EFiled: Sep 07 2016 02:09PM EDT
Transaction ID 59522313
Case No. 9322-VCL

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: APPRAISAL OF DELL INC.	Consol. C. A. No. 9322-VCL **PUBLIC VERSION TO BE FILED ON SEPT. 7, 2016**

REPLY BRIEF IN FURTHER SUPPORT OF PETITIONER'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES PURSUANT TO 8 *DEL. C.* § 262(j)

GRANT & EISENHOFER P.A.
Stuart M. Grant (# 2526)
Michael J. Barry (# 4368)
Christine M. Mackintosh (# 5085)
123 Justison Street
Wilmington, DE 19801
(302) 622-7000

Counsel for Petitioners

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

Petitioner Morgan Stanley Defined Contribution Master Trust ("Moving Petitioner") submits this Brief in Support of its Motion For An Award Of Fees And Expenses Pursuant To 8 *Del. C.* Section 262(j) (the "Fee and Expense Motion"). For the reasons set forth in the Fee and Expense Motion and herein, Moving Petitioner's Motion should be granted, and the fees and expenses it incurred in securing a judgment that the fair value of Dell was $17.62 per share should be charged pro rata against all former holders of Dell stock who are entitled to an appraisal.

PRELIMINARY STATEMENT

Moving Petitioner seeks to charge the out-of-pocket expenses that it incurred in securing a judgment that the fair value of Dell's common stock was 28% higher than the merger consideration, together with a reasonable award of attorneys' fees, pro rata against the value of all shares entitled to an appraisal. The Fee and Expense Motion asks precisely what Section 262(j) contemplates: that those former Dell shareholders ***who are entitled to share in the appraisal award*** be charged attorneys' fees and expenses.

The Magnetar Funds and the Global Continuum Petitioners (together, the "Objecting Petitioners") – who undoubtedly are more than willing to accept the 28% uplift over the deal price that they obtained ***exclusively*** due to the Moving Petitioners' efforts – now attempt to shirk their fair share of the costs by asking

that this Court charge these expenses against other former Dell stockholders ***who were deemed ineligible to participate in the appraisal and who will not share in the appraisal award***. After having thirty days' of discovery to try to gin up some reason why the T. Rowe Price Petitioners should be forced to bear expenses that the plain language of Section 262(j) does not permit to be charged to them, the Objecting Petitioners cannot identify ***a single reason*** why this Court should require the T. Rowe Price Petitioners to share in these costs.

ARGUMENT

I. THE T. ROWE PRICE PETITIONERS SHOULD NOT HAVE TO SHARE IN THE EXPENSES MOVING PETITIONER INCURRED IN CONNECTION WITH THE APPRAISAL ACTION

The Objecting Petitioners identify no basis upon which to force the T. Rowe Price Petitioners to share in the expenses that the Moving Petitioner incurred in securing an appraisal award in which the T. Rowe Price Petitioners will not share.

A. THE PLAIN LANGUAGE OF SECTION 262(j) DOES NOT PERMIT THE EXPENSES AND FEES INCURRED BY THE MOVING PETITIONER IN CONNECTION WITH THE APPRAISAL TO BE CHARGED AGAINST ANYONE OTHER THAN FORMER HOLDERS OF DELL SHARES THAT ARE ENTITLED TO AN APPRAISAL

Section 262(j) provides that "[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). Because the T. Rowe Price Petitioners do not hold "shares entitled to an appraisal," they are not within the class of persons to whom the expenses the Moving Petitioner incurred in connection with this appraisal action may be charged. The Objecting Petitioners have not cited ***a single decision*** in which this Court charged claimants who were found ineligible for appraisal a pro rata share of fees and expenses. This is not surprising, because this Court historically has been unwilling to allocate expenses and fees requested pursuant to Section 262(j) beyond the clear limits set forth therein. As Vice Chancellor Jacobs observed in declining to allocate expenses to the surviving corporation in *Pinson v. Campbell-Taggert, Inc.*, 1989 WL 17438, at *7 (Del. Ch. Feb. 28, 1989), expenses incurred in connection with an appraisal action "are recoverable ***only by a pro rata apportionment against the value of the shares entitled to an appraisal***." (emphasis added).

