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WHAT'S INSIDE

APPRAISAL RIGHTS

Rite Aid unlawfully cut off appraisal rights in Albertsons merger, suit says

By Conor O'Brien

A Delaware court should halt Rite Aid Corp.'s $24 billion sale to grocer Albertsons Cos. LLC because the deal was structured to unlawfully deprive the seller's shareholders of their appraisal rights under state law, a proposed class action says.

Aklile v. Rite Aid Corp. et al., No. 2018-0305, complaint filed, 2018 WL 1936713 (Del. Ch. Apr. 24, 2018).

The deal also incorrectly values Albertsons at the expense of Rite Aid shareholders, who stand to receive shares of the buyer's common stock as consideration, Rite Aid shareholder Mel Aklile says in a complaint filed in the Delaware Chancery Court.

The lawsuit raises additional concerns about the negotiation process, claiming Rite Aid directors responsible for bargaining on behalf of the company's shareholders were not adequately disinterested and violated their fiduciary duties.

REUTERS/Brian Snyder

Rite Aid shareholders still need to vote on the merger at a special meeting, according to the complaint.

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EXPERT ANALYSIS

Ninth Circuit creates circuit split for Section 14(e) claims regarding tender offers

O'Melveny & Myers attorneys William K. Pao, Jonathan Rosenberg, Edward Moss, Anton Metlitsky and John Hill discuss the 9th Circuit's recent decision in *Varjabedian v. Emulex*, in which the court split from five sister circuits and held that Section 14(e) claims for alleged material misstatements or omissions in tender-offer filings do not require proof of scienter but instead may be established by negligence.

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Ninth Circuit creates circuit split for Section 14(e) claims regarding tender offers

By William K. Pao, Esq., Jonathan Rosenberg, Esq., Edward Moss, Esq., Anton Metlitsky, Esq., and John Hill, Esq.
O'Melveny & Myers

On April 20, 2018, the Ninth Circuit in *Varjabedian v. Emulex*, No. 16-55088, 2018 WL 1882905 (9th Cir. Apr. 20, 2018), split from five of its sister circuits, holding that plaintiffs seeking to recover under § 14(e) of the Securities Exchange Act ("Exchange Act") for alleged material misstatements or omissions in tender-offer filings need only plead (and prove) negligence, not scienter.

The circuit split threatens to invite forum shopping and make the Ninth Circuit a magnet for § 14(e) actions, and sets up a potential Supreme Court resolution.

BACKGROUND

On February 25, 2015, Avago Technologies Wireless Manufacturing, Inc. ("Avago") and Emulex Corp. ("Emulex") issued a joint press release announcing a merger agreement under which Avago would offer to pay $8.00 per share of Emulex stock, reflecting a 26.4% premium over Emulex's closing stock price at the time.

After Avago initiated the tender offer, Emulex filed with the SEC a 48-page Recommendation Statement in support of the offer, which included a nine-factor analysis and a summary of Goldman Sachs's fairness opinion.

Emulex omitted, however, Goldman Sachs's one-page "Premium Analysis," showing that while Emulex's 26.4% premium fell within the normal range of merger premiums in comparable transactions, it was also below the average.

Shortly after Emulex and Avago completed the merger, a class of former Emulex shareholders filed a putative class action complaint alleging that the $8.00 share price was too low in light of Emulex's growth before the tender offer.

Plaintiffs later amended their complaint to allege that defendants had violated § 14(e) by failing in the Recommendation Statement to summarize the Premium Analysis and to disclose that the 26.4% premium was below the average of premiums in similar mergers.

On January 13, 2016, the district court dismissed the § 14(e) claim for failure to plead that the misstatement or omission was made "intentionally or with deliberate recklessness." *Varjabedian v. Emulex Corp.*, 152 F. Supp. 3d 1226, 1233 (C.D. Cal. 2016), *aff'd in part, rev'd in part and remanded*, No. 16-55088, 2018 WL 1882905 (9th Cir. Apr. 20, 2018).

Citing the "obvious" parallels between Rule 10b-5 and § 14(e), the district court reasoned that Rule 10b-5's scienter requirement should also apply to § 14(e) claims. *Id.* at 1232. The court also emphasized that numerous other courts have "unanimously [held] that § 14(e) claims require proof of scienter." *Id.*

NINTH CIRCUIT RULING

In reversing the district court's ruling, the Ninth Circuit began by noting that § 14(e) contains two separate clauses, "each proscribing different conduct" — i.e., (1) making or omitting an untrue statement of material fact, and (2) engaging in fraudulent, deceptive, or manipulative acts or practices.[1] *Varjabedian v. Emulex Corp.*, No. 16-55088 (9th Cir. Apr. 20, 2018) (Slip op. at 10). The Ninth Circuit reasoned that the first clause, on its face, does not include a scienter requirement. *Id.*

The Ninth Circuit acknowledged that five other circuits (the Second, Third, Fifth, Sixth, and Eleventh) had held that § 14(e) requires that plaintiffs plead scienter, but was "persuaded that the rationale underpinning those decisions" should not actually apply to the first clause of §14(e). *Id.* at 11.

According to the Ninth Circuit, those other circuits ignored or misread Supreme Court precedent in relying on the "similarities between Rule 10b-5 and § 14(e)" to import Rule 10b-5's scienter requirement to § 14(e) claims.[2] *Id.*

That is because the Supreme Court in *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976), made clear that adding "scienter [a]s an element of Rule 10b-5(b) had nothing to do with the text of Rule 10b-5." *Id.* at 12.

To the contrary, the Court in *Hochfelder* "acknowledged that the wording of Rule 10b-5(b) could reasonably be read as imposing a scienter *or a negligence* standard." *Id.* (emphasis in original).

It nonetheless found that "Rule 10b-5 requires a showing of scienter because it is a regulation promulgated under Section 10(b) of the Exchange Act, which allows the SEC to regulate *only* 'manipulative or deceptive device[s],'" which necessarily entails scienter. *Id.* at 13 (emphasis in original).

> The circuit split created by *Varjabedian v. Emulex* substantially increases the likelihood of Supreme Court review.

In other words, Rule 10b-5 requires a showing of scienter because of the authorizing statute, not based on the Rule's language. According to the Ninth Circuit, "[t]his rationale regarding Rule 10b-5 does not apply to Section 14(e), which is a statute, not an SEC rule." *Id.* at 14.

The Ninth Circuit also found "compelling" the Supreme Court's ruling in *Aaron v. SEC*, 446 U.S. 680, 696–97 (1980), that Section 17(a)(2) of the Securities Act of 1933 — a provision that applies to initial public offerings and is worded similarly to the first clause of § 14(e)[3] — "does *not* require a showing of scienter." *Varjabedian v. Emulex Corp.*, No. 16-55088 (9th Cir. Apr. 20, 2018) (Slip op. at 14) (emphasis in original).

