Investigating Opportunities to Negotiate an Extra $.88 per Share

Need to know what was offered to ineligible clients
Making use of whatever is learned
Reactions to confusion

Reactions to the issues in the Dell appraisal case reported last week[1] have become focused on two essential concerns about the "secret settlement" between Dell and the former T Rowe Price petitioners that the Court had determined were ineligible for appraisal rights:

- *whether the appraisal claimants that satisfied eligibility requirements should be offered the same – or possibly higher – payments in excess of what the Court determined was due*; and
- *what services Lead Counsel provided for the benefit of the eligible appraisal claimants, as distinguished from services to their clients that were ineligible, to justify the firm's proposed fees.*

Need to know what was offered to ineligible clients

Surprisingly little has been learned about the Dell settlement with T Rowe Price, which has in itself fueled speculation.

A transcript of the private Monday morning teleconference was obtained,[2] but actually raised more questions than it answered. Stuart Grant of Grant & Eisenhofer ("G&E"), the appointed Lead Counsel for eligible appraisal claimants, was in the teleconference acting as counsel for the ineligible T Rowe Price petitioners that had been dismissed from the appraisal case. He and Dell's counsel verbally summarized an agreement they had negotiated to pay the ineligible "Settling Petitioners" $.88 per share simply to give up whatever rights they had to appeal, and Mr. Grant explained that it was urgent to get court approval quickly, without delays that might be involved in an open review by all claimants, "so that it could be accounted for in the second quarter for all of my clients, which, understanding that they are various funds, quarters matter to them."[3] No mention was made of a written agreement during the teleconference, and there was no reference to any documented agreement in the Court's subsequent Order approving what had been summarized.[4]

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[1] See the July 6, 2016 Forum Report: Preserving the Benefits of a Model Appraisal Rights Case.

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

[3] See pages 5-6 of the Transcript. This explanation is questionable in the context of fund reporting practices, and was in any event contradicted a few days later by an SEC filing in which T Rowe Price stated that the company's accounting charge for the previously reported payments of $194 million to its funds and other managed accounts for their lost eligibility would be reduced by the $28 million settlement, so that the settlement would have no effect at all on either the amounts or timing of benefits realized by the managed funds. See July 1, 2016, T. Rowe Price Group, Inc., SEC Form 8-K: Report of $28 million settlement reducing previous reserve for losses resulting from the denial of appraisal rights (3 pages, 145 KB, in PDF format).

[4] See June 29, 2016, *In Re: Appraisal of Dell, Inc.* (Consol. C. A. No. 9322-VCL): Order Approving Settlement (4 pages, 208 KB, in PDF format).

Based on what is known, and more importantly what is ***not*** known, I sent Mr. Grant a letter yesterday morning requesting a copy of the executed settlement agreement between Dell and his ineligible clients.[5]

Making use of whatever is learned

Yesterday's letter to Mr. Grant also informed him that Cavan, the Forum's representative petitioner that initiated the Dell appraisal case, wishes to consider the same or better terms for giving up rights to appeal that he negotiated for his ineligible clients, and that the offer should be made available to all eligible claimants.

There are of course issues for lawyers to argue about whether Dell is obligated to make the offer available to all claimants in the case, or whether G&E had a duty to make the offer available to all the claimants the firm was appointed to serve as Lead Counsel. But in any event, business logic would suggest that if Dell could realize some benefit that justified a $28 million payment for the dismissed ineligible parties to waive whatever rights they might have had to appeal, Dell would welcome the opportunity to pay at least the same amount per share for the more meaningful rights of eligible claimants to appeal. And if there are reasons why this simple business logic does not apply, we need to know what those reasons are.

What we learn about Dell's settlement with the ineligible G&E clients, and naturally also what G&E is able to accomplish in negotiations of similar settlement opportunities for the eligible claimants, will obviously be relevant to consideration of the firm's controversial fee application.

Reactions to confusion

Less than seven hours after last Wednesday's Forum report addressing delays in a final order for distribution of payments to eligible claimants and other burdens relating to controversies about Lead Counsel's services,[6] Mr. Grant demonstrated his ability to act quickly by filing a proposed order for a final judgment "resolving the entire Dell Appraisal" with a provision for G&E to hold unresolved payments in escrow.[7] The Court responded one hour and eight minutes later with a filing that denied the proposed order, commenting "This submission is premature, ill-conceived, and unhelpful," briefly summarizing the issues concerning Lead Counsel's fee application that need to be resolved before a final judgment can be prepared, and stating "No one need respond to this proposed form of final order."[8]

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

[6] See the July 6, 2016 Forum Report, cited above in footnote 1, distributed to Forum participants at 8:01amET.

