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Stillwater Mining Appraisal Opinion Lands on Merger Price as the Best Indicator of Fair Value in a Single-Bidder Process

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Delaware Law Update

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The Delaware Court of Chancery has ruled in *In re Appraisal of Stillwater Mining Company* that the per share price paid for Stillwater Mining Co. ("Stillwater" or the "Company") was the best measure of the fair value of the Company's shares. This is consistent with the Delaware courts' trend toward crediting the market when valuing companies that are acquired through arm's-length transactions that display certain "indicia" of fairness.

Case Background

At the time of its merger with Sibanye Gold Limited., Stillwater was engaged in the business of developing, extracting, processing, smelting, and refining of platinum group metals from an orebody known as the J-M Reef. Stillwater and Sibanye negotiated an agreement and plan of merger pursuant to which each share of Stillwater common stock was converted to a right to receive $18.00.

Competing Valuation Methodologies

Consistent with typical appraisal petitioner practice, the petitioners relied on the discounted cash flow methodology ("DCF") in arguing that the fair value of Stillwater was $25.91 per share. The Company relied on a combination of metrics, including the deal price, Stillwater's unaffected trading price with an adjustment for a valuation increase between the unaffected date and closing, and an expert valuation based on a DCF model to arrive at its own below-deal price value of $17.63.

The court rejected both sides' DCF analyses, explaining that "the resulting valuation swings were too great for this decision to rely on a model when a market-tested indicator is available." However, the Company convinced the Court that "the sale process was sufficiently reliable to make the deal price a persuasive indicator of fair value." Though the Company argued for a discount from the transaction price "to account for value arising from the merger," the Company "failed to prove that an adjustment was warranted."

Notably, although the court did not rely on Stillwater's trading price, it did not rule trading price out as a viable metric. Vice Chancellor Laster explained that "[t]he evidence demonstrated that Stillwater's trading price could provide a persuasive indicator of value."

Notable Precedents

In reaching its fair value conclusion, the court relied heavily on recent appraisal precedents from the Delaware Supreme Court: *Dell Inc. v. Magnetar Global Event Driven Master Fund Ltd* (*Dell*), *DFC Global Corporation v. Muirfield Value Partners L.P.* (*DFC*), and *Verition P'rs Master Fund Ltd. v.Aruba Networks, Inc.* (*Aruba*).[1] As Vice Chancellor Laster recognized, "the persuasiveness of the deal price depends on the reliability of the sale process that generated it." Accordingly, the court explained that "[t]he decisions in *DCF*, *Dell,* and *Aruba* are highly informative because they analyze fact patterns in which the Delaware Supreme Court viewed the sale processes as sufficiently reliable to use the deal price as (1) the exclusive basis for its own fair value determination (*Aruba*), (2) as a valuation indicator that "deserved heavy, if not dispositive weight" (*Dell*), or (3) as a valuation indicator that provided "the best evidence of fair value" (*DFC*).

Analyzing those precedents, the *Stillwater* court found it notable that:

- No competing bidders emerged during the post-signing phase despite the lack of preclusive deal-protective devices,
- The merger was arm's length without the presence of a controlling stockholder,
- Six of Stillwater's seven directors were disinterested, outside directors with the ability to say "no" to any deal ,
- Sibanye conducted extensive due diligence, which included receipt of confidential company information, and
- Stillwater negotiated and obtained multiple price increases.

The Court concluded that, although the sales process was "not perfect," these "objective indicia" of fairness "provide[d] a cogent foundation for relying on the deal price as a persuasive indicator of fair value."

Court of Chancery Decision

The court grappled with the reliability of Stillwater's sale process involving a single-bidder strategy, no pre-signing outreach, and a passive post-signing market check, noting that the Delaware Supreme Court had not yet had a chance to address that specific fact pattern. Instead, the Court analogized to *Aruba*, in which "the dynamics of the sale during the pre-closing phase resembled a single-bidder strategy." In *Aruba*, the Supreme Court found the deal price reliable evidence of fair value, emphasizing that "a failure of competition does not result simply because a limited number of parties bid, 'or even just one bids.'"

Accordingly, Vice Chancellor Laster concluded that even though Stillwater had pursued a single-bidder strategy with Sibanye before signing the merger agreement, the deal price "provide[d] persuasive evidence of fair value because the merger agreement was sufficiently open to permit a meaningful post-signing market check." The court explained that "[i]t is theoretically possible that a more thorough pre-signing process or more vigorous negotiations might have generated a higher transaction price for Stillwater's stockholders, but the issue in an appraisal 'is not whether a negotiator has extracted the highest possible bid.'"

Takeaways

The court's opinion in *Stillwater* is consistent with the Delaware courts' trend toward crediting the market when it comes to valuing companies that are acquired through arm's-length transactions with certain "indicia" of fairness. Vice Chancellor Laster's ruling should serve to caution petitioners: "Given the arm's-length nature of the merger, the premium over market, and the substance of what took place during the sale process, it is not possible to say that an award at the deal price would result in the petitioners being exploited."

Update

In the appeal of an appraisal decision in this case, the Delaware Supreme Court has approved the Delaware Court of Chancery's reliance on the per-share sale price as the most reliable indicator of Stillwater Mining Co.'s value as of the transaction date.

[1] McCarter & English LLP represented the respondent in *Aruba*. The parties presented oral arguments to the Delaware Supreme Court on March 27, 2019, with McCarter's Michael P. Kelly arguing for Aruba.