S. MUOIO & CO. LLC, on behalf of itself and the class and derivatively on behalf of CROWN MEDIA HOLDINGS, INC., Plaintiff, v. HALLMARK ENTERTAINMENT INVESTMENTS CO., a Delaware corporation, HALLMARK ENTERTAINMENT HOLDINGS, INC., a Delaware corporation, H C CROWN CORP., a Delaware corporation, H.A., INC., a Delaware corporation, HALLMARK CARDS, INC., a Missouri corporation, WILLIAM J. ABBOTT, DWIGHT C. ARN, WILLIAM CELLA, GLENN CURTIS, STEVE DOYAL, BRIAN E. GARDNER, HERBERT A. GRANATH, DAVID E. HALL, DONALD J. HALL, JR., IRVINE O. HOCKADAY, JR., A. DRUE JENNINGS, PETER A. LUND, BRAD R. MOORE, DEANNE R. STEDEM, Defendants, and CROWN MEDIA HOLDINGS, INC., a Delaware corporation, Nominal Defendant.

Civil Action No. 4729-CC

COURT OF CHANCERY OF DELAWARE

2011 Del. Ch. LEXIS 43

December 31, 2010, Submitted
March 9, 2011, Decided

NOTICE:

THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

PRIOR HISTORY: *S. Muoio & Co. LLC v. Hallmark Entm't Invs. Co., 2010 Del. Ch. LEXIS 191 (Del. Ch., Sept. 16, 2010)*

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff stockholder (stockholder) challenged the fairness of a recapitalization of nominal defendant corporation, orchestrated by defendant, the corporation's controlling stockholder and primary debt holder (controlling stockholder), and defendants, the controlling stockholder's affiliates.

OVERVIEW: In the recapitalization, the controlling stockholder exchanged the corporation's debt that it held for an increased percentage of the corporation's class A common stock, new preferred stock, and a new and far smaller amount of debt with longer maturities, thereby permitting the corporation to avoid a debt default and bankruptcy. The corporation's board created a special committee to consider the proposed recapitalization. The court found the evidence demonstrated that the special committee was independent, fully informed, and that it had negotiated with the controlling stockholder at arm's length. The stockholder made no arguments regarding the independence of two of the three members of the special committee, and failed to convince the court that the other member lacked independence. Because the corporation's outstanding debt exceeded the value of its equity before the recapitalization, and because defendants' proffered expert testimony persuasively and thoroughly supported their valuation conclusions (and the stockholder's experts failed to convince the court otherwise), the court concluded that the recapitalization was entirely fair.

OUTCOME: Judgment was entered in favor of defendants.

LexisNexis(R) Headnotes

Business & Corporate Law > Corporations > Shareholders > General Overview
Evidence > Procedural Considerations > Burdens of Proof > Allocation
Mergers & Acquisitions Law > Mergers > Duties & Liabilities of Shareholders
Mergers & Acquisitions Law > Takeovers & Tender Offers > Duties & Liabilities of Shareholders
[HN1] A transaction between a majority stockholder and the company in which it owns a majority stake is generally reviewed under the entire fairness standard and the controlling stockholder (or the party standing on both sides of the transaction) bears the burden of proof.

Business & Corporate Law > Corporations > Directors & Officers > Management Duties & Liabilities > General Overview
Mergers & Acquisitions Law > General Business Considerations > General Overview
Mergers & Acquisitions Law > Mergers > Duties & Liabilities of Directors & Officers
Mergers & Acquisitions Law > Takeovers & Tender Offers > Duties & Liabilities of Directors & Officers
[HN2] The entire fairness standard has two components: fair dealing and fair price. These prongs are not independent and the court does not focus on each of them individually. Rather, the court determines entire fairness based on all aspects of the entire transaction. Fair dealing involves questions of when the transaction was timed, how it was initiated, structured, negotiated, disclosed to the directors, and how the approvals of the directors and the stockholders were obtained. Fair price involves questions of the economic and financial considerations of the proposed merger, including all relevant factors: assets, market value, earnings, future prospects, and any other elements that affect the intrinsic or inherent value of a company's stock.

Business & Corporate Law > Corporations > Directors & Officers > General Overview
Evidence > Procedural Considerations > Burdens of Proof > Allocation
Mergers & Acquisitions Law > Mergers > Duties & Liabilities of Directors & Officers
Mergers & Acquisitions Law > Takeovers & Tender Offers > Duties & Liabilities of Directors & Officers
[HN3] The initial burden of establishing entire fairness rests upon the party who stands on both sides of a transaction. If the defendant can show that the challenged transaction was negotiated and approved by an independent committee of directors or an informed majority of the minority, however, the burden of proof shifts to the challenging shareholder-plaintiff.

Business & Corporate Law > Corporations > Directors & Officers > General Overview
Evidence > Inferences & Presumptions > Inferences
[HN4] To establish that a director lacks independence, a plaintiff must create a reasonable doubt that a director is not so beholden to an interested director that his or her discretion would be sterilized. In order to create a reasonable doubt about an outside director's independence, a plaintiff must plead facts that would support the inference that because of the nature of a relationship or additional circumstances, the non-interested director would be more willing to risk his or her reputation than risk the relationship with the interested director.

Business & Corporate Law > Corporations > Directors & Officers > Terms in Office > Elections
[HN5] The mere nomination of a director by a majority stockholder is insufficient to demonstrate lack of independence.

Mergers & Acquisitions Law > General Business Considerations > General Overview
[HN6] Fair dealing addresses the timing and structure of negotiations as well as the method of approval of a transaction.

Business & Corporate Law > Corporations > Directors & Officers > Management Duties & Liabilities > General Overview
Mergers & Acquisitions Law > Mergers > Duties & Liabilities of Directors & Officers
Mergers & Acquisitions Law > Takeovers & Tender Offers > Duties & Liabilities of Directors & Officers
[HN7] In addition to being independent, a well-constituted special committee must have a clear mandate setting out its powers and responsibilities in negotiating the interested transaction. The Court of Chancery of Delaware has stated that this mandate should include the power to fully evaluate the transaction at issue, and, ideally, include what the Court has called the critical power to say no to the transaction.

Business & Corporate Law > Corporations > Directors & Officers > Management Duties & Liabilities > Defenses > General Overview
[HN8] See *Del. Code Ann. tit. 8, § 141(e).*

Business & Corporate Law > Corporations > Directors & Officers > Management Duties & Liabilities > Defenses > Business Judgment Rule
[HN9] Fairness opinions prepared by independent investment bankers are generally not essential, as a matter of law, to support an informed business judgment.

Mergers & Acquisitions Law > Mergers > Duties & Liabilities of Directors & Officers
Mergers & Acquisitions Law > Takeovers & Tender Offers > Duties & Liabilities of Directors & Officers
[HN10] A critical issue in the fair dealing inquiry is whether a corporation's special committee has functioned as an effective proxy for arms-length bargaining, such that a fair outcome equivalent to a market-tested deal has resulted. That is, a special committee must function in a manner which indicates that the controlling shareholder did not dictate the terms of the transaction and that the committee exercised real bargaining power at an arms-length.

Mergers & Acquisitions Law > Mergers > General Overview
Mergers & Acquisitions Law > Takeovers & Tender Offers > General Overview
[HN11] Fair price relates to the economic and financial considerations of a proposed transaction, including all relevant factors: assets, market value, earnings, future prospects, and any other elements that affect the intrinsic or inherent value of a company's stock. When conducting a fair price inquiry as part of the entire fairness standard of review, the court asks whether the transaction was one that a reasonable seller, under all of the circumstances, would regard as within a range of fair value; one that such a seller could reasonably accept.

Mergers & Acquisitions Law > Mergers > General Overview
Mergers & Acquisitions Law > Takeovers & Tender Offers > General Overview
[HN12] The "range of fairness" aspect of the fair price inquiry has most salience when the controller has established a process that simulates arm's-length bargaining, supported by appropriate procedural protections. That is, a strong record of fair dealing can influence the fair price inquiry, reinforcing the unitary nature of the entire fairness test.

Business & Corporate Law > Corporations > Directors & Officers > Management Duties & Liabilities > General Overview
Mergers & Acquisitions Law > Mergers > Duties & Liabilities of Directors & Officers
Mergers & Acquisitions Law > Takeovers & Tender Offers > Duties & Liabilities of Directors & Officers
[HN13] Delaware law clearly prefers valuations based on contemporaneously prepared management projections because management ordinarily has the best first-hand knowledge of a company's operations.

Mergers & Acquisitions Law > Mergers > General Overview
Mergers & Acquisitions Law > Mergers > Duties & Liabilities of Directors & Officers
[HN14] The Court of Chancery of Delaware prefers valuations based on management projections available as of the date of a merger and holds a healthy skepticism for post-merger adjustments to management projections or the creation of new projections entirely.

Mergers & Acquisitions Law > Mergers > General Overview
[HN15] In determining a company's value in the context of a merger, experts who vary from management forecasts should proffer legitimate reasons for such variance.

Business & Corporate Law > Corporations > Finance > General Overview
[HN16] Although there is no single preferred or accepted valuation methodology under Delaware law that establishes beyond question a company's value, there are commonly accepted methodologies that a prudent expert should use in coordination with one another to demonstrate the reliability of its valuation.

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JUDGES: CHANDLER, Chancellor.

OPINION BY: CHANDLER

OPINION

MEMORANDUM OPINION

CHANDLER, Chancellor

This action challenges the fairness of [*2] the June 29, 2010 recapitalization (the "Recapitalization") of Crown Media Holdings, Inc. ("Crown" or the "Company") orchestrated by Crown's controlling stockholder and primary debt holder, Hallmark Cards, Inc. and its affiliates (collectively "Hallmark"). [1] For years, Crown was unable to make its debt payments, and was forced to obtain extensions on the debt from Hallmark. In the Recapitalization, Hallmark exchanged its Crown debt for an increased percentage of Crown's Class A common stock, new preferred stock and a new and far smaller amount of debt with longer maturities, thereby permitting Crown to avoid a debt default and bankruptcy.

1 The relevant affiliates are defendants Hallmark Entertainment Investment Co., Hallmark Entertainment Holdings, Inc., H C Crown Corp., and H.A., Inc.

Hallmark initially proposed a recapitalization on May 28, 2009. Crown's board immediately created a Special Committee to consider the proposed recapitalization. Before the Special Committee could even consider the proposed recapitalization, S. Muoio & Co. LLC (a Crown stockholder) filed this action on July 13, 2009, seeking to enjoin the proposed transaction. The parties agreed to a stay of the litigation [*3] while the Special Committee considered Hallmark's proposal. They also agreed that Crown would not consummate any transaction without providing seven week's advance written notice to Muoio's counsel of the terms of the transaction. The parties further stipulated that in the event Muoio decided to pursue a preliminary injunction against the transaction, the parties would establish a schedule for its resolution during the seven week period.

Almost seven months later, on February 9, 2010, Crown announced that Hallmark and Crown had approved and executed a non-binding term sheet in connection with the Recapitalization. On March 1, 2010, Crown announced it had entered into a Master Recapitalization Agreement memorializing the terms of the Recapitalization. After receiving that notice, however, Muoio eschewed any preliminary injunction proceedings, and instead filed an amended and supplemental complaint on March 11, 2010, dropping its request for injunctive relief and seeking rescission of the transaction. The Recapitalization closed on June 29, 2010.

Plaintiff contends that the Recapitalization was consummated at an unfair price and drastically undervalued Crown. In so doing, plaintiff asserts [*4] that Crown should be valued based on a discounted cash flow ("DCF") analysis, and that a properly conducted DCF analysis establishes that Crown's stock is worth far more than the Recapitalization, which is valued at $2.59 per share. Plaintiff also contends that Hallmark imposed the Recapitalization on the Company through an unfair process, that the Hallmark-dictated terms of the new debt and preferred stock are unfair, and that the Recapitalization unfairly transferred significant value and voting power from the Crown minority stockholders to Hallmark. In sum, plaintiff insists that the Recapitalization substantially undervalued the Company, resulting in an enormous, unjustified transfer of wealth and voting power from the Crown minority stockholders to Hallmark, all through an unfair process that included an ineffective Special Committee and Hallmark's domination of the negotiation process.

This case was tried over a four-day period, from September 21 through September 24, 2010. The parties concede that the appropriate standard of review is entire fairness. I have considered the parties' post-trial briefs, and during trial I assessed the strength and credibility of the testimony offered [*5] by the various witnesses. Ultimately, my decision turns on the following factual findings: the Crown board's process was not flawed; the Special Committee was independent and negotiated at arm's length; and the record clearly demonstrates that Crown was underwater at the time of the Recapitalization--that is, it could not pay its debts as they became due and absent the Recapitalization, default or bankruptcy seemed inevitable. In addition (as is now quite common in cases of this nature), the valuation question, in part, resulted in a battle of the experts--and in this case, plaintiff's expert lost. His proffered opinion was far less credible and persuasive than defendants' experts. For the reasons more fully explained below, I find in favor of defendants and conclude that the Recapitalization was entirely fair. [2]

2 I have considered the parties' briefing regarding numerous outstanding objections to the admissibility of testimony, reports, exhibits, documents, demonstrative exhibits, rebuttal exhibits and testimony, and handwritten notes. I overrule all of the objections and admit all of the items which are the subject of these continuing objections. I will accord each item the weight and [*6] credibility that it appropriately deserves.

I. BACKGROUND

A. The Parties

Plaintiff Muoio is a New York securities advisory firm and a holder of Crown's Class A common stock. Salvatore Muoio is plaintiff's principal owner and manager.

Defendant Hallmark, a Missouri corporation headquartered in Kansas City, Missouri, is engaged in the manufacture and distribution of personal expression products. Immediately before the Recapitalization proposal, Hallmark controlled approximately 80.1% of Crown's outstanding shares; following the proposal it now controls approximately 90.3%. [3]

3 *See* JX 145 (Crown Schedule 13D/A); JX 85 (Crown Form 8-K (June 29, 2010)).

