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Case Name: In Re ISN Software Corp. Appraisal Litigation

Case Conclusion: October 2017

Caption: Delaware Court of Chancery, C.A. No. 8388-VCG (as appealed: Delaware Supreme Court, No. 43, 2017)

Keywords: Appraisal Action, Fair Value, Squeeze-Out Transaction

Industry: Software-as-a-Service

Professionals: David G. Clarke, ASA, Joseph W. Thompson, CFA, ASA, David Neuzil, CFA, and William P. McInerney, ASA

Privately-held ISN Software Corp. experienced substantial growth in the years prior to a 2013 cash-out merger initiated by its founder and controlling shareholder William Addy. Two minority shareholders, Ad-Venture Capital Partners and Polaris, objected to the transaction and filed a petition in the Court of Chancery seeking appraisal of their shares.

Mr. Addy established the squeeze-out merger consideration of $37,317 per share without assistance from a financial advisor or assurance from a fairness opinion. Instead, Mr. Addy determined the merger consideration by adjusting a third party's 2011 valuation to reflect his expectations for ISN's outlook in early 2013. Ultimately, not even Mr. Addy argued that the merger consideration, which implied a total equity value for the company of approximately $135 million, was a reliable indicator of fair value.

The valuation expert retained by Mr. Addy on behalf of respondent ISN argued at trial that the company's fair value was $106 million -- lower, in fact, than the equity value implied by the unreliable merger consideration. In arriving at this value, the respondent's expert relied in part upon indications of value derived from two transactions of company stock that occurred prior to the merger.

The Griffing Group was retained by counsel for petitioner Ad-Venture Capital Partners. David G. Clarke, ASA, a Managing Principal of the Griffing Group, submitted opening and rebuttal reports and testified at deposition and at trial in February 2016, opining that the company's fair value was $645 million. The expert for the other petitioner, Polaris, concluded a value of $820 million. In addition to providing traditional valuation analyses such as a discounted cash flow analysis, Mr. Clarke offered a detailed rebuttal of the respondent's expert's claim that the two prior transactions of stock provided reliable indications of the company's value.

In an August 2016 opinion, Vice Chancellor Glasscock rejected the prior transactions of stock (and the merger consideration) as unreliable and determined the company's fair value by conducting a discounted cash flow analysis that reflected a combination of the inputs used by the experts. The Vice Chancellor ruled that ISN's fair value was $98,783 per share, or approximately $357 million in total – nearly triple the $135 million value implied by the per-share merger consideration and more triple the $106 million value argued by the respondent's expert.

The decision was appealed to the Delaware Supreme Court, which in October 2017 affirmed the Chancery Court's ruling in a one-page order.

David G. Clarke, ASA was assisted by Joseph W. Thompson, CFA, ASA, David Neuzil, CFA, and William P. McInerney, ASA. Petitioner Ad-Venture Partners was represented by Jon E. Abramczyk, John P. DiTomo, and Matthew R. Clark of Morris, Nichols, Arsht & Tunnell LLP.