II. Fairness Opinion Projections Include the Implementation Costs of the BWI Program but Not the Resulting Revenue Benefits

On July 17, 2017, management presented the Board with a set of financial projections – not ordinary course projections, but instead projections expressly created for the purpose of being used in connection with the merger.[60] Those fairness opinion projections only covered the period from 2017-2021.[61]

By truncating the fairness opinion projections so that the final year was several years before the BWI program's 2024 deadline, management created a situation whereby: [redacted][62] So the fairness opinion projections effectively included all of the projected downside of the Company's participation in the BWI program, and little if any of the projected upside. Stockholders were told none of this.[63]

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[60] A209-10 ¶64.

[61] A218-19 ¶85.

[62] A198-99, 207, 218-21 ¶¶39, 60, 85-88, 90.

[63] A178-79, 199, 219, 221 ¶¶5, 40, 86, 90.

III. Management Manipulates Its Internal Models to Avoid Presenting Higher Financial Projections

Subsequent to management's July 17 presentation of financial projections to the Board, the Company's investment banker discovered an error in those projections related to CECA, a Calgon subsidiary.[64] Specifically, on July 27, 2017, the investment banker emailed management and inquired: "'[W]ill you be providing an updated segmented model that has the CECA EBITDA updated to $18.8M ***and the other segments revised downwards so that we get to the same total EBITDA as previously shown***?'"[65] Management quickly sent the investment banker "a 'revised model,' with an 'offset to CECA improvement' that management had buried 'in Corporate.'"[66] Through this manipulation, management was able to avoid both having to go back to the Board with a now-higher set of projections, and having to give those higher projections to stockholders.

On July 31, 2017, Calgon's management made a presentation to Kuraray.[67] The presentation identified several additional "Upside Opportunities" that were not

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[64] A209 ¶63.

[65] *Id.*

[66] *Id.*

[67] A207 ¶60.

included in the fairness opinion projections or disclosed to stockholders. These included:

[redacted][68]

IV. Management Prepares and Disseminates a Materially Misleading Proxy

At a September 20, 2017 meeting, Calgon's Board agreed to a merger with Kuraray.[69] At that same meeting, the Board approved resolutions delegating to management the preparation and dissemination of the Proxy.[70]

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[68] A207-08 ¶61.

[69] A216-17 ¶81.

The Proxy was filed on November 27, 2017.[71] As discussed above, it was false, misleading, and incomplete. The Proxy failed to disclose management's BWI program projections, or even mention them; instead, it presented a set of fairness opinion projections that, unbeknownst to stockholders, misleadingly included the start-up costs for, but not the substantial revenues to subsequently be generated by, the Company's participation in the BWI program. This information would have been relevant to stockholders in deciding whether to rely on the fairness opinion projections, and in deciding whether Calgon was worth more as a standalone company than the merger consideration being offered by Kuraray.

The Proxy failed to disclose, or even mention, the BCG report and analyses, despite management's and the Board's heavy reliance on that information. This information would have been relevant to stockholders in deciding whether to rely on the fairness opinion projections, and whether Calgon was worth more as a standalone company than the merger consideration being offered by Kuraray.

The Proxy fails to disclose the financial model manipulations by management in late July 2017 regarding CECA. This information would have been relevant to stockholders in deciding whether to rely on the fairness opinion projections, and

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[70] A216-17 ¶¶81-82.

[71] A217 ¶83; A55-172.

whether Calgon was worth more as a standalone company than the merger consideration being offered by Kuraray.

The Proxy asserted that management and the Board were informed by the Company's investment banker that a single-bidder process was appropriate because no other companies would be interested in buying Calgon, but failed to disclose the detailed analysis performed – and advice to the contrary given to the Company by – BCG. This information would have been relevant to stockholders in deciding whether Calgon ran a full and fair process and obtained the highest price reasonably available for the Company.

