

October 9, 2015

Court of Chancery Casts Further Doubt on Disclosure-Only Settlement Structure

In recent months, the Delaware Court of Chancery has shown increasing concern about the frequency of merger-related stockholder litigation and, in a [series of rulings](#), has called into question the practice of settling such lawsuits through supplemental disclosure. This morning, the Court of Chancery flatly refused to approve such a settlement and dismissed the case entirely. *In re Aruba Networks Inc. Stockholders Litig.*, C.A. No. 10765-VCL (Del. Ch. Oct. 9, 2015).

As has become typical upon the announcement of public company deals, stockholder plaintiffs filed multiple class action lawsuits challenging H.P.'s proposed \$2.7 billion acquisition of Aruba Networks. Following some discovery, the plaintiffs agreed to settle their claims and provide a broad release of liability in exchange for additional disclosure about the transaction. Defendants also agreed to pay plaintiffs' counsel fees of nearly \$400,000. Vice Chancellor Laster refused to approve the settlement or the fees. He noted that the "sue-on-every-deal phenomenon" has become a "real systemic problem" and created a "misshapen legal regime." The Court also expressed concern that the proposed release might extend to claims that the plaintiffs had not fully investigated. In several similar situations, the Court of Chancery had approved a proposed settlement notwithstanding its misgivings based on the parties' reasonable reliance on past practice or, alternatively, allowed parties to reconsider the terms of their settlements in light of a provisional rejection. But Vice Chancellor Laster noted that he had "been giving these [cases] a hard look for a while now" and concluded that the settlement presented should be rejected and the case dismissed.

The *Aruba* ruling confirms that the ground rules for settling merger cases remains in flux. We expect that courts will continue to review proposed settlements on a case-by-case basis and approve them in appropriate circumstances, but the trend suggests increasing judicial skepticism of disclosure-only settlements. To the extent the flood of M&A litigation continues, deal lawyers will need to consider alternative solutions, likely including more motions to dismiss and other active adversarial early-stage litigation practice.

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