Fair Price for Delaware Fiduciary Actions Can Exceed Appraisal Fair Value

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Can fiduciaries of Delaware corporations breach their duties and face damages for a merger that provides stockholders with the equivalent of fair value in a judicial appraisal? The answer, which may surprise some, is yes. On March 1, 2021, the Delaware Court of Chancery issued an opinion, *In re Columbia Pipeline Group, Inc. Merger Litigation,* 2021 WL 772562 (Del. Ch. Mar. 1, 2021) (the "2021 Decision") that expressly stated that breaches of fiduciary duty can lead to damages that exceed appraisal fair value.

Background

It has long been accepted that Delaware courts use the same valuation methodologies to determine fair value in a judicial appraisal and fair price in a fiduciary duty action.[1] There is no real debate that, "in general, the techniques used to determine the fairness of price in a non-appraisal stockholder's suit are the same as those used in appraisal proceedings." *Gesoff v. IIC Industries, Inc.*, 902 A.2d 1130, 1153, n.127 (Del. Ch. 2006). However, the precise relationship between fair price in a fiduciary duty action and fair value in a related appraisal action is often unclear.

"The element of fair price . . . relates closely to the determination of fair value under the Delaware appraisal statute." *In re Sunbelt Beverage Corp. S'holder Litig.*, 2010 WL 26539, at *5 (Del. Ch. Jan. 5, 2010). The similarities between fair price and fair value have led some to equate them, subject to the caveat that (1) fair price is part of a standard of review based on a *range* of potentially fair prices, while (2) appraisal fair value is a remedial calculation that requires the court to determine value to the nearest cent.[2] This assumption is debatable, as fair price arguably may take into account stockholder-level discounts that would be improper in an appraisal

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[1] Lawrence A. Hamermesh and Michael L. Wachter, "Rationalizing Appraisal Standards in Compulsory Buyouts," 50 *B.C. L. Rev.* 1021, 1030 (2009), citing *Rosenblatt v. Getty Oil Co.*, 493 A.2d 929, 940 (Del. 1985).

[2] *E.g., Reis v. Hazelett Strip-Casting Corp.*, 28 A.3d 442, 461, 466 (Del. Ch. 2011); Hamermesh at 1030.

proceeding.[3] In any event, precedent demonstrates that the precise relationship between appraisal fair value and the measure of damages in a related fiduciary duty action depends on the facts and circumstances of each case.

The fact that appraisal fair value is greater than deal price does not mean that a breach of fiduciary duty occurred. In the well-known *Technicolor* matter, the Delaware Supreme Court determined that appraisal fair value was $28.41 per share, even though it previously had affirmed the Court of Chancery's ruling in a fiduciary duty case that the $23 per share transaction price was entirely fair.[4] In a 2014 summary judgment opinion, the Court of Chancery held that defendants potentially could demonstrate that a merger was entirely fair, even though a prior appraisal decision had concluded that fair value was more than twice the merger price. *In re Orchard Enters., Inc. S'holder Litig.*, 88 A.3d 1, 30 (Del. Ch. 2014).

Despite the high-profile *Technicolor* exception, Delaware courts often find that mergers at less than appraisal value are unfair for fiduciary duty purposes and base damages on the equivalent of appraisal fair value.[5] Even if the merger price arguably falls within the low end of the fair price range, the Court of Chancery will not hesitate to award stockholders a "fairer price" if the record shows that conflicted fiduciaries structured the transaction,[6] which may be based on appraisal fair value. *Reis* at 468.

But what about a merger that provides stockholders with the equivalent of appraisal fair value? Can fiduciaries face liability and damages in this scenario? The answer is yes.

Delaware courts apply the principle that, "[o]nce a breach of duty is established, uncertainties in awarding damages are generally resolved against the wrongdoer." *In re Dole Food Co., Inc. S'holder Litig.*, 2015 WL 5052214, at *44 (Del. Ch. Aug. 27, 2015). Some jurisdictions refer to this principle as the "wrongdoer rule."[7] Moreover, "Delaware law dictates that the scope of recovery for a breach of the duty of loyalty is not to be determined narrowly." *Dole* at *44.