Nor should the Objecting Petitioners' appeals to equity carry the day. As this Court noted in denying the T. Rowe Price Petitioners' motion for an award of equitable interest, "[e]quitable considerations do not enter into the statutory analysis" in an appraisal action. Order Regarding Equitable Award Of Interest at ¶5. Similarly, in granting Dell's motion for summary judgment against certain of

the T. Rowe Price Petitioners based on the continuous ownership issue, this Court noted that the "Delaware Supreme Court has endorsed a principle of strict construction [concerning Section 262]." *In re Appraisal of Dell Inc.*, 2015 WL 4313206, at *10 (Del. Ch. July 30, 2015). *See also, e.g., Loeb v. Schenley Indus., Inc.*, 285 A.2d 829, 831 (Del. Ch. Dec. 10, 1971) (rejecting petitioners' arguments "to modify the rigid statutory scheme set forth in 8 *Del. C.* § 262" based on "equitable principles" and finding that the "simple answer to this contention is that the right to an appraisal in a merger proceeding is entirely a creature of statute"). This Court should not look to general concepts of equity to expand the class of persons to whom expenses can be charged under Section 262(j).

B. THE T. ROWE PRICE PETITIONERS' RECOVERY OF A REDUCED INTEREST PAYMENT UNDER A SEPARATE SETTLEMENT AGREEMENT WITH DELL DOES NOT EMPOWER THIS COURT TO CHARGE THE T. ROWE PRICE PETITIONERS THEIR PRO RATA SHARE OF EXPENSES INCURRED BY THE MOVING PETITIONER IN OBTAINING AN APPRAISAL AWARD IN WHICH THEY WILL NOT SHARE

The T. Rowe Price Petitioners' recovery of a reduced interest payment under a settlement agreement with Dell is irrelevant to the issue presented here. The Magnetar Funds assert that the interest payment is relevant here for two reasons: (1) G&E purportedly was entitled to recover its appraisal action expenses as part of

the settlement, but "voluntarily chose not to enforce [its] right to reimbursement"[1] and (2) the interest payment allegedly demonstrates that the T. Rowe Petitioners "benefited" from appraisal action expenses.[2] Both arguments are baseless.

First, the Magnetar Funds' claim that G&E "voluntarily chose not to enforce [its] right to reimbursement of 'all out of pocket expenses' from the T. Rowe Petitioners" is simply wrong.[3] G&E incurred ***no expenses at all*** in connection with the settlement and thus ***waived no right*** by not charging the T. Rowe Price Petitioners for expenses in connection with that settlement. Moreover, the fact that G&E's retainer with the T. Rowe Price Petitioners would have permitted it charge the T. Rowe Price Petitioners for the out-of-pocket expenses it incurred in connection with the appraisal action ***had the T. Rowe Price Petitioners obtained a recovery in connection with that action*** is irrelevant. G&E's retainer does not permit it to charge appraisal action expenses to the T. Rowe Price Petitioners, because the T. Rowe Price Petitioners did not obtain a recovery in the appraisal action against which such expenses could be charged.

---

[1] Magnetar Funds' Supplemental Memorandum in Opposition to Petitioner Morgan Stanley Defined Contribution Master Trust's Motion for an Award of Fees and Expenses Pursuant to 8 *Del. C.* Section 262(j) (the "Supplemental Opposition") at ¶6.

[2] Supplemental Opposition at ¶¶11-12.

[3] Supplemental Opposition at ¶6.

Second, the fact that the T. Rowe Price Petitioners reached a settlement of their demand for equitable interest does not establish that the T. Rowe Price Petitioners "benefited" from the appraisal action. The money paid to the T. Rowe Price Petitioners under the settlement agreement was to settle their demand for interest on the merger consideration – interest to which they argued they were entitled not under the ***appraisal statute*** but under ***general principles of equity***. *See* Certain Petitioners' Motion For An Equitable Award Of Interest.

