

## *In re: Pivotal Software, Inc. Stockholders' Litigation*

**COURT:** Delaware Court of Chancery  
**CASE NUMBER:** 2020-0440-KSJM  
**CASE LEADERS:** Jeroen van Kwawegen, Gregory V. Varallo, Edward G. Timlin  
**CASE TEAM:** Thomas James, Mae Oberste

This stockholder class action sought damages for minority stockholders of Pivotal Software, Inc. ("Pivotal"), who were cashed out in the acquisition of Pivotal that was orchestrated and effectuated by its controlling stockholders (the "Acquisition"). On June 4, 2020, BLB&G and its co-counsel, filed the class action complaint (the "Complaint"). On August 14, 2020, BLB&G was appointed co-lead counsel in the case, and its client was appointed lead plaintiff. Links to the Complaint and leadership order can be found under the **Case Documents** section of this page.

The Complaint alleged that Pivotal's controlling stockholders—VMware, Inc. (VMware"), Dell Technologies Inc. ("Dell"), and Michael Dell ("M. Dell")—opportunistically acquired Pivotal at a below-market price to capture the Company's generational enterprise software technology without instituting sufficient procedural protections to insulate the controllers' coercive influence over the process. Pivotal was an enterprise software application company, which Dell, VMware, and M. Dell controlled through, among other things, their ownership of Pivotal stock and their partner relationships to sell Pivotal's enterprise software. VMware, Dell, and M. Dell exercised their control to roll Pivotal up into VMware.

M. Dell set the Acquisition process into motion and VMware formed a special committee and began conducting diligence shortly thereafter. Pivotal, however, did not form a special committee for several months and that committee retained pre-selected advisors with thick ties to the controllers. Although Pivotal provided substantial diligence to VMware, VMware did not condition the Acquisition on approval by Pivotal's special committee and a minority stockholder vote for months after the process began. VMware took advantage of an abnormally poor fiscal quarter to acquire Pivotal on the cheap and timed its offer to prevent Pivotal's stock price from impounding subsequent positive quarterly results. Unlike minority stockholders, Dell received VMware stock in the Acquisition, allowing it to share in the upside of the combined entity, as well as maintaining preferential tax benefits.

The Complaint asserted breach of fiduciary duty claims against (i) Dell, M. Dell, and VMware in their capacity as Pivotal's controlling stockholders, (ii) M. Dell and Pivotal's CEO Robert Mee in their capacity as former Pivotal directors, (iii) Mee and former Pivotal CFO Cynthia Gaylor in their capacity as former Pivotal officers; as well as (iv) a claim against VMware for aiding and abetting the foregoing breaches. After briefing and a hearing on defendants' motion to dismiss, on May 11, 2021, Chancellor McCormick substantially denied defendants' motion to dismiss, leaving the primary defendants and the primary claims in the case. On November 4, 2021, BLB&G was appointed co-lead counsel in the case, and its client was appointed class representative. Plaintiff litigated this action through fact and expert discovery. The transcript decision and class certification order can be viewed under the **Case Documents** section of this page.

On June 2, 2022, Plaintiff and Defendants entered into a stipulation and agreement of settlement, compromise, and release, in which the Plaintiff and Defendants agreed to settle the claims asserted in the action for \$42.5 million in cash. A settlement hearing was held on October 4, 2022, and the Court approved the settlement, observing that "the action involved extensive discovery, mediation, [and] motion practice" and that the Plaintiff was a "model plaintiff" as well as "commend[ing] everyone involved for navigating the complexities of a pandemic while litigating

zealously on behalf of [their] clients in a fair and reasonable and civil manner as this Court expects.” Settlement Hearing Transcript at 35-36. The order approving the settlement and transcript of the settlement are available under the **Case Documents** section of this page.

The settlement administration was completed in March 2023. On April 5, 2024, the Motion for Class Distribution Order was filed. On April 11, 2024, the Court approved the Class Distribution Order. The first distribution of the net settlement fund occurred in May 2024. Subsequent distributions will occur on a rolling basis, provided that net settlement funds are available.

## Case Documents

- October 4, 2022 - Order and Final Judgment
- October 4, 2022 - Transcript and Rulings of Settlement Hearing
- November 4, 2021 - Granted Order Regarding Class Certification
- July 15, 2021 - Telephonic Rulings of the Court on Defendants' Motions to Dismiss
- June 9, 2020 - Verified Class Action Complaint
- August 14, 2020 - Order Granting Consolidation, Appointment of Lead Plaintiff and Lead Counsel, and Coordination