[7] See July 6, 2016 (filed 2:43pm), *In Re: Appraisal of Dell, Inc.* (Consol. C. A. No. 9322-VCL): Letter of Stuart M. Grant of Grant & Eisenhofer to Court enclosing a Proposed "Order and Final Judgment resolving the entire Dell Appraisal" (23 pages, 302 KB, in PDF format).

[8] See July 6, 2016 (filed 3:51pm), *In Re: Appraisal of Dell, Inc.* (Consol. C. A. No. 9322-VCL): Denial of Grant & Eisenhofer Proposed "Order and Final Judgment resolving the entire Dell Appraisal" (22 pages, 410 KB, in PDF format).

Professional and academic observers have generally viewed the current issues as unusually confused and complicated. Some have focused on what they consider extraordinary, such as refusing to explain charges, and others have focused on questions for practitioners, such as whether Court approval was needed when the Court had already dismissed the "Settling Petitioners" from the case so that they could simply agree not to appeal what the court had already decided, or acknowledge the expiration of their rights to appeal. These issues are of course important to all of us concerned with managing appraisal cases.

What may be more important, though, is how this confusion is viewed by a "real" investor who looks at the appraisal process as an essential right to realize the fair value of personal savings. One of the individual appraisal claimants who had communicated with me in the past to ask questions has for the first time offered views, and has asked me to present them. I've appended the letter (here) without editing other than redaction of the person's name to respect requested anonymity, and encourage you to consider how this articulate example of an ultimate investor views the issues that must be resolved.

GL – July 12, 2016

Gary Lutin
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APPENDIX: Letter from eligible Dell appraisal claimant

From: [redacted]
Sent: Saturday, July 09, 2016 8:04 PM
To: gl@shareholderforum.com
Subject: Compensation for G&E

Mr. Lutin:

When I first chose to pursue the DELL appraisal rights process, I sent several emails to you regarding the benefits of enlisting legal representation in that process. I decided to opt out because I failed to see any benefit. Now that we seem to be moving into the closing phases of said process, I am more convinced than ever that I made the right decision and would like for you to do what you can to let my views about this issue be known to the powers that be.

It would appear that G&E, the attorneys for T. Rowe Price and many of the others they represent are a rogues' gallery of gold-plated dunces with a sense of entitlement which they would probably tacitly attribute to the fact that they managed - by hook or crook - to get the best American legal educations the dollar can buy. In spite of that, they have repeatedly demonstrated a level of operational incompetence and ignorance of the law which could make a casual observer question their functional literacy.

More troubling than that is the attempt G&E now appears to be making to leverage that incompetence into a 7-figure payday by seeking authorization to extract money from the settlements of DELL shareholders whose interests it has not represented. As you mentioned in your most recent shareholder forum message, G&E has not represented non-client interests in its dealings with DELL. In fact, it has represented the interests of its ineligible clients over those of eligible claimants and now has the gall to try to stake a claim on non-client settlements. G&E's "secret settlement" with DELL, its non-compliance with the Consolidation Order, and its categorical refusal to provide documentation of charges are all compelling reasons for a rightful claimant who has not enlisted its services to resist any attempt it makes to lay claim to any settlement amount from non-client accounts. G&E's behavior smacks of undisclosed dual agency and malfeasance.

When I decided to pursue appraisal rights, it was my clear understanding that if I did not enter into an agreement to secure legal representation, I would receive the fair portion of the eventual settlement amount due me prorated according to the number of DELL shares I own. With that in view, I ran what has been acknowledged to be a rather formidable gauntlet of legal obstacles set up by DELL in order to discourage its shareholders from seeking redress through the appraisal rights process. In the end, one of the press releases you forwarded reported that only about 20 claimants were successful in negotiating that process. Without any complications and absolutely no help from G&E, I was able to single-handedly accomplish what its contingent of gilded morons was incapable of. And now G&E feels entitled to claim a portion of my settlement as its own...?

The naked, unbridled greed currently on display by G&E is shocking - even by Rumsfeldian standards. G&E does not deserve a single red cent of any settlement that I receive.

If G&E feels that it is not being compensated for its efforts, it should cozy up to DELL a bit more and hope that DELL will throw it another bone for services rendered.

Sincerely,

[redacted]