Delaware Appraisal Litigation – Non-Arm's-Length Transactions, Arm's-Length Transactions and the *Anna Karenina* Principle

Arthur H. Rosenbloom and Gilbert E. Matthews

Introduction

In this article, we explore a variety of issues related to statutory rights of appraisal in Delaware, and the search by which to determine the sometimes elusive concept of fair value. In the course of so doing, we: (i) discuss the statutory definition of fair value and some of the case law doctrines surrounding its application in appraisal litigation; (ii) observe and comment on the fact that, in transactions where independent fairness opinions or valuations are provided, the median premium over the transaction price in appraisals in non-arm's-length transactions is materially greater than is the case with arm's-length transactions; (iii) describe how the Delaware Court of Chancery picks and chooses among the methodologies selected by the parties' experts to arrive at its fair value conclusions and; (iv) conclude with observations concerning what the case law tells us are the principle do's and don'ts in the preparation of financial analyses and testimony by which to determine fair value.

Fair Value Defined

In relevant part, Section 262(h) of the Delaware General Corporation Law provides that dissenting shareholders in all-cash transactions, and any other mergers in which the shareholders receive any consideration other than listed stock, who have otherwise complied with the statute, shall be entitled to obtain a judicial determination of the "fair value" of their shares in the Court of Chancery. In determining fair value, "the Court shall take into account all relevant factors." Section 262(h) provides that fair value shall exclude any element of value arising from the accomplishment or expectation of the merger, although the characterization of what value does or does not arise from the accomplishment or expectation of the merger is highly fact-sensitive. Dissenters receive fair value plus interest from the date of the transaction. [1]

Under *Weinberger*, all valuation methods customarily accepted in the financial community may be employed. [2] In *Cavalier*, the Delaware Supreme Court ruled that a minority discounts and discounts for lack of marketability were impermissible because "fair value" requires that petitioners receive the value taken away from them, *i.e.*, petitioner's proportionate interest in a going concern. [3]

In appraisal proceedings, each side has the burden of proof of fair value,[4] recognizing that the "value of a corporation is not a point on a line but a range of reasonable values."[5] Finally, fair value appraisal proceedings may be coupled with claims for breach of fiduciary duty in which plaintiffs allege the absence of fair process or fair price in the transaction in question. That said, the amount of damages chargeable against individual defendants in such cases typically does not vary from the fair value figure determined in the appraisal portion of the case.[6]

---

[1] "Unless the Court in its discretion determines otherwise for good cause shown, interest from the effective date of the merger through the date of payment of the judgment shall be compounded quarterly and shall accrue at 5% over the Federal Reserve discount rate." Del Corp. Code §262(h).

[2] *Weinberger v UOP, Inc*., 457 A.2d 701, 713 (Del. 1983).

[3] *Cavalier Oil v Harnett*, 564 A.2d 1137, 1145 (Del. 1989), citing *Tri-Continental v. Battye*, 74 A.2d 71, 72 (Del. 1950).

[4] "In a statutory appraisal proceeding, both sides have the burden of proving their respective valuation positions by a preponderance of evidence." *M.G. Bancorporation, Inc. v. Le Beau*, 737 A.2d 513, 520 (Del. 1999).

[5] *ACP Master, Ltd. Sprint Corp.*, 2017 Del. Ch. LEXIS 125 (July 21, 2017) at *51, citing *Cede & Co. v Technicolor, Inc*. 2003 Del. Ch. LEXIS 146 (Del Ch., Dec. 31, 2003) at *6, *aff'd in part, rev'd on other grounds*, 884A.2d 26 (Del, 2005).

[6] *E.g.*, see *In re Emerging Communications, Inc. Sh'holders Litig.,* 2004 Del. Ch. LEXIS 70 (Del. Ch. May 3, 2004) at *155, where the appraised value was $38.05 per share and Vice Chancellor ordered certain defendants to pay $27.80 per share in damages ($38.05 less $10.25 previously paid to shareholder in the squeeze-out).

The *Anna Karenina* Principle

In his classic novel, *Anna Karenina*, Leo Tolstoy observes that "[h]appy families are all alike; every unhappy family is unhappy in its own way." In statistics, this principle is used to describe significance tests: there are many ways in which a dataset may violate the null hypothesis and only one in which all the assumptions are satisfied.

The appraisal cases we present illustrate the presence of the *Anna Karenina* principle, but also many commonalities. The *Anna Karenina* characteristics include alleged appropriation of corporate opportunities and director exculpation in breach of fiduciary duty cases, as well as questions re collateral estoppel,[7] and whether post-hoc adjustments to management's projections are permissible.[8]

These *Anna Karenina* principles notwithstanding, there are far more instances of themes that get repeated through most of the cases. These include the acceptance or rejection of the discounted cash flow (DCF) approach and the distinctly second-fiddle role generally played by other valuation methodologies, as well as common tropes such as whether a transaction price is an element of value to be considered in determining fair value (in general, yes if there has been a "robust" auction with a diverse universe of prospective buyers, no if not). The same squabbles in applying DCF analysis found in Chancery decisions generally are also found in fair value disputes. These include which cash flow projections to use (if any); elements affecting the discount rate including equity risk premium, small stock adjustments, company-specific risk premiums, beta (or its absence when using the build-up method); terminal value calculations (perpetuity versus exit multiple); and adjustments to the subject company's net cash; and value of non-operating assets.

---

[7] *M.G. Bancorp., Inc. v. LeBeau*, 737 A.2d 513, 519-521 (Del. 1999).

[8] *In re Appraisal of Dell Inc*., 2016 Del. Ch. LEXIS 81 (May 31, 2016) at *153, *rev'd on other grounds, Dell Inc. v. Magnetar Global Event Driven Master Fund Ltd*, 2017 Del. LEXIS 518 (Del. Dec. 14, 2017). The Supreme Court wrote, "The Court of Chancery had logic for its adjustment to the projections, and this adjustment did not amount to an abuse of discretion." (pp. *85-*86).

The Imprecision of DCF

In fair value litigation, the inherent sensitivity of the components of DCF analyses to small changes in projected cash flows, discount rates, and/or terminal values can result in major deviations in appraised values.

As an example, we calculated the DCF values as of December 31, 2017, of a hypothetical company with projected revenues in 2018 of $100 million, an EBITDA margin of 25%, depreciation of $10 million, capital expenditures of 115% of depreciation, working capital of 10% of revenues, 5% annual growth through 2022, annual growth of 3% or 4% thereafter, and no net debt (debt minus excess cash). Table 1 below shows the wide variances brought about by differences in the discount rate or the perpetual growth rate.

Table 1

DCF Valuation – No Net Debt			
Discount Rate	Long-Term Growth Rate 3.0%	4.0%	% Difference for Higher Growth Rate
	($ millions)		
8.0%	891	1,124	26%
10.0%	541	637	18%
% Difference for Higher Discount Rate	65%	76%	

Without leverage. the difference between the calculated value using a 3% growth rate and a 10% discount rate and using a 4% growth rate and an 8% discount rate is 108%.

The variances increase substantively with leverage. Table 2 shows the calculated values assuming $300 million of net debt.

Table 2

DCF Valuation – $300 Million Net Debt			
Discount Rate	Long-Term Growth Rate 3.0%	4.0%	% Difference for Higher Growth Rate
	($ millions)		
8.0%	591	824	39%
10.0%	241	337	40%
% Difference for Higher Discount Rate	145%	145%	

In this leveraged example, the difference between the calculated value using a 3% growth rate and a 10% discount rate and using a 4% growth rate and an 8% discount rate is 242%!

Moreover, DCF valuations are subject to the vagaries of the underlying projections, which can be material. Cases in which competing experts use the same projections for their DCF calculations are rare.

It appears that the Delaware courts favor DCF because it can yield a precise number. Many decisions arrive at DCF values calculated to four significant figures. Unfortunately, DCF suffers from the fact that it merely gives the ***illusion*** of precision.

