

In re Yahoo! Inc., Takeover Litigation

COURT: Delaware Court of Chancery
CASE NUMBER: C.A. No. 3561
CLASS PERIOD: 01/31/2008 - 12/07/2008
CASE LEADERS: Mark Lebovitch

Shareholder class action filed on behalf of the Police & Fire Retirement System of the City of Detroit and the General Retirement System of the City of Detroit (collectively "Plaintiffs") (the "Detroit Funds"), and all other similarly situated public shareholders (the "Class") of Yahoo! Inc. ("Yahoo" or the "Company"). On March 5, 2008, The Hon. William B. Chandler III, Chancellor of the Court of Chancery of the State of Delaware, granted the Plaintiffs' motion to consolidate the several pending shareholder class actions, appointing the Detroit Funds as Lead Plaintiffs and BLB&G as Co-Lead Counsel for the Class.

This action alleges that the Board of Directors at Yahoo breached their fiduciary duties by refusing to respond in good faith to Microsoft Corporation's ("Microsoft") non-coercive offer to acquire Yahoo for \$31 per share - a 62% premium above the \$19.18 closing price of Yahoo common stock on January 31, 2008. The initial complaint filed on February 21, 2008 alleged that Yahoo pursued an "anyone but Microsoft" approach, seeking improper defensive options to thwart Microsoft at the expense of Yahoo's shareholders, including transactions with Google, AOL, and News Corp. The Complaint also alleged the Yahoo Board adopted improper change-in-control employee severance plans designed to impose tremendous costs and risks for an acquirer by rewarding employees with rich benefits if they quit and claimed a constructive termination in the wake of merger.

Following consolidation of related cases and appointment of the firm as co-lead counsel by Chancellor Chandler on March 5, 2008, plaintiffs requested expedited proceedings and immediately commenced discovery, including document reviews and depositions of certain third parties and defendants.

As mentioned, a major focus of this litigation was a challenge to two Change-in-Control Employee Severance Plans that the Yahoo board of directors adopted in immediate response to this shareholder-supported offer. The severance plans were alleged to be unique, in that they created over \$2 billion of potential liabilities for any acquirer of Yahoo, without actually serving legitimate employee retention purposes. In other words, the severance plans were being used to deter and hinder Microsoft's offer, rather than being used to create shareholder value. Ultimately, even after Microsoft increased offer to \$33 per share, Yahoo rejected Microsoft's advances, denying Yahoo shareholders the opportunity to realize this significant premium. Microsoft abandoned its efforts soon after, and Yahoo's stock price has since plummeted.

After Microsoft withdrew its offer and activist investor Carl Icahn launched a proxy fight to replace the Yahoo board of directors, principally based on a desire to bring Microsoft back to the negotiating table. Prior to the August 1 annual meeting of Yahoo shareholders, the Court declined to grant plaintiffs an expedited trial on the challenge to the Severance Plan claims, indicating that the claims could be resolved in a normal litigation schedule. Shortly thereafter, settlement negotiations commenced to determine whether the Yahoo board would agree to eliminate the improper severance plans or to substantially amend their terms.

In December 2008, we informed the Court that the parties had reached a settlement of the action and explained the terms of the settlement. The settlement provided significant benefits to Yahoo's shareholders as it included

substantial revisions to the two challenged Change-in-Control Employee Severance Plans that the Yahoo board of directors adopted in immediate response to Microsoft's offer back in February of 2008. These revisions included changes to the first trigger of the severance plans by modifying what constitutes a "change of control" as well as changes to the second trigger by narrowing what amounts to "good reason for termination" or when an employee at Yahoo could leave on his own accord and claim severance benefits. Finally, the settlement provides for modifications to reduce the expense of the plan.

The Court preliminarily approved the settlement and we provided notice to the class. Subsequently, on February 3, 2009 we submitted Plaintiffs' papers in support of final approval of the proposed settlement and the Court approved the settlement on March 6, 2009.

