The Delaware Court of Chancery

Selected Business Valuation Case Summaries

SELECTED SUMMARIES OF 2020 DECISIONS

Introduction

For nearly 100 years, Duff & Phelps has helped clients make confident decisions in the areas of valuation, disputes, real estate, taxation and transfer pricing, M&A advisory and other corporate transactions. Recently, Duff & Phelps announced the transition of the company name to Kroll. Kroll is the world's premier provider of services and digital products related to governance, risk and transparency. We work with clients across diverse sectors in the areas of valuation, expert services, investigations, cyber security, corporate finance, restructuring, legal and business solutions, data analytics and regulatory compliance. Our firm has nearly 5,000 professionals in 30 countries and territories around the world.

Kroll's experts testify on commercial and shareholder disputes across the country, including in the Delaware Court of Chancery (the "Court" or the "Chancery Court"). The Chancery Court is widely recognized as one of the nation's leading business courts in terms of volume of complex business-related cases. As a result, the Court has developed significant case law in this area.

This high volume of business cases results in the Court issuing numerous opinions, many of which address business and security valuation and economic damages. Despite Court closures and restrictions due to COVID-19, there were numerous opinions issued throughout 2020 related to these topics.

In this Court Case Update, we focus on eight opinions from 2020 to highlight how certain valuation and damages analysis topics are viewed by the Court. In addition, we focus on two Chancery Court decisions that were affirmed by the Delaware Supreme Court (the "Supreme Court") in 2020. In our review of the cases herein, we do not summarize every relevant issue but rather focus primarily on certain topics related to valuation and damages. We recommend that interested readers review the full Court opinions to gain a complete understanding of all the issues addressed and each judge's position. We have included a hyperlink to each decision below its case caption.

In this Court Case Update, we summarize the following cases:

Delaware Court of Chancery

Marion Coster v. UIP Companies, Inc., et al.,
C.A. No. 2018-0440-KSJM (Del. Ch. January 28, 2020)
Vice Chancellor McCormick
Issues: capitalized cash flow method, normalizing adjustments, company-specific risk premium
https://courts.delaware.gov/Opinions/Download.aspx?id=301120

In re: Appraisal of Panera Bread Company,
C.A. No. 2017-0593-MTZ (Del. Ch. January 31, 2020)
Vice Chancellor Zurn
Issues: deal price, synergies, discounted cash flow (DCF) method, guideline companies method, precedent transactions method, terminal value
https://courts.delaware.gov/Opinions/Download.aspx?id=301340

William Richard Kruse v. Synapse Wireless, Inc.,
C.A. No. 12392-VCS (Del. Ch. July 14, 2020)
Vice Chancellor Slights
Issues: discounted cash flow (DCF) method, guideline transactions method, weighted average cost of capital (WACC), terminal value, Gordon Growth model, exit multiple
https://courts.delaware.gov/Opinions/Download.aspx?id=308140

Manichaean Capital, LLC v. SourceHOV Holdings, Inc., C.A. No. 2017-0673-JRS (Del. Ch. January 30, 2020, Order on motion for reargument March 11, 2020)
Vice Chancellor Slights
Issues: discounted cash flow (DCF) method, capital cash flow (CCF) method, adjusted present value (APV) method, projections, beta, restricted stock units (RSUs), size premium
https://courts.delaware.gov/Opinions/Download.aspx?id=301250

James A. Zachman v. Real Time Cloud Services, LLC, et al., C.A. No. 9729-VCG (Del. Ch. March 31, 2020)
Vice Chancellor Glasscock
Issues: income capitalization method, normalizing adjustments, company-specific risk premium, long-term growth rate
https://courts.delaware.gov/Opinions/Download.aspx?id=303640

In re: Happy Child World, Inc., C.A. No. 3402-VCS (Del. Ch. September 29, 2020)
Vice Chancellor Slights
Issues: real estate valuation, capitalization of earnings method, net asset value method, sales comparison method, cost of debt, size premium
https://courts.delaware.gov/Opinions/Download.aspx?id=311340

Delaware Supreme Court

Fir Tree Value Master Fund v. Jarden Corp, (Del. July 9, 2020); Delaware Chancery Court opinion: C.A. No. 12456-VCS (Del. Ch. July 19, 2019, Order on Motion for Reargument September 16, 2019)
Chief Justice Seitz
Justices Valihura, Vaughn, Traynor and Montgomery-Reeves
Issues: unaffected market price, merger price, sale process, synergies
https://courts.delaware.gov/Opinions/Download.aspx?id=307900

