

Case Name: **In Re Loral Space and Communications Inc. Consolidated Litigation**
Case Conclusion: September 2008
Caption: Delaware Court of Chancery, C.A. No. 2808-VCS
Keywords: Entire Fairness; Economic Damages; Fiduciary Duties; Preferred Stock
Industry: Satellites; Telecommunications
Professionals: David G. Clarke, ASA, Martin J. Ferguson, Michael J. Mattson, Edward T. Schroeder, CPA/CFF, CVA, MAFF, and William P. McInerney, ASA

In this case, the Court evaluated the fairness of a \$300 million convertible preferred stock transaction entered into between Loral Space and Communications, Inc., a manufacturer of satellites and provider of related services, and its largest stockholder, MHR Fund Management LLC. The case was brought as a derivative and class action by shareholders of Loral who alleged that the MHR financing was an unfair transaction approved through a flawed special committee process. With respect to fair price, the Court determined that the financial terms of the MHR financing were unfair to Loral. After concluding that the MHR financing failed the entire fairness standard, the Court determined that the most equitable remedy would be to convert the preferred stock that MHR received into non-voting stock. In setting the conversion price, the Court took into account MHR's access to inside information, its insulation of itself from market pressure, as well as Loral's actual stock trading price. The Court gave 50% weight to the mid-range of MHR's internal valuation of Loral and 50% weight to Loral's trading price.

David G. Clarke, ASA submitted an expert report and testified at deposition and trial, opining that the fairness opinion relied upon by the Special Committee of Loral's Board of Directors was flawed, and that Loral's trading price did not reflect its fair value (and thus should not be used as a basis for setting the conversion price). Vice Chancellor Leo E. Strine, Jr. recognized Mr. Clarke as one of the "credible experts" (for the plaintiffs) who had "done a good job of pointing out flaws in the work of the Special Committee's advisor, North Point, that leave me unable to draw any confidence from North Point's work."

David G. Clarke, ASA was assisted by Martin J. Ferguson, Michael J. Mattson, Edward T. Schroeder, CPA/CFF, CVA, MAFF, and William P. McInerney, ASA. The Blackrock plaintiffs were represented by Lawrence C. Ashby, Philip Trainer, Jr., and Richard L. Renck of Ashby & Geddes; and Lewis R. Clayton, Roberto Finzi, David Friar, Anthony P. Ellis, and Joseph D. Borrero of Paul, Weiss, Rifkind, Wharton & Garrison LLP.