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Delaware Chancery Court evaluates 50/50 stock and cash deal under Revlon

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In an important development defining when *Revlon* duties apply to a mixed cash and stock deal, the Court of Chancery last week applied *Revlon* to a deal where target shareholders would receive roughly 50% in cash and 50% in stock, with target shareholders owning an aggregate of 45% of the surviving company.

Previously, the Delaware courts had not established the precise bounds of *when* the heightened *Revlon* standard of review applied in deals with mixed consideration. Vice Chancellor Parsons recognized that this case obviously falls between the 33% cash out that the Supreme Court held did not trigger *Revlon* in *Santa Fe* and the 62% proportion of cash consideration that Vice Chancellor Lamb determined would trigger *Revlon* in *Lukens*. “Assuming the Court’s analysis in *Lukens* was correct, as I do, this case is necessarily approaching a limit in relation to the Supreme Court’s holdings in *Santa Fe* and *Arnold*, which, again, involved a stock for stock transaction,” he states. However, he notes (for the second time), “my conclusion that *Revlon* applies here is not free from doubt.”

This case (*Smurfit-Stone Container*) is consistent with the finding earlier this year in *Occam Networks*, where Vice Chanceller Laster found that *Revlon* would likely apply to a roughly 50/50 cash and stock deal where target shareholders would own about 15% of the resulting entity.

Read the decision in *In re Smurfit-Stone Container Corp. Shareholder Litigation* (C.A. No. 6164-VCP) (Del. Ch. May 20, 2011).

Read the transcript ruling in *Steinhardt v. Occam Networks* (C.A. No. 5878-VCL) (Del. Ch. January 24, 2011).

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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