Brigade Leveraged Capital Structures Fund Ltd. and Brigade Distressed Value Master Fund Ltd. v. Stillwater Mining Company, (Del. October 12, 2020); Delaware Chancery Court opinion: C.A. No. 2017-0385-JTL (Del. Ch. August 21, 2019, Post-Trial Judgment order September 27, 2019)
Chief Justice Seitz
Justices Vaughn and Montgomery-Reeves
Issues: deal price, sale process, discounted cash flow (DCF) method, unaffected market price
https://courts.delaware.gov/Opinions/Download.aspx?id=311860

CASE SUMMARIES

Marion Coster v. UIP Companies, Inc., et al., C.A. No. 2018-0440-KSJM (Del. Ch. January 28, 2020).

This matter is related to a stock sale of UIP Companies, Inc. (UIP), a closely held private real estate investment services company. The Court determined that the entire fairness standard applied to the stock sale, and ultimately concluded that the "[s]tock [s]ale passes entire fairness review." The Defendants presented a valuation that had been prepared in connection with the stock sale. The Plaintiff did not offer her own valuation and instead presented an expert to "discredit" the Defendants' valuation. The Court noted that the Plaintiff's expert "did not review any materials or evidence in the record other than the [Defendants' valuation] itself."

The Defendants' valuation considered three different valuation approaches but ultimately relied on the capitalized cash flow method under the income approach. The Plaintiff's main criticism of the Defendants' valuation was related to normalizing adjustments, specifically as it related to salary expenses and "sub-market pricing" of certain contracts. As it related to contracts, the Court determined that the Plaintiff "did not demonstrate that the [contracts] were at sub-market prices." As for salary expenses, the Plaintiff argued that they should have been adjusted downward, but the Defendants' appraiser had determined that the salary expenses were not "outside of a reasonable range," based on an analysis of general market trends and interviews with specific companies regarding their compensation practices. The Court determined that "Plaintiff does not present any evidence to discredit the reliability" of the Defendants' appraiser's analysis.

The Plaintiff also disagreed with the Defendants' use of a company-specific risk premium in the cost of equity calculation. As noted by the Court, in past decisions, it "has approached the application of a company-specific risk premium with skepticism." However, in this matter, the Court ultimately found that the Defendants met their burden of showing that a company-specific risk premium was reasonable due to "UIP's unique circumstances as almost wholly dependent on [special purpose entities] and [two key employees] for its revenue." While the Plaintiff's expert criticized other components of the Defendants' cost of equity calculation, including the risk-free rate and equity risk premium, the Plaintiff "abandoned these additional criticisms" by failing to address them in post-trial briefings.

CASE SUMMARIES

In re: Appraisal of Panera Bread Company, C.A. No. 2017-0593-MTZ (Del. Ch. January 31, 2020).

In this appraisal action, the Court relied solely on deal price, giving no weight to any other valuation metric. While the Court found that there were some synergies incorporated into the deal price, which could otherwise have been deducted from the deal price for the purposes of appraisal, the company had prepaid the entire deal price to the Petitioners, and the appraisal statute in Delaware does not provide any recourse for refunds. Therefore, the Petitioners received deal price, unadjusted by synergies, as a result of the appraisal matter.

The Petitioners gave 60% weight to a discounted cash flow analysis, 30% weight to a guideline companies analysis and 10% weight to a precedent transaction analysis, arriving at a fair value per share of $361.00. The Respondent argued that deal price minus synergies should be used, arriving at a fair value per share of $304.44, which was lowered to $293.44 in a post-trial briefing. The Respondent sought a refund for any difference between fair value and its prepayment of $315.00 per share (the deal price).

The Court concluded that "Panera's sale process was sufficiently reliable to make deal price persuasive evidence of fair value," for multiple reasons. First, the Court noted that the parties negotiated in an arm's-length transaction and that the board was independent without any conflicts of interest. Second, the Court noted Panera's "off the charts" transparency and the buyer's access to Panera's confidential information and "extensive public information." Third, the Court noted that the buyer raised their price twice. Fourth, despite a leak during negotiations, no other potential bidders emerged, either after the leak or after the deal announcement. Lastly, the Court relied on Panera's outreach to reach possible buyers." The Court highlighted the board's knowledge of the market, stating that "[t]he preponderance of the evidence shows that the board used its knowledge of the market and its advisors' advice to engage all logical buyers in a value-maximizing process." The Court further concluded that weaknesses pointed to by Petitioners in Panera's process "[did] not undermine the deal price's reliability."

