitioners and is premature.

First, the fee application is premature until the Court's rulings become final and the appeals period has expired. Second, the G&E Fee Application fails to allocate any responsibility for the expenses in this action to the large group of stockholders who pursued this action through discovery, trial and/or post-trial briefing, but who were found not to be entitled to appraisal. These shares must be included in the allocation of fees and expenses. This is especially true since the Court's June 29, 2016 Order approving a settlement (the "Settlement Order") by and between Dell and the disqualified shares of the T. Rowe Price Petitioners

allowed those petitioners to recover a substantial settlement payment notwithstanding the Court's disqualification of their shares in this proceeding. Moreover, the remaining petitioners should not be taxed with expenses that were incurred in connection with defending issues that were specific to certain stockholders such as entitlement to appraisal. Third, the Global Continuum Petitioners should not be held to a contingency fee that they expressly rejected. Indeed, the Global Continuum Petitioners should receive a credit against any fee award granted to G&E for the fees that they have already spent on their own counsel in light of the divergent interests of the members of the appraisal class. Finally, G&E's Lodestar demonstrates that the fees that it is seeking in the G&E Fee Application are not reasonable when spread among the full appraisal class prior to the disqualification of G&E's clients.

BACKGROUND

A. The Merger.

On October 29, 2013, Michael Dell, the Company's founder, Chairman and Chief Executive Officer, together with the private equity firm Silver Lake Partners, took Dell, Inc. ("Dell" or the "Company") private (the "Merger"). Under the terms of the Merger each share of Dell common stock, other than those shares for which appraisal was demanded, was cancelled and converted into the right to receive $13.75 in cash.

B. The Global Continuum Petitioners.

The Global Continuum Petitioners hold 826,012 shares of common stock of Dell. The Global Continuum Petitioners dissented from the Merger and perfected their appraisal rights.

C. The Global Continuum Petitioners' Reject G&E's Proposed Contingency Fee Arrangement.

In or about early January 2014, the Global Continuum Petitioners engaged in discussions with G&E regarding a potential engagement.[1] G&E presented the

[1] During the course of those discussions, G&E represented (incorrectly) to the Global Continuum Petitioners that they were required to join or file a petition for appraisal with the Court in order to obtain the appraised value. (*See* Exhibit A). If such a filing were required, the appraisal petitioner would be forced to engage Delaware counsel to file it. Of course, a stockholder who has demanded appraisal need not retain counsel, join or file a petition for appraisal with the Court in order to become part of the appraisal *quasi*-class.

Global Continuum Petitioners with a contingency fee arrangement on a take it or leave it basis. The Global Continuum Petitioners left it.

The Global Continuum Petitioners instead retained separate counsel on an hourly basis so that they could separately pursue settlement negotiations should it become appropriate. The Global Continuum Petitioners also elected to file a petition for appraisal to facilitate meaningful access to the docket and discovery record and with the expectation of having input into the strategies being pursued in connection with the appraisal action.

D. The Consolidation Order.

On March 4, 2014, the Company filed its Verified List pursuant to 8 *Del. C.* §262(f) identifying 38,765,130 shares that demanded appraisal.

On April 7, 2014, certain petitioners, including the T. Rowe Petitioners, filed a Motion for Consolidation and for Designation of Lead Counsel (the "Consolidation Motion"). Among other things, in support of its request to be appointed as Lead Counsel in the Consolidated Action, G&E noted that it "represents clients who hold more than 82.5% of all shares demanding appraisal." (Brief in Support of Petitioner's Joint Motion for Consolidation and for Designation of Lead Counsel at 12).

The Global Continuum Petitioners responded to the Consolidation Motion by requesting, among other things: (a) a prompt hearing on entitlement to

appraisal, (b) transparency on discovery, (c) the opportunity to participate meaningfully in the preparation of expert reports, (d) the opportunity to participate in any settlement discussions and receive any settlement communications, (e) the opportunity to participate in any settlement presented to the G&E Petitioners, and (f) provisions to avoid potential double billing of attorneys' fees.[2]

On April 10, 2014, the Court held a teleconference on the Consolidation Motion and entered the Consolidation Order.[3] The Court found that G&E represented the largest group of petitioners. G&E, which was the counsel of choice for the T. Rowe Petitioners, was appointed Lead Counsel for the purpose of prosecuting the Dell Appraisal on behalf of all petitioning Dell shareholders.

After the Consolidation Order was entered, and notwithstanding provisions of the Consolidation Order intended to permit them to have meaningful input in the case, the Global Continuum Petitioners were marginalized by Lead Counsel. Despite participating in discovery, including providing a witness for a deposition, they were offered little opportunity to review and comment on drafts of briefs and

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[2] The Magnetar Petitioners, who were then separately represented, filed a response raising similar concerns.

[3] The Global Continuum Petitioners were informed by counsel to Cavan Partners, LP and the Magnetar Petitioners that G&E had indicated prior to the hearing that it did not intend to seek to have its attorneys' fees charged against all shares, but only G&E's clients, but would seek pro rata sharing of expenses under 8 *Del. C.* § 262(j). (*See* Exhibit B (Ltr. from J. Anderson, Esq. to S. Grant, Esq. (April 11, 2014)); and Exhibit C (Ltr. from M. Maimone, Esq. to The Hon. J. Travis Laster (May 6, 2014))).

expert reports; and they were not invited to participate in the trial strategy or engage with potential witnesses.