The 2021 Decision

Delaware courts are almost never required to rely on the differences between fair price and fair value in resolving related fiduciary duty and appraisal actions, since they routinely coordinate these actions for discovery and trial purposes. "The Delaware Supreme Court has instructed that when a merger gives rise to both a plenary action for breach of fiduciary duty and a statutory appraisal proceeding, the court should rule on the plenary claims first, because a finding of liability and the resultant remedy could moot the appraisal proceeding."[8] Accordingly, a ruling in

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[3] *E.g.*, *Basho Techs. Holdco B, LLC v. Georgetown Basho Invs., LLC*, 2018 WL 3326693, at *44-45 (Del. Ch. July 6, 2018); *Union Illinois v. Korte*, 2001 WL 1526303, at *7 (Del. Ch. Nov. 28, 2001).

[4] *Compare Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1156, 1176-77 (Del. 1995), *with Cede & Co. v. Technicolor, Inc.*, 884 A.2d 26, 41 (Del. 2005). Notably, the fiduciary duty decision relied on prior management's business plan and the subsequent appraisal relied on new management's business plan.

[5] *E.g.*, *Gesoff* at 1167; *In re PNB Holding Co. S'holders Litig.*, 2006 WL 2403999, at *33 (Del. Ch. Aug. 18, 2006); *In re Emerging Commc'ns, Inc. S'holders Litig.*, 2004 WL 1305745, at *43 (Del. Ch. May 3, 2004).

[6] *E.g.*, *Reis* at 467; *ACP Master, Ltd. v. Sprint Corp.*, 2017 WL 3421142, at *19 (Del. Ch. July 21, 2017), *aff'd*, 184 A.3d 1291 (Del. 2018); *Basho* at *37.

[7] *E.g.*, *Great Am. Opportunities, Inc. v. Cherrydale Fundraising, LLC*, 2010 WL 338219, at *23 n.270 (Del. Ch. Jan. 29, 2010) (citing decisions applying wrongdoer rule).

[8] *Dole* at *25. Following the issuance of the fiduciary duty opinion in *Dole*, the Dole appraisal petitioners entered into a confidential settlement with Dole to resolve their appraisal claims.

the fiduciary duty action typically accompanies or precedes the fair value determination in the related appraisal.[9] Because appraisal petitioners are also members of the putative class in the related fiduciary duty action, the most logical response for appraisal petitioners is to accept the damages ruling in the fiduciary duty case and take advantage of whatever effect the wrongdoer rule had in increasing damages.[10]

Vice Chancellor J. Travis Laster's opinion in the 2021 Decision is a notable exception: he denies a motion to dismiss breach of fiduciary duty claims based on the principle that fair price for fiduciary duty purposes may exceed appraisal fair value. Due to the unusual procedural posture of the litigation, V.C. Laster issued the 2021 Decision 18 months after his final ruling in the related appraisal proceeding.[11]

In the 2021 Decision, V.C. Laster distinguishes between appraisal fair value, which is based on the going-concern value of the company as a standalone entity, and fair price in a fiduciary duty case, which considers whether breaches of fiduciary duty prevented the corporation from negotiating a better price.

> [T]he Appraisal Decision addressed a narrow question: the fair value of the Company as a standalone entity operating as a going concern. The Appraisal Decision held that the sale process was sufficiently reliable that the deal price provided a sound indication of the Company's standalone value. The Appraisal Decision did not determine whether [CEO] Skaggs and [CFO] Smith breached their fiduciary duties, nor did it address the claim that the Company could have obtained a higher deal price from TransCanada or from a competing bidder if Skaggs and Smith had not acted as they did.
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> 2021 Decision at *2.

The 2021 Decision illustrates that, under current Delaware law, fair price in a fiduciary action may be less than, equal to, or higher than appraisal fair value.

Background of Columbia Merger

Prior to 2015, Columbia was a wholly-owned subsidiary of NiSource, Inc., a publicly traded utility company. Robert Skaggs, Jr. was the CEO of NiSource and Stephen Smith was its CFO. Both had informed NiSource's Board of their intent to retire in 2016. In December 2014, Skaggs and Smith both left NiSource and took the same positions at the subsidiary, which was spun off in an IPO in July 2015. Each had a change-in-control agreement (golden parachute) that paid out triple the sum of his base salary and target annual bonus if he retired after a sale of Columbia before July 1, 2018, or double after that date.