Regarding synergies, there was disagreement regarding whether certain cost savings and tax synergies were merger-specific synergies. The Petitioners argued these synergies were not merger-specific and could have been realized by the company irrespective of the merger. However, the Court found that "Panera's management culture and priorities did not support the changes [the buyer] intended to make." The Court further stated that the "preponderance of the evidence demonstrate[d] that [the buyer] formed its bid in anticipation of applying its management playbook to Panera to generate merger-specific savings." The Court, however, rejected the Respondent's advocacy for revenue synergies, noting that the Respondent's expert did not find any revenue synergies and that the Respondent had failed to prove the amount of its revenue synergies. Deal price minus cost and tax synergies resulted in a price per share of $303.44.

In the DCF analysis, the terminal year calculation was one of the key issues addressed by the Court. The Respondent estimated the terminal year growth rate assuming the company would generate a return on invested capital consistent with its weighted average cost of capital. As a result, the corresponding investment rate used by the Respondent was higher than the investment rate implied by the Petitioners' analysis. The Court found the Respondent's approach reasonable, finding that the Petitioners did not prove their DCF model's reliability, noting that the "primary flaw" was the Petitioners' expert's "concession regarding the investment rate for the terminal period." The Petitioners' expert presented a "corrected" investment rate at trial that differed from the one presented in his report but did not adjust his DCF for the "corrected" investment rate.

The Court also determined that there was not a suitable peer group for a reliable guideline company analysis, noting that neither expert presented a reliable analysis to show a suitable peer group, with each analysis containing "material weaknesses."

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In re: Appraisal of Panera Bread Company, C.A. No. 2017-0593-MTZ (Del. Ch. January 31, 2020).

Similarly, the Court concluded that there were insufficient comparable precedent transactions to generate a reliable valuation metric to use for this method.

Finally, the Court determined that the Respondent was not entitled to a refund of its prepayment, despite concluding on a fair value of $303.44 per share, less than the full deal price of $315.00 per share. While the Respondent sought a refund, the Court noted that the parties did not agree to a clawback provision in the event the Respondent overpaid and that the Respondent cited no support for its request.

CASE SUMMARIES

William Richard Kruse v. Synapse Wireless, Inc., C.A. No. 12392-VCS (Del. Ch. July 14, 2020).

This appraisal action relates to a controlling shareholder's buyout of a private company. In 2016, McWane Inc. ("McWane"), the controlling shareholder of Synapse Wireless, Inc. ("Synapse"), offered the remaining shareholders of Synapse $0.42899 per share to buy them all out. One stockholder, the Petitioner, sought appraisal of his Synapse stock.

Neither party argued that the Court should defer to the deal price, with each party relying on an expert witness to value the Petitioner's Synapse shares. Both experts presented valuations based on DCF analyses, comparable transactions and McWane's prior purchases of Synapse's stock.

In discussing the challenges related to this case, the Court stated:

> "This case presents another, more fundamental challenge; after carefully reviewing the evidence, it is difficult to discern any wholly reliable indicators of Synapse's fair value. There is no reliable market evidence, the comparable transactions analyses both experts utilized—a dicey valuation method in the best of circumstances—have significant flaws and the management projections relied upon by both experts in their DCF valuations are difficult to reconcile with Synapse's operative reality."

The Court noted that despite these challenges, a fair value appraisal must still be determined, and noted that "[i]n this case, one expert credibly made the best of less than perfect data to reach a proportionately reliable conclusion, while the other did not." As a result, the Court adopted one of the DCF valuations proffered by the Respondent, with two "minor adjustments."

The Court rejected the prior company transaction of McWane's purchase of Synapse stock in 2012, noting that the valuation was 4 years old at the time of the 2016 merger, Synapse "faced dramatically different prospects in 2016 than it did in 2012," and by 2016 had demonstrated a "serial inability to meet even conservative financial targets." The Court also noted allegations regarding fraud in the 2012 transactions and determined that the 2012 merger "was either the product of Synapse's officers' misleading inflation of the company's value, or the product of McWane's failure to perform adequate due diligence regarding Synapse's revenue recognition model." The Court also rejected valuations based on McWane's additional purchases of Synapse stock after the 2012 merger, given that the purchases were by the controlling shareholder and involved no robust market check.