ARGUMENT

THE COURT OF CHANCERY ERRED IN HOLDING THAT THE CHALLENGED TRANSACTION WAS CLEANSED UNDER *CORWIN*

I. Question Presented

Did the Court of Chancery commit reversible error in determining, under the reasonably conceivable standard, that the Proxy disclosed all material facts and was not misleading? (A266-80; A178-79, 195-99, 202-10, 217-23 ¶¶5, 32-40, 50, 52-53, 55-64, 83, 85-94.)

II. Scope of Review

An appeal from a decision granting a motion to dismiss is reviewed de novo. *Brinckerhoff v. Enbridge Energy Co., Inc.*, 159 A.3d 242, 252 (Del. 2017). Determinations of materiality also are reviewed de novo. *Zirn v. VLI Corp.*, 621 A.2d 773, 777 (Del. 1993).

III. Merits of Argument

A. Fundamental Principles the Court of Chancery Was Supposed to Apply in Ruling on Defendants' Motion to Dismiss

Several fundamental principles were supposed to govern the Court of Chancery's analysis in ruling on Defendants' motion to dismiss. First, the Court of Chancery was supposed to:

> (1) accept all well pleaded factual allegations as true, (2) accept even vague allegations as "well pleaded" if they give the opposing party

> notice of the claim, (3) draw all reasonable inferences in favor of the non-moving party, and (4) [not dismiss] unless the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances.[72]

Indeed, "[t]he pleading standards governing the motion to dismiss stage of a proceeding in Delaware ... are minimal."[73]

Second, the Court of Chancery was supposed to ***carefully apply*** *Corwin* in ruling on Defendants' motion to dismiss.[74] In the words of this Court, "[c]areful application of *Corwin* is important due to its potentially case-dispositive impact."[75]

Third, the Court of Chancery was supposed to determine materiality from the perspective of what a ***reasonable stockholder*** would consider to be important, *i.e.* "information that a reasonable stockholder would generally want to know in making the decision, regardless of whether it actually sways a stockholder one way or the other ...."[76] Put another way:

> Information is considered material "if there is a substantial likelihood that a reasonable stockholder would consider it important in deciding

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[72] *Cent. Mortg. Co. v. Morgan Stanley Mortg. Capital Hldgs. LLC*, 27 A.3d 531, 535 (Del. 2011).

[73] *Id.* at 536.

[74] *Morrison*, 191 A.3d at 274.

[75] *Id.*

[76] *Id.* at 287.

> how to vote." ... Notably, "the question is not whether the information would have changed the stockholder's decision to accept the merger consideration, but whether 'the fact in question would have been relevant to him.'"[77]

In granting Defendants' motion to dismiss on *Corwin* grounds, the Court of Chancery failed to follow these principles. Among other things, the Court of Chancery failed to draw all reasonable inferences in favor of Plaintiff; failed to apply the reasonably conceivable standard; failed to carefully apply *Corwin*; and failed to examine Plaintiff's disclosure claims from the perspective of what a reasonable stockholder would consider to be relevant. The correct application of these principles would have resulted in the denial of Defendants' motion to dismiss, as discussed more fully below.

B. Defendants Failed to Disclose Material Facts, Thus Foreclosing *Corwin* Cleansing

Defendants asserting a *Corwin* defense "ultimately bear 'the burden of demonstrating that the stockholders were fully informed when relying on stockholder approval to cleanse a challenged transaction.'"[78] "At the pleading stage, that requires [the Court] to consider whether Plaintiff's complaint, when fairly read, supports a rational inference that material facts were not disclosed or that the disclosed

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[77] *GGP, Inc.*, 2022 WL 2815820, at *17.

[78] *In re Columbia Pipeline Gp., Inc. S'holder Litig.*, 2021 WL 772562, at *32 (Del. Ch. Mar. 1, 2021).

information was otherwise materially misleading."[79] "One sufficiently alleged disclosure deficiency will defeat a motion to dismiss under *Corwin*."[80] Here, Plaintiff sufficiently alleged multiple disclosure deficiencies.

