



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

_____)
IN RE ORACLE CORPORATION) CONSOLIDATED
DERIVATIVE LITIGATION) C.A. No. 2017-0337-SG
_____)

**MOTION TO EXTEND STAY BY THE
SPECIAL LITIGATION COMMITTEE OF
THE BOARD OF DIRECTORS OF ORACLE CORPORATION**

The Special Litigation Committee (“SLC”) of the Board of Directors (the “Board”) of nominal defendant Oracle Corporation (“Oracle” or the “Company”) hereby moves this Court for an Order extending the stay of proceedings in this derivative action for ninety (90) days through August 15, 2019 to allow the SLC time to pursue settlement negotiations – including participating in a formal, non-binding mediation that the SLC and Defendants have agreed to conduct on July 2, 2019 – to attempt to resolve the litigation for the benefit of Oracle. The grounds for this motion are set forth below.

FACTUAL BACKGROUND

1. The claims at issue in this action involve allegations of self-dealing by Oracle co-founder and director Lawrence J. Ellison in connection with Oracle’s agreement to purchase NetSuite, another company founded by Mr. Ellison and in which Mr. Ellison owned a significant interest. On May 4, 2018, following this Court’s denial of a motion to dismiss, *see In re Oracle Corp Deriv. Litig.*, 2018 WL 138133 Ch. Del. (Mar. 19, 2018), the Board formed the SLC and named three

outside directors as its sole members. The Board vested the SLC with full authority to (i) take all actions necessary to investigate, analyze, and evaluate all matters relating to this lawsuit and the claims asserted in the action, and (ii) take any actions that the SLC deems to be in the best interests of the Company in connection with this lawsuit and any related matters.

2. On July 2, 2018, the SLC moved for the entry of an order staying proceedings for six months to facilitate the SLC's investigation, review, and determination with respect to Plaintiff's claims. D.I. 91. Subsequently, the parties stipulated to a six month stay of the action. D.I. 93. On December 21, 2018, the parties entered into a stipulation further extending the stay through May 15, 2019. D.I. 97.

3. During the pendency of the stay, the SLC has engaged in a thorough investigation of the claims at issue. The SLC has collected more than one million documents from fourteen Oracle and NetSuite custodians; received and reviewed productions of documents from Oracle Board directors and five non-parties; and hired a forensic data consultant to oversee the collection of data from certain custodians' cell phones. In addition to reviewing documents, the SLC has conducted 39 interviews. The SLC has also retained its own financial advisor to assist in assessing certain valuation issues, including the strength of Plaintiff's claim that Oracle did not purchase NetSuite at a fair price.

4. The SLC's investigation is approaching completion. At this point, the SLC determined that it was in Oracle's interest to investigate whether a settlement of the claims is feasible. Therefore, on April 23, 2019, the SLC's counsel contacted Defendants' counsel to explore the possibility of settlement.

5. As a result of those discussions, the SLC and Defendants have agreed to participate in a formal non-binding mediation with former United States District Judge Layn Phillips of Phillips ADR in an attempt to negotiate a settlement. The SLC and Defendants have scheduled the mediation for Judge Phillips' earliest available date, which is July 2, 2019.

6. The SLC believes that a continued stay of the litigation while the parties pursue a potential settlement of the derivative claims is in Oracle's best interests. The mediation is scheduled for July 2, 2019, and the SLC believes that an additional stay of ninety (90) days from May 15, 2019 should be sufficient to facilitate the settlement discussions.

ARGUMENT

7. The Court should grant the SLC's request for a ninety (90) day extension of the stay so that it can pursue settlement negotiations for the benefit of Oracle. Delaware courts recognize that "[t]he directors are generally in the best position to determine if pursuit of litigation is in the corporate interest." *In re Oracle Corp.*, 2018 WL 1381331, at *1; *see also Grimes v. Donald*, 673 A.2d

1207, 1215 (Del. 1996) (“[i]f a claim belongs to the corporation, it is the corporation, acting through its board of directors, which must make the decision whether or not to assert the claim”). For this reason, a corporation may rely on a special litigation committee to reach a considered conclusion as to what course of action is best calculated to protect and advance the interests of the corporation with respect to a derivative claim. *See, e.g., Zapata Corp. v. Maldonado*, 430 A.2d 779, 785 (Del. 1981); 8 *Del. C.* § 141.

8. Here, the SLC has been properly constituted and, after its creation and retention of counsel, conducted an extremely thorough and extensive good faith investigation of the potential claims and defenses. Based on the work to date, the SLC has determined that it is in Oracle’s best interest to attempt to negotiate a settlement of the derivative claims. It follows that the SLC should be afforded a reasonable amount of time to pursue such negotiations and that the litigation should be stayed for a reasonably short period while the negotiations proceed. *Biondi v. Scrushy*, 820 A.2d 1148, 1164 (Del. Ch. 2003) (“[W]hen the committee asks for a stay to give itself breathing room to do its job without distraction from the underlying litigation’s procession, the court almost invariably grants the motion.”), *aff’d sub. nom. In re Healthsouth Corp. S’holders Litig.*, 847 A.2d 1121 (Del. 2004) (TABLE).

9. Conversely, it makes no sense to proceed with the litigation—and place additional burdens on the Company, the parties, and the Court—while settlement negotiations are pending. *See Harbor Fin. Partners v. Sunshine Mining and Ref. Co.*, 1996 WL 74728, at *2 (Del. Ch. Feb. 16, 1996) (“Delaware courts should avoid duplicative efforts to conserve limited judicial resources.”) (citations omitted). Accordingly, and in light of Delaware’s strong public policy favoring consensual resolution of litigation, *see, e.g., Sammons v. Doctors for Emergency Services, P.A.*, 913 A.2d 519, 533 (Del. 2006) (“public policy favors compromise in settlement of disputes”), including derivative litigation, the Court has routinely granted extensions of stays in similar circumstances in other cases. *See, e.g., Kikis v. McRoberts*, C.A. No. 9654-CB (Del. Ch. May 29, 2015) (ORDER) (granting extension of stay to pursue settlement discussions); *In re Clear Channel Outdoor Holdings, Inc. Deriv. Litig.*, Consol. C.A. No. 7315-CS (Del. Ch. Jan. 24, 2013) (ORDER) (same). More recently, in *Sandys v. Pincus*, the special litigation committee sought additional time to pursue a negotiated settlement, and the committee then negotiated a settlement that was approved by the Court as an “excellent result.” C.A. No. 9512-CB, at 55 (Del. Ch. Jan. 18, 2019) (TRANSCRIPT).

CONCLUSION

10. For the foregoing reasons, the SLC respectfully requests that the Court grant its motion to stay all aspects of this action through August 15, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of May, 2019, a copy of the foregoing document was served via File & Serve*Xpress* upon the following attorneys of record:

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