It's a fact of life that Court of Chancery judges and others have railed at the often-dramatic differences between the fair value determinations of the dueling experts in a given case. Equally true, experts should want to avoid getting skewered in a deposition or cross examination, or by the court. Notwithstanding, adversarial proceedings being what they are, critics should not be shocked when experts come in with fair value conclusions they believe to be within the range of fair values but appear skewed to one end of the range or the other. This is especially true because, as noted, even small changes to inputs in a DCF analysis can dramatically affect calculated values. Similarly, differences in the components of comparable company or comparable transaction analyses, such as which companies to include or which outliers to exclude, can likewise make major (albeit usually smaller) differences in the conclusions reached.

Characteristics of Arm's-Length and Non-Arm's-Length Transactions

Arm's-length transactions are those in which the buyer is not related to the seller and in which controllers and/or officers of the seller receive the sane consideration as other shareholders (other than pre-existing commitments such as severance payments and stock options).

There are at least four factors that characterize non-arm's-length transactions:

(i) in its most extreme form, where buyer is on both sides of the transaction, where buyer controls both parties to the transaction;
(ii) situations in which the majority acquires at least 90% of a company and later squeezes out the minority in a short-form merger;
(iii) management buyouts (MBOs), and;

(iv) transactions in which controllers and/or officers of the seller receive substantially different consideration than other shareholders, such as generous employment contracts, non-compete agreements, or equity in the surviving entity.

The Data

Exhibit I contains, among other elements, summaries of the Delaware appraisal decisions in the 25 non-arm's-length transactions in our survey. We have included all relevant decisions from 1998 through February 2018 in which an independent fairness opinion or valuation was rendered. Exhibit I includes the relevant citation, the appraisal awards compared to the transaction prices, the form of each transaction, the firm rendering an opinion, and whether that firm was engaged by the board of directors, a special committee, or a control party. Exhibit II contains the same data for the 16 arm's-length transactions with fairness opinions in the same period.[9]

The premiums of the appraisal awards over that the transaction prices in the non-arm's-length deals include seven with premiums over 100% and three with discounts. The median premium was 29.2% and the trimmed mean (excluding the highest and lowest data points) was 58.5%. The arm's-length deals have a narrow range with a median of 0.0% and a trimmed mean of minus 3.1%.

Issues in Non-Arm's-Length Transactions

Exhibit III contains snapshot details of valuation methods used by the Court and by investment banks in the fairness opinions or independent valuations in the 25 non-arm's-length transactions. Exhibit IV discusses some of the issues discussed by the Court in these transactions. The cases we present illustrate the presence of the *Anna Karenina* principle, but also many commonalities.

---

[9] We include the *Dell* case in the arm's-length category. The Supreme Court said:

> [T]his was not a buyout led by a controlling stockholder. Michael Dell only had approximately 15% of the equity. He pledged his voting power would go to any higher bidder, voting in proportion to other shares.
>
> *Dell Inc. v. Magnetar Global Event Driven Master Fund Ltd*, 2017 Del. LEXIS 518 (Del. Dec. 14, 2017) at *55.

Exhibit III shows Delaware's overwhelming preference for DCF methodology. In only three of these 25 appraisals was the income approach not employed by the Court. Conversely, in 16 out of the 25, DCF (or another form of the income approach[10]) was the *only* methodology used. Five used both the income method and the market approach (comparable companies and/or comparable transactions[11]) and one used capitalized earnings and book value.

It is interesting to contrast the methods used by the Court of Chancery with those used by the investment banks. Of the 25 opinions and valuations for which information was available,[12] 17 used both the income method and the market method. Five apparently used the income method only,[13] two used DCF and asset value, and one used a single comparable company (the Court did the same in that case).

Exhibit IV contains case descriptions of Anna Karenina issues as well as more common ones. Anna Karenina issues include collateral estoppel, exculpation of directors, whether the entire fairness doctrine can be invoked absent a controlling shareholder, when a controlling shareholder's duty to disclose ceases, tax liability of Sub Chapter S corporations, the treatment of excess regulatory capital, whether preferred stock should be valued at its liquidation preference or on an as-converted basis, the dilutive effect of long-term stock options, adjustments for misappropriated corporate opportunities, and whether 9/11-related facts should be used to reduce value.

The more quotidian themes spread over many cases include, *inter alia*, which valuation methods to employ, the transaction price as evidence of value, cost of capital issues (*e.g.*, debt/equity ratios, beta, quantification of small stock premiums, applicability of company-specific risk premiums), which projections to

---

[10] One used direct capitalization of cash flow and one used capitalized earnings.

[11] The Court of Chancery generally uses "comparable" rather than "guideline."

[12] Two transactions had two fairness opinions; no information was available for one fairness opinion for a private company.

[13] In two decisions for private companies, the Court noted that the fairness opinions used DCF and did not say whether or not any other methods were used.

employ, growth rates in terminal value calculations, and present value of net operating loss carryforward.

Research Results – Premiums or Discounts to Transaction Prices

We observe that of the 25 non-arm's-length transactions studied, 13 sought appraisal relief only, and 12 combined an appraisal request with an allegation of breach of fiduciary duty. In five cases, the Court found no breach of fiduciary duty. Exhibit V shows the premiums awarded in each of these 18 pure appraisal decisions and in the seven that combined an appraisal with a successful breach of fiduciary duty claim. The median premium in the first group was only 19.7%, but the median was 132.5% where appraisal was coupled with a finding of breach of fiduciary duty. The trimmed means were 28.8% and 127.3%, respectively.

Did the courts' disapproval of respondents/defendants' conduct cause it to award higher premiums to transaction prices versus the appraisal-only cases? Although the small sample size in the breach of fiduciary duty cases does not allow for a definitive conclusion on this matter, we note then-Vice Chancellor Strine's observation in a joint appraisal/fiduciary duty case:

> Because of the relationship between the appraisal and equitable actions, I have, at the margins, in fact resolved doubts in favor of the plaintiffs. In other words, the valuation I set forth is more optimistic than is strictly justified.[14]

We question the concept that fair value should be determined differently in breach of fiduciary actions than in pure appraisal cases. Fair value should be the same regardless of either the flaws in the transaction or the behavior of any party. If there are damages from an egregious breach of fiduciary duty, exemplary (punitive) damages over and above fair value may lie.

Issues in Arm's-Length Transactions

Exhibit VI contains snapshot details of valuation methods used by the Court of Chancery (and, in two cases, by the Supreme Court) and in investment banks' 20 fairness opinions in the 16 arm's-length transactions (four of these

---

[14] *Andaloro v. PFPC Worldwide*, 2005 Del. Ch. LEXIS 125 (Del. Ch., Aug. 19, 2005) at *32. In joint fiduciary duty/appraisal cases, it is customary to award damages for breach of fiduciary duty at the appraised value net of any amount previously received by plaintiffs.

transactions had two fairness opinions). Exhibit VII discusses some of the issues discussed by the Court in these transactions.

Exhibit VI summarizes valuation approaches employed by fairness opinion providers or appraisers. It shows Delaware's strong preference for relying on the transaction price in arm's-length deals. In nine of these 16 appraisals, the Court of Chancery based its appraisal solely or primarily on the transaction price. Six Chancery decisions were based on DCF, but two 2017 Supreme Court rulings reversed lower court decisions that had used DCF and instructed the Court of Chancery to give predominant weight to the transaction price. A February 2018 Chancery decision cited the Supreme Court decisions and based its appraisal on unaffected market price prior to announcement of the transaction.[15] In light of this decision, in future cases counsel may choose to engage experts to perform event studies with respect to stock volume, bid-ask spreads, and other such measures to determine whether the efficient market hypothesis applies in the fact pattern at bar.

The fairness opinions rendered prior to these transactions were each opining as to the fairness of the negotiated price of the proposed transaction. Of the 20 fairness opinions, 18 explicitly considered both DCF and comparable companies; 14 of these also considered comparable transactions. The other two decisions noted that the fairness opinions (which were for private companies) had employed DCF but did not discuss whether or not they had used any other method.

