RAMCELL, INC. V. ALLTEL CORP.

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C.A. No. 2019-0601-PAF

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Key Takeaway: *Appraising the value of shares is not one-size-fits-all, but rather a judge-made creation that can use, blend, or cease using the parties' argued appraisal methodologies.*

Ramcell, Inc. ("Ramcell") brought this action under 8 *Del. C.* Section 262 to appraise the value of 155.4309 shares in Jackson Cellular Telephone Co. ("Jackson") converted at the time of a short-form merger with Alltel Corporation ("Alltel") a wholly owned subsidiary of Verizon Wireless ("Verizon"). Ramcell received $2,963 per share of Jackson. Ramcell's expert posited that each share of Jackson was worth between $21,047 and $36,016. Conversely, Alltel's expert argued that Ramcell's shares were valued at $5,690.92 each. The description of Jackson's business model and historical financial performance is laid out in pages 421–35 of the attached opinion. Using a combination of both parties' arguments, Vice Chancellor Paul A. Fioravanti, Jr. appraised Ramcell's shares in Jackson at $11,464.57 per share and awarded costs of the proceeding against Alltel.

Appraisal actions in Delaware are not the same as the "general economic concept of fair value[,]" but are instead a "judge-made creation[.]"[1] Each party shares the burden to prove by a preponderance of the evidence a company's value under a totality of the circumstances. Valuing a corporation "is an art rather than a science[,]" and the court is allowed to adopt a methodology relying entirely, partially, blending, or not at all on methodologies put forth by the parties.[2] Delaware accepts the discounted cash flow analysis[3] ("DCF") to value corporations, but parties' experts normally differ in their calculations due to a variety of variables. DCF estimates projected net cash flows over a limited period of time. Part of the DCF analysis includes determining the discount rate—an interest

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[1] Finkelstein v. Liberty Digit., Inc., No. Civ. A. 19598, 2005 WL 1074364, at *11 (Del. Ch. Apr. 25, 2005) (stating that the judicial appraisal of shares is not the same as the "actual real world economic value[,]" but a "judge-made creation" using any acceptable method for valuing the company).

[2] Ramcell, Inc. v. Alltel Corp., 47 DEL. J. CORP. L. 425, 440 (Del. Ch. Oct. 31, 2022)

[3] A brief explanation follows, but for a more complete analysis, see *Ramcell*, 47 DEL. J. CORP. L. at 439–74.

rate to determine present cash flows. Parties normally calculate the discount rate using the weighted average cost of capital ("WACC") method[4] or the capital asset pricing ("CAPM") model.[5] When valuing a corporation made of smaller divisions or distinct business lines, the court should not use the WACC for the overall corporation to value each division or business line. The terminal rate is the present value of the assets following the projected time period. Lastly, Section 262(j) of the Delaware General Corporation Law permits a court to allocate the costs of proceedings on either party. Normally, the costs of the proceedings will be allocated on the surviving corporation unless the stockholders are proven to act in bad faith.

Ramcell's expert created two separate projections for Jackson's net present cash flows based on Verizon's nationwide performance. The first projection opined that Jackson's NPA-XXX was correct; Jackson's operating margin would converge with Verizon's by 2028; and Jackson's capital expenditures, depreciation, and amortization would be normalized with Verizon. The second projection assumed that Jackson had already achieved market penetration and that its market would grow at the same pace as Verizon's national market. Conversely, Alltel's expert relied on the financial projections created by Jackson's management prior to the merger and adjusted the amounts based on Jackson's actual performance. The Court rejected Ramcell's valuation for net cash flows because the company's expert did not prove through sufficient evidence that Jackson would perform at the same level as Verizon, but rather made faulty assumptions to justify the similar performance. Further, Ramcell's expert was not justified in disassociating with Jackson's financial projections solely because the projections are off by some percentage. On the other hand, Alltel's expert failed to consider shortcomings with the NPA/NXX data when he based his model on Jackson's forecasted performance taking into account the merger and Jackson's actual performance. Vice Chancellor Fioravanti determined that using the NPA/NXX to track subscribers was unreliable, and blended the approaches used by both parties to solve for the proper value of net cash flows.

Alltel only based the discount rate on the cost of equity and came to a rate of 12.9%. On the other hand, Ramcell calculated the discount rate at 6.8% based on assumption that Jackson's and Verizon would have the

[4] *Id.* at 456 ("The WACC is an average of the costs of all sources of capital for the company, with each source weighted by its respective percentage share in the capital structure of the company.") (citation and quotation marks omitted).

[5] *Id.* at 457 ("Essentially, the CAPM estimates the expected return of an investment based on its riskiness relative to the rest of the market.").

same WACC. On this note, the Court relied on *In re Cellular* to conclude that Verizon's WACC was not the proper premium to be applied to Jackson.[6] The Court settled on blending the approaches provided by Ramcell and Alltel to find a discount rate of 7.847% using WACC. Both parties agreed on using the perpetual growth rate to solve for the terminal rate, but Ramcell determined that the value should have been 2.77% while Alltel argued that the value should have been 2.00%. The Court relied on Alltel's presentation of the McKinsey Value Driver formula because of its consideration of the necessity for investment to foster long-term growth. In addition, the Court, basing its calculations on a variation of Ramcell's methodology, determined that the growth rate should be 2.20%. When considering whether to award costs of the procedure, the Court determined that costs should be paid by Alltel due to Ramcell's lack of bad faith. The interest awarded to Alltel was made in accordance with 8 *Del. C.* Section 262(h) where interest is "compounded quarterly and shall accrue at 5% over the Federal Reserve discount rate[.]"

Considering all the above, Vice Chancellor Fioravanti determined that Ramcell's shares in Jackson were worth $11,464.57 per share at the time of the merger, totaling $1,781,948.74 for 155.4309 shares. Alltel was further ordered to pay Ramcell's cost of proceedings due to a lack of bad faith by Ramcell when bringing this action.

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[6] *In re* Cellular Tel. P'ship Litig., C.A. No. 6885-VCL, 2022 WL 698112, at *54 (Del. Ch. Mar. 9, 2022) (holding that a national wireless carrier made up of smaller regional entities could not use the WACC for a national provider's regional entities).