2021 WL 1734863 (Del.Ch.) (Trial Motion, Memorandum and Affidavit)

Chancery Court of Delaware.

In re CELLULAR TELEPHONE PARTNERSHIP LITIGATION.

No. 6885-VCL.

April 28, 2021.

**Plaintiffs' Post-Trial Answering Brief in Support of Their Breach of Fiduciary Duty Claims**

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THIS FILING APPLIES TO ALL COORDINATED ACTIONS

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| Aswath Damodaran, *The Small Cap Premium: Where is the beef?,* Musings on Markets (Apr. 11, 2015) | 37 |
| Donald J. Wolfe & Michael A. Pittenger, *Corporate and Commerical Practice in the Del. Court of Chancery,* § 12.04[b] | 64 |
| Shannon P. Pratt, *Valuing a Business: The Analysis and Appraisal of Closely Held Companies* (5th ed. 2008) | 70 |

**PRELIMINARY STATEMENT**[Text redacted in copy]c[1](#co_tablefootnoteblock_1_1)

At trial, Plaintiffs presented overwhelming evidence that AT&T breached its fiduciary duty of loyalty to the Minority Partners by cashing them out of the Partnerships through an unfair process and at an unfair price. Despite carrying the burden of establishing the Transactions were entirely fair, AT&T presented no credible evidence of fair dealing or fair price. AT&T instead resorts to mischaracterizing the trial evidence or ignoring it altogether.

Chief among AT&T's mischaracterizations is the contention that the Transactions' purpose was to reduce administrative expenses. Trial showed this was less than truthful: AT&T's actual purpose for the Transactions was to avoid future profit distributions to its partners,[2](#co_tablefootnoteblock_2_1) reduce its minority interest expense,[3](#co_tablefootnoteblock_3_1) and increase its profitability.[4](#co_tablefootnoteblock_4_1) AT&T's minority interest expense was 2.4% of Mobility's Operating Income as of the close of the 3rd quarter of 2009[5](#co_tablefootnoteblock_5_1) and growing.[6](#co_tablefootnoteblock_6_1) AT&T was the proverbial “800-pound gorilla”[7](#co_tablefootnoteblock_7_1) and Plaintiffs' distributions were low-hanging bananas that could be plucked without Plaintiffs' consent.[8](#co_tablefootnoteblock_8_1)

The avoidance of administrative expenses was a *de minimis* “byproduct of the transactions.”[9](#co_tablefootnoteblock_9_1) Between the 4th quarter of 2010 and 2014, AT&T projected “[n]ew cash flow from avoided partnership distributions” would generate $47.5 million[10](#co_tablefootnoteblock_10_1) and a “cash tax shield from step-up” would generate another $9.4 million.[11](#co_tablefootnoteblock_11_1) In contrast, “[a]voided administrative costs, after taxes” would generate $1.9 million, just 3.2% of the benefits AT&T expected from the Transactions.[12](#co_tablefootnoteblock_12_1) Yet, AT&T told this Court the Transactions were motivated by administrative cost-savings over,[13](#co_tablefootnoteblock_13_1) and over,[14](#co_tablefootnoteblock_14_1) and over,[15](#co_tablefootnoteblock_15_1) and over,[16](#co_tablefootnoteblock_16_1) and over,[17](#co_tablefootnoteblock_17_1) and over[18](#co_tablefootnoteblock_18_1) again. Avoided distributions and AT&T's corresponding minority interest expense are not even mentioned in AT&T's post-trial briefing.

AT&T misrepresents more: AT&T did not manage the Partnerships in compliance with either the Partnership Agreements or Management Network and Sharing Agreements (“MNSAs”),[19](#co_tablefootnoteblock_19_1) and AT&T has no idea how much more profitable the Partnerships would have been if it had complied with these agreements.[20](#co_tablefootnoteblock_20_1) AT&T has no idea what the Partnership financials would look like if it accurately accounted for Partnership subscribers,[21](#co_tablefootnoteblock_21_1) nor did AT&T and Verizon agree to port subscribers to Mobility based on NPA-NXX ranges.[22](#co_tablefootnoteblock_22_1) Roaming did not make the Partnerships whole,[23](#co_tablefootnoteblock_23_1) and AT&T's philosophy was not to allocate all revenues to the Partnerships,[24](#co_tablefootnoteblock_24_1) nor did AT&T historically favor the Partnerships.[25](#co_tablefootnoteblock_25_1)

Plaintiffs have proven AT&T's valuations were contrived and manipulated, its witnesses lack credibility, and that AT&T effected the Transactions unilaterally, on terms it dictated and knew to be unfair. Plaintiffs have met their burden to support judgment in their favor and the award of $148,289,060 in damages, plus pre- and post-judgment interest and costs.