E. The Entitlement Opinions.

In September 2014, the Court dismissed certain claimants who had withdrawn their demands for appraisal with Respondent's written approval. Similarly, in May 2015, the Court entered a series of summary judgment orders finding that certain shares were not entitled to appraisal on the grounds that the demands were not signed by the record stockholder, the claimant sold their shares, the shares were tendered, or the demand was untimely or duplicative. These disqualified shares totaled 854,656 shares.

On July 13, 2015, this Court issued July 30, 2015 Opinion Granting Partial Summary Judgment In Favor of Dell Inc. As to Appraisal Claims By Certain Petitioners (the "Summary Judgment Opinion") in which it held that Petitioners Northwestern Mutual Series Fund, Inc. Equity Income, Manulife US Large Cap Value Equity Fund, T. Rowe Price Funds SICAV US Large Cap Equity Value Fund, the Milliken Retirement Plan, and Curtiss-Wright Corporation Retirement Plan were not eligible to pursue appraisal rights because the record owner of the stock beneficially owned by these Petitioners had changed after these Petitioners demanded appraisal rights under the terms of the statute. These disqualified shares totaled 1,675,666 shares.

In the face of challenges to G&E's status as Lead Counsel by the Magnetar Petitioners, the T. Rowe Petitioners successfully delayed the resolution of many of the disputes concerning their entitlement to appraisal until after trial on the valuation issues.

The Court's May 11, 2016 Opinion (the "Entitlement Opinion") found that the T. Rowe Petitioners, who had pursued appraisal through post-trial briefing, were not entitled to appraisal based on a voting issue long known by the T. Rowe Petitioners and their counsel (the "Entitlement Opinion"). These disqualified shares totaled 30,730,930 – or approximately 80% of the original Appraisal Class.

Ultimately, the disqualified shares totaled 33,261,253 of the 38,765,130 shares identified on the Company's Verified List – or 86% of the original Appraisal Class (together referred to as the "Disqualified Shares") represented by G&E as Lead Counsel.[4] And the vast majority of those shares continued pursuing this litigation and incurring expenses through discovery, summary judgment, trial, and post-trial proceedings and briefing. Moreover, the shares belonging to clients represented by G&E enjoyed the benefits of the Settlement Order, which Lead Counsel presented to the Court on their behalf long after their shares were found to be disqualified.

[4] The Global Continuum Petitioners' calculations of the Disqualified Shares is attached as Exhibit D.

F. The Valuation Opinion.

On May 31, 2016, the Court issued its opinion on valuation (the "Valuation Opinion"), finding that the fair value of the Company's common stock at the effective time of the Merger was $17.62.

G. G&E's Refusal To Participate In Discovery In Connection With The G&E Fee Application.

On June 8, 2016, the Magnetar Funds served discovery requests (the "Discovery Requests") on Lead Petitioners and G&E. Among other things, the discovery sought information generally relating to (i) the arrangements that the T. Rowe Petitioners had with their counsel and whether they were obligated to pay fees and reimburse expenses regardless of the Court's entitlement decision and (ii) the allocation of fees and expenses as between the valuation and the entitlement issues.

On June 13, 2016, G&E served written responses to the Discovery Requests. Those responses, however, refused to provide *any* information beyond access to the backup of all expenses incurred during the prosecution of this case (which, to date, has not been produced)[5] and a letter claiming that only a single expense in the amount of $20,475.00 -- of the $4,035,787.18 of aggregate expenses that they seek

[5] On the afternoon of July 1, 2016, the date that the Global Continuum Petitioners' opposition to the G&E Fee Application was due, G&E offered to make the back up for the expenses claimed in the G&E Fee Application available at their offices. Obviously, this offer comes far too late.

in the G&E Fee Application from the remaining petitioners who were found entitled to appraisal -- related to the entitlement issue that they litigated on behalf of the T. Rowe Petitioners, who retained them through post-trial summary judgment proceedings and culminated in a 69-page Opinion from the Court. In addition, G&E stated in a June 13, 2016 letter accompanying its discovery responses that the Discovery Requests were objectionable because they sought information protected by the attorney-client privilege. G&E failed to explain, however, how it could withhold information on the basis of attorney-client privilege from an entity that it claimed to have represented as its client (and against which it was assessing its attorney fees).

H. The T. Rowe Settlement.

On June 27, 2016, the Global Continuum Petitioners were informed by counsel for Respondent, and through counsel to the Magnetar Petitioners, that G&E had obtained a separate settlement between the T. Rowe Petitioners and Dell in respect of their shares of Dell common stock that were found not to be entitled to appraisal. The Court approved that separate settlement on June 29, 2016. Thus, G&E's representation of the T. Rowe Petitioners in this action continued through that date, the T. Rowe Petitioners have benefited from settlement optionality throughout this litigation, and the T. Rowe Petitioners have now achieved a financial benefit through participation in this action.

