IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: APPRAISAL OF DELL INC.

Consol. C. A. No. 9322-VCL

**PETITIONER'S MOTION TO ALTER OR AMEND THE COURT'S
MAY 31, 2016 MEMORANDUM OPINION,
OR IN THE ALTERNATIVE, FOR REARGUMENT**

Petitioner Morgan Stanley Defined Contribution Master Trust ("Moving Petitioner") through its undersigned counsel and pursuant to Court of Chancery Rule 59(e) hereby moves to alter or amend the Court's May 31, 2016 Memorandum Opinion ("Opinion") determining that the fair value of the common stock of Dell Inc. ("Dell" or the "Company") was $17.62 as of the effective date of a transaction in which Dell founder Michael S. Dell took the Company private (the "Merger"), or in the alternative, for reargument pursuant to Rule 59(f). The grounds for this motion are as follows:

1. As explained below, Moving Petitioner believes that the Court's DCF analysis with respect to the adjusted BCG 25% Case contains a mathematical error that impacts its ultimate calculation of fair value of Dell in this case. This is precisely the type of scenario that warrants a motion to alter or amend an order under Court of Chancery Rule 59.

2. On May 31, 2016, the Court issued the Opinion, determining that the fair value of a share of Dell stock was $17.62 per share at the effective time of the

Merger.[1] In reaching this conclusion, the Court employed a discounted cash flow

("DCF") valuation methodology. The Court's valuation was based on two sets of

forecasts, as modified by Professor Hubbard: a forecast developed by the Boston

Consulting Group that projected Dell achieving 25% of planned cost savings (the

"BCG 25% Case"); and a case created by one of the parties to the Merger, Silver

Lake (the "Bank Case").[2] The adjustments to those cases made by Professor

Hubbard and accepted by the Court are described in the Opinion.[3]

      3.   In calculating its DCF value, the Court applied the following inputs:

- A 2% perpetual growth rate,[4] which was already reflected in Professor Hubbard's models;

- A 21% tax rate throughout the forecast period;[5]

- A weighted average cost of capital ("WACC") of 9.46%,[6] which was already reflected in Professor Hubbard's models;

- A deduction from available cash of $3 billion for working capital and $1.2 billion for restricted cash for purposes of determining enterprise value[7]; and

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[1] Trans. Id. 59072455.

[2] Op. at 104

[3] Op. at 101-104.

[4] Op. at 105 ("[Although a] 2% growth rate is arguably too low . . . [t]his decision nevertheless uses the 2% rate.").

[5] Op. at 107 ("Cornell's tax estimate [of 21%] is more reliable and consistent with the Company's operative reality.").

[6] Op. at 108 ("The inputs selected [by the Court] generate a WACC of 9.46%").

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- A deduction from excess cash of $650 million to account for a liability for unrecognized tax benefits[8].

4. According to the Opinion, the Court's DCF analysis generated a fair value of $16.43 per share using the adjusted BCG 25% Case, and a fair value of $18.81 per share using the adjusted Bank Case. Weighting these calculations equally, the Court ruled that the fair value of Dell at the time of the Merger was $17.62 per share.

5. Following the issuance of the Opinion, Petitioners replicated the Court's calculations, using the financial models created by Professor Hubbard and adopted by the Court, modified only insofar as necessary to reflect the inputs specifically adopted by the Court in the Opinion identified above in Paragraph 3. Professor Hubbard's models were submitted as JX899 (adjusted BCG 25% Case) and JX900 (adjusted Bank Case).

6. As described in the attached affidavit ("Cornell Affidavit" or "Cornell Aff."),[9] and at the request of Petitioners, Professor Cornell employed the same

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[7] Op. at 110 ("This decision deducts working capital of $3 billion and restricted cash of $1.2 billion from the Company's available cash for purposes of determining its enterprise value.").

[8] Op. at 112 ("This decision deducts $650 million from the Company's excess cash.").

[9] Moving Petitioner recognizes that in some cases, the Court has declined to consider affidavits when ruling on a Rule 59(f) motion. *See, e.g.*, *Techmer Accel Holdings, LLC v. Amer*, 2011 WL 567456 (Del. Ch. Feb. 8, 2011); *Miles v.*

forecasts, the same inputs, and the same assumptions as the Court described in its

Opinion. Although Professor Cornell's calculations confirmed the Court's

calculations using the adjusted Bank Case,[10] Professor Cornell's calculation using

the adjusted BCG 25% Case, and the same inputs that were adopted by the Court

and applied to the adjusted Bank Case, produced a per share value of $16.90.

Compared to the Court's calculation of $16.43 per share, Professor Cornell's check

yielded a per share value that is $0.47 per share higher. Weighting $18.81 and

$16.90 per share values equally (per the Court's Opinion) produces an implied fair

value of Dell of $17.85, a $0.23 per share increase over the Court's calculation of

$17.62.[11]

7. "Under Rule 59(e), a motion to alter an Order may be granted if the

[movant] demonstrates (1) an intervening change in controlling law; (2) the

availability of new evidence not previously available; or (3) the need to correct a

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Cookson, 677 A.2d 505, 506 (Del. Ch. 1995). In those cases, however, the movants had submitted new and additional facts, rather than constraining their motion to the record. This situation is different—Moving Petitioner does not adduce new facts, but rather points to a mathematical error in the calculation of fair value based on the facts adopted by the Court.

