

Case Name: John Douglas Dunmire, et al. v. Farmers & Merchants Bancorp of Western Pennsylvania, Inc.
Case Conclusion: November 2016
Caption: Delaware Court of Chancery, C.A. No. 10589-CB
Keywords: Fair Value; Appraisal Action
Industry: Commercial Banking
Professionals: Daniel R. Van Vleet, ASA

In October 2014, Farmers & Merchants Bancorp of Western Pennsylvania, Inc. (“F&M”) merged with neighboring community bank NextTier, Inc. (“NextTier”), in a stock-for-stock transaction (the “merger”). The 2.17 stock exchange ratio valued NextTier at \$180 per share and F&M at \$83 per share. John D. Dunmire and other F&M stockholders (the petitioners) filed an appraisal action seeking the Court’s determination of the fair value of their shares, which they argued was more than the \$83 per share value afforded to them in the transaction.

The petitioners’ expert claimed that the fair value of F&M’s common stock was \$138 per share, 66% more than the merger consideration. F&M retained Daniel R. Van Vleet, ASA, a Managing Principal of The Griffing Group, who determined the company’s fair value to be \$76 per share, about 8% less than the merger consideration. Mr. Van Vleet submitted opening and rebuttal expert reports, and testified at deposition and trial in support of his analysis.

The Court concluded that the fair value of F&M was \$92 per share, much nearer to the \$76 value concluded by Mr. Van Vleet (and the \$83 merger consideration) than the \$138 value proffered by the petitioners’ expert. The Court arrived at this fair value by conducting a capitalized net income analysis of F&M. In performing its analysis, the Court determined beta differently than either expert, but otherwise relied entirely on Mr. Van Vleet’s inputs and assumptions, including those for future net income, the risk-free rate, the equity risk premium, the size premium, the perpetuity growth rate, and the company’s excess capital and amortization tax benefits.

The respondent was represented by Kenneth J. Nachbar, Ryan D. Stottmann, and Glenn R. McGillivray of Morris, Nichols, Arsht & Tunnell LLP.