Nominal Defendant Crown is a Delaware corporation with its principal place of business in Studio City, California. Crown's revenues are largely tied to advertising revenue, which in turn is driven by the ratings and demographics of its cable television channels. Crown competes for both ratings and key demographics with large media companies that are able to spread their costs across multiple cable channels. Crown's board includes the Special Committee defendants and defendants William J. Abbott, Dwight C. Arn, William Cella, Glenn Curtis, Steve [*7] Doyal, Brian E. Gardner, David E. Hall, Donald J. Hall, Jr., Irvine O. Hockaday, Jr., Brad R. Moore, and Deanne R. Stedem.

The Special Committee consists of defendants Herbert A. Granath, A. Drue Jennings, and Peter A. Lund. Granath has been a Crown director since December 2004 and has extensive experience in the broadcast and cable television industries. He served as the chairman of Disney/ABC International Television, and he also developed and was the chairman of several cable networks for ABC, including ESPN, A&E, the History Channel, and Lifetime. [4] He was also the chairman of the National Academy of Television Arts and Sciences and has won several awards for his work in the industry. [5] Lund has been a Crown director since 2000, and has extensive experience in the media sector. Lund had a long career with CBS, serving as president and CEO of CBS Television and Cable Networks and later, as president and CEO of CBS Inc. [6] He is also currently a director of DirecTV. [7] Jennings served for twelve years as the CEO of Kansas City Power & Light Company, a publicly traded company on the New York Stock Exchange. As a prominent leader in the Kansas City community, Jennings has been actively [*8] involved with several civic associations, including the Midwest Research Institute and the Bloch Endowment Fund at the Greater Kansas City Community Foundation. [8] He also served on numerous advisory boards, including the University of Kansas Medical Center and University of Kansas Endowment Association. He has been "of counsel" with the law firm Polsinelli Shughart P.C. since October 2004. [9] Jennings joined the Crown board in 2006 and he is the chair of Crown's Audit Committee.

4 Trial Transcript ("Tr.") 583-87 (Granath).
5 Tr. 588-89 (Granath).
6 Tr. 428-30 (Lund).
7 Tr. 431 (Lund).
8 *See, e.g.*, Tr. 663-64, 673, 734-37 (Jennings).
9 Pre-Trial Stipulation and Order ("PTO") ¶ 26.

B. Crown's Formation and its Debt Crisis

In 1991, Hallmark created the family entertainment platform that became Crown following a review of its business units, which also include Crayola and other family oriented subsidiaries. [10] In the early 1990s, Hallmark acquired an extensive production library of programming that was designed to appeal to all ages. In 1998, Hallmark partnered with the National Interfaith Cable Coalition ("NICC") to relaunch the Odyssey Network as a family-friendly cable network. [11] The network was [*9] later renamed as "Hallmark Channel." Crown Media Holdings was created in 2000 to effectuate an initial public offering of Crown, providing the Company with additional capital to fund its development.

10 Joint Ex. ("JX") 99 (Crown Corporate History).
11 Tr. 597 (Granath).

In January 2001, Crown acquired a library of over 700 original television movies, representing over 3,000 hours of programming, from a Hallmark subsidiary (the "Library Transaction"). [12] This programming was used, among other things, to populate the Hallmark Channel and the Hallmark Movie Channel. With the Library

Transaction, Crown assumed $220 million of debt and ultimately issued 33.3 million shares of stock to Hallmark. [13] Over the years, Hallmark supplied Crown with needed capital injections, and agreed to extend maturities on the debts owed to it by Crown. By spring 2009, however, Crown owed Hallmark over $1.1 billion in debt. [14] Crown also held a credit revolver with J.P. Morgan (the "JPM Revolver") guaranteed by Hallmark, and it owed $25 million to NICC. [15]

12 JX 99 (Crown Corporate History).
13 *See* JX 305.
14 PTO ¶ 28.
15 JX 84 (Crown Form 14C (May 21, 2010)).

C. Crown's Attempts to Find a Buyer

In August 2005, the Crown [*10] board formed a special committee composed of Granath and Lund (the "2005 Special Committee") to seek a buyer for the Company and also consider other alternatives. The 2005 Special Committee retained independent legal and financial advisors, Wachtell, Lipton, Rosen & Katz and Citigroup, to engage in an extensive sales process involving key players in the cable industry as well as private equity firms. The object was to help identify a buyer for Crown. Not a single offer resulted from the 2005 Special Committee process. Thereafter, Hallmark itself engaged in discussions with several potential acquirers or other sources of financing for Crown, but was similarly unsuccessful. [16]

16 Tr. 434-35 (Lund).

In August 2006, Tim Griffith became Hallmark's interim CFO and assumed responsibility for the management of Hallmark's investment in Crown. At this point, Hallmark held $1 billion of Crown's outstanding debt. [17] Crown's financial situation was precarious because Crown had never made a profit and (as stated above) efforts to sell the Company had failed up to this point. To allow Crown to continue operating as a going concern, Hallmark had previously granted Crown a waiver and standstill on its [*11] debt payments. [18] The waiver and standstill agreement was revisited every quarter, with extensions being effective for one year from the date Hallmark extended. Without the waivers and extensions, Crown's auditors would have issued a going concern qualification on Crown's financial statements for one simple reason: Crown could not pay interest on its debt (much less pay the principal of the notes due upon expiration of the standstill).

17 Tr. 745 (Griffith).
18 Tr. 747-48 (Griffith).

In 2006, Crown hired a new CEO, Henry Schleiff, who was specifically recruited to find a buyer for Crown. [19] Schleiff had successfully sold another cable channel before joining Crown. Schleiff contacted numerous parties but ultimately failed to locate a buyer for Crown during his three year tenure as CEO. In 2007, Schleiff's efforts produced three prospective buyers: Liberty Media, Time Warner, and Hearst. [20] Each potential buyer did due diligence and spoke with management. Liberty Media expressed interest in Hallmark's stake in Crown, valuing Crown at around $800 million. [21] Liberty Media continued to show its interest, raising its enterprise value to $1 billion by 2008. [22] In other words, Liberty Media viewed [*12] Crown's enterprise value to be below the value of Crown's debt. Similarly, Time Warner did not make an offer, but put an enterprise value on Crown of $1 billion (again, below the value of its debt). Hearst never formally made an offer. In 2008 and 2009, Schleiff also turned up other potential buyers, including CBS, Hasbro, and Fox. None made an offer above Crown's debt to Hallmark. Fox did make a proposal, in which it put the total enterprise value of Crown at $500 million and which would have required Hallmark to write off 85% of the Hallmark debt and give Fox control of the Company. [23] Hallmark was unwilling to accept those terms. Concurrently, Hallmark extended Crown's waiver and standstill to May 2010. [24]

19 Schleiff's employment contract provided a substantial incentive, a bonus of at least $6 million ($6-9 million), if he was successful in selling the Company. He used his extensive industry contacts and connections to constantly pitch Crown to all players in the industry. *See* Tr. 433 (Lund); 594 (Granath); 748 (Griffith); JX 312 (Crown Form 8-K (Oct. 6, 2006)).
20 Tr. 749 (Griffith).
21 Tr. 749-50 (Griffith).
22 Tr. 756-58 (Griffith).
23 Tr. 760-61 (Griffith).
24 In the midst of these attempts [*13] and processes, in 2007, Crown was negotiating its agreements with the major cable service providers that provided Crown's programming to cable television subscribers. Crown's contracts with Comcast, Time Warner, DirecTV and Echostar (which together control about 70% of Crown's cable distribution) were set to expire during 2007. Accordingly, Hallmark extended the waiver and standstill on Crown's debt because Hallmark recognized that failing to extend could negatively impact the negotiations and any sale prospects. Thus, in late 2007 and early 2008, Schleiff successfully negotiated Crown's multi-year contracts with major cable service providers: Comcast, ex-

tended to 2022, DirecTV to 2017, and Time Warner and Echostar to 2012. *See* Tr. 746-47 (Griffith).

In sum, despite continuous efforts to shop Crown since 2005, no potential buyer had placed a value on Crown that exceeded the Hallmark debt, and the most recent offer for Crown was $500 million--less than half of its debt to Hallmark. At least in Hallmark's view, given that refinancing Hallmark's debt with a third party was impossible, a recapitalization was the best path forward either to a future refinancing or a future sale. Although [*14] plaintiff disputes this, it appears that Hallmark's view was that if there was no recapitalization, bankruptcy or foreclosure were the likely alternatives. [25]

25 Tr. 763-64 (Griffith); 818 (Hall).

D. The Recapitalization Proposal

On May 28, 2009, Hallmark sent the Crown board a proposal for recapitalizing the Hallmark debt (the "Hallmark Proposal"). [26] Under the Hallmark Proposal, Hallmark's equity ownership would increase from 67% to at least 90.1% (possibly even up to 95%), while its voting power would increase from 80.1% to 90.3%. [27] The Hallmark Proposal included restructuring $500 million of principal amount of the Hallmark debt into a $300 million cash-pay term loan bearing an annual interest rate of 12% and a $200 million pay-in-kind term loan with an annual interest rate of 15%, both maturing on September 30, 2011. [28] The remaining Hallmark debt, which is about $600 million, would be exchanged for convertible preferred stock with a liquidation preference of approximately $640 million and a conversion price of $1.00 per share. [29] Along with this proposal, Hallmark also advised Crown that it would not continue to extend the waiver and standstill. Hallmark was neither willing, nor [*15] legally obligated, to invest further in Crown.

26 PTO ¶ 29; JX 23 (Crown Form 8-K (May 28, 2009)).
27 JX 48 (Sept. 28, 2009 Minutes) at 3.
28 PTO ¶ 29; JX 24 (May 28, 2009 Proposal Letter).
29 *Id.*

E. Creation of the Special Committee

After receiving the Hallmark Proposal, the Crown board on June 2, 2009, formed the Special Committee, composed of independent directors Granath, Lund, and Jennings. Jennings was chosen as chairman of the Special Committee. As stated above, the Special Committee had two members with industry experience (Lund and Granath), and its chairman (Jennings) was a lawyer and former CEO of a publicly traded utility company. According to the resolutions creating the Special Committee, the Special Committee was empowered to "consider such matters as it deems advisable with respect to the Recapitalization Proposal," and authorized to "take such further action, at the Company's expense, as the Special Committee deems appropriate in order to carry out the intent and purposes" of the authorizing resolutions. [30] The resolutions prohibited the Crown board from approving or authorizing an agreement with respect to the Hallmark Proposal "without a prior favorable recommendation of the [*16] Recapitalization Proposal or the relevant part thereof by the Special Committee." [31]

30 JX 423 (Resolutions for the Appointment of a Special Committee ("Resolutions")).
31 *Id.*

F. Process of the Special Committee

The Special Committee's first task was to select its independent legal and financial advisor. The Special Committee retained Richards, Layton & Finger, P.A. ("RLF") as its independent legal counsel. After receiving presentations from various firms, the Special Committee retained Morgan Stanley as its financial advisor. [32] Once Morgan Stanley was engaged, the Special Committee promptly authorized a press release announcing the engagement, stating expressly that the Committee was "considering Hallmark Cards' proposal as well as the Company's other alternatives." [33]

32 In its engagement letter, the Special Committee sought to give Morgan Stanley an incentive to find a sale transaction as an alternative to the Hallmark Proposal. *See* JX 431 (Morgan Stanley Engagement Letter) at SC00000707 ("[A]t its sole discretion, the Committee will consider paying Morgan Stanley an additional 'Discretionary Fee' in connection with any Recapitalization or Sale Transaction, as the case may be, which will [*17] be based upon the performance of Morgan Stanley during the course of the engagement."); Tr. 837 (Kindler) ("My expectation was if there was a sale transaction, that we would get a higher fee than for recapitalization.").
33 JX 612 (Press Release (July 14, 2009)); Tr. 672-73 (Jennings).

After being retained by the Special Committee, Morgan Stanley engaged in extensive due diligence of Crown, including meetings with Crown's senior management to discuss the Company's business plans and financial viability. Morgan Stanley reviewed Crown's current financial condition and provided the Special Committee with information regarding comparable companies. Based on its analysis, on September 11, 2009, Morgan Stanley advised the Special Committee that it had determined a preliminary value of Crown of between $500 million and approximately $1 billion, with a midpoint at approximately $700 to $750 million--less than the amount Crown owed to Hallmark. [34]

34 Tr. 259, 262-63 (Lee); 604 (Granath); 683-84 (Jennings); JX 43 (Sept. 11, 2009 Minutes); JX 448 (Morgan Stanley Sept. 11, 2009 Presentation).

Crown management also made presentations to the Special Committee, updating the Committee on the cable industry [*18] and on Crown's performance in 2008 and 2009. The Special Committee was informed that the Company's performance in its key demographic (women age 25 to 54) fell below expectations and below 2008 results, and Crown's 2009 advertising sales were below 2008 sales by approximately 13% to 15%. [35] In November 2009, Crown's management revised the Company's five-year business plan by reducing the forward-looking projections in light of current market conditions and Crown's performance. Management discussed the revised plan with the Special Committee. [36] Before the Hallmark Proposal, Crown had not been able to meet its debt service on the Hallmark debt; interest on the debt alone was more than $100 million per year. [37] As a result, Crown had been operating under a series of waivers and extensions since 2006 that deferred nearly all of Crown's payment obligations--without which waivers Crown would have defaulted on the Hallmark debt. In short, Crown faced significant hurdles going forward. To make matters worse, the cable industry's gradual decline itself added more negative pressure to Crown's bleak future. [38]

35 JX 43 (Sept. 11, 2009 Minutes); Tr. 446-47 (Lund).
36 JX 56 (Nov. 23, 2009 Minutes).
37 Tr. [*19] 768 (Jennings); 745, 796 (Griffith).
38 Tr. 424-25 (Lee); 888-89 (Kindler).

The Special Committee knew it had few options. Those options included: (1) refinancing the Hallmark debt; (2) pursuing a third-party sale; (3) accepting Hallmark's Proposal; or (4) negotiating the Hallmark Proposal. The Special Committee, with advice from Morgan Stanley, acknowledged that none of those options were optimal, but the status quo (*i.e.*, doing nothing) was not feasible because Crown simply could not service its debt burden and would be unable to satisfy its debts on the maturity dates. [39] Morgan Stanley took the position (and so advised the Special Committee) that Crown could not refinance the Hallmark debt with a third party in light of Crown's capital structure and debt market conditions in 2009. Moreover, given past failed sales efforts, the Special Committee determined that a third-party sale was unlikely. [40] The Special Committee reached this decision based on its own members' extensive industry experience as well as Morgan Stanley's advice.

