

**BOUCHARD MARGULES & FRIEDLANDER**

A PROFESSIONAL CORPORATION

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June 13, 2008

**BY LEXIS-NEXIS FILE & SERVE**

The Honorable William B. Chandler, III  
Court of Chancery  
34 The Circle  
P.O. Box 424  
Georgetown, DE 19947

Re: In re Yahoo! Shareholders Litigation, Cons. C.A. No. 3561-CC

Dear Chancellor Chandler:

I write on behalf of plaintiffs to bring to the Court's attention news of how Yahoo! Inc. ("Yahoo") has found another way to coerce the stockholder vote, creating another reason why it is imperative that a trial be held in advance of the annual meeting scheduled for August 1, 2008.

Yesterday, Yahoo announced that it had ceased discussions with Microsoft Corporation and further announced that it had entered into a pact with Google Inc. ("Google"), pursuant to which Yahoo will send search queries to Google and Google will provide Yahoo with advertisements for display on websites and other applications owned and operated by Yahoo (the "Services Agreement"). Yahoo announced that it estimates that the Services Agreement represents "an approximately \$800 million annual revenue opportunity." (Exhibit A at Ex. 99.1)

This morning, Yahoo filed a Form 8-K disclosing that the expected revenue stream from the Services Agreement can disappear, depending on the outcome of the director election at the upcoming annual meeting. According to the Form 8-K, Google is entitled to "suspend performance" under the Services Agreement if a majority of Carl Icahn's slate of nominees are elected:

**The Services Agreement also permits Google to suspend performance of the Services under certain circumstances, including a pending Change in Control of Yahoo! involving Microsoft, Time Warner or News**

**Corp and a change in a majority of the board of directors of Yahoo! following an annual or special meeting of stockholders if a majority of the new directors did not serve on Yahoo!'s board immediately prior to such stockholder meeting and were nominated or solicited for by Microsoft, Time Warner or News Corp or, solely with respect to Yahoo!'s first two annual or special meetings held after the Effective Date where the election of a majority of directors is before Yahoo! stockholders (but not later than September 1, 2009), by any other person or group.**

(*Id.* at Item 1.01) This grant of an "Election Walkaway" right to Google coerces stockholders into not voting for Icahn's slate, given the potential \$800 million annual price tag of a vote against the incumbent directors.

As Your Honor may recall, the grant of an Election Walkaway in a merger agreement involving Ceridian Corporation was a basis for scheduling an expedited trial last summer, during the pendency of a proxy contest. That litigation was resolved by a settlement that provided, in part, for the removal of the Election Walkaway. We remain unaware of any judicial precedent upholding an Election Walkaway, which forces stockholders to reelect an incumbent board as a price for keeping a board-approved deal. *See Minneapolis Firefighters' Relief Ass'n v. Ceridian Corp.*, C.A. No. 2996-CC, Chandler, C., tr. at 21 (Del. Ch. Feb. 25, 2008) (attached as Exhibit B hereto).

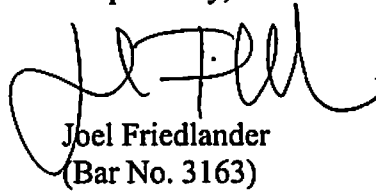
Plaintiffs can be prepared to try both our pending claim seeking invalidation of the Severance Plan and our new challenge to the Services Agreement. On Monday, June 4, 2008, plaintiffs served a document request on defendants that includes a request for documents relating to any arrangement with Google under which Yahoo would use services provided by Google related to search or the delivery of advertisements. We understand that Yahoo has been gathering Google-related documents subject to its previously asserted business strategy privilege. Now that the Services Agreement has been announced, defendants should be in a position to produce relevant documents expeditiously. Plaintiffs intend to move promptly to amend our pleading to add a Count seeking invalidation and/or modification of the Services Agreement.

If defendants persist in opposing our request to schedule a trial, we trust that they will address the coercive effect of the Services Agreement as part of the brief they agreed to file no later than this Monday.

We respectfully request that our motion to set a trial date be heard as promptly as the Court's schedule permits. We are available at the convenience of the Court.

