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The Delaware Court of Chancery

Selected Business Valuation Case Summaries

Selected Summaries of 2023 Decisions

Introduction

Kroll 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.

In this Court case update, we focus on four opinions from 2023 to highlight how certain valuation and damages analysis topics are viewed by the Court. In addition, we note that in August 2023 the Delaware Supreme Court affirmed the 2022 decision In re BGC Partners, Inc. Derivative Litigation, C.A. No. 2018-0722-LWW (Del. Ch. August 19, 2022) (Del. Supr. August 10, 2023).

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

In Re Mindbody, Inc. Stockholder Litigation
C.A. No. 2019-0442-KSJM
(Del. Ch. March 15, 2023)
Chancellor McCormick
Issues: deal price, bid amounts
Click here to view the opinion

NetApp, Inc. v. Albert E. Cinelli, et al.
C.A. No. 2020-1000-LWW
(Del. Ch. August 2, 2023)
Vice Chancellor Will
Issues: damages, synergies, guideline companies method, discounted cash flow (DCF) method
Click here to view the opinion

HBK Master Fund L.P. et al. v. Pivotal Software, Inc.
C.A. No. 2020-0165-KSJM
(Del. Ch. August 14, 2023, corrected March 12, 2024)
Chancellor McCormick
Issues: deal price, unaffected stock price, DCF method, projections, terminal value, discount rate, size premium, guideline companies method, control premium, comparable transactions method
Click here to view the opinion

Gener8, LLC and Symbient Product Development, LLC v. Scott Castanon
C.A. No. 2022-0426-LWW
(Del. Ch. September 29, 2023)
Vice Chancellor Will
Issues: damages, goodwill
Click here to view the opinion

Case Summary

***In Re Mindbody, Inc. Stockholder Litigation*, C.A. No. 2019-0442-KSJM (Del. Ch. March 15, 2023)**

This matter pertains to the 2019 acquisition of Mindbody, Inc. ("Mindbody" or the "Company") by Vista Equity Partners Management, LLC ("Vista") for $36.50 per share (the "Merger"). Entities associated with Luxor Capital Partners, L.P. ("Plaintiffs") owned the second-largest block of Mindbody's stock and filed this action on behalf of a class of Mindbody's stockholders. They claimed that Mindbody's founder, Richard Stollmeyer ("Stollmeyer") and other board members breached their fiduciary obligations in connection with the Merger and that Vista aided and abetted those breaches. Specifically, they claimed that Stollmeyer "pursued a fast sale to Vista to further his personal interests" and, as a result, the process did not achieve a result that falls within the range of reasonableness. Stollmeyer pursued a sale only to Vista under the belief that it would allow him to "gain liquidity" and remain as CEO post-acquisition. Plaintiffs also alleged that Stollmeyer and Vista committed disclosure violations by failing to disclose facts about the sale process. As a remedy, Plaintiffs sought the "lost transaction price that Vista would have paid if the process had not been tilted in its favor." Plaintiffs estimated that figure at $40 per share.

The Court explained that the record in this case demonstrated "Vista had authority to bid up to $40 per share, but that figure was a stretch. Internal Vista communications show[ed] that Vista was prepared to increase its bid to $37.50 per share, and...Vista's modeling demonstrate[d] that a deal at that price remained profitable for Vista." On December 18, 2018, Vista submitted a formal offer to acquire the Company for $35 per share. However, evidence emerged at trial which indicated that on the same day, Vista employees took bets on what price per share Vista would ultimately pay to acquire Mindbody. One bet was for $37.50, with the lowest prediction at $36.50 and the highest prediction at $40.00. The highest prediction by a deal team member was $38.50. In all, over half of the participating employees guessed that the price would be greater than $37.50.

On December 20, Vista increased their offer to $36.50 per share. Vista described this offer as its "best and final," but the decision noted that the evidence showed Vista "could and would [have] gone higher if it had been pressured to do so." On December 23, the Merger agreement was signed.

While both sides engaged experts who testified at trial on valuation, the Court ultimately decided that the evidence demonstrated "that Vista would have paid $37.50 had Stollmeyer not corrupted the process." The Court referenced similarities to Weinberger v. UOP, in which "[t]he facts of that case demonstrated that the acquirer would have paid at least $1 more for the target, and at that price, the transaction still would be profitable for the acquirer. Engaging in a classic exercise of equitable discretion, he awarded nominal damages in the amount of $1 per share." In this matter, the Court stated that internal Vista communications indicated Vista was prepared to increase its bid to $37.50 per share and the most senior person on the deal team predicted the bidding would end at that price. As a result, Plaintiffs were awarded lost transaction damages in the amount of $1 per share.