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[9] *But see Orchard* at 7; *Nebel v. Sw. Bancorp., Inc.*, 1999 WL 135259, at *7 (Del. Ch. Mar. 9, 1999).

[10] *See Bomarko, Inc. v. Int'l Telecharge, Inc.*, 794 A.2d 1161, 1164 (Del. Ch. 1999, revised Nov. 16, 1999) (awarding damages in fiduciary duty action and declining to make appraisal fair value determination, "as it is unnecessary to do so"), *aff'd*, 766 A.2d 437 (Del. 2000). Following the issuance of the fiduciary duty opinion in *Dole*, the Dole appraisal petitioners entered into a confidential settlement with Dole to resolve their appraisal claims.

[11] *In re Appraisal of Columbia Pipeline Grp., Inc.*, 2019 WL 3778370 (Del. Ch. Aug. 12, 2019) (the "Appraisal Decision").

Columbia's management engaged Lazard Frères to examine strategic alternatives. Lazard's presentation identified several possible acquirers, including TransCanada, Dominion Energy, Berkshire Hathaway Energy, NextEra Energy, and Spectra Energy. Skaggs and Smith rebuffed Spectra's expression of interest, allegedly because they believed Spectra wanted a stock deal and they wanted cash for their shares. The four other firms each expressed an interest in a cash transaction.

> On November 9, [2015,] Columbia and TransCanada entered into an NDA [non-disclosure agreement]. Over the next week, Columbia entered into additional NDAs with Dominion, NextEra, and Berkshire Hathaway Energy, and the NDA counterparties began conducting due diligence.
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> Each NDA contained a standstill provision that prohibited the counterparty from making any offer to buy Columbia securities without the Board's prior written invitation. Most of the standstills lasted eighteen months. Each contained a feature colloquially known as a "don't-ask-don't-waive" provision (a "DADW"), which prohibited the counterparty from "making a request to amend or waive" the standstill or the NDA's confidentiality restrictions.
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> 2021 Decision at *7.

None of the prospective buyers proposed a price satisfactory to Columbia. On November 25, the Board decided to terminate the merger discussions and proceed with the equity offering, which was completed a week later. The potential acquirers were instructed to destroy the confidential information received under their NDAs.

In mid-December 2015, François Poirier, TransCanada's Senior Vice President for Strategy and Corporate Development, called Smith (in violation of the DADW) to reiterate its interest in a deal. They scheduled a meeting for January 7. Smith involved Skaggs and Goldman Sachs, but no one told the Board that Smith's talks with TransCanada had resumed. Smith told Poirier that TransCanada was unlikely to face competition from major strategic players, telling him in substance that the company had eliminated the competition.

> On January 25, 2016, TransCanada expressed interest in a transaction in the range of $25 to $28 per share. … The Board had not waived the DADW standstill, nor had the Board invited TransCanada to make an offer. The offer breached the standstill.
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> 2021 Decision at *6.

The Board ignored TransCanada's breach of the DADW and granted TransCanada exclusivity through March 8. During the exclusivity period, Columbia could not accept or facilitate an acquisition proposal from anyone else except in limited circumstances. The Board had instructed Skaggs and Smith on March 4 to waive the DADW standstill provisions in the NDAs with Dominion, NextEra, and Berkshire, but they disregarded that directive until March 12.

On March 9, TransCanada made a $26 per share offer, 90% in cash and 10% in stock. On March 14, TransCanada lowered its bid to $25.50 with a three-day deadline for Columbia to accept it. Columbia accepted it. The merger agreement provided for a breakup fee that would add $0.87

per share to a competitive bidder's cost, and it gave TransCanada the right to match any competitive bid.

After the merger closed, litigation ensued.

Unusual Procedural Posture

Immediately after the merger was announced, traditional stockholder plaintiffs filed a fiduciary duty action attacking the proposed merger. On March 7, 2017, V.C. Laster granted the defendants' motion to dismiss. *In re Columbia Pipeline Grp., Inc.*, 2017 WL 898382 (Del. Ch. Mar. 7, 2017).

Several stockholders, primarily merger arbitrageurs, filed a petition for judicial appraisal. After trial, V.C. Laster' Appraisal Decision ruled that fair value under the appraisal statute was equal to the $25.50 merger price.

