

CANADA / JUDGMENT

Bamrah v. Waterton Precious Metal Bid Corp.

2019 BCSC 258

COURT

Supreme Court of British Columbia

DECIDED

28 February 2019

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2019 BCSC 258 Bamrah v. Waterton Precious Metals Bid Corp.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bamrah v. Waterton Precious Metals Bid Corp.,

2019 BCSC 258

Date: 20190228

Docket: S157396

Registry: Vancouver

Between:

Nandeep Bamrah

Petitioner

And

Waterton Precious Metals Bid Corp.

Respondent

Before: The Honourable Mr. Justice Funt

Reasons for Judgment

Counsel for the Petitioner:

R. Agarwal

Counsel for the Respondent:

M. Pontin

J. Hernaez

Place and Dates of Hearing:

Vancouver, B.C.

May 16-18, 2018

Place and Date of Judgment:

Vancouver, B.C.

February 28, 2019

Table of Contents

1. Introduction.. 3
2. Legal Framework.. 4
3. Jurisprudence. 5
4. Background.. 8
 - (a) Generally. 8
 - (b) Incorporation of Chaparral 8
 - (c) Initial Hostile Bid. 9
 - (d) Search for Strategic Alternatives. 11
 - (e) Revised Hostile Bid. 12
 - (f) Negotiating and Approving the Plan of Arrangement 14
 - (g) Passing the Arrangement Resolution. 15
 - (h) Environmental Liability. 17
5. fair value. 20
 - (a) Deal Price. 20
 - (b) Shareholder Approval 21
 - (c) Spin-Out Transaction. 22
 - (d) Trading Stock Price of Chaparral Shares 24
 - (e) Initial Hostile Bid. 26
 - (f) White Knights. 26

- (g) Revised Hostile Bid. 27
- (h) Termination Fee. 28
- (i) Possible \$0.02 Per Share Additional Consideration. 29
- (j) Dissent Rights. 29
- (k) Gold Price. 30
- (l) Paradigm Valuation. 30
- (m) Market Information. 31
- 6. Valuation reports. 33
- 7. SUMMARY OF KEY FINDINGS. 38
- 8. COSTS. 39

Schedule "A". 40

Schedule "B". 43

1. Introduction

- [1] The petitioner was a minority shareholder of Chaparral Gold Corp. ("Chaparral") who opposed an arrangement under a plan of arrangement under which the respondent (or "Waterton") acquired Chaparral for \$0.61 in cash per Chaparral share (the "Arrangement").
- [2] The respondent is a company incorporated under the laws of our Province. The respondent is wholly-owned by Waterton Precious Metals Fund II Cayman LP ("Waterton LP"). Waterton LP has over US \$1 billion in assets and was also a party to the Arrangement.
- [3] Prior to shareholder approval of the Arrangement, the shares in the capital of Chaparral were listed for public trading on the Toronto Stock Exchange ("TSX").
- [4] The petitioner exercised his dissent rights under the Arrangement and now seeks the Court's determination of the "payout value" or "fair value" under s. 245(2)(a) of the Business Corporations Act, S.B.C. 2002, c. 57 [BCBCA].
- [5] The petitioner says that fair value is between US \$1.60 and US \$1.85 per Chaparral share. He tendered expert evidence providing a theoretical valuation to support his position.
- [6] The respondent claims that fair value is the price under the Arrangement, \$0.61 per Chaparral share (the "Deal Price"). The Deal Price was negotiated by the respondent and Chaparral, then arm's length parties, with neither under compulsion to act. The Deal Price subsequently received shareholder approval.

- [7] In the case at bar, there was an open and unrestricted market for Chaparral shares with all material information disclosed and readily accessible by the public. The market forces of market participants operating with self-interest to either sell for the most or pay the least were engaged, serving to provide a confirmatory check that the Deal Price is the fair value.
- [8] As set forth in greater detail below, with the market forces engaged in an unburdened open market, operating in compliance with the relevant securities laws, the Court finds \$0.61 per Chaparral share to be fair value.

2. Legal Framework

- [9] The petitioner exercised his dissent rights in accordance with the BCBCA and the Arrangement. In this regard, on November 7, 2014, Master Muir made an order regarding the Arrangement (the "Muir Order"). Paragraph 28 of the Muir Order reads:

Notwithstanding section 245 of the BCBCA, Waterton, not Chaparral, shall be required to offer to pay fair value, as of the day prior to the approval of the Arrangement Resolution, for Chaparral Shares held by Registered Shareholders who duly exercise Dissent Rights, and to pay the amount to which such Registered Shareholders may be entitled pursuant to the terms of the Plan of Arrangement. In accordance with the Plan of Arrangement and the Circular, all references to the "company" in subsection 245 of the BCBCA shall be deemed to refer to "Waterton" in place of the "company", and Waterton shall have all of the rights, duties and obligations of the "company" under sections 245-247 of the BCBCA.

- [10] The key statutory provision on this application is s. 245(2)(a) of the BCBCA which reads:

245

- (2) A dissenter who has not entered into an agreement with the company under subsection (1) or the company may apply to the court and the court may
- (a) determine the payout value of the notice shares of those dissenters who have not entered into an agreement with the company under subsection (1), or order that the payout value of those notice shares be established by arbitration or by reference to the registrar, or a referee, of the court,

- [11] Section 237 defines "dissenter", "notice shares" and "payout value". Section 237(1) reads:

237 (1) In this Division:

"dissenter" means a shareholder who, being entitled to do so, sends written notice of dissent when and as required by section 242;

"notice shares" means, in relation to a notice of dissent, the shares in respect of which dissent is being exercised under the notice of dissent;

"payout value" means,

- (a) in the case of a dissent in respect of a resolution, the fair value that the notice shares had immediately before the passing of the resolution,
- (b) in the case of a dissent in respect of an arrangement approved by a court order made under section 291 (2) (c) that permits dissent, the fair value that the notice shares had immediately before the passing of the resolution adopting the arrangement,
- (c) in the case of a dissent in respect of a matter approved or authorized by any other court order that permits dissent, the fair value that the notice shares had at the time specified by the court order, or

excluding any appreciation or depreciation in anticipation of the corporate action approved or authorized by the resolution or court order unless exclusion would be inequitable.

[12] The parties do not dispute that the petitioner is a dissenter with the matter properly before the Court. The only issue before the Court is the determination of "payout value", which under the Muir Order, is the "fair value" of the petitioner's shares in the capital of Chaparral "as of the day prior to the approval of the Arrangement Resolution", being December 11, 2014.

3. Jurisprudence

[13] No party bears the onus to determine the fair value of the dissenter's shares. The "ultimate onus is on the court to arrive at a fair value based upon an assessment of the evidence presented": *Ashton Mining Canada Inc. v. Kwantes*, 2007 BCSC 1374, at para. 18, *aff'd* 2008 BCCA 248, leave to S.C.C. *ref'd*.

[14] In *Grandison v. NovaGold Resources Inc.*, 2007 BCSC 1780, Justice Pitfield summarized the duty of the court in assessing fair value where dissent rights are engaged in opposition to a plan of arrangement, stating:

[5] On an application of this kind, the court's obligation is to consider all relevant evidence and to exercise judgment in the determination of fair value at the date on which the special resolution adopting the plan of arrangement was passed . The value attributed to the shares by the plan of arrangement is but one piece of evidence to be considered. Other evidence includes that pertaining to the history of [the acquiring company and target company], the trading price of the shares in the public market, the evolution and formulation of the plan of arrangement and the value of the shares specified in it, and the opinions regarding value expressed by expert witness[es] called by the petitioners and the respondents, respectively.

[15] Justice Pitfield further stated the following about dissent rights and the definition of "fair value":

[150] The right to dissent and to compel the purchase of one's shares has been described as an "appraisal remedy" permitting a shareholder who disagrees with any of the various kinds of enumerated corporate action to realize the value of an investment rather than succumbing to the transaction. The purpose of the remedy was appropriately described by Mr. Vern Krishna in an article entitled Determining the "Fair Value" of Corporate Shares, Canadian Business Law Journal, vol. 13, 1987-88, p. 139 as follows:

The core of the structure for the protection of minority shareholders is their statutory right to the "fair value" of their shares in circumstances when they are rendered vulnerable by the actions of the majority. Whether in appraisal, oppression, take-over, merger, or going-private proceedings, it is the shareholder's right to exit from the corporation with the fair value of shares that affords the dissenter the ultimate, sometimes only, protection from the acts of the majority.

