

Corporate & Financial Weekly Digest

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Chancery Court Denies Dollar Thrifty Stockholder Motion for Preliminary Injunction

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On September 8, the Delaware Court of Chancery denied a motion for a preliminary injunction to prevent the consummation of a merger plan, pursuant to which Hertz Global Holdings, Inc. will buy all the shares of rental car competitor Dollar Thrifty Automotive Group, Inc. Under the Hertz merger plan, Hertz will pay \$32.80 per share in cash (including a \$200 million special dividend that will only be paid in the event of the merger) and 0.6366 shares of Hertz stock for each share of Dollar Thrifty stock. At signing, the merger consideration was valued at \$41 per share. Avis Budget Group, Inc. has emerged with a bid that tops the Hertz bid, offering a combination of cash and stock valued at \$46.50 per share. The primary differences between the Hertz bid and the Avis bid are that Avis has refused to promise to pay any reverse termination fee in the event that antitrust approval for an Avis-Dollar Thrifty merger is not obtained, and Avis has not matched the level of divestitures Hertz is willing to make in order to achieve antitrust approval.

Under the principles set forth in *Revlon v. MacAndrews & Forbes Holdings, Inc.*, when a company is sold in a change of control transaction, a board is charged with the obligation to secure the best value reasonably attainable for its shareholders. Here, the shareholders that brought the injunctive action argued that by failing to take affirmative steps to draw Avis into a bidding contest with Hertz before signing a definitive merger agreement with Hertz, the Dollar Thrifty Board breached its duty to take a reasonable approach to immediate value maximization, as required by *Revlon*.

In denying the motion, the court found that the Board's behavior was entirely reasonable and properly motivated. The court noted that the record reflects that "the entire Dollar Thrifty Board had no conflict of interest that gave them a motive to do other than the right thing. The record reveals no preference on the part of the Board for Hertz over Avis or any other acquirer... When directors who are well motivated, have displayed no entrenchment motivation over several years, and who diligently involve themselves in the deal process choose a course of action, this court should be reluctant to second-guess their actions as unreasonable." (*In re Dollar Thrifty Shareholder Litigation*, 2010 WL 3503471 (Del. Ch. Sept. 8, 2010))

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