Noting that "statutes dealing with similar subjects should be interpreted harmoniously," *id.*, the Ninth Circuit found

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that the first clause of Section 14(e), like Section 17(a)(2), "requires a showing of negligence, not scienter." *Id.* at 16.

The Ninth Circuit distinguished the contrary rulings in the five other circuits by noting that they were either decided before *Ernst & Ernst* and *Aaron* or failed to follow the reasoning of those decisions and acknowledge the distinction between Rule 10b-5 and § 14(e). *Id.* at 15–16.

TAKEAWAYS

We see four things to note about *Varjabedian*.

First, the decision (assuming Emulex and Avago do not petition for and obtain en banc review) will likely incentivize plaintiffs pursuing § 14(e) claims to file in Ninth Circuit courts.

Under § 27 of the Exchange Act, § 14(e) claims may be brought in "the district wherein any act or transaction constituting the violation occurred" or in the district "wherein the defendant is found or is an inhabitant or transacts business." *See* 15 U.S.C. § 78aa; *accord Bourassa v. Desrochers*, 938 F.2d 1056, 1057 (9th Cir. 1991) (stating same).

Thus, plaintiffs pursuing § 14(e) claims on behalf of a nationwide class of shareholders have some choice of jurisdictions in which to file suit — to the extent that potential defendants transact business in the Ninth Circuit or alleged violations occur there — and may attempt to use that flexibility to file in the Ninth Circuit.

Second, the circuit split created by *Varjabedian* substantially increases the likelihood of Supreme Court review.

Even if the other circuits that already have addressed § 14(e) want to revisit the issue in light of *Varjabedian*, they could do so only through en banc proceedings or after a contrary Supreme Court decision. *See, e.g., United States v. Sanchez*, No. 17-11043, 2018 WL 1882961, at *1 (5th Cir. Apr. 19, 2018) ("One panel of this court may not overrule the decision of another absent a superseding en banc or Supreme Court decision.").[4]

Moreover, it is not clear that those circuits would agree with the Ninth Circuit on the merits in any event. As the Fifth Circuit noted, "Congress adopted in [the first clause of] Section 14(e) the substantive language of the second paragraph of Rule 10b-5 and in so doing accepted the precedential baggage those words have carried over the years." *Smallwood v. Pearl Brewing Co.*, 489 F.2d 579, 605 (5th Cir. 1974).

Thus, when Congress drafted the first clause of § 14(e), it arguably did so with the understanding that it was borrowing language (from Rule 10b-5) that included an implied scienter requirement. Because of those divergent interpretations, the Supreme Court could be persuaded to resolve the circuit split, perhaps even in response to a cert petition in *Varjabedian*.

> The district court dismissed the Section 14(e) claim for failure to plead that the misstatement or omission was made "intentionally or with deliberate recklessness."

Third, *Varjabedian* brings Ninth Circuit § 14(e) tender-offer claims in line with § 14(a) proxy-statement claims, which the Ninth Circuit held in *Knollenberg v. Harmonic, Inc.*, 152 F. App'x 674, 682–83 (9th Cir. 2005), do not require scienter.

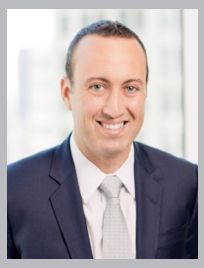
The Ninth Circuit's reasoning in *Knollenberg* was similar to *Varjabedian*; the court distinguished § 14(a) from § 10(b) because the former lacked any reference to a "manipulative device or contrivance," and on that basis held that § 14(a) did not include a scienter requirement. *Id.* at 682.

There is also a circuit split as to the interpretation of Section 14(a), *compare Adams v. Standard Knitting Mills, Inc.*, 623 F.2d 422, 431 (6th Cir. 1980) ("[A]n action under 14(a) requires proof of scienter."), and the Supreme Court has reserved judgment on the issue, *see Va. Bankshares, Inc. v. Sandberg*, 501 U.S. 1083, 1090 n.5 (1991). This increases the chances of Supreme Court review.

Fourth, even under *Varjabedian*, defendants still have several avenues to challenge § 14(e) claims. Nothing in *Varjabedian*, for example, limits defendants' ability to argue, as they often do in M&A cases, that the alleged misstatements or omissions are not material.

The district court in *Varjabedian* did not reach the defendants' argument that the Premium Analysis was not material, *Varjabedian v. Emulex Corp.*, 152 F. Supp. 3d at 1232, and the Ninth Circuit noted that it will be "difficult to show that [the] omitted information was indeed material." *Varjabedian v. Emulex Corp.*, No. 16-55088 (9th Cir. Apr. 20, 2018) (Slip op. at 18). WJ





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NOTES

[1] § 14(e) provides in relevant part: "It shall be unlawful for any person [1] to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or [2] to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer...."

[2] *Compare* § 14(e) ("It shall be unlawful for any person [1] to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading or [2] to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer....") *with* Rule 10b-5 ("It shall be unlawful for any person ... [t]o make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or [t]o engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.'").

[3] Under § 17(a)(2), "[i]t shall be unlawful for any person in the offer or sale of any securities (including security-based swaps) ... to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading."

[4] *See also In re Zarnel,* 619 F.3d 156, 168 (2d Cir. 2010) (Panels are "bound by the decisions of prior panels until such time as they are overruled either by an en banc panel of our Court or by the Supreme Court."); *Blair v. Scott Specialty Gases,* 283 F.3d 595, 610–11 (3d Cir. 2002) (stating same); *United States v. Lee,* 793 F.3d 680, 684 (6th Cir. 2015) (stating same); *United States v. Brown,* 342 F.3d 1245, 1246 (11th Cir. 2003) (stating same).

APPRAISAL RIGHTS

Hedge fund demands appraisal for Regal shares at time of Cineworld merger

By Daniel Rice

A hedge fund has petitioned the Delaware Chancery Court to appraise Regal Entertainment Group's worth at the time of the movie theater company's $3.6 billion acquisition by European counterpart Cineworld Group PLC.

Blue Mountain Credit Alternatives Master Fund LP et al. v. Regal Entertainment Group, No. 2018-0266, complaint filed, 2018 WL 1773492 (Del. Ch. Apr. 10, 2018).

New York-based Blue Mountain Credit Alternatives Master Fund LP filed an April 10 petition seeking judicial appraisal of more than 6.5 million Regal shares it held with affiliated funds when the deal closed in February. Cineworld, which is headquartered in London, paid $23 per share for the Delaware-incorporated theater owner.