In Exhibit VII, Anna Karenina issues include whether a dissenter can withdraw some but not all its shares from its appraisal demand, the admissibility of valuation treatises not entered into evidence, impact on appraisal of taxes and expenses relating to sale of a business that was contingent on sale of the continuing company, and whether a financial buyer's target IRR affects whether the price it is willing to pay is a meaningful indication of fair value.

Other issues include, in addition to those in Exhibit IV, the relevance of synergies that were not unique to the buyer, treatment of stock-based compensation in DCF analyses, the use of Barra betas, and whether cash held abroad should be adjusted for taxes payable upon repatriation.

---

[15] *Verition Partners Master Fund Ltd. v. Aruba Networks, Inc.*, 2018 LEXIS 52 (Del. Ch. Feb. 15, 2018),

Conclusions

1. The Court of Chancery will almost always favor management's ex ante projections made in the ordinary course of business for corporate planning purposes over projections made for marketing the company or post ante projections made in connection with litigation.
2. Transaction price is a major factor in appraisal if there has been a robust market check. The absence of an adequate market check in many non-arm's-length transactions has resulted in appraisal valuations materially higher than the deal price.
3. Delaware seldom awards a premium over the transaction price in appraisals of arm's-length transactions.
4. The Court of Chancery has shown a strong preference for the income approach (primarily DCF) over the market approach.
    a. The capital asset pricing model (CAPM) is preferred to the build-up method, as the latter is more subjective.
    b. For calculating terminal value, a growth model is preferred, both because it is preferred by academics and because the multiples used by experts (usually EBITDA) are commonly based on current market multiples without regard for what multiples might be at the end of the projection period.
    c. The Court had developed a preference for a supply side equity risk premiums (ERP) rather than an historical ERP.
5. In future cases, experts may be asked to perform event studies to determine whether the efficient market hypothesis applies in the fact pattern at bar.
6. The Anna Karenina principle is alive and well in the Delaware courts.

The authors thank Ira T. Kay, a Managing Partner of Pay Governance, LLC, for his suggestion that an article comparing transaction price to the court-adjudicated value in an appraisal proceeding might be a useful contribution to valuation literature. We also appreciate information supplied by Charles Nathan, a Senior Advisor to the Finsbury subsidiary of WPP plc.

EXHIBIT I

Delaware Appraisal Cases – Non-Arms'-Length Transactions with Fairness Opinions, 1997 – 2017

Citation	Company appraised	Deal price (a)	Court's value	Increase	Transaction	Fairness opinion or valuation by:	Engaged by:
Le Beau v. M.G. Bancorp., 1998 Del. Ch. LEXIS 9 (Del. Ch. Jan. 29, 1998); *aff'd*, *M.G. Bancorp. v. Le Beau*, 737 A.2d 513 (1999)	M.G. Bancorporation	$41.00	$85.00	107.3%	Short-form merger	Alex Sheshunoff [*Fair market value*]	Board
ONTI, Inc. v. Integra Bank, 751 A.2d 904 (Del. Ch. 1999)	ONTI, Inc.	$6,040,000	$16,195,258	168.1%	Merger with affiliated co.	Hempstead & Co. [*Valuation*]	Control shareholder
Gray v. Cytokine Pharmasciences, Inc., 2002 Del. Ch. LEXIS 48 (Apr. 25, 2002)	PharmaSciences, Inc.	$1,114.00	$1,114.00	0.0%	Merger with affiliated co.	Merrill Lynch [*Valuation*]	Board
Gentile v. SinglePoint Financial, Inc., 2003 Del. Ch. LEXIS 21 (Del. Ch. Mar. 5, 2003)	SinglePoint Financial	$0.04	$5.51	13,675%	Merger with affiliated co.	Harman Group	Controller
Cede & Co. v. JRC Acquisition Corp., 2004 Del. Ch. LEXIS 12 (Del. Ch. Feb. 10, 2004)	800-JR Cigar	$13.00	$13.58	4.5%	Going private	Merrill Lynch	Special Committee
In re Emerging Communications, Inc. Shareholders Litig., 2004 Del. Ch. LEXIS 70 (Del. Ch. May 3, 2004)	Emerging Communications	$10.25	$38.05	271.2%	Going private	Houlihan Lokey	Special Committee
Doft & Co. v. Travelocity.com, Inc., 2004 Del. Ch. LEXIS 75 (Del. Ch. May 21, 2004); 2004 Del. Ch. LEXIS 84 (Del. Ch. June 10, 2004)	Travelocity.com	$28.00	$30.43	8.7%	Short-form merger	Salomon Smith Barney	Special Committee
Gholl v. eMachines, Inc., 2004 Del. Ch. LEXIS 171 (Del. Ch. Nov. 24, 2004); *aff'd*, 2005 Del. LEXIS 220 (Del. June 14, 2005)	eMachines	$1.06	$1.64	54.7%	Short-form merger	Credit Suisse First Boston	Board
In re U. S. Cellular Operating Co., 2005 Del. Ch. LEXIS 1 (Del. Ch. Jan. 6, 2005)	Janesville Cellular Telephone Co.	$43.85	$54.00	23.1%	Squeeze-out merger	Duff & Phelps [*Fair market value*]	Board
	Sheboygan Cellular Telephone Co.	$21.45	$30.13	40.5%	Squeeze-out merger		Board
Andaloro v. PFPC Worldwide, Inc., 2005 Del. Ch. LEXIS 125 (Del. Ch. Aug. 19, 2005)	PFPC Worldwide	$34.26	$32.81	(4.2%)	Going private	Salomon Smith Barney	Board
Gesoff v. IIC Industries Inc., 902 A.2d 1130 (Del. Ch. 2006)	IIC Industries	$10.50	$14.30	36.2%	Going private	Jesup & Lamont	Special Committee
In Re PNB Holding Co. Sh'holders Litig., 2006 Del. Ch. LEXIS 158 (Del. Ch. Aug. 16, 2006)	PNB Holding	$41.00	$52.34	27.7%	Squeeze-out merger	Prairie Capital [*Valuation*]	Board
Crescent/Mach I Partnership, L.P. v. Turner, 2007 Del. Ch. LEXIS 63 (Del. Ch May 2, 2007) (b)	Dr Pepper Bottling Co. of Texas	$25.00	$32.31	29.2%	Squeeze-out merger	Donaldson, Lufkin & Jenrette	Board
In re Sunbelt Beverage Corp. Shareholder Litig., 2010 Del. Ch. LEXIS 1 (Del. Ch. Jan. 5, 2010)	Sunbelt Beverage	$45.83	$114.04	148.8%	Squeeze-out merger	Hempstead & Co.	Board

