

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

IN RE INTEL CORP. DERIVATIVE :  
LITIGATION, :  
: Civil Act. No. 09-867-JJF  
:  
: **CONSOLIDATED**

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**MEMORANDUM OPINION**

July 22, 2010  
Wilmington, Delaware.

Farnan,  District Judge.

Pending before the Court is the motion for approval of the Settlement of this derivative action and a request for attorneys' fees and costs by Lead Plaintiffs. In addition, a separate Motion For Final Approval Of Derivative Settlement And An Award Of Attorneys' Fees And Expenses (D.I. 72) has been filed by Martin Smilow and the Rosenfeld Family Foundation (the "Related Plaintiffs"), as shareholders of Intel Corporation and parties to the stipulation settling this derivative litigation. For the reasons discussed, the Court will approve the Settlement, award the attorneys' fees requested by counsel and agreed to by Intel Corporation, and grant the Motion filed by the Related Plaintiffs.

Pursuant to Federal Rule of Civil Procedure 23.1, the Court's approval is required to settle a derivative action. To grant its approval, the Court must find that the settlement is "fair, adequate, reasonable and proper, and in the best interests of the class and the shareholders." Bell Atlantic Corp. v. Bolger, 2 F.3d 1310, 1317 (3d Cir. 1993). In making this determination, the "principle factor" to be considered "is the extent of the benefit to be derived from the proposed settlement by the corporation, the real party in interest." Shlensky v. Dorsey, 574 F.2d 131, 147 (3d Cir. 1978) (citations omitted). In addition, the Court must also consider the following

additional factors:

(1) the complexity, expense and likely duration of the litigation; (2) the reaction of the shareholders to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the derivative action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement agreement in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Girsch v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975) (quotation omitted); see also Shlensky, 574 F.2d at 147 (applying the Girsh factors in the context of a shareholder derivative action).

Within the context of these factors, the decision to grant or deny approval of a settlement rests within the discretion of the Court. Shlensky, 574 F.2d at 147.

After reviewing the proposed Settlement in light of the Girsh factors and the applicable case law, the Court finds that the Settlement is fair, adequate and reasonable and in the best interests of the Company and its shareholders. The Court finds that the Girsh factors weigh in favor of the settlement, and in particular, is persuaded that the benefits of the corporate reforms agreed to be undertaken by Intel in connection with the Settlement far outweigh the expenses and risks of maintaining this complex action, including the significant burden of establishing liability required of Lead Plaintiffs in light of

the discovery produced to date, as well as the likelihood, that continued litigation of this action would certainly be protracted.

In addition, the Court finds, with respect to shareholder reaction, that it is very significant that only a few shareholders have objected to the settlement out of approximately 1.6 million shareholders.<sup>1</sup> (D.I. 94, 58, 63.) The objections raised essentially fall into two categories, those related to lack of adequate notice of the Settlement, and one challenging the substance of the Settlement on the basis that it does not include a pecuniary gain to Intel.

With respect to lack of notice, courts have recognized that untimely notice is an attendant risk of owning stock in "street name," and that the ultimate question with respect to notice is "'not whether some individual shareholders got adequate notice, but whether the class as a whole had notice adequate to flush out whatever objections might reasonably be raised to the settlement.'" Fidel v. Farley, 534 F.3d 508, 514 (6th Cir. 2008) (quoting Torrisi v. Tucson Elec. Power Co., 8 F.3d 1370, 1375 (9th Cir. 1993) and collecting cases). In this case, the Court concludes that notice was adequately provided to interested parties, on the whole, and therefore, the lack of timely notice

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<sup>1</sup> Objectors who challenge the Settlement include Christine Del Gazio, William Kelly Puls, Giles A. Birch and Lisa G. Mirabile.

to the few shareholders who have objected is insufficient to withhold the Court's approval of the Settlement.

With respect to the substance of the Settlement, the shareholder objecting challenges the lack of monetary gain to Intel. The proponent of this objection is Dr. Christine Del Gaizo ("Dr. Del Gaizo"), who raises the possibility of recovery to the Company under its officers and directors' insurance policies. However, as counsel for Dr. Del Gaizo recognized at the hearing, the case law does not require a pecuniary gain to Intel, and in the words of counsel for Dr. Del Gaizo, "The Company got a good deal." (Hearing Tr. 7/20/10.) Indeed, Dr. Del Gaizo could not identify any additional corporate governance measure that should have been sought from Intel that was not in the Settlement. Further, the Court finds that the corporate governance reforms initiated by Intel as a result of the parties' negotiations and this Settlement have value to both the Company and its shareholders both currently and in the long-term, and that these benefits outweigh the speculative potential of any monetary payment from the relevant insurance policies. In this regard, the Court notes that payment under the insurance policies turns not only on the onerous burden of establishing an antitrust violation in the first instance, but also on the perhaps more difficult burden, of establishing bad faith on the part of Intel's officers and directors. Accordingly, the Court will

overrule all of the Objections lodged against the Settlement and approve the Settlement, in its entirety.