NetApp, Inc. v. Albert E. Cinelli, et al., C.A. No. 2020-1000-LWW (Del. Ch. August 2, 2023)

The Plaintiff purchased the private company Cloud Jumper on April 17, 2020 (the "Purchase"). The company provides a platform for delivering virtual desktop infrastructure, storage and data management across cloud-based programs.

According to the Court, Cloud Jumper recorded internal software use ("Internal Billings") as revenue in its unaudited financial statements prior to the Purchase. This practice was not disclosed to the Plaintiff prior to the Purchase and was ultimately discovered after closing. The Defendants accepted that Cloud Jumper breached certain representations about its financial condition in the parties' merger agreement, but denied others and insisted that any misrepresentations were inadvertent and that NetApp was not damaged by them. The Plaintiff alleged a breach of contract and fraud.

After trial, the Court ruled in favor of the Plaintiff, ruling that Cloud Jumper breached multiple representations in the merger agreement, including that its financial statements were generally accepted accounting principles (GAAP)-compliant and reflected bona fide transactions. According to the Court, these misstatements amounted to fraud, and the Plaintiff also proved that it was damaged by Cloud Jumper.

The Plaintiff sought to recover damages "based on the stream of future cash flows it expected to generate by acquiring Cloud Jumper." The Plaintiff's expert calculated the Plaintiff's expectations for Cloud Jumper as a unit of NetApp using projected cash flow plus synergistic cash flow. From that number, the Plaintiff's expert subtracted the value of future cash flows that the Plaintiff actually received, adjusting for the Internal Billings.

The Plaintiff's expert employed a three-step approach using a DCF methodology. First, he replicated the Plaintiff's valuation analysis at the time of the deal, coming up with a value greater than the purchase price, in part because of the inclusion of synergies in his analysis. Second, he adjusted the Plaintiff's projections to remove the Internal Billings. Finally, he calculated damages equal to the difference between these estimates on a present value basis, estimating damages of $37.7 million.

The Defendants focused on the diminution in Cloud Jumper's value attributable to the misrepresented revenue. The Defendants' expert compared the purchase price to what he determined to be Cloud Jumper's fair market value as of the closing.

The Defendants' expert arrived at his opinion of fair market value for Cloud Jumper using several methods, including an income approach and a market approach.

The Defendants' expert's income approach used the Plaintiff's standalone DCF model for Cloud Jumper, adjusted to account for the Internal Billings in Cloud Jumper's income statement. The Defendants' expert first lowered projected revenue based on an estimate of the annual Internal Billings. He then adjusted Cloud Jumper's gross margins after removing the Internal Billings.

The Defendants' expert's market approach valued Cloud Jumper based on the guideline public companies and guideline transactions methods. He identified several public companies and transactions in relevant industries, from which he calculated median multiples of enterprise value to revenue. The Defendants' expert determined value through these methods by applying the median revenue multiple he calculated for each industry to Cloud Jumper's respective revenue streams.

The Defendants' expert weighted his conclusion of value toward the market approach over the income approach. He then calculated the difference between the purchase price and his estimate of the fair market value of Cloud Jumper.

In reviewing the analyses, the Court commented that, while the Plaintiff's expert's approach was "facially appealing," the Court could not accept the Plaintiff's expert's analysis for two reasons. First, the record lacked "any tangible facts to support a

reasonable inference that [the Plaintiff] would have achieved the theoretical synergies it projected." The Court noted that NetApp's financial due diligence report referred to "aggressive [s]ynergies modeled in the financial DCF valuation" and indicated that NetApp's revenue team did not evaluate whether the "synergies made any sense." The Court noted that that the Plaintiff's expert did not test the synergy calculations or opine on their reasonableness. Second, the Plaintiff's estimate was "not limited to the harm proximately caused by Cloud Jumper's fraud and breaches of contract." The Court stated that the Plaintiff's expert's damages estimate would "deliver a windfall" to the Plaintiff.