1. The Proxy Improperly Omitted Information Regarding the BWI Project

Plaintiff alleges that Calgon management created ordinary-course projections in March 2017, just a few months before Kuraray's initial bid, showing significant revenue and cash flow generation from Calgon's participation in the BWI program, [redacted][81]

"[M]anagement projections ... made in the ordinary course of business ... are generally deemed reliable."[82]

Plaintiff also alleges these March 2017 BWI projections were material, yet were not disclosed to Calgon's stockholders.[83] "Faced with the question of whether to

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[79] *Morrison*, 191 A.3d at 282.

[80] *Mindbody*, 2020 WL 5870084, at *26.

[81] A198-99 ¶39.

[82] *Cede & Co. v. Technicolor, Inc.*, 2003 WL 23700218, at *7 (Del. Ch. Dec. 31, 2003), *aff'd in part, rev'd in part*, 875 A.2d 602 (Del. 2005), withdrawn from bound volume, opinion amended and superseded, 884 A.2d 26 (Del. 2005), and *aff'd in part, rev'd in part*, 884 A.2d 26 (Del. 2005).

[83] A219-21 ¶¶86-90.

accept cash now in exchange for forsaking an interest in [the company's] future cash flows, ... stockholders would obviously find it important to know what management['s] ... best estimate of those future cash flows would be."[84]

The Court of Chancery did not pause to ask whether it was reasonably conceivable that Calgon stockholders would consider it important to know that Calgon management expected to generate [redacted] from the BWI program prior to the 2024 retrofit deadline. The Court of Chancery did not pause to ask whether it was reasonably conceivable that stockholders would want to know that the fairness opinion projections baked in the downside start-up costs for the BWI program without including any of the upside revenues/cash flows. Rather, it ruled – without asking these required threshold questions – that that information was immaterial to stockholders as a matter of law. The Court of Chancery's rationale for making this ruling is without merit.

For example, the Court of Chancery asserts that the BWI projections "were outdated because of the IMO's delay."[85] But it cites no authority to support the conclusion that, because of the delay, it is not reasonably conceivable that Calgon

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[84] *In re Netsmart Techs. Inc.*, 924 A.2d 171, 203 (Del. Ch. 2007).

[85] Opinion at 35.

stockholders would still consider the BWI projections to be important. Moreover, Plaintiff alleges that the delay in the start date had no negative impact at all on the total revenues and cash flows to be generated by Calgon's participation in the BWI program given that the 2024 retrofit deadline remained in place. In short, the Court of Chancery's rationale is unsupported and unsupportable.

The Court of Chancery also asserts that "there is no 'obligation on the part of a board to disclose information that simply does not exist.'"[86] But management's BWI projections ***did*** exist, and are specifically pled.

The Court of Chancery also apparently concludes that the BWI projections would be unimportant to Calgon stockholders because Plaintiff has not "pled any facts suggesting that the Company's fiduciaries selected a five-year projection window to obscure the Ballast Water Initiative's future value."[87] However, management's motive for choosing a five-year projection window for the fairness opinion is ***irrelevant*** to the *Corwin* issue, which is whether it is reasonably conceivable that Calgon stockholders would believe management's BWI projections were important to know. Moreover,

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[86] *Id.* at 31-32.

[87] *Id.*

the court's statement is just not true. Plaintiff ***expressly*** pleads that management chose a five-year window to expressly to hide the value of the BWI project.[88]

The Court of Chancery also asserts that the fairness opinion projections were "prepared in the ordinary course of business."[89] Again, not true. The fairness opinion projections were created in the midst of what Plaintiff alleges was a conflicted transaction – that is the ***opposite*** of "ordinary course." Management's undisclosed March 2017 BWI projections, on the other hand, ***were*** prepared in the ordinary course (and thus were material).

The Court of Chancery states that "Plaintiff struggles to identify what the Company should have done differently."[90] Once again, not true. Plaintiff alleges that the Company should have disclosed management's BWI projections, and also should have disclosed that the five-year fairness projections included the downside start-up costs for the BWI program but not the upside revenues/cash flow.[91]

The Court of Chancery, again, apparently concludes that the BWI projections are immaterial as a matter of law because "'five-year forecasts are routine in fairness

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[88] A176, 178-79, 219-21 ¶¶1, 5, 86-90.