[152] In this jurisdiction, courts have declined to equate fair value and fair market value: see, for example, *Nunachiaq Inc. v. Chow*, (1993), 8 B.L.R. (2d) 109 (B.C. S.C.) and *Cyprus Anvil Mining Corp. [v. Dickson]* (1986), 8 B.C.L.R. (2d) 145 (C.A.). The reluctance results from the fact that it is not the market value of the dissenter's shares that is the center of attention. The focus is the determination of the en bloc value of all shares in the company, and the allocation of a proportionate share thereof to the dissenter. As a result, the minority discount that would ordinarily be applied when determining the fair market value of a minority interest is ignored. Notwithstanding these differences, it must be acknowledged that en bloc value is the fair market value of all issued shares of the company.

[157] The proceeding is not intended to enrich a dissenter by providing more than that which is reasonable, or to impoverish the dissenter by compelling the acceptance of less. The proceeding is intended to ensure that a dissenter is treated fairly by assuring receipt of a proportionate share of the en bloc fair market value of all shares.

[16] The petitioner's valuation expert defines fair market value as follows:

Fair Value is defined as the ratable portion of 'en bloc' fair market value ("FMV") where FMV is defined as "the monetary consideration that, in an open and unrestricted market, a prudent and informed buyer would pay to a prudent and informed seller, each acting at arm's length with the other and under no compulsion to act."

[Emphasis in original]

[17] The respondent's valuation expert used the same definition.

[18] In *The Fundamentals of Canadian Income Tax, Volume 2: Corporate Tax* (Toronto: Thomson Reuters, 2018) at 710, Professor Vern Krishna defines fair market value as:

A value of price determined by an unrelated buyer and seller who are separate and acting rationally in his or her own self-interest. The value is considered more meaningful if established in an actual transaction than if estimated hypothetically. Historical cost is assumed to have been the fair market value of an asset when it was acquired.

[19] In *Grandison*, Justice Pitfield made the following comments about assessing fair value specifically where the right of dissent was engaged in the context of a broadly-based open market transaction:

[163] In most situations where the right of dissent is engaged, there is no broadly-based open market transaction. Sometimes the corporate action that permits dissent involves changes to the essential nature of the company in which the shareholder has invested but does not involve a disposition of shares. In those transactions where a disposition of shares is involved, there is often no ready market for the shares: see *Diligenti v. RWMD Operations Kelowna Ltd.* (1977), 4 B.C.L.R. 134 (B.C.S.C.).

[164] In other transactions, the company may be controlled by a single shareholder or a group of shareholders which is able to initiate a non-arm's length transaction compelling a minority shareholder to dispose of shares at less than fair value with resulting benefit to the majority: see *Cyprus Anvil*, *supra*. In some circumstances, the acquirer may have obtained the commitment of holders of a substantial portion of the targeted shares to sell at an agreed price which then becomes the benchmark for the purchase of the shares of others. Ownership of a block of stock, or the procurement of an agreement with some shareholders to sell at a fixed price leaves little "free" stock to be acquired, a circumstance that could permit the acquisition of shares at less than market value: see *Nunachiaq*, *supra*.

[165] In the situations I have described, there is no truly open market for the shares by reference to which a fair value can be said to have been established. As a result, one must resort to theoretical methods of valuation such as the asset value approach or the intrinsic value approach. That is not to say, however, that the [BCBCA] requires one to ignore or disregard market transactions in relation to the shares, including a transaction involving the corporation and an independent third party that accords a value to shares, and to embark, in all instances, upon a theoretical search for fair value. One need not assume that a transaction involving an independent third party is incapable of reflecting fair value. In fact, depending upon the circumstances, it may be the best evidence of fair value. At the very least, market transactions provide a point from which to begin, as they are indicators of prices at which parties have been prepared to buy and sell the shares.

[Emphasis added.]

4. Background

(a) Generally

[20] In this section, I will review, often paraphrasing or using counsel's or filed materials (after having reviewed the relevant source documents and affidavits), the relevant events that preceded the shareholders' resolution approving the Arrangement (the "Arrangement Resolution"). For ease of reference, I have attached to these reasons a chronology of key dates, as Schedule "A", and a chart showing Chaparral's share price and volume, as Schedule "B".

- [21] As of November 3, 2014, the record date under the Muir Order, the petitioner was the registered and beneficial owner of 351,154 common shares in the capital of Chaparral. The total issued and outstanding common shares in the capital of Chaparral was 117,916,376. Accordingly, the petitioner owned approximately three-tenths of one percent of the shares in the capital of Chaparral.
- [22] On December 12, 2014, the Arrangement Resolution was passed by the Chaparral shareholders.
- (b) Incorporation of Chaparral
- [23] Chaparral is a mining company engaged in the exploration and development of gold (and silver) deposits in Nevada, U.S.A. Chaparral's principal mining assets are two wholly-owned mining properties: Goldfield and Converse.
- [24] Chaparral was formed in September 2013 to participate in a spin-out transaction among International Minerals Corporation ("IMZ"), Hochschild Mining plc ("Hochschild"), HOC Holdings Canada Inc. ("HOC Canada"), a wholly-owned subsidiary of Hochschild, and itself.
- [25] Prior to the spin-out, the Goldfield and Converse mining properties were held by IMZ. Under the spin-out, HOC Canada acquired all of the issued and outstanding shares of IMZ; each IMZ shareholder was entitled to receive cash consideration of US \$2.38 per IMZ share and the number of common shares in Chaparral equal to his or her shareholdings in IMZ; and IMZ transferred to Chaparral its cash and receivables and all of its rights, title and interest to its wholly-owned non-Peruvian subsidiaries, and its assets and related liabilities, which included a 100% interest in the Goldfield and Converse properties.
- [26] Paradigm Capital Inc. ("Paradigm") acted as the independent financial advisor to IMZ and provided a valuation and fairness opinion in connection with the spin-out. Paradigm was of the opinion that the fair market value of a Chaparral share was in the range of \$0.58 to \$0.85.
- [27] The spin-out transaction completed on December 20, 2013. Chaparral began trading on the TSX on December 30, 2013.
- (c) Initial Hostile Bid
- [28] On February 19, 2014, the respondent made an unsolicited, hostile bid to acquire all of the issued and outstanding shares of Chaparral for cash consideration of \$0.50 per share (the "Initial Hostile Bid").
- [29] The Chaparral Board of Directors (the "Board") appointed an independent special committee (the "Special Committee"), which comprised of three independent directors, to consider the Hostile Bid and to make recommendations to the Board. Two of these directors were formerly independent directors of IMZ.

[30] In a press release dated February 26, 2014, the Board recommended that shareholders reject the Initial Hostile Bid. As set forth in the petitioner's affidavit, sworn August 31, 2015, the press release summarized eleven reasons for rejecting the bid:

- i. The Hostile Bid implies NEGATIVE value for Chaparral's mineral properties.
- ii. The Board is aggressively pursuing value-maximizing alternatives.
- iii. The Hostile Bid fails to recognize the strategic value of Chaparral's asset base.
- iv. The timing of the Hostile Bid is opportunistic.
- v. The Hostile Bid is significantly below precedent multiples for similar-scale gold developers.
- vi. The Hostile Bid represents an immaterial premium to Chaparral's share price.
- vii. Waterton's own financial advisors recognize the scarcity value of assets similar to Goldfield.
- viii. Chaparral has a strong balance sheet and no near-term dilution risk for shareholders.
- ix. The Hostile Bid is financially inadequate.
- x. Rejection of the Hostile Bid by Chaparral's directors and officers.
- xi. The Hostile Bid is highly conditional.

[Emphasis in original.]

[31] The Board stated again its recommendation and reasons for rejecting the Initial Hostile Bid in a director's circular dated March 4, 2014. As summarized in the petitioner's affidavit, the circular made several additional criticisms of the Initial Hostile Bid, including that it:

- i. "significantly undervalues the Common Shares";
- ii. "is not credible as it implies that the Company's two open-pit, heap leach gold projects in Nevada are worthless" and "implies a negative value for Chaparral's mineral properties";
- iii. "would deprive Shareholders of their exposure to the cash generating potential and gold price optionality" of the Company's development projects;
- iv. "represents a significant discount to the Price to Net Asset Value ("P/NAV") multiples and Enterprise Value per ounce of gold ("EV/oz") economic parameters that have been paid in prior acquisitions of similar-scale gold developers"; and
- v. represented "a meager 14.9% premium to the closing price of the Common Shares on the TSX on February 14, 2014 (the last trading day prior to the announcement of the [Hostile Bid]" and represented "a 16.6% DISCOUNT to the closing price for the Common Shares on the TSX" as at March 3, 2014".

[Emphasis in original.]

[32] The circular also included an opinion from Maxit Capital LP ("Maxit"), an independent financial advisory firm with expertise in mergers and acquisitions. Maxit concluded that the Initial Hostile Bid was "inadequate, from a financial point of view, to Shareholders other than [the respondent] and its affiliates."