By seeking judicial appraisal, Blue Mountain is hoping to persuade the Chancery Court that Regal was worth more than $23 per share, despite the premium Cineworld said it was paying at the time of the merger.

The hedge fund has asked the court to determine the fair value of its ownership interest when the deal closed and then award it any difference, plus interest.

APPRAISAL DEMAND

Blue Mountain's petition says the hedge fund did not vote its shares in favor of the acquisition. Instead, the fund demanded appraisal of the stock under the Delaware General Corporation Law, 8 Del.C. § 262, the suit says.

Section 262 allows a stockholder to have the Chancery Court determine the value of its ownership interest in a company, regardless of the amount paid for the company's shares in a merger. A petitioning shareholder is entitled to recover any difference between the judicially determined value of the stock and the merger consideration, together with interest at 5 percent over the Federal Reserve discount rate.

Blue Mountain says it perfected its judicial appraisal rights under Section 262 by refusing to tender its shares and making a pre-suit appraisal demand. The fund has not reached an agreement with Regal on the proper valuation of shares, according to the complaint.

PREMIUM PAID?

When announcing the merger agreement in December 2017, Regal said it was paying a 43 percent premium over the company's weighted average share price of $16.06 in the 30 days leading up to the deal's announcement.

Recent Delaware case law suggests the Chancery Court is more likely to accept the unaffected, or preannouncement, share price of a company's stock as the most persuasive indicator of value.

In February, Vice Chancellor J. Travis Laster appraised wireless network provider Aruba Networks nearly $7 per share less than the price Hewlett Packard Co. paid to acquire the wireless network company in May 2015. *Verition Partners Master Fund Ltd. v. Aruba Networks Inc.*, No. 11448, *opinion issued*, 2018 WL 922139 (Del Ch. Feb. 15, 2018).

REUTERS/Jonathan Alcorn

London-based Cineworld said it paid $23 per share when it acquired Regal Entertainment Group in February. Moviegoers at a Regal Cinemas location in California are shown here.

"Vice Chancellor Laster's decision lowered the floor for appraisal actions," Reuters columnist Alison Frankel said. "He was ... the first Delaware judge in the appraisal litigation boom to find share price — rather than deal price — to be the most reliable marker of fair value." WJ

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Related Filings:
Complaint: 2018 WL 1773492

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Sprint, T-Mobile merger must clear at least 6 regulatory hurdles

By Jeremy Abrams

The $26 billion all-stock merger of T-Mobile USA Inc. and Sprint Corp., respectively the third- and fourth-largest wireless network operators in the U.S., faces no fewer than six regulatory hurdles, according to a recent securities filing.

Sprint Corp. Form 8-K, 2018 WL 01993637 (Apr. 30, 2018).

The most challenging obstacle likely will be obtaining antitrust clearance for the transaction. In 2014 the companies terminated a previous merger attempt — in which Sprint offered to purchase T-Mobile for roughly $32 billion — based on competition concerns.

Sprint and T-Mobile inked their current merger agreement April 29, according to a Form 8-K filed with the Securities and Exchange Commission on April 30. The exchange ratio of 0.10256 T-Mobile shares per Sprint share values the combined company at roughly $146 billion, the companies said.

If completed, the transaction will give Japan's Softbank Group Corp., which owns roughly 85 percent of Sprint, about 27 percent of the combined company, according to the Form 8-K. German-based Deutsche Telekom AG, which holds 63.5 percent of T-Mobile's stock, will own 42 percent of the combined firm, the filing said.

REUTERS/Dado Ruvic

The remaining 31 percent of the company, which is to be named T-Mobile Inc., will be held by public stockholders, according to the filing.

The merger agreement calls for the board of the merged company to have 14 members, composed of nine directors selected by Deutsche Telekom, four selected by Softbank and T-Mobile's CEO, the filing said.

ANTITRUST CLEARANCE, REGULATORY HURDLES

Before it can close, the merger must survive the scrutiny of several U.S. regulators, including the Federal Trade Commission, the Justice Department and the Federal Communications Commission, according to the merger agreement.

Various state public utility commissions, the Defense Security Service and the Committee on Foreign Investments in the United States must also examine the transaction, the agreement said. DSS and CFIUS are federal authorities tasked with reviewing the national security implications of transactions involving foreign companies.

Neither company is required to pay the other a termination fee if the merger fails to obtain antitrust approval, but T-Mobile could have to pay Sprint $600 million if it backs out of the deal for other specified reasons, according to the agreement. WJ

Related Filings:
Form 8-K: 2018 WL 01993637

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BancTec buyer reneged on $8 million earn-out payment, suit says

By Jodine Mayberry

The buyer of BancTec Inc. has refused to pay the banking technology company's former stockholders $8.1 million under an earn-out provision of the 2014 acquisition agreement that was triggered last year, according to a suit filed in the Delaware Chancery Court.

Western Standard Inc. v. SourceHOV Inc., No. 2018-0280, complaint filed, 2018 WL 1789084 (Del. Ch. Apr. 13, 2018).

The April 13 complaint filed by Western Standard LLC, as representative of all former BancTec stockholders, says acquirer SourceHOV Holdings Inc. has breached the acquisition agreement by failing to make the earn-out payment and refusing to arbitrate the parties' dispute.

BancTec agreed to a $44 million buyout in February 2014 in which lead investor HandsOnFund 4 I LLC, a SourceHOV affiliate, agreed to pay BancTec's investors $2.45 per share for their 18 million shares, according to the lawsuit.

Under an earn-out provision, HandsOnFund agreed to pay the BancTec shareholders an additional 45 cents per share if the investment fund realized more than $2,000 per BancTec share within five years after the merger, the suit says.

In July 2017 SourceHOV completed a merger with Quinpario Acquisition Corp., according to the complaint. HandsOnFund obtained beneficial ownership of Quinpario stock worth $4,600 per BancTec share, far more than the $2,000 a share threshold, Western Standard alleges.

But SourceHOV disputes that the Quinpario deal triggered the earn-out provision, claiming Quinpario was its affiliate before the July 12, 2017, merger and thus the buyer already owned the target's assets, the suit says.

According to Western Standard, SourceHOV's assertion is "plainly false" as Quinpario's June 26 proxy statement, filed less than three weeks before the merger, says no major shareholder or affiliate of SourceHOV held a 5 percent or greater stake in Quinpario at that point.

The proxy statement shows SourceHOV acquired a substantial stake in Quinpario only through the merger itself, the complaint says.