[89] Opinion at 32-33.

[90] *Id.* at 33.

[91] *See, e.g.*, A221 ¶90.

opinions supporting mergers.'"[92] Again, the Court of Chancery gets the question wrong. Whether five-year forecasts are "routine" has nothing to do with whether it is reasonably conceivable that Calgon stockholders would consider the BWI projections (and/or information regarding the inclusion of the costs but not the benefits of the BWI program in the fairness opinion projections) to be important. Moreover, choosing a five-year projection window does not automatically operate to render management projections that exceed five years immaterial as a matter of law. Indeed, companies can and do use projection periods of varying lengths.[93]

The Court of Chancery also states that "[a]bsent an allegation of misleading inaccuracy or omission, or other wrongdoing, Plaintiff's disagreement with how Calgon reflected that real-world change in its ordinary course projections does not support a disclosure claim."[94] Again, the Court of Chancery is wrong. Plaintiff's

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[92] Opinion at 32.

[93] *See, e.g.*, *Kihm v. Mott*, 2021 WL 3883875, at *15 (Del. Ch. Aug. 31, 2021) (discussing "ten-year projections"); *Garfield v. BlackRock Mortg. Ventures, LLC*, 2019 WL 7168004, at *6 (Del. Ch. Dec. 20, 2019) (same); *In re Morton's Rest. Grp., Inc. S'holders Litig.*, 74 A.3d 656, 675 (Del. Ch. 2013) (discussing "four year projection period"); Edmund H. Mantell & Edward Shea, *Development and Application of Business Valuation Methods by the Delaware Courts*, 17 Hastings Bus. L.J. 335, 346 (2021) ("The choice of the projection period (*e.g.*, 5 years, 10 years, etc.) will often reflect a congeries of financial, technological, industry and political influences.").

[94] Opinion at 33.

complaint is replete with allegations of misleading inaccuracies, omissions, and wrongdoing, including management shifting its "not for sale" position to pushing for a single-bidder sale to Kuraray after being enticed with personal benefits;[95] management choosing a five-year fairness opinion projections period to exclude the value of the BWI program and make the merger look fair;[96] management concealing the BCG report from stockholders;[97] and management manipulating the Company's financial models to conceal CECA's higher EBITDA numbers.[98]

The Court of Chancery also relies on the opinion in *Ehlen v. Conceptus, Inc.*[99] as support for its apparent conclusion that longer-term projections are immaterial as a matter of law.[100] *Ehlen* does not say that, and in any event is inapposite.

Specifically, *Ehlen* is a letter opinion concerning a motion to expedite proceedings.[101] There, the fairness opinion at issue was based on five-year projections

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[95] A176, 202-03 ¶¶1, 50.

[96] A178-79, 199, 219-21 ¶¶5, 40, 86-90.

[97] A196, 202-03, 222-23 ¶¶33, 50, 92-94.

[98] A209 ¶63.

[99] 2013 WL 2285577 (Del. Ch. May 24, 2013).

[100] Opinion at 33-34.

[101] 2013 WL 2285577, at *1.

because those were the only projections that existed – management had not, as management did in this case, create any longer-term projections. Therefore, as the *Ehlen* court ruled:

> At oral argument (but not in the Complaint), the Plaintiff opined that ending the DCF at 2017 does not reflect the future value of Essure because the latest version of the device will not be available until the end of 2017. There is no support for this proposition in the facts alleged; it is based purely on speculation and only articulated at oral argument. Instead of basing the DCF on five-year projections, as was done here, the Plaintiff would have the Defendants extend the scope of management's forecasts, and the DCF, for an unspecified number of years.[102]

For this and other reasons, the *Ehlen* court denied the plaintiff's motion to expedite.