39 Morgan Stanley also did not view the status quo as a viable alternative because, even if Hallmark agreed, contrary to its public statements, to continue [*20] to waive the defaults on its debt, there would be increasing uncertainty in the markets and "no assurance that the shareholders would ever get any value." *See* JX 43 (Sept. 11, 2009 Minutes).
40 Even though Crown had been shopped continuously and was seen as still for sale, Crown had not received any offers or even an expression of interest valuing the Company above its debt. *See* Tr. 450 (Lund); *see also* Tr. 602 (Granath) ("We just finished four years of constant activity trying to sell the thing. If Peter [Lund] and I were not successful with our contacts, certainly Henry [Schleiff], who was in the trade press, as I say every second day, made known to the world that the Hallmark Channel was up for sale. So, you know, unless somebody came out of the woodwork, [a sale] was not a real possibility.").

Ultimately, the Special Committee determined that, absent a recapitalization of its debt, Crown faced a potential bankruptcy. Morgan Stanley advised that Crown's non-Hallmark stockholders likely would not receive any value in a bankruptcy proceeding. On the other hand, there were potential downsides to Hallmark in a bankruptcy, and Morgan Stanley considered it unlikely that Hallmark wanted to [*21] place Crown into bankruptcy. [41] As stated above, Hallmark, with its original proposal, had no intention of continuing to extend the waiver and standstill, and it simply did not want to invest further in Crown. Likewise, the Special Committee and Morgan Stanley believed that further extending the debt waivers and putting off Crown's significant capital structure issues were not in the best interests of Crown or its minority stockholders, because the debt owed to Hallmark would continue to grow. Therefore, the Special Committee decided not to pursue or to ask for further debt extensions. Given the potential risks and costs of a bankruptcy, Morgan Stanley believed Hallmark would be inclined to renegotiate a solution to the debt issues for Crown; Morgan Stanley also considered the Hallmark Proposal to have numerous deficiencies. [42] It was against this background that Morgan Stanley advised the Special Committee that a go-private transaction was the best alternative for the non-Hallmark stockholders. In the event Hallmark would not consider taking Crown private at a fair price, Morgan Stanley believed the Special Committee should try to negotiate for better terms in a recapitalization.

41 In [*22] fact, the Special Committee's legal counsel, RLF, advised the Special Committee that there was a "high risk" of equitable subordination to Hallmark in the event of a bankruptcy. Tr. 639 (Granath). The Committee members agreed it would be "anathema" to Hallmark to force a bankruptcy. Tr. 499-501 (Lund).

42 For example, Hallmark's proposal would extend the maturity of the Crown debt by only five quarters and failed to address the maturity of the JPM Revolver in March 2010 or the mandatory redemption of NICC's debt in December 2010. Under the Hallmark proposal, Crown would be facing another liquidity crisis in less than a year. *See* Tr. 262; JX 43 (Sept. 11, 2009 Minutes).

G. The Negotiations

Armed with Morgan Stanley's advice favoring a go-private transaction, the Special Committee approached Hallmark on this issue. On September 21, 2009, Jennings sent a letter on the Special Committee's behalf to Don Hall, Jr., CEO of Hallmark, proposing a go-private transaction. [43] On September 23, 2009, on behalf of Hallmark, Griffith responded that Hallmark was not interested in taking Crown private. [44] After Hallmark rejected the go-private idea, the Special Committee decided to negotiate the recapitalization. [*23] To this end, it directed Morgan Stanley to meet with Hallmark's financial advisor, Evercore Partners, to discuss a counterproposal. The Special Committee's counterproposal had several goals, including a significant reduction in Crown's outstanding debt, an extension of Crown's debt maturities, and an increase in the amount of equity retained by the unaffiliated stockholders. [45] Morgan Stanley's proposed strategy, which the Special Committee adopted, was to posit a low number for Crown's value, give Hallmark new debt equal to that number, and allow the minority stockholders to share in any upside from that number.

43 PTO ¶ 33; JX 449 (Special Committee Letter to Hallmark); Tr. 682-83 (Jennings).

44 PTO ¶ 34; JX 47 (HCC Letter to the Special Committee (Sept. 23, 2009)); Tr. 682-83 (Jennings).

45 JX 49 (Morgan Stanley Oct. 1, 2009 Presentation).

Morgan Stanley conveyed this counterproposal to Hallmark through Evercore Partners on October 1, 2009. At a meeting on October 15, 2009, Evercore Partners conveyed to Morgan Stanley Hallmark's three concerns about the Special Committee's counterproposal: (1) Hallmark would not write off any portion of its $1.1 billion in loans to the Company; (2) a "majority [*24] of the minority" vote condition could not be a condition to closing; and (3) Crown had to pay off the NICC debt at par in due course.

Hallmark's October 15 response had a slight change from its original proposal. As a result, the Special Committee decided not to bid against itself and refused to engage. As a result of this strategy, Hallmark made "a major economic concession" and gave Morgan Stanley the perception of what could be the "framework of a negotiated transaction." [46] Hallmark eventually submitted a revised proposal that, among other things, allowed the equity to participate in Crown's value above $500 million. [47] With that revision in hand, the Special Committee had achieved one of its important goals. That is, to the extent the value of Crown was more than $500 million, the minority stockholders' equity would have value. Hallmark's revised proposal also extended the maturity of the new debt and guaranteed a revolver in a sufficient amount. [48] Hallmark delivered a further revised term sheet to the Special Committee on November 27, 2009. [49]

46 Tr. 280-81 (Lee).

47 Tr. 853 (Kindler) ("They basically accepted our position, and it was the best outcome we could have imagined.").

48 JX [*25] 55 (Morgan Stanley Nov. 18, 2009 Presentation).

49 JX 84 (Crown Form 14C (May 21, 2010)).

Four days later, the Special Committee and Hallmark, along with their advisors, held a meeting to discuss the open issues leading up to Hallmark's most recent revised recapitalization proposal. At that meeting, Hallmark made numerous concessions, including agreeing to lower the interest rates on the new Hallmark debt for the first two years; agreeing to annual cash flow sweeps, [50] as opposed to quarterly sweeps; and agreeing to use its best efforts to support Crown in obtaining a $30 million revolver. [51] Hallmark refused to agree to additional concessions, specifically refusing to agree to: (1) a transaction after which it would own less than 90% of Crown; and (2) a transaction subject to a majority-of-the-minority vote. [52] Hallmark did offer terms for a standstill agreement in which Hallmark would guarantee a floor, in a purchase or third-party sale of Crown, of $1.00 per share to the minority stockholders. [53] The Special Committee rejected this offer by Hallmark. Despite the fact that the Special Committee and its advisors walked out of the meeting at that point, significant progress had been made, [*26] and the parties' advisors continued their discussions, including the terms of a binding standstill agreement.

50 As I understand it, a cash flow sweep is a debt covenant that requires a certain amount of

available cash flow to be used for debt service in the event of excess cash flow.

51 JX 58 (Dec. 1, 2009 Minutes); JX 473 (Morgan Stanley Dec. 7, 2009 Presentation).

52 Tr. 283 (Lee); 466-67 (Lund); JX 58 (Dec. 1, 2009 Minutes).

53 JX 58 (Dec. 1, 2009 Minutes).

H. The Special Committee Retains a Second Financial Advisor

After the December 1 meeting, based on the advice provided by Morgan Stanley, the Special Committee directed its legal advisor, RLF, to submit a revised term sheet to Evercore Partners setting forth the terms that the Special Committee would be willing to recommend to the Crown board. The Special Committee also discussed the possibility of retaining a second financial advisor to provide additional guidance on the remaining terms under consideration and, if appropriate, to render a fairness opinion. The Special Committee eventually retained Houlihan Lokey as its second financial advisor to evaluate the Recapitalization and, if possible, to provide an opinion that the Recapitalization [*27] was fair to Crown from a financial point of view. Houlihan explained that its analysis would "help bridge the gap between the Committee's potential finding that the Recapitalization is fair to the Company's stockholders (other than [Hallmark]) and the opinion that the Recapitalization is fair to the Company from a financial point of view." [54]

54 JX 73 (Feb. 9, 2010 Minutes).

I. The Special Committee and Hallmark Negotiate a Standstill Agreement

On December 7, 2009, the Special Committee determined that it would send a term sheet to Hallmark's attorneys reflecting the terms the Special Committee was willing to recommend to the Crown board. Included in the terms was a stringent standstill agreement which limited Hallmark's ability to buy or sell Crown's shares. [55] Throughout December 2009 and January 2010, negotiations continued based on revisions to the Special Committee's proposed term sheet. The Special Committee and Hallmark ultimately reached an agreement on the final terms of a standstill agreement--terms that prohibited Hallmark from acquiring additional shares of Crown common stock from the closing date of the recapitalization until December 31, 2013, unless expressly approved by [*28] a special committee of the Crown board composed solely of independent and disinterested directors. [56] As of January 1, 2012, however, Hallmark will be able to acquire additional Crown shares *if* it pays a $0.50 per share premium to the minority in conjunction with a third-party sale or if it makes a tender offer for all of Crown's shares with a majority-of-the-minority tender condition. [57] The standstill agreement also limits Hallmark's ability to sell its Crown shares to a third party. [58]

55 JX 475 (Email from J. Zeberkiewicz (Dec. 10, 2009)).

56 JX 84 (Crown Form 14C (May 21, 2010)) at Ex. D.

57 *Id.*

58 Special Committee Defs.' Post-Trial Answering Br. 26 ("Until December 31, 2011, Hallmark cannot sell its Crown common stock to a third party without prior approval of a special committee of the board composed of solely independent, disinterested directors. From January 1, 2012, to December 31, 2013, however, Hallmark can effect a third-party sale in a 'Premium Transaction,' in which the minority receives an additional $.50 per share premium, or in certain limited public offerings. Beginning January 1, 2014, through December 31, 2020, Hallmark is also restricted in its ability to sell a majority [*29] of the Crown stock to a third party."). The standstill agreement defines a Premium Transaction as a transaction in which all stockholders unaffiliated with Hallmark are entitled to participate and are entitled to receive both: (1) consideration equivalent in value to the highest per-share consideration received by Hallmark in connection with the transaction, and (2) a premium, in cash, equal to $0.50 per share of common stock. JX 84 (Crown Form 14C (May 21, 2010)) at Ex. D.

J. The Special Committee Approves a Non-Binding Term Sheet

On February 9, 2010, after consulting with and receiving advice and recommendations from its advisors, the Special Committee approved a non-binding term sheet (the "Final Term Sheet"), [59] setting forth the basic details of an agreement on the terms of the Recapitalization. [60] The Final Term Sheet was publicly filed with the SEC. [61] Morgan Stanley believed that the Final Term Sheet represented a better outcome for, and provided more value to, the minority stockholders than any of the alternatives, including the status quo. [62] Houlihan also addressed the Special Committee during the February 9, 2010 meeting. Houlihan analyzed how the minority stockholders would [*30] fare pre-recapitalization and post-recapitalization concluding that the minority stockholders received significant benefits under the Recapitalization (in the Final Term Sheet), as opposed to the status quo, in which the minority stockholders would receive no value for their shares. [63]

59 Before the Special Committee approved the term sheet, in January 2010, the Special Committee learned of a possible deal between Crown and Martha Stewart Living Omnimedia, Inc. (the "MSLO Transaction"). *See* JX 497 (MSLO Transaction Agreement). The Special Committee discussed the business and financial impact of the MSLO Transaction with Crown management. Given the anticipated modest impact on the Company's projected financial performance, and the Committee's evaluation of the inherent risks in the transaction, the Special Committee determined that the MSLO Transaction did not provide the Special Committee with a credible basis on which to extract improved terms from Hallmark. *See* Tr. 468-69 (Lund).

60 PTO ¶ 35; JX 73 (Feb. 9, 2010 Minutes).

61 JX 510 (Crown Form 8-K (Feb. 10, 2010)).

62 *See* Tr. 314 (Lee) ("We thought in our view this really was and really is the best alternative that was available to all stakeholders. [*31] We went from having a company that had a billion-two of senior secured debt on its balance sheet and having equity, not having any value until liability was satisfied, to having equity controlling -- only non-affiliated equity owning 10 percent of the company roughly after only $500 million of value."); *see also* Tr. 869-70 (Kindler) ("I felt, I was actually quite certain, that we had pushed this as far as we could possibly push it. And you know, our job was to do the best job we could do for the non-Hallmark stockholders. And sitting there, looking at all the alternatives, it was very, very clear to us that there was absolutely no way of getting this company refinanced. Or the status quo, where, basically, we just kept on going on with waiver after waiver after waiver. That would have been an awful result for the non-Hallmark shareholders.").

63 *See* Tr. 185-86 (De Rose).

There were a number of improvements in the Final Term Sheet as compared to the initial Hallmark Proposal, including: (1) the minority stockholders will begin to share in Crown's upside once the value of Crown exceeds $525 million, compared to $1.168 billion in the initial Hallmark Proposal; (2) $315 million of post-Recapitalization [*32] debt (as compared to $500 million in the initial Hallmark Proposal), with a maturity date in December, 2013 (as compared to September, 2011 in the initial Hallmark Proposal); (3) reduced interest rates on the debt and a higher conversion price on the preferred stock; (4) inclusion of a $30 million revolver, guaranteed by Hallmark for the term of the new debt as compared to no revolver in the initial Hallmark Proposal; (5) the Standstill Agreement; and (6) annual, rather than quarterly, cash flow sweeps. [64] As mentioned above, the Final Term Sheet was publicly disclosed, and the Company never received any other offers to purchase the Company, even though it was disclosed as a non-binding term sheet.

64 *See* JX 73 (Feb. 9, 2010 Minutes).