ALLEGED BREACH OF CONTRACT

In addition to not making the earn-out payment, SourceHOV has breached the BancTec buyout agreement by failing to produce post-merger books and records and refusing to submit to arbitration to resolve the dispute, as the earn-out provision specifies, the suit says.

SourceHOV's breaches are "evidence of its bad faith and refusal to cooperate" with Western Standard with respect to the earn-out agreement, the complaint says.

Western Standard is asking the court to award it direct damages of $8.1 million for breach of contract plus interest accrued since July 12, 2017, the effective date of the Quinpario merger, and to resolve the ongoing dispute arising from the buyout agreement. WJ

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Related Filings:
Complaint: 2018 WL 1789084

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After judge halts Fuji merger, Xerox cedes control to shareholder activists

Xerox Corp. has tentatively agreed to settle a challenge to its $6.1 billion sale to Fujifilm Holdings Corp. after dissident shareholders persuaded a New York judge to halt the deal and find Xerox's directors let its "massively conflicted" CEO hijack the negotiations.

In re Xerox Corp. Consolidated Shareholder Litigation, No. 650766/18, 2018 WL 1988860 (N.Y. Sup. Ct., N.Y. Cty. Apr. 27, 2018).

New York County Supreme Court Justice Barry R. Ostrager's April 27 ruling granted the plaintiff investors' motion for a preliminary injunction of a scheduled Xerox shareholder vote on the "cashless" Fuji merger and a director election that excluded activist investors Carl Icahn and Darwin Deason's candidates.

Justice Ostrager said the plaintiffs would likely be able to prove Xerox's directors not only breached their duty by letting the CEO they were about to replace take over the negotiations, but "acted in bad faith" in structuring the deal.

Norwalk, Connecticut-based Xerox, which is incorporated in New York, announced the acquisition deal with imaging giant Fuji on Jan. 31.

RULING BRINGS PACT

Two business days after Justice Ostrager issued his sharply worded critique of the merger, Xerox announced it was postponing a vote on the deal and had reached a tentative settlement of all shareholder litigation contesting the merger and Xerox's upcoming director election.

In a May 1 statement, Xerox said the pact calls for six newly appointed board members to immediately replace CEO Jeff Jacobson and six of the company's 10 incumbent directors. Icahn representatives Keith Cozza and John Visentin will serve as the company's new chairman and CEO, respectively, Xerox said.

The May 1 statement said the newly constituted board would meet promptly to discuss strategic alternatives for Xerox. Deason and Icahn praised the outcome of the intensely fought contest for control, with Icahn saying it "marks a watershed moment for corporate governance generally and for Xerox specifically."

However, Icahn and Deason released a joint statement May 4 claiming Xerox had failed to implement the agreed-upon corporate governance changes before the tentative settlement expired May 3, which would cause the litigation to resume. No one at Xerox was immediately available to comment.

AN 'ARRESTING IRONY'

Justice Ostrager's decision greenlighted the combined lawsuits of Deason and other shareholders after finding they were excused from a derivative suit requirement to let the directors first review the charges because there is proof they were too conflicted.

Normally, the business judgment rule gives director decisions the benefit of the doubt, but "this transaction was largely negotiated by a massively conflicted CEO in breach of his fiduciary duties to further his self-interest" and approved by equally conflicted directors, the judge said.

Justice Ostrager noted the "arresting irony" that the directors rushed through a deal with numerous shop-around restrictions and a $183 million penalty if it fell through, despite "scant evidence" of comparison shopping or economic necessity at Xerox.

REUTERS/Hyungwon Kang

HIDDEN 'CROWN JEWEL'?

In an April 19 amended complaint in his suit seeking to block the deal, Deason said he learned only after the acquisition was announced that the two companies had a 17-year-old joint venture agreement that contains a secret "crown jewel" lockup provision, making it effectively impossible for Xerox to negotiate with another suitor.

The lockup "allows Fuji to control Xerox's intellectual property and manufacturing rights in the $36 billion Asia-Pacific market if Xerox was to sell just 30 percent of the company to another suitor," Deason alleged in his original complaint.

The amended complaint claimed the directors breached their fiduciary duties of care, good faith, loyalty, candor and independence by not acting in the best interests of the shareholders. It also accused the directors, former CEO Ursula M. Burns and Xerox of common law fraud in their disclosures about the deal.

The defendants filed a memorandum in support of their motion to dismiss and in opposition to Deason's injunction motion April 19, saying Deason allied himself with Icahn "to disenfranchise the rest of Xerox's shareholders."

THE RULING'S 'LYNCHPIN'

Justice Ostrager said the "lynchpin" of his decision was Jacobson's conduct in taking over the negotiations with Fuji after the board told him to stand down, and his knowledge that without the deal he would likely be replaced.

The judge's opinion also noted "the board's approval of a transaction that granted control of an iconic American company to Fuji without any cash payment by Fuji to Xerox shareholders and the board's acquiescence to Jacobson's conduct."

It said without the injunction, shareholders "will lose the potential opportunity to receive a superior control premium while being forced to vote on the proposed transaction despite Xerox's failure to make timely, material disclosures regarding the transaction and the Fuji joint venture." WJ

Related Filings:
Opinion: 2018 WL 1988860

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Musk controlled Tesla board in SolarCity deal, Delaware judge says

Tesla Motors Inc. shareholders have won a round in their challenge to a 2016 merger with SolarCity Corp. after a Delaware judge found that Tesla CEO Elon Musk controlled the electric car maker's board despite owning only 22 percent of its stock.

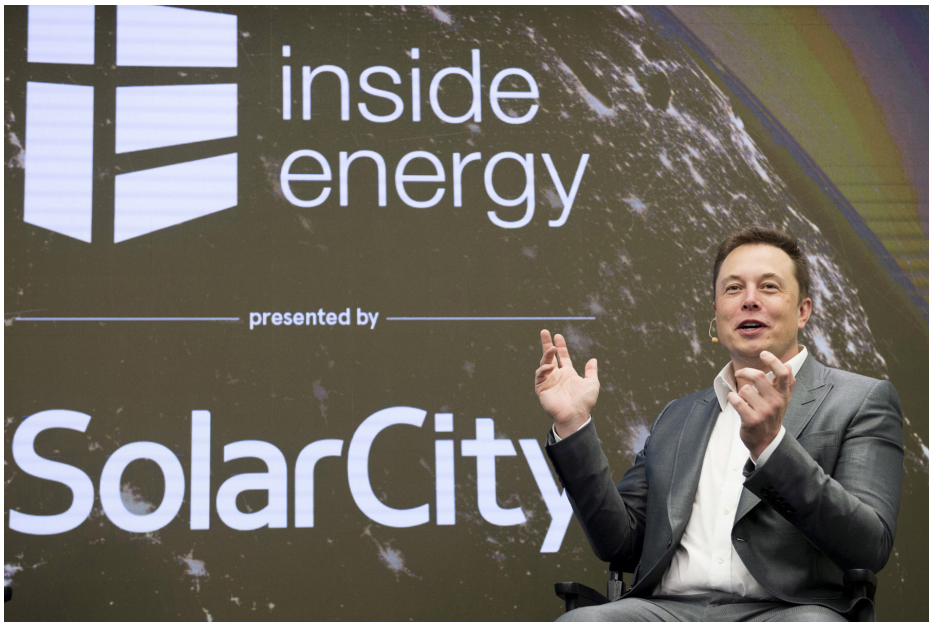
In re Tesla Motors Inc. Stockholder Litigation, No. 12711, 2018 WL 1560293 (Del. Ch. Mar. 28, 2018).

