

IN THE CHANCERY COURT OF THE STATE OF DELAWARE

IN RE YAHOO! INC. :
SHAREHOLDERS LITIGATION : Consolidated
: C.A. 3561-CC
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Chancery Court
34 The Circle
Georgetown, Delaware
Tuesday, December 9, 2008
11:05 a.m.

- - -

BEFORE: WILLIAM B. CHANDLER III, Chancellor.

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TELECONFERENCE

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CHANCERY COURT REPORTERS
34 The Circle
Georgetown, Delaware 19947
(302) 856-5645

1 APPEARANCES:

2
3 (via telephone)4 JOEL FRIEDLANDER, ESQ.
5 ANDRE G. BOUCHARD, ESQ.
6 Bouchard, Margules & Friedlander, P.A.

7 -and-

8 MARK LEBOVITCH, ESQ.
9 Bernstein, Litowitz, Berger & Grossmann, LLP
10 of the New York Bar
11 for Plaintiffs Police and Fire Retirement
12 System of the City of Detroit and the
13 General Retirement System of the City of
14 Detroit15 PAMELA S. TIKELLIS, ESQ.
16 A. ZACHARY NAYLOR, ESQ.
17 Chimicles & Tikellis, LLP
18 for Plaintiff Ronald J. Dicke19 EDWARD P. WELCH, ESQ.
20 Skadden, Arps, Slate, Meagher & Flom, LLP
21 -and-
22 GARRETT J. WALTZER, ESQ.
23 of the California Bar
24 Skadden, Arps, Slate, Meagher & Flom, LLP
for Defendant Yahoo! Inc.BRUCE L. SILVERSTEIN, ESQ.
Young, Conaway, Stargatt & Taylor, LLP

-and-

JOHN W. SPIEGEL, ESQ.
Munger, Tolles & Olson, LLP
of the California Bar
for Defendants Jerry Yang, Roy Bostock,
Ron Burkle, Eric Hippeau, Vyomesh Joshi,
Arthur Kern, Robert Kotick, Edward Kozel,
Maggie Wilderotter, and Gary Wilson

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1 THE COURT: Good morning, counsel.

2 MR. FRIEDLANDER: Good morning, Your
3 Honor.

4 MR. FRIEDLANDER: This is Joel
5 Friedlander on behalf of plaintiffs. I'm with Andy
6 Bouchard in my office. And Mark Lebovitch from the
7 Bernstein Litowitz firm is also on.

8 MR. WELCH: Ed Welch, Your Honor,
9 from Skadden, Arps, Slate, Meagher and Flom. On the
10 line with me is my partner Garrett Waltzer, who will
11 make the presentation on our behalf if one is
12 required.

13 MR. SPIEGEL: John Spiegel from
14 Munger, Tolles and Olson in Los Angeles, Your Honor.

15 MS. TIKELLIS: Pamela Tikellis and
16 Zach Naylor on behalf of plaintiff.

17 MR. SILVERSTEIN: Your Honor, this is
18 Bruce Silverstein, and Mr. Spiegel is our co-counsel.

19 THE COURT: All right. If that's
20 all, Mr. Friedlander --

21 MR. FRIEDLANDER: That should be all,
22 Your Honor.

23 Your Honor, I sent an e-mail a few
24 minutes ago to your chambers with a cover letter and

1 a copy of the unsigned stipulation. I just want to
2 know if Your Honor has received that? I realize it
3 came at a pretty late notice.

4 THE COURT: Yes, to both.

5 MR. FRIEDLANDER: And my apologies
6 about that.

7 THE COURT: That's all right, but I
8 haven't had a chance to read it. I literally just
9 had it handed to me.

10 MR. FRIEDLANDER: Okay. Well, I will
11 try to discuss the terms orally and make reference to
12 it as necessary.

13 Your Honor, essentially, we're
14 pleased to present to the Court on a preliminary
15 basis a settlement that's based on comprehensive
16 changes to the Yahoo! change-in-control severance
17 plans.

18 These plans, as Your Honor knows,
19 were the focus of our litigation efforts. We had
20 expert discovery about them, five fact depositions,
21 expert affidavits, briefing with their claim, and
22 then amended pleadings respecting those plans. And
23 our objective in this litigation consistently has
24 been to assemble and to present to the Court the

1 factual basis for a successful Unocal challenge to
2 the plan.

3 Now, we were unable to do so prior to
4 the last annual meeting. But the current pleading
5 now assembles those facts; and we are now able to
6 achieve our litigation objective in a timely fashion.

7 By settling now and presenting to
8 Your Honor, we have these changes to the plans
9 implemented immediately, well in advance of the next
10 annual meeting, and at a time which is a critical
11 juncture for Yahoo! as a company. They've announced
12 they're looking for a new CEO. They are, obviously,
13 evaluating various strategic alternatives. And now,
14 with the plans in effect immediately, they will now
15 not be a deterrent to a potential change in control.

