

Dan Gold Discusses Merger Dispute With Reorg

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PRACTICES Bankruptcy Litigation, Restructuring

Haynes Boone Partner Dan Gold talked with Reorg about a prominent merger dispute that was filed in a business court in Oakland County, Mich., as opposed to the Delaware Chancery Court, the usual jurisdiction for such disputes.

Here is an excerpt:

While merger disputes are most commonly litigated in the Delaware Chancery Court, Simon Property Group and Taubman Centers will most likely see similar treatment of their case in Michigan, albeit with a potentially longer timeline, according to practitioners with experience litigating such matters.

Simon argues that Taubman failed to take appropriate business measures in response to the pandemic. Such measures could have included furloughing employees, reducing operating expenses, and suspending cash payments and retainer fees for independent board directors.

However, according to Dan Gold, partner and chair of the securities and shareholder litigation practice group at Haynes Boone, buyers have asserted the opposite position regarding these types of business measures taken in response to the pandemic.

Earlier this year, for example, an affiliate of Sycamore Partners argued that it had validly terminated its purchase of a majority interest in Victoria's Secret from owner L Brands. Sycamore claimed that L Brands violated the covenant to conduct the business in the ordinary course by furloughing its employees and reducing by 20% the base compensation of all employees above the level of senior vice president, among other operational cuts.

Gold, the practitioner with Haynes Boone, noted that even the more experienced Delaware Chancery Court has anticipated needing time for these disputes to be ready for trial.

"What the Delaware court has said in a number of cases is that even under the best of circumstances, these cases are too complex to be ready for trial in a few weeks," Gold said. "They're very fact-intensive and dependent on what's going on with the target company's business and the industry - these are not easy claims to prove."

To read the full article, click [here](#). (Subscription required.)