As the foregoing shows, *Ehlen* is not on point. Nor does it support a conclusion that, under the reasonably conceivable standard, Calgon stockholders would find ***existing*** management BWI projections (and/or information regarding the inclusion of the costs but not the benefits of the BWI program in the fairness opinion projections) to be important.

Finally, the Court of Chancery asserts that, because the BWI projections were ten years in length, while there were no Company-wide ten-year projections, there can be no disclosure claim.[103] The court cites no authority for that assertion, or for its

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[102] *Id.* at *3.

[103] Opinion at 34-35.

conclusion that, under the reasonable conceivability standard, Calgon stockholders would not find the BWI projections (and/or information regarding the inclusion of the costs but not the benefits of the BWI program in the fairness opinion projections) to be important merely because there were no Company-wide ten-year projections.

Instead, the court tries to bolster its conclusion by distinguishing this case from recent decisions upholding complaints that alleged omitted company-wide projections.[104] The flaw in the Court of Chancery's analysis – again – is that it is asking the wrong question. Regardless of whether the projections in other cases were company-wide or not, is it reasonably conceivable here that Calgon stockholders would find the BWI projections (and/or information regarding the inclusion of the costs but not the benefits of the BWI program in the fairness opinion projections) to be important? Plaintiff believes, and alleges, that the answer is yes. At a minimum, at the motion to dismiss stage, Plaintiff has alleged a reasonably conceivable disclosure deficiency.

2. The Proxy Improperly Omitted Information Regarding the BCG Report

The Court of Chancery makes some of the same errors in finding the BCG report immaterial as a matter of law (for example, concluding that the BCG report was

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[104] *Id.*

"outdated") as it made in finding the BWI information immaterial as a matter of law.[105] And that finding should be reversed for the same reasons discussed above.

Moreover, the Court of Chancery's reliance on *In re PNB Holding Co. Shareholders Litigation*[106] is misplaced. The projections at issue in *PNB* were found to be unreliable only after trial, based on evidence adduced at trial, and based on the refusal of experts from either side to rely on the projections.[107] Here, by contrast, on a pleadings motion, Plaintiff is entitled to have all inferences drawn in his favor, and his allegations are to be examined under a reasonably conceivable standard.

Importantly, *PNB* also stated: "Had the Merger been proposed in 2001, months after Criswell prepared the projections, the failure to disclose those projections would have created a material deficiency."[108] Here, both the BCG report and the BWI projections were prepared only months before Kuraray's initial merger offer. Thus, in the words of *PNB*, "the failure to disclose those projections ... created a material deficiency."[109]

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[105] *See, e.g.*, Opinion at 46.

[106] 2006 WL 2403999 (Del. Ch. Aug. 18, 2006).

[107] *Id.* at *15-*18.

[108] *Id.* at *15.

[109] *Id.*

Beyond that, as Plaintiff alleges, Calgon's management and Board heavily relied on BCG's report and analyses throughout 2017, including as a key part of the merger process. For example, in July 2017, management and the Board expressly discussed the BCG report, [redacted][111] If management and the Board thought the BCG report was so relevant and reliable, as their actions indicate they did, then how is it not at least reasonably conceivable that Calgon stockholders too would consider the information in that report important to know? That is the question the Court of Chancery ***should*** have asked, and it was error for the Court of Chancery to conclude that the BCG report was immaterial as a matter of law.

The BCG report should have been disclosed for another reason as well. The Proxy, as noted by the Court of Chancery, states:

> The working group, the members of the Calgon Carbon senior management team and representatives of Morgan Stanley ***discussed a list of other potential strategic and financial companies that might be interested in an acquisition of Calgon Carbon*** at that time, and determined that it was highly unlikely that any of those potential

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[110] A202-06 ¶¶48, 52-53, 55.

[111] A206 ¶58.