The fact that the T. Rowe Price Petitioners agreed not to appeal the Court's determination that they were not entitled to an appraisal as part of the settlement does not change the nature of the $28 million payment. That payment is ***a payment to settle the T. Rowe Price Petitioners' demand for equitable interest***. Because the money the T. Rowe Price Petitioners were paid under the settlement was not paid in connection with the appraisal action but to settle its demand for equitable interest, the assertion that the T. Rowe Price Petitioners have been "given a free pass on expenses"[4] incurred in connection with that action is simply wrong.

Moreover, any suggestion that the T. Rowe Price Petitioners have "benefited" from the appraisal action because they were able to settle their claim for equitable interest for $28 million is simply false. Had the T. Rowe Price

[4] Supplemental Opposition at ¶6.

Petitioners never sought an appraisal at all and instead invested the $435,241,193.75 in merger consideration that Dell had use and enjoyment of during the pendency of the appraisal action, their investment earnings readily could have eclipsed the $28 million interest payment.[5] Once again it is with ill grace that the Magnetar Funds seek a portion of the T. Rowe Price Petitioners' reduced interest when Magnetar is receiving more than double that interest rate in the appraisal.

II. THE MOVING PETITIONER AMPLY SUBSTANTIATED THE EXPENSES FOR WHICH IT SEEKS REIMBURSEMENT

G&E produced 537 pages of backup documentation to the Objecting Petitioners detailing each and every expense for which G&E seeks reimbursement.[6] The Objecting Petitioners' claim that G&E has not adequately

[5] Had the T. Rowe Price Petitioners managed to secure a 2% interest rate on an investment of the merger consideration, they would have earned $25,231,120.42; had they managed to secure a 3% interest rate, they would have earned $38,340,238.79 (both assuming quarterly compounding).

[6] The Global Continuum Funds' claim that G&E did not provide these documents until July 1, 2016 – the day its opposition brief was due – is disingenuous. As an initial matter, ***only the Magnetar Funds*** served discovery requests on G&E. Further, as G&E informed the Global Continuum Funds when it complained for the first time on July 1, 2016 that it did not have copies of the documents, the documents had been available for the asking from the time G&E served its discovery responses on June 13, 2016. The Global Continuum Funds' attempt to blame G&E for their failure to request copies of the documents until the eleventh hour is inappropriate.

demonstrated that the expenses for which it seeks reimbursement were incurred litigating the fair value of Dell is wrong.

First, G&E identified a lone invoice that was incurred solely in connection with litigating the entitlement issue – a $20,475.00 invoice for an expert – and does not seek reimbursement for that invoice.

Second, the Magnetar Funds concede that the lions' share of the expenses for which G&E seeks reimbursement – $3,372,878.02 – were incurred in connection with the expenses of experts "who were exclusively devoted to valuation issues."[7]

Third, all but a *de minimis* amount of the remaining $642,434.25 in expenses for which G&E seeks reimbursement were incurred in connection with litigating the fair value of Dell, as detailed below.[8]

[7] Supplemental Opposition at ¶15.

[8] Given the true facts about the amount of expenses incurred litigating the entitlement issue, the Global Continuum Petitioners' proposal that 1/3 of the expenses be allocated to the entitlement litigation is ridiculous. 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) (the "Global Continuum Opposition") at 15.

A. CATEGORIES OF EXPENSES THAT WERE INCURRED EXCLUSIVELY IN CONNECTION WITH LITIGATION THE VALUATION ISSUE

In addition to the $3,372,878.02 in expert expenses that the Magnetar Funds concede were incurred exclusively in connection with the valuation litigation, the following categories of expenses also were incurred ***exclusively*** in connection with the valuation issues:

- Travel - $37,880.53[9]
- Transcription services - $42,807.45[10]
- Meeting expenses - $1,884.70[11]
- Case-Related Publication - $32.00[12]
- Outside Counsel - $787.34[13]

[9] Because there were no "entitlement only" depositions or out-of-town meetings, no travel expenses are solely attributable to the entitlement issue. Further, the only deposition at which entitlement issues were even raised – the one-day deposition of Ken Allen of T. Rowe Price – took place in Baltimore, involved *de minimis* costs, and was noticed before the *entitlement issue* even arose. That deposition consisted mainly of questioning related to T. Rowe's analysis of the value of Dell. Moreover, Dell deposed the other petitioners as to whom no entitlement issues had been raised.

