

Mergers and Acquisitions Litigation Skyrocketing

by Michael Cifelli on July 11, 2012

Mergers and acquisitions are increasingly being challenged by shareholder lawsuits, even as merger activity begins to rebound. As detailed in a recent study by Cornerstone Research, companies that were sold for more than \$100 million in 2010 and 2011 were subject to more than 1,500 lawsuits.

The litigation trend has continued into this year. As of late March 2012, 67 lawsuits have already been reported in connection with 17 acquisitions announced in the first two months of 2012.

The incidence of litigation represents a significant jump from recent years. In 2007, only about half of the acquisitions valued at or over \$500 million faced lawsuits. In comparison, nearly every large acquisition in 2010 and 2011 was subject to legal challenges, and each deal garnered an average of 5 or more lawsuits.

Smaller mergers and acquisitions are also not immune from lawsuit. According to the report, the large majority of recent deals valued between \$100 and \$500 million also faced multiple legal challenges. For deals announced in 2010 and 2011, 91 percent of the acquisitions valued over \$100 million faced at least one lawsuit. As the report also highlights, relatively small acquisitions of Conexant Systems, Force Protection, and American Oil & Gas also resulted in more than fifteen lawsuits.

Finally, the report also questions the success of shareholder lawsuits. Only a small percentage of the lawsuits studied resulted in payments to shareholders, according to report. Instead, most of the settlements called for additional disclosures or changes in merger terms, such as deal protection provisions.

Of course, there are exceptions. Last month, Delphi Financial Group's shareholders settled for \$49 million after the Delaware Chancery Court was highly critical of Delphi's founder and CEO, who negotiated a premium price for the Class B stock he owned compared with the price of the publicly owned Class A stock.

Overall, the report suggests that companies pursuing mergers and acquisitions should be prepared for legal challenges. To help minimize the risk, we recommend consulting with an experienced New York and New Jersey business attorney.