

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MILTON PFEIFFER,

Plaintiff,

v.

C.A. No. 4140-VCL

BRUCE E. TOLL; ROBERT I. TOLL; ZVI  
BARZILAY; ROBERT S. BLANK; RICHARD  
BRAEMER; PAUL E. SHAPIRO; CARL B.  
MARBACH, and THE ESTATE OF JOEL H.  
RASSMAN,

Defendants,

-and-

TOLL BROTHERS, INC. a Delaware Corporation,

Nominal Defendant.

**NOTICE OF PENDENCY OF SETTLEMENT OF ACTION**

**TO: ALL CURRENT STOCKHOLDERS OF TOLL BROTHERS, INC.**

**(TRADING SYMBOL: TOL)**

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS WILL BE AFFECTED BY THE LEGAL PROCEEDINGS IN THIS LITIGATION. IF THE COURT APPROVES THE PROPOSED SETTLEMENT, YOU WILL BE FOREVER BARRED FROM CONTESTING THE FAIRNESS, REASONABLENESS, AND ADEQUACY OF THE PROPOSED SETTLEMENT, OR PURSUING THE CLAIMS DEFINED HEREIN.**

**IF YOU HOLD TOLL BROTHERS, INC. COMMON STOCK FOR THE BENEFIT OF ANOTHER, PLEASE PROMPTLY TRANSMIT THIS DOCUMENT TO SUCH BENEFICIAL OWNER.**

**IF YOU DO NOT OBJECT TO THE PROPOSED SETTLEMENT, ATTORNEYS' FEE AND EXPENSE AWARD, OR THE INCENTIVE AWARD DESCRIBED IN THIS NOTICE, YOU ARE NOT OBLIGATED TO TAKE ANY ACTION.**

## **I. WHY ARE YOU RECEIVING THIS NOTICE?**

The purpose of this Notice is to tell you about: (i) lawsuits (the “Actions”) in the Delaware Court of Chancery (the “Delaware Court”) and in the United States District Court for the Eastern District of Pennsylvania (the “Federal Court”) brought on behalf of Toll Brothers, Inc. (“Toll Brothers” or the “Company”); (ii) a proposal to settle the Actions as provided in a Stipulation of Compromise and Settlement (the “Stipulation”); and (iii) your right, among other things, to attend and participate in a hearing to be held on Friday, March 15, 2013 at 10:00 a.m., in the Court of Chancery, New Castle County Courthouse, 500 North King Street, Wilmington, Delaware 19801 (the “Settlement Hearing”).

This Notice describes the rights you may have under the Stipulation and what steps you may, but are not required to, take concerning the proposed settlement. If the Court approves the Stipulation, the parties will ask the Delaware Court to approve an Order and Final Judgment that would end the Actions.

**THE FOLLOWING DESCRIPTION DOES NOT CONSTITUTE FINDINGS OF ANY COURT. IT IS BASED ON STATEMENTS OF THE PARTIES AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF ANY COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES RAISED BY ANY OF THE PARTIES.**

## **II. BACKGROUND: WHAT ARE THE ACTIONS ABOUT?**

Plaintiffs Milton Pfeiffer, Oliverio Martinez, and William Hall are current Toll Brothers stockholders. Mr. Pfeiffer is represented by Rosenthal, Monhait & Goddess, P.A., Schubert Jonckheer & Kolbe LLP, Robbins Umeda LLP, Levi & Korsinsky LLP, and the Law Offices of Ronald A. Marron, APLC (collectively, “Plaintiffs’ Counsel”). Mr. Martinez is represented by Robbins Umeda LLP, and Mr. Hall is represented by the Law Offices of Ronald A. Marron, APLC.

Nominal defendant Toll Brothers is a Delaware corporation with its principal place of business in Horsham, Pennsylvania. Defendants Bruce E. Toll, Robert I. Toll, Zvi Barzilay, Robert S. Blank, Richard J. Braemer, Paul E. Shapiro, Carl B. Marbach, the Estate of Joel H. Rassman, Joseph R. Sicree, Roger S. Hillas, Edward G. Boehne, and Stephen A. Novick (collectively, the “Individual Defendants”) are present or former officers and/or directors of Toll Brothers.