Citation	Company appraised	Deal price (a)	Court's value	Increase	Transaction	Fairness opinion by:	Engaged by:
Global GT LP v. Golden Telecom, Inc. 993 A.2d 497 (Del. Ch. 2010); *aff'd, Golden Telecom v. Global GT LP*, 11 A.3d 214 (Del. 2010)	Golden Telecom	$105.00	$125.49	19.5%	Sale to affiliated company	Credit Suisse	Special Committee
In re Hanover Direct, Inc. Sh'holders Litig., 2010 Del. Ch. LEXIS 201 (Del. Ch. Sept. 24, 2010)	Hanover Direct	$0.25	$0.25	0.0%	Going private	Goldsmith, Agio, Helms & Lynner [*valuation*]	Board
Reis v. Hazelett Strip-Casting Corp., 28 A. 3d 442 (Del. Ch. 2011)	Hazelett Strip-Casting	$1,595.17	$3,752.19	135.2%	Reverse split	Sheldrick, McGehee & Kohler [*valuation*]	Board
In Re: Appraisal of The Orchard Enterprises, Inc., 2012 Del. Ch. LEXIS 165 (Del. Ch. July 18, 2012)	Orchard Enterprises	$2.05	$4.67	127.8%	Going private	Fesnak & Associates	Special Committee
Towerview LLC v. Cox Radio, Inc., 2013 Del. Ch. LEXIS 159 (Del. Ch. June 13, 2013)	Cox Radio	$4.80	$5.75	19.8%	Merger with parent	Gleacher	Special Committee
Laidler v. Hesco Bastion Environmental, Inc., 2014 Del. Ch. LEXIS 75 (May 12, 2014)	Hesco Bastion Environmental	$207.50	$364.24	75.5%	Squeeze-out merger	Willamette Mgt. [*Fair market value*]	Company
Owen v. Cannon, 2015 Del. Ch. LEXIS 165 (Del. Ch. June 17, 2015)	Energy Services Group	$19.95	$31.94	60.1%	Squeeze-out merger	Grant Thornton [*Fair market value*]	Board
Dunmire v. Farmers & Merchants Bancorp of Western Pa., Inc., 2016 Del. Ch. LEXIS 167 (Nov. 10, 2016)	Farmers & Merchants Bancorp of Western Pennsylvania	$83.00	$91.90	10.7%	Merger with affiliated company	Ambassador Financial	Special Committee
In Re Appraisal of SWS Group, Inc., 2017 Del. Ch. LEXIS 90 (Del. Ch. May 30, 2017); aff'd, *Merlin Partners, L.P. v. SWS Group, Inc*., 2018 Del. LEXIS 77 (Del. Feb. 23, 2018)	SWS Group	$7.79 (c)	$6.38	(18.1%)	Sale to major lender	Sandler O'Neill	Special Committee
ACP Master, Ltd. v. Sprint Corp., 2017 Del. Ch. LEXIS 125 (Del. Ch. July 21, 2017)	Clearwire Corp.	$5.00	$2.13 (d)	(57.4%)	Merger with 50.2% shareholder	Evercore Centerview Partners	Board Special Committee

Trimmed Mean [excluding high & low] **58.5%**

Median **29.2%**

(a) Per share (except for ONTI, Inc.)

(b) *modified, Crescent/Mach I P'ship, L.P. v. Dr Pepper Bottling Co*., 2008 Del. Ch. LEXIS 68 (Del. Ch., June 4, 2008); *modification rev'd*, 962 A.2d 205, 2008 Del. LEXIS 541 (Del. 2008)

(c) The consideration at closing was worth $6.92 per share because the market price of the acquiror's stock declined.

(d) This case has been appealed.

EXHIBIT II

Delaware Appraisal Cases – Arm's-Length Transactions with Fairness Opinions, 1997 – 2017

Citation	Company appraised	Deal price (a)	Court's value	Increase	Transaction	Fairness opinion by:	Engaged by:	Opinion date
Union Ill. 1995 Investment LP v. Union Financial Group, Ltd., 847 A.2d 340 (Del. Ch. 2003)	Union Financial Group	$10.20	$8.74	(14.3%)	Sale to third party	Stifel Nicolaus	Board	12/19/2003
Cede & Co., Inc. v. MedPointe Healthcare, Inc., 2004 Del. Ch. LEXIS 124 (Del. Ch. Aug. 16, 2004)	Carter-Wallace	$20.44	$24.45	19.6%	Merger with and asset sale to third parties	J. P. Morgan; Houlihan Lokey	Board	8/16/2004
Highfields Capital, Inc. v. AXA Financial, Inc., 939 A.2d 34 (Del. Ch. 2007)	MONY Group	$31.00	$24.97	(19.5%)	Sale to third party	Credit Suisse First Boston	Board	8/17/2007
Gearreald v. Just Care, Inc., 2012 Del. Ch. LEXIS 91 (Del. Ch. Apr. 30, 2012)	Just Care	$40,000,000	$34,244,570	(14.4%)	Sale to third party	Harris Williams	Board	4/30/2012
Merion Capital, L.P. v. 3M Cogent, Inc., 2013 Del. Ch. LEXIS 172 (Del. Ch. July 8, 2013)	Cogent	$10.50	$10.87	3.5%	Sale to third party	Credit Suisse	Board	7/8/2013
Huff Investment Fund v. CKx, Inc., 2013 Del. Ch. LEXIS 262 (Del. Ch. Nov. 1, 2013) ; *aff'd*, 2015 Del. LEXIS 77 (Del. Feb. 12, 2015)	CKx, Inc.	$5.50	$5.50	0.0%	Arm's-length LBO	Gleacher	Board	11/1/2013
In Re Appraisal of Ancestry.com, Inc., 2015 Del. Ch. LEXIS 21 (Del. Ch. Jan. 30, 2015)	Ancestry.com	$32.00	$32.00	0.0%	Arm's-length LBO	Qatalyst	Board	1/30/2015
Merlin Partners LP v. AutoInfo, Inc., 2015 Del. Ch. LEXIS 128 (Del. Ch. Apr. 30, 2015)	AutoInfo	$1.05	$1.05	0.0%	Arm's-length LBO	Stephens	Special Committee	4/30/2015
Longpath Capital, LLC v. Ramtron Intl. Corp., 2015 Del. Ch. LEXIS 177 (Del. Ch. June 30, 2015)	Ramtron International Corp.	$3.10	$3.07	(1.0%)	Sale to hostile third party	Needham	Board	6/30/2015
Merion Capital LP v. BMC Software, Inc., 2015 Del. Ch. LEXIS 265 (Del. Ch. Oct. 21, 2015)	BMC Software	$46.25	$46.25	0.0%	Arm's-length LBO	BofA Merrill Lynch; Morgan Stanley	Board	10/21/2015

<table>
<tr><th>Citation</th><th>Company appraised</th><th>Deal price (a)</th><th>Court's value</th><th>Increase</th><th>Transaction</th><th>Fairness opinion by:</th><th>Engaged by:</th><th></th></tr>
<tr><td rowspan="4">In re Appraisal of Dell Inc., 2016 Del. Ch. LEXIS 81 (May 31, 2016), rev'd, Dell Inc. v. Magnetar Global Event Driven Master Fund Ltd, 2017 Del. LEXIS 518 (Del. Dec. 14, 2017)</td><td rowspan="4">Dell</td><td rowspan="4">$13.75</td><td colspan="2">Court of Chancery</td><td rowspan="4">LBO by group including 15% shareholder</td><td rowspan="4">Evercore; J.P. Morgan</td><td rowspan="4">Special Committee</td><td rowspan="4">5/31/2016</td></tr>
<tr><td>$17.62</td><td>28.1%</td></tr>
<tr><td colspan="2">Supreme Court</td></tr>
<tr><td>~$13.75 (b)</td><td>~0.0%</td></tr>
<tr><td>Merion Capital LP v. Lender Processing Servicing, Inc., 2016 Del. Ch. LEXIS 189 (Del. Ch. Del. Ch. Dec. 16, 2016)</td><td>Lender Processing Servicing</td><td>$37.14</td><td>$37.14</td><td>0.0%</td><td>Sale to third party</td><td>Credit Suisse; Goldman Sachs</td><td>Board</td><td>12/16/2016</td></tr>
<tr><td>In Re Appraisal of PetSmart, Inc., 2017 Del. Ch. LEXIS 89 (Del. Ch. May 26, 2017)</td><td>PetSmart</td><td>$83.00</td><td>$83.00</td><td>0.0%</td><td>Arm's-length LBO</td><td>J.P. Morgan</td><td>Board</td><td>5/26/2017</td></tr>
<tr><td rowspan="4">In re Appraisal of DFC Global Corp., 2016 Del. Ch. LEXIS 103 (Del. Ch. July 8, 2016); modified, C.A. No. 10107-CB (Del. Ch. Sept. 14, 2016) [unpublished]; rev'd, DFC Global Corp. v. Muirfield Value Partners, L.P., 172 A.3d 346 (Del. 2017)</td><td rowspan="4">DFC Global Corp.</td><td rowspan="4">$9.50</td><td colspan="2">Court of Chancery</td><td rowspan="4">Arm's-length LBO</td><td rowspan="4">Houlihan Lokey</td><td rowspan="4">Board</td><td rowspan="4">7/8/2016</td></tr>
<tr><td>$10.21</td><td>7.5%</td></tr>
<tr><td colspan="2">Supreme Court</td></tr>
<tr><td>~$9.50 (c)</td><td>0.0%</td></tr>
<tr><td>Verition Partners Master Fund Ltd. v. Aruba Networks, Inc., 2018 LEXIS 52 (Del. Ch. Feb. 15, 2018)</td><td>Aruba Networks</td><td>$24.67</td><td>$17.13</td><td>(30.6%)</td><td>Sale to third party</td><td>Qatalyst Partners</td><td>Board</td><td>2/15/2018</td></tr>
<tr><td>In re Appraisal of AOL Inc., 2018 Del. Ch. LEXIS 63 (Del. Ch. Feb. 23, 2018)</td><td>AOL</td><td>$50.00</td><td>$49.70</td><td>(0.6%)</td><td>Sale to third party</td><td>Allen & Co.</td><td>Board</td><td>2/23/2018</td></tr>
</table>