[10] Professor Cornell's calculation using the adjusted Bank Case was $18.80 per share, as compared to the Court's calculation of $18.81 per share—an immaterial difference Moving Petitioner attributes to rounding. Cornell Aff. at 7 n.15.

[11] Moving Petitioner, by attempting to recreate the Court's DCF result and by filing this motion, does not concede that the Court adopted the correct forecasts, inputs, or other assumptions, and therefore does not concede that Professor Cornell's calculation of the $17.85 per share value based on the Court's model represents the true value of Dell's shares.

clear error of law or to prevent manifest injustice." *Nash v. Schock*, 1998 WL

474161, at *1 (Del. Ch. July 23, 1998).

8.   Relief is also appropriate pursuant to Chancery Court Rule 59(f).

Rule 59(f) motions are granted when the "court . . . has misapprehended the facts

or the law such that the outcome of the decision would be different." *Adams v.*

Calvarese Farms Main. Corp., 2011 WL 383862, at *1 (Del. Ch. Jan. 13, 2011);

see also Reed v. Reed, 2011 WL 378929 (Del. 2011) (affirming a court's

correction of a clerical error in a judgment, applying Rule 60(f)).

9.   The Court's authority to correct computational errors derives not only

from Rule 59, but from its inherent power. *See Crescent Mach 1 P'ship, L.P. v. Dr*

Pepper Bottling Co. of Texas, 2008 WL 2440303, at *2 (Del. Ch. June 4, 2008),

rev'd on other grounds, 962 A.2d 505 (Del. 2008) (citing *Am. Trucking Ass'ns v.*

Frisco Transp. Co., 358 U.S. 133, 145 (1958)).

10.   This Court has granted requests to modify orders and judgments in

circumstances similar to this case. In *Doft & Co. v. Travelocity.com Inc.*, for

example, the Court recognized that its calculation of the per share equity value for

Travelocity was incorrect as a result of two computational errors, and so granted a

request for reargument under Rule 59(f). 2004 WL 3578094 (Del. Ch. June 10,

2004). Similarly, in *Henke v. Trilithic Inc.*, the Court determined that its DCF

analysis failed to account for particular assets owned by the company and therefore

it modified its appraisal decision. 2005 WL 3578094 (Del. Ch. Dec. 20, 2005); *see also e.g.*, *Crescent Mach 1 P'ship, L.P.*, 2008 WL 2440303 (recognizing the ability of the Court to modify its decisions and correct computational errors).

11.   As demonstrated in the Cornell Affidavit, Professor Cornell's application of the inputs accepted by the Court to the financial models created by Professor Hubbard and adopted by the Court results in a per share value of $16.90 using Professor Hubbard's adjusted BCG 25% Case.

12.   If the Court equally weighted the $16.90 resultant value for the corrected BCG 25% model and the $18.81 value for the Bank Case, the calculated fair value of each share of Dell stock would be $17.85, a difference of $0.23 per share. For the appraisal class, this represents an increase of $1,266,317.90 over the awarded value.[12] Because these errors identified by Professor Cornell materially affected the Court's valuation opinion, a revision of the Opinion is appropriate.

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[12] *See* Petr.'s Mot. for Award of Attorneys' Fees and Expenses, at 2-3 (Trans. Id. 59081925) (noting that the total number of appraisal shares is 5,505,730).

13.   For these reasons, Moving Petitioner respectfully requests that the Court grant its Rule 59 motion and revise the Opinion accordingly.

Dated: June 6, 2016

Respectfully submitted,

/s/ Stuart M. Grant
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

CERTIFICATE OF SERVICE

I, Christine M. Mackintosh, hereby certify that on June 6, 2016, *Petitioner's Motion to Alter or Amend the Court's May 31, 2016 Memorandum Opinion, or In the Alternative, for Reargument,* was filed and served via File & Serve*Xpress* on the following counsel of record:

<table>
<tr>
<td>
John D. Hendershot
Gregory P. Williams
Susan M. Hannigan
Andrew Peach
RICHARDS LAYTON & FINGER
One Rodney Square
920 North King Street
Wilmington, DE 19801
</td>
<td>
Thomas A. Uebler
COOCH & TAYLOR, P.A.
The Brandywine Building
1000 West Street, 10th Floor
Wilmington, DE 19801
</td>
</tr>
<tr>
<td>
Jeremy D. Anderson
FISH & RICHARDSON PC
222 Delaware Ave., 17th Floor
Wilmington, DE 19801
</td>
<td>
Samuel T. Hirzel, II
Melissa N. Donimirski
PROCTOR HEYMAN ENERIO LLP
300 Delaware Avenue, Suite 200
Wilmington, DE 19807
</td>
</tr>
</table>

/s/ Christine M. Mackintosh
Christine M. Mackintosh (#5085)