The Honorable William B. Chandler, III  
June 13, 2008  
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Respectfully,



Joel Friedlander  
(Bar No. 3163)

cc: Register in Chancery (by e-filing)  
Edward P. Welch, Esquire (by e-filing)  
David C. McBride, Esquire (by e-filing)

# EXHIBIT A

# YAHOO INC

## FORM 8-K (Current report filing)

Filed 06/13/08 for the Period Ending 06/12/08

Address	YAHOO! INC. 701 FIRST AVENUE SUNNYVALE, CA 94089
Telephone	4083493300
CIK	0001011006
Symbol	YHOO
SIC Code	7373 - Computer Integrated Systems Design
Industry	Advertising
Sector	Technology
Fiscal Year	12/31

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**

Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): June 12, 2008

**Yahoo! Inc.**

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(Exact name of registrant as specified in its charter)

Delaware	000-28018	77-0398689
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)
701 First Avenue Sunnyvale, California		94089
(Address of principal executive offices)		(Zip Code)

Registrant's telephone number, including area code: (408) 349-3300

Not Applicable

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(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry into a Material Definitive Agreement.

Item 7.01 Regulation FD Disclosure

Item 9.01 Financial Statements and Exhibits.

SIGNATURE

EXHIBIT INDEX

EXHIBIT 99.1

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### Item 1.01. Entry into a Material Definitive Agreement.

#### *Services Agreement*

On June 12, 2008 (the "Effective Date"), Yahoo! Inc., a Delaware corporation ("Yahoo!"), and Google Inc., a Delaware corporation ("Google"), entered into a Services Agreement (the "Services Agreement"), pursuant to which Google will provide Yahoo! with advertisements through Google's AdSense for Search service (the "AFS Services") and AdSense for Content service (the "AFC Services" and together with the "AFS Services," the "Services") for display on web sites and other applications owned and operated by Yahoo! and its subsidiaries (the "Yahoo! Properties") and certain of Yahoo!'s business partners/affiliates (the "Yahoo! Partner Properties"). The Services Agreement applies to properties within the United States and Canada.

Under the Services Agreement, Yahoo! has sole discretion to choose which search queries to send to Google and is not obligated to send any minimum number of search queries. Yahoo! also has sole discretion to decide on which pages to display ads provided by Google through its AFC Services. In addition, the Services Agreement is non-exclusive, and expressly provides that Yahoo! is not prevented from implementing any other advertising, promotion or marketing service or monetization method, including any that are the same as or substantially similar in nature to the Services or displaying comparable advertisements. Yahoo! also has sole discretion with respect to the placement and location of ads generated from the Services, the number of ads requested and the formatting of ads. Additionally, Yahoo! may serve its own ads or third-party ads alongside Google ads.

Google will pay Yahoo! a percentage of the gross revenues generated from AFS Services on the Yahoo! Properties, with such percentage adjusting based on specified monthly gross revenue thresholds, and with respect to the Yahoo! Partner Properties will pay a similar percentage of gross revenues less a separate specified percentage. Google will also pay Yahoo! a fixed percentage of gross revenues generated from AFC Services on the Yahoo! Properties and a fixed percentage of gross revenues for AFC Services on Yahoo! Partner Properties.

The initial term of the Services Agreement commenced on the Effective Date and will continue for a period of four years thereafter. Yahoo! may, at its option, extend the term of the Services Agreement for up to two additional periods of three years each. Either party may terminate the Services Agreement upon notice to the other party (i) in the event of an uncured material breach of the Services Agreement by the other party, subject to dispute resolution procedures and certain limitations; (ii) in the event of a Change in Control (as defined below) involving either party; (iii) 120 days after the Effective Date in order to avoid or end a lawsuit or similar action filed on competition law grounds if the terminating party has taken all actions required under the Services Agreement with respect to regulatory matters and defending such action is not commercially reasonable for that party (taking all factors into account); or (iv) if a court of competent jurisdiction has entered an order enjoining the implementation of the Services Agreement. In addition, Google may terminate the Services Agreement if, after ten months after the Services are first launched, and each month thereafter, the gross revenues recognized by

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Google under the Services Agreement are less than \$83,333,333 for the four prior calendar months.

