



# The Delaware Court of Chancery

Selected Business Valuation Case Summaries  
Selected Summaries of 2024 Decisions



## Introduction

Kroll experts testify on commercial and shareholder disputes across the country, including in the Delaware Court of Chancery (the “Court” or the “Chancery Court”). The Chancery Court is widely recognized as one of the nation’s leading business courts in terms of volume of complex business-related cases. As a result, the Court has developed significant case law in this area.

This high volume of business cases results in the Court issuing numerous opinions, many of which address business and security valuation and economic damages.

In this Court case update, we focus on three opinions from 2024 to highlight how certain valuation and damages analysis topics are viewed by the Court.

In our review of the cases herein, we do not summarize every relevant issue but rather focus primarily on certain topics related to valuation and damages. We recommend that interested readers review the full Court opinions to gain a complete understanding of all the issues addressed and each judge’s position. We have included a hyperlink to each decision below its case caption.

In this Court case update, we summarize the following cases:

### Delaware Court of Chancery

*In re Sears Hometown and Outlet Stores, Inc. Stockholder Litigation*  
Consolidated C.A. No. 2019-0798-JTL (Del. Ch. January 24, 2024)  
Vice Chancellor Laster  
Issues: projections, cost of debt, control premium  
[Click here to view the opinion](#)

*Hyde Park Venture Partners Fund III, L.P. et al. v. FairXchange, LLC*  
C.A. No. 2022-0344-JTL (Del. Ch. July 30, 2024)  
Vice Chancellor Laster  
Issues: financing rounds, internal valuations, 409A valuation, stockholder reactions  
[Click here to view the opinion](#)

*Jacobs et al. v. Akademos, Inc. et al.*  
C.A. No. 2021-0346-JTL (Del. Ch. October 30, 2024)  
Vice Chancellor Laster  
Issues: projections, transaction price, 409A valuation, subsequent events  
[Click here to view the opinion](#)

# Case Summaries

## ***In re Sears Hometown and Outlet Stores, Inc. Stockholder Litigation,*** **Consolidated C.A. No. 2019-0798-JTL** **(Del. Ch. January 24, 2024)**

This matter relates to the 2019 acquisition of Sears Hometown and Outlet Stores, Inc. (“Sears” or the “Company”) by its controlling shareholder, Edward Lampert (“Lampert”) and the Franchise Group, an affiliate of Vintage Capital Management LLC (the “Transaction”). The Court found that the Transaction was not entirely fair and award damages of \$1.78 per share.

Sears conducted business through two segments: the Sears Hometown and Hardware Segment (“Hometown”) and the Sears Outlet Segment (“Outlet”). As a result, the Transaction had two components: Hometown assets were liquidated and sold to Lampert, and Outlet was sold to the Franchise Group. Both parts of the deal closed on October 23, 2019, and the Company’s stockholders received total consideration of \$3.21 per share. Minority stockholders contend that Lampert breached his fiduciary duties by “using his stockholder voting power to block the liquidation plan” (the “Controller Intervention”) and by forcing the Company into the Transaction. The Court determined that Lampert did not breach his fiduciary duties by engaging in the Controller Intervention but determined that the Transaction was not entirely fair and awarded damages of \$1.78 per share based on the difference between fair value and the consideration received. While there was also an appraisal action, it came “to a halt” when the Company filed for bankruptcy in December 2022.

Both experts (Plaintiffs’ and Defendants’) submitted discounted cash flow (DCF) analyses that valued the Company as a whole and incorporated cash flows that assumed the liquidation of Hometown and going concern for the rest of the company. The Court rejected both DCF valuations for the Company as a whole.

