

## Alert

Delaware Open MRI Radiology Associates, P.A. v. Kessler at al in the Court of Chancery of the State of Delaware in and for New Castle County Consolidated C.A. No.275-N Vice Chancellor Strine decided April 26, 2006

This case has it all: the squeeze-out of minority shareholders, the practice of sub-contracting "reading" fees to shareholders and ignoring the effect on practice value, ignoring for valuation purposes the all but ready roll-out of a state-wide series of similar MRI centers, and even the appraiser's reflex of "tax effecting" earnings in this matter involving an S corporation. Fertile ground indeed for shareholder litigation, and a set of fairly common facts in practice. Some lessons for appraisers, certainly. The Chancery court, after a thorough analysis, did a great job by modifying the conclusion of the expert it considered the best of the two to reach its conclusion under the fair value statutes.

The decision is based on an exhaustive description of the fact pattern, and the Court tried to conservatively guess what was unknown. In particular, it did review the sources of the projections used by the appraiser, and used one available projection which was not used but that the Court found telling. It even reviewed each appraiser's calculation of the weighted-averaged cost of capital.

The decision returned an "unfair" characterization of the price paid by the majority shareholders, and an additional 104.7% plus statutory interest to the minority shareholders/radiologists.

The decision is available at <http://courts.delaware.gov> then click on Opinions, then on Chancery, then on the Opinion itself. The decision can also be found at <http://NYNJCT-BV.com/MRIde.pdf>.

**J. L. PIERSON, ASA**

**Business Valuation**

<mailto:jlp@NYNJCT-BV.COM>

<http://www.NYNJCT-BV.COM>

**(203) 325-2703 Office**

**(203) 621-3128 Fax**

**(203) 434-4648 Cell**

**P.O. Box 2392 Darien CT 06820-0392**

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