> counterparties would be interested in an acquisition of Calgon Carbon and have the ability to implement an acquisition of Calgon Carbon at that time due to competing strategic priorities and recent acquisitions in the industry.[112]

The foregoing conclusion is directly contrary to the advice BCG had given to Calgon just a few months earlier. As discussed above, BCG presented Calgon with [redacted][114]

Given the conflict between the advice rendered by BCG and the quoted statement in the Proxy regarding other potential acquirors, the BCG report assumed additional significance, and rendered the Proxy's discussion a misleading partial disclosure:

> Under Delaware law, when a board chooses to disclose a course of events or to discuss a specific subject, it has long been understood that it cannot do so in a materially misleading way, by disclosing only part of the story, and leaving the reader with a distorted impression.... "Partial disclosure, in which some material facts are not disclosed or are

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[112] Opinion at 45 (quoting Proxy at 34) (emphasis in original).

[113] A202-03, 222-23 ¶¶50, 94.

[114] A195-96, 202-03 ¶¶32, 50.

> presented in an ambiguous, incomplete, or misleading manner, is not sufficient to meet a fiduciary's disclosure obligations."[115]

For this reason as well, the BCG report should have been disclosed, and it was error for the Court of Chancery to hold otherwise.

The Court of Chancery further held that the Proxy "substantially discloses" the BCG report because it contains the general statement that management "offered Kuraray 'strategic plan and limited other nonpublic information for purposes of enabling Kuraray to increase its proposed price above $20.00.'"[116] This was error. The partial disclosure identified by the Court of Chancery is incomplete and misleading given the nature of the BCG report, the projections and analyses it contained, and how heavily Calgon relied on and used the BCG report throughout the merger process, as discussed above. In short, this "'[p]artial disclosure ... is not sufficient to meet a fiduciary's disclosure obligations.'"[117] The Court of Chancery's efforts to distinguish this case from *Morrison* are likewise unavailing.[118] That the misleading partial disclosure in *Morrison* was different than the misleading partial

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[115] *Appel v. Berkman*, 180 A.3d 1055, 1064 (Del. 2018).

[116] Opinion at 47.

[117] *Appel*, 180 A.3d at 1064.

[118] Opinion at 47-48.

disclosure here in no way renders the BCG report information that, as a matter of law, a reasonable stockholder would consider irrelevant.

Defendants also failed to disclose any of the specific and achievable "Further Upside Opportunities" identified by BCG and management.[119] Defendants were aware of these opportunities and had used resources to identify and quantify them.[120] They were shared with Kuraray.[121] Yet their value was excluded from the fairness opinion projections and from the valuation analyses prepared by the Company's investment banker.[122] Neither the existence of the specific opportunities, nor the value of the specific opportunities – nor even the general fact that the fairness opinion projections excluded known upside opportunities – was disclosed to stockholders.[123] In granting Defendants' motion to dismiss, the Court of Chancery failed to address these material nondisclosures. This was error. It is reasonably conceivable that stockholders would consider this information regarding corporate opportunities and value to be important.

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[119] A196, 207-09, 221-22 ¶¶33, 60-62, 91.

[120] A221-22 ¶91.

[121] *Id.*

[122] *Id.*

[123] *Id.*

3. The Proxy Improperly Omitted Information Regarding the CECA EBITDA Manipulation

Management's manipulation of its financial models to mask CECA's increased EBITDA performance also is information that it is reasonably conceivable Calgon stockholders would consider relevant. As discussed above, on July 27, 2017, the Company's investment banker discovered an error in the Company projections related to CECA, a Calgon subsidiary.[124] The investment banker emailed management and inquired: "'[W]ill you be providing an updated segmented model that has the CECA EBITDA updated to $18.8M ***and the other segments revised downwards so that we get to the same total EBITDA as previously shown***?'"[125] Management quickly sent the investment banker "a 'revised model,' with an 'offset to CECA improvement' that management had buried 'in Corporate.'"[126]

By lowering unspecified "Corporate" projections to offset up to $18.8 million in higher 2017 CECA EBITDA numbers, Plaintiff submits, management was able to avoid both having to go back to the Board with a now-higher set of projections, and having to give those higher projections to stockholders. Plaintiff notes that the exact amount by which CECA's $18.8 million in 2017 EBITDA exceeded the amount in the

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[124] A209 ¶63.