On November 4, 2008, Milton Pfeiffer filed an action in the Delaware Court (the “Delaware Action”) derivatively on behalf of Toll Brothers against executives Bruce E. Toll, Robert I. Toll, Zvi Barzilay, and the Estate of Joel H. Rassman (collectively the “Delaware Executive Defendants), and directors Robert S. Blank, Richard J. Braemer, Paul E. Shapiro, Carl B. Marbach (collectively with the Delaware Executive Defendants, the “Delaware Individual Defendants”), claiming that certain of the Individual Defendants breached their fiduciary duties of loyalty in connection with certain sales of publicly-traded Toll Brothers stock and asserting related claims for contribution and indemnification.

On March 27, 2009, Milton Pfeiffer filed his Verified Amended Shareholder Derivative Complaint (the “Amended Complaint”), asserting claims for breach of fiduciary duty, and contribution and indemnification. The defendants to the Delaware Action filed motions to dismiss the Amended Complaint on June 8, 2009. On March 3, 2010, the Court denied the motions to dismiss the Amended Complaint.

On March 4, 2009, Oliverio Martinez filed a complaint in the Federal Court derivatively on behalf of Toll Brothers and against Bruce E. Toll, Robert I. Toll, Zvi Barzilay, Joseph R. Sicree, Robert S. Blank, Richard J. Braemer, Paul E. Shapiro, Carl B. Marbach, Roger S. Hillas, Edward G. Boehne, Stephen A. Novick

and the Estate of Joel H. Rassman (collectively, the “Federal Individual Defendants”), alleging claims for breach of fiduciary duty, corporate waste, unjust enrichment, and contribution and indemnification.

On April 1, 2009, William Hall filed a complaint in the Federal Court derivatively on behalf of Toll Brothers and against the Federal Individual Defendants, alleging substantially similar claims and seeking similar relief as the complaint filed by Mr. Martinez. On July 14, 2009, the Federal Court ordered consolidation of the two actions (the “Martinez/Hall Actions”).

On October 15, 2009, Oliverio Martinez and William Hall (the “Federal Derivative Plaintiffs”) filed a Consolidated Verified Shareholder Derivative Complaint in the Federal Court, and the defendants to the Martinez/Hall Actions filed motions to dismiss on December 14, 2009.

On March 31, 2010, the Federal Court granted the Federal Derivative Plaintiffs leave to file an amended consolidated complaint and ordered the motions to dismiss moot. The Federal Derivative Plaintiffs filed their Verified Amended Consolidated Shareholder Derivative Complaint on April 30, 2010, and the Federal Defendants filed motions to dismiss the Martinez/Hall Actions on May 28, 2010. Thereafter, briefing ensued and was completed on July 30, 2010. The parties to the Martinez/Hall Actions requested that the Federal Court defer a decision on the motion to dismiss in light of ongoing proceedings in the Delaware Court.

Over the course of the litigation, Plaintiffs’ Counsel conducted extensive discovery. Among other things, Plaintiffs’ Counsel: reviewed approximately 70,000 pages of documents; deposed nineteen fact witnesses; reviewed answers to dozens of interrogatories; and engaged in other discovery procedures.

The Individual Defendants have denied and continue to deny that they have committed any act or omission giving rise to any breach of fiduciary duty, liability, and/or violation of law.

### **III. HOW WAS THE SETTLEMENT REACHED?**

After considerable litigation, the parties conducted a mediation session with the Honorable Layn R. Phillips (Ret.), a highly experienced mediator of complex disputes, in October 2010 and again in December 2010. These mediations failed to produce a settlement.

After extensive discovery procedures and depositions, the parties revisited a potential settlement of the Actions, conducting two additional mediation sessions with Judge Phillips on March 21, 2012 and May 14, 2012. Following further discussions after the May 14, 2012 mediation and a mediator’s recommendation issued by Judge Phillips, on July 6, 2012 the parties reached an agreement on the principal terms reflected in the Stipulation. The Stipulation was later signed by all parties on December 6, 2012.

