

Rights to Payment for Waiving Appeal of Dell Appraisal Decisions

Questions raised about rights of all claimants

Determining the interests of all claimants

In the Forum's reports of investor interests in Dell's settlement with T. Rowe Price a couple of months ago,¹ it had been assumed that Dell would provide a copy of their agreement defining the specific terms they are required to make available to all other claimants. They have not yet done so.

Questions raised about rights of all claimants

This unusual challenge raises important questions about what claimants should expect and about who is obligated to do what, not only in the this case but in future appraisal cases.

- ***What are the terms that Dell is required to offer other claimants?*** The only information available about the terms of settlement has been what was verbally summarized by counsel for Dell and T Rowe Price in their private conference with the court when they requested approval,² and what was subsequently reported in SEC filings by Dell and T Rowe Price.³ Taken together, these sources provide only a general indication that Dell paid T Rowe Price \$28 million, or approximately \$.88 per share, for a waiver of rights to appeal the court's determination of the amount Dell was required to pay the petitioners managed by T Rowe Price. The settling parties argue that other claimants should be able to get this extra \$.88 per share only if they give up rights to what the court has determined they are due, so that Dell would give a claimant only the \$13.75 offer price plus the \$.88 "settlement" payment. This position is of course inconsistent with the logic of a settlement that reportedly accepts a court's decision instead of rejecting it, and is clearly not supported by any documentation of the settlement or by the SEC filings. The limited evidence instead supports the extra \$.88 per share payment in consideration of a claimant's agreement to waive appeal of the court's decision about the amount Dell must pay that claimant, meaning that Dell would pay the \$.88 per share in addition to whatever amount the court determined was due.⁴
- ***Should an appraisal petitioner be allowed to settle without providing the written agreement to other petitioners, possibly to all claimants, or at least to the court?*** As indicated, Dell and T Rowe Price have rejected repeated requests for copies of the agreement, and counsel for T Rowe Price has stated that the court has not been given a

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

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

⁴ See [September 6, 2016 Shareholder Forum letter to Stuart M. Grant of Grant & Eisenhofer, attaching email correspondence with John D. Hendershot of Richards, Layton & Finger as counsel for Dell](#) (3 pages, 213 KB, in [PDF](#) format).

copy.⁵ Dell has been encouraged to reconsider its position, but if they do not provide the agreement voluntarily we will have to consider asking the court to compel disclosure.⁶

- ***Who is responsible for supporting the interests of non-petitioner claimants?*** Whether or not the court's Consolidation Order appointing Grant & Eisenhofer as Lead Counsel should make the firm responsible for the interests of all claimants in any settlement, the firm has indicated that in this case it will not be representing any parties other than its directly contracted T Rowe Price clients in matters relating to this settlement.⁷ Other petitioners have of course formally "appeared" in the case with counsel and therefore have the ability to be heard by the court, but non-petitioning claimants in appraisal proceedings have not appeared and must therefore depend on the petitioners to address their interests. Delaware courts have referred to this reliance upon petitioners in appraisal cases as being generally similar to the reliance upon lead plaintiffs in class actions, but the processes are not identical and the rules for petitioner responsibilities in appraisal proceedings are not well defined. Under these circumstances, the Forum is advising its delegate Cavan petitioner to support the interests of all claimants not represented by Grant & Eisenhofer in their rights to consider a fair settlement offer, and in doing so to test new standards for the conduct of appraisal proceedings.

Determining the interests of all claimants

Anyone with a claimant interest in the Dell case – or with a broader investor interest in the fair process of other appraisal cases – is encouraged to offer advice about what we should be considering.

Cavan has also engaged a leading expert on investor rights, Cornish F. Hitchcock of the [Hitchcock Law Firm PLLC](#), as special counsel to guide our attention to relevant interests and regulatory considerations. As many of you know from his activities with past Forum programs and with the Council of Institutional Investors, Mr. Hitchcock's expertise and wisdom can be relied upon to assure our understanding of the issues that need to be addressed.

I will of course welcome your questions and comments.

GL – September 19, 2016

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⁵ See the "[Response of Lead Counsel](#)" section of the [July 14, 2016 Forum Report: Conclusions from Investigation of Reported Settlement](#).

⁶ See [September 14, 2016 Shareholder Forum letter to Stuart M. Grant of Grant & Eisenhofer as counsel for settling T. Rowe Price petitioners and John D. Hendershot of Richards, Layton & Finger as counsel for Dell](#) (1 page, 160 KB, in [PDF](#) format); Mr. Grant responded only by confirming receipt, and Mr. Hendershot reported he would require more time to respond.

⁷ See the [September 14, 2016 letter](#) referenced above in [footnote #6](#).