

Do We Really Need 2 Shareholders Suits Challenging Warner Deal?

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May 20, 2011

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It was pretty much a given that after Warner Music announced its \$3.3 billion sale to Access Industries on May 6, some plaintiffs firm out there would file a class action challenging the deal. More than 56 percent of Warner's common stock is in the hands of a few big insider shareholders, including CEO Edgar Bronfman Jr. and the private equity firms he partnered with to acquire Warner in 2004. So there were bound to be questions about whether the board was looking out for everyone or just the insiders. Besides, these days there's hardly a major deal that closes without litigation.

Sure enough, on May 12 Robbins Geller Rudman & Dowd and Delaware counsel from Rosenthal, Monheit & Goddess filed a 13-page Delaware Chancery Court complaint against Warner Music's directors and officers. The bare-bones suit accuses the defendants of breaching their duty to the shareholder class by failing to look hard enough for a buyer and agreeing to deal provisions that favor Access.

But wait! There's more. On Thursday Brower Piven filed a suit in New York state supreme court. It raises basically the same allegations and asserts the same causes of action as the Delaware suit.

That's probably not going to sit very well with the judges of Delaware Chancery Court, who have lately been on the warpath about M&A shareholder suits being litigated in multiple jurisdictions. You've heard about Vice-Chancellor Travis Laster's [fit of pique](#) in the Nighthawk case, but he's not the only one. As (plaintiffs lawyer!) Mark Lebovitch of Bernstein Litowitz Berger & Grossmann wrote this week in [a comprehensive post on multiforum deal litigation](#) at the Harvard Law School Forum on Corporate Governance blog, "The current system is prone to manipulation and gamesmanship [and] the judiciary is becoming more sensitive to some of these issues."

Defendants in one case before Laster, a consolidated class action to enjoin optionsXpress's merger with Charles Schwab, asked for his help last month. "Ten nearly identical lawsuits have been filed in Illinois and Delaware seeking, among other things, to enjoin the proposed merger," their brief says. "While counsel representing individual shareholder plaintiffs in both jurisdictions have sought to consolidate the cases pending within those jurisdictions, none has taken steps to try to combine them within a single jurisdiction....It makes no sense for nearly identical lawsuits against the same defendants, based on the same fundamental facts, seeking the same relief on behalf of the same putative shareholder class to proceed simultaneously in two separate forums."

Could the same be said for the competing Warner Music cases? There's no defense counsel listed for Warner in either docket, and no judge appears to have been named in either suit. Brian Kerr of Brower Piven—the firm that filed the second Warner suit, in New York state supreme court—declined to comment. Sam Rudman of Robbins Geller didn't return a call. But we'll be keeping an eye on these cases, wherever they end up being tried.