Trimmed Mean [excl. high & low] **(3.3%)**

Median **0.0%**

(a) Per share (except for Just Care)

(b) The Supreme Court ruled that the transaction price should be given substantial weight. The authors believe it is likely that the appraised value will be at or close to the transaction price.

(c) The case settled shortly after the Supreme Court remanded for reconsideration instructing the Court of Chancery to give (i) more weight to transaction price and (ii) a lower growth rate in DCF calculation.

EXHIBIT III

Valuation Methods – Non-Arms'-Length Transactions

Company appraised	Transaction	Fairness opinion or valuation by:	SEC filing	Valuation Methods Used in Fairness Opinion or Valuation	Discount Rate	Terminal Value		Valuation Methods Used by Court	Discount Rate	Terminal Value	
						Multiple	Growth			Multiple	Growth
M.G. Bancorporation	Short-form merger	Alex Sheshunoff *[fair market value, not fairness]*	N	DCF; comparable companies (EPS and book value); comparable transactions (EPS and book value)	10.0%	–	4%	Comparable transactions (EPS and book value)	DCF not used		
ONTI, Inc.	Merger with affiliated co.	Hempstead *[Valuation, not fairness]*	N	DCF only	22.2%	–	3%	DCF only	18.35 %	–	3%
PharmaSciences	Merger with affiliated co.	Merrill Lynch *[Valuation, not fairness]*	N	DCF; comparable companies (revenues)	40%-50%	4x-6x revenues	–	DCF (50%); comparable companies (revenues)(50%)	40%	4x revenues	–
SinglePoint Financial	Merger with affiliated co.	Harman Group	N	The court noted that DCF was used	not disclosed			Comparable transactions (revenues)	DCF not used		
800-JR Cigar	Going private	Merrill Lynch	Y	DCF; comparable companies (EBITDA and EPS); comparable transactions (revenues, EBITDA and EBIT); PV of future stock price; LBO analysis; premiums paid in going-private transactions	13%-14%	4x-6x EBITDA	–	DCF only	13%	–	3.5%
Emerging Communications	Going private	Houlihan Lokey	Y	DCF; comparable companies (revenues, EBITDA and EBIT); comparable transactions (revenues, EBITDA and EBIT)	not disclosed			DCF only	8.69%	–	not disclosed

Company appraised	Transaction	Fairness opinion or valuation by:	SEC filing	Valuation Methods Used in Fairness Opinion or Valuation	Discount Rate	Terminal Value		Valuation Methods Used by Court	Discount Rate	Terminal Value	
						Multiple	Growth			Multiple	Growth
Travelocity.com	Short-form merger	Salomon Smith Barney	Y	Comparable company (EBITDA, EBIT and EPS); premiums paid in going-private transactions; maximum price payable by purchaser without dilution	DCF not used			Comparable company	DCF not used		
eMachines	Short-form merger	Credit Suisse First Boston	Y	DCF; liquidation analysis; premiums paid in other transactions	15%-25%	15x-25x EPS	–	DCF only	18.50%	–	5%
Janesville Cellular Telephone Co. & Sheboygan Cellular Telephone Co.	Squeeze-out mergers	Duff & Phelps [*fair market value, not fairness*]	N	Capitalized earnings; comparable transactions (value per POP)	12%	not disclosed		Capitalized earnings (70%); comparable transactions (value per POP) (30%)	11.82%	10.0x EBITDA	–
PFPC Worldwide	Going private	Salomon Smith Barney	N	The court noted that DCF and comparable companies were used	not disclosed			DCF (75%); comparable companies (EBITDA) (25%)	13.5%	–	5%
IIC Industries	Going private	Jesup & Lamont	Y	Sum of the parts, using DCF to value each part	not disclosed			Sum of the parts using DCF	not disclosed		
PNB Holding	Squeeze-out merger	Prairie Capital [*valuation*]	N	Discounted dividend model; comparable companies; comparable transactions	not disclosed			DCF only	12%	–	5%
Dr Pepper Bottling Co. of Texas	Squeeze-out merger	Donaldson, Lufkin & Jenrette	N	DCF; comparable companies; comparable transactions	9%-11%	not disclosed		DCF only	9.75%	–	4%

Company appraised	Transaction	Fairness opinion or valuation by:	SEC filing	Valuation Methods Used in Fairness Opinion or Valuation	Discount Rate	Terminal Value		Valuation Methods Used by Court	Discount Rate	Discount Rate	
						Multiple	Growth			Multiple	Growth
Sunbelt Beverage	Squeeze-out merger	Hempstead & Co.	N	DCF; transactions in company's stock; asset value	not disclosed			DCF only	DCF only		
Golden Telecom	Sale to affiliated company	Credit Suisse	Y	DCF; comparable companies (EBITDA); comparable transactions (EBITDA)	10.5%-12.5%	–	2%-4%	DCF only	12.3% cost of equity	–	5%
Hanover Direct	Going private	Goldsmith, Agio, Helms & Lynner [*valuation*]	Y	DCF; comparable companies (EBITDA, EBIT, total assets): comparable transactions (EBITDA, EBIT)	20.4% - 22.4%	6.5x-8.0x EBITDA	–	DCF; comparable companies; comparable transactions	not disclosed		
Hazelett Strip-Casting	Reverse split	Sheldrick, McGehee & Kohler [*valuation*]	N	Capitalized earnings	21%	NA		Capitalized earnings (80%); book value (20%)	17%	Net income	NA
Orchard Enterprises	Going private	Fesnak & Associates	Y	DCF; comparable companies (revenues and EBITDA); comparable transactions (revenues)	20.0%	not disclosed		DCF only	15.3%	not disclosed	
Cox Radio	Merger with parent	Gleacher	Y	DCF; comparable companies (revenues and EBITDA); premiums paid for minority interests	9%-12%	–	1%-3%	DCF only	8%	–	2.25%
Hesco Bastion Environmental	Squeeze-out merger	Willamette [*fair market value, not fairness*]	N	DCF; comparable companies (revenues and EBITDA); comparable transactions (revenues and EBITDA);	not disclosed		4%	DCCF (direct capitalization of cash flow)	21.83%	–	4%

Company appraised	Transaction	Fairness opinion or valuation by:	SEC filing	Valuation Methods Used in Fairness Opinion or Valuation	Discount Rate	Terminal Value		Valuation Methods Used by Court	Discount Rate	Terminal Value	
						Multiple	Growth			Multiple	Growth
Energy Services Group	Squeeze-out merger	Grant Thornton *[fair market value, not fairness]*	N	The court noted that DCF was used	16%	–	2.5%	DCF only	14.13%	–	3%
Farmers & Merchants Bancorp of Western Pennsylvania	Merger with affiliated company	Ambassador Financial	N	No information available	not disclosed			Capitalized earnings only	11.07%	–	3%
SWS Group	Sale to major lender	Sandler O'Neill	Y	DCF; comparable companies (EPS, yield, book value, and tangible book value)	10%-15%	10x-15x EPS; 1.0x-1.8x TBV	–	DCF only	12.76%	–	3.35%
Clearwire Corp.	Merger with 50.2% shareholder	Evercore	Y	DCF; comparable companies (MHz-POP); comparable transactions (MHz-POP); analysts' target stock prices; premiums paid in large cash acquisitions	12%-17.5%	–	2%-4%	DCF only	12.44%	–	3.35%
		Centerview Partners		DCF; comparable acquisitions (MHz-POP); analysts' target stock prices; premiums paid in other acquisitions	10%-17.5%	–	1%-3%				

