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Failure to Pay "Fair Value" to Holders of Fractional Shares in a Reverse Stock Split Constitutes an Independent Claim in Delaware

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In the recent case of *Samuels v. CCUR Holdings, Inc.*, the Delaware Court of Chancery held that a stockholder-plaintiff could pursue a standalone statutory claim (independent of a breach of any fiduciary duty claim) under Section 155 of the Delaware General Corporation Law (DGCL) to determine the fair value of fractional shares cashed out in a reverse stock split. Section 155 of the DGCL requires a corporation that opts to cash out fractional interests to pay the fair value of those fractional shares.

In *Samuels*, CCUR Holdings, Inc. (CCUR), effected a 3,000-1 reverse stock split with the end goal of delisting from the OTCQB market and taking the company private. Pursuant to the reverse stock split, any fractional shares would be cashed out based on the market price of the company's stock at the time, despite the fact that the company's stock was thinly traded. The stockholder-plaintiff brought multiple claims against CCUR, including a standalone claim for a determination of fair value under DGCL Section 155. CCUR argued that, based on prior Delaware case law, absent facts suggesting a breach of fiduciary duty or freeze-out by a controlling stockholder, DGCL Section 155 does not authorize an appraisal-style proceeding to determine the fair value of fractional shares. The Delaware Court of Chancery ultimately determined that while an alleged violation of DGCL Section 155 does not entitle a stockholder to the equivalent of a DGCL Section 262 appraisal proceeding, Delaware law does permit direct claims against a corporation for violating the requirement to pay fair value under DGCL Section 155.

Samuels represents a reminder to corporations that holders of fractional shares need to be paid "fair value" for those shares, and the market price for thinly traded stock may not be adequate for determining the "fair value" of such stock under DGCL Section 155.

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