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Delaware Court of Chancery Provides Guidance on M&A Litigation Settlement

In *In re Riverbed Technology Inc. Stockholders Litigation*, the Delaware Court of Chancery approved a disclosure only settlement that released a broad range of claims, but in doing so, noted that, going forward, the interests of stockholder classes may merit rejecting settlements that encompass releases that extend beyond the claims asserted and the results achieved.

In 2014, Riverbed Technology Inc. was acquired by third parties. Stockholder plaintiffs brought suit alleging that the transaction undervalued Riverbed and that the preliminary and definitive proxy documents failed to disclose all material information related to alleged financial advisor conflicts. The parties agreed to a settlement pursuant to which Riverbed made certain supplemental disclosures relating to the financial advisor's relationship with the acquirers and certain information used by the financial advisors in their fairness opinions, and the plaintiffs released all potential federal and state law claims. The parties also agreed that the defendants would not oppose a fee request by the plaintiffs of $500,000.

The Court of Chancery approved the settlement holding that:

> ➤ *The plaintiffs' counsel represented that the federal and state claims being given up were not viable; thus, the give from the stockholder class was "basically nil"* – The court accepted the settlement in large part because it constituted a relatively even, though low-value, trade – a "peppercorn" of additive disclosures, in exchange for a "mustard seed" of claims released (including claims that the plaintiffs themselves viewed as not viable).

> ➤ *The breadth of the release given by the plaintiffs was "troubling," but the court found that where the parties negotiated a remedy in good faith with the reasonable expectation that the broad release negotiated in return would be approved by the court, the settlement was fair to the class* – The court noted that: "If it were not for the reasonable reliance of the parties on formerly settled practice in this Court . . . the interest of the Class might merit rejection of a settlement encompassing a release that goes far beyond the claims asserted and results achieved."

> ➤ *The disclosures merited a fee of $300,000* – The court held that the disclosure in connection with potential conflicts of interests of Riverbed's financial advisor merited a fee of $200,000 and the supplemental disclosures merited a fee of $100,000.

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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