**THE COURTS HAVE NOT FINALLY DETERMINED THE MERITS OF PLAINTIFFS’ CLAIMS OR THE DEFENSES THERETO. THIS NOTICE DOES NOT IMPLY THAT THERE HAS BEEN OR WOULD BE ANY FINDING OF VIOLATION OF THE LAW BY THE INDIVIDUAL DEFENDANTS OR THAT RECOVERY COULD BE HAD IN ANY AMOUNT IF THE ACTIONS WERE NOT SETTLED.**

### **IV. WHAT ARE THE TERMS OF THE SETTLEMENT?**

Under the Stipulation, Toll Brothers is to receive the total sum of \$16,250,000 (the “Settlement Payment”), which shall be funded by payments from insurance carriers for the Individual Defendants in an amount totaling \$9,800,000 and from the Delaware Executive Defendants in an amount totaling \$6,450,000.

Because the Actions were brought for the benefit of Toll Brothers, any recovery in the litigations (whether from this or any settlement or through a judgment in favor of the Plaintiffs) would go to Toll Brothers. Toll Brothers stockholders will not receive any direct payment as a result of the Stipulation and will not need to fill out any kind of claims form as a result of the settlement.

If the Delaware Court approves the proposed Stipulation, Plaintiffs will then request that the Federal Court dismiss the Martinez/Hall Actions with prejudice because the Stipulation finally resolves all claims of Toll Brothers against the Released Persons (as defined below) arising out of the facts on which the Actions are based. The Stipulation is contingent on receiving approval from the Delaware Court.

**V. WHAT CLAIMS WILL THE SETTLEMENT RELEASE?**

***Under the Stipulation, the following releases will occur, except as noted below:***

Plaintiffs (on their own behalves and derivatively on behalf of Toll Brothers), Plaintiffs' Counsel, Toll Brothers, and each and every current Toll Brothers stockholder claiming by, through, in the right of, derivatively, or on behalf of Toll Brothers, shall fully, finally, and forever release, relinquish, and discharge the Released Persons (as defined below) from any and all of the Released Claims (as defined below).

Each of the Released Persons (as defined below) shall fully, finally, and forever release, relinquish, and discharge Plaintiffs, Plaintiffs' Counsel, Toll Brothers, and each and every current Toll Brothers stockholder claiming by, through, in the right of, derivatively, or on behalf of Toll Brothers from any and all claims arising from the institution or prosecution of the Actions.

The "Released Persons" include: the Individual Defendants and their predecessors, successors, subsidiaries, affiliates, agents, attorneys, insurers, and each of their past or present officers, directors, and employees. "Released Persons" also includes all current and former officers, directors, or employees of Toll Brothers that were, are, or could have been named in the Actions.

The "Released Claims" include: any and all claims for relief or causes of action, debts, demands, rights, or liabilities whatsoever, known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, that have been or could have been asserted in the Actions against Toll Brothers, the Individual Defendants, or the Released Persons, based on the facts, transactions, events, occurrences, acts, disclosures, statements, or omissions that were alleged or could have been alleged in the Actions against Toll Brothers and the Individual Defendants.

***The following claims are reserved and not being released as part of the Stipulation:***

Each of Toll Brothers and the Released Persons shall retain and reserve all of their respective claims or rights that may exist for advancement and payment from Toll Brothers and/or reimbursement to Toll Brothers of legal fees and defense costs arising under and pursuant to any Released Person's respective indemnification agreements with Toll Brothers, Toll Brothers' certificate of incorporation or by-laws, applicable law, equity or other contract, or any entitlement to insurance coverage or insurance proceeds, and all rights to seek contribution or equitable indemnification from any person in connection with the Actions, and any other litigation, matter, proceeding, or investigation commenced after the date of the Stipulation.

None of the reserved claims permit the Released Persons to seek indemnification from Toll Brothers for any settlement amounts described above.

## **VI. WHAT ARE THE REASONS FOR SETTLING THE ACTIONS?**

Plaintiffs and Plaintiffs' Counsel believe that the claims asserted in the Actions have merit and that Plaintiffs' Counsel's investigation supports the claims asserted, but also believe that the settlement set forth above provides substantial and immediate benefits for Toll Brothers and its current stockholders. Plaintiffs and their counsel have taken into account the uncertain outcome and the risk of any litigation, especially in complex stockholder litigation such as the Actions, as well as the difficulties and delays inherent in such litigation. Plaintiffs and Plaintiffs' Counsel also are mindful of inherent problems of proof associated with, and possible defenses to, the violations asserted in the Actions. In addition, Plaintiffs and Plaintiffs' Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Actions against the Individual Defendants through trial and appeals. Based upon these considerations, among others, and having been informed by the extensive discovery, Plaintiffs and Plaintiffs' Counsel have concluded that the terms and conditions of the Stipulation confer substantial benefits upon and are in the best interests of Toll Brothers and its stockholders.