EXHIBIT IV

Selected Issues Discussed by the Court – Non-Arms'-Length Transactions

Company Appraised	Transaction	Valuation Issues Discussed by the Court	Other Issues
M.G. Bancorporation	Short-form merger	a) Whether to use DCF only or comparable transactions as well; b) Whether control premium should be accepted; c) Whether capital market approach should be used versus market/book value.	Collateral estoppel given to pre-merger valuation opinion based on fair market value rather than fair value.
ONTI, Inc.	Cash merger with affiliated company	a) Whether merger that created potential value to minority, in place at time of cash out merger, is an element of value; b) Whether control premium should be applied; c) Use of company-specific risk premium and small stock premium; d) Market price as evidence of value; e) Should comparable company approach be used; f) Management fee adjustment.	Defendants liable for breach of fiduciary duty – damages assessed at Court's appraised price
PharmaSciences	Merger with affiliated company	a) Whether to adjust DCF to include interest income on cash or expense on debt; b) Whether to accept comparable company analysis; c) Whether to adjust for share repurchases; d) Whether petitioner's expert was conflicted; e) Whether respondent's expert's projections should be rejected.	–
SinglePoint Financial	Merger with affiliated company	a) Whether share dilution was a justiciable issue; b) Whether comparable transaction analysis or DCF alone should be used or whether DCF alone should govern.	–
800-JR Cigar	Going private	a) The perpetuity rate to be used to determine terminal value or whether an exit multiple should be used; b) The proper debt/equity ratio; c) Disputes over the Ibbotson equity risk premium; d) Appropriate tax rate; e) Whether offer prices for subject company could be utilized; f) Whether comparable transaction analysis could be used.	–
Emerging Communications	Going private	a) Which projections should be used; b) Elements comprising the discount rate; c) Relationship between capex and depreciation; d) Evidentiary value of stock price; e) Add-ons for misappropriated corporate opportunities.	Defendants liable for breach of fiduciary duty – damages awarded (appraisal value less amount paid in cash-out merger).
Travelocity.com	Short-form merger	a) Probative value of projections of very young company; b) Whether a single comparable company, Expedia, could be used; c) If so, what discount from its trading multiple should be taken; d) Weighting of EBITDA and EPS multiples.	On reargument, use security analysts' projections and add back net cash because it was already included in EPS.

Company Appraised	Transaction	Valuation Issues Discussed by the Court	Other Issues
eMachines	Short-form merger	a) CAPM vs. build-up method; b) Terminal value (perpetuity or exit multiple); c) Addback of excess cash; d) Transaction price as evidence of value (whether auction was too limited); e) Whether addbacks to value from alleged management unfair practices justiciable in an appraisal proceeding; f) Whether comparable companies analysis was usable; g) Which projections should be used; h) Discount rate issues, including whether company-specific risk premium should be included and size of small stock premium.	–
Janesville & Sheboygan Cellular Telephone	Squeeze-out mergers	a) Whether capital gains tax can be deducted from terminal value; b) Whether cellular phone company should be valued per subscriber or per POP.	–
PFPC Worldwide	Going private	a) Projected cash flow growth; b) Use of perpetuity model for terminal value; c) Proper debt equity ratio; d) Basis for determining beta; e) Whether to use two or three step DCF model; f) Backing out cash flow from company to be sold but adding back its profits; g) Weighting of DCF vs. comparable companies.	Defendants liable for breach of fiduciary duty – damages assessed at Court's appraised price
IIC Industries	Going private	a) Whether company-specific risk premium should be used; b) Amount of small stock premium; c) Probative value of prior real property appraisals; d) Probative value of management projections; e) Whether 9/11-related facts should be held to decrease value.	a) Whether independent directors entitled to exculpation, b) Whether breach of fiduciary duty claim would lie (yes), c) Damages awarded at appraisal value.
PNB Holding	Squeeze-out merger	a) The acceptable capital ratio for the bank; b) Whether the discounted dividend model arrives at fair value or includes a minority discount.	Whether entire fairness can be invoked when there is no control shareholder.
Dr Pepper Bottling Co. of Texas	Squeeze-out merger	a) Valuation of net operating loss in a change of control transaction; b) Appropriate projected depreciation and capital expenditures.	Fiduciary duties of control shareholder who is selling control but retaining an equity participation.
Sunbelt Beverage	Squeeze-out merger	a) Relevance of formula used to determine price in prior transaction; b) Impact on value of post-merger conversion to S corp; c) Applicability of company-specific risk premium.	Whether to award rescissory damages

Company Appraised	Transaction	Valuation Issues Discussed by the Court	Other Issues
Golden Telecom	Sale to affiliated company	a) Whether merger price was an element of value; b) Whether comparable company analysis should be considered; c) How terminal value should be calculated; d) Company's tax rate; e) Amount of equity risk premium; f) How beta should be calculated and whether Barra beta should be used.	–
Hanover Direct	Going private	"If a discounted cash flow analysis reveals a valuation similar to a comparable companies or comparable transactions analysis, I have more confidence that both analyses are accurately valuing a company."	"The issue of fair process is secondary to the ultimate import of fair price; and fair value under a statutory appraisal is tantamount to fair price in an entire fairness action."
Hazelett Strip-Casting	Reverse split	a) Earnings base for capitalizing net income should be normalized; b) Whether a business strategy of retaining employees rather than laying them off during a business downturn represents the company's operative reality; c) Whether losses for a money-losing subsidiary unrelated to the company's business should be excluded when normalizing.	"In cases like this one, . . . the fair price analysis and remedial determination coincide."
Orchard Enterprises	Going private	a) Whether preferred stock should be valued at its liquidation preference or on an as-converted basis when determining fair value; b) Whether DCF should be the sole methodology; c) As to DCF, whether build up methodology was usable versus capital asset pricing model; d) Probative value of management's projections and weight to be given to base case versus aggressive case projections; e) Present value of tax benefit of net operating losses; f) Terminal value computations; g) Whether supply side or historical equity risk premium should be used; h) Whether a company-specific risk premium should be included.	–
Cox Radio	Merger with parent	a) Whether DCF should be the only methodology; b) Which projections best reflect recovery from recession; c) Whether long term incentive plan options should be used in calculating outstanding shares; d) Calculation of net debt; e) Whether to add back a retained earnings cushion; f) How to treat deferred taxes; g) Relationship between capital expenditures and depreciation; h) How to calculate terminal value.	–

Company appraised	Transaction	Valuation Issues Discussed by the Court	Other Issues
Hesco Bastion Environmental	Squeeze-out merger	a) How to value company whose revenues are very irregular; b) Use of industry risk premium; c) Amount of size premium.	–
Energy Services Group	Squeeze-out merger	a) Whether valuation should be by DCF only; b) What projections to use; c) Tax liability for subchapter S companies; d) Terminal value computations; e) Amount of working capital; f) Amount of Texas Use and Sales Tax; g) Whether to recognize dilution from stock-related performance units.	Defendants liable for breach of fiduciary duty – damages assessed at Court's appraised price
Farmers & Merchants Bancorp of Western Pennsylvania	Merger with affiliated company	a) How to deal with fact that company had no long-term projections; b) Methods to be used (comparable transactions with DCF as a cross check or equally weighted DCF, comparable company and comparable transactions); c) Supply side versus historical equity risk premium; d) Adjustments for cash.	Procedurally flawed with no auction or majority of the minority provisions – both companies controlled by one family.
SWS Group	Sale to major lender	a) Extent to which SWS' financial performance was improving; b) Weighting of DCF vs. comparable companies or whether DCF should be only approach used; c) Appropriateness of management's three-year projections; d) Whether warrants issued to respondent should be included as if exercised before merger; e) How to deal with excess regulatory capital; f) How to deal with interest on debt subsequent to warrant exchange; g) Methods for calculating terminal value; h) Whether to use supply side equity risk premium; i) How to compute beta; j) Quantification of size premium.	–
Clearwire	Merger with 50.2% shareholder	a) Whether to use management projections or buyer's projections; b) "A merger price resulting from arms-length negotiations where there are no claims of collusion is a very strong indication of fair value." c) "In the context of appraisals, it is entirely proper for the Court of Chancery to adopt any one expert's model, methodology, and mathematical calculations, in toto, if that valuation is supported by credible evidence and withstands a critical judicial analysis on the record."	a) When a controller's duty of disclosure ceases; b) Differing value standards for breach of fiduciary duty (value as a range) vs. for appraisal (need for fixed value),

