



## Court Holds Merger Price Is Reliable Indicator of Fair Value

Posted by William Savitt, Wachtell, Lipton, Rosen & Katz, on Tuesday November 5, 2013

**Editor's Note:** [William Savitt](#) is a partner in the Litigation Department of Wachtell, Lipton, Rosen & Katz. This post is based on a Wachtell Lipton firm memorandum by Mr. Savitt and [David E. Shapiro](#). This post is part of the [Delaware law series](#), which is cosponsored by the Forum and Corporation Service Company; links to other posts in the series are available [here](#).

In a thoughtful and well-reasoned decision, the Delaware Court of Chancery held last week that the merger price produced by a “thorough, effective” sales process, “free from any spectre of self-interest or disloyalty,” can be the most reliable indicator of the value of shares in an appraisal proceeding. [Huff Fund Investment Partnership v. CKx, Inc., No. 6844-VCG \(Del. Ch. Nov 1, 2013\)](#).

CKx was a publicly traded corporation with interests in iconic entertainment properties, including the *American Idol* television show, Elvis Presley Enterprises, and Muhammad Ali Enterprises. In 2011, following an attempted go-private transaction and faced with uncertainty related to the network renewal of *American Idol*, CKx received several unsolicited bids to purchase the Company for cash. The CKx board retained an independent financial advisor and conducted an expedited process to explore a sale of the Company. Interested bidders were given three weeks to conduct diligence and negotiate a transaction. The Company ultimately received an offer of \$5.50 per share from Apollo and an offer of \$5.60 from a competing private equity firm. The \$5.60 bid, while nominally higher, was not supported by financing commitments and the bidder refused to provide documentation that would have allowed CKx to verify its representations as to financing. In light of the uncertainty surrounding the \$5.60 bid, CKx accepted the offer from Apollo notwithstanding its nominally lower purchase price.

After the merger closed, a large stockholder challenged the transaction and exercised its rights under Section 262 of the Delaware General Corporation Law to seek an appraisal of its shares. The Court of Chancery conducted a three-day trial, received expert testimony, post-trial briefing and post-trial oral arguments. In determining the appraised value, the Court reviewed all relevant factors and determined that DCF analyses, comparable companies analyses and comparable

transaction analyses were in this case either unreliable or unavailable given the uncertainties surrounding the *American Idol* renewal negotiations. The court determined that the arms-length sale price—exclusive of synergies—generated by the conflict-free auction was the most relevant indicator of value.

The CKx case reaffirms that a board can conduct a thorough and effective process in a compressed period of time and that accepting the nominally highest price is not always required or in the best interests of shareholders. The decision is also a reminder to stockholders considering appraisal that such actions carry significant risk that after costly litigation they may be left with nothing more (or even potentially less) than the deal consideration.