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HP Was 'Opportunistic' In $2.8B Aruba Buy, Chancery Told

By **Jeff Montgomery**

Law360, Wilmington (December 13, 2016, 9:07 PM EST) -- A financial expert for two hedge funds challenging the share price paid in the $2.78 billion sale of Aruba Networks Inc. to Hewlett-Packard Co. last year accused the buyer of "opportunistic" pricing Tuesday, during the opening hours of a three-day Delaware appraisal trial.

Paul A. Marcus, an expert retained for a stock price challenge mounted by two Verition Fund Management LLC interests, testified before Vice Chancellor J. Travis Laster that he pegged the fair value of Aruba's stock at $32.57 a share on the transaction date — 32 percent higher than the price HP paid and 64 percent above the fair value estimate for Aruba under the deal.

Marcus said that HP made its offer at a time when Aruba's stock had fallen sharply and had not yet recovered after the company trimmed guidance on quarterly results.

"There was an acknowledgement that they knew the market wasn't trading on reality," Marcus testified, adding later that the timing of HP's offer "was quite opportunistic," allowing it to "put in an offer at the bottom" before Aruba's stock could rebound on news of better expectations.

The two Verition interests, which hold more than 2.2 million shares of Aruba, launched their lawsuit six months after the merger announcement in March 2015. Their action sought a court determination of Aruba's fair value and stock price, under provisions of Delaware's corporation law that give dissenting stockholders a right to seek payment based on court-set values.

Marcus told Verition attorney Christine M. Mackintosh of Grant & Eisenhofer PA on Tuesday that Aruba had become a leader in the wireless network market, and was viewed as "the only company that was scalable" in growth and a potential factor in competition with market leader Cisco Systems Inc.

Aruba attorney Karen Pieslak Pohlmann of Morgan Lewis & Bockius LLP pressed Marcus on his views, however, saying he was comparing the performance of Aruba's mostly wireless network system products business with an industry sector providing both products and services.

"Aruba at its high is still less than a third of Cisco at its lowest," Pohlmann said. The attorney said Aruba's success with one important new-generation wireless product was still potentially blunted because it created a user need to upgrade wired systems — unavailable from Aruba — for full exploitation.

For HP, however, Aruba was a strategic asset, Pohlmann said, providing HP with what was described in Aruba's court filings as a wireless complement to its international business and "the ideal" addition to HP in its efforts to challenge Cisco.

"Do you agree that Aruba was not a strategic fit for anyone but HP?" Pohlmann asked Marcus while reviewing documents showing estimates of potential synergies created by the combination.

Aruba's attorneys said in court filings that Marcus' valuation was flawed in part by "a predictable consequence of his relative unfamiliarity" with the wireless network industry. The company also argued that the approved deal price, minus estimates of synergy gains as a result of the combination, was the best indication of fair value.

Attorneys for the hedge funds argued that the negotiations and valuation process were riddled with conflicts, including a desire by Aruba CEO Dominic Orr to secure a position at the top of the combined venture.

The appraisal suit also challenged the interests of bankers involved in the deal, with the hedge funds' attorneys alleging financier efforts to gain or regain HP's favor and secure hefty compensation if the deal went through.

"There was no price discovery," Marcus said. "The only indication of value in this particular matter is the amount that HP was willing to pay, so that didn't give me confidence there was fair value."

Trial testimony was scheduled to continue through Thursday.

Appraisal actions under Section 262 of Delaware's general corporation law can pay large dividends if a court chooses a higher price. Dissenting stockholders receive interest on any gain from the appraisal at 5 percent plus the Federal Reserve discount rate, compounded quarterly from the date of the deal.

In the case of the two hedge funds, the difference between HP's deal price and the alternative, higher fair value used in the hedge fund claim amounts to more than $18 million, based on the 2,288,234 shares held for appraisal in the suit.

The Verition funds are represented by Stuart M. Grant, Michael J. Barry, Christine M. Mackintosh, Michael T. Manuel and Rebecca A. Musarra of Grant & Eisenhofer PA.

Aruba is represented by Michael P. Kelly and Christopher A. Selzer of McCarter & English LLP, and Marc J. Sonnenfeld, Karen Pieslak Pohlmann and Laura Hughes McNally of Morgan Lewis & Bockius LLP.

The case is Verition Multi-Strategy Master Fund Ltd. et al. v. Aruba Networks Inc., case number 11448, in the Court of Chancery of the State of Delaware.

--Editing by Aaron Pelc.