(d) Search for Strategic Alternatives

[33] As a result of receiving what it considered an inadequate offer, Chaparral sought strategic alternatives to the Initial Hostile Bid.

[34] As of March 17, 2014, thirteen companies had signed confidentiality agreements with Chaparral, reflecting interest in a possible transaction. Chaparral had also received a preliminary offer.

[35] On March 18, 2014, Chaparral announced an 18% increase in the mineral resource estimate of measured and indicated ounces of gold for the Converse gold deposit.

[36] As of April 7, 2014, Chaparral received offers from three companies. Each of the offers were in the nominal range of \$0.60 cash, cash-equivalent, or a combination of such, per Chaparral share, which was the approximate trading price of Chaparral's shares at the time.

[37] On April 17, 2014, Chaparral publicly disclosed that the Environmental Protection Agency (the "EPA") had requested a meeting with Metallic Ventures (U.S.) Inc. ("Metallic") of one of Chaparral's wholly-owned subsidiaries, to discuss Metallic's potential responsibility with respect to contamination at a historical smelter site. I will discuss the evidence related to this potential environmental liability in more detail below.

[38] As of May 5, 2014, all of the companies that had made offers had withdrawn from the bidding process. Chaparral had also signed a confidentiality agreement with an additional company; this did not lead to an offer.

[39] As of June 12, 2014, Chaparral was evaluating potential transactions with two additional corporations; neither of these transactions proceeded.

(e) Revised Hostile Bid

[40] While Chaparral was engaged in the process of seeking other bidders, the respondent extended the Initial Hostile Bid eight times: March 25, 2014, April 8, 2014, April 21, 2014, May 7, 2014, May 21, 2014, June 3, 2014, June 17, 2014, and July 2, 2014.

[41] On July 17, 2014, respondent amended the Initial Hostile Bid and increased the cash consideration to \$0.55 per share (the "Revised Hostile Bid"). The respondent identified the Revised Hostile Bid as its "best and final Offer".

[42] In a press release dated July 23, 2014, the Board recommended that shareholders reject the Revised Hostile Bid. As set forth in the petitioner's affidavit, the press release outlined several reasons for rejecting the bid:

- The Revised Offer implies INSUFFICIENT value for the Company's mineral properties;
 - o The Revised Offer is not credible as it implies that the Company's two open-pit, heap leach gold projects in Nevada are immaterial to the Company's value. The Revised Offer, net of the Company's estimated working capital, implies a value of only approximately US\$4.8 million for Chaparral's mineral properties. Comparatively, the book value of Chaparral's mineral properties is approximately US\$50 million (at March 31, 2014). Effectively Waterton is using Chaparral's cash and receivables to fund Waterton's proposed acquisition of Chaparral.
- The timing of the Revised Offer is OPPORTUNISTIC;
 - o Waterton is attempting to acquire Chaparral when Chaparral is negotiating for an acceptable "limited ability to pay" settlement with the EPA for the Eureka smelter issue. By minimizing the potential liability associated with this issue by way of such a settlement, it is expected that alternative higher value proposals for the Company will emerge.
- The Revised Offer is highly COERCIVE;
 - o After eight extensions and never having had more than 1.1% of the Common Shares tendered to its original offer, Waterton is dropping its minimum tender condition, which is highly coercive to shareholders and a clear attempt to secure a minority blocking position to thwart Chaparral's strategic alternative process before Chaparral can reach a settlement with the EPA.
- The Revised Offer fails to recognize the strategic value of the Company's asset base in the mining friendly Nevada;
- The Revised Offer is significantly below precedent multiples for similar-scale gold developers;
- The Revised Offer represents an inadequate premium to the share price;
- The Revised Offer is financially inadequate;
- Rejection of the Revised Offer by the Company's directors and officers; and
- The Revised Offer is highly conditional.

[Emphasis in original.]

[43] The recommendation to reject the Revised Hostile Bid was also stated again in a notice of change to the director's circular dated July 23, 2014, which made various criticisms of the offer. As set forth in the petitioner's affidavit, these included that the Revised Hostile Bid:

- (i) "is inadequate and opportunistic and significantly undervalues the Common Shares";
- (ii) is "not credible" because it fails to recognize the value of the Company's development projects:

The Revised Offer is not credible as it implies that the Company's two open-pit, heap leach gold projects in Nevada are immaterial to the Company's value. The Revised Offer, net of the Company's estimated working capital, implies a value of only approximately US\$4.8 million for Chaparral's mineral properties. Comparatively, the book value of Chaparral's mineral properties is approximately US\$50 million (at March 31, 2014). Effectively Waterton is using Chaparral's cash and receivables to fund Waterton's proposed acquisition of Chaparral.

(iii) "does not compensate shareholders for the value inherent in the Gemfield deposit as a project from which gold production is expected to commence in a reasonable timeframe";

(iv) "is highly coercive to Shareholders and a clear attempt to secure a minority blocking position", as a consequence of dropping the minimum tender condition from the initial Offer;

(v) "would deprive Shareholders of their exposure to the cash generating potential and gold price optionality" of the Company's development projects; and

(vi) "represents a significant discount to the Price to Net Asset Value ("P/NAV") multiples and Enterprise Value per ounce of gold ("EV/oz") economic parameters that have been paid in prior acquisitions of similar-scale gold developers".

[44] The petitioner in his affidavit also states: "The Notice of Change also included another opinion from Maxit, which similarly concluded, despite the increased consideration offered, that the Revised Hostile Bid was 'inadequate'".

[45] On July 31, 2014, in accordance with the terms of the Revised Hostile Bid, the respondent took up 19,811,204 Chaparral shares, representing approximately 16.83% of the issued and outstanding common shares of Chaparral. As a result, the respondent owned and controlled, directly and indirectly, a total of 23,214,704 Chaparral shares, representing approximately 19.72% of the issued and outstanding Chaparral shares.

[46] In accordance with securities legislation, on August 1, 2014, the respondent issued an Early Warning Report confirming that it had beneficial ownership of approximately 19.72% of the issued and outstanding Chaparral shares.

(f) Negotiating and Approving the Plan of Arrangement

[47] On August 5, 2014, the Special Committee recommended opening "a dialogue with the respondent to see if a fair and reasonable transaction may be negotiated". On August 5, 2014, the Board accepted the Special Committee's recommendation.

[48] On August 21, 2014, the Board instructed management to enter into negotiations with the respondent in connection with an overture made by the respondent that it was prepared to make an offer for all of the issued and outstanding Chaparral shares.

[49] Representatives of the Chaparral management team, along with a representative of Maxit, met with the respondent on August 25, 2014. On August 28, 2014, the Board authorized an exclusivity agreement with the respondent to enable further negotiation.

- [50] On September 16, 2014, at a meeting of the Special Committee, a representative of Paradigm delivered a verbal opinion concluding that the proposed Arrangement was fair, from a financial point of view, to the shareholders of Chaparral. This opinion was followed by a formal written opinion which confirmed the same.
- [51] In addition to discussing the Paradigm opinion, the Special Committee discussed, among other things, that the offer arose from a comprehensive negotiation process, that the offer represented a premium to current and historical trading prices of Chaparral shares, the fairness of the conditions of the proposed Arrangement, equal treatment of shareholders, and potential risks and issues.
- [52] As a result of these discussions, the Special Committee recommended that the Board approve the Arrangement, subject to the resolution of certain matters.
- [53] On October 8, 2014, the Board approved the Arrangement and Chaparral announced that it had entered into a plan of arrangement with the respondent, Waterton LP, and Goldrock Mines Corp. (counsel agree that this corporation's involvement in the Arrangement is not relevant to the matter at bar) for the non-hostile acquisition of Chaparral for cash consideration of \$0.61 per Chaparral share.
- [54] The Arrangement provided that if a US \$5 million installment in relation to a particular receivable was received on or before December 29, 2014, the respondent would pay an additional \$0.02 per Chaparral share, representing a total cash consideration of \$0.63 per Chaparral share.
- (g) Passing the Arrangement Resolution
- [55] Chaparral fixed December 12, 2014 as the date for a special meeting of the shareholders to vote on the Arrangement.
- [56] As already noted, on November 7, 2014, Master Muir issued the Muir Order, which, among other things, determined entitlement to notice of the December 12, 2014 Special Meeting of Shareholders that was set to consider and, if deemed advisable, to pass a special resolution approving the Arrangement and confirmed the conditions pertaining to dissent rights.
- [57] On November 7, 2014, Chaparral issued a management information circular recommending that shareholders vote in favour of the Arrangement at the special meeting. In argument, counsel highlighted several reasons set forth in the circular for supporting the transaction, including that:
- i. the offer price of \$0.61 provided a "significant premium" for shareholders;
 - ii. the all-cash consideration would provide the shareholders with certainty of value during a period of heightened market volatility;
 - iii. there was no financing condition;