K. The Special Committee Approves the Recapitalization

During a February 25-26, 2010 meeting, Morgan Stanley reconfirmed its earlier advice to the Special Committee that "it would be impossible to refinance with the Company's current indebtedness," and that it "did not think there would be any return for the equity if the Company was sold today." [65] Morgan Stanley did not believe that other strategic options would even be available to the Company. Therefore, [*33] Morgan Stanley believed that the Recapitalization was clearly the best option for Crown and recommended that the Special Committee approve the Recapitalization. Furthermore, the Special Committee received a fairness opinion from Houlihan, and Houlihan's analysis indicated that Crown's equity would have value after the Recapitalization, as opposed to before the Recapitalization, in which it would not. [66] Based on its own business judgment and the advice from its independent legal and financial advisors, including the recommendation from Morgan Stanley and the fairness opinion by Houlihan, the Special Committee concluded that the Recapitalization was in the best interests of Crown and its minority stockholders, and recommended that the transaction be approved by the full Crown board. Relying on the Special Committee's recommendation, the full board approved the Recapitalization, which closed on June 29, 2010.

65 JX 76 (Feb. 25-26, 2010 Minutes).

66 *See* JX 77 (Houlihan Lokey Fairness Opinion).

II. ANALYSIS

A. Standard of Review and Burden of Proof

[HN1] A transaction between a majority stockholder and the company in which it owns a majority stake is generally reviewed under the entire fairness standard [*34] and the controlling stockholder (or the party standing on both sides of the transaction) bears the burden of proof. [67] Given Hallmark's role in the Recapitalization, the applicable standard of review for this case under Delaware law is therefore entire fairness. As its name implies, [HN2] entire fairness has two components: fair dealing and fair price. These prongs are not independent and the Court does not focus on each of them individually. [68] Rather, the Court "determines entire fairness based on all aspects of the entire transaction." [69] Fair dealing involves "questions of when the transaction was timed, how it was initiated, structured, negotiated, disclosed to the directors, and how the approvals of the directors and the stockholders were obtained." [70] Fair price involves questions of "the economic and financial considerations of the proposed merger, including all relevant factors: assets, market value, earnings, future prospects, and any other elements that affect the intrinsic or inherent value of a company's stock." [71]

67 *Kahn v. Tremont Corp., 694 A.2d 422, 428 (Del. 1997)* ("Ordinarily, in a challenged transaction involving self-dealing by a controlling shareholder, the substantive [*35] legal standard is that of entire fairness."); *Kahn v. Lynch Commc'n Sys., Inc., 638 A.2d 1110, 1115 (Del. 1994)*.

68 *Valeant Pharms. Int'l v. Jerney, 921 A.2d 732, 746 (Del. Ch. 2007)* ("[T]he fair dealing prong informs the court as to the fairness of the price obtained through that process.").

69 *Id.*; *William Penn P'ship v. Saliba, 13 A.3d 749, 2011 Del. LEXIS 91, 2011 WL 440615 (Del. Feb. 9, 2011)*.

70 *Emerald Partners v. Berlin, 787 A.2d 85, 97 (Del. 2001)* (quoting *Weinberger v. UOP, Inc., 457 A.2d 701, 711 (Del. 1983))*.

71 *Id.* (quoting *Weinberger, 457 A.2d at 711*).

[HN3] "[T]he initial burden of establishing entire fairness rests upon the party who stands on both sides of the transaction." [72] If defendant can show that the challenged transaction was negotiated and approved by "an independent committee of directors" or an informed majority of the minority, however, the burden of proof shifts to "the challenging shareholder-plaintiff." [73] To determine whether the burden shifts in this case, I must consider "whether the special committee was truly independent, fully informed, and had the freedom to negotiate at arm's length." [74] [HN4] To establish that a director lacks independence, plaintiff must "create a reasonable doubt that a director [*36] is not so 'beholden' to an interested director . . . that his or her 'discretion would be sterilized.'" [75] In order "[t]o create a reasonable doubt about an outside director's independence, a plaintiff must plead facts that would support the inference that because of the nature of a relationship or additional circumstances . . . , the non-interested director would be more willing to risk his or her reputation than risk the relationship with the interested director." [76]

72 *Kahn v. Lynch, 638 A.2d at 1117 (Del. 1994)* (citing *Weinberger, 457 A.2d at 710-11*).

73 *Id.* "If the controlling stockholder permits the use of both protective devices [an independent special committee *and* an informed majority of the minority], then the transaction could avoid entire fairness review. *Reis v. Hazelett Strip-Casting Corp., 2011 Del. Ch. LEXIS 11, 2011 WL 303207, at *10 (Del. Ch. Jan. 21, 2011)* (citing *In re CNX Gas Corp. S'holders Litig., 4 A.3d 397, 400 (Del. Ch. 2010)*; *In re John Q. Hammons Hotels Inc. S'holder Litig., 2009 Del. Ch. LEXIS 174, 2009 WL 3165613, at *12 (Del. Ch. Oct. 2, 2009)*; *In re Cox Commc'ns, Inc. S'holders Litig., 879 A.2d 604, 606 (Del. Ch. 2005))*. Here, as there was no majority of the minority vote, avoiding entire fairness review [*37] completely is not a possibility.

74 *Kahn v. Lynch, 638 A.2d at 1120, 1121*.

75 *Beam v. Stewart, 845 A.2d 1040, 1050 (Del. 2004)*.

76 *Id. at 1052*.

At trial, the evidence easily met this exacting standard, demonstrating that the Special Committee was independent, fully informed, and that it had negotiated with Hallmark at arm's length. First, plaintiff made no arguments regarding the independence of Lund and Granath, two of the three members of the Special Committee. Second, plaintiff failed to convince me that the other member, Jennings, lacked independence.

Plaintiff makes several arguments as to why Jennings lacks independence, but none of them were enough to create a reasonable doubt as to his independence. First, plaintiff contends that because of his nomination by Hallmark to the board of Crown, Jennings lacks independence. [HN5] The mere nomination of a director by a majority stockholder, however, is insufficient to demonstrate lack of independence. [77] It was established at trial that aside from his service on the board of Crown, Jennings has no business or personal relationship with any of the other Crown directors. [78] Next, plaintiff points to Jennings's service for various charitable and civic [*38] organizations, and his involvement with the University of Kansas (which receives financial support from Hallmark) to challenge his independence. Although Jennings has served on the boards of numerous nonprofit organizations in the Kansas City area, none of the positions raise reasonable doubts about his independence. Moreover, plaintiff asserts that several members of the Hall family attended the University of Kansas and that the Hall family made significant donations to the University of Kansas. Plaintiff also contends that Jennings's fundraising efforts for the University of Kansas are themselves sufficient to undermine his independence. Jennings, however, has never solicited from Hallmark or the Hall family on behalf of the University of Kansas. Furthermore, Jennings does not receive any compensation for his service on University of Kansasaffiliated boards. Although he did receive a salary for his three month job as the University of Kansas's interim athletic director, he returned his salary to the University when his term was up. [79]

77 *See, e.g., Aronson v. Lewis, 473 A.2d 805, 816 (Del. 1984)* ("[I]t is not enough to charge that a director was nominated by or elected at the behest [*39] of those controlling the outcome of a corporate election. That is the usual way a person becomes a corporate director.").

78 Tr. 665, 675-76, 735-36 (Jennings).

79 Tr. 676-77 (Jennings).

All these facts illustrate that cases like *In re Oracle Corp. Derivative Litigation* [80] (which involved a special litigation committee) do not apply here. For example, in *Oracle* and other similar cases, the special committee members were paid a salary by the university that received the donations, and they personally solicited donations from (or had other substantial dealings with) the donors. In short, plaintiff failed to persuade me that Jennings was beholden to or under the domination of Hallmark or the Hall family, or that Jennings was "disabled from exercising independent judgment." [81]

80 *824 A.2d 917 (Del. Ch. 2003).*

81 *In re J.P. Morgan Chase & Co. S'holder Litig., 906 A.2d 808, 821 (Del. Ch. 2005).* In addition to being independent and disinterested, the individual committee members impressed me as directors willing to assume the task of the committee "in a rigorous and independent manner." G. Varallo, S. Raju & M. Allen, *Special Committees: Law and Practice* 32-33 (2011).

Accordingly, I find that all three [*40] members of the Special Committee were independent, and approved the transaction after an arm's length negotiation. Thus, plaintiff bears the burden of showing that the Recapitalization was unfair given the undisputed evidence that the transaction was approved by an independent and disinterested special committee of directors. I now begin my analysis by examining the issue of fair dealing and then turn to the related issue of fair price.

B. Fair Dealing

Along with the board's composition and independence, [HN6] "fair dealing addresses the timing and structure of negotiations as well as the method of approval of the transaction." [82] Considering theses factors, for the reasons set forth below, I find that the process followed here was entirely fair.

82 *Kahn v. Lynch Commc'ns Sys., Inc., 669 A.2d 79, 84 (Del. 1995).*

1. Hallmark's Timing of the Recapitalization

Plaintiff argues that Hallmark opportunistically timed its original Recapitalization proposal to burden Crown with debt as the initial step in a devised plan in which it could exercise leverage over Crown to maneuver a "perfect storm" and force recapitalization at a critical moment in Crown's life cycle. [83] Given the fact that Hallmark had all [*41] along sought a meaningful solution to Crown's crumbling capital structure, I do not accept plaintiff's contention that Hallmark had devised an elaborate scheme to unfairly time the Recapitalization. To begin with, Hallmark did not have any legal obligation to continue to waive Crown's debt obligations. Like the majority stockholder and creditor in *Odyssey Partners, L.P v. Fleming Companies, Inc.*, [84] Hallmark did not have an obligation to defer payments or to make other financial concessions for the sake of Crown, or its minority stockholders. [85] As former Chancellor Allen observed in *Thorpe v. CERBCO, Inc.*, "controlling shareholders, while not allowed to use their control over corporate property or processes to exploit the minority, are not required to act altruistically towards them." [86] Moreover, the evidence at trial indisputably showed that there was no tangible way that Crown would be able to meet its debt obligations when they were due, and that Crown had no real options other than a recapitalization or bankruptcy. Given the fact that Crown's debt crisis had developed over the years with unprofitable and not-promising operations, it is evident that Crown did not have a solution [*42] that would provide a better opportunity for future value than a recapitalization. Thus, I find that plaintiff's evidence falls far short of demonstrating Hallmark's having unfairly timed the Recapitalization.

83 Pl's Opp'n Post-Trial Br. 42 ("The Recap Proposal was opportunistically timed by Hallmark to coincide with a perceived 'perfect storm' of events that would allow it to increase its controlling stake above 90% at a bargain price, to wit, the confluence of (a) the impending expiration of the Standstill and Waiver, (b) near-frozen capital markets that would allow Hallmark to claim to be [the] 'only game in town,' and (c) a company that had finally turned EBITDA positive, but had not yet shot up the curve of the proverbial 'hockey stick.'").

84 *735 A.2d 386 (Del. Ch. 1999).*

85 *Id. at 411* ("Fleming was under no obligation to agree to any of these things, either as a stockholder, a supplier or a creditor."); *see Jedwab v. MGM Grand Hotels, Inc., 509 A.2d 584, 598 (Del. 1986)* ("[T]he law does not require more than fairness. Specifically, it does not, absent a showing of culpability, require that directors or

controlling shareholders sacrifice their own financial interest in the enterprise [*43] for the sake of the corporation or its minority shareholders.").

86 *1993 Del. Ch. LEXIS 257, 1993 WL 443406, at *7 (Del. Ch. Oct. 29, 1993).*

Unfortunately that is not all of the bad news for the plaintiff. There are other reasons why plaintiff's unfair timing theory fails as well. Plaintiff's unfair timing theory is premised almost entirely on the approximately $3 billion valuation of Crown by plaintiff's expert witness, Daniel R. Schechter. I am not able to accept this theory, however, when Schechter's valuation cannot explain why no potential buyer or valuation expert (other than Schechter himself) ever perceived Crown's value to exceed its debt. First, if plaintiff's theory were correct, Hallmark would have accepted the Special Committee's offer to take Crown private (because Hallmark would have benefited from Schechter's additional $2 billion of value had it in fact existed). Second, during the nine months between the Hallmark Proposal (May 2009) and the Special Committee's approval of the Recapitalization (February 2010) in which plaintiff argues that Crown was in the "sweet spot" on the "proverbial hockey stick," none of the potential buyers tried to capture this purported upside by offering terms better [*44] than Hallmark's proposal. Third, when Hallmark saw the upside in Crown's "life cycle," surely at least one of the other sophisticated industry players and private equity buyers (players that Schechter noted regularly advise on potential cable acquisitions) would have attempted to take advantage of the purported "sweet spot" as well by offering to pay more than the value implied by the conversion price in the Recapitalization. No one did. Lastly, plaintiff argues that Hallmark proposed the Recapitalization at a critical time in Crown's life cycle, during a brief period after Crown had turned the EBITDA positive but before it shot up the curve to profitability. On this specific point, I agree with and fully credit Hallmark's expert witness (Professor Jerry A. Hausman) that absent a material change in expected cash flows, a short interval in time between two DCF valuations will not produce the type of dramatic change in value that plaintiff's theory posits. Hausman explained that only "new (unexpected) information" (the type of information that could materially affect Crown's cash flows)--not changes in the timing of a valuation--would be required to explain the dramatic change in values. [*45] [87] Unless something changes that would materially affect the expected future cash flows (and no such change occurred here), the timing of the valuation should not produce the type of change in value that plaintiff assumes. Thus, it is clear to me that plaintiff's unfair timing theory is flawed.