ARGUMENT

8 *Del. C.* § 262(j) provides the Court with significant discretion to determine whether and the extent to which the Court should allocate fees and expenses across the appraisal class: "[u]pon application of a stockholder, the Court ***may*** order all ***or a portion of*** the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, ***reasonable*** attorney's fees and the fees and expenses of experts, to be charged pro rata against the value of all the shares entitled to an appraisal." (emphasis added). Importantly, the statute does not mandate allocation across the appraisal class, allocation of all of the fees and expenses, or that all of the fees and expenses that are incurred in connection with the appraisal be reimbursed to the lead petitioner's counsel. What is unique about the G&E Fee Application is that: (1) G&E seeks to tax a small portion of the petitioners who pursued appraisal with the expenses incurred by a much larger appraisal class that was pursuing a much larger appraisal judgement; and (2) G&E seeks to extend a contingency fee arrangement to petitioners who did not consent to such a fee structure.

I. THE G&E FEE APPLICATION IS PREMATURE

The Court's rulings have not yet become final and there are pending motions before the Court relating to the Magnetar Funds' discovery requests and their motion for co-lead status. In addition, the possibility remains that one or both

parties will appeal. "Interim fee awards are generally disfavored" and absent "exigent or other special circumstances" will not be granted when the benefits of the litigation are "subject to reversal or alteration as the remaining portion of the litigation proceeds." *Smollar v. Potarazu*, C.A. No. 10287-VCS, Mem. Op. (Del. Ch. June 29, 2016) (quoting *Frank v. Elgamal*, 2011 WL 3300344, at *3 (Del. Ch. July 28, 2011; *In re Novell, Inc. S'holder Litig.*, 2011 WL 4091502, at *5 (Del. Ch. Aug. 30, 2011); *La. State Empls.' Ret. Sys. v. Citrix Sys., Inc.*, 2001 WL 1131364, at *4 (Del. Ch. Sept. 19, 2001)). As long as G&E serves as Lead Counsel under the Consolidation Order, it has ongoing responsibilities to the Appraisal Class. Moreover, in the event that substitute Lead Counsel is appointed, they will likely be entitled to share in the Fee Award. The G&E Fee Application should be stayed until the Court's rulings become final and no longer subject to appeal or alteration.

II. THE DISQUALIFIED SHARES MUST BE CONSIDERED IN THE ALLOCATION OF EXPENSES

A. The Disqualified T. Rowe Shares Must Be Included For Purposes Of The Allocation of Expenses.

The T. Rowe Petitioners pursued their appraisal rights through trial and post trial briefing and intentionally delayed (over the objection of certain petitioners) the resolution of the entitlement issues until after trial. (*See* Entitlement Opinion at 3). The T. Rowe Petitioners had the benefit of being petitioners in this case up until the time they were deemed ineligible, as their counsel controlled the litigation

and the outlay of expenditures, and they had settlement optionality. As the Court noted, "the [T. Rowe] petitioners knew, at a minimum, that there was a significant risk that they would not qualify for appraisal, either because they had submitted instructions (albeit inadvertently) to vote their shares in favor of the merger, or because their shares were transferred by their custodians to a new record holder or both. The Petitioners could decide to accept that legal risk in the hope that their arguments would prevail…."). (May 31, 2016 Order Denying Award Of Interest). Indeed, Dell sought discovery regarding the entitlement issues ***before*** the Motion to Consolidate pursuant to which G&E sought Lead Counsel status. (*See* Respondent's First Set of Interrogatories Directed to Certain Petitioners on Issues Relating to Entitlement to the Statutory Appraisal Remedy dated March 24, 2014). Thus, the possibility that the T. Rowe shares would not be entitled to appraisal has been an issue since the outset of this litigation. The T. Rowe Petitioners nonetheless elected to delay the entitlement determination until after trial, while at the same time seeking to have their selected counsel designated as Lead Counsel based on the magnitude of their holdings.

Upon information and belief (G&E has not produced the T. Rowe Petitioners' engagement letter(s)), pursuant to G&E's engagement agreement with the T. Rowe Petitioners, the T. Rowe Petitioners are not responsible for G&E's expenses if they were found to be entitled to only the Merger Consideration. That

is a contractual matter between the T. Rowe Petitioners and G&E. It does not follow that the remaining Petitioners, including the Global Continuum Petitioners, should pick up the T. Rowe Petitioners' portion of the expenses that that G&E incurred on behalf of the entire appraisal class before their disqualification. *See In re Appraisal of Shell Oil Co.*, 1992 WL 321250, at *5 (Del. Ch. Oct. 30, 1992) ("Clearly if the counsel for the class (as here) has agreed to a contingency fee, he is not entitled to any attorney fee at all if no benefit is achieved.")

Accordingly, assuming that G&E did not reach other arrangements with its direct clients protecting itself from the effect of potential disqualification of their shares, G&E alone assumed the risk of advancement and non-recovery in its contract with the T. Rowe Petitioners; the other petitioners did not agree to such risk-taking, and it is G&E alone who must bear that consequence. Moreover, now that the Settlement Order provided the T. Rowe Petitioners a substantial recovery despite their disqualification, there is all the more reason to hold them fully accountable for their pro rata contribution of fees and expenses.

B. The Remaining Petitioners Should Not Be Held Responsible For The Fees And Expenses Associated With Entitlement Issues That Were Specific To The T. Rowe Petitioners.