[10] Again, there were no "entitlement only" depositions and thus no "entitlement only" transcription expenses.

[11] These charges were for refreshments provided to counsel at the depositions of Dell board member Alex Mandl and at the depositions of petitioners' experts.

[12] This charge was incurred purchasing an article entitled "Management Buyouts and Earnings Management" published in the *Journal of Accounting, Auditing & Finance*, which G&E used to develop arguments concerning the inherent limitations on prices that could be paid in the context of an LBO.

Adding these expenses to the expert expenses, $3,456,270.04 of the expenses for which G&E seeks reimbursement was incurred ***exclusively*** in connection with litigating the valuation issue.

B. CATEGORIES OF EXPENSES FOR WHICH A DE MINIMIS PORTION WAS INCURRED IN CONNECTION WITH THE ENTITLEMENT ISSUE

After subtracting the above-described expenses that were incurred exclusively in connection with litigating the fair value of Dell, $559,042.14 in expenses remains. The portion of these expenses attributable to litigating the entitlement issue is *de minimis*.

1. e-Discovery Expenses

G&E incurred $246,519.90 in expenses for e-Discovery Data Processing and e-Discovery Hosting Services ("e-Discovery Charges"). A total of 478.4 gigabytes of documents were processed and hosted on G&E's e-Discovery platform throughout the duration of the appraisal action. Of these documents, only 4.9 gigabytes (1% of the total) – comprised of small productions made in June 2015, July 2015, October 2015, and November 2015 after the issue of the T. Rowe Price

[13] This amount was paid to Clark, Hunt, Ahern, & Embry in connection with a subpoena that Petitioners served on Bain & Company in Massachusetts. This subpoena sought information relating to work Bain did to assist Dell in implementing its transformational strategy, and thus was a "valuation litigation" expense.

Petitioners' entitlement emerged (the "Entitlement Documents") – related to the unique T. Rowe Price entitlement issue.

The total cost to load and process the Entitlement Documents was $201.50; the cost to host the Entitlement Documents was $125 a month, for a total hosting cost of $1,500.[14]

Accordingly, $244,818.40 of the total $246,519.90 in e-Discovery Charges was incurred in connection with litigating the fair value of Dell.[15]

2. Filing Fees

G&E spent $21,267.78 on filing fees. Of these fees, only $531.60 was spent on filings relating to the entitlement issue: $36.35 for filing the April 2016 summary judgment opposition brief and $495.25 for filing the January 2016 summary judgment opposition brief. Accordingly, a total of $20,736.18 in filing fees was incurred in connection with litigating the fair value of Dell.

[14] This figure is based on a conservative calculation of what the monthly hosting fee would have been had ***all*** of the Entitlement Documents been loaded in June 2015 and hosted until May 31, 2016 (the cutoff date in G&E's expense calculation). The actual monthly hosting charges prior to November 2015 (when the full 4.9 gigabytes of Entitlement Documents were loaded) would have been slightly lower as hosting charges are based on volume of data.

[15] Because the "valuation documents" comprised 99% of the Dell database, it is not surprising that the "valuation e-Discovery" charges comprise approximately 99% of the total e-Discovery Charges.

3. Expenses Incurred Before The T. Rowe Price Petitioners Learned Of The Entitlement Issue

The remaining expenses are as follows: (1) $265,864.33 in duplication services; (2) $20,729.37 in case-related research; (3) $3,351.32 in postage and delivery; (4) $1,269.45 in telephone; and (5) $39.99 in service fees (together, the "Miscellaneous Expenses"). To the extent that the Miscellaneous Expenses were incurred before October 27, 2014, they could not possibly have been attributable to the entitlement issue, because T. Rowe Price itself was not alerted to this potential issue until that date.[16] The Miscellaneous Expenses incurred before October 27, 2014 were as follows: (1) $2,408.80 in duplication; (2) $6,826.83 in case-related research; (3) $472.72 in postage and delivery; and (4) $651.26 in phone.