The Court disagreed with the Plaintiff that a DCF analysis was the only way to evaluate the misrepresented revenue's effect on the Plaintiff's expectations for the combined entity, noting that contemporaneous documents showed the Plaintiff "viewed market multiples as a more accurate measure of value for a startup like Cloud Jumper than a DCF method."

The Court found that the Defendants' expert's use of a revenue multiple was appropriate. The Court stated that a company like Cloud Jumper that experienced negative earnings during its early operational stages "can have positive market value where investors believe it will achieve earnings and cash flow in the future."

Further, the Court found that the Defendants' expert met his burden of showing that the guideline companies considered in the analysis were appropriate comparable companies for Cloud Jumper. The Court noted that, while the guideline companies were "substantially larger than Cloud Jumper and (unlike Cloud Jumper) [had] generated EBITDA...perfect comparables do not exist," noting that the gross profit margins and growth percentages of the companies were "sufficiently in line with Cloud Jumper's."

Ultimately, the Court ruled total damages to the Plaintiff to be $4,598,978, based on the purchase price ($35 million) minus the value of Cloud Jumper using the Defendants' expert's guideline public companies analysis ($30,401,022).

HBK Master Fund L.P. et al. v. Pivotal Software, Inc., C.A. No. 2020-0165-KSJM (Del. Ch. August 14, 2023, corrected March 12, 2024)

This appraisal matter relates to the acquisition of Pivotal Software, Inc. ("Pivotal") by its controlling shareholder, VMware, Inc. ("VMware" or "Respondent"). On December 30, 2019, VMware acquired Pivotal for $15 per share for Class A shares and an exchange of Pivotal Class B common stock held by Dell Technologies ("Dell") at a ratio of 0.0550 shares of VMware Class B stock per share of Pivotal Class B stock, resulting in a blended price of $11.71 per share. Former Class A shareholders exercised their appraisal rights.

The Petitioners argued that the fair value was $20 per share, relying on a comparable companies analysis and a comparable transactions analysis. The Petitioners' expert also conducted a DCF analysis as a cross-check. The Respondent arrived at a fair value of $12.17 per share using two DCF analyses to arrive at a per-share value on August 14, 2019, then adjusting this figure using an events study to capture changes in the market between then and the valuation date of December 30, 2019. The Respondent also argued that the deal price of $15 should be a cap on fair value and pointed to the unaffected stock price of $8.30 per share as a cross-check. The Court ultimately found the fair value to be $15.44 per share by applying equal weights to adjusted versions of the Petitioners' comparable companies analysis and the Respondent's DCF analysis.

The Court stated that the Respondent's argument about deal price being a ceiling "raises an interesting question about deal primacy under Delaware law—namely, whether the appraisal statute requires deference to the deal price in controller squeeze-outs conditioned on MFW protections."

The Court stated that the short answer is no, and the "slightly longer answer is that even as the court independently measures going concern value, companies remain incentivized to deploy strong procedural protections for minority stockholders, as those protections can help reduce

exposure to liability in appraisal actions, and they did to a degree in this action."

Fair Value

In discussing the various valuation approaches, the Court stated that while the Delaware Supreme Court has declined to adopt any one valuation methodology over another, recent Delaware court decisions "suggest a pecking order of methodologies for determining fair value." The Court stated that market evidence should be the starting point, with deal price minus synergies as "'first among equals.'" The Court then addressed unaffected stock price, DCF analyses and finally, comparable companies and comparable transactions analyses.

Market-Based Indicators

The Respondent proposed deal price as a valuation metric and argued that the deal price was the result of an objectively reliable process given that the deal value of $15 per share exceeded the fair value. The Respondent did not use deal price to set a precise fair value but argued that the $15 per share deal price provided a cap on fair value because the transaction was subject to MFW protections. The Respondent also noted a second market-based indicator, the unaffected stock price of $8.30 per share, to affirm its position. Based on the DCF analysis performed by the Respondent's expert, the Respondent contended that the fair value was $12.17 per share.