The Court opined that the Plaintiffs’ expert’s DCF valuation was “not sufficiently reliable” for multiple reasons. First, the Plaintiffs’ expert used projections from Sears management, which were “overly optimistic” for both the liquidation of the Hometown segment and the projected operations of the rest of the Company. Management’s projections also contained two double counting errors, which resulted in an overstatement of the Company’s cash flows. Second, the Plaintiffs’ expert derived a beta using “a set of guideline companies that were not sufficiently comparable.” Third, the Court pointed to “internal inconsistencies” that increased the value. The Court

noted that the Plaintiffs’ expert: (i) lowered the cost of debt based on the theory that “after using the liquidation proceeds to pay down debt, the Company could borrow at a lower rate” and (ii) modeled the capital structure based on the anticipated debt level subsequent to “a Hometown liquidation, while continuing to use other inputs derived from pre-Transaction trading prices.” The Court ruled that “whether the Company could obtain a lower rate was speculative, because after the Hometown liquidation, it would be a smaller firm with a comparatively new business model.”

The Court opined that the Defendants’ expert’s DCF valuation was “not persuasive.” The Defendants’ expert performed a DCF valuation by adjusting a valuation model that was previously presented to the Sears Board of Directors in April 2019. The Defendants’ expert increased the discount rate, modified the terminal value calculation, and made “extensive” modifications to the projections that the Court noted “seemed excessive.”

Both experts also submitted sum-of-the parts valuations combining the liquidation value of Hometown with a valuation for Outlet. For Outlet, the Court used the third-party sale value, the approach used by the Defendants’ expert, rejecting the Plaintiffs’ expert’s use of a DCF valuation, noting that “when there is a market-tested price, attempting to value Outlet using a DCF methodology makes no sense.”

For Hometown, the areas of disagreement were “largely reduced to a single variable: the proceeds that a liquidation of the Hometown inventory could generate.” However, the Defendants’ expert relied on a liquidation value from another expert’s report that the Court excluded, noting that the “valuation is therefore not persuasive.”

Based on a sum-of-the-parts valuation, the Court determined the final consideration for Outlet to be \$119.96 million (derived from the third-party sale value) and the risk-adjusted proceeds from the Hometown liquidation of \$98.41 million. The Court added net operating losses and subtracted net debt to arrive at an equity value for the whole Company of \$113.37 million, or \$4.99 per share.

The Defendants argued that since Lampert already controlled the Company, he was “entitled to acquire the minority for a price that reflected that control.” Therefore,

the Defendants argued that the Court should apply a minority discount to the Company valuation. The Court stated that “[d]ivining a specific control premium or minority discount is not necessary for assessing fairness” but instead the question should be whether the Transaction consideration implies a premium or discount that falls within a range of fairness. The Court determined that the Transaction

consideration of \$3.21 per share, when compared to the pro rata value of \$4.99 per share, did not offer a fair price, even taking into account Lampert’s control.

This decision awards damages equal to the difference between what the minority stockholders received (\$3.21) and the fair value of the company (\$4.99), or \$1.78 per share.

## **Hyde Park Venture Partners Fund III, L.P. et al. v. FairXchange, LLC, C.A. No. 2022-0344-JTL (Del. Ch. July 30, 2024)**

This is an appraisal matter related to the 2022 acquisition of FairXchange, Inc. (“FairX”) by Coinbase Global, Inc. (“Coinbase”) (the “Merger”). The merger agreement was signed on January 11, 2022, with a price of \$330 million, consisting of \$265 million in Coinbase stock and \$65 million in cash. By the time the transaction closed on February 1, 2022, Coinbase’s stock price had declined, reducing the merger consideration to \$310.4 million. The Court concluded that “the least bad methodology” in this case was deal price and concluded on a fair value of \$300 million (\$10.42 per share), the deal price at signing, with no adjustment for change in value between signing and closing.

FairX was a privately held Delaware corporation that operated as a securities exchange for retail investors looking to trade commodity futures. The technology used to run its exchange was also capable of being used for retail trading of cryptocurrency futures. FairX was founded in 2019 and was “early in its development.”

FairX’s CEO solicited an acquisition proposal from Coinbase without securing prior approval from the board. Following the close of the merger, Hyde Park Venture Partners (“Hyde Park”), who owned 15% of FairX’s equity through two venture capital funds, sought appraisal. While FairX is the named Respondent, the Court refers to the “Selling Stockholders” as taking the positions put forth by the Respondent, noting that the “real parties” in interest are the Selling Stockholders since they agreed to indemnify Coinbase for any appraisal award that exceeded the Merger considered.

