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# Court of Chancery Again Looks to Merger Price in Appraisal Ruling

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**Editor's Note:** Theodore N. Mirvis is a partner in the Litigation Department at Wachtell, Lipton, Rosen & Katz. The following post is based on a Wachtell Lipton memorandum by Mr. Mirvis, William Savitt, and Ryan A. McLeod. 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.

The Delaware Court of Chancery this week held that the "fair value" payable in a statutory appraisal proceeding was less than the merger price. *LongPath Capital, LLC v. Ramtron Int'l Corp.*, C.A. No. 8094-VCP (Del. Ch. June 30, 2015). The decision adds to a growing body of Delaware case law confirming the importance of the market in establishing fair value in the context of increasingly frequent (and increasingly economically significant) "appraisal arbitrage" litigation.

The case arose from Cypress Semiconductor Corp.'s hostile bid for Ramtron in 2012. In response to the bid, Ramtron tested the market but no other buyers emerged. Ramtron eventually agreed to be acquired by Cypress for $3.10 per share, a substantial premium to the stock's trading price. After the merger was announced, LongPath, a hedge fund in the business of buying appraisal claims, acquired almost 500,000 shares of Ramtron, with the purpose of bringing an appraisal action.

At trial, LongPath relied on an expert discounted cash flow analysis based on management projections to argue that the fair value of Ramtron's stock was $4.96 per share. The Court rejected petitioner's claim, finding that the management projections were unreliable. Equally important, the Court expressed skepticism regarding expert-fueled valuation claims, noting that "[m]uch has been said of litigation-driven valuations, none of it favorable," and observed that valuation far above the deal price "would be a significant market failure." Refusing to credit a claim premised on such an unexplained market failure, Vice Chancellor Parsons noted that "in the situation of a proper transactional process likely to have resulted in an accurate valuation of an acquired corporation, this Court has looked to the merger price as evidence of fair value and, on occasion, given that metric one hundred percent weight." The Court added that nothing in the case law "hold[s] that a multi-bidder auction … is a prerequisite to finding that the merger price is a reliable indicator of fair value." The Court thus looked to the merger price to derive fair value, and because petitioner conceded synergies of $.03 per share, it was awarded just $3.07—three cents less than the price received by stockholders who accepted the merger consideration.

The decision builds on recent appraisal rulings according substantial weight to the merger price. And as a rare example of a Delaware appraisal award of less than the deal price, the decision

suggests that there can be downside risk as well as opportunistic upside for funds that buy appraisal claims. But this salutary trend in the case law does not eliminate the mischief of appraisal arbitrage. Arbitrageurs continue to benefit from a high rate of statutory interest (even where, as here, the merger price exceeded fair value) and continue to exploit the asymmetry in financial risk and litigation costs that benefit petitioners over respondents. Statutory reform to curb the purchase of appraisal claims should remain a priority.