The Individual Defendants deny that they have committed or intended to commit any wrongdoing or violations of law arising out of any of the conduct, statements, acts, or omissions alleged in the Actions, and maintain that their conduct was at all times proper and in compliance with applicable law. The Individual Defendants further deny that they traded on the basis of material non-public information, breached their fiduciary duties or committed corporate waste, or made any material misstatements or omissions in Toll Brothers' public filings, press releases, or other public statements. The Individual Defendants also deny that Toll Brothers was harmed by any conduct of the Individual Defendants alleged in the Actions or that could have been alleged therein. Each of the Individual Defendants asserts that, at all relevant times, they acted in good faith and in a manner they reasonably believed to be in the best interests of Toll Brothers and its shareholders.

Defendants, however, recognize the uncertainty and the risk inherent in any litigation, and the difficulties and substantial burdens, expense, and length of time that may be necessary to defend this proceeding through the conclusion of discovery, summary judgment motions, trial, post-trial motions, and appeals. Defendants wish to eliminate the uncertainty, risk, burden and expense of further litigation, and to permit the operation of Toll Brothers without further distraction and diversion of its directors and executive personnel with respect to the Actions. Defendants have therefore determined to settle the Actions on the terms and conditions set forth in this Stipulation and to put the Released Claims to rest finally and forever, without in any way acknowledging any wrongdoing, fault, liability, or damages.

## **VII. HOW WILL THE ATTORNEYS GET PAID?**

To date, Plaintiffs' Counsel have not received any payments for their efforts on behalf of Toll Brothers and its stockholders. If the Delaware Court approves the Stipulation, Plaintiffs' Counsel shall apply to the Delaware Court for an award of attorneys' fees and expenses (the "Fee and Expense Application") of no more than \$4,387,500 (or 27% of the Settlement Payment), to be paid by Toll Brothers from the Settlement Payment. Additionally, Plaintiffs' Counsel will seek an incentive award to plaintiff Milton Pfeiffer in an amount of up to \$10,000 (the "Incentive Award Application") to be payable from the fees and expenses awarded by the Delaware Court to Plaintiffs' Counsel in connection with the Fee and Expense Application, in recognition of Mr. Pfeiffer's efforts litigating the Delaware case derivatively on behalf of Toll Brothers and obtaining the Settlement Payment for Toll Brothers. Defendants have reserved all rights to oppose the Fee and Expense Application and the Incentive Award Application.

Court approval of the Stipulation is not in any way conditioned on the Delaware Court approving the Fee and Expense Application or the Incentive Award Application. Disallowance by the Delaware Court of the Fee and Expense Application or the Incentive Award Application, or any portion thereof, any appeal from any order relating thereto, and any modification or reversal on appeal of any such order, will not operate to terminate or cancel the Stipulation or affect its other terms, including the releases, or affect or delay the finality of the Judgment approving the Stipulation.

All of defendants' own legal fees, costs, and expenses incurred in the Actions will be borne by defendants.

#### **VIII. WHEN WILL THE SETTLEMENT HEARING TAKE PLACE?**

The Delaware Court has scheduled a Settlement Hearing to be held on Friday, March 15, 2013 at 10:00 a.m., in the Court of Chancery, New Castle County Courthouse, 500 North King Street, Wilmington, Delaware 19801.

The purpose of the Settlement Hearing is to: (i) determine whether the proposed Stipulation is fair, reasonable, and adequate and in the best interests of Toll Brothers and its stockholders and should be approved by the Court; (ii) determine whether an Order and Final Judgment should be entered dismissing the Delaware case with prejudice and extinguishing and releasing all of the claims raised in the Actions against the Released Persons; (iii) determine whether the Delaware Court should approve Plaintiffs' Counsel's Fee and Expense Application; (iv) determine whether the Delaware Court should approve the Incentive Award Application; (v) hear and determine any objections to the proposed settlement; and (vi) rule on such other matters as the Delaware Court may deem appropriate.

The Court may adjourn the Settlement Hearing from time to time without further notice to anyone other than the parties to the Actions and any Objectors (as defined below). The Delaware Court reserves the right to approve the Stipulation at or after the Settlement Hearing with such modifications as may be consented to by the parties to the Stipulation and without further notice.