As defined in the Services Agreement, the term "Change in Control" means (a) a merger, consolidation, statutory share exchange, recapitalization, restructuring or business combination involving directly or indirectly a party or a subsidiary of a party in which voting securities of the party outstanding immediately prior to such transaction do not continue to represent more than 50% (or 65% in the case of a transaction involving Microsoft Corporation ("Microsoft"), Time Warner Inc. ("Time Warner") or News Corporation ("News Corp"), in each case together with their respective affiliates) of the voting power represented by the outstanding voting securities of the surviving entity immediately following the transaction; (b) any "person" or "group" becoming the "beneficial owner" (as such terms are used or defined in Sections 13(d) and 14(d) under the Securities Exchange Act of 1934, as amended) of more than 50% of the voting power of the then outstanding voting securities of the party, except that, in the case of Time Warner and News Corp, the percentage will be 35% instead of 50% and, in the case of Microsoft, the percentage will be 15% instead of 50% and a Change in Control will also be deemed to occur if Microsoft (i) beneficially owns 15% of the voting power of the party or (ii) acquires directly from a party any equity or voting securities of that party representing (or having a right to receive in the aggregate) 5% or more of the total equity value of the party or 1% or more of the party's annual revenues on a consolidated basis); (c) approval by the stockholders of a party of a plan of liquidation or dissolution; (d) the sale or disposition of all or substantially all the consolidated assets of a party; or (e) at any point in time, Yahoo! no longer owns and, with respect to the U.S. and Canada, controls a majority portion of Yahoo!'s technology and intellectual property assets that in the 12-month period prior to that time had been owned by Yahoo! and used by Yahoo! to provide services in the U.S. and Canada for either its algorithmic search or search advertising business. The Services Agreement also permits Google to suspend performance of the Services under certain circumstances, including a pending Change in Control of Yahoo! involving Microsoft, Time Warner or News Corp and a change in a majority of the board of directors of Yahoo! following an annual or special meeting of stockholders if a majority of the new directors did not serve on Yahoo!'s board immediately prior to such stockholder meeting and were nominated or solicited for by Microsoft, Time Warner or News Corp or, solely with respect to Yahoo!'s first two annual or special meetings held after the Effective Date where the election of a majority of directors is before Yahoo! stockholders (but not later than September 1, 2009), by any other person or group.

If the Services Agreement is terminated by either party within 24 months of the Effective Date as a result of a Change in Control of Yahoo! (other than a Change in Control triggered only by Microsoft either (x) acquiring beneficial ownership of voting securities representing more than 15% of the voting power of outstanding Yahoo! voting securities or (y) acquiring directly from Yahoo! equity or voting securities representing 5% or more of Yahoo!'s total equity value or 1% or more of Yahoo!'s consolidated annual revenues, unless Microsoft becomes the beneficial owner of more than 35% of the voting power of such securities within such 24 month period), Yahoo! is required to pay to Google the sum of \$250,000,000, which payment will be reduced by one-half of an amount equal to (a) all gross revenues received by Google pursuant to the Services Agreement through the date of termination less (b) the amount equal to Yahoo!'s share of such gross revenues during the same period.

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The Services Agreement will be implemented approximately three and a half months after the Effective Date, or sooner if regulatory authorities in the United States or Canada, as applicable, have given notice that they have completed their review. Pursuant to the terms of the Services Agreement, Google and Yahoo! shall cooperate reasonably in working with regulatory authorities regarding their review of the Services Agreement.

In connection with the Services Agreement, Yahoo! and Google have agreed to certain procedures with the Antitrust Division of the United States Department of Justice (the "DOJ") to facilitate review of the Services Agreement by the DOJ, including delaying the implementation of the Services Agreement in order to provide the DOJ with a reasonable period of time to review the Services Agreement.

The Services Agreement may only be assigned by a party with the written consent of the other party or in connection with a Change in Control of the assigning party, subject to the other party's right to terminate.

Yahoo! and Google each agrees to maintain the confidentiality of information provided by the other party and the existence and terms of the Services Agreement, in each case subject to requirements of law and the rules of any national stock market or exchange and other customary exceptions.

Each of Yahoo! and Google agrees to indemnify the other party under certain circumstances and subject to certain limitations.