Vice Chancellor Joseph R. Slights' March 28 Delaware Chancery Court opinion denied a motion by Tesla's officers and directors to dismiss a consolidated breach-of-duty suit that accuses them of agreeing to the $2.6 billion acquisition to rescue Musk's SolarCity investment at Tesla shareholders' expense.

AN EXCEPTION TO *CORWIN*

Palo Alto, California-based Tesla is incorporated in Delaware, where corporate law generally gives decisions by independent, unconflicted directors the benefit of the doubt under the business judgment rule.

The Delaware Supreme Court has said that evidence of director self-dealing or conflict of interest in a transaction such as a contested merger may be excused by shareholder ratification unless a controlling shareholder could have influenced the board. *Corwin v. KKR Fin. Holdings,* 125 A.3d 304 (Del. 2015).



Tesla CEO Elon Musk REUTERS/Rashid Umar Abbasi

MULTIPLE MERGER CHALLENGES

A number of shareholders challenged the deal, claiming it was plagued by conflicts of interest and amounted to a bailout of the struggling solar energy company.

> The shareholders' complaints, which were later consolidated, said Musk orchestrated the proposed acquisition to protect his own financial interests and those of family members and close affiliates.

Vice Chancellor Slights said Musk was that exception because despite his small ownership stake, the plaintiffs have pleaded facts suggesting he controlled Tesla's board through his authority as CEO and chairman, his status as the company's visionary and product architect, and his fundraising role.

Tesla and SolarCity, an alternative-energy equipment maker based in San Mateo, California, announced their $2.6 billion merger Aug. 1, 2016.

The shareholders' complaints, which were later consolidated, said Musk orchestrated the proposed SolarCity acquisition to protect his own financial interests and those of family members and close affiliates.

Not only is Musk the largest shareholder in both Tesla and SolarCity, the shareholders say, but SolarCity CEO Lyndon Rive and Chief Technology Officer Peter Rive are his cousins, and six of Tesla's seven board members have financial or familial ties to the company.

MOTION-TO-DISMISS RULING

In ruling on the defendants' motion to dismiss, which alleged a failure to show that Musk was a controlling shareholder and thus a potential source of conflict of interest for Tesla's board, the vice chancellor said the decision was "a close call."

His opinion highlighted numerous findings that Musk exerted control over Tesla and its board, such as when the CEO allegedly came back to the directors three times to pitch the SolarCity acquisition even as the alternative energy company's fiscal health declined.

Vice Chancellor Slights said Musk pushed the deal through during the due diligence examination of SolarCity, seeking support from institutional investors and making public statements about the acquisition even as the company's liquidity crisis, problems with facilities and other issues were brought to light.

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Tesla's board did not form a special committee for the transaction and "it is reasonably conceivable that a majority of the five board members who voted to approve the offer and acquisition ... were interested in the acquisition or not independent," the vice chancellor said.

"There were practically no steps taken to separate Musk from the board's consideration of the acquisition," Vice Chancellor Slights wrote.

"Setting aside Musk's and the company's public acknowledgements of Musk's substantial influence ... the pled facts reveal many of the markers that have been important to our courts when determining whether a minority block holder is a controlling stockholder," he said. WJ

Attorneys:
Plaintiffs: Jay W. Eisenhofer and James J. Sabella, Grant & Eisenhofer, Wilmington, DE; Michael Hanrahan, Esquire, Paul A. Fioravanti Jr. and Samuel L. Closic, Prickett, Jones & Elliott, Wilmington, DE; Ned Weinberger, Esquire, Ryan T. Keating and Thomas Curry, Labaton Sucharow LLP, Wilmington, DE; Joel Friedlander and Jeffrey M. Gorris, Friedlander & Gorris, Wilmington, DE; Justin S. Brooks, Guttman, Buschner & Brooks, Wilmington, DE; Randall J. Baron, David T. Wissbroecker and Maxwell R. Huffman, Robbins Geller Rudman & Dowd, San Diego, CA; Lee D. Rudy, Eric L. Zagar, Robin Winchester and Kristen L. Ross, Kessler Topaz Meltzer & Check, Radnor, PA; Mark Lebovitch and Jeroen van Kwawegen, Bernstein Litowitz Berger & Grossmann, New York, NY

Defendants: David E. Ross, Garrett B. Moritz and Benjamin Z. Grossberg, Ross Aronstam & Moritz, Wilmington, DE; William Savitt, Graham W. Meli, Steven Winter and David E. Kirk, Wachtell, Lipton, Rosen & Katz, New York, NY

Related Filings:
Opinion: 2018 WL 1560293

See Document Section B (P. 24) for the opinion.

ATTORNEY FEES

Judge OKs pacts over Ply Gem sale, plaintiffs' fee award

A Delaware Chancery Court judge has approved an agreement by Ply Gem Holdings Inc. to pay lawyer fees for shareholders who recently dropped their challenge to the construction materials company's $2.4 billion go-private sale.

In re Ply Gem Holdings Inc. Stockholder Litigation, No. 2018-0151, 2018 WL 1802717 (Del. Ch. Apr. 10, 2018).

In re Ply Gem Holdings Inc. Stockholder Litigation, No. 2018-0151, 2018 WL 1627224 (Del. Ch. Apr. 3, 2018).

Chancellor Andre G. Bouchard on April 10 ordered Ply Gem to pay $199,000 to two law firms for plaintiff shareholders. A week earlier he approved the plaintiffs' voluntary dismissal of a suit asking him to halt the sale until investors got added disclosures.

Ply Gem, which manufactures windows, siding and other home construction products, is based in North Carolina but chartered in Delaware, where attorneys for shareholders challenging a transaction can seek fees if they win a money judgment or higher price.