The Petitioners disputed giving market-based indicators presumptive weight in an appraisal of a controller squeeze-out, even where the transaction is subject to MFW. The Court concluded the following:

Deal Price

The Court noted that there is no presumption in favor of deal price and that, while an analysis of deal price is fact-specific, there are certain "'objective indicia'" of reliability of merger price reflected in the fact-patterns of recent cases. The non-exhaustive list includes: (i) whether the buyer was an unaffiliated third party; (ii) whether the seller's board labored under any conflicts of interest; (iii) the existence of robust public information about a company's value; (iv) whether the bidder conducted diligence to obtain non-public information about the company's value; (v) whether the parties engaged in negotiations over the price; and (vi) whether the merger agreement was sufficiently open to permit bidders to emerge during the post-signing phase. However, the Court also noted that this list does not "map neatly onto a controller squeeze-out." The Court noted that Delaware Supreme Court decisions that adopted deal price as a valuation metric involved a third-party deal subject to unhindered, informed and competitive market valuation and that "no appraisal decision of a Delaware court has given weight to deal price when determining fair value in the context of a controller squeeze-out, which lack the necessary competitive dynamics that render deal price reliable." As a result, the Court ruled that the deal price did not establish a cap on fair value.

Unaffected Stock Price

The Court highlighted two "significant factors [that] undermine the reliability" of the stock price on August 14, 2019: (i) the market price did not incorporate certain material, non-public information and (ii) the "presence of a controlling stockholder provides reason to be skeptical of arguments touting market efficiency." As such, the Court viewed Pivotal's unaffected stock price as a "context clue" but not an independent determinant of fair value.

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DCF Analysis

Discount Rate

The Respondent's expert performed two DCF analyses using different discount rates: a low-end weighted average cost of capital (WACC) of 7.69% and a high-end WACC of 8.97%. The high-end WACC was determined by adding a size premium of 1.28% to the low-end WACC. All other DCF inputs were identical, resulting in share prices of $13.83 and $11.87, respectively, with a midpoint and resulting fair value of $12.85 per share. The Respondent's expert then adjusted the midpoint using an events study to account for changes in market value between the merger announcement date and the appraisal date and arrived at a value of $12.17 per share. While the Petitioners did not dispute the discount rates or the approach of averaging the two DCFs, the Court rejected the high-end WACC DCF that applied a size premium. The Court suggested a "cautious approach to size premia," noting that while a size premium may be appropriate in certain scenarios, the proponent of the size premium bears the burden of proving the factual basis for applying one. The Court noted that, in this case, the Respondent "did not make such a showing, and the use of conservative free cash flow estimates appears to address any idiosyncratic growth-related risks not captured by beta."

Free Cash Flow

The Petitioners instead attacked the Respondent's expert's free cash flow and terminal value, arguing that the management projections used were unreliable. Although the Petitioners' expert also performed a DCF analysis, it was used as a cross-check for his comparable companies analysis and was not presented as a reliable indication of fair value.

The Court concluded that the management projections used in the Respondent's DCF were (i) not prepared in the ordinary course and (ii) conservative and useful only with adjustments for their conservative skew. The Court concluded that it was reasonable to use the management projections as a basis for the cash flow projections as both Pivotal's financial advisor and the Respondent's expert did. In addition, disregarding the management forecast would leave only the Petitioners' expert's forecast, which the Court determined to be speculative and "seem[ed] to reflect hindsight bias."

The Court ultimately used the Respondent's expert's cash flows as a basis for a DCF but made adjustments to the DCF analysis to rectify the conservative skew and arrive at its own estimate of free cash flow.

Terminal Value

The Court also rejected the Respondent's method to calculate terminal value, which implemented an effective 0% perpetuity growth rate in the terminal period. The Court also rejected the Petitioners' 5% perpetuity growth rate as overly optimistic, noting that it was above the upper bound of U.S. growth forecasts. The Court selected the midpoint between the Respondent's and the Petitioners' proposed perpetuity growth rates to arrive at a growth rate of 2.5%.

Market Adjustment

The Court rejected the Respondent's market adjustment intended to account for "market and industry factors" between August 14, 2019, the DCF valuation date, and December 30, 2019, the closing date. The Court noted that the market indices upon which the Respondent's expert relied reflected market growth between these dates, but his analysis resulted in Pivotal's stock price declining without explanation, and therefore the Court disregarded this adjustment as unreliable. Instead, the Court adjusted the stub period factor in the first year of the DCF.

Accounting for the Court's adjustments, the adjusted Respondent's DCF analysis resulted in a fair value of $16.13 per share

Comparable Companies Analysis

The Petitioners suggested the Court base fair value conclusions on revenue multiples from comparable companies and precedent transactions. This approach resulted in a fair value of $20 per share. The Court determined that the Petitioners' precedent transaction analysis was unreliable but the comparable company analysis was reliable with adjustments.