Additionally, the Court rejected the parties' comparable transactions analyses, noting that each expert was "able to make well-considered, convincing objections to the other's model that were not effectively rebutted."

Regarding the DCF, the Court largely adopted the Respondent's DCF, which had more conservative projections. In determining a discount rate, the Respondent's expert calculated two WACCs: 12%, based on an average of industry WACCs, and 40%, by adding a premium based on "a startup company's risk of complete failure." The Petitioner's expert used the capital asset pricing model (CAPM) to calculate cost of equity and assumed 100% equity when calculating a WACC of 14.2%. The Court gave no weight to the 40% WACC, noting that McWane had "demonstrated a persistent willingness to provide seemingly unlimited capital financing to Synapse." The Court also rejected the Petitioner's WACC due to its capital structure assumption of 100% equity. The Court noted the difficulty in Petitioner's position that its expert did not provide a calculation of WACC with debt included in the capital structure. As a result, the Court adopted the Respondent's expert's 12% WACC.

The Court also adopted the Respondent's terminal value, using the Gordon Growth model, with a perpetual growth rate of 3.1%. While the Court noted that the Petitioner's use of an exit multiple in calculating terminal value is also a "well-accepted" method, the Petitioner's exit multiple of 21.9x EBITDA resulted in an implied perpetual growth rate of 10%, which the Court noted was "far beyond the conventional limit of the long-term GDP growth rate."

CASE SUMMARIES

Manichaean Capital, LLC v. SourceHOV Holdings, Inc., C.A. No. 2017-0673-JRS (Del. Ch. January 30, 2020, Order on motion for reargument March 11, 2020).

On January 30, 2020, the Court issued an appraisal decision regarding the fair value of SourceHOV Holdings, Inc. ("SourceHOV") in connection with its 2017 merger with Novitex Holding Inc. ("Novitex"), in which SourceHOV and Novitex were merged into Quinpario Acquisition Corp. 2 ("Quinpario"), a NASDAQ-listed special purpose acquisition company (SPAC) that was formed specifically to find a merger opportunity. The Court determined the fair value of SourceHOV's stock at the time of the transaction was $4,591 per share, based on a DCF analysis, which was 10% above the equity value of $4,177.10 implied by the merger consideration.

The Court noted that based on recent guidance from the Delaware Supreme Court, the appraisal analysis typically focuses first on market-based evidence of fair value. However, the parties agreed that market evidence was not useful in this instance because: (i) SourceHOV was privately held and did not have publicly traded stock price data, and (ii) SourceHOV's managers made "no real effort" to run a sale process in advance of the transaction. Further, with both experts agreeing that there were no sufficiently comparable companies or transactions to rely on as indications of value, the experts agreed that the income approach was the most reliable approach to determine the fair value of SourceHOV.

The experts applied three different income approach methods, with the Petitioners' expert basing his conclusion on the DCF method and the capital cash flow (CCF) method, while SourceHOV's expert relied on the adjusted present value (APV) method. The Court explained that the CCF and APV methods can be considered variations of the traditional DCF method, and the Court often used the term "DCF" in the decision to refer generally to the experts' respective income approach methods.

Before addressing certain details of the experts' valuation analyses, the Court provided several reasons why it found the Respondent's presentation "lacked credibility." First, the Respondent disagreed with its own expert over which revenue projections to use and "ultimately separated from its expert with respect to SourceHOV's fair value." Second, the Court concluded that one of the Respondent's key witnesses "simply was not believable." The Court explained that the witness was "not at all forthright in explaining the circumstances surrounding the creation of the 'Backdated Valuation,'" a valuation produced in discovery that indicated it had been created in July 2017 (before the transaction) but that had actually been prepared in January 2018. Finally, the Court criticized the Respondent's expert's "bespoke approach to calculating SourceHOV's beta," which the expert "admitted he had 'not seen' or 'done' before." The Petitioners' expert calculated beta indirectly, based on 19 publicly traded comparable companies, a methodology that the Court described as "generally accepted among valuation experts" and supported in academic literature.

Having rejected the Respondent's position as "generally not credible," the Court turned to the Petitioners' expert's DCF analysis. The Court assessed five areas in which the Respondent criticized the Petitioners' DCF inputs.