- iv. the Arrangement would be subject to court supervision; and
 - v. the Board, with the assistance of the Special Committee, management, and its financial and legal advisors, had pursued a variety of strategic alternatives with a view to the best interests of the Company and its shareholders before negotiating the Arrangement with the respondent.
- [58] As noted by the petitioner, some of these reasons would have been applicable to the Initial Hostile Bid and Revised Hostile Bid, including the facts that the offer was all-cash and that there was no financing condition.
- [59] In addition to these reasons, the Board and the Special Committee included in the circular a valuation and fairness opinion of the Arrangement from Paradigm, dated October 8, 2014. As set forth in the petitioner's affidavit, the Paradigm opinion concluded that:
- i. "the Fair Market Value [as defined in the opinion] for Chaparral's common shares is in the range of \$0.45-\$0.76 per common share"; and
 - ii. "the Consideration is fair, from a financial point of view, to the shareholders of Chaparral".
- [60] As noted by the petitioner, the offers in the Initial Hostile Bid and the Revised Hostile Bid both fall within the range of fair market value identified by Paradigm.
- [61] There is no evidence showing whether the Board or the Special Committee considered or relied upon an opinion from Maxit regarding the Arrangement.
- [62] On December 12, 2014, the Chaparral shareholders passed the special resolution approving the Arrangement. Approximately 57.91% of Chaparral shares were voted on the special resolution and approximately 99.48% of those voted shares were voted in favour of the Arrangement. As described below, excluding the respondent, any related party, and Mr. Stephen Kay, approximately 99.19% of the shares voted were voted in favour of the Arrangement.
- [63] On December 17, 2014, Chaparral received final court approval of the Arrangement.
- [64] On February 18, 2015, the respondent completed the acquisition of all of the issued and outstanding common shares of Chaparral for consideration of \$0.61 in cash per Chaparral share pursuant to the terms of the Arrangement.
- (h) Environmental Liability
- [65] As noted above, potential environmental liability for Chaparral arose while it was in the course of seeking strategic alternatives to the Initial Hostile Bid. In compliance with securities law disclosure requirements, various documents were publicly disclosed that detail the emergence of the potential liability raised by the EPA and Chaparral's response to the concern.

- [66] On April 17, 2014, Chaparral publicly disclosed that the EPA had requested a meeting with Metallic to discuss Metallic's potential responsibility for contamination from the late 1800s at historical smelter sites near Eureka, Nevada.
- [67] Information about the EPA's review of Metallic was first disclosed shortly after the Board approved Chaparral's audited financial statements for the year ended December 31, 2013 on March 27, 2014. In this regard, Chaparral's April 17, 2014 press release reads (in part):

Eureka Smelter Sites

The Company previously disclosed in its annual public disclosure documents for the year ended December 31, 2013 certain correspondence received by the Company's wholly-owned indirect subsidiary Metallic Ventures (U.S.) Inc. ("Metallic") from the United States Environmental Protection Agency ("EPA") related to contamination at historical smelter sites from the late 1800s near the town of Eureka in central Nevada. The EPA has recently requested a meeting with Metallic to further discuss Metallic's potential responsibility in this matter.

Metallic does not own and has never operated the sites under investigation and its current involvement is determined by the EPA to be as the corporate successor of the Richmond-Eureka Mining Company formed in 1905 which may itself have been a corporate successor to former owners and operators. Metallic has not accepted any responsibility with respect to this issue and continues to thoroughly evaluate the EPA's position with respect to Metallic's involvement.

To date, the EPA has not indicated that Metallic has any liability with respect to this matter nor has the EPA made any demand for compensation from Metallic. At the present time, it is impossible to ascertain if Metallic has, or may have, any responsibility for assisting in the remediation of the sites.

- [68] On May 5, 2014, Mr. N. Appleyard, Chaparral's chief executive officer, told the Special Committee that all the companies that had submitted written proposals had withdrawn from the bidding process. He also told the Special Committee that Chaparral's management team was focused on the EPA's complaint and Chaparral's potential liability, and was pursuing a couple avenues to restrict liability.
- [69] On May 14, 2014, the Board agreed to postpone further discussion on the Initial Hostile Bid until after Chaparral had "met with the EPA and received clarification regarding the Company's potential responsibility in connection with the Eureka smelter site remediation issue".
- [70] On June 12, 2014, Mr. Appleyard advised the Special Committee that "the main focus of the Company's efforts is presently concentrated on resolving the EPA issue in as timely a manner as possible" and suggested that "until the Company receives an estimate of what an equitable settlement might be, it is not prudent to move forward with negotiations for other projects and plans".

- [71] On July 21, 2014, Mr. Appleyard advised that Special Committee that Metallic had made a US \$100,000 settlement offer to the EPA. He reported that it had yet to receive a response to the offer, but that the management team had subsequently contacted the EPA to suggest that Metallic "would consider making an increased settlement payment if the EPA would expedite a resolution to the case, thus allowing the Company to proceed with White Knight scenarios before the Waterton deadline of July 31." Later that day, the Board authorized management to negotiate an expedited settlement with the EPA up to US \$1.8 million.
- [72] On August 5, 2014, Mr. Appleyard told the Board that the EPA would be looking to "affiliate companies 'further up the chain'" to contribute to remediation costs at the Eureka smelter sites.
- [73] On November 5, 2014, the EPA confirmed that it would be pursuing Chaparral, in addition to Metallic, for potential liability. The EPA also demanded that Chaparral pay US \$6.3 million within 30 days for costs incurred by the EPA at the Eureka smelter sites.
- [74] As a listed risk factor related to the Arrangement, the November 7, 2014 management circular states:

If the Arrangement is not completed, the market price of Chaparral Shares may be adversely affected by the EPA's assertion that Chaparral or its Subsidiaries are potentially responsible for contamination at historical smelter sites near the town of Eureka, Nevada. On November 5, 2014, Chaparral received correspondence from the EPA in which the EPA stated that Chaparral may be a potentially responsible party with respect to the foregoing contamination, by virtue of its relationship with its indirect Subsidiary, Metallic Ventures (U.S.) Inc. which the EPA has alleged may be a successor in interest to former operators of those smelter sites in the late 1800's. The EPA further demanded that Chaparral pay the EPA US\$6.3 million within 30 days for environmental remediation costs incurred by the EPA at Eureka through October 17, 2014. The EPA also extended the opportunity to Chaparral to discuss the possibility of negotiating a comprehensive settlement. Although Chaparral strongly disagrees with the EPA's position that Chaparral may be a potentially responsible party, and will so indicate in its response to the EPA, it is uncertain whether Chaparral will ultimately be found liable for these remediation costs.

- [75] There is no evidence that the disputed potential liability had been reduced or resolved by December 11, 2014.

5. fair value

(a) Deal Price

- [76] As described in *Grandison*, the Court must determine the en bloc fair market value of all shares of the subject corporation.
- [77] As in *Grandison*, the appropriate starting point is the transaction itself--the \$0.61 per Chaparral share Deal Price.

- [78] In negotiating the Arrangement, Chaparral and the respondent were dealing at arm's length. The respondent did not control Chaparral nor were there common directors.
- [79] I note that the respondent did hold almost 20% of the shares in the capital of Chaparral which would enable a compulsory acquisition under s. 300 of the BCBCA to be blocked (greater than 10% is required). At 20%, the respondent would also be deemed to be a "control person" under the Securities Act, R.S.B.C. 1996, c. 418, s. 1(1).
- [80] As noted below, the thresholds for shareholder approval of the Arrangement were not directly affected or constrained by the foregoing provisions and the respondent holding almost 20% of the shares in the capital of Chaparral.
- [81] The respondent was a prudent and informed buyer. Similarly, the Deal Price of \$0.61 was approved by the Chaparral Board, after seeking and following advice from the Special Committee, using its judgment in serving the interests of Chaparral and its shareholders as to the best obtainable price per share.
- [82] Under the approval provisions for the Arrangement Resolution, Chaparral shareholders were under no compulsion to act. The fact that the Chaparral Board (through management) negotiated such shareholder approval provisions shows that the Chaparral Board was not pressured, compelled, or coerced to sell to the respondent at \$0.61 per share.
- (b) Shareholder Approval
- [83] The Muir Order stated the requisite shareholder approval as follows:
19. The requisite approval required to pass the Arrangement Resolution shall be:
- (a) the affirmative vote of two thirds of the votes cast on the Arrangement Resolution by the Chaparral Shareholders voting as a single class, present in person or by proxy and entitled to vote at the Meeting (excluding from the count of total votes cast any spoiled, illegible and/or defective ballots and abstentions); and
- (b) the affirmative vote of a simple majority of the votes cast on the Arrangement Resolution by the Chaparral Shareholders, present in person or by proxy at the Meeting, excluding for this purpose votes cast in respect of Chaparral Shares that are beneficially owned by Waterton, any related party of Waterton and Stephen Kay, Executive Chairman and a Director of Chaparral (excluding from the count of total votes cast any spoiled, illegible and/or defective ballots and abstentions);
- [84] The requirement of an affirmative vote of a simple majority of Chaparral shareholders (excluding the respondent, related parties, and Mr. Kay) served to address the risks that these shareholders would be in any manner compelled to vote in favour of the Arrangement Resolution. In other words, the respondent's almost 20% shareholding could not influence the vote such that a minority shareholder may have perceived that there was little or no choice but to vote in favour of the Arrangement Resolution. They could vote independently of the wishes of the respondent. Less than a simple majority vote of shares in favour of the

Arrangement Resolution would defeat it. The respondent did not enjoy a blocking position.