The Miscellaneous Expenses left after deducting those Miscellaneous Expenses incurred before October 27, 2014 (the "Potential Entitlement Expenses") are as follows: (1) $263,455.53 in duplication; (2) $13,902.54 in research; (3) $2,878.60 in postage and delivery; (4) $618.19 in telephone charges; and (5) $39.99 in service fees. That leaves $280,894.85 for which no precise allocation could be made.

[16] *See* Objections and Responses of T. Rowe Price and the T. Rowe Price Petitioners to Respondent's Second Set of Interrogatories Directed to Certain Petitioners on Issues Relating to Entitlement to the Statutory Appraisal Remedy, at Response to Interrogatory No. 10.

While a precise amount of the Potential Entitlement Expenses that was actually expended on the entitlement issue is not possible, G&E respectfully submits that 2% of these Expenses ($5,617.90) should be allocated to the "entitlement" issue. The fact that the entitlement issue accounted for vanishingly small percentages of those expenses for which reimbursement is sought as to which a precise breakdown was possible (*i.e.*, 0% of the expert expenses, 0% of the travel expenses, 0% of the transcription expenses, 0% of the meeting expenses, 0% of the outside counsel expenses, 1% of e-Discovery Charges, and 2.5% of filing fees) underscores the reasonableness of allocating 2% of the Potential Entitlement Expenses to the entitlement issue. While the Objecting Petitioners may wish to believe otherwise, the fact is that the entitlement issue was an infinitesimal part of this litigation. The fact that so little was spent on it reflects G&E's laser focus on establishing that the fair value of Dell was in excess of the merger price.

As the documents produced and the foregoing demonstrate, the expenses attributable to litigating the entitlement issue are *de minimis*. In a spirit of compromise, G&E will agree to deduct the following amounts from its expense reimbursement requests:

Expense Category	Proposed Deduction
Entitlement e-Discovery Charges	$1,701.50
Entitlement Filing Fees	$531.60
2% of the Potential Entitlement Expenses	$5,617.09

Accordingly, G&E requests reimbursement for $4,007,462.08 in out-of-pocket expenses incurred in litigating the fair value of Dell, as follows:

Expenses Category	Total Amount	Valuation Allocation	Entitlement Allocation
Experts	$3,372,878.02	$3,372,878.02	$0
Filing Fees	$21,267.78	$20,736.18	$531.60
Meeting Expense	$1,884.70	$1,884.70	$0
Outside Counsel	$787.43	$787.43	$0
Travel	$37,880.53	$37,880.53	$0
Case-Related Publication	$32.00	$32.00	$0
Duplication Services	$265,864.33	$260,595.22	$5,269.11
Postage & Delivery	$3,351.32	$3,293.75	$57.57
Service Fees	$39.99	$39.99	$0
Telephone	$1,269.45	$1,257.09	$12.36
Transcription Services	$42,807.45	$42,807.45	$0
Case-Related Research	$20,729.37	$20,451.32	$278.05

E-Discovery Data Processing Services	$55,954.95	$55,753.45	$201.50
E-Discovery Data Hosting Services	$190,564.95	$189,064.95	$1,500
Expenses Sought		**$4,007,462.08**	

III. THE T. ROWE PRICE PETITIONERS SHOULD NOT HAVE TO SHARE IN THE MOVING PETITIONERS' ATTORNEYS' FEES

The Objecting Petitioners identify no basis upon which to force the T. Rowe Price Petitioners to share in the Moving Petitioners' attorneys' fees relating to the appraisal action.