First, the Court determined that management's projections for its debt load were realistic and that reliance on those projections was "reasonable and supported by credible evidence."

Second, the Petitioners' expert concluded that the management forecasts for depreciation and amortization were "too high," and made a corresponding "Respondent-friendly adjustment" to the projections, which the Respondent's expert subsequently adopted. While the Respondent put forward criticisms relating to differences between tax basis and book basis calculations, the Court noted that the Petitioners' expert used the same book values that SourceHOV had used in preparing its projections, and it concluded that the Petitioners' expert's projections were the "best-available forecasts."

Third, the Court found the Petitioners' expert's use of March 31, 2017 financial statements was reasonable. The Court explained that while second quarter data "may have existed" before July 12, 2017 (the Valuation Date), that information "was not realistically available" until about a month after the transaction closed.

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Manichaean Capital, LLC v. SourceHOV Holdings, Inc., C.A. No. 2017-0673-JRS (Del. Ch. January 30, 2020, Order on motion for reargument March 11, 2020).

Fourth, the experts disagreed as to whether SourceHOV's restricted stock units (RSUs) should be included in the total outstanding shares (thereby diluting the holdings of existing shareholders). The Petitioners' expert did not include RSUs on the basis that the vesting of the RSUs was "speculative." Citing the amount of company RSUs forfeited historically (both leading up to the transaction and during the three-year period from 2014 to 2016), the Court found the Petitioners' expert's exclusion of RSUs to be "justified."

The only input for which the Court utilized the Respondent's expert's input was in selecting the appropriate size premium. While both experts selected a size premium based on the post-transaction trading price of the combined company, the Respondent's expert utilized a share price from one week after the transaction, which incorporated the market response to certain transaction-related stock redemptions, which the Court concluded was "an outcome that was knowable" before the combination. The Court, therefore, adopted the Respondent's expert's size premium.

Updating the Petitioners' expert's analysis to reflect this modified size premium, the Court found that the fair value of SourceHOV was $4,591 per share. On March 11, 2020, the Court denied the Respondent's motion to recalculate fair value by adding certain "vested" but not yet "settled" RSUs to SourceHOV's share count. The Court denied this motion stating that it made new arguments that SourceHOV "should have raised, at the latest, before post-trial argument."

CASE SUMMARIES

James A. Zachman v. Real Time Cloud Services, LLC, et al., C.A. No. 9729-VCG (Del. Ch. March 31, 2020).

On March 31, 2020, the Court issued a decision regarding the fair value of the Plaintiff James Zachman's ("Zachman") interest in Real Time Data Services, LLC ("Real Time Data" or the "Company"), a company that provides QuickBooks hosting services. The Court explained that the dispute resulted from the inability of the principals of the Company to work together, with Zachman's ownership interest being eliminated through a merger on October 29, 2012 (the "Merger") at "an unfair price following an unfair process." The value assigned to Zachman's interest in connection with the Merger was less than $3,500. At trial, each side offered a valuation expert to opine on the fair value of Zachman's 50% interest in the Company. Ultimately, the Court relied on an income capitalization model to produce an equity value for Real Time Data as of the date of the Merger of $346,000, with Zachman's 50% interest valued at $173,000.

The Defendants' expert based his analysis on financial data provided by Real Time Data and selected a valuation date of October 31, 2012, because it was the closest month-end to the date of the Merger. He considered three potential approaches: the asset-based approach, market approach and income approach (which included the DCF approach and income capitalization approach), ultimately selecting the income capitalization approach. In applying the income capitalization approach, the Defendants' expert applied two adjustments to the Company's trailing 12-month financial information prior to applying a capitalization rate. First, he excluded revenues relating to clients that left the Company between Zachman's termination as a manager on May 16, 2012, and the date of the Merger. The Court explained that by making this adjustment, the Defendants' expert assumed that the Company's loss of customers was permanent and that the Company would grow at a steady rate from its reduced client base as of October 2012. Second, the Defendants' expert adjusted the Company's historical income "as he deemed appropriate" to account for taxes, litigation expenses and the fact that neither Zachman nor Chhabra (the co-managers of Real Time Data) took a salary.

The Court did not provide a detailed discussion of the discount rate but noted that the Defendants' expert included a company-specific risk premium, based on "the volatility caused by Real Time Data's management disputes and Zachman's competition at Cloudvara," a competing company Zachman founded after his departure from Real Time Data. The Defendants' expert concluded that the Company had no real growth potential, and therefore its growth rate should match the inflation rate of 2%. Applying a capitalization rate of 14.25% to his adjusted annualized income resulted in a value for Real Time Data of $265,000 and a value for Zachman's 50% interest in the Company of $132,500.

Zachman's expert based his analysis on financial information that had been "recreated" by Zachman based on "source documents." Zachman's expert did not review the financial data provided by the Company and did not attempt to reconcile the numbers in conducting his analysis. Zachman's expert used the date of Zachman's termination in May 2012 for his valuation date, rather than the date of the Merger in October 2012.

Like the Defendants' expert, Zachman's expert used an income-based approach. However, rather than an income capitalization approach, Zachman's expert performed a valuation using a DCF model. Because the Company did not make projections, Zachman's expert prepared his own projections. He forecasted a 30% growth rate for five years, followed by a terminal growth rate of 5%, based on the Company's 50% year-to-year growth leading up to the Merger. To determine the Company's income, Zachman's expert added back the loss of business related to management disputes and Zachman's solicitations from Cloudvara, "contending that the Company would heal from this temporary disruption and return to normal levels of growth." In determining expenses, he used Zachman's estimates of operating expenses, adjusted for expenses that Zachman's expert "imagined the Company might require in the future as it grew."

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James A. Zachman v. Real Time Cloud Services, LLC, et al., C.A. No. 9729-VCG (Del. Ch. March 31, 2020).

Zachman's expert's DCF model resulted in an equity value for Real Time Data of $3,364,554 at the time of Zachman's termination, and a value for Zachman's 50% interest in the Company of $1,682,000.

In reaching its decision, the Court first determined that the relevant valuation date was October 29, 2012, the date of the Merger in which Zachman's economic interest in the Company was terminated, rather than the date of Zachman's termination in May 2012. The Court explained that Zachman's claim arose at the time his interest in the Company was eliminated, and the measure of Zachman's damages was the value of his interest at that time.

Next, the Court explained that it found the Defendants' expert's report and testimony "more reliable," and therefore used the Defendants' expert's income capitalization model as a starting point for its valuation. The Court's conclusion was based on two factors. First, the Defendants' expert utilized the appropriate valuation date (the date of the Merger). Second, the Court concluded that the financial data used by the Defendants' expert represented "the most reliable indication of the company's value."

The Court found that Zachman "had no credible basis for the financial figures" that he provided to his expert, and the expert's use of those figures was problematic for two reasons. First, Zachman "simply guessed" at the Company's expenses, with the Court finding that Zachman underestimated the expenses by approximately $682,000. Second, the Court found that Zachman inflated the Company's income, and it noted that Zachman was unable to explain why the income he claimed the Company generated was "*significantly* higher than the income [Zachman] reported on his personal tax returns."

The Court made one adjustment to the Defendants' expert's income capitalization model, finding that the long-term growth rate of 2% applied by the Defendants' expert was "unduly conservative." The Court therefore increased the long-term growth rate from 2% to 5% to account for "the Company's early-years hyper-growth." This adjustment resulted in an equity value of $346,000 for Real Time Data and a value of $173,000 for Zachman's 50% interest.

CASE SUMMARIES

In re: Happy Child World, Inc., C.A. No. 3402-VCS *(Del. Ch. September 29, 2020)*

On September 29, 2020, the Court issued a decision resolving a "decade-old dispute between former friends" arising from their failed attempt to own and operate a daycare center in Delaware, Happy Child World, Inc. (HCW or the "Company"). HCW was incorporated in 2002, with the majority owner Boraam Tanyous ("Tanyous") providing the capital and the minority owners Medhat and Mariam Banoub (together the "Banoubs") controlling the day-to-day operations of the daycare.

By 2007, disputes between the parties had emerged, and in 2008, the Court resolved an ownership dispute, ruling that Tanyous was the controlling shareholder, owning 55% of HCW's equity. Following that ruling, the Banoubs left the daycare, leaving Tanyous in control. HCW struggled under Tanyous' leadership, ultimately resulting in the closure of the facility in August 2011 and the subsequent revocation of HCW's operating license by the state in September 2011. Approximately one year later, on August 6, 2012, Tanyous executed a squeeze-out merger (the "Merger"), cancelling the Banoubs' shares in exchange for $8,457.17, the fair value of the Banoubs' ownership interest as determined by a valuation expert retained by Tanyous. The Banoubs declined the merger consideration and exercised their appraisal rights.

