



Second Fairness Opinions



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A Case For Second Fairness Opinions From Experienced and Independent Financial Advisors

Background – Fairness opinions became common after the 1985 ruling *Smith v. Van Gorkom*, 488 A.2d 858 (Del. 1985). The Delaware Supreme Court held that Trans Union Corp. was sold without a proper auction process and the Trans Union board had violated a duty of care. The Court further found that the Board of Directors acted with gross negligence and imposed personal liabilities on directors.

The Current Environment – Fairness opinions have become a standard tool used by corporate boards to protect against lawsuits and investor criticism. Recently, however, there has been increasing regulatory scrutiny regarding possible conflicts-of-interest in corporate transactions involving directors, controlling shareholders and other fiduciaries. The Wall Street Journal (“WSJ”) reported that “U.S. regulators are ratcheting up scrutiny of the value and independence of so-called ‘fairness opinions’, which companies seek from their banking advisors to show that a planned merger or acquisition is ‘fair’ to shareholders.”

A Trend Toward Second Opinions – The WSJ also reported that more Wall Street firms are advising boards of directors to obtain second opinions when faced with possible conflicts-of-interest.

Recommendation – To optimize the benefit of a second fairness opinion, a board of directors should retain an experienced, independent financial advisor early in the transaction process. The financial advisor should be able to quickly grasp the complexities of the transaction and be willing to ask the tough questions. That is precisely TGG’s approach to helping our clients.

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