

Miami Firefighters' Relief & Pension Fund v Icahn

2025 NY Slip Op 35065(U)

December 23, 2025

Supreme Court, New York County

Docket Number: Index No. 657447/2019

Judge: Nancy M. Bannon

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NANCY M. BANNON PART 61M

Justice

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MIAMI FIREFIGHTERS' RELIEF & PENSION FUND,

Plaintiff,

- v -

CARL C. ICAHN, HIGH RIVER LIMITED PARTNERSHIP,
ICAHN CAPITAL LP, KEITH COZZA, GIOVANNI VISENTIN,
JONATHAN CHRISTODORO, JOSEPH ESCHEVARRIA,
NICHOLAS GRAZIANO, CHERYL GORDON KRONGARD,
ANDREW SCOTT LETIER, XEROX HOLDINGS
CORPORATION,

Defendant.

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INDEX NO. 657447/2019

MOTION DATE _____

MOTION SEQ. NO. 019

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 019) 423, 424, 425, 426, 427, 428, 429, 430, 440, 448

were read on this motion to/for COMPROMISE.

I. INTRODUCTION

This is a shareholder derivative action on behalf of Xerox Holdings Corporation ("Xerox"), commenced in December 2019 by Miami Firefighters' Relief and Pension Fund (Miami Firefighters), an owner of Xerox common stock. The complaint alleged, among other things, that Carl Icahn, High River Limited Partnership, and Icahn Capital, LP (collectively, the "Icahn defendants") and Xerox's then-directors breached their fiduciary duties to Xerox and were unjustly enriched through the Icahn defendants' purchases of HP, Inc. ("HP") common stock based upon Xerox's non-public information. The parties moved for approval of a Stipulation of Settlement (MOT SEQ 019) and the plaintiffs moved separately for attorney's fees (MOT SEQ 020). MOT SEQ 019 is granted and MOT SEQ 020 is decided separately.

II. BACKGROUND

In 2019, a previously filed derivative action, Carmen Ribbe v. Jeff Jacobson et al., Index No. 652147/2019 ("Ribbe action") was amended to allege that the Icahn defendants caused Xerox to waste its corporate assets to bail out the Icahn defendants' investment in HP. This action and the Ribbe action were coordinated by the court (Ostrager, J. [Ret.]), which, by an

order dated December 15, 2020, dismissed both claims and found that plaintiffs did not have a claim for disgorgement because the Icahn defendants lost money on their investment in HP stock. By an order dated January 15, 2021, the same court denied the plaintiff's motion for discovery. The plaintiffs appealed both orders. By an order dated November 18, 2021, the First Department reversed both orders, reinstated the plaintiffs' claims and allowed discovery to proceed. Between 2019 and approximately 2023, this case was extensively litigated. Justice Ostrager entertained numerous motions and cross-motions to dismiss, consolidate, compel discovery, stay the action, quash subpoenas, seal documents and for summary judgment. By an order dated March 18, 2024, this court granted a motion by the plaintiff to extend the Note of Issue filing deadline to May 15, 2024.

On May 6, 2024, the parties entered a Stipulation of Settlement ("Settlement"). The Settlement provides, among other things, for the Icahn defendants to pay \$2.2 million to Xerox to offset the cost of litigation, and for the implementation of certain corporate governance changes, including, but not limited to, (1) the appointment of two independent directors, (2) Xerox's agreement to form a special committee if either a direct beneficial owner of more than 5% of Xerox's stock or Xerox's management proposes to engage in a change of control action, (3) providing that major shareholders are subject to an amended confidentiality agreement to prevent the use of material non-public information, and (4) establishing a strategic review committee to review material, value-enhancing possibilities for Xerox.

On July 24, 2024, the court granted the plaintiffs' motion for preliminary approval of the parties' stipulation of settlement, authorization of notice of the settlement on the shareholders of Xerox, and a stay of all discovery. On September 24, 2025, plaintiffs filed a motion for final approval of the Settlement (MOT SEQ 019) and a motion for an award of attorney's fees and expenses (MOT SEQ 020). On October 29, 2024, the court held a hearing for final approval of the Settlement.

III. DISCUSSION

Approval of a settlement in a derivative shareholder action is examined based on the following factors: the likelihood of success weighed against the relief offered in the settlement, the extent of support from the parties, the judgment of counsel, the presence of bargaining in good faith, and the nature of the issues of law and fact. See In re Colt Indus. S'holder Lit., 155 A.D.2d 154 (1st Dept. 1990).

The court credits the plaintiffs' claim that the likelihood of plaintiffs prevailing in this case is uncertain. Even if plaintiffs could prove at trial that the Icahn defendants purchased HP stock while in possession of non-public information, it is unclear to what extent the plaintiffs could establish the amounts of profits the Icahn defendants disgorged. Similarly, based on the factual issues and legal issues to establish damages under the "equal footing doctrine," (See SEC v Shapiro, 494 F.2d 1301 [2nd Cir. 1974]), the plaintiffs have shown that their likelihood of success is uncertain, as they would need to prove a specific equal footing date. In short, the uncertain gain to the corporation if the case had proceeded to trial weighed against the \$2.2 million payment and corporate governance improvements in the Settlement favor the Settlement.

The plaintiffs provided proof to demonstrate that the Settlement was properly noticed, and as no shareholders objected to the terms of the Settlement, the Settlement has the support of the parties. See In re Colt, supra. Based on the credible affirmations of counsel, the parties were represented by counsel who were competent and experienced in the fields of class action litigation, and the settlement discussions took place in good faith at arm's length with the assistance of a mediator recommended by the court, Dennis Glazer. No issues have been raised regarding the settlement negotiations. See Gordon v. Verizon Comm., Inc., 148 A.D.3d 146 (1st Dept. 2017) (finding that where there is no evidence to the contrary, good faith bargaining is presumed).

In addition to the Colt factors, the court must also examine whether the proposed settlement is in the best interests of the putative settlement class as a whole, and in the best interests of the corporation. See Gordon v Verizon Comm., supra. Here, the corporate governance improvements in the Settlement weigh in favor of the best interests of the shareholders and the corporation. Where, in this case, there were allegations that the Icahn defendants breached their fiduciary duties based on improper use of non-public corporate information, the corporate governance improvements in the Settlement -- specifically the appointment of two independent directors, the amended confidentiality agreements, and compliance trainings to prevent sharing of non-public information -- deter the wrongdoing alleged in the complaint and benefit the shareholders. Similarly, the \$2.2 million payment and the corporate governance improvements -- specifically establishing a strategic review committee to review material, value-enhancing possibilities for Xerox -- benefit the corporation by providing value. Further, it is in Xerox's best interest to avoid incurring additional litigation

expenses. See Gordon, supra (finding that avoiding litigation expenses is a benefit to the corporation).

Therefore, based on the seven (7) factors in Colt and Gordon collectively, this court concludes that the Settlement agreement is fair and in the best interests of the shareholders and the corporation.

IV. CONCLUSION


Accordingly, upon the foregoing papers and after oral argument, it is

ORDERED that the parties' Stipulation of Settlement is approved, without opposition, and it is further,

ORDERED that the Clerk shall enter judgment accordingly, and it is further

ORDERED that the parties shall provide notice to interested shareholders pursuant to Business Corporations Law § 626(d) and Xerox Holdings Corporation shall bear any costs related to providing such notice.

This constitutes the Decision and Order of the court.



NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

12/23/2025
DATE

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE