

# 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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## Delaware Law Update

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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 arbitration 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.