16 So, it was plaintiffs' belief that it
17 was better to obtain that relief now on the severance
18 plans, rather than proceed with, you know, briefing
19 at the pleading stage on potential damages plans or
20 on the severance plans themselves. Consistent with
21 the teachings of this Court, most recently perhaps in
22 SS&C Technologies, we're advising the Court of the
23 changes to the plans now so that we can proceed with
24 that implementation.

1 This preliminary, advisory call is
2 not going to supplant the final court approval
3 process. We are diligently working on getting final
4 settlement papers with all the attachments to the
5 Court, which we will present shortly; and then get a
6 scheduling order and go through the whole notice
7 procedure. And the terms of this settlement provide
8 that if judicial approval is not obtained within 90
9 days, the amendments will not be of further force and
10 effect. So Your Honor, you know, will be looking at
11 these again at a later juncture, but we wanted to
12 present them now so that we can implement them
13 immediately.

14 The changes to the plans themselves
15 are described on pages 13 to 17 of the stipulation,
16 and the marked versions of the plans are annexed to
17 the stipulations. And you can see there's a lot of
18 changes, a lot of strike-outs and then additions. I
19 think they can be summarized relatively simply.

20 There are three categories of changes
21 to a plan. One set of changes is to the first
22 trigger of how these plans work in terms of what is a
23 change of control. And there are changes to the
24 second trigger in terms of what constitutes good

1 reason -- a good reason termination, when an employee
2 can leave on his own accord and claim severance
3 benefits. And there are other changes designed to
4 reduce the expense of the plan.

5 As to the changes to the first
6 trigger, what a major issue in this litigation was
7 the dispirit and coercive effect of the severance
8 plan in a proxy contest. So that any proxy
9 contestant -- such as Mr. Ichan, or anyone else who
10 wishes to change the board, change the majority of
11 the board, perhaps change the CEO and pursue new
12 strategies -- would be burdened with this severance
13 expense with respect to any terminations.

14 The new plans make clear that a
15 removal of a majority of the board is not itself a
16 change of control. So any proxy contestant would be
17 on a level playing field with incumbent management,
18 you know, for purposes of running a proxy contest.

19 Another issue of the litigation was
20 what we call the dead-hand effect of the announcement
21 of a merger proposal in which case the severance
22 rights were frozen in place and couldn't be changed
23 by the board. The new plans removed the dead-hand
24 provision so that now if a third party makes a merger

1 proposal, the board has the discretion to jettison
2 the plan in a negotiated merger agreement. So, if a
3 potential acquiror -- such as Microsoft, for
4 example -- can persuade the board that a different
5 compensation scheme is cheaper, it creates better
6 employees to stay and perform, the board now has the
7 ability to negotiate to amend the plan or the
8 outright termination of the plan. The new plans also
9 make clear that a purchase of Yahoo!'s search
10 business cannot be a change in control.

11 As to the changes to the second
12 trigger of the plan, Your Honor may recall that we
13 submitted affidavits by John Fox, an employment
14 lawyer, about the concept of good reason. And he
15 described that the current plan, he said, were
16 virtually global -- global backing of the severance
17 benefits, and that upon the occurrence of routine and
18 merely common place events following the change of
19 control that virtually any employee would be able to
20 assert a claim for severance benefits. Because the
21 standard was one of cost substantial adverse
22 alteration in duties and responsibilities; and given
23 the fast-changing world of the internet, one would
24 expect the job duties to change and be altered as a

1 matter of course in a two-year period following the
2 change of control.

3 And this problem has been identified
4 by Microsoft in a document we attached to the
5 complaint; the problem of bad retention. You know,
6 you have payments that are required for people who
7 just want to hang around and they can easily assert
8 the severance claim.

9 So, our aim was to eliminate the
10 global vesting problem or the bad retention problem,
11 and thereby reduce the cost to a severance plan to an
12 acquiror, and remove the impediments delivering value
13 to shareholders in an acquisition. We believe we
14 have accomplished that in a variety of ways.

15 For one thing, we changed the good
16 reason of resignation standards. So, instead of
17 being a substantial adverse alteration in one's
18 duties and responsibilities, there has to be a
19 material diminution in duties and responsibilities.
20 And Mr. Fox discussed that at length in the
21 affidavit; the different between someone having
22 diminished duties as opposed to just altered duties.

23 And then we clarified various
24 circumstances that would not qualify as a good reason

1 for termination, such as a change in job title, or
2 change in reporting relationships, or any change in
3 duties or responsibilities of a type that Yahoo! has
4 caused or permitted in the last two years, such as in
5 the course of any reorganizations, transfers or
6 restructuring: A promotion, the decrease in the
7 number of employees managed over the budget managed
8 and the consequence of a reduction in force.