87 JX 87 (Hausman Report) ¶ 18 ("[M]arket prices only change when there is new (unexpected) information.").

2. The Special Committee's Formation and Selection of Counsel

The members of the Special Committee have extensive business and industry experience, including Lund's and Granath's experience in the television and cable industries. Plaintiff alleges that Hallmark improperly controlled the Special Committee's formation and operation, and in particular that Jennings was not independent. [88] Plaintiff attempts to show this by pointing to preliminary discussions that Jennings had with Brian Gardner, General Counsel of Hallmark and Secretary of Crown. Plaintiff insists these discussions somehow were improper, but does not allege that any of these preliminary discussions involved the substance of the Hallmark Proposal or the Recapitalization. Furthermore, no evidence exists of any discussions between [*46] Gardner and members of the Special Committee once the Special Committee was formed, other than in connection with meetings of the full Crown board. [89]

88 Plaintiff focuses on Jennings because it is crystal clear that Lund and Granath are independent of Hallmark. Lund has no relationship with anyone in the Hall family, and he has no personal or business affiliation with any Hallmark entity (other than as a director of Crown). Granath is also disinterested in the Recapitalization and independent of Hallmark and the Hall family. He was asked by Lund to join the Crown board, and he did not know any of the other members of the Crown board or any members of the Hallmark board of directors. Like Lund, Granath has no personal or business relationships with any members of the Hall family, other than as a director of Crown. Again, plaintiff made no arguments regarding the independence of Lund and Granath at trial or in its written submissions. Furthermore, as I have stated above, plaintiff offered no evidence of any financial dealings between Jennings and any member of the Hall family. In *Oracle* and other analogous cases, the committee members were paid salaries by the universities that received [*47] the donations. That is not the case here.

89 Tr. 670-71 (Jennings).

Finally, I do not recognize any legitimate issue that can be raised concerning the Special Committee's independence or the integrity of its process in its selection of one of the attorneys, Mark Gentile of RLF, identified by Gardner. Lund independently suggested Gentile, because he had previously worked with Gentile on a special committee assignment with another board. [90] At this time, Jennings also asked Gardner to see if Hallmark's Delaware counsel could suggest other Delaware counsel with experience in representing special committees (and with no Hallmark conflict). [91] Among the counsel identified by Gardner's Delaware counsel was Gentile of RLF. Then, Lund recommended Gentile to the Special Committee. [92] Based on Lund's recommendation, and the firm's reputation, the Special Committee retained RLF as its counsel. Thus, the record is clear that it was Lund's recommendation of Gentile that led the Special Committee to retain RLF. Finally, no evidence exists that Gentile had any ties to Hallmark or had any reason to favor Hallmark's interests over those of the Special Committee and Crown's minority stockholders. Based [*48] on this record, I find that the Special Committee (including its members, formation, and selection of counsel) is independent of Hallmark.

90 Tr. 441 (Lund).
91 *See* JX 414 (Email chain regarding Crown Media (May 28, 2009)); Tr. 667 (Jennings).
92 *See* Tr. 441-42 (Lund); 613 (Granath); 668 (Jennings).

3. The Special Committee's Mandate

As respected practitioners have noted, "in the context of a conflict transaction, the importance of the committee's charter cannot be overstated." [93] [HN7] In addition to being independent, a well-constituted special committee must have a "clear mandate setting out its powers and responsibilities in negotiating the interested transaction." [94] This Court has stated that "this mandate should include the power to fully evaluate the transaction at issue, and, ideally, include what this court has called the 'critical power' to say 'no' to the transaction." [95] Here, the members of the Special Committee interpreted their clear mandate broadly to include the power to consider the Hallmark Proposal, negotiate its terms, consider alternatives to the transaction, and ultimately recommend or reject the Hallmark Proposal. [96] Each member of the Special Committee understood that his [*49] role was to represent the interests of the minority stockholders of Crown. [97] Moreover, the Crown board could not approve the Hallmark Proposal without a favorable recommendation from the Special Committee. [98]

93 G. Varallo, S. Raju & M. Allen, *Special Committees: Law and Practice* 41(2011).
94 *Gesoff v. IIC Indus., Inc., 902 A.2d 1130, 1146 (Del. Ch. 2006).*
95 *Id.*
96 *See, e.g.,* Jennings Dep. 92-94 ("[I]t has always been our understanding as a committee that we had the broadest of authorities to review alternatives available to the company."); Lund Dep. 92-93 ("Q. Mr. Lund, did you view the scope of the Special Committee's mandate to include exploration of alternatives other than the proposed recapitalization? A. . . . Yes."); Granath Dep. 59.
97 *See* Tr. 439 (Lund) ("The special committee's responsibilities were to protect the rights of the minority stockholders."); 671 (Jennings).
98 *See* JX 423 (Resolutions).

Plaintiff contends that the Special Committee was "hamstrung by its narrow mandate" [99] (which according to plaintiff was limited to negotiating the Hallmark Proposal) and was thus unable to consider alternatives to the Hallmark Proposal. This argument is meritless as it is contrary to the [*50] evidence described above and set forth at trial. First, plaintiff selectively omits quotations from the Resolutions themselves, which broadly empowered the Special Committee to "consider such matters as it deems advisable with respect to the Recapitalization Proposal" and "take such further action, at the Company's expense, as the Special Committee deems appropriate in order to carry out the intent and purpose" of the resolutions. [100] Second, as noted above, each member of the Special Committee viewed the committee's mandate broadly as allowing it to consider the Hallmark Proposal, negotiate its terms, recommend (or not recommend) the Hallmark Proposal, and also to consider any and all alternatives to the Hallmark Proposal. [101] For example, the Special Committee had initially proposed a go-private transaction to Hallmark, which was rejected. Third, Morgan Stanley repeatedly advised the Special Committee on alternatives to the Hallmark Proposal. Fourth, the Special Committee encouraged and incentivized Morgan Stanley to pursue alternatives, such as a sale, in its engagement letter. [102] Lastly, the Special Committee commissioned a press release announcing to the world that the Special [*51] Committee was "considering Hallmark Cards' proposal *as well as the Company's other alternatives.*" [103] Finally, plaintiff alleges that Hallmark drafted the Special Committee's Resolutions. Plaintiff, however, overlooks the fact that the Special Committee's counsel completely revised the Resolutions. [104] Therefore, I find that the Special Committee was well aware of its mandate, interpreted that mandate broadly, understood that it had the power to reject the Hallmark Proposal and understood that its role was to represent the interests of Crown's minority stockholders.

99 Pl.'s Opp'n Post-Trial Br. 43.
100 JX 423 (Resolutions).
101 *See, e.g.,* Tr. 473-74 (Lund); 601-02 (Granath); 671-73 (Jennings).
102 *See* JX 431 (Morgan Stanley Engagement Letter); Tr. 837 (Kindler) ("My expectation was

if there was a sale transaction, that we would get a higher fee than for recapitalization.").
103 JX 612 (Press Release (July 14, 2009)) (emphasis added); Tr. 672-73 (Jennings); 841-42 (Kindler) ("This kind of reference, looking at all alternatives, is very well understood on Wall Street; that the company is for sale, and that, basically, we'll look at everything, not just a recapitalization, but also any other alternative, [*52] including a sale.").
104 *Compare* JX 115 (original draft of the Resolutions), *with* JX 423 (Resolutions as approved by the Crown board).

4. The Special Committee's Financial Advisors

The Special Committee retained Morgan Stanley as one of its two independent financial advisors. As a second financial advisor, the Special Committee retained Houlihan based on the firm's reputation and on the strength of previous work that Houlihan had done for Crown. Morgan Stanley was independent from both Hallmark and Crown, and Houlihan was independent of Hallmark. Morgan Stanley and Houlihan did not work together, and neither saw the other's work. [105] Houlihan provided the Special Committee with an analysis of the *pro forma* impact of the Recapitalization on the minority stockholders, as well as a fairness opinion as to Crown. [106] Morgan Stanley did not provide a fairness opinion, but did advise the Special Committee to approve and recommend the Recapitalization. [107] The recommendation was an essential part of Morgan Stanley's retention at the outset. [108]

105 *See, e.g.*, Tr. 181-82 (De Rose) ("We did not work with them together."); 890 (Kindler) ("I don't know anything about the Houlihan presentation.").
106 *See* [*53] JX 77 (Houlihan Lokey Fairness Opinion); JX 78 (Houlihan Lokey Feb. 26, 2010 Presentation); Tr. 202 (De Rose).
107 *See, e.g.*, Tr. 871 (Kindler) ("That is basically Morgan Stanley as an institution telling the special committee that they affirmatively recommend that they do the recap. That is just far stronger than a fairness opinion.").
108 JX 431 (Morgan Stanley Engagement Letter).

Pursuant to *8 Del. C. § 141(e)*, the Special Committee was entitled to rely on the "information, opinions, reports or statements" [109] presented by Morgan Stanley and Houlihan. Morgan Stanley's recommendation was supported by months of work and an understanding of the cable industry and Crown's business. [110] Morgan Stanley and Houlihan were selected with reasonable care, the Special Committee reasonably believed that the task was within their professional or expert competence, and their analyses were "not so deficient that the [special] committee would have reason to question [them]." [111] In addition, under Delaware law, there is no requirement that the Special Committee obtain a formal fairness opinion as to the minority stockholders, particularly in light of the strength of the advice it received. [112] Thus, [*54] I find that the recommendation from Morgan Stanley, the fairness opinion from Houlihan, and the analysis of the *pro forma* impact on the minority stockholders from Houlihan were sufficient to satisfy the Special Committee's duty of care.

109 *8 Del. C. § 141(e)* ([HN8] "A member of the board of directors, or a member of any committee designated by the board of directors, shall, in the performance of such member's duties, be fully protected in relying in good faith upon the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of the corporation's officers or employees, or committees of the board of directors, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the corporation.").
110 The recommendation by Morgan Stanley was also approved by its internal fairness committee. *See* Tr. 872 (Kindler) ("Q. Morgan Stanley has a committee that approves the issuance of fairness opinions, doesn't it? A. Yes. Q. And did that same committee approve Morgan Stanley's recommendation in this matter? [*55] A. Yes, it did.").
111 *In re Walt Disney Co. Deriv. Litig., 907 A.2d 693, 770 (Del. Ch. 2005)* (holding that the compensation committee was protected by *8 Del. C. § 141(e)* in relying upon the advice of its compensation expert).
112 *See, e.g., Smith v. Van Gorkom, 488 A.2d 858, 876 (Del. 1985)* ("We do not imply that an outside valuation study is essential to support an informed business judgment; nor do we state that fairness opinions by independent investment bankers are required as a matter of law."); *Crescent/Mach I P'rs, L.P. v. Turner, 846 A.2d 963, 984 (Del. Ch. 2000)* ([HN9] "[F]airness opinions prepared by independent investment bankers are generally not essential, as a matter of law, to support an informed business judgment.").

5. The Special Committee's Process and Arm's-Length Negotiations

[HN10] Another critical issue in the fair dealing inquiry is "whether the Special Committee functioned as an effective proxy for arms-length bargaining, such that a fair outcome equivalent to a market-tested deal resulted." [113] That is, a special committee "must function in a manner which indicates that the controlling shareholder did not dictate the terms of the transaction and that the committee exercised [*56] real bargaining power 'at an arms-length.'" [114] After reviewing all the evidence that was produced at trial and the parties' written submissions, I find that the Special Committee functioned independently of Hallmark and reached the best deal possible through intense negotiations that were appropriately adversarial.

113 *In re Loral Space & Commc'ns Inc. Consol. Litig., 2008 Del. Ch. LEXIS 136, 2008 WL 4293781, at *22 (Del. Ch. Sept. 19, 2008).*
114 *Kahn v. Tremont, 694 A.2d at 429.*

The Special Committee met formally twenty-nine times over a period of nine months. The Special Committee's legal advisors were present at each one of them. After Morgan Stanley was retained, representatives of Morgan Stanley (usually including Robert Kindler, the Global Head of Mergers and Acquisitions at Morgan Stanley) attended every one of the Special Committee's meetings. The members of the Special Committee relied on the professional advice provided by their legal and financial advisors. Notably, each member of the Special Committee assumed an active role in the process (outside its internal meetings) including speaking with a third party regarding potential interest in Crown (Lund), meeting with Muoio to discuss his concerns (Granath), [*57] actively facilitating negotiations (Jennings), and negotiating face-to-face with Hallmark (Lund). [115]

115 *See, e.g.*, Tr. 433-35 (Lund); 628-29 (Granath); 682-83 (Jennings); 463-64 (Lund).

As stated earlier, the Special Committee evaluated and actively searched for alternatives to the Hallmark Proposal, including a third-party sale, a third-party refinancing, a potential bankruptcy, and continuing the status quo. After reviewing the alternatives, Morgan Stanley advised the Special Committee that neither a sale nor a refinancing was a viable option. [116] Indeed, at trial, Kindler was resolute about Morgan Stanley's views on the alternatives. [117] It also is undisputed that the Special Committee initially refused to negotiate the Hallmark Proposal and instead made its own proposal that Hallmark take Crown private, even though Hallmark had previously indicated that it was not interested in such a transaction. [118] In light of Morgan Stanley's involvement in the process of evaluating the Hallmark Proposal and considering the alternatives, as well as Morgan Stanley's deep familiarity with the market, I reject plaintiff's assertion that Morgan Stanley somehow failed to comprehend the opportunities [*58] in the market and that the Special Committee erred in relying on Morgan Stanley.

116 Tr. 260-61 (Lee) ("We also evaluated the capital markets alternative as well as sale alternative, and in our view, in conjunction with discussions with our ratings advisory group and our capital markets group, . . . they did not believe that the company could raise enough to take out the $1.2 billion of senior secured Hallmark debt. Likewise, on the sale side, we did not believe that in the current market, or based on the company's forecasted projections, that the company was likely to achieve a sale value of greater than $1.2 billion.").
117 Tr. 839 (Kindler) ("[Reaching out to third parties about refinancing] would have been a pointless exercise. We have one of the premier leverage finance businesses on Wall Street. We're in the market every day. And the concept that anyone would lend this company, it just was not going to happen, so it would have been a pointless exercise to do that."); 842-43 (Kindler) ("[Considering a third party sale was] much like the refinancing. From [Morgan Stanley's] perspective as investment bankers . . . the asset was for sale but the key was at what price could it possibly [*59] be sold. We're in this business. We knew what every other cable channel was sold for. [W]e knew that it could not be sold for anywhere near what the debt was. This was just one of those circumstances where it was absolutely clear to us as investment bankers that there would be no buyer for this channel at anything near what the debt was.").
118 Tr. 261 (Lee) ("We thought a go-private transaction in which Hallmark would tender for the shares of the unaffiliated shareholders was a . . . good alternative, arguably the best alternative that was available, but we didn't think it was actually going to be available.").