In addition to including the T. Rowe shares in the denominator of the allocation of expenses, expenses that were specific to the T. Rowe shares or the

entitlement issues should be backed out of G&E's expense total (i.e., the numerator) before the expenses are allocated across the appraisal class.

As the proponent of the fee application, G&E has the burden to demonstrate that it is entitled to the fees and expenses that it seeks. *See Boyer v. Wilmington Materials, Inc.*, 1999 WL 342326, at *1 (Del. Ch. May 17, 1999) ("The proponent of an application for attorneys' fees and expenses bears the burden of establishing the reasonableness of the amount sought."); *Shell Oil*, 1992 WL 321250, at *3 ("The standards governing the award of attorneys' fees in an appraisal class action, therefore, are identical to those in other types of shareholder benefit litigation."). G&E made no effort, however, to allocate the expenses that were incurred in connection with the entitlement issues from the valuation issues in connection with the G&E Fee Application. As evidenced by the substantial summary judgment briefing on the T. Rowe entitlement issues and the Court's 69-page Entitlement Opinion, substantial expenses, including document discovery and hosting, deposition transcripts, deposition travel, etc. were dedicated to litigating the T. Rowe Petitioners' entitlement to appraisal. These issues were unique to the T. Rowe Petitioners and did not benefit the remaining members of the Appraisal Class. G&E has not provided any backup to its expenses in the G&E Fee Application. In addition, although G&E has agreed to produce backup to its expenses in discovery, it has yet to produce those documents. The question of the

allocation of fees among shareholder plaintiffs is an issue soundly within the Court's discretion. *Kronfeld v. Continental Airlines Corp.*, 542 A.2d 357 (Del. 1988) (Table), 1988 WL 46618 (Del. 1988). Where a party refuses to provide substantial evidence in support of their demand for an allocation of fees or expenses, the Court is justified in reducing, or eliminating entirely, that party's alleged allocated expenses. *In re Infinity Broad. Corp. S'holders Litig.*, 802 A.2d 285, 291-93 (Del. 2002); *see also Schultz v. Ginsburg*, 965 A.2d 661 (Del. 2009) (holding that a self-serving settlement allocation plan was properly rejected and objectors awarded nothing). Absent a more accurate allocation from G&E, the Global Continuum Petitioners propose allocating 1/3 of the expenses to the entitlement issues and deducting that amount from the expenses claimed in G&E's Fee Application.

33.3% Reduction to Account for T. Rowe Entitlement Expenses	$4,035,787.18 (1.00 - 0.3333) = $2,690,659
Remaining Petitioner's Expense Allocation across all shares seeking Appraisal	(5,503,878 / 38,765,130) * $2,690,659 = $382,020
Global Continuum's Pro Rata Expense Allocation across all shares seeking Appraisal	(826,012 / 38,765,130) * $2,690,659 = $57,332.88
Total Pro Rata Expenses Allocable To The Global Continuum Petitioners	**$57,332.88**

Moreover, the $4,035,787.18 of expenses claimed by G&E is grossly excessive for the 5,503,878 appraisal shares remaining after the disqualification of 1,675,666 shares in the July 13, 2015 Summary Judgment Opinion and 30,730,930 shares in the May 11, 2016 Entitlement Opinion. This level of spend was only justified when those additional shares were seeking appraisal. For that reason as well, the expenses must be "right sized" for the smaller appraisal class after the disqualification of the T. Rowe shares even if the proportional approach suggested above were not accepted by the Court.

III. THE GLOBAL CONTINUUM PETITIONERS SHOULD NOT BE HELD TO A CONTINGENCY FEE AGREEMENT THAT THEY EXPRESSLY REJECTED.

Rule 1.5 of the Delaware Lawyers' Rules of Professional Conduct provides that a contingency fee agreement "shall be in a writing signed by the client." Here, the Global Continuum Petitioners were presented with a proposed contingency fee and expressly rejected it. Such an arrangement, which would obligate them to pay $594,728.64 ($0.72 per share on 826,012 shares) in legal fees to G&E based on the appraisal recovery, should not be imposed upon them without their consent through the G&E Fee Application.

G&E has not cited, and counsel has not identified, any cases in which the Court has extended a contingency fee arrangement reached by one set of petitioners to other petitioners who did not sign onto such an engagement under

Section 262(j). Section 262(j) permits the pro rata charging of "reasonable attorneys' fees" across the appraisal class. It does not, however, provide that stockholders can be held to contingency fee arrangements that they did not agree to and, in the case of Global Continuum, expressly rejected. *Quantum meruit* provides an adequate remedy. *See Murrey v. Shank*, 2011 WL 4730549 (Del. Super. Aug. 30, 2011).

G&E's Lodestar of $7,776,899 also demonstrates that the fees that it is seeking from the Global Continuum Petitioners are excessive. G&E's fees were incurred for the benefit of its clients, who represented a much larger appraisal class. When a reasonable multiple of G&E's full Lodestar (without first reducing it to account for fees that were incurred in connection with the Entitlement issues) is distributed among all of the appraisal petitioners on behalf of whom G&E prosecuted this action, the Global Continuum Petitioner's allocation of the fee award should be much lower than those based on the contingency fee arrangement that they expressly rejected. For example, if the Court applied a 2.5x multiple to G&E's Lodestar and divided it across the entire class of petitioners on whose behalf G&E pursued appraisal, the Global Continuum Petitioners' portion of that fee award would be $414,277.72 = (826,012 / 38,765,130) * 2.5 * $7,776,899.