- [85] I also find that the potential EPA liability did not force Chaparral shareholders to sell their Chaparral shares. The EPA potential liability negatively affected value, and accordingly, the Deal Price negotiated in October 2014 became more attractive as the potential seriousness of the claim become clearer. In short, the potential EPA liability was a material development that Chaparral shareholders could weigh in deciding to vote for or against the Arrangement.
- [86] The following aspects further support the Court finding that the Deal Price of \$0.61 per Chaparral share represented the fair value as of December 11, 2014.

(c) Spin-Out Transaction

- [87] Chaparral was incorporated as part of the November 2013 "spin-out" of certain assets from IMZ. Of particular importance, Chaparral received the Goldfield and Converse properties.
- [88] Under the spin-out, each IMZ shareholder received US \$2.38 (CAD \$2.46) and one Chaparral share for each share held by the shareholder in the capital of IMZ.
- [89] For the spin-out, Paradigm gave a fairness and valuation opinion. As of September 17, 2013, Paradigm was of the opinion that the fair market value of each Chaparral share to be received by IMZ shareholders was in the range of \$0.58 to \$0.85 per share.
- [90] IMZ's shares were listed on the TSX. In its October 25, 2013 Management Information Circular, the President and Chief Executive Officer of IMZ stated:

Significant Premium to IMZ Shareholders. Combining the cash consideration to be paid by HOC of \$2.38 per share (approximately C \$2.46) with the fair market value per share for Chaparral's Gold assets (Nevada properties and cash) estimated by Paradigm as ranging from C \$0.58 to C \$0.85 per share, the Arrangement represents total consideration (cash and Chaparral Gold) of approximately C \$3.04 - C \$3.31 per share. This value range represents a 15 - 25% premium to IMZ's spot price of C \$2.65 and a 24 - 35% premium over IMZ's 20-day volume weighted average price ("VWAP") on the TSX of C \$2.46, prior to the announcement of the transaction.

- [91] At the time of the spin-out, the EPA concern had not arisen. It is not noted in either the Paradigm valuation or IMZ's Management Information Circular. The Paradigm valuation was an appendix to the Circular.
- [92] In its valuation, Paradigm assumed that the spot gold price for the next four years would be US \$1,320 per ounce.
- [93] The Paradigm valuation range of \$0.58 to \$0.85 per Chaparral share represented an en bloc fair market value of all shares in the capital of Chaparral.

- [94] IMZ shares were traded on the TSX and Swiss Exchange. In its September 17, 2013 valuation and fairness opinion, Paradigm stated that the historical 13-week trading range was \$1.78 to \$2.59. Paradigm examined the "five, 10, 20, 30, 45 and 60-day [volume weighted average prices] on both the TSX and Swiss Exchange". Paradigm noted that "the Swiss Exchange makes up over 90% of the combined value on both [of] the exchanges. The combined 20-day and 60-day value traded totalled \$3,483,581 and \$9,379,920".
- [95] In the October 25, 2013 Management Information Circular, the IMZ per share spot price was stated to be \$2.65. Using the more conservative figure of \$2.65 (from a valuation perspective), market participants valued a spin-out Chaparral share at no less than \$0.19 per share. Under the spin-out, an IMZ shareholder for each IMZ share held received US \$2.38 (CND \$2.46) and one Chaparral share. IMZ shareholders voting in favour of the spin-out assigned to a Chaparral share a value of no less than \$0.19 (\$2.65 - \$2.46).
- [96] The spin-out was undertaken by way of a plan of arrangement. Court approval was required under the Business Corporation Act (Yukon), R.S.Y. 2002, c. 20. The arrangement also required approval by a simple majority of shareholders present in person or represented by proxy excluding those required to be excluded under Multilateral Instrument 61-101 - Protection of Minority Security Holders in Special Transactions ("MI 61-101"). Dissent rights were also provided. A condition for the closing of the spin-out was that dissent rights involving no more than 5% of the issued and outstanding IMZ shares could be exercised.
- [97] As noted, the spin-out transaction received shareholders and Court approval. On December 30, 2013, Chaparral shares began trading on the TSX.
- [98] The spin-out provides real evidence that as of November 26, 2013, the date of the meeting of shareholders approving the spin-out, the value of a Chaparral share was far less than the US \$1.60 to US \$1.85 the petitioner says was the fair value as of December 11, 2014.
- [99] If the value of a Chaparral share were considerably more than \$0.58 to \$0.85 as estimated by Paradigm, I find that the US \$2.38 in cash consideration would have been considerably less. Hochschild, an established mining corporation, acting in its self-interest, serving the interests of its shareholders, would have required such.
- [100] In the spin-out, market forces were engaged with the market participants acting with self-interest. The spin-out is consistent with a fair value within a range including \$0.61 per share and not the US \$1.60 to US \$1.85 the petitioner asserts.
- (d) Trading Stock Price of Chaparral Shares
- [101] Again, as noted, on December 30, 2013, the shares in the capital of Chaparral started trading on the TSX. The respondent's first Initial Hostile Bid was February 19, 2014. During this period, Chaparral's shares traded in the range of approximately \$0.35 to \$0.45. Although a relatively short period, trading totalled approximately 22% of the total number of Chaparral's issued and outstanding shares.

[102] The relevant material information was also readily available and accessible. The petitioner does not assert otherwise. In particular, the IMZ Management Information Circular was readily accessible as were all securities law filings (through SEDAR).

[103] In these materials, there were detailed descriptions of the Goldfield and Converse properties. For example, in the Paradigm September 17, 2013 valuation report, these two properties are described:

Goldfield

International Minerals holds a 100% interest in Goldfield, a development stage site approximately 290 northwest of Las Vegas, Nevada, USA comprising 86 square km ("sq. km") with three principal target areas: Goldfield Main; McMahon Ridge; and Gemfield. Gemfield is currently the main prospect on the property and is being pursued as an open-pit heap leach operation. As per an amended feasibility study dated June 17, 2013 on Gemfield, proven and probable reserves total 567,000 oz Au; 17.26 Mt at 1.0 g/t Au, with no reserves at Goldfield Main or McMahon Ridge. Measured and indicated resources as of the same date were 1.34 M oz Au; 38.66 Mt at 1.1 g/t Au, attributable to the three properties. Permitting for Gemfield is expected to run parallel with the Environmental Impact Statement ("EIS") process which is currently projected to be completed by late 2014 to early 2015, allowing production to begin in 2016. Gemfield has an average annual production estimate of 76,000 oz, a 6.3 year estimated mine life, and 483,000 oz estimated life of mine gold production. Neither Goldfield Main nor McMahon have a projected start-up date as yet. All three deposits are structurally controlled, volcanic-hosted, epithermal gold deposits of the high-sulfidation, quartz-alunite type.

Converse Project

International Minerals holds a 100% interest in Converse, a development stage open-pit project site approximately 48 km southeast of Winnemucca, Nevada, USA and 8 km west of the Goldcorp/Barrick Marigold gold mine. The property comprises a total of 28.5 sq. km with 10.7 sq. km of free lands purchased from Nevada North Resources (USA) Inc. ("Nevada North"), 224 unpatented claims leased from Nevada North and 36 unpatented claims owned by IMZ. The total measured and indicated resource as per a feasibility study on December 19, 2011 was 5.17 M oz Au and 37.95 M oz Ag; 320.23 Mt at 0.50 g/t Au and 3.69 g/t Ag.