After Hallmark refused to consider a go-private transaction, the Special Committee started to contemplate and address the terms and conditions for recapitalizing the Company. The Special Committee, with advice from Morgan Stanley, pushed back against the Hallmark Proposal and pursued a negotiating strategy designed to provide as much benefit as possible to the minority stockholders. [119] Morgan Stanley's proposed negotiating strategy was to choose a value for Crown at the low end of Morgan Stanley's range ($500 million), give Hallmark new debt equal to that number, and allow the [*60] minority stockholders to share in the upside above that number. [120] The Special Committee adopted this strategy, which eventually worked. In the Recapitalization, Hallmark received credit for $500 million of its debt, and Crown's minority stockholders were given the opportunity to share in Crown's value above $500 million. [121] Given this result, in which Crown's minority stockholders would have some opportunity to realize value as opposed to none, it is clear that the Special Committee's arm's-length negotiating strategy ultimately resulted in a benefit to the minority.

119 Kindler explained at trial that the Hallmark Proposal provided no return to the minority stockholders. *See* Tr. 847-48 (Kindler) ("[T]he original proposal that was made by Hallmark was basically that the equity wouldn't share in anything until the company was worth over [$]1.15, $1.2 billion."). Because both Hallmark and Morgan Stanley agreed that Crown was worth less than $1.15 billion, the equity would have received no value under the Hallmark Proposal.

120 Tr. 270-71 (Lee); 847-49 (Kindler).

121 With $500 million of debt, only $315 million of Crown's debt was converted into new debt, and $185 million of Crown's debt [*61] was converted into Crown preferred stock. PTO ¶ 37. Eventually, non-Hallmark equity ownership turned out to be the amount that exceeded Crown's aggregate value of $525 million, because of the issue with the preferred stock. Non-Hallmark stockholders were to retain 8.2% of the common stock assuming the preferred stock converted. JX 74 (Morgan Stanley Feb. 25, 2010 Presentation) at 19-20. At trial, Kindler testified "[w]e were going to be sharing at over 500 million, essentially sharing at over 525 million, because this is preferred stock at issue that we had." Tr. 855 (Kindler).

The Special Committee initially suggested the go-private transaction to counter Hallmark's recapitalization proposal, and when it determined that Hallmark had not made adequate concessions in response to its first counterproposal, the Special Committee refused to negotiate altogether, thereby forcing Hallmark to bid against itself and to make additional concessions. This adversarial conduct bespeaks independence, and confirms the arm's-length nature of the bargaining process.

Although the Special Committee eventually acceded to Hallmark's proposal that Hallmark own more than 90% of Crown's common shares after [*62] the Recapitalization, the Special Committee secured a binding standstill agreement that requires, among other things, independent director approval for a future short-form merger or third-party sale until December 31, 2011, and a potential $0.50 per share premium to the non-Hallmark stockholders in the event of a third-party sale until December 31, 2013. Furthermore, the Special Committee insisted on a majority-of-the-minority condition. [122] Kindler thought it unlikely that Hallmark would ever agree to such a condition, [123] but he nonetheless advised the Special Committee to maintain its position "if, for nothing else, for negotiating leverage." [124] The Special Committee eventually dropped the majority-of-the-minority condition near the end of the negotiations, in exchange for other favorable concessions from Hallmark. [125]

122 JX 50 (Oct. 27, 2009 Minutes).

123 Tr. 865-66 (Kindler) ("If I was in Hallmark's position, I would never agree to a majority-of-the-minority condition. It makes absolutely no sense from Hallmark's perspective, because then they're in the impossible position of having negotiated with the special committee only to find that, now, they've got to go to public stockholders [*63] to get the majority of the minority to approve. They don't even know who the public stockholders are because it changes every day.").

124 *Id.*

125 Tr. 866 (Kindler) ("[W]e kept it to negotiate. We were strong on it, right from the beginning of the transaction; and toward the end of the transaction, we were able to extract a lot of things . . . all in the context of agreeing not to have the majority-of-the-minority condition.").

In the end, the Special Committee got a great result for Crown's minority stockholders. Its advisors believed and advised the Special Committee that the Recapitalization was a more attractive and viable option for Crown's minority stockholders than any other alternatives available to the Company. Accordingly, I find that the negotiated Recapitalization terms were the product of a thorough, effective, and independent Special Committee.

C. Fair Price

[HN11] Fair price "relates to the economic and financial considerations of the proposed [transaction], including all relevant factors: assets, market value, earnings, future prospects, and any other elements that affect the intrinsic or inherent value of a company's stock." [126] "When conducting a fair price inquiry as part of the [*64] entire fairness standard of review, the court asks whether the transaction was one 'that a reasonable seller, under all of the circumstances, would regard as within a range of fair value; one that such a seller could reasonably accept.'" [127] Here, the answer is yes, it was.

126 *Weinberger, 457 A.2d at 711.*

127 *Reis v. Hazelett Strip-Casting Corp., 2011 Del. Ch. LEXIS 11, 2011 WL 303207, at *15 (Del. Ch. Jan. 21, 2011)* (citing *Cinerama, Inc. v. Technicolor, Inc., 663 A.2d 1134, 1143 (Del. Ch. 1994), aff'd, Technicolor Plenary, 663 A.2d 1156*; *accord Kahn v. Tremont Corp., 1996 Del. Ch. LEXIS 40, 1996 WL 145452, at *1 (Del. Ch. Mar. 21, 1996)* ("A fair price is a price that is within a range that reasonable men and women with access to relevant information might accept."), *rev'd on other grounds, 694 A.2d 422 (Del. 1997))*.

For purposes of determining whether the Recapitalization fairly valued Crown, I will first discuss the terms of the Recapitalization and then briefly review the various methodologies employed by the parties' experts in their determination of Crown's value at the time of the transaction. On the basis of that review, I then assess which methodologies are most appropriate under Delaware law and in light of the particular [*65] circumstances of this case.

1. Terms of the Recapitalization

[HN12] The "range of fairness" aspect of the fair price inquiry "has most salience when the controller has established a process that simulates arm's-length bargaining, supported by appropriate procedural protections." [128] That is, "[a] strong record of fair dealing can influence the fair price inquiry, reinforcing the unitary nature of the entire fairness test." [129]

128 *Reis v. Hazelett Strip-Casting Corp., 2011 Del. Ch. LEXIS 11, 2011 WL 303207, at *17 (Del. Ch. Jan. 21, 2011).*
129 *Id.*

Here, the Special Committee's process, its demonstrated independence and arm's-length negotiations, the advice it received from its financial advisors, and the result it achieved all lend support to the conclusion that the Recapitalization was entirely fair. Crown was saddled with debt; it was essentially insolvent, seeking another extension of the Hallmark debt waiver, and faced a real threat of bankruptcy. Those are the brute facts concerning this company. The Special Committee, based on advice from its advisors, determined that the Recapitalization was the best alternative for Crown's minority stockholders. [130] As one of the Morgan Stanley representatives stated at trial: "Going [*66] into this, if you were a non-Hallmark stockholder, what you owned was equity in a company with about $1.2 billion worth of debt. And the only way you could ever achieve any value is if the company was worth more than $1.2 billion, which it wasn't. Here, by lowering the threshold to [$]500 million, we felt you were giving the equity, which started out with no value, something that had real value." [131] In addition, plaintiff's own expert, Schechter, conceded that absent the Recapitalization, Crown would not have survived long enough to realize any future value, much less value above the level of Hallmark's debt. [132] Thus, without a recapitalization, Crown was facing insolvency and its equity was worthless.

130 *See, e.g.*, JX 76 (Feb. 25-26, 2010 Minutes) ("Mr. Kindler stated that he does not view the decision to approve the Recapitalization as being a close call and that he believes approval of the Recapitalization is clearly the right thing for the Committee to do. The Committee members unanimously approved and accepted the report of Morgan Stanley.").
131 Tr. 853 (Kindler).
132 *See* Tr. 53-55 (Schechter).

Two decisions by this Court are instructive--*In re Vision Hardware Group, Inc.*, [133] and [*67] *In re Hanover Direct, Inc. S'holders Litigation.* [134] In *Vision Hardware*, Better Vision "was an insolvent company that was in default on substantial obligations, with even greater obligations falling due in its immediate future," and with no other realistic alternative to bankruptcy. [135] TCW, a creditor of Better Vision, agreed to purchase all of Better Vision's outstanding senior and subordinated debt and sought to cash out the minority of Better Vision. Although *Vision Hardware* was a statutory appraisal action (which this is not), the Court (as here) was faced with how to value a company's debt where the company itself was on the brink of bankruptcy and had no ability to refinance its debt. Former Chancellor Allen noted that a corporation's long-term, "going concern" value becomes irrelevant and instead its value in bankruptcy becomes the relevant metric for determining fair value. [136] Thus, the *Vision Hardware* Court recognized that when a company's going concern value comes close to its liquidation value (with the increasing risk of bankruptcy) its equity value may approach zero. [137]

133 *669 A.2d 671 (Del. Ch. 1995), aff'd sub nom. Young v. Vision Hardware Group, Inc., 676 A.2d 909 (Del. 1996).*
134 *2010 Del. Ch. LEXIS 201, 2010 WL 3959399 (Del. Ch. Sept. 24, 2010).*
135 *Id. at 677.*
136 *Id. at 677* [*68] ("[T]he evidence shows conclusively that but for the TCW proposal and its effectuation, Better Vision was a going concern heading immediately into bankruptcy and, unless new credit was made available, liquidation. This fact has very basic importance in determining the fair value of Better Vision stock.").
137 *Id.* ("As a company to be appraised moves closer to the lip of liquidation, the line between

going concern basis and liquidation basis becomes ever finer. That is, financial differences between the results of these different types of analysis will grow smaller as the company moves close to forced liquidation.").

Now consider *Hanover*, which involved a go-private merger without a special committee. Hanover's debt commitments exceeded the value of its common stock and, thus, the company was heading towards insolvency. The controlling stockholder increased its holdings of Hanover debt and preferred stock. Then it proposed a recapitalization that eliminated Hanover's minority stockholders. The *Hanover* Court found that the value of Hanover's equity was "already below sea level," and concluded that "a merger price above $0.00 (in [that] case, $0.25 per share) was entirely fair." [138]

138 *2010 Del. Ch. LEXIS 201, 2010 WL 3959399, at *3.*

Crown [*69] would have faced bankruptcy without a recapitalization or further forbearance by Hallmark. Plaintiff here asks me to disregard the economic reality which Crown faced. But treating Crown as if it had no liquidity crisis would require me to ignore the credible evidence adduced at trial. [139] This I cannot do. Thus, I conclude that the Recapitalization was entirely fair on its face. Nonetheless, in the interest of completeness, I will review the expert opinions.

139 *See Finkelstein v. Liberty Digital, Inc., 2005 Del. Ch. LEXIS 53, 2005 WL 1074364, at *12 (Del. Ch. Apr. 25, 2005)* (finding that plaintiffs' "Fantasy Island approach" to DCF valuation ignored the company's "hard economic realities.").

2. The Experts

As has become common in entire fairness proceedings of this sort, the parties presented the testimony of competing valuation experts in an effort to convince me that their valuation was the most accurate. [140] At trial, plaintiff presented the expert testimony of Daniel R. Schechter from L.E.K. Consulting, LLC, and Professor Robert Hamada from the University of Chicago Booth School of Business. Schechter, abjuring all other valuation methods, only relied on a DCF analysis. Hamada, who was presented as a rebuttal [*70] expert in response to Hallmark's valuation expert, primarily identified alleged mistakes in Morgan Stanley's valuation of Crown.

140 *See In re John Q. Hammons Hotels Inc. S'holder Litig., 2011 Del. Ch. LEXIS 1, 2011 WL 227634, at *3 (Del. Ch. Jan. 14, 2011).*

As for defendants, the Special Committee presented the testimony of Christopher Lee, the Executive Director of Morgan Stanley and Richard De Rose, the Managing Director of Houlihan, to rebut Schechter's expert testimony. Hallmark presented the expert testimony of Jerry A. Hausman, the MacDonald Professor of Economics at the Massachusetts Institute of Technology. In contrast to plaintiff's valuation experts (Schechter and Hamada), Hausman is an expert on the cable television industry and the economic trends in that industry. And unlike Schechter, Hausman believes that a DCF analysis is more reliable when it can be verified by alternative valuation methods. Importantly, plaintiff did not cross-examine Hausman at trial.

This case (as earlier noted) is similar to *In re Hanover Direct, Inc. S'holders Litigation*, where the Court found that a merger price of $0.25 per share was entirely fair because the subject company's equity actually had zero value. [141] In *Hanover*, [*71] plaintiffs' expert rejected management's projections and relied solely on a single valuation methodology, while defendant's expert used a more robust approach involving multiple methodologies to support his valuation conclusions. [142] For that and other reasons, the *Hanover* Court assigned full weight to the trial testimony of defendant's expert and no weight to the testimony of the plaintiffs' expert. [143] In this case, Schechter's single methodology valuation of Crown is roughly three times higher than any of the other valuations. The more robust approaches taken by defendants' experts and advisors, however, used multiple valuation methodologies and independently reached results that fell within the same range. [144] Although there certainly may be circumstances where using only one valuation methodology is appropriate and reliable, this is not such a circumstance. Schechter's failure to incorporate other valuation methods into his analysis makes his valuation far less credible.

141 *2010 Del. Ch. LEXIS 201, 2010 WL 3959399, at *3 (Del. Ch. Sept. 24, 2010)* ("[T]he company was in fact 'under water' at the time of the merger. Accordingly, a merger price above $0.00 (in [*Hanover*], $0.25 per share) was entirely fair.").
142 *2010 Del. Ch. LEXIS 201, [WL] at *2.*
143 *Id.* [*72] ("If a discounted cash flow analysis reveals a valuation similar to a comparable companies or comparable transactions analysis, I have more confidence that both analyses are accurately valuing a company. If an expert witness clearly and persuasively explains why he or she has included or omitted an outlier from his or her data set, I have more confidence that the expert witness's data set is less likely to lead to a biased or skewed valuation.").