[125] *Id.*

[126] *Id.*

prior models is unclear at this stage in the litigation. The Court of Chancery posited that "the total adjustment was less than $18.8 million, and perhaps significantly less,"[127] and thus would not "alter the total mix of information available to stockholders."[128] This was error.

First, on a motion to dismiss, Plaintiff is entitled to have all reasonable inferences drawn in its favor, which the Court of Chancery failed to do.[129] Second, the magnitude of the CECA EBITDA offset is a question of fact, which "cannot be resolved on a motion to dismiss."[130] Third, Plaintiff submits that the CECA EBITDA offset was substantial enough for the investment banker to reach out to management to request that the models be "revised." Fourth, given that the projections in the Proxy set forth only $100.6 million in 2017 EBITDA for Calgon ***as a whole***, even a fraction of the $18.8 million in CECA EBITDA would likely move the needle in a material way.

Plaintiff submits that it is reasonably conceivable that stockholders would have found information regarding the CECA EBITDA offset important, as it bears not only

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[127] Opinion at 40-41.

[128] *Id.* at 43.

[129] *Cent. Mortg. Co.*, 27 A.3d at 535.

[130] *Goldstein v. Denner*, 2022 WL 1671006, at *37 (Del. Ch. May 26, 2022).

on the standalone value of a company with improving financial performance, but on the integrity of the financial information shareholders were given in connection with their vote on the merger. As Delaware's courts have held, "if the circumstances surrounding the preparation of final projections relied upon by the Board and disclosed to stockholder cast doubt on their reliability, then those circumstances should be disclosed."[131] Management's deliberate manipulation of the financial models with the explicit purpose of avoiding having to disclose an increase in projected EBITDA is a "circumstance[] surrounding the preparation of the [Fairness] Projections" that is "sufficient to cast doubt on their reliability." *Id.*

The Court of Chancery distinguished *KCG* and *Goldstein* on the grounds that the projections manipulations in those cases were larger in dollar volume and occurred closer to the date of the fairness opinion than here.[132] This too was error.

First, as noted above, the significance of the CECA EBITDA offset of up to $18.8 million, as compared to EBITDA of $100 million for Calgon as a whole, is a question of fact unsuitable for resolution at this stage of the litigation. Second, Plaintiff submits that the Court of Chancery read these cases too narrowly. It is

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[131] *Chester Cnty. Empls.' Ret. Fund v. KCG Hldgs., Inc.*, 2019 WL 2564093, at *14 (Del. Ch. June 21, 2019).

[132] Opinion at 40-42.

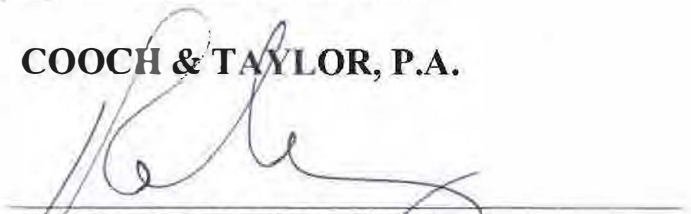
reasonably conceivable that manipulations of financial projections during the merger process could cause a reasonable stockholder to question the reliability of those projections, whether that manipulation took place a few days before the fairness opinion was issued, as in *Goldstein*, or a few weeks, as happened here. Manipulated projections are manipulated projections.

For all of these reasons, the Court of Chancery erred in ruling that information regarding the CECA EBITDA offset was immaterial as a matter of law.

CONCLUSION

"One sufficiently alleged disclosure deficiency will defeat a motion to dismiss under *Corwin*."[133] As demonstrated above, Plaintiff sufficiently alleged multiple disclosure deficiencies. Accordingly, judgment should be reversed.

COOCH & TAYLOR, P.A.



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[133] *Mindbody*, 2020 WL 5870084, at *26.