[104] In February 2014, gold was trading at approximately US \$1,270 per ounce (approximately US \$50 per ounce below Paradigm's assumed price in its September 17, 2013 valuation). Throughout 2014, the price of gold in Canadian dollars did not fluctuate wildly. It also did not increase by December 11, 2014, the relevant valuation date, so as to explain the range of US \$1.60 to US \$1.85 the petitioner claims is the Chaparral per share fair value. On December 11, 2014, the closing spot gold price was US \$1,216 per ounce (the average price for the fourth quarter of 2014 was US \$1,201).

[105] The trading in Chaparral shares from December 30, 2013 to February 18, 2014 on the TSX occurred in an open and unrestricted market. With the readily accessible information, especially that following from the spin-out transaction, there is no basis to find that market participants were uninformed. As noted, Paradigm's September 17, 2013 valuation in relation to the spin-out was in the range of \$0.58 to \$0.85 per share en bloc but with a higher assumed spot gold price.

(e) Initial Hostile Bid

[106] As noted, the Initial Hostile Bid was made February 19, 2014. The bid price was \$0.50 per share. The Initial Hostile bid was extended eight times. The expiration of the final extension was July 17, 2014. As of July 16, 2014, 899,108 shares had been deposited (and not withdrawn) under the Initial Hostile Bid of \$0.50 per share. The 899,108 shares represented approximately eight-tenths of one percent of Chaparral's issued and outstanding shares.

[107] On March 18, 2014, Chaparral had also announced "an increase of 18% in total measured and indicated ounces of gold" in relation to the Converse property. It would be expected that this favourable news would enhance Chaparral's value.

[108] The fact that so few shares were deposited (and not withdrawn) at \$0.50 per share is real evidence that the en bloc fair market value of Chaparral was greater than \$0.50 per share.

(f) White Knights

[109] In March, April, May, and June 2014, Chaparral had discussions with and received offers from various possible purchasers. Confidentiality agreements were executed. All offers were in the neighbourhood of \$0.60 per Chaparral share. None of the transactions proceeded. In its dealings with possible white knights, there is no evidence that Chaparral was not dealing at arm's length.

[110] In considering making an offer for all of the shares in the capital of Chaparral or some alternative type of transaction, as a sophisticated market participant, a white knight would have analyzed and considered the en bloc fair market value of the Chaparral shares. Having entered into a confidentiality agreement, the white knight would have had access to all confidential information, including information related to the EPA's interest in possible environmental liabilities.

[111] The fact that the white knight offers were in the neighbourhood of \$0.60 per Chaparral share is further market participant evidence that the en bloc fair market value in March, April and May 2014 was well below that which the petitioner argues the fair value was as of December 11, 2014.

[112] I find that the exposure of Chaparral to white knights is real evidence that the en bloc fair market value in the spring of 2014 was approximately \$0.60 per share.

[113] I also find that industry and market participants recognized that Chaparral was "in play" as a potential acquisition target. Chaparral was exposed to the market with material information readily accessible. Such information included the unfolding EPA potential liability. As with any other material development, market participants were in a position to analyze the potential effect of this uncertainty up to the time of the Arrangement Resolution. The EPA potential liability did not prevent bids by future white knights, although it may have negatively affected a white knight's calculation of value.

(g) Revised Hostile Bid

[114] On July 17, 2014, the respondent made its Revised Hostile Bid of \$0.55 per Chaparral share. By July 31, 2014, under the Revised Hostile Bid the respondent had taken up 19,811,204 shares (which would include shares under the Initial Hostile Bid, as extended) in the capital of Chaparral. These shares represented approximately 16.83% of the issued and outstanding shares in the capital of Chaparral. In sum, with a \$0.05 increase on its bid price, the respondent was able to acquire, within two weeks, approximately 15% of the issued and outstanding shares of the capital of Chaparral.

[115] Those shareholders accepting the bid would have had access to a detailed description of the Chaparral's two main properties (including the March 18, 2014 increase resource estimate), financial statements ("Chaparral Gold Business" financial statements attached as an appendix to IMZ's October 25, 2013 Circular), metal prices, currency exchange rates, and similar information. As noted, by April 17, 2014, Chaparral had alerted the market that the EPA wished to discuss Metallic's potential responsibility.

[116] By July 17, 2014, shareholders holding a significant percentage of the issued and outstanding shares in the capital of Chaparral were willing to sell their Chaparral shares for \$0.55 per share. Such is real, not opinion, evidence that \$0.55 per share, while still not representing the en bloc fair market value of Chaparral on a per share basis, was a per share price quickly approaching the en bloc fair market value.

(h) Termination Fee

[117] Under the Arrangement, a \$2,271,250 termination fee was payable to the respondent if Chaparral entered into a written agreement with respect to a Superior Proposal prior to shareholders' approval of the Arrangement Resolution. In the Arrangement, Superior Proposal is defined as follows:

"Superior Proposal" means any unsolicited bona fide written Acquisition Proposal from a Person who is an arm's length third party to acquire not less than all of the outstanding Common Shares or all or substantially all of the assets of the Company on a consolidated basis that: (a) complies with Securities Laws and did not result from or involve a breach of Article 5; (b) is reasonably capable of being completed without undue delay, taking into account all financial, legal, regulatory and other aspects of such proposal and the Person making such proposal; (c) is not subject to any financing contingency and in respect of which adequate arrangements have been

made to ensure that the required funds will be available to effect payment in full for all of the Common Shares or assets, as the case may be; (d) is not subject to any due diligence or access condition; and (e) that the Board determines, in its good faith judgment, after receiving the advice of its outside legal and financial advisors and after taking into account all the terms and conditions of the Acquisition Proposal, including all legal, financial, regulatory and other aspects of such Acquisition Proposal and the party making such Acquisition Proposal, would, if consummated in accordance with its terms, but without assuming away the risk of non-completion, result in a transaction which is more favourable, from a financial point of view, to the Shareholders than the Arrangement (including any amendments to the terms and conditions of the Arrangement proposed by the Purchaser pursuant to Section 5.4(2)).

[118] The termination fee represents approximately \$0.02 per Chaparral share.

[119] If fair value were in the range of US \$1.60 to US \$1.85 per share, the Court finds that a Superior Proposal would have been forthcoming. Canada and the United States have established mining industries with many publicly listed mining companies. With this context, I find that there were many market participants who could have acquired Chaparral. The fact that the white knights had looked at Chaparral in March, April, and May 2014 is further evidence that many market participants were aware that Chaparral was a target for an acquisition and that they were not willing to make a proposal.

(i) Possible \$0.02 Per Share Additional Consideration

[120] The Arrangement provided additional consideration of \$0.02 in cash per share if a US \$5 million installment on a particular receivable was received on or before December 29, 2014.

[121] The installment was not received. Accordingly, the final cash consideration was \$0.61 in cash per share.

[122] However, the negotiation of the potential additional cash consideration represents a fine gradation, which is evidence of determined and hard bargaining between Chaparral and the respondent. In other words, Chaparral's management was trying to achieve maximum value for Chaparral's shareholders by having the US \$5 million installment included if received and the respondent having it not recognized if not received.

(j) Dissent Rights

[123] Excluding the petitioner's 351,154 shares in the capital of Chaparral, only 7,642 shares were used to vote against the special resolution to approve the arrangement transaction. The Arrangement was approved by 99.48%. Excluding the respondent (and any related party) and Mr. Kay, the Arrangement was approved by 99.19%.

[124] Dissent rights are well-known to market participants. They were also described in the November 7, 2014 Management Circular for the December 12, 2014 special meeting of shareholders of Chaparral.

[125] Shareholders holding in aggregate less than 1% of all issued and outstanding shares in Chaparral's capital exercised dissent rights. If fair value were within the range of US \$1.60 to \$1.85 per share, I find that dissent rights would have been exercised with respect to a far greater percentage of the shares in Chaparral's capital.

[126] The small percentage of dissenting shares and shareholders is real evidence that there was no coercion or compulsion. If a shareholder were to feel coerced or compelled by the respondent, the dissent provisions provided a ready path to escape the financial consequences of such coercion or compulsion.

(k) Gold Price

[127] By the last quarter of 2014, the spot gold price had also fallen to approximately US \$1,200 per ounce. As a result, a consideration for market participants would be the negative effect on Chaparral's profitability. As noted, Paradigm's September 2013 valuation was based on a spot gold price of US \$1,320 per ounce.

(l) Paradigm Valuation

[128] In its October 8, 2014 letter, Paradigm determined the fair market value of a share in the capital of Chaparral to be in the range of \$0.45 to \$0.76.

[129] Paradigm describes itself as follows:

Paradigm Capital is a Canadian independent investment banking firm with a sales, trading, research, and corporate finance focus providing services for both institutional investors and corporations. Paradigm Capital was founded in 1999 and is a member of the Toronto Stock Exchange, the TSX Venture Exchange, and IIROC. Paradigm Capital has participated in many transactions involving both public and private companies.