### Item 7.01 Regulation FD Disclosure.

On June 12, 2008, Yahoo! released a press release announcing the signing of the Services Agreement. A copy of the press release is furnished with this Form 8-K and attached hereto as Exhibit 99.1. Exhibit 99.1 shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities under that Section and shall not be deemed to be incorporated by reference into any Yahoo! filing under the Securities Act of 1933, as amended, or the Exchange Act.

### Item 9.01 Financial Statements and Exhibits.

#### (d) Exhibits.

<b>Exhibit Number</b>	<b>Description</b>
99.1	Press release, dated June 12, 2008, announcing the Services Agreement.

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### SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

YAHOO! INC.  
(Registrant)

By: /s/ Michael J. Callahan

Name: Michael J. Callahan

Title: Executive Vice President, General  
Counsel and Secretary

Date: June 12, 2008

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**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description</b>
99.1	Press release, dated June 12, 2008, announcing the Services Agreement.

## YAHOO! TO STRENGTHEN COMPETITIVE POSITION IN ONLINE ADVERTISING THROUGH NON-EXCLUSIVE AGREEMENT WITH GOOGLE

### Agreement Advances Yahoo!'s Open Strategy; Enhances Ability to Compete in Converging Search and Display Marketplace

Sunnyvale, CA, June 12, 2008 —Yahoo! Inc. (Nasdaq: YHOO), a leading global Internet company, announced today that it has reached an agreement with Google Inc. that will enhance its ability to compete in the converging search and display marketplace, advancing the company's open strategy. The agreement enables Yahoo! to run ads supplied by Google alongside Yahoo!'s search results and on some of its web properties in the United States and Canada. The agreement is non-exclusive, giving Yahoo! the ability to display paid search results from Google, other third parties, and Yahoo!'s own Panama marketplace.

Under the terms of the agreement, Yahoo! will select the search term queries for which — and the pages on which — Yahoo! may offer Google paid search results. Yahoo! will define its users' experience and will determine the number and placement of the results provided by Google and the mix of paid results provided by Panama, Google or other providers. The agreement applies to paid search and content match and does not apply to algorithmic search. The agreement also applies to current partners in Yahoo's publisher network.

Yahoo! CEO and co-founder Jerry Yang said, "We believe that the convergence of search and display is the next major development in the evolution of the rapidly changing online advertising industry. Our strategies are specifically designed to capitalize on this convergence—and this agreement helps us move them forward in a significant way. It also represents an important next step in our open strategy, building on the progress we have already made in advancing a more open marketplace."

"This agreement provides a source of funds to both deliver financial value to stockholders from search monetization and to invest in our broader strategy to transform display advertising and advance our starting point objectives with users," said Yahoo! President Sue Decker. "It enhances competition by promoting our ability to compete in the marketplace where we are especially well positioned: in the convergence of search and display."

### Agreement Provides Attractive Economics and Enhances Search Monetization

Yahoo! believes that this agreement will enable the Company to better monetize Yahoo!'s search inventory in the United States and Canada. At current monetization rates, this is an approximately \$800 million annual revenue opportunity. In the first 12 months following implementation, Yahoo! expects the agreement to generate an estimated \$250 million to \$450 million in incremental operating cash flow.

The agreement will enhance Yahoo!'s ability to achieve its goal to grow operating cash flow significantly, while at the same time providing flexibility to continue to invest in

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ongoing initiatives such as algorithmic search innovation and search and display advertising platforms. It gives Yahoo! complete flexibility to continue to use its Panama paid search results.

#### Significant Benefits Will Flow to Users, Advertisers, Publishers and Employees

Users will also benefit from Yahoo!'s ability to invest incremental operating cash flow in ongoing improvements to its search services, building upon recent major innovations such as Search Assist and SearchMonkey. Advertisers will continue to benefit from multiple marketplace alternatives including Panama, Google and others. Publishers will benefit from a winning combination of distribution, monetization and services to help them grow their businesses. The financial benefits will enable Yahoo! to broaden the scope of its investments and initiatives, enhancing Yahoo!'s ability to offer attractive career opportunities to its employees.