This case consolidated the appraisal action and a series of claims and counterclaims, with Tanyous and the Banoubs both asserting claims against the other on behalf of HCW. The approach used by the Court to address the appraisal and the competing claims was to: (i) value HCW, excluding any consideration of the claims asserted against the parties on behalf of the Company; (ii) value HCW's claims against the respective parties; (iii) combine the value of HCW's "non-litigation assets" with the value of HCW's claims against the parties to determine the total fair value of HCW for the appraisal; and (iv) adjust the Banoubs' appraisal recovery to account for their liability to the Company.

Following this process, the Court found the following: (i) the value of HCW as of the Merger (excluding the litigation assets) was $135,961.75; (ii) the Banoubs were liable to HCW in the amount of $62,199.11 (for compensation-related damages and misappropriated funds); and (iii) Tanyous was liable to HCW in the amount of $20,099.19 (relating to several self-dealing transactions), resulting in a total fair value of HCW of $218,260.15. In the end, the Court awarded the Banoubs a total of $36,017.96, reflecting the appraisal award of $98,217.07 (the Banoubs' 45% share of HCW's $218,260.15 fair value), less $62,199.11 (the Banoubs' liability to the Company).

Discussion of the derivative claims is outside the scope of this summary. The valuation of HCW is summarized briefly below.

In addressing the experts' valuations, the Court concluded that Tanyous' expert's valuation analysis and trial testimony were more credible. First, Tanyous' expert correctly performed the analysis as of the date of the Merger, while the Banoubs' expert—"for reasons unclear"—conducted his valuation as of 2008, four years prior to the 2012 Merger.

Further, the Court found Tanyous' expert's approach to valuing HCW's principal asset (its real estate) to be credible, while the Banoubs' expert's valuation approach was not. The Banoubs' expert performed the real estate appraisal himself, "even though he admittedly lack[ed] that expertise," and the Court explained that it had "no confidence" in the three datapoints relied on by the Banoubs' expert in his real estate valuation.

Tanyous' expert, on the other hand, recognized that real estate valuation was not his expertise and therefore relied on an expert real estate appraiser to address the real estate valuation component of the analysis. As a result, the Court generally adopted Tanyous' expert's analysis, with several adjustments.

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In re: Happy Child World, Inc., C.A. No. 3402-VCS *(Del. Ch. September 29, 2020)*

Tanyous' expert based his conclusion of value on an equal weighting of the capitalization of earnings method and the net asset value method. The Court adopted this weighting, explaining that as of the Merger, HCW was no longer operating as a daycare, and that in June 2012, just two months before the Merger, Tanyous had entered into a one-year lease for the real estate before deciding whether to restart the daycare operations. The Court stated that an operating daycare business "would typically merit an income-based valuation approach" but that a "pure leasing business model" would be more appropriately valued under a net asset value approach. Given the uncertainty around the Company's future business model as of the Merger Date, the Court found the equal weighting of the capitalization of earnings and net asset value methods was appropriate.

Tanyous' expert's capitalization of earnings method was based on HCW's debt-free net cash flow for the nine years from 2003 to 2011, when the facility was closed. The Banoubs challenged certain components of the discount rate used in this approach. In particular, the Banoubs argued that the cost of debt should be the mortgage rate of 6.5% and should not include the additional 5% penalty rate imposed by the mortgage lender. However, the Court found that the penalty rate was properly included due to the Company's high leverage and limited operating income. Further, the Banoubs challenged the size premium included in Tanyous' expert's cost of equity calculation, which relied on the *Ibbotson SBBI 2011 Valuation Yearbook* (now published by Kroll), arguing that HCW was "nowhere near" the size of the companies included in that data set. Regarding the size premium, the Court found the Ibbotson data to be the best source available, concluded that the size premium used was reliable, and noted that the Banoubs offered no alternative data set or size premium.

Tanyous' expert's net asset method was based on the value of HCW's real estate, as determined by the separate real estate appraiser, less the fair value of HCW's liabilities. The real estate appraiser used an equal weighting of two separate methodologies to value the HCW's real estate: (i) a sales comparison method, based on sales of similar properties; and (ii) an income capitalization method, which analyzes the income-generating potential of the property. The Court found the real estate expert's work to be credible and made just one adjustment. The real estate expert utilized leases for comparable daycare properties. However, the Court concluded that the one-year lease for the HCW real estate at issue signed in June 2012 (two months prior to the Merger) would provide more reliable inputs to the valuation.