The Selling Stockholders did not offer a specific assessment of the fair value of FairX, and “their position on valuation evolved over the course of the case.” Their expert opined that the fair value was lower than the Merger consideration at close of \$310.4 million. The Selling Stockholders argued in their pre-trial brief that the value was “about \$154 million” and in their post-trial brief that the ceiling was about \$150 million. The Selling Stockholders “offered a grab bag of what they described as market-based indicators” to support the ceiling.

First, the Selling Stockholders pointed to pre- and post-money valuations for the Company’s three financing rounds as “observable market prices” of fair value, evidence which the Court referred to as “helpful, but weak.” The Court pointed to the most recently completed financing round (Series B1/B2 in April 2021) as being stale given multiple milestones the Company hit between that round and the valuation date. Further, the Court noted that, while the pre-money valuation from the recent C round “could range from \$200 million up to \$400 million” with a commercial agreement from Coinbase, that round did not close.

Second, the Selling Stockholders pointed to Crypto.com’s acquisition of Small Exchange for \$64 million, which the Court deemed was not a comparable transaction and placed no weight on this indicator.

Third, the Selling Stockholders pointed to the Petitioners’ internal valuations. In December 2021, the Petitioners carried their investment in FairX at \$100 million, “representing the book value implied by their investment in the Series B1/B2 round.” The Court declined to give weight to this valuation, noting the Petitioners “decided to carry the investment in FairX at book value, which is permissible for accounting purposes. Those valuations did not reflect going concern value.” The Court did note that “it is possible that in another case, the court might give weight to an internal valuation, but not this time.”

Fourth, the Court gave no weight to the 409A valuation that the Selling Stockholders pointed to, as it was “stale and unreliable” and a “substantial outlier.” The Court pointed to the milestones the Company hit after the issuance of the 409A valuation and noted “incentives” that can be at play in 409A valuations of startup companies, as they are used to set the exercise price for stock options. The Court noted that the FairX 409A valuation of \$0.59 per share “suggests those incentives were in play,” implying the 409A valuation was lower than it otherwise might have been without incentives.

Lastly, the Selling Stockholders pointed to the reactions of stockholders to a December 2021 letter from the Petitioners' former board member urging stockholders to vote against the merger and suggesting a value of "at least \$1 billion by the end of 2022." The Court noted that the investors supported the Merger, "suggesting that they did not place significant reliance on the projections or credit the upside case." The Court stated, "that market indication carries some probative value, and the court relies on it when assessing fair value."

The Petitioners conducted a DCF analysis to arrive at a fair value estimate of \$573 million, or \$19.76 per share. The Court took issue "not with the method, but with the inputs." Specifically, the Court stated that the projections used by the Petitioners' expert "are too speculative to be reliable." The Court noted that while the projections were prepared in the ordinary course of business, "the difficulty lies in FairX's disruptive business model." The Court noted that the

projections "reflected how FairX would perform if everything went according to plan" and "represent FairX's hoped-for reality, not its operative reality." The Court also pointed to sophisticated investors not crediting the projections.

Ultimately, "without a persuasive valuation case from either side," the Court concluded that "the least bad methodology" in this case is deal price. Since the Selling Stockholders did not present "any evidence of synergies," no synergies were deducted. The Court also did not make any adjustment for change in value between signing and closing, noting "a decline in an acquirer's stock price does not necessarily correspond to a change in the target's value, particularly when the acquirer is comparatively large and the target comparatively small." The Court stated that "[n]either party made a persuasive case" that the value changed and concluded on a fair value of FairX of \$330 million, or \$10.42 per share, based on the deal price at signing.