But the Chancery Court said in a seminal 2016 decision that it would stop approving lawyer fees when a settlement wins nothing more than additional disclosures about a deal rather than financial benefits. *In re Trulia Inc. Stockholder Litig.*, 129 A.3d 884 (Del. Ch. 2016).

The settlement Chancellor Bouchard approved April 3 involved a deal to dismiss the consolidated suit in exchange for supplemental disclosures about the merger that the plaintiffs said they needed.

One of the plaintiffs' firms, Washington-based Levi & Korsinsky, said in a statement that the parties had agreed to a separate fee request after the settlement of the suit and that the court would not review that agreement other than whether it complied with the requirement of notice to shareholders.

ALLEGED BREACH OF DUTY

The suit resolves a proposed class action filed March 6 by Michelle Miller, who claimed Ply Gem's directors breached their fiduciary duties by failing to disclose key parts of their negotiations with private equity firm Clayton, Dubilier & Rice.

The complaint asked the court to block the sale and order Ply Gem's directors to augment their regulatory disclosures so that investors would have enough information to decide whether to accept CD&R's $21.64-per-share offer.

Miller's suit accused Ply Gem President and CEO Gary E. Robinette, Chairman Frederick J. Iseman, and seven other directors of breaching their duty of loyalty to the shareholders.

A separate lawsuit by shareholder Robert Lowinger, which was consolidated March 19 with Miller's, made similar allegations.

DISCUSSIONS AND SEPARATE PACTS

According to the chancellor's April 3 dismissal order, arm's-length discussions produced an agreement to dismiss the suit in return for additional disclosures, but Ply Gem disputes that those disclosures "contained any new material facts."

Ply Gem also continues to "deny any material misstatements, omissions or wrongdoing of any kind whatsoever," and no compensation of any kind was included in the settlement, the stipulated order said.

Chancellor Bouchard retained jurisdiction over the rest of the attorney fee issue, including a round of briefing scheduled to last until June. But he approved the fee agreement seven days later. WJ

Attorneys:
Plaintiffs: Ryan M. Ernst and David P. Murray, O'Kelly Ernst & Joyce, Wilmington, DE; Donald J. Enright and Elizabeth K. Tripodi, Levi & Korsinsky, Washington, DC

Defendant: Stephen P. Lamb and Daniel A. Mason, Paul, Weiss, Rifkind, Wharton & Garrison, Wilmington, DE; Andrew G. Gordon, Paul, Weiss, Rifkind, Wharton & Garrison, New York, NY

Related Filings:
Fee order: 2018 WL 1802717
Dismissal order: 2018 WL 1627224

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U.S. jury convicts former Autonomy exec of fraud over HP deal

(Reuters) – A U.S. jury on April 30 convicted the former chief financial officer of British software company Autonomy of wire fraud and other crimes related to claims by the government that he inflated the firm's value before its sale to Hewlett Packard, a Justice Department spokesman said.

United States v. Hussein, No. 16-cr-462, verdict returned (N.D. Cal. Apr. 30, 2018).

Federal prosecutors brought criminal conspiracy and wire fraud charges against Sushovan Hussain in 2016, alleging that beginning in 2009, he and others sought to deceive Autonomy's investors and HP about the company's financial condition and prospects for growth.

The scheme had several objectives, an indictment said, including to artificially increase and maintain Autonomy's share price to make the company attractive to potential buyers like HP, which agreed to buy it in 2011 for $11 billion.

Hussain pleaded not guilty, and the trial in San Francisco federal court lasted several weeks.

In a statement, Hussain's attorney John Keker said defense evidence was excluded from the trial that would have shown HP was not misled at all and that they will appeal the verdict.

"Mr. Hussain defrauded no one and acted at all times with the highest standards of honesty, integrity and competence," Keker said, adding: "It is a shame that the United States Department of Justice lent its support to HP's campaign to blame others for its own catastrophic failings."

The Autonomy deal was supposed to form the central part of HP's move into software but instead led the U.S. company a year later to write off three-quarters of Autonomy's value.

Hewlett Packard Enterprise Co. issued a statement April 30 saying it was pleased with the verdict. Hussain misled the market, the company said.

"That Mr. Hussain attempted to depict the fraud as nothing more than a misunderstanding of international accounting rules was, and still remains, patently ridiculous," the company said.

HPE last year completed the spinoff of much of its software business, closing the door on the Autonomy deal. HPE was formed when the company once known as Hewlett-Packard split into HPE and HP Inc. in November 2015. WJ

(Reporting by Dan Levine; editing by Lisa Shumaker)

Feds clear Microchip's $8 billion buyout of Microsemi

By Jeremy Abrams

Semiconductor manufacturer Microchip Technology Inc. said its pending acquisition of rival Microsemi Corp. has secured U.S. antitrust clearance, bringing the transaction a crucial step closer to completion.

Microsemi Corp. Schedule 14A, 2018 WL 01795579 (Apr. 17, 2018).

Microchip said in an April 17 proxy filing that the merger-review waiting period established under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 has expired, removing one potential obstacle to the deal. However, the transaction remains subject to antitrust approval from several foreign countries, including Austria, China, Germany, Japan and Taiwan, the company said.

That the Federal Trade Commission and the Justice Department let the HSR waiting period expire indicates neither agency needed more time to determine if the proposed transaction would violate U.S. antitrust laws. Although the agencies can still challenge the transaction, the odds of an objection on anti-competition grounds drop significantly after the waiting period ends.

Chandler, Arizona-based Microchip makes microcontroller, mixed-signal and analog semiconductors for a broad range of applications.

Microsemi, which is based in Aliso Viejo, California, produces semiconductors and designs systems for companies in the aerospace, defense, communications and data center industries.

The companies announced an agreement in March for Microchip to buy Microsemi for roughly $8.35 billion.

Microchip will pay Microsemi shareholders $68.78 for each of their shares, which represents a 7 percent premium over Microsemi's closing stock price the day before the deal was announced, according to Reuters.

In addition to required regulatory approvals, the transaction is subject to customary closing conditions, including Microsemi shareholders approving the deal, according to the proxy statement.

