

Case Name: Richard A. LeBeau, et al. v. M.G. Bancorporation, et al.
Case Conclusion: January 1998
Caption: Delaware Court of Chancery, C.A. No. 13414-VCJ
Keywords: Appraisal Action; Fair Value
Industry: Commercial Banking
Professionals: David G. Clarke, ASA and Michael J. Mattson

Headquartered in Worth, Illinois, M.G. Bancorporation, Inc. (MGB) was a bank holding company that owned a 100% equity interest in Mount Greenwood Bank and a 75.5% equity interest in Worth Bancorp, Inc. In November 1993, MGB was merged into its 92% shareholder, Southwest Bancorp, Inc. (Southwest), in a “short form” merger in which neither MGB’s Board of Directors nor its minority shareholders were legally required to, or did, vote on the transaction. Southwest retained an investment bank to determine the *fair market value* of MGB’s common shares as of June 30, 1993. The investment bank concluded a value of \$41 per share, and Southwest set that value as the merger price. (In a separate breach of fiduciary duty class action, the Delaware Court of Chancery found that the investment bank’s appraisal was legally improper, as it had determined only the *fair market value* of MGB – a minority-level value – as opposed to valuing MGB in its entirety as a going concern and determining the *fair value* of the minority shares as a pro-rata percentage of that controlling-basis value.)

On behalf of the petitioners, Griffing Group Managing Principal David G. Clarke, ASA, submitted an expert report and testified at trial, opining that the fair value of MGB was \$85 per share. The respondent’s expert witness concluded that the fair value of MGB was \$41.90 per share, just \$0.90 higher than the improperly determined minority-basis fair market value of \$41.00 used as the merger price. The trial court rejected entirely the valuation analyses performed by the respondent’s expert, and ruled that the \$85 per share value concluded by Mr. Clarke was the fair value of MGB.

In affirming the trial court’s decision, the Delaware Supreme Court made two valuable contributions to the development of the law pertaining to valuations in appraisal actions: (1) when a subject company in a statutory appraisal is a holding company, it is appropriate to value the company’s ownership interests in its subsidiaries using a comparative acquisition method; and (2) the comparative public company method, which was employed by the respondent’s expert witness, includes a “built-in minority discount” that renders its use inappropriate in a statutory appraisal proceeding, absent the inclusion of a premium to reverse the effect of the minority discount.

David G. Clarke, ASA was assisted by Michael J. Mattson. The petitioners were represented by Bruce L. Silverstein and Martin S. Lessner of Young, Conaway, Stargatt & Taylor LLP and Thomas E. Chomicz of Wilson & McIlvaine.