In addition, the Court has considered the applications for attorneys' fees and expenses and concludes that they are reasonable and reflective of a substantial benefit rendered to the Company by the efforts of counsel. Shlensky, 574 F.2d at 149. In particular, the Court finds that the attorney lodestar, the relevant multipliers and the hours expended by counsel are fair and reasonable, and therefore, the Court will award counsel for both the Lead Plaintiffs and the Represented Plaintiffs the attorneys' fees and costs. Accordingly, the Court will enter the Order proposed by the parties.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

IN RE INTEL CORP. DERIVATIVE  
LITIGATION

C.A. No. 1:09-cv-867-JJF

**ORDER AND FINAL JUDGMENT**

The Stipulation of Settlement, dated May 25, 2010 (the “Stipulation”) of this derivative action (the “Delaware Action”), and the settlement contemplated thereby (the “Settlement”) were presented to the Court at the Settlement Hearing on July 20, 2010, pursuant to the Scheduling Order entered herein on June 3, 2010 (the “Scheduling Order”). The Stipulation was agreed to by the parties to the Delaware Action, by and through their attorneys.

The Court, having determined that notice of the Settlement Hearing was given to Intel shareholders of record in accordance with the Scheduling Order and that said notice was adequate and sufficient; having heard the Parties’ support for the Settlement as articulated by their attorneys; having allowed all other persons entitled to be heard an opportunity to be heard on this matter as provided in the notice; and having considered all matters related to this Settlement, hereby

ORDERS, ADJUDGES, and DECREES as follows:

1. Capitalized terms used in this Order and Final Judgment but not defined herein shall have the meanings set forth in the Stipulation.



2. The Notice of Pendency of Derivative Action, Proposed Settlement of Derivative Action, Settlement Hearing and Right to Appear (the "Notice") has been given to shareholders of Intel Corporation ("Intel" or the "Company") pursuant to and in the manner directed by the Scheduling Order, proof of the mailing of the Notice has been filed with the Court, and full opportunity to be heard has been offered to all parties to the Delaware Action, Intel shareholders, and persons in interest. The form and manner of the Notice is hereby determined to have been the best notice practicable under the circumstances and to have been given in full compliance with and satisfaction of the requirements of Rule 23.1 of the Federal Rules of Civil Procedure and due process.

3. The Settlement is fair, reasonable, adequate and in the best interests of Intel and Intel's shareholders, and it is hereby approved. The Parties are hereby authorized and directed to comply with and to consummate the Settlement in accordance with its terms and provisions, and the Clerk of the Court is directed to enter and docket this Order and Final Judgment in the Delaware Action.

4. The Delaware Action is hereby dismissed with prejudice on the merits as to all Defendants, without costs, except as provided below.

5. All of the Settled Claims by Releasing Persons against Released Persons are completely, fully, finally and forever compromised, settled, released, discharged, extinguished and dismissed with prejudice. For purposes of this Order and Final Judgment, "Released Persons," "Releasing Persons," and "Settled Claims" mean the following:

A. "Released Persons" means each and all of the Individual Defendants, each and all of the current and former officers, directors and

employees of Intel, and each and all of their respective agents, representatives, insurers, heirs, executors, personal or legal representatives, estates, administrators, predecessors, successors and assigns, and Intel as Nominal Defendant.

B. "Releasing Persons" means each and all of the Delaware Plaintiffs, the Related Plaintiffs, Intel and each and all of the past and present shareholders of Intel, and each and all of their respective officers, directors, employees, heirs, executors, personal or legal representatives, estates, administrators, predecessors, successors and assigns.