EXHIBIT V

Premiums Over Transaction Price in Non-Arm's-Length Transactions: Appraisal and Breach of Fiduciary Duty versus Appraisal Only

Appraisal and Alleged Breach of Fiduciary Duty – Breach Found		
Case	**Company Appraised**	**Increase**
ONTI, Inc. v. Integra Bank	ONTI, Inc.	168.1%
In re Emerging Communications	Emerging Communications	271.2%
Gesoff v. IIC Industries	IIC Industries	36.2%
In re Sunbelt Beverage	Sunbelt Beverage	148.8%
Reis v. Hazelett Strip-Casting	Hazelett Strip-Casting	132.5%
Laidler v. Hesco Bastion Environmental	Hesco Bastion Environmental	74.3%
Owen v. Cannon	Energy Services Group	60.1%
	Trimmed Mean *[excl. high & low]*	**127.3%**
	Median	**132.5%**

Appraisal Only		
Case	**Company Appraised**	**Increase**
Le Beau v. M.G. Bancorp.	M.G. Bancorporation	107.3%
Gray v. Cytokine Pharmasciences	PharmaSciences	0.0%
Gentile v. SinglePoint Financial	SinglePoint Financial	13,675%
Cede & Co. v. JRC Acquisition Corp.	800-JR Cigar	4.5%
Doft & Co. v. Travelocity.com	Travelocity.com	8.7%
Gholl v. eMachines	eMachines	54.7%
*Andaloro v. PFPC Worldwide**	PFPC Worldwide	(4.2%)
In re U. S. Cellular Operating Co.	Janesville Cellular Telephone Co.	23.1%
	Sheboygan Cellular Telephone Co.	40.5%
*PNB Holdings**	PNB Holdings	27.7%
*Crescent/Mach I P'ship v. Turner**	Dr Pepper Bottling Co. of Texas	29.2%
Global GT LP v. Golden Telecom	Golden Telecom	19.5%
*In re Hanover Direct**	Hanover Direct	0.0%
Appraisal of Orchard Enterprises	Orchard Enterprises	127.8%
Towerview LLC v. Cox Radio	Cox Radio	19.8%
Dunmire v. Farmers & Merchants Bancorp	Farmers & Merchants Bancorp of Western Pa.	10.7%
Appraisal of SWS Group	SWS Group	(7.8%)
*ACP Master v. Sprint Corp.**	Clearwire	(57.4%)
	Trimmed Mean *[excl. high & low]*	**28.8%**
	Median	**19.7%**

* Breach of fiduciary duty alleged but not found.

EXHIBIT VI

Valuation Methods – Arms'-Length Transactions

Company appraised	Transaction	Fairness opinion by:	SEC filing	Valuation Methods Used in Fairness Opinion or Valuation	Discount Rate	Terminal Value		Valuation Methods Used by Court	Discount Rate	Growth
						Multiple	Growth			
Union Financial Group	Sale to third party	Stifel Nicolaus	N	The Court noted that Stifel's DCF value was below the transaction price; no other information available	not disclosed			NPV of transaction price assuming that contingent payments were earned (rejected DCF value that was materially lower than transaction price)	13.53%	NA
Carter-Wallace	Merger with and asset sale to third parties	J. P. Morgan	Y	DCF; comparable companies (EBITDA); comparable transactions (revenues for consumer products, EBITDA for healthcare); LBO analysis	8%-10% (consumer products); 10%-12% (healthcare)	–	1%-3%	DCF, cross-checked against comparable companies, historical trading prices, and "desperate sales effort" leading to transaction.	10.0%	3.35%
		Houlihan Lokey		DCF; comparable companies (revenues and EBITDA); comparable transactions (revenues and EBITDA)	12%-14% (consumer products); 14%-16% (healthcare)	–	1%-3%			
MONY Group	Sale to third party	Credit Suisse First Boston	Y	DCF; comparable companies (EPS and book value); comparable transactions (EPS and book value); premiums paid in other insurance acquisitions	10%-12%	0.7x-0.9x EPS; 1x-1.2x book value	–	75% weight to transaction price less synergies; 25% weight to sum-of-the-parts analysis (life insurance: actuarial valuation; broker-dealer: comparable companies; asset management: DCF and comparable companies)	not disclosed	
Just Care	Sale to third party	Harris Williams	N	DCF; no other information available	not disclosed			DCF, with no value assigned to speculative expansion viewed as unlikely and one-third haircut to expansion with "high degree of risk"	18.71%	5.5%

Company appraised	Transaction	Fairness opinion by:	SEC filing	Valuation Methods Used in Fairness Opinion or Valuation	Discount Rate	Terminal Value		Valuation Methods Used by Court	Discount Rate	Growth
						Multiple	Growth			
Cogent	Sale to third party	Credit Suisse	Y	DCF; comparable companies (EBITDA and EBIT); comparable transactions (revenues and EBITDA)	11%-15%	5.5x-7.5x EBITDA	–	DCF only	11.954%	4.5%
CKx, Inc.	Arm's-length LBO	Gleacher	Y	DCF; comparable companies (EBITDA); historical multiples of EBITDA.	13%-15%	–	(0.5%)-0.5%	"[I]n this case, where no comparable companies, comparable transactions, or reliable cash flow projections exist, that the merger price is the most reliable indicator of value."	DCF not used	
Ancestry.com	Arm's-length LBO	Qatalyst Partners	Y	DCF; comparable companies (EBITDA)	9%-14%	6x-8x EBITDA	–	Transaction price, which was close to Court-calculated DCF value.	10.7%	3%
AutoInfo	Arm's-length LBO	Stephens	N	DCF; comparable companies (EBITDA and EPS); comparable transactions (EBITDA); LBO analysis; premiums paid in other acquisitions	18%-20%	5x-7x EBITDA	–	Transaction price with zero adjustment for synergies.	DCF not used	
Ramtron Intl. Corp.	Sale to hostile third party	Needham	Y	DCF; comparable companies (revenues, EBITDA and non-GAAP EPS); comparable transactions (revenues and EBITDA); premiums paid in other technology acquisitions	20%-23%	5x-7x EBITDA	–	Adjusted for synergies, approximately 99% of transaction price	DCF not used	
BMC Software	Arm's-length LBO	BofA Merrill Lynch	Y	[both] DCF; comparable companies (EBITDA and non-GAAP EPS); comparable transactions (revenues and EBITDA); PV of future stock price; analysts' target stock prices; premiums paid in other software acquisitions	9%	7x-9x EBITDA	–	Transaction price, which was close to Court-calculated DCF value	10.5%	3.25%
		Morgan Stanley			9%	7x-9x EBITDA	–			

