

## Corporate Finance/M&A - USA

### Illinois court affirms single-bidder sale may satisfy *Revlon* duties

Contributed by **Ropes & Gray LLP**

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In *Keating v Motorola Mobility Holdings, Inc*<sup>(1)</sup> an Illinois state court held that directors of Motorola Mobility's board did not violate their fiduciary duties to stockholders in selling the company to Google in a single-bidder sale process.

In 2011 Google bought Motorola Mobility for \$40 per share, a 63% premium on its market value. Former stockholders of Motorola Mobility brought suits in both Delaware and Illinois courts, but ultimately the Delaware case was withdrawn. The Illinois plaintiffs alleged that the board did not meet its *Revlon* duties because:

- it agreed to customary deal protections;
- it lacked the valuations necessary to make an informed decision; and
- Microsoft had contacted Motorola Mobility's chief executive officer about a potential partnership, of which the board was not aware.

The Illinois court disagreed with the plaintiffs on all counts and dismissed the case. A number of facts supported the court's decision, including the following:

- The board had hired two separate financial analysts to conduct a fairness analysis, whose fairness opinions supported the board's decision.
- No competing bids were submitted.
- The board negotiated the price up from \$30 to \$40 per share.
- Ninety-nine percent of stockholders approved the transaction.

While this was a case of an Illinois court applying and interpreting Delaware law, it affirmed a basic principle of Delaware case law that there is no single, mandated way to conduct a sale process and, in certain circumstances, a board need not conduct a full auction to fulfill its *Revlon* duties.<sup>(2)</sup>

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#### Endnotes

(1) 11-CH-228854 (October 2 2014).

(2) See *In re Plains Exploration & Production Co Stockholder Litig* (Del Ch May 9 2013).

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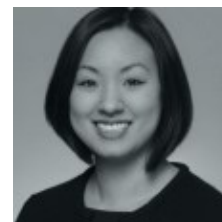
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