A. THE OBJECTING PETITIONERS' CHOICE TO RETAIN ADDITIONAL COUNSEL DOES NOT RELIEVE THEM OF THEIR OBLIGATION TO PAY THEIR *PRO RATA* PORTION OF G&E'S ATTORNEYS' FEES

The Magnetar Funds concede that G&E's requested attorneys' fees are reasonable,[17] but contend that they are entitled to a "dollar-for-dollar offset for the

[17] The Global Continuum Petitioners assert that they should not be held to a contingency agreement to which they did not consent. Global Continuum Opposition at 16-17. G&E offered the low contingency percentage on which the Fee Motion is based to the T. Rowe Price Petitioners due in large part to their massive stake in Dell. If the Global Continuum Petitioners prefer to be released from this sweetheart deal, G&E would be more than happy to seek attorneys' fees from the Global Continuum Petitioners on a *quantum meruit* basis, the likely starting point of which would be G&E's $7,776,899.00 lodestar. The Global Continuum Petitioners also claim that the contingency percent should be ***lowered*** if it is to serve as a proxy for reasonableness because G&E should have contemplated performing additional work and incurring additional expenses litigating the entitlement issue. Global Continuum Opposition at 18. This assertion is baseless.

legal fees they were ***required*** to incur to protect their interests."[18] The Global Continuum Petitioners similarly demand an offset.[19] The Objecting Petitioners' demand for an offset is inappropriate for several reasons.

First, the Magnetar Funds have not provided ***any information at all*** about the offset to which they claim they are entitled – not the amount, not the composition of the amount, not the breakdown of the amount between valuation issues and entitlement issues. The Magnetar Funds' failure in this regard may be due to the fact that Lowenstein Sandler – who ***knows*** that it deserves ***no credit*** for the massive 28% uplift G&E secured for Lowenstein Sandler's clients[20] – stands poised to earn a windfall here.[21]

T. Rowe retained G&E on September 24, 2013 – more than a year before T. Rowe itself had any inkling of the entitlement issue. No one could have – or should have – contemplated the distracting voting issue sideshow at the outset of the engagement.

[18] The Magnetar Funds' Objections and Responses to T. Rowe's First Request for Production of Documents, at Response to Document Request No. 4 (emphasis added).

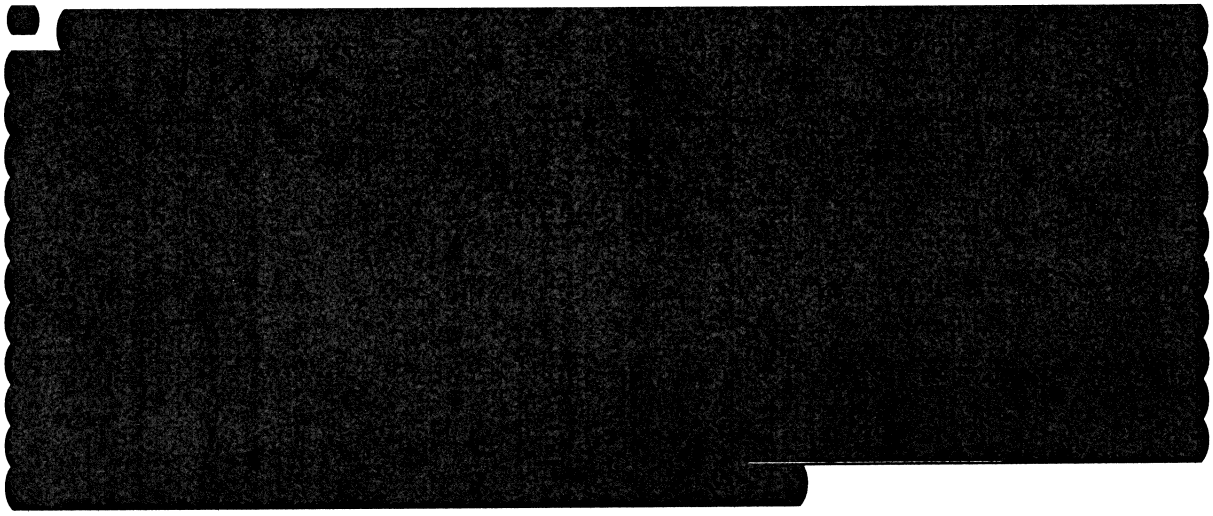
[19] Global Continuum Opposition at 18-19.