CASE SUMMARIES

Fir Tree Value Master Fund v. Jarden Corp (Del. July 9, 2020)

In July, the Delaware Supreme Court affirmed the Chancery Court's 2019 opinion regarding the appraisal of Jarden Corporation, relying on unaffected market price as fair value. The Supreme Court rejected the Petitioners claim that there was a "long-recognized principle" that "a corporation's unaffected stock price cannot equate to fair value," noting that there is no such "long-recognized principle." The Supreme Court noted that the Chancery Court considered alternative measures of fair value and "ultimately explained its reasons for not relying on that evidence." Lastly, the Supreme Court rejected the Petitioners' argument that Jarden's sale price should act as a valuation floor, given that the Petitioners "successfully convinced" the Chancery Court that a flawed sale process led to the deal price, and that, in this case, there were synergies that were "probably" captured in the merger price. The Supreme Court concluded that the Chancery Court "did not err for failing to treat the deal price as a floor for fair value."

CASE SUMMARIES

Brigade Leveraged Capital Structures Fund Ltd. and Brigade Distressed Value Master Fund Ltd. v. Stillwater Mining Company (Del. October 12, 2020)

On August 21, 2019, the Chancery Court issued a decision in the Stillwater Mining Company ("Stillwater") appraisal matter, finding that the $18.00 per share price paid by Sibanye Gold Limited ("Sibanye") for Stillwater was the best measure of fair value for the company's shares. The Chancery Court concluded that neither the trading price nor the DCF valuations "provided a persuasive indicator of fair value" and found that the deal price was the best measure of fair value for Stillwater's shares. On October 12, 2020, the Delaware Supreme Court affirmed the decision.

In affirming the decision, the Supreme Court addressed the Petitioners' argument that the Chancery Court disregarded the facts of the case and "failed to analyze the sale[] process for Stillwater to determine whether it provided reliable evidence of third-party market valuation." The Supreme Court explained that the Chancery Court had "examined Stillwater's sale process, explained its reasoning, and grounded its conclusions in the relevant facts and law." Further, the Supreme Court noted that in its decision, the Chancery Court "walked through each step of the sale process, found that there were objective indicia of reliability, and addressed each of the Petitioners' arguments concerning alleged defects in the pre- and post-signing phases." The Chancery Court discussed "five key objective indicators" that supported the reliability of the sale process. Despite concluding that these indicators were "fewer indicia of fairness" than those identified in *DFC*, *Dell*, or *Aruba*, the Supreme Court found that the Chancery Court did not abuse its discretion in determining that the objective indicia present provided a "cogent foundation for relying on the deal price."

The Supreme Court also reviewed and discussed the Chancery Court's rejection of the Petitioners' arguments for why the pre-signing process undermined the reliability of the deal price, finding that the Chancery Court did not abuse its discretion in holding that the pre-signing process "was sufficient to support reliance on the deal price." The Supreme Court summarized the Chancery Court's findings that: (i) the flaws in the sale process, including the "suboptimal" executive and board involvement early on, did "not inherently disqualify the sale process from generating reliable evidence of fair value; (ii) although Stillwater's CEO's pursuit of the merger appeared to have been "motivated by his desire to maximize his personal wealth and retire," those personal interests were aligned with stockholders' desire to maximize value and did not undermine the sale process; (iii) while Stillwater's abbreviated pre-signing process was "not ideal," it overall was still "a positive factor for the reliability of the sale process;" and (iv) the negotiations between Stillwater and Sibanye, including Stillwater's two rejections of lower offers by Sibanye provided strong evidence of fair value.

In addition to its discussion of pre-signing considerations, the Supreme Court also reviewed the Petitioners' challenges to the terms of the merger agreement and the board's decisions during the post-signing period, including the Petitioners' argument that an adjustment to the deal price was warranted due to the increase in commodity prices between signing and closing. The Supreme Court referenced the Chancery Court's explanation that the merger agreement was not designed to provide stockholders with potential upside or downside resulting from changes in the price of palladium after signing, but rather provided stockholders with the "comparative certainty" of the $18.00 per share deal price. The Supreme Court further noted that the party seeking an adjustment to the deal price "bears the burden to identify that change and prove the amount to be adjusted" and indicated that no adjustment was made because the Petitioners failed to meet their burden of proof.

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