[130] A prudent and informed Chaparral shareholder would recognize that it was in Paradigm's self-interest to provide a reasonably accurate valuation. In other words, with hindsight and without reasonable explanation, if Paradigm's valuation was significantly inaccurate, say, by a factor of 3, its business reputation would be negatively affected.

[131] Paradigm also did not state or suggest that Chaparral was being "coerced" by the respondent, despite the earlier Notice of Change, press releases, and other statements of a similar tenor.

[132] Market participants realize that market information may not be accurate and true (certainly with hindsight). Market participants will constantly weigh and consider information having regard to the source of the information and the reliability of the source as part of the ongoing stream of market information. Accordingly, post-transaction criticisms of a valuation opinion are not relevant where a truly open market is operating for two reasons. First, to the extent the criticism is based on post-transaction information, the criticism is not relevant. Second, to the extent the criticism is made on the basis of pre-transaction information, there is not a basis to presume that market participants did not undertake the

same or similar analysis of the post-transaction critic.

[133] A prudent and informed Chaparral shareholder could also consider that Paradigm had a high range estimate of \$0.76 per Chaparral share, significantly above the Deal Price. Nevertheless, the vast majority of shareholders accepted the \$0.61 per Chaparral share from the respondent. I am satisfied that the \$0.76 per share price reflected a hypothetical valuation as to that which the market might assign to a Chaparral share.

(m) Market Information

[134] Canada enjoys a sophisticated and highly-regarded securities industry operating within an established legislative and regulatory framework.

[135] Within this environment, material information is disclosed on a timely basis. As noted, this information included financial information on Chaparral and geological and mining information in connection with the Goldfield and Converse properties.

[136] A Chaparral shareholder or other interested market or industry participants were positioned to analyze the en bloc fair market value using various techniques, including:

- a) net asset value;
- b) price to net asset value;
- c) discounted cash flow;
- d) comparable mining companies;
- e) market trading multiples;
- f) enterprise value to gold equivalent;
- g) profitability sensitivity to future gold and silver prices; and
- h) takeover premiums associated with comparable transactions.

[137] Consonant with the foregoing, a prudent and informed Chaparral shareholder could also consider that the Special Committee and Chaparral Board favoured the Arrangement. There was no suggestion that either was not acting in good faith or not seeking the best price. That is not to suggest that this Court can merely defer to the Board and Special Committee's recommendation that the Deal Price is "fair"; it is the Court's duty to assess what is the fair value. Nonetheless, all material information was available to Chaparral's shareholders to allow them to assess whether to approve the Arrangement, including the solicitation and negotiation processes that led to the Deal Price.

[138] The shareholder approval of the Arrangement is real evidence that prudent and informed shareholders viewed the \$0.61 per share price as representing the fair value for their shares. In other words, if upon analyzing the available information the Chaparral shareholders were not generally and collectively of the view that \$0.61 per share did not represent fair value, the Arrangement Resolution would not have passed.

6. Valuation reports

[139] An August 15, 2017 valuation report prepared Mr. Robert Low was submitted in support of the petitioner's view of fair value of US \$1.60 to US \$1.85.

[140] Mr. Low was asked to determine fair value as of December 11, 2014 and also comment on Paradigm's October 8, 2014 opinion. Mr. Low's opinion was restricted to publicly available information.

[141] The respondent submitted a valuation report prepared by Mr. Richard F. Crosson. He was asked to consider whether the \$0.61 per share "was established in the context of a fair market value transaction". He was also asked to comment on Paradigm's October 8, 2014 opinion and on Mr. Low's opinion. Mr. Crosson did not prepare a "comprehensive valuation report".

[142] In turn, the petitioner asked Mr. Low to comment on Mr. Crosson's opinion.

[143] Mr. Low and Mr. Crosson are valuation experts.

[144] In his report, Mr. Low gave the following overview of his approach:

There are two generally accepted approaches to value a business entity, being the liquidation approach and the going-concern approach. Based on our review of Chaparral's financial position, mineral assets and its operating prospects we concluded that a going-concern approach was appropriate.

There are three generally accepted going-concern valuation approaches:

- a. Asset Based Approach - the [Fair Market Value] ["FMV"] of a company is determined by assessing the - FMV of the company's individual assets and liabilities. All assets and liabilities (both reported and unreported) are restated to their FMV.
- b. Cash Flow (income) Approach - FMV is determined based on the projected future cash flows (income) of the company subject to valuation, based on the idea that a company's value is based on its ability to generate Future cash flow (income).
- c. Market Approach - pursuant to a market approach, the FMV of a business is determined by comparing the company subject to valuation to selected comparable public companies and precedent transactions. Valuation metrics implied by the comparable public companies and precedent transactions are applied to the company subject to valuation.

Based on our review and analysis of Chaparral's financial position, mineral assets and historical trading price, we conclude that the most appropriate going-concern valuation approach is the Market Approach. We note that our use of a Market Approach is consistent with the approach adopted by Paradigm to assess the fairness of the Transaction.

We have considered metals and mining industry specific valuation metrics and multiples in our consideration of the Market Approach. Particularly, we considered the following Market Approaches:

- a. Comparable Public Company Analysis - we have identified publicly traded junior gold exploration and development companies that were considered to be similar to Chaparral. We have assessed the valuation multiples and metrics associated with these comparable public companies (Enterprise Value per Ounce of Gold Resource) to derive an implied FMV for Chaparral. We have adjusted the comparable public company valuation metrics to reflect average takeover premiums.
- b. Precedent Transactions Analysis - we have identified transactions involving the acquisition of junior gold exploration and development companies that we consider to be similar to Chaparral. We have analyzed the valuation multiples and metrics associated with these precedent transactions (Enterprise Value per Ounce of Gold Resource) to derive an implied FMV for Chaparral.

[145] With respect, in determining fair value, I find that Mr. Low did not give sufficient weight to the market forces engaged in an unburdened open market, operating in compliance with the relevant securities law.

[146] Mr. Low discards too readily the real evidence provided by the market forces which included both the Arrangement negotiated by Chaparral and the respondent and the market trading price. For the purpose of determining fair value, where open and unrestricted market forces are engaged, a valuator should use the real evidence that may be obtained from such market forces and then adjust (e.g., minority discount), where necessary, for the particular valuation task.

[147] As Justice Pitfield in *Grandison* at para. 165 states:

At the very least, market transactions provide a point from which to begin, as they are indicators of prices at which parties have been prepared to buy and sell the shares.

[148] Returning to the definition of fair market value, Mr. Low does not critically analyze in any detail whether there was an open and unrestricted market. Matters for analysis included:

- a) Was Chaparral's Board compelled to sell for \$0.61 per share?;
- b) Were Chaparral and the respondent dealing at arm's length?;
- c) Were Chaparral shareholders prudent and informed sellers?;

- d) Were the Chaparral shareholders compelled to sell for \$0.61 per share?; and
- e) Was there little "free" stock left to be acquired?

[149] With respect to market trading, Mr. Low states:

CHAPARRAL HISTORICAL SHARE PRICE

Generally, when assessing the FMV of a publicly traded company such as Chaparral we would consider the company's publicly traded share price prior to the Transaction as an indication of value at the Valuation Date.

Multilateral Instrument 61-101 ("MI 61-101") of the Ontario Securities Commission ("OSC") protects minority shareholders in sale transactions. For the purpose of assessing Fair Value, MI 61-101 defines a liquid market as one in which the shares of the company subject to valuation traded for 12 months prior to the transaction.

Chaparral only traded on the TSX for 34 trading days prior to the first unsolicited Waterton offer in February 2014. Chaparral's shares were traded for an insufficient period of time to accurately establish their value in a liquid market. As a result, the publicly traded share price cannot be relied upon as an indication of FMV.

The Directors' Circular [March 4, 2014, p.7] supports this premise indicating that the Company "has not had a full opportunity to re-rate to the trading price levels of its peer group with similar development gold projects in favourable jurisdictions."

Having consideration for the foregoing, and absent a liquid market, we place limited weight on Chaparral's publicly traded share price as an indication of the FMV of the Company's shares.

[Emphasis in original.]

[150] Mr. Low does not address the spin-out transaction, the effect of the available dissent rights, or the threshold for shareholder approval (which excluded the respondent, related parties, and Mr. Kay).

[151] I am satisfied that the actual trading volume of approximately 26,000,000 shares between December 30, 2013 and February 19, 2014 provided sufficient liquidity to warrant analysis of the trading price of Chaparral's shares. This trading immediately followed the spin-out transaction. Chaparral's shares also continued to trade after the Initial Hostile Bid and were trading as of December 11, 2014. I agree with Mr. Crosson's statement:

Both the market in which Chaparral's shares traded publicly and the market in which potential acquirers could bid to obtain a controlling or en bloc interest was open and competitive, which is consistent with the FMV context.