While the appraisal case was pending, stockholders filed federal securities claims in the Southern District of New York. On September 26, 2019, the district judge granted the defendants' motion to dismiss. *In re Columbia Pipeline, Inc.*, 405 F. Supp. 3d 494 (S.D.N.Y. 2019).

While the appraisal was pending, certain Columbia stockholders that had not demanded appraisal filed a putative class action claiming that breaches of fiduciary duty by Skaggs and Smith prevented them from receiving a fair price for their shares. In pleading their claims, these stockholders ("Plaintiffs") relied on discovery from the appraisal proceeding that had become publicly available. Plaintiffs claimed that Skaggs and Smith were motivated by a desire to sell the company to trigger their golden parachutes and that they favored TransCanada to the detriment of other interested buyers. Plaintiffs also alleged that the officers withheld certain facts from the Board and that there were material omissions in the merger proxy statement.

Plaintiffs in the second fiduciary duty action sought to consolidate their case with the appraisal action. TransCanada objected, claiming that consolidation would unnecessarily delay the appraisal case, which was nearing trial. V.C. Laster agreed with TransCanada and denied Plaintiffs' motion to consolidate.

Distinguishing Appraisal Valuations from Damages in Fiduciary Duty Actions

After the appraisal case concluded, the defendants in the second fiduciary duty action moved to dismiss Plaintiffs' claims. The defendants argued that the fair value determination in the Appraisal Decision should be dispositive of fair price in the fiduciary duty action. On March 1, 2021, V.C. Laster, who had presided in the appraisal, denied the defendants' motion to dismiss. He explained that none of the petitioners from the appraisal action were parties to the class action and that Plaintiffs were not parties to the appraisal action, federal securities action, or original class action. He further explained that the appraisal case and second fiduciary duty claim involved different inquiries:

> [T]he Appraisal Decision focused exclusively on whether the sale process "was sufficiently reliable to make the deal price a persuasive indicator of fair value." The Appraisal Decision did not examine whether the sale process resulted in "the best value

> reasonably available for the stockholders." As a result, the Appraisal Decision did not evaluate the possibility of a fiduciary breach based on the prospects for a better price from TransCanada or a higher bid from a third party.
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> 2021 Decision at *33, quoting *Paramount Comm'ns, Inc. v. QVC Network, Inc.*, 637 A.2d 34, 46 (Del. 1994).

V.C. Laster emphasized the same point later in the 2021 Decision:

> Because of the limitations of an appraisal proceeding, the court does not evaluate the possibility of a higher negotiated price or the potential for an offer from an alternative bidder, except to the extent that those factors touch on the relationship between the deal price and standalone value. In this instance, the Appraisal Decision did not evaluate whether the sale process resulted in the best value reasonably available to stockholders, and the Appraisal Decision did not determine whether management's conduct undermined the Board's ability to obtain a higher price from TransCanada or a different bidder.
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> 2021 Decision at *2.

V.C. Laster noted the Delaware Supreme Court's instruction that "[t]he issue in an appraisal is not whether a negotiator has extracted the highest possible bid. Rather, the key inquiry is whether the dissenters got fair value and were not exploited." *Dell, Inc. v. Magnetar Global Event Driven Master Fund Ltd.*, 177 A.3d 1, 33 (Del. 2017). He further explained:

> Under the appraisal statute, fair value means the value of the company as a standalone entity. To determine the company's fair value, the court values the corporation as a going concern based on its operative reality at the point in time when the merger closed. The court looks to the company's standalone value as a going concern because "[t]he underlying assumption in an appraisal valuation is that the dissenting shareholders would be willing to maintain their investment position had the merger not occurred."
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> 2021 Decision at *44, quoting *M.P.M. Enters., Inc. v. Gilbert*, 731 A.2d 790, 795 (Del. 1999).

V.C. Laster held that fair price for breach of fiduciary duty could be greater than appraisal fair value because damages from a breach could include the incremental amount that a buyer would have offered but for the improper conduct of the CEO and CFO.

> [T]he defendants … argue that the Company's stockholders could not have suffered damages if they received an amount that this court found to be the standalone value of the Company. That damages remedy is not what the plaintiffs are seeking. They contend that stockholders lost out on the difference between the $25.50 that they received and the higher amount that TransCanada or another bidder would have paid.
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> *Id* at *56.