Of course, G&E's Lodestar also reflects significant fees that were expended in connection with the Entitlement issues that should not be included in the

Lodestar being used to determine the fees to be paid by the remaining petitioners. If that original Lodestar were reduced by 33.3% before application of the 2.5x multiple to account for the client specific Entitlement issues litigated by G&E, the Global Continuum Petitioners' portion of that fee award would be $276,323.24 = (826,012 / 38,765,130) * 2.5 * (1.000 - 0.333) * $7,776,899.

To the extent that the contingency fee structure that G&E agreed to with some of the Petitioners is used as a proxy for a reasonable fee for other petitioners, however, the percentages should be adjusted downward before being applied to other petitioners to account for the fact that G&E contemplated (or should have contemplated) performing additional work and incurring additional expenses on behalf of the T. Rowe Petitioners in connection with establishing their entitlement to appraisal. Indeed, G&E expressly disclaimed any obligation to litigate entitlement issues on behalf of other stockholders when it filed the Consolidation Motion. (*See* Consolidation Order ¶ 6).

Finally, the Global Continuum Petitioners should be credited with the fees and expenses that they have paid to their own counsel against any fee award payable to G&E ($23,339.89 through May 2016). In light of potentially divergent interests in connection with potential settlement of this action, including among other things the possibility that the T. Rowe Petitioners would trade value for the class against for the risk of disqualification of their shares, it was prudent for the

Global Continuum Petitioners to have separate counsel to protect their interests. The fees that they paid should be credited against any amount that they are required to pay to G&E as counsel to the *quasi*-class.

CONCLUSION

The Global Continuum Petitioners recognize that G&E achieved a premium to the merger price and are entitled to an allocation of their fees and expenses across the appraisal class. That allocation, however, must be fair and equitable. The Global Continuum Petitioners should not be taxed with the fees and expenses associated with issues that were specific to G&E's direct clients or that otherwise benefited their direct clients simply because G&E's direct clients were ultimately disqualified and found not entitled to appraisal.

The Fee Application should be stayed until the Court's judgments become final and not subject to appeal and it is determined whether G&E will continue to serve as Lead Counsel or sole Lead Counsel until that time. Subject to the foregoing, the following adjustments should be made to the G&E Fee Application pursuant to Section 262(j):

(1) expenses should be allocated across all shares who sought appraisal and appeared on the Company's Verified List;

(2) expenses should be reduced by at least 33.3% to account for expenses that related to entitlement issues that were specific to G&E's clients;

(3) attorneys' fees should be awarded on a *quantum meruit* basis, or the percentages from the G&E contingency fee arrangement should be reduced to

account for the lack of entitlement issues that were to be litigated on behalf of petitioners who did not sign on with G&E; and/or

(4) the Global Continuum Petitioners should receive a credit against any fee award to G&E for the amount that they paid to their own counsel.

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Dated: July 1, 2016

EXHIBIT A

THE GLOBAL CONTINUUM PETITIONERS' BRIEF IN OPPOSITION TO PETITIONER MORGAN STANLEY DEFINED CONTRIBUTION MASTER TRUST'S MOTION FOR AN AWARD OF ATTORNEYS FEES AND REIMBURSEMENT OF EXPENSES PURSUANT TO 8 *DEL. C.* SECTION 262(J)

REDACTED

From: Stuart Grant [mailto:sgrant@gelaw.com]
Sent: Wednesday, February 19, 2014 2:25 PM
To: Steve Ballentine; Emily Johnson
Subject: RE: Potential Appraisal Action of Dell, Inc. Shares [IWOV-LEGAL.FID78856]

Steve,

No you won't. If you don't file for appraisal you are out! You get the merger consideration and that's it.

Stuart

From: Steve Ballentine [mailto:sballentine@ballentine-capital.com]
Sent: Wednesday, February 19, 2014 2:21 PM
To: Stuart Grant; Emily Johnson
Subject: FW: Potential Appraisal Action of Dell, Inc. Shares [IWOV-LEGAL.FID78856]

Mr. Grant and Ms. Johnson,

Thank you for your proposal and I apologize for the delay in responding. In the time that has passed since our initial conversation effectively all of the largest shareholders, including T Rowe Price (the lion's share of the shares seeking appraisal) and Magnetar, have already filed petitions. As they are in the compelling position to control the process, we do not see it making sense for us to file ourselves and incur the significant expense and effort as there is likely no benefit to us from doing so in this case. We are already properly listed on Dell's verified list and they are not challenging our having properly perfected our rights, As we understand the appraisal process, if we do not file by the 120 day deadline we will be in a pseudo class with all other shares and receive the ultimate consideration decided in the case. We remain open to discussion about alternative proposals on this matter should we be mistaken in our understanding of the process or if there are significant benefits you would like to point out that we are missing.
I can do a phone call any time tomorrow between 8am-noon ET should you wish to arrange a time to discuss this further.

