Corporate Finance/M&A - USA

Appraisal decisions: deal consideration as fair value

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In recent appraisal actions the Delaware Court of Chancery has shown a willingness to look to deal consideration in arm's-length transactions as the best indicator of fair value, breaking from its tradition of using discounted cash flow to determine a company's value. Two recent decisions confirm this trend, but also show the limitations of the court's willingness to use deal consideration as a value measure.

In *Huff Fund Investment Partnership v CKx, Inc*,(1) a case in which the court had previously ruled that the merger price paid by the acquirer was the best available measure of the target's value, the court held to its ruling and denied motions by both parties to adjust the appraisal determination in light of, among other factors, a post-merger acquisition by the target, unexploited revenue opportunities and certain cost savings realised by the acquirer in taking the target private.

In contrast, in *Laidler v Hesco Bastion Environmental*(2) – a case in which a company's majority shareholder conducted a tender offer and subsequent short-form merger to acquire full control of the company – the court made clear that this same deference will not be afforded to interested transactions and instead fashioned its own calculation of the fair value of the petitioner's shares based on a direct capitalisation of cash flows.

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Endnotes

(1) CA 6844-VCG (Delaware Chancery, May 19 2014).

(2) CA 7561-VCG (Delaware Chancery, May 12 2014).

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