The Petitioners' expert used revenue multiples for comparable publicly traded companies to determine fair value. The Respondent argued that the Petitioners' analysis selected companies that were not truly comparable to Pivotal and, as a result, the analysis was flawed.

Revenue Multiple

The Petitioners' expert selected an enterprise value to revenue multiple, using both latest twelve months (LTM) and next twelve months (NTM) revenues. The Respondent did not challenge his ratio selection, and the Court determined that it was appropriate to use both LTM and NTM ratios, thereby incorporating both historical data and projections.

To derive his NTM estimate, the Petitioners' expert did not use Pivotal's projections and instead used data from Capital IQ. The Respondent did not challenge the decision to use market data and the Court found it reasonable.

Comparable Companies

The Petitioners' expert selected eight companies and excluded services companies. The Court adjusted the comparables set to include services companies and used a weighted revenue multiplier that applied 75% and 25% weights to comparable software companies and services companies, respectively. The Respondent criticized that several of the selected companies had significantly higher or lower market capitalizations than Pivotal, as well as the wide disparity of multiples for the companies. The Court, however, made no adjustment for market capitalization, citing that the inclusion of these companies reflected comparable levels of maturity with Pivotal and more holistically accounted for market-wide growth trends. Additionally, the Court noted that the weighted multiple and use of the median rather than the mean alleviated the disparity concerns. With the Court's adjustments, the comparable company analysis yielded a fair value of $14.75 per share.

Control Premium

The Court dismissed the Petitioners' request to add a control premium to their comparable companies approach, citing the Jarden and Aruba Delaware Supreme Court decisions. The Court stated that "[t]aken together, Jarden and Aruba implicitly (i) reject the notion that markets generally discount value for lack of control; and (ii) state that control premia are synergies, so even if there is an inherent discount, the control differential should not get priced into going concern value." The Court noted that both cases "avoided far-sweeping statements to this effect" and that a minority discount/control premium may still be a useful tool in some circumstances, including when a court uses a controlled company's stock price as a basis for its valuation. The Court also noted "measurement-related issues" with the Petitioners' expert's estimate of a control premium. Specifically, the Court stated that the selected control premium, which was based on the media premia of 10 precedent transactions of companies deemed to be comparable to Pivotal, "ignores other synergies that are likely included within the deal premia he sampled." While the Petitioners' expert testified that, based on his review of analyst reports and proxy statements, there were not a lot of synergies, the Court referred to this testimony as "effectively a gut-check," noting that the "litigation context of his testimony undermines his credibility on this point." The Court also stated that the Petitioners' expert erred by applying the control premium at the end of his comparable companies analysis, after accounting for non-stock assets, artificially magnifying the effect of the minority discount.

Comparable Transactions Analysis

The Court viewed many of the transactions selected by the Petitioners' expert as dissimilar, and after culling out the dissimilar firms, the Court was left with four companies. The Court rejected this approach, stating that (i) a sample of four transactions is too short and is "unlikely to represent industry standards effectively," and (ii) generating a revenue multiple from these specific four companies over-weighs one part of Pivotal's business.

Conclusion

The Court calculated DCF and comparable company values of $16.13 and $14.75 per share, respectively. Attributing equal weight to the DCF and comparable company analysis, the Court concluded on a fair value of $15.44 per share.

The Court initially issued its decision on August 14, 2023, and concluded on a fair value of $14.83 per share, based on DCF and comparable company values of $14.91 and $1.75, respectively, but issued a corrected decision on March 12, 2024, fixing a math error in the DCF analysis.

Gener8, LLC and Symbient Product Development, LLC v. Scott Castanon, C.A. No. 2022-0426- LWW (Del. Ch. September 29, 2023)

This is a breach of contract matter related to non-compete and non-solicitation clauses in a purchase agreement. Scott Castanon ("Defendant") founded Symbient Product Development, LLC ("Symbient") in 2004 and served as its CEO until May 2021. In February 2020, Gener8, LLC ("Gener8"), another player in the same industry, acquired Symbient. The Defendant received $9.15 million in cash and 2,932,961 rollover units in the new company, valued at $5.25 million, for the Defendant's interests in Symbient. The purchase agreement between Gener8 and Symbient included a covenant prohibiting the Defendant from competing with and soliciting employees or customers from Symbient for five years.