Microsemi said it expects the acquisition to close in June. WJ

Related Filings:
Schedule 14A: 2018 WL 01795579

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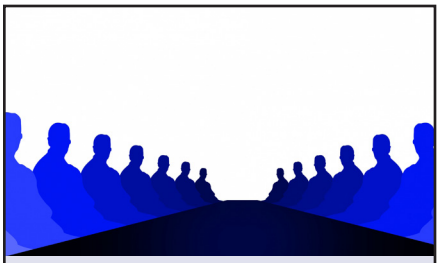

WESTLAW JOURNAL

CORPORATE OFFICERS & DIRECTORS LIABILITY

This publication provides coverage of both federal and state litigation and legislation involving the individual liability of corporate officers and directors and corporate governance issues. It summarizes and provides access to the latest pleadings and opinions in this area of the law. Commentary by key litigators provides perspective and insight. It also discusses director and officer liability insurance, fiduciary duty, corporate governance, shareholder suits, and insider trading

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DOJ requires construction materials firm to divest assets before merger

By Daniel Rice

Road construction materials supplier Martin Marietta Materials Inc. has agreed to sell quarries in Maryland and Georgia to address the Justice Department's antitrust concerns related to its pending $1.6 billion acquisition of rival Bluegrass Materials Co. LLC.

Press Release, Justice Department, Justice Department Requires Martin Marietta to Divest Quarries to Preserve Competition in Connection with its Acquisition of Bluegrass Materials, 2018 WL 1942494 (Apr. 25, 2018).

The DOJ said in an April 25 statement the divestures will preserve competition in the two states for aggregate, a key ingredient for asphalt and ready-mix concrete.

Martin Marietta announced in June 2017 it would acquire Panadero Corp. and Panadero Aggregates Holdings LLC, which together make up Bluegrass Materials, in an all-cash transaction intended to expand the company's asset portfolio.

Raleigh, North Carolina-based Martin Marietta makes cement, asphalt and other building materials. Bluegrass Materials is an aggregate and concrete block producer with headquarters in Jacksonville, Florida, and operations throughout Georgia, Kentucky, Maryland, Pennsylvania, South Carolina and Tennessee.

ANTITRUST REVIEW

The Justice Department has been scrutinizing the proposed merger for several months. Martin Marietta and Bluegrass Materials agreed last year to new timelines for closing their merger to accommodate the DOJ's review, according to an earlier securities filing.

The DOJ and the Maryland attorney general's office filed a lawsuit April 25 to block the transaction in the U.S. District Court for the District of Columbia. *U.S. v. Martin Marietta Materials Inc.*, No. 18-cv-973, *complaint filed* (D.D.C. Apr. 25, 2018).

The suit alleges Martin Marietta and Bluegrass are two of only three aggregate producers in certain areas of Maryland and Georgia qualified by the states' transportation departments.

"The acquisition, as originally proposed, would have left customers in Georgia and Maryland with few competitive choices and given Martin Marietta the ability to increase prices and reduce customer service," Makan Delrahim, head of the DOJ's antitrust division, said in a statement.

The DOJ and the Maryland attorney general's office filed a proposed final judgment outlining the settlement terms and required divestures along with the complaint. If accepted by the court, the settlement will resolve the case.

REQUIRED DIVESTURES

The settlement calls for Martin Marietta to divest Bluegrass Materials' Beaver Creek quarry in Hagerstown, Maryland, to an approved acquirer, according to the proposed final judgment.

The company also agreed to divest its lease for the Forsyth quarry in Suwanee, Georgia, along with the quarry's assets, to Midsouth Paving Inc. or an alternative approved buyer, the judgment said.

The DOJ said it required Martin Marietta to identify a buyer for the Forsyth quarry assets in advance due to the unique nature of the lease.

The settlement is subject to a 60-day comment period, after which the court may approve the proposed final judgment if it finds that the settlement serves the public interest, the DOJ said. WJ

Related Filings:
Justice Department statement: 2018 WL 1942494

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M&A Roundup

Here's a quick overview of key M&A activity reported on the Westlaw Practitioner Insights for Mergers & Acquisitions page during the past month.

ANALYSIS

- After a record first quarter for mergers and acquisitions activity, corporate executives remain optimistic about the global economy and the climate for future deals, according to accounting and corporate advisory firm **Ernst & Young**. Read more: 2018 WL 1937272

DEAL ACTIVITY

- Airplane manufacturer **Boeing Co.** agrees to buy aerospace parts company **KLX Inc.** for $3.2 billion purchase in a deal that prohibits the target from soliciting other offers. Read more: 2018 WL 2051239
- Electric and gas utility **CenterPoint Energy Inc.** says it will purchase energy holding company **Vectren Corp.** in a $6 billion deal requiring the rivals' best efforts to secure regulatory approval. Read more: 2018 WL 1938472
- U.S. health insurer **Cigna Corp.** says it has obtained a $1.5 billion revolving line of credit backed by several lenders to help finance its planned $67 billion purchase of pharmacy benefits manager **Express Scripts Holding Co.** Read more: 2018 WL 1834429
- Casino entertainment company **Eldorado Resorts Inc.** makes plans to purchase **Tropicana Entertainment Inc.**'s gaming and hotel operations in a $1.85 billion multiparty merger that subjects each company to a potential $92.5 million termination fee. Read more: 2018 WL 1864743
- Satellite provider **Globalstar Inc.** says it will merge with landline operator **FiberLight LLC** in a $1.65 billion deal that will create a company with assets across satellite, spectrum, fiber and related technologies. Read more: 4/25/18 REUTERS 15:39:20
- Private equity firm **Hellman & Friedman** plans to buy investment adviser **Financial Engines Inc.** in a deal valued at about $3 billion as digital-based financial advising grows more popular. Read more: 2018 WL 2014562
- **Humana Inc.** teams up with private equity firms **TPG Capital** and **Welsh, Carson, Anderson & Stowe** to buy privately held **Curo Health Services** for about $1.4 billion, in a deal that will create the largest hospice operator in the United States. Read more: 4/23/18 REUTERS 16:38:47
- Jelly giant **J.M. Smucker Co.** agrees to acquire natural pet food company **Ainsworth Pet Nutrition LLC** for $1.9 billion, with both parties promising to cooperate in arranging permanent financing even though the deal is ultimately not subject to a financing contingency. Read more: 2018 WL 1720764
- Energy company **Marathon Petroleum Corp.** announces it will buy rival Andeavor in a $35.6 billion transaction that allows the seller to walk if the IRS does not consider the merger a tax-free reorganization. Read more: 2018 WL 2052826
- Pharma giant **Novartis AG** enters the emerging field of genetic therapies by snapping up **Avexis Inc.**, a provider of gene replacement to treat a rare neurodegenerative disease, for about $8.7 billion in cash. Read more: 2018 WL 1703323
- Luxury hotel management firm **Pebblebrook Hotel Trust** hopes the third time is the charm in its quest to buy rival **LaSalle Hotel Properties**, as it tries to close the deal by nudging up its reportedly "final" offer from $3.6 billion to $3.7 billion. Read more: 2018 WL 1940422
- Major consumer goods conglomerate **Procter & Gamble Co.** expands its lineup by acquiring the consumer health business of German drugmaker **Merck KGaA** for about $4.2 billion. Read more: 2018 WL 1870828
- Lawn and garden products maker **Scotts Miracle-Gro Co.** inks a $450 million asset purchase agreement with garden supply company **Sunlight Supply Inc.** that prohibits Sunlight and its affiliates from poaching employees or competing with Scotts for five years. Read more: 2018 WL 1914119
- **Sears Holding Corp.** appoints a special committee to consider an informal proposal by CEO **Eddie Lampert**'s hedge fund, **ESL Investments Inc.**, to buy the struggling retailer's home improvement and parts businesses for $500 million, and its Kenmore appliances brand for an undetermined amount. Read more: 2018 WL 1937392
- While British regulators evaluate a potential $25 billion merger between U.K. television network **Sky PLC** and **Twenty-First Century Fox Inc.**, cable and internet giant **Comcast Corp.** finds financing for a $31 billion counteroffer for Sky that the target is taking seriously. Read more: 2018 WL 1940423
- Software company **Trimble Inc.** looks to expand its reach into the construction and building industry with its $1.2 billion deal to acquire specialty software developer **Viewpoint Inc.** Read more: 2018 WL 1918523
- Appliance maker **Whirlpool Corp.** says it will sell its compressor business to Japan's **Nidec Corp.** for $1.08 billion as part of a refocusing on consumer products. Read more: 2018 WL 1918521

