Number of Shareholder Appraisal Petitions in Delaware Continues Downward Trend in 2018

Cornerstone Research report finds substantial variation in awards from the 34 cases that went to trial between 2006 and 2018.

BOSTON (PRWEB) February 13, 2019 -- The number of appraisal petitions filed in the Delaware Court of Chancery continued to fall in 2018. Appraisal petitions, in which shareholders challenge the deal prices in proposed acquisitions, have been steadily declining since peaking in 2016, according to a new report issued today by Cornerstone Research.

The inaugural edition of Appraisal Litigation in Delaware—Trends in Petitions and Opinions, 2006–2018, shows that shareholders filed 26 appraisal petitions in the Court of Chancery in 2018, a 57 percent decrease from 2017 and down significantly from the high of 76 actions in 2016.

In the 34 appraisal cases that went to trial during the 13-year period, there has been considerable variation in the Court of Chancery and Delaware Supreme Court opinions. Premiums to deal price awarded ranged from negative 57 percent to positive 158 percent. Several recent decisions, including In Re: Appraisal of Dell Inc. and In Re: Verition Partners Master Fund Ltd. et al. v. Aruba Networks Inc., have highlighted judicial concerns about the quality of the sales process and the appropriate methodologies used to evaluate fair value.

“Our findings show that the Delaware courts place a strong emphasis on whether the merger was the product of a robust, arms-length sales process,” said David Marcus, a Cornerstone Research senior vice president who coauthored the report. “For transactions in which the target company was allowed to solicit competing bids, the average premium to the deal price awarded was 1 percent.”

Cornerstone Research vice president and coauthor Frank Schneider added, “The use of market prices of shares over deal prices in recent decisions appears to have affected the methodologies used to determine a deal’s fair value. We expect the Delaware courts will provide more clarity on these issues in 2019 and beyond.”

Key Trends
- The top 10 petitioner­s—largely hedge funds and private equity firms—accounted for more than half of the 433 petitions between 2006 and 2018. Many were represented by the same law firm repeatedly.
- The top 10 petitioner law firms were involved in 98 percent of all petitions between 2006 and 2018. The top 10 respondent firms were involved in 77 percent of all petitions over the same period.
- Between 2006 and 2017, the Delaware courts relied heavily upon discounted cash flow (DCF) analyses and the deal price to determine fair value.
- The opinions of the Delaware courts were almost evenly split between awards above the deal price and awards at or below the deal price.
- The typical case took over two years between the filing of the petition and the start of the trial, and the average time from trial to the Delaware Courts’ issuance of the initial opinion was almost eight months.

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