Best,

Steve Ballentine

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From: Emily Johnson [mailto:Ejohnson@gelaw.com]
Sent: Wednesday, January 08, 2014 12:14 PM
To: Steve Ballentine
Cc: Stuart Grant
Subject: Potential Appraisal Action of Dell, Inc. Shares [IWOV-LEGAL.FID78856]

Mr. Ballentine,

Mr. Grant asked me to send you the attached.

Thank you.

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EXHIBIT B

THE GLOBAL CONTINUUM PETITIONERS' BRIEF IN OPPOSITION TO PETITIONER MORGAN STANLEY DEFINED CONTRIBUTION MASTER TRUST'S MOTION FOR AN AWARD OF ATTORNEYS FEES AND REIMBURSEMENT OF EXPENSES PURSUANT TO 8 *DEL. C.* SECTION 262(J)

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Frederick P. Fish
1855-1930

W.K. Richardson
1859-1951

ATLANTA
AUSTIN
BOSTON
DALLAS
DELAWARE
HOUSTON
MUNICH
NEW YORK
SILICON VALLEY
SOUTHERN CALIFORNIA
TWIN CITIES
WASHINGTON, DC

April 11, 2014

Via eMail

Stuart M. Grant, Esquire
GRANT & EISENHOFER, P.A.
123 Justison Street
Wilmington, DE 19801

Re: *In re Appraisal of Dell, Inc.*, Consolidated C.A. No. 9322-VCL

Dear Stuart,

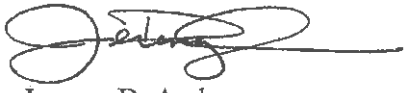
I write on behalf of the Other Claimants, as that term is defined in the Court's Consolidation Order of April 10, 2014.

Each of the Other Claimants supported your appointment to be lead counsel in the above-captioned matter. This support was premised on your representation to the Other Claimants that you would not seek to have Grant & Eisenhofer, P.A.'s ("G&E") attorneys' fees charged pro rata against the value of Other Claimants' shares. In fact, you specifically told me that G&E was not seeking to "reach into the pocket" of my client. Mr. Hirzel's proposed consolidation order reduced that collective understanding to writing based on the representations that you made to me and Mr. Maimone.

Please confirm, in writing, our agreement that you will not seek to have G&E's attorneys' fees charged against the Other Claimants' shares. For clarification, we do not take issue with G&E's right under Section 262 and the Court's Consolidation Order to have its expert fees charged pro rata against the value of all shares entitled to appraisal.

We hope that we can memorialize this agreement without further burdening the Court.

Sincerely,



Jeremy D. Anderson
(Delaware Bar No. 4515)

JDA:phb

Cc: Michael J. Maimone, Esquire
Samuel T. Hirzel, Esquire

EXHIBIT C

THE GLOBAL CONTINUUM PETITIONERS' BRIEF IN OPPOSITION TO PETITIONER MORGAN STANLEY DEFINED CONTRIBUTION MASTER TRUST'S MOTION FOR AN AWARD OF ATTORNEYS FEES AND REIMBURSEMENT OF EXPENSES PURSUANT TO 8 *DEL. C.* SECTION 262(J)

Michael J. Maimone
Tel 302.661.7389
Fax 302.661.7166
maimonem@gtlaw.com

May 6, 2014

BY E-FILING

The Honorable J. Travis Laster
Court of Chancery
New Castle County Courthouse
500 North King Street, Suite 11400
Wilmington, DE 19801

Re: *IN RE APPRAISAL OF DELL INC.*,
C.A. No. 9322-VCL

Dear Vice Chancellor Laster:

We represent Magnetar Capital Master Fund Ltd, Magnetar Global Event Driven Master Fund Ltd, Spectrum Opportunities Master Fund Ltd, and Blackwell Partners LLC ("Magnetar Entities") in connection with the above-referenced action. The Magnetar Entities, Cavan Partners, L.P. ("Cavan"), and Global Continuum Fund, Ltd. ("Global Entities") have been defined as the "Other Claimants" in the Consolidation Order entered by this Court on April 10, 2014 ("Order"). I am writing on behalf of the Other Claimants in order to clarify a possible inaccuracy in the record and to highlight to this Court a potential issue between Grant & Eisenhofer ("G&E") and the Other Claimants.

During the scheduling conference held on April 10, 2014 ("Conference"), the Magnetar Entities suggested that the following provision be included in the proposed consolidation order ("Proposed Order"):

> Each Petitioner solely is responsible for the fees payable to such Petitioner's counsel, and G&E's current clients solely are responsible for the fees payable to G&E, which includes the fees payable to G&E as Lead Counsel.

It was the understanding of the Magnetar Entities at the time of the Conference that such provision was consistent with the position of G&E as communicated to me. During the Conference, along with other information that was provided to me for the first time, G&E stated that this was not G&E's position, and that G&E intended to defer the fees and expenses issue until the end of this action as contemplated by 8 *Del. C.* §262(j). This Court agreed with G&E, questioned the reasonableness of the position suggested by the Magnetar Entities (and supported by Cavan and the Global Entities), and ordered that, "at an appropriate stage of the proceeding, G&E may seek to have its fees and expenses charged *pro rata* against the value of all the shares entitled to an appraisal." Order at 9, ¶11.

Although the Magnetar Entities (a) believed that G&E was "backtracking" on an agreement, and (b) only suggested the provision regarding fees and expenses be included in the Proposed Order based upon such agreement, I determined that it would be more efficient (and less disruptive to the Conference) to discuss the situation with counsel to Cavan and the Global Entities and with G&E prior to informing this Court of a potential issue.