144 Morgan Stanley and Houlihan used multiple valuation methodologies, and they both arrived at values for Crown less than the amount of Crown's debt. Also, third-party indications from other players in the industry valued Crown at between $500 million and $1 billion. *See* JX 31 (June 24, 2009 Minutes). Furthermore, Hallmark's financial advisors ran thirteen different valuation exercises, and only one reflected a value above the Hallmark debt. *See* JX 401 (Email from A. Shakir) at HLMK00008502 (deriving Crown's enterprise value at $1.391 billion); *see also* Tr. 186-87 (De Rose) ("It's our view, and I believe the view of practitioners in the valuation area, that valuations are best when they are supported by multiple legs, when there are different [*73] analyses from which you can triangulate a value, and that each of the analyses are confirmatory of the other. . . . So it really is the sense that more methodologies are better than just relying on a single one."); 298 (Lee) ("In our view, each valuation methodology has its limitations, so in order to have the best result in a valuation, we believe it makes sense, and most practitioners, I believe, and most academics, recommend that you use multiple valuation methodologies to triangulate a valuation.").

3. Schechter's Analysis

Schechter valued Crown nearly three times higher than all the other valuations at $2.946 billion. [145] This result, which Schechter derived from his own DCF analysis, was an obvious outlier from the other valuations presented at trial. Schechter conducted two other valuations, comparable companies analysis ($803 million) and comparable transactions analysis ($1.3 billion), and rejected those conclusions because those valuation conclusions were "absurdly low" in comparison to his DCF analysis, which valued Crown at almost $3 billion. [146] Such an outlier valuation has caused credibility concerns in other cases before this Court. [147] The chart reproduced below visually [*74] demonstrates just how far off Schechter's single methodology valuation was as compared to the multiple valuations of Crown that had been performed by the various financial advisors engaged by the Special Committee and Hallmark, as well as other industry players who had previously looked into acquiring Crown. [148]

145 JX 86 (Schechter Report) at 58.

146 Tr. 9-11 (Schechter).

147 *See, e.g., Gray v. Cytokine Pharmasciences, Inc., 2002 Del. Ch. LEXIS 48, 2002 WL 853549, at *8 (Del. Ch. Apr. 25, 2002)* ("In sum, when compared to other indications of value, Davis's valuation is such an outlier that it casts doubt on its reliability, quite apart from its exact assumptions and methodologies.").

148 Hallmark Defs.' Post-Trial Answering Br. 35. As the chart demonstrates, Schechter's own two rejected valuations are located at the very bottom of the chart and his $2.946 billion DCF value is on the far right in the circle. The chart shows the valuation numbers from the potential buyers in the past, and the valuation ranges by methodologies from defendants' financial advisors (Morgan Stanley, Houlihan and Evercore Partners).

[SEE Valuations and Indications of Crown's Enterprise Value 2008-2010 IN ORIGINAL]

As the chart plainly reveals, [*75] Schechter's sole valuation of Crown using his own DCF methodology was wildly divergent from all other valuations. Hausman, [149] on the other hand, recognized the economic reality that real-world valuations done by potential buyers are "often the best source of economic information" about the value of a company. [150] Even if the generally-preferred DCF valuation approach is used, it is only reliable when it can be verified by alternative methods to DCF or by real world valuations, including especially, valuations performed by potential third-party buyers. [151]

149 In contrast to Schechter and Hamada, Hausman is an expert on the cable industry and the economic trends in that industry. He has extensive experience as a consultant to cable and satellite TV providers, and cable TV channels. JX 87 (Hausman Report) ¶ 3; Hausman Dep. 10-16. In addition, in contrast to Schechter, Hausman has testified as an expert in the cable industry in court proceedings and has written academic papers about that industry. *Id.* at 30-31. Hausman submitted an expert rebuttal report explaining the flaws in Schechter's valuation, and as previously noted, plaintiff did not cross-examine Hausman at trial.

150 JX 91 (Hausman [*76] Rebuttal) ¶ 2 (finding Schechter's valuation fails an economic reality test, Hausman states, "[s]ince economists typically find market outcomes to be among the best sources of economic information, I analyze whether his valuation is consistent with observed market outcomes. Market outcomes are often the best source of economic information since individuals and firms spend real money and attempt to achieve the best outcome possible.").

151 *Id.* at ¶ 8.

As described earlier, Crown had been "on the market" since 2005 and management had vigorously pursued a sale. Crown's CEO, Schleiff, had a significant financial incentive to find a buyer. In the end, however, Crown was not successful in locating a buyer willing to pay even the value of Crown's debt, let alone above its debt. Hausman opined that the offers and expressions of interest in Crown by potential buyers are relevant indicators of Crown's value, especially the most recent offer by Fox in 2009 that valued Crown at approximately $370-500 million and an earlier analysis by Liberty Media in 2007 that valued Crown at approximately $466-997 million. [152] Thus, in assessing the reliability of Schechter's valuation, Hausman noted that "no [*77] observed market valuation, in either the pre-recession period or more recently (where Schechter is doing his valuation) came anywhere close to Mr. Schechter's claimed amount of $2.95 billion." [153] I agree with Hausman. If Crown was really worth $2.95 billion (as Schechter claims), the most knowledgeable and sophisticated buyers in the industry would not have readily passed on an opportunity to obtain substantial returns on an investment in Crown. [154] Because Crown's own financial statements and projections indicated that Crown had insufficient cash flow to support its debt service, Hausman reasonably determined that Crown's value was less than its debt. [155] Hausman's conclusion that the equity value was "*zero*" was in line with Morgan Stanley's analyses and was consistent with Evercore Partner's $1.025 billion valuation of Crown. [156] And again, it was consistent with earlier offers and valuations by sophisticated players in the industry, all of whom independently concluded that Crown's value is less than its debt.

152 *See* JX 87 (Hausman Report) ¶ 16; JX 91 (Hausman Rebuttal) ¶ 3; Tr. 660 (Hausman).

153 JX 91 (Hausman Rebuttal) ¶ 2; *see id.* at ¶ 3 ("I find it remarkable that Mr. Schechter [*78] makes no reference in his report to these prior market valuations. The market knew Crown was for sale and Hallmark was a 'motivated seller.' Yet no offer came within a factor of three of Mr. Schechter's valuation."); *see also id.* at n.9 ("Fox made the only actual offer, and its offer is only about 1/6 of Mr. Schechter's valuation.").

154 *Id.* at ¶ 12 ("[T]he discrepancy between Crown's market valuation and Mr. Schechter's valuation implies that a potential buyer could earn over $1.8 billion by buying Crown (the difference between Mr. Schechter's $2.95 billion valuation and the $1.13 billion market valuation). This type of opportunity is rarely missed by Wall Street. Thus, even given the characteristics of Hallmark owning a substantial share of Crown, I do not find it plausible that a buyer would miss the opportunity of an expected return of approximately 160% if Mr. Schechter's valuation was accurate. This analysis makes his valuation especially implausible given Hallmark's demonstrated willingness to sell Crown over the 2005-2009 period.").

155 JX 87 (Hausman Report) ¶ 16 ("Given the value of the debt at $1.1 billion before the recent recapitalization, and reviewing the above approaches [*79] and outcomes, I do not find that the value of the Crown common stock was positive. That is, after the debt is paid off there would not be any residual value for common equity owners.").

156 *Id.* at n.9 ("My conclusion is also consistent with the Evercore valuation of Crown as of December 2009 of $1.025 billion.").

I am convinced that the way in which Schechter arrived at a value nearly three times that of any other valuation is flawed. Below are a few of the specific reasons that cause me to reject Schechter's opinion:

o Schechter's DCF analysis ignored management's contemporaneous projections and used his own hypothetical and overly optimistic set of projections. This Court has consistently recognized the importance of management's contemporaneous projections because "the outcome of a DCF analysis depends heavily on the projections used in the model." [157] Valuations that have ignored or altered management's contemporaneous projections are "sometimes completely discounted." [158] Here, Schechter had no legitimate reason for abandoning management's projections in favor of his more optimistic estimates developed in only a short period of time and without access to Crown's management or its [*80] data. And it was unreasonable to substitute his personal judgment for "the non-litigation business judgment of [the Company's] management." [159] Schechter disapproved management's projections for simply being too low. [160] In addition, Brian Stewart, former CFO of Crown, explained in detail that management's five year projections are created with significant input and involvement from management. [161] After an extensive review process, the five year projections are approved by the CEO and finance committee, and are presented to the full board of directors for approval. [162] Thus, I am convinced that management's projections are carefully crafted and reasonable. This kind of reliable information (i.e. reasonable management projections) should have been used by Schechter in his valuation instead of his own Panglossian views.

o Schechter unreasonably extended his optimistic projections to 2024. Crown's management, well aware of Crown's economic reality and its day-to-day operations, considers it problematic to project out more than five years. [163] Hausman explained in his rebuttal that uncertainty increases with the length of projections. [164] The Special Committee's advisors used the 2013 [*81] projections provided by Crown's management. [165] Schechter provides no explanation why he is in a better position than Crown's management (which has consistently used three to five year forecast periods) to make projections extending out fourteen years. Tellingly, plaintiff's other expert, Hamada, did not opine that Crown's management projections were of inappropriate or insufficient length for a proper DCF analysis. [166]

o Schechter's valuation disregards all the contemporaneous evidence of Crown's value, as well as the economic reality facing Crown. Indeed, Hausman believed that Schechter's "valuation fails an economic reality test." [167] Not one of the many (at least eighteen) valuations of Crown done between 2008 and the time of the Recapitalization was even close to Schechter's DCF valuation. As Vice Chancellor Laster recently noted, "what you actually like to see when you're doing a valuation is some type of overlap" between the various methodologies. [168] Well, as the chart on page 51 comparing the various valuations of Crown shows, Schechter's DCF analysis does not "overlap" with anything. But as Kindler and the Special Committee members testified at trial, every media company knew [*82] that Crown had been for sale since 2005. Three sophisticated industry players had considered Crown around the time of the Hallmark Proposal, and none of their views on value were remotely close to Schechter's DCF-they all pegged Crown's enterprise value at less than Crown's debt to Hallmark. This Court in *Gray v. Cytokine Pharmasciences, Inc.* looked to offers made by potential buyers in the three years before a transaction and found that those valuations supported the conclusion that the plaintiff's "off the charts" expert was not credible. [169] There, then-Vice Chancellor Lamb concluded that the expert's valuation was an "extreme variation from the pack" as compared to all other valuations and was thus an unreliable outlier. [170] Schechter, here, is similarly "off the charts" and I find his valuation to be unreliable. Even more oddly, Schechter ignores the Hallmark debt. He valued the Company disregarding this financial reality and did not consider Crown as a "financially distressed" company. Although Schechter baldly states that the possibility of bankruptcy was "wildly implausible and somewhat ridiculous," I find it quite plausible that bankruptcy would have been Crown's future if [*83] it had maintained the status quo. [171]

o Schechter rejected both of his own market-based analyses because he was not satisfied with the results. [172] He thus relied on only one valuation methodology to support his conclusions-his "off the charts" DCF analysis. This Court has recognized that "the DCF valuation has featured prominently in this Court because it 'is the approach that merits the greatest confidence within the financial community.'" [173] Notwithstanding that general statement, the Court also gives more credit and weight to experts who apply "multiple valuation techniques that support one another's conclusions" and that "serve to cross-check one another's results." [174] Although it is true that a DCF valuation is certainly a dependable and commonly used valuation methodology, practitioners, academics, and the experts in this case acknowledge that it has its own limits and weaknesses. [175] Thus, it is preferable to take a more robust approach involving multiple techniques--such as a DCF analysis, a comparable transactions analysis (looking at precedent transaction comparables), and a comparable companies analysis (looking at trading comparables/multiples)--to triangulate a value range, [*84] as all three methodologies individually have their own limitations. [176] Here, under Schechter's comparable companies analysis, Crown had a value of $803 million, and under his comparable transactions analysis, Crown had a value of $1.2 billion. [177] Both of those numbers fall within the ranges found by Morgan Stanley and Houlihan. Schechter, however, rejected each of those valuations as "absurdly low" and "unreasonably low," respectively, and he gave them "no weight." [178] Like petitioners' expert in *Hanover*, because Schechter failed to clearly and persuasively provide any acceptable reasons for his outlier result, his methodology leaves me with little confidence in his valuation. [179]

157 *Kleinwort Benson Ltd. v. Silgan Corp., 1995 Del. Ch. LEXIS 75, 1995 WL 376911, at *5 (Del. Ch. June 15, 1995)*; *see, e.g., Doft & Co. v. Travelocity.com Inc., 2004 Del. Ch. LEXIS 75, 2004 WL 1152338, at *5 (Del. Ch. May 20, 2004)* ([HN13] "Delaware law clearly prefers valuations based on contemporaneously prepared management projections because management ordinarily has the best first-hand knowledge of a company's operations."); *In re Emerging Commc'ns, Inc. S'holders Litig., 2004 Del. Ch. LEXIS 70, 2004 WL 1305745, at *14 (Del. Ch. May 3, 2004)* ("This Court has consistently expressed [*85] a preference for the most recently prepared management projections available as of the merger date. The Court has also been skeptical of *ex post* adjustments to such projections.").

158 *Cede & Co. v. JRC Acquisition Corp., 2004 Del. Ch. LEXIS 12, 2004 WL 286963, at *2 (Del. Ch. Feb. 10, 2004)* ([HN14] "[T]his Court prefers valuations based on management projections available as of the date of the merger and holds a healthy skepticism for post-merger adjustments to management projections or the creation of new projections entirely. Expert valuations that disregard contemporaneous management projections are sometimes completely discounted."); *see, e.g., Taylor v. Am. Specialty Retailing Group, Inc., 2003 Del. Ch. LEXIS 75, 2003 WL 21753752, at *2 (Del. Ch. July 25, 2003)* ("Significantly, Kern's valuation lacks credibility because, . . . he ignored a contemporaneous set of projections prepared by Dunham's management, choosing instead to rely on far more pessimistic assumptions of Dunham's future prospects that he prepared on his own.").

159 *In re Emerging Commc'ns, 2004 Del. Ch. LEXIS 70, 2004 WL 1305745, at *15* (explaining that [HN15] "[e]xperts who . . . vary from management forecasts should proffer legitimate reasons for such variance" and finding that the expert in that [*86] case had failed to provide "legitimate reasons" for modifying management's projections).