#### Terms of the Agreement

The agreement will enable Yahoo! to run ads supplied by Google's AdSense™ for Search and AdSense™ for Content services next to Yahoo!'s internally generated paid search and algorithmic search results. Yahoo may also run Google-supplied ads on non-search Yahoo web properties, as well as on current members of its partner network. The agreement has a term of up to ten years: a four-year initial term and two, three-year renewals at Yahoo!'s option. It applies to Yahoo!'s operations in the U.S. and Canada only. Advertisers will continue to pay Yahoo! directly for clicks served by Yahoo! from Yahoo!'s Panama and Content Match marketplaces. Advertisers will pay Google directly for each click on Google paid search results appearing on Yahoo! owned and operated network or certain affiliate sites. Google will share a percentage of such revenue with Yahoo!.

In addition, Yahoo! and Google agreed to enable interoperability between their respective instant messaging services, bringing easier and broader communication to users.

The agreement allows either party to terminate the agreement in the event of a change in control of either party. The agreement also requires Yahoo! to pay a termination fee if the agreement is terminated as a result of a change in control that occurs within 24 months. The termination fee is \$250 million, subject to reduction by 50 percent of revenues earned by Google under the agreement.

Although Google and Yahoo! are not required to receive regulatory approval of the deal before implementing it, the companies have voluntarily agreed to delay implementation for up to three and a half months while the U.S. Department of Justice reviews the arrangement.

Goldman, Sachs & Co., Lehman Brothers and Moelis & Company are acting as financial advisors to Yahoo!. Skadden, Arps, Slate, Meagher & Flom LLP is acting as legal advisor to Yahoo!, and Munger Tolles & Olson LLP is acting as counsel to the outside directors of Yahoo!.

Yahoo! will host a conference call to discuss the agreement with Google at 6:30 p.m. Eastern Time today. To listen to the call live, please dial 877-391-6847 (reservation number 70308474#). A live audiocast of the conference call can be accessed through the Company's Investor Relations website at <http://yhoo.client.shareholder.com/index.cfm>. In addition, an archive of the audiocast can

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be accessed through the same link. An audio replay of the call will be available following the conference call by calling 888-286-8010 (reservation number 84138579).

#### About Yahoo! Inc.

Yahoo! Inc. is a leading global Internet brand and one of the most trafficked Internet destinations worldwide. Yahoo! is focused on powering its communities of users, advertisers, publishers, and developers by creating indispensable experiences built on trust. Yahoo! is headquartered in Sunnyvale, California.

#### Non-GAAP Financial Measures

This release refers to operating cash flow (operating income before depreciation, amortization of intangible assets, and stock-based compensation expense, or OCF), which is a non-GAAP financial measure. The most comparable GAAP measure is income from operations. With respect to the OCF numbers provided in this release, the estimate of income from operations is the same as the estimated OCF, as the Company does not expect to incur any additional depreciation and amortization or stock-based compensation expense related to this agreement.

#### Forward Looking Statements

This release (including without limitation the statements and information in the quotations from management in this press release) contains forward-looking statements that involve risks and uncertainties concerning Yahoo!'s projected financial performance as well as Yahoo!'s strategic and operational plans. Actual results may differ materially from those described in this press release due to a number of risks and uncertainties. The potential risks and uncertainties include, among others, the expected benefits of the services agreement with Google may not be realized, including as a result of actions taken by United States or foreign regulatory authorities and the response or acceptance of the agreement by publishers, advertisers, users and employees; the implementation and results of Yahoo!'s ongoing strategic initiatives; Yahoo!'s ability to compete with new or existing competitors; reduction in spending by, or loss of, marketing services customers; the demand by customers for Yahoo!'s premium services; acceptance by users of new products and services; risks related to joint ventures and the integration of acquisitions; risks related to Yahoo!'s international operations; failure to manage growth and diversification; adverse results in litigation, including intellectual property infringement claims; Yahoo!'s ability to protect its intellectual property and the value of its brands; dependence on key personnel; dependence on third parties for technology, services, content and distribution; general economic conditions and changes in economic conditions; and potential continuing uncertainty arising in connection with the withdrawal of Microsoft's unsolicited proposal to acquire Yahoo!, and the announced intention by a stockholder to seek control of our Board of Directors, the possibility that Microsoft or another person may in the future make another proposal, or take other actions which may create uncertainty for our employees, publishers, advertisers and other business partners, and the possibility of significant costs of defense, indemnification and liability resulting from stockholder litigation relating to the Microsoft proposal. More information about potential factors that could affect Yahoo!'s business and financial results is included under the captions "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Yahoo!'s Annual Report on Form 10-K for the fiscal year ended December 31, 2007, as amended, and the Quarterly Report on Form 10-Q for the quarter ended March 31, 2008, which are

