

## Case Alert

Gesoff v. IIC Industries Inc. et al., in the Delaware Chancery Court decided May 18, 2006

The Delaware Chancery Court has issued an interesting decision on the subject of squeeze-out mergers. While it focuses on the process by which a UK-based company went out of its way to squeeze out the minority [22% in the aggregate] shareholders in a Delaware chartered, public company with a \$10.50 per share payment, the Court also made interesting comments on valuation considerations. The parent company had appointed a committee of *one* director, and forced on him, as his financial advisor, a small investment bank with a continuing relationship with the parent. The Court concluded by declaring the process illegal.

The public company had operations in various countries. The parent company first used the "September 11 defense" indicating that the company was worth less due to terrorism. The Court simply did not buy it, noting that neither its tourism businesses in Eastern Europe, its Israeli manufacturing nor its East African distributorship had anything to do with attacks on the U.S. The parent then offered its appraisals, but the Court saw them as flawed and smacking of made-as-instructed justification after the fact. In particular, its appraiser did adjust downwards a management projection without any justification, failed to take into account appreciated realty, and used a small company premium without regard to the fact that subsidiaries were, in effect, large businesses in their respective emerging markets. The Court also criticized the use of a specific company risk premium: after all, the public company was listed here and, in the aggregate, had sales of approx. \$200 million at the time of the merger. Another appraisal commissioned by the parent company and covering its Hungarian real estate holdings had glaring factual errors.

In the end, the Court made significant corrections to the parent company's appraisal, and awarded \$14.30 as the mid-point of its high and low value estimates.

The decision can be found at <http://courts.delaware.gov/opinions> then click on Court of Chancery, then search for Gesoff, or at <http://www.NYNJCT-BV.com/gesoffDE.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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