Breaches of Fiduciary Duty

In the 2021 Decision, V.C. Laster held that Plaintiffs adequately had pled claims for breach of fiduciary duty. He observed that favoritism towards TransCanada allegedly began in mid-December 2015 when Poirier, in violation of the DADW provision, called Smith to reiterate TransCanada's interest in acquiring Columbia. Prior to the January 7 meeting, Smith emailed Poirier 190 pages of confidential information, which included "critical information that enabled TransCanada to assess the Company's value and make a bid." *Id.* at *41.

> It is reasonable to infer that the January 7 Meeting undercut the Company's ability to negotiate the best value reasonably available from TransCanada. The Board had not authorized Smith to meet with TransCanada, much less to give TransCanada non-public information plus advice on how to avoid a competitive sale process. Skaggs and Smith never told the Board the full story about the January 7 Meeting or Smith's unauthorized disclosures. Although Skaggs generally was forthcoming with the Board, in this instance he told the directors that TransCanada had reached out to Smith, without mentioning that Smith met with Poirier and without reporting Smith's unauthorized disclosures.
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> *Id.*

V.C. Laster concluded: "The factual allegations of the Complaint support a reasonable inference that Skaggs and Smith tilted the sale process in favor of TransCanada and against the other bidders so that they could obtain a cash deal that would enable them to retire with their change-in-control benefits" and that "it falls outside the range of reasonableness to tilt the playing field against one bidder and in favor of another, not in a reasoned effort to maximize advantage for the stockholders, but because the fiduciaries have personal reasons to prefer the favored bidder." *Id.* He held that plaintiffs had pled facts sufficient to state a claim for breach of duty by supporting a reasonable inference that the merger and the process that led to it fell outside the range of reasonableness.

The 2021 Decision also noted that the Appraisal Decision had identified three material misstatements and omissions in the merger proxy statement (the "Proxy"). The first disclosure issue was that the Proxy statement created the misleading impression that the other prospective bidders were not bound by standstills during the pre-signing period. The Appraisal Decision stated:

> The Proxy disclosed that Columbia had entered into NDAs in November 2015 with Parties B, C, and D, but the Proxy did not disclose that the NDAs contained standstills, much less DADWs. The Proxy then disclosed misleadingly that "[u]nlike TransCanada, none of Party B, Party C or Party D sought to re-engage in discussions with [Columbia] after discussions were terminated in November 2015." The Proxy failed to provide the additional disclosure that all four parties were subject to standstills with DADWs, that TransCanada breached its standstill, and that Columbia opted to ignore TransCanada's breach.
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> *Id.*, quoting Proxy.

The second disclosure issue was the Proxy's failure to disclose Skaggs' and Smith's plans to retire in 2016, because "a reasonable stockholder would have regarded their plans as material." *Id.* The third and most material disclosure issue was the incomplete disclosure about the January 7 meeting, where the Proxy failed to mention that Smith had invited a bid from TransCanada and had told Poirier that it did not face competition.

The Vice Chancellor concluded that "these findings and the evidence that supported them give rise to a reasonable pleading-stage inference that the stockholder vote on the Merger was not fully informed."[12]

Relevant Prior Decisions

The holding in the 2021 Decision that fiduciaries conceivably can face liability for approving a merger that provided stockholders with the equivalent of appraisal fair value may surprise some. However, numerous opinions have recognized that stringent remedies are available for breaches of the duty of loyalty. For more than thirty years, *Revlon* has required corporate fiduciaries to take reasonable steps to obtain "the best price for the stockholders at a sale of the company." *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.,* 506 A.2d 173, 182 (Del. 1986). The 2021 Decision applied these straightforward principles.

Previous opinions by V.C. Laster have emphasized that damages in fiduciary duty actions should be based on the value stockholders likely would have received if "faithful fiduciaries" had negotiated the challenged transaction, without any reference to appraisal fair value. For example, in a 2012 opinion, V.C. Laster found certain fiduciaries jointly and severally liable for damages based on the circumstances that likely would have existed if the corporate officers had been "faithful fiduciaries." *Dweck v. Nasser*, 2012 WL 161590, at *17 (Del. Ch. Jan. 18, 2012). His 2015 fiduciary duty opinion in *Dole* is particularly instructive. He wrote:

> [Dole's Chairman and CEO] Murdock and [President and COO] Carter's conduct throughout the Committee process, as well as their credibility problems at trial, demonstrated that their actions were not innocent or inadvertent, but rather intentional and in bad faith.
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> Under these circumstances, assuming for the sake of argument that the $13.50 [transaction] price still fell within a range of fairness, the stockholders are not limited to a fair price. They are entitled to a fairer price designed to eliminate the ability of the defendants to profit from their breaches of the duty of loyalty.
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> *Dole* at *6.