#### **IX. DO I HAVE A RIGHT TO APPEAR AND OBJECT?**

Any record or beneficial stockholder of Toll Brothers who objects to the settlement, the judgment proposed to be entered, Plaintiffs' Counsel's Fee and Expense Application, and/or the Incentive Award Application, or who otherwise wishes to be heard (an "Objector"), may appear in person or by his, her, or its attorney at the Settlement Hearing and present any evidence or argument that may be proper and relevant; provided, however, that no Objector shall be heard or entitled to contest the approval of the terms and conditions of the Stipulation, or, if approved, the judgment to be entered thereon, unless he, she, or it has, no later than ten (10) business days before the Settlement Hearing (unless the Delaware Court in its discretion shall thereafter otherwise direct, upon application of such person and for good cause shown), filed with the Register in Chancery, Court of Chancery, New Castle County Courthouse, 500 North King Street, Wilmington, Delaware 19801, and served (electronically, by hand, or overnight mail) on plaintiffs' and defendants' counsel, at the addresses below, the following: (i) proof of current ownership of Toll Brothers stock; (ii) a written notice of the Objector's intention to appear; (iii) a detailed statement of the objections to any matter before the Delaware Court; and (iv) a detailed statement of all of the grounds thereon and the reasons for the Objector's desire to appear and to be heard, as well as all documents or writings which the Objector desires the Court to consider.

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*Attorneys for Nominal Defendant Toll  
Brothers, Inc.*

Any person or entity who fails to object in the manner prescribed above shall be deemed to have waived such objection (including the right to appeal), unless the Delaware Court in its discretion allows such objection to be heard at the Settlement Hearing, and shall forever be barred from raising such objection in these Actions or any other action or proceeding or otherwise contesting the Stipulation, the Fee and Expense Application, or the Incentive Award Application, and will otherwise be bound by the Judgment to be entered and the releases to be given. You are not required to appear in person at the Settlement Hearing in order to have your timely and properly filed objection considered.

**X. WHAT ARE THE TERMS OF THE PROPOSED ORDER AND FINAL JUDGMENT?**

If the Court determines that the Stipulation is fair, reasonable, adequate, and in the best interests of Toll Brothers and its stockholders, the parties shall jointly request that the Delaware Court enter an Order and Final Judgment, which will, among other things:

1. Approve the Stipulation and adjudge the terms thereof to be fair, reasonable, adequate, and in the best interests of Toll Brothers and its stockholders, pursuant to Court of Chancery Rule 23.1;
2. Determine that appropriate notice of the Actions, the Stipulation, the Settlement Hearing, and the right to appear was provided pursuant to Court of Chancery Rule 23.1.
3. Authorize and direct the parties to consummate the settlement in accordance with the terms and conditions of the Stipulation and reserve jurisdiction to supervise the consummation of the Stipulation provided therein;
4. Dismiss the Delaware case with prejudice in accordance with the terms of the Stipulation and grant the releases described more fully above and in accordance with the terms and conditions of the Stipulation. Separately, Plaintiffs will seek dismissal of the pending Martinez/Hall Actions with prejudice and without costs to any party; and,
5. Grant Plaintiffs' Counsel's Fee and Expense Application and the Incentive Award Application, as the Delaware Court deems appropriate.

**XI. HOW DO I GET ADDITIONAL INFORMATION ABOUT THE SETTLEMENT?**

This Notice is not all-inclusive. The references in this Notice to the pleadings in the Actions, the Stipulation and other papers and proceedings are only summaries and do not purport to be comprehensive. For the full details of the Actions, claims that have been asserted by the parties, and the terms and conditions of the settlement, including a complete copy of the Stipulation, stockholders of Toll Brothers are referred to the Court files in the Actions. You or your attorney may examine the Delaware Court files during regular business hours of each business day at the office of the Register in Chancery, Court of Chancery, New Castle County Courthouse, 500 North King Street, Wilmington, Delaware 19801. Questions about the settlement or about this Notice in general may be addressed to Plaintiffs' Counsel:

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***PLEASE DO NOT WRITE OR CALL THE COURT***

**BY ORDER OF THE COURT**

Dated: December 13, 2012

Vice Chancellor J. Travis Laster  
Delaware Court of Chancery, New Castle County