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Delaware Court of Chancery Addresses Multi-Forum Deal Litigation

That litigation follows in the wake of a deal's announcement is nothing new. But participants in the M&A markets are still grappling with the increasingly prevalent trend of multiple shareholder actions challenging the same deal in different courts. The Delaware Court of Chancery recently endorsed a pragmatic solution to this endemic problem. [*In re Allion Healthcare Inc. S'holders Litig.*, C.A. No. 5022-CC \(Del. Ch. Mar. 29, 2011\)](#).

The case involved a going-private transaction in which Allion Healthcare's controlling shareholders, in concert with a private investment firm, bought out the company's unaffiliated shareholders. As has become customary, multiple lawsuits challenging the deal were filed in Delaware (Allion's state of incorporation) and New York (Allion's principal place of business). The various plaintiffs declined to coordinate their efforts and the actions proceeded in both jurisdictions. Preliminary injunction proceedings were scheduled in both jurisdictions and then resolved through supplemental disclosures in Allion's proxy statement. Following the close of the transaction, both sets of plaintiffs filed amended complaints and the defendants engaged in settlement discussions with the Delaware plaintiffs, which ultimately yielded a settlement based on an increase in the merger consideration. The settlement, including an award of fees for the plaintiffs' lawyers, was then approved in the Delaware court over the objection of the New York plaintiffs. When the Delaware and New York plaintiffs' groups were unable to agree on an allocation of fees, the Court was forced to resolve the issue.

In so doing, Chancellor Chandler observed the "increasingly problematic" "fallout" of multi-forum deal litigation—a trend [we have warned of before](#). The Chancellor recognized the unfairness of forcing defendants "to litigate the same case—often identical claims—in multiple courts," noted the resulting waste of judicial resources, and cautioned of the potential confusion and full faith and credit problems that could stem from different outcomes in different jurisdictions. The Chancellor made clear that his "preferred approach" is an innovation this Firm developed several years ago in response to the multi-forum litigation problem: identical motions simultaneously filed in each venue "asking the judges in each jurisdiction to confer with one another and agree upon where the case should go forward." The Chancellor explained that this method "has worked for [him] in every instance when it was tried."

In *Allion*, the Chancellor awarded the New York plaintiffs half the fees associated with the supplemental disclosures, but no fees in connection with the price bump obtained in the settlement, signaling his view that obstructionist behavior will not be rewarded. More broadly, *Allion* indicates that the Delaware courts will apply their practical wisdom to combat the untenable burdens imposed by multi-forum deal litigation and remain receptive to new approaches to harmonize conflicting and duplicative merger litigation.

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