[152] With respect to the comment in the Directors' Circular that there had not been a full opportunity for the shares to "re-rate", Mr. Low does not look at this statement with a sceptical eye that it may have been no more than posturing in a manner no different than

the respondent's statement in connection with its Revised Hostile Bid of \$0.55 per Chaparral share as its "best and final offer" (the Deal Price was \$0.61 per share). With readily accessible information, markets re-rate quickly (up or down)--there is a buck to be made or lost.

[153] As noted, Mr. Low focuses his analysis on what he views as comparable junior gold exploration and development companies, and similar precedent transactions. Mr. Crosson challenges Mr. Low's determination of "comparable" companies. For example, he noted that at least six Mr. Low's comparable companies with "higher EV/Au oz factors either had resource grades significantly higher than 1.0 g/t or had characteristics that caused them not to be comparable." I agree with respondent's counsel that in his reply comments, Mr. Low does not address fully Mr. Crosson's criticism of his comparables.

[154] Mr. Low also assigned no effect on value as a result of the EPA's ongoing review of Chaparral. He stated (in part):

The notes to Chaparral's financial statements disclose the potential contingent liability, but make no attempt to quantify the exposure and no liability is reported on Chaparral's balance sheet. Given the high degree of uncertainty surrounding the EPA liability, we have assumed a \$nil value consistent with Chaparral's financial disclosure and reporting at the Valuation Date;

[155] Mr. Low errs in relying on Chaparral's financial statements to assign no effect of the potential EPA liability. A key duty of auditors in preparing financial statements is to disclose financial risk as part of their responsibility to act in the public interest. However, a financial statement is not intended to place value on a business; an auditor is not required to quantify financial risk. For a valuation report to be of any value to the Court, the valuator must take into account and assess such risks.

[156] Mr. Low also does not address that the EPA's review and subsequent claim were disclosed by Chaparral in its SEDAR public filings as part of its disclosure obligations (including continuous disclosure) of material matters. In particular, the November 7, 2014 Circular's description of the EPA as a risk factor set forth above. For ease of reference, I repeat it here:

If the Arrangement is not completed, the market price of Chaparral Shares may be adversely affected by the EPA's assertion that Chaparral or its Subsidiaries are potentially responsible for contamination at historical smelter sites near the town of Eureka, Nevada. On November 5, 2014, Chaparral received correspondence from the EPA in which the EPA stated that Chaparral may be a potentially responsible party with respect to the foregoing contamination, by virtue of its relationship with its indirect Subsidiary, Metallic Ventures (U.S.) Inc., which the EPA has alleged may be a successor in interest to former operators of those smelter sites in the late 1800's. The EPA further demanded that Chaparral pay the EPA US\$6.3 million within 30 days for environmental remediation costs incurred by the EPA at Eureka through October 17, 2014. The EPA also extended the opportunity to Chaparral to discuss the possibility of negotiating a comprehensive settlement. Although Chaparral strongly disagrees with the EPA's position that Chaparral may be a potentially responsible party, and will so indicate in its response to the EPA,

it is uncertain whether Chaparral will ultimately be found liable for these remediation costs.

[157] With respect to the potential EPA liability, Mr. Crosson states:

In my view, uncertainty of a liability is not a valid basis for assuming that a buyer would not require a purchase price discount or allowance; as buyers are risk adverse, uncertainty normally results in higher, not lower discounts.

[158] I agree with Mr. Crosson's statement. I find that the EPA's review and the subsequent claim brought against Chaparral (and Metallic) had a negative effect on the value of shares in the capital of Chaparral.

[159] The essence of Mr. Low's report and his comments on Mr. Crosson's report is that they illustrate approaches that may have been taken by a hypothetical market participant in determining what price a market participant may have theoretically paid (or sold) for a Chaparral share. In the matter at bar, there is real evidence provided by the engaged market forces.

[160] Mr. Crosson also opined that the \$0.61 per share "paid for the acquisition of all of Chaparral's Shares was established in the context of a fair market value transaction". His analysis generally aligns with my approach to focus on the real evidence provided by the market forces to make my findings.

[161] As is emphasized by Professor Krishna's definition of fair market value, the value is more meaningful if established in an actual transaction than if estimated hypothetically.

7. SUMMARY OF KEY FINDINGS

[162] In the case at bar, the Deal Price of \$0.61 per share was negotiated by two arm's length, sophisticated parties. Neither Chaparral nor the respondent was under compulsion to act.

[163] The shareholders of Chaparral were also under no compulsion to act. They could vote independently of the wishes of the respondent. Less than a simple majority of shares (after excluding from the count any shares held by the respondent, related parties, or Mr. Kay) in favour of the Arrangement would defeat it.

[164] With the market forces engaged through trading on the TSX, operating in compliance with the relevant securities laws, and in an unburdened open market, the market served to provide a confirmatory check as to the fair value of the Deal Price. To use Justice Pitfield's language from Grandison, there was a "truly open market".

[165] The Court finds that as of December 11, 2014, the fair value of a share in the capital of Chaparral was \$0.61.

8. COSTS

[166] The respondent is awarded its reasonable costs and disbursements at Scale B of Appendix "B".

"Funt J."

Schedule "A"

September 2013

Chaparral incorporated

December 30, 2013

Chaparral's shares start trading on the TSX

February 19, 2014

Initial Hostile Bid - \$0.50

February 26, 2014

Chaparral Board press release respecting bid

March 4, 2014

Chaparral's Directors' Circular

March 17, 2014

Chaparral is seeking strategic alternatives to the Initial Hostile Bid and has entered into 13 confidentiality agreements

March 18, 2014

Chaparral announces increased mineral resource estimate

March 25, 2014

Initial Hostile Bid extended (first time)

April 7, 2014

Offers to purchase Chaparral have been received from three corporations

April 8, 2014

Initial Hostile Bid extended (second time)

April 17, 2014

Chaparral discloses the EPA has requested a meeting with Metallic

April 21, 2014

Initial Hostile Bid extended (third time)

May 5, 2014

The three offers have been withdrawn

May 7, 2014

Initial Hostile Bid extended (fourth time)

May 14, 2014

Chaparral Board agrees to postpone further discussion on responding to the Initial Hostile Bid until after meeting with the EPA

May 21, 2014

Initial Hostile Bid extended (fifth time)

June 3, 2014

Initial Hostile Bid extended (sixth time)

June 12, 2014

Two other possible transactions are evaluated (they do not proceed)

June 12, 2014

Mr. Appleyard advises the Special Committee that it is not prudent to proceed with negotiations for other projects and plans until an estimate of a settlement with the EPA is received

June 17, 2014

Initial Hostile Bid extended (seventh time)

July 2, 2014

Initial Hostile Bid extended (final time - expires July 17, 2014)

July 17, 2014

Revised Hostile Bid - \$0.55

July 23, 2014

Mr. Appleyard advises the Special Committee that Metallic had made an offer to the EPA

July 23, 2014

Chaparral's press release and Directors' Circular recommend rejecting the Revised Hostile Bid

July 31, 2014

Respondent takes up 19,811,204 Chaparral Shares - \$0.55

August 1, 2014

Early Warning Report by the respondent stating that it owns approximately 19.72% of Chaparral shares

August 5, 2014

Special Committee recommends discussions with the respondent and the Board agrees

August 21, 2014

Chaparral Board instructs management to meet with the respondent

August 25, 2014

Chaparral management (with Maxit) meet with the respondent

August 28, 2014

Chaparral Board authorizes an exclusivity agreement with the respondent

September 16, 2014

Special Committee recommends approval of the proposed Arrangement and the Board agrees (following further negotiations with the respondent)

October 8, 2014

Arrangement is approved by Board and announced

November 3, 2014

Record date for notice of the December 12, 2014 Special Meeting of Shareholders

November 5, 2014

EPA demands Chaparral pay US \$6.3 million within 30 days

November 7, 2014

Muir Order

November 7, 2014

Chaparral's Management Information Circular recommending shareholders vote in favour of the Arrangement

December 11, 2014

Valuation Date

December 12, 2014

The Arrangement Resolution passes

December 17, 2014

Final Court approval of the Arrangement

December 29, 2014

US \$5 million installment not received

February 18, 2015

Acquisition of Chaparral completed - \$0.61 per share

Schedule "B"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/19/02/2019BCSC0258.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/bamrah-v-waterton-precious-metal-bid-corp-2019>

Prepared on 27 October 2026 · Esheria