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Delaware Court of Chancery Provides New Guidance on Merger Litigation Settlements

In an opinion last week, the Delaware Court of Chancery rejected a disclosure-only settlement of a putative stockholder class-action lawsuit challenging a merger. *In re Trulia, Inc. Stockholder Litig.*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016). Continuing and perhaps completing its recent reevaluation of merger litigation settlement practice, the Court made clear that it "will be increasingly vigilant in scrutinizing" such settlements in the future and that disclosure claims should be litigated (if at all) outside the settlement context.

The rejected settlement of the case challenging the stock-for-stock transaction between Trulia and Zillow provided for supplemental disclosures in exchange for what the Chancellor called "an extremely broad release" of all known and unknown claims "relating in any conceivable way to the transaction." The Court found that the supplemental information provided, which consisted of additional details concerning the financial analysis of the selling board's advisors, was not "material or even helpful to Trulia's stockholders."

In refusing to approve the settlement, the Court noted the "current ubiquity of deal litigation" and the "proliferation of disclosure settlements." Because such settlements "rarely yield genuine benefits for stockholders," the Court held that its "historical predisposition toward approving disclosure settlements needs to be reexamined." The Court concluded that claims challenging the adequacy of disclosures should generally "occur in an adversarial process," and not in the context of a settlement. Disclosure-only settlements are now "disfavor[ed]," the Chancellor ruled, and unlikely to be approved absent a "plainly material misrepresentation or omission" and a narrowly tailored release of claims.

The *Trulia* decision appears to mark a significant evolution in merger litigation practice in Delaware. The Court coupled its rejection of the disclosure-only settlement with the observation that fiduciary claims challenging mergers now "may be amenable to dismissal," and its recognition that the Court would treat motions to dismiss deal claims with "special care" because "the risk of strike suits means that too much turns on the mere survival of the complaint." Under *Trulia*, disclosure claims quibbling about marginal immaterial omissions in merger proxies can no longer be resolved on a class basis at all, let alone in exchange for broad releases. They should not be able to justify expedited discovery of directors or survive a motion to dismiss either, as the decided cases increasingly recognize.

In time, the *Trulia* decision should help stanch the overflow of deal litigation. But as we have previously noted, deal lawyers and transaction planners should be ready to beat back fiduciary claims on the merits until the tide of opportunistic merger litigation recedes.

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