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Delaware High Court to Address Propriety of Trading Price as Proxy for Fair Value in Aruba Appraisal

In May 2015, Hewlett-Packard Company purchased Aruba Networks Inc. (“Aruba”) in a deal that paid Aruba’s stockholders \$24.67 in cash per share. Verition Partners Master Fund Ltd. and Verition Multi-Strategy Master Fund Ltd. (together, “Verition”) commenced an action in Delaware’s Court of Chancery in August 2015 seeking an appraisal of the fair value of their Aruba shares pursuant to Delaware General Corporate Law Section 262.

Court of Chancery’s Initial Opinion

After a three-day trial and multiple rounds of post-trial briefing following the Delaware Supreme Court’s decisions in *DFC Glob. Corp. v. Muirfield Value Partners, L.P.*, and *Dell, Inc. v. Magnetar Glob. Event Driven Master Fund Ltd*, Vice Chancellor Travis J. Laster issued a 129-page opinion determining the fair value of Aruba’s stock to be equal to its 30-day average unaffected trading price of \$17.13 per share. Vice Chancellor Laster further supported his \$17.13 per share fair value determination in a 51-page memorandum opinion denying Verition’s re-argument request.

Notably, the *Aruba* decision was the first time that the Court of Chancery awarded trading price as fair value in an appraisal action since the comprehensive revision and adoption of the Delaware General Corporate Law in 1967.

Verition’s Appeal

Verition ultimately appealed the Vice Chancellor’s ruling to the Delaware Supreme Court. On March 27, 2019, the parties presented oral argument, with McCarter’s Michael Kelly arguing for Aruba. Verition argued that Vice Chancellor Laster committed legal error when rejecting its discounted cash flow valuation of \$32.57 per share and determining the fair value of Aruba’s stock to be equal to its trading price.

Aruba argued that Vice Chancellor Laster’s \$17.13 fair value determination should be affirmed given the standard of review, the evidence presented at trial, and the Delaware Supreme Court’s *DFC* and *Dell* decisions. The parties anticipate a ruling from the high court within the next 90 days.

To see the entire oral argument, please click this link: <https://livestream.com/accounts/5969852/events/8614787/videos/189217237/player>

If you have any questions about these topics, please contact a member of the Delaware Corporate and Alternative Entity Law Group linked [here](#), or your lawyer at McCarter & English, LLP.