In re ACS Shareholder Litigation (Xerox)

COURT: Delaware Court of Chancery
CASE NUMBER: 4940-VCP

Shareholder class action lawsuit filed in the Delaware Court of Chancery, on behalf of the New Orleans Employees' Retirement System ("NOERS") and similarly situated shareholders of Affiliated Computer Service, Inc. ("ACS" or the "Company"), against members of the Board of Directors of ACS ("the Board"), Xerox Corporation ("Xerox"), and Boulder Acquisition Corp. ("Boulder"), a wholly owned subsidiary of Xerox.

August 24, 2010 - Court Grants Final Approval to $69 Million Settlement - $12.8 Million to be Personally Paid by ACS Founder, Darwin Deason

On August 24, 2010, the Court granted final approval to a global settlement reached with defendants for $69 million. The settlement, which was obtained on May 19, 2010, serves to release all claims in this action. In exchange for the release of all claims, Darwin Deason, ACS's founder and Chairman and largest stockholder, has agreed to personally fund $12.8 million of the settlement. A copy of the Notice and Proof of Claim form can be found on the "Case Documents" page.

Background

On October 2, 2009, BLB&G filed a complaint alleging that the members of the ACS Board breached their fiduciary duties by approving a merger with Xerox, which would allow Deason to extract for himself hundreds of millions of dollars of value that rightfully belongs to ACS's public shareholders . In this regard, on September 27, 2009, ACS entered into a merger agreement with Boulder and Xerox, whereby each ACS shareholder would receive a total of $18.60 per share in cash and 4.935 Xerox shares for each ACS Class A share that they own. However, Deason, who controlled 44% of ACS's voting interests while owning less than a 10% economic interest in the Company, would receive a mix of Xerox preferred securities, cash and other benefits worth approximately $889 million for his ACS Class A shares and his ACS high-vote Class B shares. Per the agreement, Deason's consideration amounted to over a 50% premium when compared to the consideration paid to ACS's public stockholders. The ACS Board further breached its fiduciary duties by agreeing to certain deal protections in the merger agreement, including an approximately 3.5% termination fee and a no-solicitation provision. These deal protections, along with the voting agreement that Deason signed with Xerox (which requires him, under certain circumstances, to pledge half of his voting interest in ACS to Xerox), essentially locked up the transaction between ACS and Xerox. Plaintiffs, therefore, sought a preliminary injunction to enjoin the deal.

On October 7, 2009, the Court appointed NOERS as Co-Lead Plaintiff and BLB&G as Co-Lead Counsel. The Court also set a January 21, 2010 hearing date to consider Plaintiffs' motion for a preliminary injunction to enjoin the ACS-Xerox merger. On October 22, 2009, the Court granted Co-Lead Plaintiffs' motion for class certification, and

appointed NOERS as a Class Representative. On October 26, 2009, Defendants filed a motion to proceed in one jurisdiction in response to the shareholder class actions filed in the Delaware and Texas courts. During the afternoon of October 26, 2009, the Court held a conference concerning Defendants' motion to proceed in one jurisdiction. The Class Representatives then submitted a letter to the Court on October 27, 2009 stating their view that Delaware was the proper jurisdiction for such action to proceed.

On December 11, 2009, Plaintiffs filed an amended complaint. On December 13, 2009, Class Representatives entered into a stipulation with certain defendants, which will confer significant benefits on the Class in connection with the proposed ACS-Xerox merger. The benefits include an amendment of the merger agreement to include a majority of the minority vote condition. On December 14, 2009, Class Representatives submitted a letter to the Court requesting that it approve the stipulation and enter it as an order.

On December 21, 2009, the plaintiffs agreed not to press their motion to seek a constructive trust or equitable set-off with respect to the additional compensation that Darwin Deason will receive from the merger. In exchange, Deason agreed to provide Class Representatives 20 days notice before selling or transferring any of the Xerox convertible preferred stock. The parties also agreed to a trial in May 2010 to resolve all outstanding claims. Class Representatives submitted a letter to the Court requesting approval of this agreement.

On February 8, 2010, Plaintiffs filed a motion for partial summary judgment seeking a declaration that Defendants violated the ACS charter because it expressly precludes Deason from receiving any payment for his Class B shares that differs in "kind and amount" from the consideration received by ACS Class A shareholders.

On May 19, 2010, Plaintiffs reached a global settlement with defendants for $69 million. In exchange for the release of all claims, Deason agreed to pay the settlement class $12.8 million while ACS agreed to pay the remaining $56.1 million. The Court granted final approval to the settlement on August 24, 2010.

Case Documents

- June 25, 2010 - Notice of Proposed Settlement of Class Action, Settlement Hearing, and Right to Appear
- February 8, 2010 - Memorandum in Support of Motion for Partial Summary Judgement
- February 8, 2010 - Declaration of Cynthia Calder in Support of Class Plaintiffs' Motion for Summary Judgement
- February 8, 2010 - Plaintiffs' Motion for Partial Summary Judgement
- December 21, 2009 - Letter to Court re Agreement Not to Seek Constructive Trust
- December 14, 2009 - Letter to Court
- December 11, 2009 - Amended Verified Class Action Complaint
- October 27, 2009 - Plaintiffs' Response to Defendants' Motion to Proceed in One Jurisdiction
- October 26, 2009 - Defendants' Memorandum of Law in Support of their Motion to Proceed in One Jurisdiction
- October 22, 2009 - Order Granting Plaintiffs Motion for Class Certification
- October 7, 2009 - Order Granting Stipulation re Case Schedule

- October 1, 2009 - Verified Class Action Complaint