

Delaware Supreme Court Ruling in Aruba Completes a Trilogy of Decisions Emphasizing Arm's-Length Merger Price in Determining Fair Value

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A significant contribution to Delaware appraisal jurisprudence, the Delaware Supreme Court's reversal of the Court of Chancery's ruling in *Verition Partners v. Aruba Networks* is the third Supreme Court decision in the last two years to rely on the negotiated merger consideration in determining a company's fair value.

Court of Chancery's Initial Opinion

The Court of Chancery had relied on Aruba's 30-day unaffected stock price in its opinion, finding the fair value of Aruba's stock to be \$17.13 per share at the time of its acquisition merger. This was a steep discount to the merger price of \$24.67 per share of Aruba stock. The trial court noted that the petitioners were not entitled to share in either element of value because both "aris[e] from the accomplishment or expectation of the merger" under Delaware General Corporation Law § 262.

Thus, the court had declined to base its fair value calculation on a deal-price-less-synergies analysis due to difficulties with quantifying and allocating synergies attributable to the merger. The court also noted the uncertainties associated with calculating and subtracting any potential synergies relating to a reduction in agency costs attributable to the aggregation of 100% ownership in Aruba's acquirer. The petitioner ultimately appealed the trial court's ruling to the Delaware Supreme Court. The parties presented oral argument, with McCarter's Michael P. Kelly arguing for Aruba.

Supreme Court's Ruling

Resolving the appeal in a unanimous decision, the Delaware Supreme Court reversed the Court of Chancery, finding that the lower court had abused its discretion by relying on the 30-day unaffected market price of Aruba's stock before the transaction was publicly announced.

Consistent with its two groundbreaking rulings in *Dell Inc. v. Magnetar Global Event Driven Master Fund Ltd.* and *DFC Global Corporation v. Muirfield Value Partners L.P.* in 2017, the Supreme Court found the fair value of Aruba's stock to be \$19.10 per share based on a calculation of merger price minus synergies realized in

the merger. The Supreme Court rejected the trial court's theory that the merger would reduce agency costs through a consolidation of ownership and control. The court explained that "unlike a private equity deal, the merger at issue in this case would not replace Aruba's public stockholders with a concentrated group of owners; rather, it would swap out one set of public stockholders for another: HP's."

Key Takeaways

Aruba completes a trilogy of Supreme Court precedents relying on the negotiated merger consideration, less synergies attributable to the merger, in determining fair value. *Aruba* will likely reduce the volume of appraisal arbitrage in Delaware. Notably, however, the merger price in the three opinions was found to be the product of arm's-length negotiation. Merger price will not likely serve as the basis for a fair value determination in transactions where conflicts of interest on the part of directors, financial advisors, or significant stockholders undermine the quality of a company's sales process.