[20] The fact that the ***only role*** Lowenstein Sandler even claims to have played was providing "assistance and advice" on a tax issue makes blisteringly clear that they in no way contributed to the result here. Magnetar Funds' Memorandum in Opposition to Petitioner Morgan Stanley Defined Contribution Master Trust's Motion for an Award of Fees and Expenses Pursuant to 8 *Del. C.* Section 262(j) (the "Magnetar Opposition") at ¶11. Other than suggesting that G&E retain a tax expert, Lowenstein's involvement with that expert was non-existent. G&E found Professor Steines on its own, worked with Professor Steines to frame the issues to

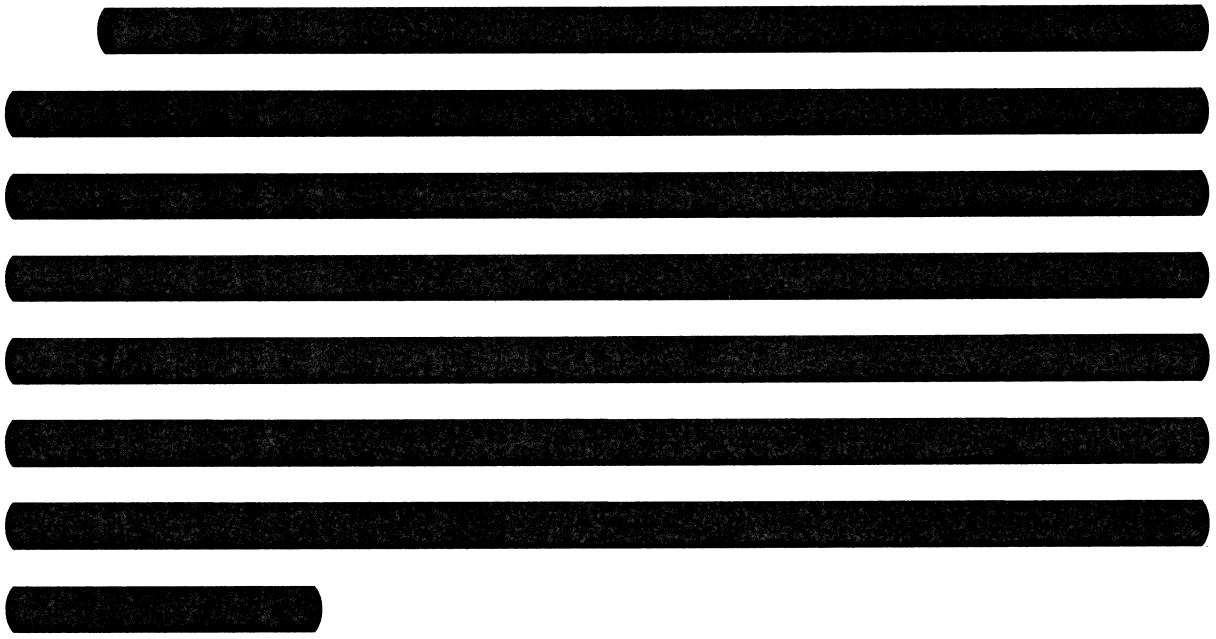
Second, the Objecting Petitioners fail to identify any legitimate "unique interests" driving their decision to retain additional counsel. While the Objecting Petitioners attempt to create a unique issue by pointing out that "G&E expressly disclaimed any obligation to fully represent the interests of all Non-G&E Petitioners by carving out any responsibility to litigate entitlement issues on behalf of other stockholders," this is a bogus *post hoc* justification. Supplemental Opposition at ¶17 n.3. Dell's Verified List, filed on March 4, 2014, stated no objections at all to any of the Objecting Petitioners and their entitlement was ***never*** challenged. In fact, the Magnetar Funds did not even retain Lowenstein Sandler until ***June 2015***, when the entitlement challenge ship had long since sailed. The

---

which his report should be addressed, and prepared Professor Steines for his deposition and defended it. Lowenstein Sandler did not even attend Professor Steines' deposition.



work done by Objecting Petitioners' additional counsel was to attempt to provide an escape for Objecting Petitioners from their fair share of the fees and costs of the appraisal. It would be Kafkaesque to now have the T. Rowe Petitioners pay those attorneys for that role.