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on file with the Securities and Exchange Commission ("SEC") and available at the SEC's website at [www.sec.gov](http://www.sec.gov). All information in this release is as of June 12, 2008, unless otherwise noted, and Yahoo! does not intend, and undertakes no duty, to update or otherwise revise the information contained in this release.

###

Yahoo! and the Yahoo! logos are trademarks and/or registered trademarks of Yahoo! Inc. All other names are trademarks and/or registered trademarks of their respective owners.

Media Contacts:

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The Abernathy MacGregor Group for Yahoo! Inc.

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Investor Contact:

Marta Nichols

Yahoo! Inc.

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[mnichols@yahoo-inc.com](mailto:mnichols@yahoo-inc.com)

## **EXHIBIT B**

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MINNEAPOLIS FIREFIGHTERS' :  
RELIEF ASSOCIATION, on behalf of :  
itself and all other similarly :  
situated shareholders of Ceridian :  
Corporation, :

Plaintiff, :

vs. :

Civil Action

No. 2996-CC

CERIDIAN CORPORATION, KATHRYN :  
V. MARINELLO, NICHOLAS D. :  
CHABRAJA, RONALD T. LEMAY, :  
GEORGE R. LEWIS, L. WHITE :  
MATTHEWS, III, RICHARD :  
SZAFRANSKI, WILLIAM L. TRUBECK, :  
ALAN F. WHITE, THOMAS H. LEE :  
PARTNERS, LP, FIDELITY NATIONAL :  
FINANCIAL, INC., FOUNDATION :  
HOLDINGS, INC. and FOUNDATION :  
MERGER SUB, INC., :

Defendant. :

Chancery Court  
34 The Circle  
Georgetown, Delaware  
Monday, February 25, 2008  
2:30 p.m.

BEFORE: HON. WILLIAM B. CHANDLER III, Chancellor.

SETTLEMENT HEARING

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

COPY

## 1 APPEARANCES:

2 JOEL FRIEDLANDER, ESQ.  
Bouchard, Margules & Friedlander, P.A.

3 -and-

4 MARK LEBOVITCH, ESQ.  
of the New York Bar  
5 Bernstein, Litowitz, Berger & Grossmann, LLP.  
for Plaintiff

6 CHRISTIAN DOUGLAS WRIGHT, ESQ.  
7 Young, Conaway, Stargatt & Taylor, LLP.

8 -and-

9 STEPHEN R. DiPRIMA, ESQ. (via telephone)  
of the New York Bar  
Wachtell, Lipton, Rosen & Katz  
10 for Defendant Ceridian Corporation and the  
Director Defendants

11 NATHAN A. COOK, ESQ.  
12 Abrams & Laster, LLP.

13 -and-

14 VIRGINIA H. JOHNSON, ESQ.  
of the New York Bar  
Weil, Gotshal & Manges, LLP.  
for Defendants Thomas H. Lee Partners, LP,  
15 Fidelity National Financial, Inc.,  
16 Foundation Holdings, Inc., and  
Foundation Merger Sub, Inc.

17 - - -

1 agreed to that. So we have a stipulation that we  
2 filed that is requiring Your Honor's okay on that.

3 THE COURT: I have that stipulation,  
4 and I have no problem approving it.

5 MR. FRIEDLANDER: So that really  
6 concludes my presentation. We have submitted the  
7 fairness of the settlement. The class certification,  
8 I think, is standard. And we're deferring the fee  
9 application to a later time. Unless Your Honor has  
10 any questions?

11 THE COURT: Let me see if anyone from  
12 the other side, the defense side wants to add or say  
13 anything in addition to what has already been  
14 presented.