After the Conference, counsel to the Other Claimants discussed the situation and I learned for the first time that G&E made a similar statement to counsel to Cavan, Fish & Richardson ("Fish"). It was determined that Fish would contact G&E to clarify the situation. (A copy of the letter from Fish to G&E, dated April 11, 2014, is attached hereto as Exhibit A). A few days later, G&E responded to Fish by letter, in which G&E acknowledged the existence of an agreement, but stated that such agreement was conditioned upon the Other Claimants not challenging G&E's desire merely to "keep [the Other Claimants] in the loop." (A copy of the letter from G&E to Fish, dated April 14, 2014 is attached hereto as Exhibit B). At no time during my discussions

with G&E did G&E state that the agreement was based upon a condition, and I confirmed that G&E's agreement with Fish also was not conditional. Indeed, absent the existence of an agreement (or if the agreement was conditional), the Magnetar Entities would not have suggested the provision regarding fees and expenses be included in the Proposed Order.

The Other Claimants wanted to inform Your Honor of the facts underlying the Proposed Order and to explain the reason the Magnetar Entities (as well as Cavan and the Global Entities) suggested the provision regarding fees and expenses be included in the Proposed Order. Although the Other Claimants currently understand the position of G&E (a position that creates numerous issues for the Other Claimants that the Other Claimants may be forced to respectfully request that this Court resolve),[1] at the time of the

[1] It is the understanding of the Other Claimants that G&E is representing at least some (if not all) of its initial clients on a contingency-fee basis. Neither Section 262(j) nor any decision interpreting Section 262(j) provides that the Other Claimants will be required to share in this contingency-fee arrangement with G&E absent a written agreement between G&E and each of the Other Claimants. This contingency-fee arrangement raises additional issues, including whether the Other Claimants will be responsible for paying to G&E (a) their pro rata portion of the percentage that G&E's initial clients agreed to pay, (b) the same percentage as G&E's initial clients are directed by this Court

Conference, the Other Claimants believed that their position was consistent with the position of G&E, and, thus, was reasonable. At no time did the Other Claimants attempt to circumvent Section 262(j) or attempt to act in an unreasonable manner.

We are available at Your Honor's convenience if this Court has any questions or concerns.

Respectfully submitted,

/s/ Michael J. Maimone

Michael J. Maimone (Del. No. 3592)

cc: Register in Chancery (by e-filing)
Stuart M. Grant, Esq. (by e-filing)
Michael J. Barry, Esq. (by e-filing)
Jeremy D. Anderson, Esq. (by e-filing)
John D. Hendershot, Esq. (by e-filing)
Samuel T. Hirzel, II, Esq. (by e-filing)

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to pay, and (c) on the basis of a lodestar analysis notwithstanding the fact that each of the Other Claimants retained individual counsel. It also is not clear whether the payments of each of the Other Claimants to its individual counsel will be credited towards (or otherwise deducted from) any amount (if any) that the Other Claimants may be obligated to pay to G&E.

EFiled: May 06 2014 01:42PM EDT
Transaction ID 55400275
Case No. 9322-VCL

EXHIBIT A

FISH & RICHARDSON P.C.

17TH FLOOR
222 DELAWARE AVENUE
P.O. BOX 1114
Wilmington, Delaware
19899-1114

Telephone
302 652-5070

Facsimile
302 652-0607

Web Site
www.fr.com

Jeremy D. Anderson
302 778-8452

Email
janderson@fr.com

Frederick P. Fish
1855-1930

W.K. Richardson
1859-1951

FR

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TWIN CITIES
WASHINGTON, DC

April 11, 2014

Via eMail

Stuart M. Grant, Esquire
GRANT & EISENHOFER, P.A.
123 Justison Street
Wilmington, DE 19801

Re: *In re Appraisal of Dell, Inc.*, Consolidated C.A. No. 9322-VCL

Dear Stuart,

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We hope that we can memorialize this agreement without further burdening the Court.

Sincerely,

Jeremy D. Anderson
(Delaware Bar No. 4515)

JDA:phb

Cc: Michael J. Maimone, Esquire
Samuel T. Hirzel, Esquire

EXHIBIT B

Grant & Eisenhofer P.A.

123 Justison Street Wilmington, DE 19801 Tel: 302-622-7000 Fax: 302-622-7100

485 Lexington Avenue
New York, NY 10017
Tel: 646-722-8500
Fax: 646-722-8501

1747 Pennsylvania Avenue, N.W., Suite 875
Washington, DC 20006
Tel: 202-386-9500
Fax: 202-386-9505

30 N. LaSalle Street, Suite 1200
Chicago, IL 60602
Tel: 312-214-0000
Fax: 312-214-0001

Stuart M. Grant
Managing Director
Tel: 302-622-7070
sgrant@gelaw.com

April 14, 2014

Jeremy D. Anderson, Esquire
Fish & Richardson P.C.
17th Floor
222 Delaware Avenue
P.O. Box 1114
Wilmington, DE 19899-1114

Re: *In re Appraisal of Dell, Inc.*, Consolidated C.A. No. 9322-VCL

Dear Jeremy:

I write in response to your letter of April 11, 2014. I was surprised that you claim to be writing on behalf of all Other Claimants. You have no idea what my discussions were with them and your assumption that my discussions with them were the same as with you is not well founded.[1] I therefore will respond to you only with regard to my discussions with you and not as the "representative" of the Other Claimants.