REGULATORY ACTIVITY

- **Apple Inc.** pauses its plan to buy music identification service **Shazam Entertainment Ltd.** for a purported $400 million after the **European Commission's competition bureau** launches a deeper review of the deal. Read more: 2018 WL 1940421

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- Britain's media secretary will give his verdict on **Rupert Murdoch**'s 18-month pursuit of **Sky PLC** by June 13, potentially paving the way for **Twenty-First Century Fox Inc.** to take on **Comcast Corp.** in Murdock's battle to buy the British TV group for $25 billion. Read more: 5/1/18 REUTERS 14:55:00
- Health insurer **Cigna Corp.** faces a hurdle in its plan to buy the largest U.S. pharmacy benefit manager, **Express Scripts Holding Co.**, as the **U.S. Justice Department** demands more information about the $67 billion deal. Read more: 2018 WL 1918522
- Generic drugmakers **Impax Laboratories Inc.** and **Amneal Pharmaceuticals LLC** say they have received all needed regulatory approvals to complete their $6.4 billion merger after satisfying the **Federal Trade Commission**'s condition that they divest several medications. Read more: 2018 WL 2013208
- Road construction materials supplier **Martin Marietta Materials Inc.** agrees to sell quarries in Maryland and Georgia to address the **U.S. Justice Department**'s antitrust concerns about its pending $1.6 billion acquisition of rival **Bluegrass Materials Co. LLC**. Read more: 2018 WL 1999471
- The **U.S. Justice Department** requests additional information about paper and packaging manufacturer **WestRock Co.**'s pending $4.9 billion acquisition of rival **KapStone Paper & Packaging Corp.**, signaling the government's concern about the transaction's potential effects on competition. Read more: 2018 WL 1834430

Rite Aid

CONTINUED FROM PAGE 1

Privately held Albertsons agreed in February to buy Rite Aid and go public in a deal that allows the drugstore chain's shareholders to choose their form of consideration. For each share they own, Rite Aid investors will receive one-tenth of a share of Albertsons' common stock plus either $0.183 in cash or 0.0079 of a share of Albertsons stock, according to the deal announcement.

VALUATION ISSUES

Albertsons' merger consideration may not be enough, says Aklile, whose lawsuit seeks to highlight the importance of shareholder appraisal rights when a private company is a party to a merger.

Appraisal rights are needed because privately owned companies such as Albertsons are "notoriously difficult to value," the lawsuit says.

Whereas the market values public companies every day, private companies are only valued when they seek to raise money, the complaint says.

A preliminary proxy statement filed April 6 acknowledges the difficulty of valuing Albertsons, according to the lawsuit. The proxy reported that the value of the merger consideration will depend on the price of Albertsons' stock when the merger closes, at which point the combined company will be listed on the New York Stock Exchange.

Before closing, however, there will not be an established price for the Albertsons shares, which are owned by private equity firm Cerberus Capital Management LP, according to the complaint.

Despite this difficulty, Citigroup Global Markets Inc. issued a fairness opinion that implied a value of Albertsons stock between $14.07 and $18.49, the complaint says. Using that price, the .0079 shares of stock Albertsons is offering for each Rite Aid share has an implied value between $0.1111 and $0.146, the suit says.

In *Krieger*, the court ruled the exception to the exception did not apply to shareholders who were given the choice of receiving cash or stock.

Seeking to distinguish *Krieger* from his own case, Aklile alleges Rite Aid shareholders are presented with a "false choice." Whereas the shareholders in *Krieger* were entitled to $385 in cash, an equivalent value in publicly traded shares, or a combination of cash and stock worth $385, the share exchange ratio

Albertsons' merger consideration may not be enough, says the plaintiff, whose lawsuit seeks to highlight the importance of shareholder appraisal rights when a private company is a party to a merger.

KRIEGER DISTINGUISHED

Aklile alleges the companies took advantage of the Delaware Chancery Court's ruling in *Krieger v. Wesco Financial Corp.*, 30 A.3d 54 (Del. Ch. 2011), which allowed merging companies to restrict appraisal rights by giving shareholders a consideration choice of either stock or cash.

Appraisal rights are available to shareholders of a merging company under Section 262 of the Delaware General Corporation Law, Del. Code Ann. tit. 8, § 262, subject to an exception for investors in a company listed on a national exchange or owned by more than 2,000 holders of record.

The statute contains an "exception to the exception," however, that restores appraisal rights to shareholders if they are required to receive certain types of merger consideration.

Albertsons is offering is "locked at 0.0079," the complaint says.

The lawsuit says Rite Aid's directors breached their fiduciary duties by misrepresenting in the proxy statement that appraisal rights are not available to shareholders, when such rights should be available.

The proxy statement is also deficient under Delaware law, the complaint alleges.

The complaint seeks class certification on behalf of all public stockholders of Rite Aid at the time of the proposed transaction. WJ

Attorneys:
Plaintiff: Ralph N. Sianni and Eric M. Andersen, Andersen Sleater Sianni LLC, Wilmington, DE

Related Filings:
Complaint: 2018 WL 1936713
Preliminary proxy: 2018 WL 01652146

See Document Section A (P. 17) for the complaint.

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CASE AND DOCUMENT INDEX

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