

EXPERT TESTIMONY

SECTION 238 SHAREHOLDER DISSENTS AND SHAREHOLDER APPRAISAL DISPUTES



BRG delivers meaningful depth to the valuation process through our professionals' substantial industry expertise and regular experience providing expert testimony

Overview

Attorneys require valuation experts who have a peerless credibility both on paper and on the stand when providing testimony. BRG's valuation professionals are trial tested and supported by a deep bench of industry and subject-matter technical experts who assist in the research and due diligence aspects of a case. Our senior professionals have participated in many of the largest and most complex cases and provide courts with thoroughly documented and supported expert reports, along with carefully prepared depositions and trial testimony. With this broad capability, we have provided case support to many of the world's leading law firms in adversarial proceedings in state and federal courts, as well as international venues.

Section 238 of the Cayman Companies Law

Since 2015, following the Cayman Grand Court's decision in the Matter of Integra Group, there has been an increase in minority shareholder dissent activity related to mergers of Cayman Islands' companies. Integra provided the Court with the opportunity, for the first time, to issue guidance for determination of fair value under section 238 of the Cayman Companies Law. The Court relied heavily on the dispute standard and prior rulings of the Delaware Chancery Court and Canadian courts in cases involving similar circumstances. Ultimately, the Cayman Grand Court decided that fair value is a question of valuation. Since Integra, the Cayman Courts have been active in 2017 with regard to section 238 cases. In the Matter of Shanda Games (currently under appeal), the Court's role in the determination of fair value was affirmed, and greater detail was provided with respect to the valuation approach. Other cases relating to the valuation process have dealt with interim payments (Qihoo and Qunar) and discovery (Homeinns Hotel Group).

BRG professionals are experts in the legal constructs of fair value and are qualified to provide an independent valuation of a business in support of a dissenting shareholder's challenge, as well as to challenge the valuation provided in support of a proposed merger. The determination of fair value process under section 238 disputes is not unique and generally follows ASC Section 820 standards, albeit with a greater emphasis on the Discounted Cash Flow (DCF) approach. The BRG valuation team has studied Integra and—with our US and international accreditations and experience—is well positioned to provide valuation services for fair value issues arising under section 238 disputes.

Shareholder Appraisal

Disputes between majority and minority shareholders occur in public corporations and privately owned businesses, small and large entities, and varied industries. BRG's valuation and technical experts provide clients with advice and fully researched and supported expert reports for submission to mediators, arbitrators, and triers of fact. We are well versed with the standards and analyses required in Delaware Chancery Court.

Representative Cases and Law Firm Clients





Our global valuation professionals provide unparalleled insight into the potential impacts of current and future macroenvironmental industry, market, and regulatory risks.

BRG Role in Relevant Cases

For an appraisal action involving ISN Software Corporation in Delaware Chancery Court, BRG professionals provided expert testimony on behalf of a minority shareholder challenging the consideration offered for their stock as part of a cash-out merger transaction effectuated by the controlling shareholder. Following a lengthy trial, the court adopted many key assumptions contained in the BRG analysis and concluded that the total value of the company as of the merger date was nearly double the amount that the transaction consideration was based on.

In LyondellBasell (LBI), a BRG professional provided expert witness testimony and the BRG team prepared expert and rebuttal reports. Our work included valuation and solvency opinions in defense of the banks that underwrote the \$21 billion acquisition financing and were accused of a fraudulent transfer that left LBI insolvent.

After Mervyn's filed for bankruptcy protection, BRG professionals were retained to provide detailed solvency analysis in connection with the defense of an alleged fraudulent conveyance. Part of our work included valuations of both balance sheet and adequate capital tests of Mervyn's at multiple dates.

In Lukoil, BRG professionals were retained to provide expert testimony on whether reasonably equivalent value was received for certain gasoline station assets that were transferred by an allegedly insolvent company to a related party. Our work included the determination of fair value for several assets as well as environmental liabilities.

For Molycorp, BRG acted as financial advisor, and our roles included valuation, solvency, and recovery analysis related to a plan of reorganization, including a challenge to the debtor's estimation of liquidation value. We also assisted counsel in the preparation of a draft complaint and the preparation of mediation materials for the bankruptcy court judge.

In the bankruptcy case of Almativ BV, BRG professionals represented a group of mezzanine lenders who were challenging the valuation of the company as part of a prepackaged bankruptcy filing. BRG experts provided an expert valuation report and deposition for the US Bankruptcy Court, Southern District of New York. As a result of the valuation challenge, the mezzanine lenders were awarded a sizable equity interest in the reorganized company under a plan approved by the Bankruptcy Court.

Team

Our valuation team brings extensive industry experience through years of working with many of the world's leading law firms.

We have a unique blend of experience, including professionals who have worked in both the corporate world and in valuation-focused litigation support roles such as:

- Courtroom testifying expert
- Auditors and tax preparers
- CFOs, controllers, and C-suite executives
- SEC examination readiness advisory (Wells Notice)

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