In July 2021, the Defendant's stepson, James Isaacs, a Symbient employee until he left in October 2021, founded Protoshop, to which Defendant is alleged to have provided substantial help. Isaacs solicited multiple Symbient employees to join Protoshop, with one employee joining Protoshop. The Plaintiffs filed claims for breach of contract. While the Defendant's "central defense" was that Protoshop is not a competitor, this was disproven at trial and the Court entered judgment for the Plaintiffs on their breach of contract claims.

The Decision ruled on both sanctions and breach of contract. This summary focuses on damages related to the breach of contract claim.

The Plaintiffs sought at least $7.4 million in disgorgement based on the sale of Symbient to Gener8 or, alternatively, compensatory damages of $2.3 million. The Plaintiffs also sought repayment of attorney fees and injunctive relief to require the Defendant to abide by the restrictive covenants of the purchase agreement.

The Plaintiffs argued that damages were "shown by the valuation of Symbient performed by KPMG for the $14.4 million acquisition." The Plaintiffs' theory was that Castanon's breach of his

restrictive covenants "destroyed the goodwill and growth" that Gener8 paid to acquire. The Court found that this approach was "deeply flawed" and "untethered from the harm caused by Castanon's beaches of his covenants." The Court stated that the Plaintiffs did not argue that the Defendant was unjustly enriched through the sale of Symbient, noting that the transaction was not the "underlying wrong" at issue in this case. The Court stated that awarding damages on this basis, particularly while the Plaintiffs retain the assets and upside, would result in a "windfall exceeding the relevant expectations."

Even if such an approach were appropriate, the Court was critical of the Plaintiffs' damages methodology. The Plaintiffs sought to recover approximately $7.4 million, comprised of $9.6 million "for the value of goodwill," prorated by the time Castanon complied with his restrictive covenants (14 of 60 months, or 23.3%). The Plaintiffs based their calculation on a purchase price allocation that KPMG LLP performed for Gener8's acquisition of Symbient. While the purchase price allocation allocated $9,657,000 to "Goodwill," the Defendant's expert explained at trial that the purchase price allocation's goodwill estimate is simply "the difference between the purchase price and all th[e] assets [KPMG] identified." This remedy was rejected by the Court.

Alternatively, the Plaintiffs sought expectation damages in the form of lost profits between $1,529,146 and $2,333,067, derived from two different components: "Fee Damages" and "Customer Retention Damages."

The Court rejected the Plaintiffs' expert's analysis for several reasons. First, the Fee Damages were found to be speculative. The Plaintiffs' expert estimated Fee Damages to be the "result of Symbient's 'lost opportunity to deploy' the 'services' of 'Solicited Employees' and 'earn profits on the associated fees and materials revenues.'" The "keystone" of the analysis was that Symbient was "supply constrained" and would have had more business during the Fee Damages period but for the loss of the solicited employees. However, the Plaintiffs' expert did not identify a single job that was rejected due to insufficient staff, nor were any mitigation efforts considered. The Court noted that the calculation of lost profit damages should be offset by a plaintiff's actions to overcome harm caused by the defendant. While the Plaintiffs' expert accepted the assumption that Symbient could not have replaced the solicited employees, the Court stated that the evidence indicated that Symbient managed to replace each of the solicited employees with internal promotions or new hires.

The Plaintiffs' expert's calculation of Customer Retention Damages was deemed equally conclusory, as it included no backup for the conclusion that each employee's departure "reduce[d] the pool of repeat customers on which future fee volumes depend." The Plaintiffs' expert applied an attrition rate to forecast the reduction in repeat customer contracting in the period after the Fee Damages accrued. However, the Court determined there was no reliable evidence suggesting that the departures affected Symbient's ability to retain customers, and the Plaintiffs' damages calculations were determined to be unreliable.

Instead, the Court accepted the Defendant's expert's view of damages based on the lost value of Symbient's workforce. This damages amount was derived from KPMG's purchase price allocation analysis of the assembly costs for Symbient's workforce by employee category and totaled $104,345.

The Court also ruled in favor of the Plaintiffs' request for injunctive relief and compensation for Plaintiffs' attorney fees and costs.

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