9 We also specified that any reduction
10 in salary would have to be material in order to be a
11 good reason for a resignation. And also, that any
12 changes in duties or any relocation from someone to a
13 new job location, if it was requested by the employee
14 or consented to by the employee, that could not
15 constitute a basis for a good reason resignation.

16 There are other cost saving changes
17 to the plan. The one thing was the time period for
18 the assertion of a severance claim is now -- can only
19 be events that take place within one year -- within
20 one year of the change of control, rather than two
21 years in the change of control. So that, if after a
22 change of control -- you know, 13, 15, 18 months
23 out -- the company wants to have a reduction in force
24 or restructuring, or whatever, they don't have to

1 worry about severance liabilities for events that
2 take place after one year.

3 There's also a provision for the
4 mandatory arbitration of denial of the severance
5 claims, so that any claim for severance benefits will
6 be subject to streamlined arbitration rules, rather
7 than jury trials in federal court.

8 We made a couple of other streamlined
9 changes of the plans. They cover U.S. employees,
10 which is the bulk of the Yahoo! work force, and not
11 employees in foreign countries that have employment
12 laws that would require consent or notice of any of
13 these changes or have any, you know, country's
14 specific terms to them.

15 And the plans provide -- the
16 stipulation provides and the plans provide that the
17 board cannot change any of the provisions I just
18 discussed for the next 18 months, except in two
19 circumstances: One, by making a judicial application
20 upon a showing of substantial need; or, second, in
21 connection with an actual change-in-control action.

22 In short, Your Honor, the plaintiffs
23 believe this is a highly satisfactory basis for the
24 resolution of the litigation. It provides timely,

1 substantial relief on the severance claims. The
2 amendments I just discussed were negotiated with the
3 assistance of experts, including on our side, John
4 Fox, the top employment lawyer of Silicon Valley, and
5 James Reda, a compensation expert. And we're getting
6 this relief on the severance claim, and getting it
7 now, while recognizing that the damage claims we also
8 asserted, you know, would be subject to various
9 defenses.

10 And, Your Honor, that concludes my
11 presentation, unless Your Honor has any questions.

12 THE COURT: No, I don't have any
13 questions, Mr. Friedlander. I assume everyone else
14 on the line is essentially in agreement?

15 MR. WATZLER: That's right, Your
16 Honor.

17 THE COURT: Then I take it at some
18 point you will provide me a form of order for
19 scheduling this for a further hearing?

20 MR. FRIEDLANDER: Yes. We plan to do
21 that very, very shortly. We're just working on
22 getting, you know, the order and notice together. I
23 mean, we just -- once we arrived at the terms of the
24 settlement itself, we wanted to advise Your Honor

1 immediately. We will be, in a matter of days,
2 providing you with full settlement papers.

3 THE COURT: All right. Well, at this
4 point, I will look forward to receiving the form of
5 notice and the order for scheduling, and I will
6 advise you when we can get it on the Court's
7 calendar. I will do that as promptly as we can,
8 consistent with the obligations to give notice to
9 everyone.

10 I appreciate your calling me,
11 Mr. Friedlander, and all the others for being on the
12 line to apprise me of this. This is, of course, good
13 news to the Court, and I am glad to hear that a
14 resolution has been reached.

15 So I will await your further
16 communication, via the notice and order.

17 MR. SILVERSTEIN: Your Honor, this is
18 Bruce Silverstein. If I may for one moment? For the
19 sake of clarity, we are obviously all in agreement
20 that the settlement is a good one and ought to be
21 submitted to the Court for approval.

22 I don't want our being in agreement
23 with Mr. Friedlander to be taken to mean that we
24 agree with everything he just said during that long

1 discussion.

2 THE COURT: All right. So noted,
3 Mr. Silverstein.

4 MR. SILVERSTEIN: Thank you.

5 THE COURT: Anyone else?

6 (No response.)

7 MR. FRIEDLANDER: No. Thank you,
8 Your Honor.

9 THE COURT: All right. Thank you for
10 being available.

11 MR. SILVERSTEIN: Thank you, Your
12 Honor.

13 THE COURT: Have a good day.

14 MR. FRIEDLANDER: Thank you, Your
15 Honor.

16 (The teleconference was concluded at
17 11:19 a.m.)

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1 CERTIFICATE

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3 I, JENNIE L. WASHINGTON, Official Court
4 Reporter of the Chancery Court, State of Delaware,
5 do hereby certify that the foregoing pages numbered
6 3 through 14 contain a true and correct
7 transcription of the proceedings as stenographically
8 reported by me at the hearing in the above cause
9 before the Chancellor of the State of Delaware, on
10 the date therein indicated.

11 IN WITNESS WHEREOF I have hereunto set my
12 hand at Georgetown, this 9th day of December, 2008.

13
14 /s/Jennie L. Washington
15 Official Court Reporter
16 of the Chancery Court
17 State of Delaware

18 Certification Number: 140-PS
19 Expiration: Permanent
20
21
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23
24