McCarter & English

Trial Win Sets Precedent for Valuation in M&A Transactions

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McCarter team Mike Kelly, Steven Wood and Andrew Dupre prevailed in a trial that will have far-reaching implications for how Delaware companies should be valued in a M&A transaction. We represented HP, Inc., in a valuation case brought by hedge funds Verition Partners Master Fund Ltd. and Verition Multi-Strategy Master Fund Ltd. Verition bought over 2 million shares of Aruba Networks after HP had announced it was going to purchase Aruba. Verition disputed the $24.67 per share valuation of the stock at the deal's closing and filed an appraisal proceeding, arguing that the fair value was $32.57 according to its expert. After hearing the evidence presented at trial and reviewing extensive post-trial briefing, Vice Chancellor J. Travis Laster accepted our argument that great weight should be given to the 30-day market price of its stock at the time of the merger. His conclusion valued the shares at $17.13, representing an $18 million loss for Verition.

This ruling took into account two recent Delaware Supreme Court opinions, *Dell* and *DFC*. Together the three rulings set the standard that the unaffected market price of a company and the deal price of a merger should be given great weight when determining the "fair value" of shares in the context of an M&A transaction. This will likely reduce the cost of M&A deals, as public companies should now give less weight to a "judicial tax" to cover appraisal litigation that dissenting shareholders might bring.

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