V.C. Laster cited three Supreme Court decisions in support of his position. The seminal *Weinberger* opinion said:

> The appraisal remedy we approve may not be adequate in certain cases, particularly where fraud, misrepresentation, self-dealing, deliberate waste of corporate assets, or

[12] 2021 Decision at *33. The defendants in this case have requested certification of an interlocutory appeal to the Supreme Court.

> gross and palpable overreaching are involved. Under such circumstances, the Chancellor's powers are complete to fashion any form of equitable and monetary relief as may be appropriate, including rescissory damages.
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> *Weinberger v. UOP, Inc.*, 457 A.2d 701, 714 (Del. 1983).

Technicolor stated that "the measure of any recoverable loss . . . under an entire fairness standard of review is not necessarily limited to the difference between the price offered and the 'true' value as determined under appraisal proceedings." *Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345, 371 (Del. 1993). In *Bomarko,* the Supreme Court ruled:

> In an appraisal action, a court must determine the fair value of the stockholders' shares at the time of the merger. The question faced by the trial court in the instant action was determining what ITI's stockholders' "shares would have been worth at the time of the Merger if [ITI's CEO] Haan had not breached his fiduciary duties." . . . Haan's breach of his duty of loyalty to ITI, in all likelihood, influenced the fairness of the merger transaction and concomitantly the price ITI's stockholders received for their shares. *The Court of Chancery has greater discretion when fashioning an award of damages in an action for a breach of the duty of loyalty than it would when assessing fair value in an appraisal action* [emphasis added].
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> *Bomarko,* 766 A.2d 437, 440-41.

In the *Dole* opinion, V.C. Laster calculated damages based on his determination of what faithful fiduciaries likely would have achieved in the challenged merger. *Dole* at *46.

In a 2017 opinion, he explained that the inquiry into what "faithful fiduciaries" could have achieved must take into account the strength of the corporation's bargaining position:

> [W]hat was beneficial to [the controlling stockholder] and what was fair to the Company and its common stockholders are two different things. The latter is measured by what faithful fiduciaries could have achieved in light of [the controlling stockholder's] relatively weak contractual position.
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> *Frederick Hsu Living Tr. v. ODN Hldg. Corp.*, 2017 WL 1437308 (Del. Ch. Apr. 14, 2017) at *35.

He further explained this approach in a 2019 opinion:

> When seeking post-closing damages for a breach of fiduciary duty in a sale process, the measure of damages logically depends on what the plaintiffs contend would have happened absent the breach. If the plaintiffs prove that the defendants could have sold the corporation to the same or to a different acquirer for a higher price, then the measure of damages should be based on the lost transaction price.
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> *In re PLX Tech. Inc. S'holders Litig.*, 2018 WL 5018535 (Del. Ch. Oct. 16, 2018) at *51, *aff'd*, 211 A.3d 137 (Del. 2019).

There is nothing novel about this approach to calculating damages. In a 1996 opinion, then-Vice Chancellor Jack Jacobs recognized his "discretion to craft from the 'panoply of equitable remedies' a damage award that approximates a price the board would have approved absent a breach of duty." *Ryan v. Tad's Enters., Inc.*, 709 A.2d 682, 699 (Del. Ch. 1996), *aff'd*, 693 A.2d 1082 (Del. 1997).

Conclusion

The 2021 Decision highlights the principle that fair price in a fiduciary duty action can exceed appraisal fair value. The wrongdoer rule is now well-established in Delaware law, and the Supreme Court has recognized that the Court of Chancery has greater discretion when making a damages award for breach of fiduciary duty than in assessing fair value in an appraisal. *Americas Mining Corp. v. Theriault*, 51 A.3d 1213, 1252 (Del. 2012). The 2021 Decision confirms that if breaches of fiduciary duty caused the buyer to pay less than it otherwise would have, stockholders should receive the higher price that the Court of Chancery determines the buyer would have paid, even if the price paid by the buyer was equal to or greater than going-concern value.