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Delaware Court of Chancery Applies Business Judgment Rule to Going-Private Transaction based on *M&F Worldwide*

In *In re Books-A-Million, Inc. Stockholders Litigation*, the Delaware Court of Chancery dismissed the fiduciary duty claims of former minority stockholders following a going-private, squeeze-out merger because the transaction satisfied the framework to invoke business judgment review as approved by the Delaware Supreme Court in *Kahn v. M&F Worldwide Corp.* (discussed [here](#)). For more, click [here](#).

Delaware Supreme Court Reverses Court of Chancery's Decision to Dismiss Based on Failure to Plead Demand Excusal

In *Sandys v. Pincus*, the Delaware Supreme Court reversed the Delaware Court of Chancery's decision to dismiss a complaint filed by a stockholder of Zynga, Inc. asserting fiduciary duty claims against certain officers and directors of Zynga that challenged Board-approved exceptions to lock-up restrictions on sales of stock by insiders. The Court of Chancery had dismissed the complaint based on the plaintiff's failure to make a pre-suit demand on the board, holding that the requirement to make such a demand was not excused because a majority of the board was independent for purposes of considering the demand. In a 4-1 split decision, the Delaware Supreme Court reversed, holding that the plaintiff had adequately pled that demand was futile because a majority of the board was conflicted for purposes of considering the demand due to certain personal and business relationships of a majority of the directors. For the decision, click [here](#).

Delaware Court of Chancery Holds that *Revlon* and *Unocal* Do Not Apply to Dissolution and that Transaction Was Also Cleansed Under *Corwin*

In *Huff Energy Fund, L.P. v. Gershen*, the Delaware Court of Chancery held that a board's decision to dissolve the corporation was not an "end stage" transaction that implicated the *Revlon* standard of review. Similarly, the court held that review under *Unocal* was not warranted, as there was no evidence indicating that the board adopted the dissolution as a defensive measure, nor did it do so for entrenchment purposes. Finally, the court extended *Corwin v. KKR Financial Holdings, LLC* (discussed [here](#)) beyond the merger and acquisition context to dismiss the challenge to the dissolution, holding that because the stockholders approved the dissolution, the business judgment rule applied to the board's decision to dissolve unless the plaintiffs could plead waste (which the court held it failed to do). For the decision, click [here](#).

Delaware Court of Chancery Applies *Corwin* to Dismiss *Revlon* Claims

In *In re OM Group, Inc. Stockholder Litigation*, the Delaware Court of Chancery held that a stockholder vote on the sale of OM Group, Inc. to a financial buyer was fully informed and uncoerced, and therefore the business judgment rule applied to the board's decision to approve the transaction under *Corwin* in the absence of waste. The plaintiff challenged certain disclosures in the proxy relating to process and conflict issues, arguing that the stockholder vote was not fully informed. The court analyzed and rejected each these claims, however, holding that *Corwin* operated to cleanse the transaction. For the decision, click [here](#).

Delaware Court of Chancery Declines to Issue Summary Judgment Under *Corwin* in Favor of Developing Factual Record on Stockholder Vote

In *In re Comverge Shareholders Litigation*, the Court of Chancery declined to enter summary judgment in favor of the defendants based on *Corwin*, noting that the Court would like a more developed factual record to determine whether stockholders were fully informed in approving the sale of Comverge Inc. to a private equity firm, a transaction that the plaintiffs alleged included unreasonable deal protections. For the decision, click [here](#).

Delaware Court of Chancery Provides Guidance on Fee Awards in Appraisal Actions

In *In re Appraisal of Dell Inc.*, the Delaware Court of Chancery awarded fees to attorneys representing shareholders of Dell, Inc. in an appraisal action relating to the company's 2013 going-private merger. The court held that the approximately \$4 million in advanced expenses and \$4 million in attorneys' fees, which it deemed to be reasonable, should be allocated *pro rata* among the appraisal class. In view of the significant out-of-pocket expenses of the plaintiffs' attorneys, the court determined that deducting reimbursable expenses then awarding a fee based on the net benefit achieved best balanced the interests of the attorneys and the class. The decision will likely provide guidance in determining fee awards in future appraisal actions. For the decision, click [here](#).

Delaware Court of Chancery Invalidates Fee-Shifting Bylaw That Applies to Claims Violating a Valid Forum Selection Clause

In *Solak v. Sarowitz*, the Delaware Court of Chancery invalidated a fee-shifting bylaw that was applicable only to stockholders that violated a valid Delaware forum selection bylaw (i.e., a bylaw requiring reimbursement of the corporation's attorneys' fees and other expenses to dismiss or stay improperly filed lawsuits filed in courts outside of Delaware). The court held that Section 109(b) of the Delaware General Corporation Law prohibited "any provision" that would shift fees and was not limited to a prohibition on fee-shifting in the case of claims filed in Delaware. For the decision, click [here](#).

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M&A Markets

The following issues of M&A at a Glance, our monthly newsletter on trends in the M&A marketplace and the structural and legal issues that arise in M&A transactions, were published this quarter. Each issue can be accessed by clicking on the date of each publication below.

➤ October 2016

➤ November 2016

➤ December 2016

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:



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