

U. S. COURT OF APPEALS  
**FILED**

NOV 20 2009

**No. 08-51163**

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

**CHARLES R. FULBRUGE III  
CLERK**

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UNION ASSET MANAGEMENT HOLDING AG,  
*Plaintiff-Appellant,*

v.

DELL INC.; KEVIN B. ROLLINS; JAMES M. SCHNEIDER; MICHAEL DELL,  
*Defendants-Appellees.*

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On Appeal from the United States District Court for the  
Western District of Texas, Austin Division,  
No. 1:06-cv-726, Hon. Sam Sparks, Judge Presiding

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**JOINT MOTION FOR LIMITED REMAND AND  
CONTINUED ABATEMENT OF APPEAL**

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### ARGUMENT

Appellant Union Asset Management Holding AG and Appellees Dell Inc., Kevin B. Rollins, James M. Schneider, and Michael Dell (collectively, the "Parties") request a further abatement of the appeal and a limited remand of the case to the district court for the limited purpose of review and approval of the Parties' settlement as required by Federal Rule of Civil Procedure 23. Should the District Court approve such a settlement and the settlement reaches its effective date, this appeal will become moot and Union Asset Management Holding AG will move to dismiss its appeal.

The Parties have been engaged in settlement discussions related to this case. On November 20, 2009, counsel for the Parties executed a stipulation of settlement (the "Stipulation") that would dispose of all claims asserted in this case. The Stipulation is predicated on the certification of a class for settlement purposes and subsequent court approval of the settlement under Rule 23(e), which requires that "[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval."

Thus, in order for the settlement reached by the Parties to dispose of this case, the district court must certify a settlement class and approve the settlement under Rule 23(e). *See U.S. Trust Co. of N.Y. v. Executive Life*

*Ins. Co.*, 791 F.2d 10, 13 (2d Cir. 1986) (remanding case to the district court for Rule 23(e) proceedings when the parties reached a settlement during the appeal). A “remand to the district court for proceedings under Rule 23(e) is appropriate” because “an appellate court cannot undertake the proceedings necessary to judicial consideration of the adequacy of such settlement.” *Id.*

Thus, the Parties respectfully request that the Court remand this case for the limited purpose of reviewing and approving the settlement agreement between the parties and to further abate this appeal pending the proceedings in the district court. Should the Parties be unsuccessful in obtaining final judicial approval of the settlement (or if the settlement set forth in the Stipulation is cancelled or terminated or fails to become effective in accordance with its terms), the Parties will ask the Court to reinstate the proceedings in this appeal.

#### **CONCLUSION AND PRAYER**

For the foregoing reasons, the Parties jointly request that the Court remand this case to the district court for the limited purpose of reviewing and approving a settlement of this case and continue to abate this appeal.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I certify that the **Joint Motion for Limited Remand and Continued Abatement of Appeal** was filed with the Court by Federal Express, on the 20th day of November, 2009, and a copy of the motion was served on all counsel of record, as listed below, by Federal Express on the same date:

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