15 Mr. DiPrima, or anyone here in the  
16 courtroom want to do that?

17 MR. DiPRIMA: I don't have anything  
18 to add to that, Your Honor.

19 MR. WRIGHT: Nor do I, Your Honor.

20 MS. JOHNSON: Nor do we.

21 MR. COOK: No, Your Honor.

22 THE COURT: Well, as you probably  
23 already know, I am pretty familiar with many of the  
24 facts that Mr. Friedlander was reciting for me as to

1 the nature of this litigation, even predating this  
2 litigation of the Pershing Square litigation against  
3 Ceridian, which is an interesting case in its own, I  
4 thought, that 220 action. When this one was filed  
5 right on the heels of the Pershing Square action, I  
6 thought this one was really going to be interesting,  
7 because I thought it had some very intriguing  
8 questions about some of these defenses. And it  
9 struck me as quite novel.

10 The briefing that you submitted,  
11 Mr. Friedlander, indicates that you've searched for a  
12 case, and you, Mr. Lebovitch, on a merger agreement  
13 that had a similar walkaway right, and you couldn't  
14 find one of those. I looked a little bit when this  
15 case was filed for something like that. I couldn't  
16 find any cases that had anything like that.

17 Then you had the waiver provision on  
18 the standstill, which -- even post Topps and Vice  
19 Chancellor Strine's comments there about the  
20 legitimate use versus the illegitimate use of a  
21 standstill -- still made this look to me as one of  
22 the more interesting cases that I had seen come in.

23 So, I was, believe it or not,  
24 actually looking forward to maybe having some

1 argument about it and seeing where it took all of us.  
2 But it was, after all, sort of the dog days of  
3 summer, and I realized that the idea that you might  
4 want to trek down to Georgetown in sultry August  
5 weather might not be as appealing to you as it was to  
6 me. So, I was not shocked, but somewhat  
7 disappointed, that the case had resolved itself and  
8 you worked out a solution. And so, we had that  
9 earlier hearing, and I was willing to go ahead and  
10 approve the partial settlement and going forward.

11 Today, I can tell you, to relieve any  
12 anxiety that you may have, that I am going to approve  
13 the settlement as presented. Let me sort of begin  
14 the way I necessarily must begin under our law.

15 First, the application to certify the  
16 class, I am satisfied, meets all the requirements  
17 under Rule 23. The standard litany of numerosity,  
18 typicality and adequacy, and to the extent that I  
19 need to go through that, they are all satisfied here  
20 easily in this; and this can be certified to the  
21 class action along the lines proposed.

22 In addition, I have done the Prezant  
23 analysis that I am required to do. There is no  
24 evidence of any kind of conflict here that would

1   disable counsel or the lead plaintiff in any way  
2   whatsoever. To the contrary, I have to say -- I am  
3   glad to say that lead counsel here and the plaintiff  
4   shareholder admirably prosecuted this litigation in a  
5   frenetic way, but a very professional way, and were  
6   met ably on the other side by the very skilled and  
7   talented counsel who were defending on behalf of  
8   Ceridian, which was one of the reasons why I thought  
9   it would be an extra treat to try this case in  
10   Georgetown on an expedited basis. But that's really  
11   not the question.

12                   The question is whether the  
13   settlement here is in the best interest of the class  
14   and the best interest of the company. Settlements,  
15   of course, are approved by the Court because they are  
16   really favored in the sense that it is better for  
17   litigants to find a way to resolve litigation than to  
18   try them. And in this case it probably is true as  
19   well, because the world has moved on; conditions have  
20   changed. Dynamics here are different than they were  
21   in July and June when this thing was shaping up. The  
22   market has changed some.

23                   Here, the transaction that was  
24   ultimately approved by the shareholders may well have



1 been the best transaction available. But what is  
2 important is that the litigation itself can easily  
3 have been said to have contributed to the  
4 shareholders' ability to make that judgment, both  
5 by the removal of the walkaway provision from the  
6 agreement and the waiver provision with respect to  
7 the standstill and the other terms, including the  
8 additional disclosures here which were quite  
9 significant, it seemed to me, for these shareholders  
10 to be able to make a fully informed decision about  
11 whether to accept this deal, or whether to try to  
12 press the board perhaps to consider alternatives like  
13 the recapitalization or the spinoff of Comdata --  
14 which, of course, Pershing Square was one of the  
15 major champions for that option here for the company.

16           The fact that I am a little comforted  
17 by the fact that Pershing Square's analysis of this,  
18 in the end, they concluded that \$36 is probably the  
19 best number we can get; that, as I said, gives me  
20 some comfort as well that this was probably the right  
21 result.

22           So, for all of those reasons, I am  
23 convinced that given the difficulty of the litigation  
24 on such an expedited basis, some of these claims

1 being rather novel -- yes, you got strong pushback  
2 from Mr. McBride about the baselessness of your  
3 claims, but that's what Mr. McBride is paid to do  
4 after all. So, I take that, with all due respect,  
5 but with all due grains of salt added to that as  
6 well.

7                   So I think it would have been a  
8 challenge, in any case, to litigate to the bitter  
9 end. Given that the market dynamics were moving, it  
10 may have been risky to try to force the issue on; and  
11 given those risks, I think it was probably very  
12 sensible to settle it and along the lines you did,  
13 which, after all, were pretty good accomplishments.

14                   It wasn't a lay-down settlement. You  
15 did quite a bit of work in filing the complaint on an  
16 expedited basis on two fronts: On the 211 and on the  
17 breach of fiduciary duty front. Moving for  
18 expedition. Getting me to agree to that expedition  
19 on a really rapid schedule, like I said, in the dog  
20 days of summer, was not a small feat. You were also  
21 undergoing quite a bit of document review, preparing  
22 for depositions both offensively and defensively.

23                   So, given all of that, I think  
24 perhaps at least Bouchard and Friedlander was being

1 occupied pretty frenetically in August. I don't know  
2 about Mr. Lebovitch's firm, they may have been as  
3 well. So, given all of that, I think it was a fairly  
4 remarkable achievement and a very successful  
5 achievement on the plaintiffs' side, and I give due  
6 credit to the work that was done to get ready on that  
7 basis to present to me. I am sure that if we had  
8 gone to trial, it would have been very professionally  
9 handled, and a very strong advocacy and professional  
10 advocacy on both sides.

11 So, for all those reasons, I am  
12 satisfied fully that the settlement is fair, adequate  
13 and in the best interest of the class. Therefore,  
14 the Court of Chancery will approve it.

15 Now, having said all of that, I will  
16 enter an order today that approves the settlement  
17 along those lines, and certifies the class. We will  
18 do that electronically so you will have it instantly.

19 I will wait for you to go ahead -- if  
20 you want to do that, I will wait for you to go ahead  
21 and submit the briefs on the attorneys' fees, but I  
22 don't know exactly why you would want to do that.  
23 Let me just say without trying to tell you that I  
24 have made up my mind, I think that this was hard

1 fought litigation. This was not a lay-down  
2 settlement. This was serious lawyers, seriously  
3 litigating some rather interesting and novel claims.

4 I think that given that they were  
5 able to achieve -- some of those claims were able to  
6 be achieved as part of the settlement, the changes in  
7 the merger terms and the additional disclosures, I  
8 will be interested in seeing some argument about why  
9 I shouldn't approve fees like this that are  
10 undertaken on a contingent basis by very good firms  
11 doing that. I will be open-minded about it, but you  
12 might think carefully about whether it is worth  
13 briefing, spending a lot of attorneys' time, billing  
14 on that question, as opposed to just moving on from  
15 this dispute to some other dispute. So I will leave  
16 it at that and not say any more.

17 Do you want a hard copy of this, or  
18 is an electronic version satisfactory,  
19 Mr. Friedlander?

20 MR. DiPRIMA: Electronic version is  
21 satisfactory, Your Honor.

22 THE COURT: All right. Mr. DiPrima  
23 says an electronic version is okay with him.

24 Is it okay with you?

1 MR. FRIEDLANDER: Yes, it is.

2 THE COURT: Very good. I will do  
3 that as soon as I get back in chambers.

4 Is there anything else we can do  
5 today, counsel?

6 MR. FRIEDLANDER: No, Your Honor.

7 THE COURT: All right. We are  
8 adjourned.

9 Thank you, Mr. DiPrima, for being  
10 available.

11 MR. DiPRIMA: Thank you, Your Honor.

12 THE COURT: Bye now. We are off the  
13 record now.

14 (The hearing adjourned at 3:06 p.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 28 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 25th day of February, 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