C. "Settled Claims" means all claims, demands, rights, actions or causes of action, liabilities, damages, losses, obligations, judgments, suits, fees, expenses, costs, matters and issues of any kind or nature whatsoever, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, matured or unmatured, that have been, could have been, or in the future can or might be asserted by any of the Releasing Persons derivatively on behalf of Intel (or by Intel directly) in the Delaware Action or in the Related Actions, or in any other court, tribunal or proceeding (including, but not limited to, any claims arising under federal, state or foreign statutory or common law relating to alleged fraud, misrepresentation, breach of any duty of care or loyalty, negligence, corporate waste or mismanagement, contribution, indemnification, recoupment, disgorgement, or for violations of any antitrust or competition laws or otherwise) whether legal, equitable or any other type, which have arisen, arise now or hereafter arise out of, or relate in any manner to, the allegations, facts, events, practices, conduct, transactions, matters, acts, occurrences, statements,

representations, misrepresentations or omissions, or any fees, expenses or costs incurred in prosecuting, defending or settling the Delaware Action or the Related Actions, or any other matter, thing or cause whatsoever, or any series thereof, embraced, involved or set forth in, or referred to or otherwise related, directly or indirectly, in any way to, the Delaware Action or the Related Actions, or the subject matter of the Delaware Action or the Related Actions, and including, without limitation, any claims of a derivative nature brought on behalf of Intel (or by Intel directly) in any way related to (i) the Settlement, (ii) the fiduciary duties of the Individual Defendants or Released Persons relating to or in connection with the allegations made in the Delaware Complaint or the Related Actions, (iii) any compensation, bonus, or benefits received by any Released Persons relating to or in connection with the allegations made in the Delaware Complaint or the Related Actions; (iv) any disclosures or alleged misrepresentations or omissions that were made or allegedly not made by any of the Released Persons regarding the subject matter of the Delaware Action or the Related Actions, the Settlement or any other matters described or alleged in the Delaware Complaint or the Related Actions or this Settlement, or (v) the conduct alleged in the Antitrust Proceedings; *provided, however,* that the Settled Claims shall not include the right to enforce the terms of the Settlement. Nothing herein shall be construed to release any claim or cause of action asserted (a) by any governmental body in any pending litigation against Intel or (b) by any Intel shareholders in any pending class action against Intel.

6. All claims that have been or could have been asserted by any Individual Defendant or any other Released Person against the Delaware Plaintiffs or the Related

Plaintiffs or any of their counsel which arise out of or in any way relate to the institution, prosecution or settlement of the Delaware Action or the Related Actions are completely, fully, finally and forever compromised, settled, released, discharged, extinguished and dismissed with prejudice.

7. The releases contemplated by this Settlement extend to claims that the Releasing Persons do not know or suspect to exist at the time of the release, which if known by the Delaware Plaintiffs, plaintiffs in the Related Actions, or Intel might have affected their decisions to enter into this release, or might have affected any other Intel stockholder's decision not to object to this Settlement. The Releasing Persons will be deemed upon Final Approval by operation of the Order and Final Judgment to have waived and relinquished the provisions, rights and benefits of §1542 of the California Civil Code, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

In addition, the Releasing Persons will be deemed, upon Final Approval by operation of the Order and Final Judgment, to have waived and relinquished any and all provisions, rights and benefits of any law of any state or territory of the United States, federal law, foreign law or principle of common law, which is similar, comparable or equivalent to §1542 of the California Civil Code. The Releasing Persons may hereafter discover facts in addition to or different from those now known or believed to be true with respect to the Settled Claims, but the Releasing Persons shall, upon Final Approval by operation of the Order and Final Judgment, be deemed to have completely, fully,

finally and forever compromised, settled, released, discharged and extinguished any and all Settled Claims known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery or existence of additional or different facts. The foregoing waiver was separately bargained for and is a key element of the Settlement.

8. The Delaware Plaintiffs, Intel, Intel's past and present shareholders, and anyone claiming through or for the benefit of any of them, are hereby permanently barred from asserting, commencing, prosecuting, assisting, instigating or in any way participating in the commencement, maintenance, or prosecution of any action or other proceeding, in any forum, asserting any Settled Claims.

9. Delaware Plaintiffs' Counsel and Related Plaintiffs' Counsel are hereby awarded attorneys' fees and expenses in the following amounts, which amounts the Court finds to be fair and reasonable and which shall be paid to Delaware Plaintiffs' Counsel and Related Plaintiffs' Counsel in accordance with the terms of the Stipulation:

A. to Delaware Plaintiffs' Counsel and to counsel in the Paris Action, collectively, \$1.8 million in attorneys' fees and expenses; and

B. to Rosenfeld's Counsel, \$850,000.00 in attorneys' fees and expenses.

10. This Order and Final Judgment shall not constitute evidence or admission by any party herein that any acts of wrongdoing have been committed by any of the parties to the Delaware Action and should not be deemed to create any inference that there is any liability therefore.

11. Without affecting the finality of this Order and Final Judgment in any way, the Court reserves jurisdiction over all matters relating to the administration and consummation of the Settlement in accordance with the Stipulation.

Dated: July 22, 2010

Joseph J. Faucher  
UNITED STATES DISTRICT JUDGE

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