We discussed you supporting G&E's clients (the 87% stakeholder in the appraisal) and G&E as lead in this case with the understanding that we would keep you in the loop. While you were supportive at first, once Mike Maimone opposed our stipulation and attempted to bind us to numerous unreasonable requirements, you filed papers with the Court supporting many of his positions. Now that Maimone was unsuccessful in that effort, you seek to have us agree to a proposal that was made to you in return for your full support of our consolidation which you did not provide.

The Court has entered the Consolidation Order. That order provides that the issue of any surcharge will be deferred until the end of the case. We think that makes abundant sense. We will work hard to make this a successful appraisal for all claimants. If we accomplish that goal, we can discuss any surcharge at the end of the case.

[1] So that there is no misunderstanding, we most certainly did not tell others that we would not seek to have fees charged pro rata against them particularly since at least one claimant told me directly that he was going to hire other counsel to simply file and ride G&E's coattails just so he didn't have to pay the same fee that the T. Rowe clients were paying.

I look forward to working with you for the success of all of our clients.

Very truly yours,

Stuart M. Grant

EXHIBIT D

THE GLOBAL CONTINUUM PETITIONERS' BRIEF IN OPPOSITION TO PETITIONER MORGAN STANLEY DEFINED CONTRIBUTION MASTER TRUST'S MOTION FOR AN AWARD OF ATTORNEYS FEES AND REIMBURSEMENT OF EXPENSES PURSUANT TO 8 *DEL. C.* SECTION 262(J)

Verified List No	Shares	Reason for Disqualification
1	16500000	TR = Shares Disqualified in 5/11/16 Opinion
2	7045780	TR
5	1271400	TR
7	1010600	TR
9	965100	TR
10	954800	TR
13	891700	TR
15	685800	TR
18	458900	TR
24	329500	TR
26	256500	TR
39	100,500	TR
42	93900	TR
43	86450	TR
45	80000	TR
Subtotal	30730930	Shares Disqualified in 5/11/16 Opinon
19	416000	SJ = Shares Disqualified in 7/13/15 Opinion
21	347300	SJ
27	251950	SJ
28	218643	SJ
30	207300	SJ
37	118048	SJ
44	84900	SJ
50	31525	SJ
Subtotal	1675666	Shares Disqualifed in 7/13/15 Opinion
22	343699	CO = Continuous Ownership
46	64000	CO
47	57000	NS = Not Signed
48	50000	sold
56	20500	NS
49	37032	NS
53	24000	NS
55	21500	WD = Withdrawn
57	19431	WD
58	18289	CO
59	18012	CO
60	16500	CO
61	14700	NS
62	13300	NS
64	11200	T = Transferred

65	10483	sold
66	10400	WD
70	8000	sold
71	7500	WD
74	6000	Sold
76	5000	T
77	4600	CO
84	2684	sold
89	2000	NS
91	2000	WD
92	1939	NS
94	1611	WD
95	1500	WD
97	1320	NS
99	1012	WD
100	1010	NT
101	1000	NS
103	1000	NS
104	1000	WD
108	1000	NS
115	600	NS
128	400	NS
133	300	NS
158	148	NS
164	102	NS
167	100	NS
173	100	WD
177	100	WD
186	50	WD
195	33	NS
199	19	NS
203	10	NS
204	10	NS
205	9	NS
213	0	NS
Subtotal	802203	Shares Disqualified in May 2015 Orders as withdrawn, sold, transferred, not signed, etc.
72	7210	
79	4000	
81	3000	
83	3000	
85	2650	

86	2400
87	2300
88	2000
90	2000
96	1500
98	1257
105	1000
106	1000
107	1000
109	800
110	800
111	800
112	800
113	800
114	700
117	600
118	530
119	509
120	500
121	500
122	500
123	500
124	465
126	402
127	400
129	365
130	340
131	310
132	310
134	300
135	300
136	263
137	220
138	200
139	200
140	200
141	200
142	200
143	200
144	200
145	200
146	200
147	200
148	200
149	200
150	200
151	200

153	192
154	164
155	160
157	150
159	130
160	125
161	120
162	116
163	103
165	100
166	100
169	100
170	100
171	100
172	100
174	100
175	100
176	100
178	100
179	100
180	100
181	100
182	77
183	75
184	75
185	54
187	50
188	50
189	48
190	45
191	40
192	38
193	35
194	34
196	30
197	22
198	20
200	18
201	15
202	13
206	7
208	6
209	5
210	3
211	1
212	1

52453	claimants listed on Oppenheimer Aff. Dkt. 146 Ex. 1 and not elsewhere

Total Shares on Verifed List	38765130	
(Shares DQ in May 2016 Opinion)		30730930
(Shares DQ in July 2015 Opinion)		1675666
(Shares DQ in Early Orders)		802203
claimants listed on Oppenheimer Aff. Dkt. 146 Ex. 1 and not elsewhere		52453
		33261252
Remaining Shares	5503878	