

IN THE CHANCERY COURT OF THE STATE OF DELAWARE

IN RE YAHOO! INC.  
SHAREHOLDERS LITIGATION

:  
:  
: Consolidated  
: C.A. 3561-CC  
:  
:

- - -

Chancery Court  
34 The Circle  
Georgetown, Delaware  
Tuesday, December 9, 2008  
11:05 a.m.

- - -

BEFORE: WILLIAM B. CHANDLER III, Chancellor.

- - -

TELECONFERENCE

- - -

---

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 &amp; Friedlander, P.A.

7 -and-

8 MARK LEBOVITCH, ESQ.

9 Bernstein, Litowitz, Berger & Grossmann, LLP  
10 of the New York Bar11 for Plaintiffs Police and Fire Retirement  
12 System of the City of Detroit and the  
13 General Retirement System of the City of  
14 Detroit

15 PAMELA S. TIKELLIS, ESQ.

16 A. ZACHARY NAYLOR, ESQ.

17 Chimicles &amp; Tikellis, LLP

18 for Plaintiff Ronald J. Dicke

19 EDWARD P. WELCH, ESQ.

20 Skadden, Arps, Slate, Meagher &amp; 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 &amp; Taylor, LLP

-and-

JOHN W. SPIEGEL, ESQ.

Munger, Tolles &amp; 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

- - -

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.)

18 - - -

19

20

21

22

23

24

## 1 CERTIFICATE

2  
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  
22  
23  
24