Third, the Objecting Petitioners' assertion that the discovery of the issues surrounding the T. Rowe Price Petitioners' entitlement "required" them to hire additional counsel to ensure that G&E did not attempt to "offload the full brunt of its expenses on the surviving petitioners"[22] is revisionist history. The Magnetar Funds retained their own counsel at the outset of the litigation,[23] long before there

[22] Magnetar Opposition at 7.

[23] *See* November 11, 2013 retention agreement between the Magnetar Funds and Greenberg Traurig, attached hereto as Exhibit B.

was ever any question about the T. Rowe Price Petitioners' entitlement to seek an appraisal.[24] [redacted] these Funds hired additional counsel because they wanted to, not because some unique interests or alleged conflict on G&E's part "required" them to.

Fourth, the fact that T. Rowe Price paid G&E an attorneys' fee from its interest payment is irrelevant. Section 262(j) permits this Court to apportion attorneys' fees earned in connection with the appraisal action pro rata against the value of all shares entitled to an appraisal. The statute does not provide an offset for fees that counsel may have been paid from would-be appraisal claimants who were "kicked out" of the appraisal class in connection with a separate settlement.

---

[24] While Moving Petitioners have not been provided with a copy of the Global Continuum Funds' retainer with Proctor Heyman, Proctor Heyman filed the Global Continuum Funds' petition at the outset of this action and also submitted a Response to Petitioner's Joint Motion for Consolidation on April 9, 2014. Subsequently, Proctor Heyman entered an appearance of behalf of the Global Continuum Petitioners on June 26, 2014 – months before the T. Rowe Price Petitioners themselves knew about the potential entitlement issue and nearly a year before the Global Continuum Funds learned of this issue. Under these circumstances, the Global Continuum Funds' assertion that they retained their own counsel out of "pruden[ce]" "[i]n light of the potentially divergent interests" of the T. Rowe Price Petitioners and the risk "that the T. Rowe Price Petitioners would trade value for the class against the risk of disqualification of their shares" is specious. Global Continuum Opposition at 18.

Finally, the Magnetar Funds' suggestion that G&E should not be entitled to ***any attorneys' fees at all*** for its work on the appraisal case because it received fees from a payment that Dell decided (for its own reasons) to offer to the T. Rowe Price Petitioners to settle their demand for equitable interest outside of the appraisal action is outrageous. Supplemental Opposition at ¶18 ("Indeed, the $4.2 million fee to G&E is greater than the fee being sought in their Fee & Expense Petition, raising the question as to whether any additional fees should even be due to G&E.").[25] The Magnetar Funds' willingness to reap the benefits of a Neiman Marcus representation while seeking to pay a Walmart price is appalling.

IV. ANY FEES AND EXPENSES DUE AND OWING TO G&E SHOLD BE PAID PROMPTLY UPON RESOLUTION OF THIS MOTION

The Magnetar Funds cite no legal authority in support of their request that the Court suspend the payment of any fee and expense award to G&E until the valuation ruling becomes final and unappealable. Particularly here, where Magnetar has made clear that any appeal will be handled by counsel other than G&E, G&E should be paid any fees and expenses awarded promptly following this Court's ruling on the Fee and Expense Motion.

[25] The fee G&E seeks in the Fee Application represents a ***nearly 50% discount*** to its $7,776,899.00 lodestar. Accordingly, even if this Court were permitted to consider the $4.2 million in fees G&E was paid out of the ***interest payment*** in assessing the reasonableness of the fees requested in connection with the ***appraisal action***, G&E's requested fees are eminently reasonable.

CONCLUSION

For these reasons and those set forth in the Fee Motion, Moving Petitioner requests that the Court grant Moving Petitioners' Fee Motion, awarding $3,964,125.60 in attorney's fees and $4,007,462.08 in expenses to be charged pro rata against the value of all shares entitled to an appraisal.

Dated: August 30, 2016

Respectfully submitted,

/s/ Christine M. Mackintosh

Stuart M. Grant (#2526)
Michael J. Barry (#4368)
Christine M. Mackintosh (#5085)
Rebecca A. Musarra (#6062)
GRANT & EISENHOFER P.A.
123 Justison Street
Wilmington, DE 19801
(302) 622-7000

Counsel for Moving Petitioner