Case Documents

- February 23, 2009 - Yahoo Inc.'s Memorandum in Support of Proposed Settlement
- March 4, 2009 - Plaintiffs' Reply Brief in Support of Proposed Settlement
- February 11, 2009 - Plaintiffs' Brief in Support of Proposed Settlement
- Notice of Pendency and Settlement of Class and Derivative Action
- December 9, 2008 - Transcript of Teleconference
- December 9, 2008 - Letter to Chancellor Chandler from Lead Plaintiffs, with Attached Stipulation of Settlement and Severance Plan Exhibits
- November 21, 2008 - Second Amended Complaint
- July 14, 2008 - Proposed Second Amended and Supplemental Consolidated Complaint
- April 24, 2008 - Plaintiffs' Reply in Support of Emergency Motion to Compel Attendance at Deposition
- February 25, 2008 - Motion to Consolidate
- March 3, 2008 - Stipulation and Proposed Case Management Order
- March 24, 2008 - Transcript of Hearing
- April 24, 2008 - Director Defendants' Opposition to Plaintiffs'
- May 12, 2008 - Motion for Leave to Amend
- May 27, 2008 - Plaintiffs' Surreply in Support of Unsealing the Proposed Amended Complaint
- March 17, 2008 - Letter to Chancellor William B. Chandler III from the Court-Appointed Lead Counsel for Plaintiffs
- June 13, 2008 - Plaintiffs' Letter to Chancellor William B. Chandler III Requesting Trial Date be Held in Advance of Annual Meeting Scheduled for August 1, 2008
- June 2, 2008 - Unsealed Version of the First Amended Verified Complaint of May 12, 2008
- March 3, 2008 - Declaration of Mark Lebovitch in Support of the Detroit Funds' Motion for Consolidation and Appointment of BLB&G and BM&F as Lead Counsel

- June 2, 2008 - Letter from Chancellor William B. Chandler III Granting Plaintiffs' Motion to Amend Complaint and Ordering Unsealing of the Amended Complaint
- June 11, 2008 - Defendants' Letter to Chancellor William B. Chandler III Regarding Motion to Set Trial Date
- April 22, 2008 - Transcript of Telephone Conference
- May 20, 2008 - Transcript of Teleconference Before Chancellor William B. Chandler III
- March 5, 2008 - Order of Consolidation
- May 20, 2008 - Plaintiffs' Letter to Chancellor William B. Chandler III in Support of Unsealing the Proposed Amended Complaint
- April 18, 2008 - Plaintiffs' Emergency Motion to Compel Attendance at Deposition
- February 22, 2008 - Motion to Expedite
- June 9, 2008 - Plaintiffs' Opening Brief in Support of Their Motion to Set Trial Date
- March 3, 2008 - Memorandum of Law in Further Support of the Detroit Funds' Motion for Consolidation, Appointment of Lead Counsel and In Opposition to the Plumbers and Pipefitters Competing Motion
- June 16, 2008 - Letter from Chancellor William B. Chandler III Denying Plaintiffs' Motion to Set Trial Date
- March 12, 2008 - Amendment to Order of Consolidation
- May 23, 2008 - Defendants' Supplemental Briefing in Opposition to Plaintiffs' Challenge to Rule 5(G) Redactions
- February 21, 2008 - Class Action Complaint
- March 26, 2008 - Yahoo! Inc.'s and Individual Defendants' Opposition to Plaintiffs' Motion for Expedited Proceedings
- May 16, 2008 - Letter to Chancellor William B. Chandler III Requesting Hearing on Yahoo's Redactions of Plaintiffs' Proposed First Amended Verified Consolidated Complaint
- May 15, 2008 - First Amended Verified Consolidated Complaint
- June 11, 2008 - Plaintiffs' Letter to Chancellor William B. Chandler III in Further Support of Their Motion to Set Trial Date