160 JX 86 (Schechter Report) at 37-39 ("I found several areas of the forecasts to be lower than I would expect;" "I find this estimate to be very low;" "The forecasts used in the Morgan Stanley valuation are very low."). Using his own approach, Schechter calculated the revenues to surpass management's projections by $26 million (8%) in 2011, $69 million (19%) in 2012, and $75 million (18%) in 2013. *Compare* JX 86 (Schechter Report) at Ex. 4, *with* JX 559 (Crown 5 Year Plan) at SC0000018.

161 *See* Tr. 508-09 (Stewart).

162 *Id.* at 520.

163 *Id.* at 509-510 ("[L]ike any business, it's very difficult to predict the forecasted performance of the organization . . . forward-looking forecasts are obviously dependent on advertising revenue which is driven by ratings, and those ratings are very difficult to predict for extended periods beyond three to four years.").

164 JX 91 (Hausman Rebuttal) ¶ 20 n.32 ("An example might be useful to demonstrate how uncertainty increases the further one predicts into the future. The prediction for 2024 has approximately 4.7 times as much uncertainty (variance) as the prediction for 2010. [*87] Now values further into the future have less weight in the DCF because of discounting. But even after discounting, the predictions for 2022-2024 will contribute approximately the same amount to the DCF valuation as the 2010 prediction. Yet, the discounted prediction from 2022-2024 will still have over 4 times as much uncertainty as the 2010 prediction since the ratio of the variance is approximately 4.3.").

165 *See, e.g.*, Tr. 187 (De Rose) ("We used the projections provided to us by management at Crown. It's our customary practice to rely on management projections."); Tr. 255 (Lee) ("We rely on management's judgment and believe that as the operators of the company, they are in the best position to evaluate how the company will perform and are in the best position to prepare a business plan.").

166 Tr. 963 (Hamada) ("Q. [Y]ou didn't give any opinion at all on the appropriate lengths of a projection period for a DCF analysis of Crown; did you? A. What would be an appropriate length

of time or optimal length of time? No, I did not.").

167 JX 91 (Hausman Rebuttal) ¶ 2.

168 *In re Zenith Nat'l Ins. Corp. S'holders Litig.*, C.A. No. 5296-VCL, Tr. at 117 (Del. Ch. Apr. 22, 2010); *see also Gray v. Cytokine Pharmasciences, Inc., 2002 Del. Ch. LEXIS 48, 2002 WL 853549, at *7 (Del. Ch. Apr. 25, 2002)* [*88] ("Davis's valuation reached conclusions as to value that are so high that they draw into question both his qualifications and his independence. Davis's valuation is off the charts. Davis's valuation, . . . , more than doubles the results reached by Merrill Lynch and Lehman Brothers. Davis's going concern value is also more than four times higher than any offer PSI's board received when attempting to sell the Company.").

169 *Gray, 2002 Del. Ch. LEXIS 48, 2002 WL 853549, at *7-8* (finding that "the extraordinary variance from [earlier] indications of value" the board had received when attempting to sell the company was "unexplained").

170 *2002 Del. Ch. LEXIS 48, [WL] at 8* ("In sum, when compared to other indications of value, [plaintiff's expert's] valuation is such an outlier that it casts doubt on its reliability, quite apart from its exact assumptions and methodologies.").

171 Tr. 50 (Schechter); *but see* 763 (Griffith) ("[W]e wouldn't have extended the standstill. I think we would have no choice but to pursue bankruptcy or foreclosure."); 819-20 (Hall) ("Q. So bankruptcy was an option? A. It was an option, and probably the only option, and we were prepared to take forward if this did not take place.").

172 Tr. 12-13 (Schechter).

173 *Cede & Co. v. JRC Acquisition Corp., 2004 Del. Ch. LEXIS 12, 2004 WL 286963, at *2 (Del. Ch. Feb. 10, 2004)* [*89] (quoting *Ryan v. Tad's Enters., Inc., 709 A.2d 682, 702 (Del. Ch. 1996)).*

174 *Hanover, 2010 Del. Ch. LEXIS 201, 2010 WL 3959399, at *2* ([HN16] "Although there is no single preferred or accepted valuation methodology under Delaware law that establishes beyond question a company's value, there are commonly accepted methodologies that a prudent expert should use in coordination with one another to demonstrate the reliability of its valuation. If a discounted cash flow analysis reveals a valuation similar to a comparable companies or comparable transactions analysis, I have more confidence that both analyses are accurately valuing a company.").

175 JX 89 (Lee Rebuttal Report) at 6 ("While DCF valuation is a theoretically sound and commonly used valuation methodology, it is highly sensitive to the numerous underlying assumptions, including but not limited to the cash flow projections, terminal value calculation, and WACC. Furthermore, a DCF valuation values the 'fundamental' or 'intrinsic' value of an enterprise and as such, may not reflect certain market dynamics or synergies that an acquirer may enjoy. Consequently, the theoretical DCF valuation analysis may misrepresent what a buyer would actually pay for a business."); [*90] JX 92 (De Rose Rebuttal Report) at 5 ("Though the DCF is a generally accepted valuation methodology, it is typically general industry practice to employ the use of several methods-based on available data--in order to triangulate a conclusive valuation opinion.").

176 *Hanover, 2010 Del. Ch. LEXIS 201, 2010 WL 3959399, at *2*; JX 89 (Lee Rebuttal Report) at 7 n.11 (citing Niso Abuaf, *Valuing Illiquid Equity Securities in Light of the Financial Crisis of 2007-2009*, 20 Journal of Applied Finance 110, 113 (2010) ("Most practitioners triangulate among the three approaches. Triangulation shows scientific humility and legal prudence. That is, if we do not know what the truly correct approach is, we might as well be non-dogmatic and consider all the reasonable approaches, cross-check them against each other, and estimate the final result by quoting a range and not a point estimate."); Conroy & Harris, *Valuing Assets in Financial Markets* 5 (2007) ("Triangulation of value estimates is common in practice and also very useful as any method has its flaws.")). Trading comparables/multiples in the comparable companies analysis informs "what equity investors were willing to pay for similar assets, based on facts and circumstances [*91] at the time of the analyses." *Id.* Precedent transaction comparables in the comparable transactions analysis reflects "the value buyers were willing to pay for similar assets, including potential synergies, control premia, and other factors relevant to the period when such assets were acquired." *Id.* In sum, this market approach is premised on the concept that "the value of a business can be determined by reference to 'reasonably' comparable guideline companies for which values are known because either (i) they are publicly traded (comparable companies analysis), or (ii) they were recently bought or sold in a transaction, the terms of which were publicly disclosed (comparable trans-

actions analysis)." JX 92 (De Rose Rebuttal Report) at 5.
177 JX 86 (Schechter Report) at 31-32.
178 *Id.*
179 *2010 Del. Ch. LEXIS 201, 2010 WL 3959399, at *2.*

4. Hamada's Analysis

Hamada's expert opinions, proffered as rebuttal to Hausman's expert report, were less a "rebuttal" to Hausman's opinions than Hamada's (and plaintiff's) effort to attack Morgan Stanley's valuation. [180] Hamada's opinions, however, are without any basis and ignore all the significant and relevant economic realities of Crown.

180 Hamada, in his deposition, admitted that [*92] he could have offered his rebuttal report before the opening expert report was filed. Hamada Dep. 18-20, 23-25. Hamada had not read the Hausman Rebuttal Report before his deposition although he conceded at trial that "it was certainly important enough for me to read." Tr. 937 (Hamada). Moreover, Hamada's cross-examination revealed that he had not discovered any real flaw in Hausman's criticism of Schechter's DCF analysis. Tr. 950-52 (Hamada).

First, Hamada did not criticize Hausman's opinions that the offers and expressions of interest for Crown by key market players are important economic indicators to be considered in determining Crown's value. [181] Thus, it is not surprising that Hamada did not examine the offers by Liberty Media or Fox. [182] After all, he is not an expert in the cable television business, and was not in a position to adequately evaluate the contents of those offers. [183]

181 *Id.* at 940.
182 *Id.*
183 *Id.* ("But in this assignment they would have never hired me as an expert in the cable television industry. So I would not be able to adequately evaluate the contents of those offers and so forth because I don't know that industry well enough.").

Second, Hamada did no analysis regarding [*93] Crown's sustainable capital structure growth, with or without the Recapitalization. [184] Hamada did not know that Hallmark, in connection with its Hallmark Proposal, would not extend its waiver and standstill beyond May 1, 2010. [185] He also was not aware that "Crown's auditors had issued a going-concern opinion for the year ended 2009," and that its revolving credit line was set to expire in 2010. [186] Indeed, Hamada did no analysis of Crown's liquidity situation in 2010 or any other year. [187]

184 Tr. 974 (Hamada).
185 Tr. 942 (Hamada).
186 *Id.*
187 Tr. 943 (Hamada).

Third, Hamada's argument that Morgan Stanley mixed "apples and oranges" in its DCF valuation was misguided as well as based on Hamada's misapprehension of the facts. Specifically, Hamada argued that Morgan Stanley mixed firm-specific costs of equity and debt with an industry-average capital structure, and that this error led to an exaggerated WACC and deflated valuation of Crown. [188] Apparently, there was confusion over what each expert (Hamada and Lee) said and heard, but the evidence is clear that Morgan Stanley used a post-recapitalization cost of equity and a post-recapitalization cost of debt, along with a post-recapitalization [*94] target capital structure. [189] As a result, Hamada ultimately conceded that Morgan Stanley's approach (using a post-recapitalization cost of equity and debt, and target capital structure) would be an "apples-to-apples comparison," and at trial he confirmed this concession. [190]

188 Hamada explained there are two accepted approaches to calculate a firm's WACC--an industry approach and a firm-specific approach. Tr. 904-05 (Hamada); JX 88 (Hamada Rebuttal) ¶¶ 6-8. Hamada opined that the correct calculation of WACC under the industry approach requires that a cost of equity and a cost of debt based on industry inputs must be weighted with an industry-average capital structure. Under the firm-specific approach, the firm-specific cost of equity and the firm-specific cost of debt must be weighted with a firm-specific capital structure. Hamada insists that calculating a firm's WACC using an industry-average capital structure with firm-specific costs of equity and debt is methodologically inappropriate and results in an incorrect WACC calculation. *Id.* at ¶¶ 6-10; Hamada Dep. 151-56.
189 *See* Tr. 914 (Hamada), 324 (Lee); *see also* Special Committee Defs.' Answering Post-Trial Br. 60 n.39.
190 Hamada Dep. [*95] 159; Tr. 977 (Hamada).

Fourth, Hamada's criticism of Morgan Stanley's terminal value calculation is without merit. Morgan Stanley conducted two different terminal value calculations: a perpetuity growth rate and an exit multiple. Hamada argued that Morgan Stanley unjustifiably used low perpetuity growth rates (1-3%) and terminal multiples (or exit multiples) (6.5-8.5) to calculate Crown's terminal value. [191] He theorized that both methods adopted by Morgan Stanley contributed to an unreasonable decline in future growth rates, all of which resulted from Crown management's truncated projections. [192] At trial, however, Lee (for Morgan Stanley) testified that the purported decline between the explicit forecast period and the terminal period is typical. [193] In addition, the undisputed testimony showed that Morgan Stanley's exit multiple calculation had no precipitous decline in growth rates. [194] Ultimately, therefore, Hamada failed to convince me that Morgan Stanley's perpetuity growth rate was unreasonable or that its exit multiple calculation created a "cliff-like drop."

191 JX 74 (Morgan Stanley Feb. 25, 2010 Presentation) at 35-37.

192 Hamada explained that the "cliff-like drop" in the terminal [*96] year is evident with Morgan Stanley's selected perpetuity growth rates-22.3% free cash flow growth in the final year of the projections going out only 3 1/2 years and then dropping immediately to only 1-3% growth in perpetuity. JX 88 (Hamada Rebuttal) ¶¶ 15-16.

193 *See, e.g.*, Tr. 312 (Lee) ("[I]t's typical to have a difference, a spread between the growth rate that's implied by management's projections and then the perpetual growth rate that you apply using the perpetual growth rate methodology. I think that's the case in every DCF that I've done, so it wasn't unusual and wasn't something that we viewed as highly suspect."); Kindler Dep. 67 ("Having reviewed many of these I cannot imagine a single case where the perpetuity growth rate is not significantly below the growth rate in the last years."). Moreover, Morgan Stanley's perpetuity growth rates were consistent with industry practice. JX 89 (Lee Report) at 17.

194 Perpetuity growth rates implied by Morgan Stanley's exit multiple calculation actually were higher than the perpetuity growth rate Schechter used. Hamada, however, altered the WACC Morgan Stanley estimated and then argued that Morgan Stanley's exit multiples created a cliff [*97] like drop. Morgan Stanley estimated a WACC nearly 50% higher than the WACC that Hamada assumed in his criticisms of Morgan Stanley's exit multiple calculation. Tr. 966-69 (Hamada) ("Q. [I]n your report, your analysis of the cliff-like drop assumes that Morgan Stanley estimated Crown's WACC to be 9 percent; doesn't it? A. Just the same as the number right above 13.2 percent on page 34. Q. But Morgan Stanley did not estimate Crown's WACC to be 9 percent; did it? A. They should have.").

Finally, Hamada is not a restructuring expert and has never been paid to advise on a corporate restructuring. [195] As Hamada admitted, he has not offered an opinion as to whether the Recapitalization is fair to Crown or to its non-Hallmark stockholders--either in his rebuttal report or his trial testimony. In short, Hamada's opinions do not establish that the Recapitalization was unfair.

195 Tr. 948 (Hamada).

In sum, because Crown's outstanding debt exceeded the value of its equity before the Recapitalization, and because defendants' proffered expert testimony persuasively and thoroughly supported their valuation conclusions (and plaintiff's experts failed to convince me otherwise), I conclude that the Recapitalization [*98] was entirely fair.

III. CONCLUSION

For all the foregoing reasons, I find in favor of defendants and conclude that the process and the price of the Recapitalization were entirely fair. An Order consistent with this Memorandum Opinion has been entered.