Delaware Supreme Court Remains Committed to Precedent and the Importance of Process in Appraisal Actions

Related People:
Matthew J. Rifino

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In the appeal of an appraisal decision—*Bridge Leveraged Cap. Structures Fund Ltd., et al. v. Stillwater Mining Co.*, Case No. 427, 2019 (Del. Oct. 12, 2020), Montgomery-Reeves, J.—the Delaware Supreme Court approved the Delaware Court of Chancery's reliance on the sale price as the most reliable indicator of a company's value. The court's decision is the latest ruling in a series of rulings by the Delaware Supreme Court concerning the criteria for evaluating the reliability of the sale process as persuasive evidence of share value. Once again, the court placed a premium on the process by which the sale was negotiated and accepted.

In *Bridge Leveraged Cap. Structures Fund Ltd.*, the board of directors for the Stillwater Mining Company (SWC) expressed concern with the long-term prognosis for the palladium and platinum markets, and authorized its CEO to inquire into "various strategic alternatives." SWC's chief executive met with Sibanye Gold Ltd. unbeknownst to the SWC board. During this meeting, Sibanye was informed that any offer must include a significant cash component and reflect a share premium. Several months later, Sibanye expressed a non-binding interest in acquiring SWC at $15.75 per share. Although negotiations with Sibanye progressed, the SWC board instructed firm management to expand its search. Afraid that its CEO intended to rush the sale process for personal reasons, SWC retained a law firm to evaluate potential conflicts of interest, a second law firm to provide legal services concerning a potential transaction, and an investment banker to conduct an assessment of the market. Sibanye subsequently increased its offer to $17.50-$17.75 per share. Although its internal discounted cash flow model valued the company between $10.78 and $14.14 per share, the SWC board rejected Sibanye's revised offer. Sibanye then made its final offer of $18 per share, which the SWC board accepted based on an analysis of its investment banker. Following SWC's acceptance, the price of palladium increased. Despite the increase in SWC's value, 75 percent of its shareholders approved the transaction.

Several dissenting shareholders exercised their statutory right to an appraisal. In an appraisal action, the court must determine the fair value of a company's shares arising from "the accomplishment or expectation of [a] merger[,]" in which the court must assess the company as a going concern as of the closing date of the merger. At trial, the petitioning shareholders attacked the sale process.

Based on the evidence, which is explained in greater detail here, the Delaware Court of Chancery concluded that the sale process was reliable and the sale price was the best indication of SWC share value. The Delaware Supreme Court agreed.

Delaware courts consider certain criteria in determining whether the sale process provides evidence of fair value, which would permit a court to assess whether the sale process is fair, open, and informed. Where the sale process bears sufficient evidence of reliability, the Delaware Supreme Court has explained that the courts should defer to the sale price. In this case, both the Delaware Court of Chancery and the Delaware Supreme Court concluded that the sale process was indicative of a fair price, and that the merger was an arm's-length transaction with a third party; Sibanye conducted due diligence; SWC's board did not possess any conflicts; SWC negotiated multiple increases in the bid price; and there were no other bidders. Although the SWC board was unaware of its CEO's conduct during the initial stages of the negotiation, this fact did not undermine the entire process or overshadow other events, which demonstrated the reliability of the process and the sale price.

This case reflects the Delaware Supreme Court's commitment to precedent, an emphasis on process, and the importance of evaluating a transaction as a whole. While certain events did cast doubt on the sale process, the courts addressed these events, among other factors, in its analysis. The courts were ultimately persuaded that events other than the motivation of the SWC CEO rendered the process reliable in concluding that the sale price was fair. Companies, professionals, and shareholders alike should consider the criteria set forth in this opinion when evaluating the process by which a sale is negotiated and approved.