### **Jacobs et al. v. Akademos, Inc. et al., C.A. No. 2021-0346-JTL (Del. Ch. October 30, 2024)**

This is an appraisal matter related to the 2020 acquisition of Akademos, Inc. ("Akademos"). Kohlberg Ventures, LLC (the "KV Fund"), an existing investor pre-transaction, acquired the remaining shares it did not own of Akademos on December 22, 2020, for \$0.35 per share of common stock (the "Merger"). Brian Jacobs, founder and former CEO of Akademos, and other common stockholders (the "Plaintiffs") exercised their appraisal rights. The Court determined that the fair value of the common stock "for purposes of appraisal" was zero and that the Merger was entirely fair.

The Court's first step in determining the fair value of the Plaintiffs' common shares was to determine the fair value of Akademos as a whole. The second step was to determine the value attributable to the common shares.

The Plaintiffs' expert valued Akademos at \$31.6 million. The Plaintiffs' expert relied solely upon a DCF analysis to arrive at this value. The Court rejected this analysis because the management projections relied upon by the Plaintiffs' expert were deemed to be too speculative.

The Court determined that the projections were too speculative because they included business lines that had not yet been launched and could not be financed by Akademos' operations. The Court noted Akademos struggled to raise both equity and debt financing and was projected to incur losses in the first two years of the projection period. Therefore, the Court rejected the Plaintiffs' expert's assumption that the plans in the projections could be funded. The Court also stated that the projections were unreliable because they "sought to

anticipate the results of brand new businesses that [Akademos] had yet to start," noting that "projecting results for a new business is inherently speculative."

The Defendants' expert valued Akademos at \$4.3 million. The Defendants' expert utilized a DCF analysis and comparable company analysis, weighting the approaches 60% and 40%, respectively.

The Defendants' expert used the same projections as the Plaintiffs' expert in the DCF analysis; however, the Defendants' expert excluded the two new lines of business due to Akademos' inability to fund those business lines, and valued Akademos based on its existing business.

The Defendants' expert also prepared a comparable companies analysis, using four guideline companies. The Defendants' expert derived multiples based on the last 12 months of revenue and the projected next 12 months of revenue, and averaged the two for an implied valuation of Akademos.

In addition to expert analysis, the Court considered alternative valuation indicators.

First, the Court considered the Merger price. The Court opined that, in this case, "the market evidence tends to undermine the valuation of \$31.6 million advanced by the [Plaintiffs]." The Court noted that the results of the go-shop process were "more consistent with the valuation prepared by the KV Fund's expert," yet did not rely on the Merger price due to "arguable flaws in the go-shop" process.

Second, the Court considered a September 2019 409A valuation report that valued Akademos at \$32.0 million. The Court noted that 409A valuations “warrant a heavy dose of skepticism” and agreed with the Defendants’ expert’s testimony that the 409A analysis was stale and unreliable. The Court also noted that the 409A valuation assumed that Akademos was “not in financial distress and would continue as a going concern, neither of which was true in 2020.”

Third, the Plaintiffs pointed to a subsequent transaction involving Akademos. In 2023 (i.e., two years after the Merger), the KV Fund ran a sale process for Akademos that resulted in an expression of interest of \$30 million from one party and an ultimate sale of Akademos for \$20 million to another party. The Court stated that this “information constitutes post-valuation date evidence that a court generally will not consider.”

The Court’s second step in determining the fair value of the Plaintiffs’ common shares was to determine the value attributable to those common shares. The principal factors

affecting the value of the common shares were the KV Fund’s notes and Akademos’ preferred stock.

The Court noted that Akademos owed \$6 million on the KV Fund’s notes as of the valuation date, as well as a \$6 million “repayment premium triggered under specified circumstances” and \$32 million in accrued dividends and principal associated with the preferred stock. The Defendants argued that the common stock sat behind the KV Fund’s notes and underneath the preferred stock. “Referencing both the *Orchard* and *Shifan* decisions, the Court agreed.”

The Defendants’ expert allocated Akademos’ equity using a contingent claims analysis. The Court adjusted this analysis to use the Defendants’ expert’s DCF valuation rather than a higher value derived from the deal price. The Court determined that since the higher value yielded \$0 for common stock, a contingent claims analysis using a lower value would also result in no value for common stock. The Court therefore determined that the Merger was “entirely fair.”

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