Company appraised	Transaction	Fairness opinion by:	SEC filing	Valuation Methods Used in Fairness Opinion or Valuation	Discount Rate	Terminal Value		Valuation Methods Used by Court	Discount Rate	Growth
						Multiple	Growth			
Dell	LBO by group including CEO, a 15% shareholder	Evercore	Y	DCF; comparable companies (EBITDA, FCF per share and EPS); PV of future stock price; analysts' target stock prices; LBO analysis; share buyback analysis; premiums paid in other large transactions	10%-12%	3x-5x EBITDA	–	<u>Court of Chancery:</u> DCF only	9.46%	2.0%
								<u>Supreme Court:</u> On remand, Vice Chancellor must consider deal price and may consider DCF	Not addressed	
		J.P. Morgan		DCF; comparable companies (EBITDA and EPS)	9.5%-13.5%	9.5%-13.5% EBITDA	–			
DFC Global Corp.	Arm's-length LBO	Houlihan Lokey	Y	DCF; comparable companies (EBITDA and EPS); comparable transactions (EBITDA)	10%-11%	5x-6x EBITDA	–	<u>Court of Chancery</u>: equal weight to DCF, comparable companies (EBITDA) and transaction price	10.72%	4%
								<u>Supreme Court</u>: Remanded, asking for more weight to transaction price, lower discount rate, and explanation of weighting	Not addressed	4% too high – remanded
Lender Processing Services	Sale to third party	Credit Suisse	Y	DCF; comparable companies (EBITDA); comparable transactions (EBITDA); analysts' target stock prices	8%-10%	5.5x-7.5x EBITDA	–	Transaction price, which was close to Court-calculated DCF value	9.56%	3.4%
		Goldman Sachs		DCF; comparable companies (EBITDA and EPS); comparable transactions (EBITDA); PV of future stock price	8.5%-10%	5.5x-7.5x EBITDA	–			
PetSmart	Arm's-length LBO	J.P. Morgan	Y	DCF; comparable companies (EBITDA and EPS); comparable transactions (EBITDA)	9%-11%	–	1.5%-2.5%	Transaction price (DCF unreliable because management projections were overly aggressive)	DCF not used	

Company appraised	Transaction	Fairness opinion by:	SEC filing	Valuation Methods Used in Fairness Opinion or Valuation	Discount Rate	Terminal Value		Valuation Methods Used by Court	Discount Rate	Growth
						Multiple	Growth			
Aruba Networks	Sale to third party	Qatalyst Partners	Y	DCF; comparable companies (EPS); comparable transactions (revenues and EPS)	10.5%-14%	11x-16x net operating profit after taxes	–	Market prices prior to announcement	DCF not used	
AOL	Sale to third party	Allen & Co.	Y	DCF; comparable companies (EBITDA); comparable transactions (EBITDA)	10%-12%	6.5x-7.5x EBITDA –	–	DCF only	Not disclosed	3.5%

EXHIBIT VII

Selected Issues Discussed by the Court – Arms'-Length Transactions

Company appraised	Transaction	Valuation Issues Discussed by the Court	Other Issues
Union Financial Group	Sale to third party	a) Use of management projections vs. higher projections by expert; b) Appropriate beta; c) Use of company-specific risk premium	Right of dissenter to withdraw some but not all its shares from appraisal demand.
Carter-Wallace	Merger with and asset sale to third parties	a) Should appraisal reflect taxes and expenses relating to sale of consumer products business that was contingent on sale of continuing healthcare company; b) Use of management projections vs. higher projections by expert; c) All components of WACC.	–
MONY Group	Sale to third party	a) Can DCF be used to value a life insurance company; b) Validity of comparable company and comparable transaction analyses when company has materially underperformed its industry.	–
Just Care	Sale to third party	a) Credibility of management projections made outside of ordinary course of business; b) Unlikely or very risky expansion plans; Components of WACC	–
Cogent	Sale to third party	a) Credibility of management projections made during negotiations; b) Exclusion of stock-based compensation from cash flow but not from operating income; c) Computation of working capital; d) All components of WACC; e) Use of growth model rather than multiples for terminal value.	Admissibility of valuation treatises not entered into evidence.
CKx, Inc.	Arm's-length LBO	a) Credibility of management projections given substantial uncertainties; b) Relevance of synergies that were not unique to the buyer.	–
Ancestry.com	Arm's-length LBO	a) Use of three-stage or two-stage growth model; b) Normalizing margins for terminal value	Since §262 allocates burden of proof to both sides, the burden effectively falls on the judge to determine fair value
AutoInfo	Arm's-length LBO	a) Projections prepared solely to paint an optimistic picture for marketing the company are unreliable; b) In absence of viable management projections, the court can use projections prepared by buyer in its due diligence; c) "The Court may reject comparable companies analyses based on purported comparables that differ significantly in size from the company being appraised."	–

Company appraised	Transaction	Valuation Issues Discussed by the Court	Other Issues
Ramtron International Corp.	Sale to hostile third party	a) Projections are unreliable when not in the ordinary course using a methodology never had before employed by the company, and made after hostile bid; b) Projections are unreliable when they "suggest a dramatic turnaround in a company despite no underlying changes that would justify such an improvement of business." c) Transactions are unreliable when there are only two and those two have widely different multiples.	–
Dell	LBO by group including CEO, a 15% shareholder	Court of Chancery: a) Whether merger price is evidentiary; b) Whether MBO's are non-arms'-length transactions; c) Whether, for fair value, a DCF model should consider value to the buyer; d) Extent to which fair value was a focus of the Special Committee; e) Whether Dell's market price reflected only short-term value; f) Which projections to use; g) Permissibility of expert's post-hoc adjustments to management projections; h) Tax rate; i) Each element of CAPM; j) Adjustments for cash, deferred taxes, and unrealized tax benefits. Supreme Court: a) "[T]he fact that a financial buyer may demand a certain rate of return on its investment in exchange for undertaking the risk of an acquisition does not mean that the price it is willing to pay is not a meaningful indication of fair value"; b) Use of comparable company method was appropriate.	–
BMC Software	Arm's-length LBO	a) Whether it is appropriate to include a reasonable offset for the tax associated with repatriating" cash held overseas; b) Whether it is reasonable to deduct estimated stock-based compensation as an expense when the company has a history of buying back such stock to prevent dilution.	"When considering deal price as a factor – in part or in toto – for computing fair value, ... [a] two-step analysis is required: first, were synergies realized from the deal; and if so, were they captured by sellers in the deal price".
Lender Processing Servicing	Sale to third party	a) "The first factor supporting the persuasiveness of the Company's sale process is the existence of meaningful competition among multiple bidders during the pre-signing phase"; b) The court requires expert testimony in order to determine if synergies should be deducted from the transaction price.	–

Company appraised	Transaction	Valuation Issues Discussed by the Court	Other Issues
PetSmart	Arm's-length LBO	a) "A discounted cash flow analysis does not work in the appraisal context when the projections reflect the operative reality of the company in the hands of the acquirer"; b) "[W]hile it is true that private equity firms construct their bids with desired returns in mind, it does not follow that a private equity firm's final offer at the end of a robust and competitive auction cannot ultimately be the best indicator of fair value for the company."	–
DFC Global Corp.	Arm's-length LBO	<u>Court of Chancery</u>: a) Weighting of valuations using different methods; b) Two-stage vs. three-stage growth model; c) Use of Barra beta, two-year vs. five-year data for beta, and method for unleveraging beta; d) Impact of financial buyer's IRR on bidding process <u>Supreme Court</u>: a) "[T]he fact that a financial buyer may demand a certain rate of return on its investment in exchange for undertaking the risk of an acquisition does not mean that the price it is willing to pay is not a meaningful indication of fair value"; b) Use of comparable company method was appropriate	–
Aruba Networks	Sale to third party	a) Relevance of unaffected market price prior to announcement of transaction; b) Whether shares trade in an efficient market; c) Relevance of transaction price; d) Difficulties in quantifying synergies; e) Relevance of DCF analyses.	Impact of Supreme Court decisions in *Dell* and *DCF Global*
AOL	Sale to third party	a) Was sale process sufficiently unconstrained for Court to rely on transaction price; b) Could DCF analysis use projections made for determining goodwill amortization; c) Which of the pending deals were part of operative reality; d) Exclusion of cash required for operations from DCF valuation.	Impact of Supreme Court decisions in *Dell* and *DCF Global*