AT&T objects, claiming Plaintiffs' reliance on *Radiology Associates*[26](#co_tablefootnoteblock_26_1) creates a windfall. It does no such thing and, in fact, is the closest the Court can come to leaving AT&T in the precise position it claims to have rightfully occupied for a decade: enjoying only administrative savings from the Transactions, and nothing more.

Plaintiffs are also entitled to their attorneys' fees for AT&T's pre-litigation conduct, which left the Minority Partners with no path but to endure the enormous litigation effort they have undertaken.

**ARGUMENT**[**27**](#co_tablefootnoteblock_27_1)

**I. AT&T BREACHED ITS DUTY OF LOYALTY**

The parties agree the Transactions are subject to entire fairness review.[28](#co_tablefootnoteblock_28_1) AT&T had the burden of proof[29](#co_tablefootnoteblock_29_1) and failed to meet its burden. Its arguments on fair dealing are inapposite, relying on misdescribed evidence and misapplied law.[30](#co_tablefootnoteblock_30_1) As to fair price, AT&T proffered only the opinions of Carlyn Taylor. Trial showed that her opinions are not credible or reliable. Failing to meet its burden, AT&T is liable to the Minority Partners for breach of its duty of loyalty.

**A. The Transactions Were Not the Product of Fair Dealing.**

Delaware courts have long provided controllers guidance for structuring interested transactions fairly.[31](#co_tablefootnoteblock_31_1) AT&T had the means to create safeguards to protect minority interests and demonstrate fair dealing. Each of the Partnerships had an Executive Committee, and minority representation could have been used to negotiate at arm's-length.[32](#co_tablefootnoteblock_32_1) AT&T instead chose to act unilaterally. In fact, AT&T focused on the Partnerships precisely because it could act unilaterally.[33](#co_tablefootnoteblock_33_1)

AT&T concedes Delaware law, or substantially similar law, applies to the Transactions.[34](#co_tablefootnoteblock_34_1) Yet, AT&T relies *on J&J Celcom v. AT&T Wireless Services, Inc.*[35](#co_tablefootnoteblock_35_1) and asserts that the Transactions were “contractually-permitted”[36](#co_tablefootnoteblock_36_1) to contend it dealt fairly with the Minority Partners. *J&J Celcom* was decided under Washington, not Delaware law and, in any event, merely granted summary judgment for AT&T after the cashed-out parties “presented no coherent evidence that the values should have been materially different.”[37](#co_tablefootnoteblock_37_1) *J&J Celcom* has no bearing on fair dealing; the concept is not even discussed. AT&T's statement that the Transactions were “contractually-permitted” is just as irrelevant. Delaware law is clear AT&T's conduct is “twice tested,”[38](#co_tablefootnoteblock_38_1) and “inequitable action does not become permissible simply because it is legally possible.”[39](#co_tablefootnoteblock_39_1) As to fair dealing under Delaware law, *i.e.* “when the transaction was timed, how it was initiated, structured, negotiated, disclosed ... and how the approvals of the [partners] were obtained,”[40](#co_tablefootnoteblock_40_1) the trial evidence shows there was none.

**1. AT&T Timed the Transactions for Its Own Benefit.**

AT&T timed the Transactions for its own benefit. In arguing to the contrary, AT&T contends (i) there was no “game changer” on the horizon in the wireless business[41](#co_tablefootnoteblock_41_1) and (ii) its motivation for the Transactions was merely a “fair and legitimate business” concern to simplify its structure and reduce “costs and inefficiencies of accounting for partnership markets separately.”[42](#co_tablefootnoteblock_42_1) The trial evidence shows both contentions are untrue: there was a game changer on the horizon - 4G was expected to revolutionize how the Network was used by everyone, and everything; and AT&T's motivation for the Transactions was to avoid sharing future profits with its partners, not administrative efficiencies.

**a. 4G and Expected Data Explosion.**

AT&T expected explosive growth in network usage. That fact alone contradicts AT&T's contention that the Transactions occurred “at a time of increasing cost in a maturing industry.”[43](#co_tablefootnoteblock_43_1) The possibilities presented by 4G were enormous.[44](#co_tablefootnoteblock_44_1)

As of the dates of the Transactions, AT&T had mostly rolled-out its 3G technology.[45](#co_tablefootnoteblock_45_1) 4G was next.[46](#co_tablefootnoteblock_46_1) 4G created the “step function increase in data throughput” that makes today's smartphone media applications viable.[47](#co_tablefootnoteblock_47_1) In the advancing technology, AT&T also saw growing opportunities to monetize subscriber data.[48](#co_tablefootnoteblock_48_1) Similarly, connected devices, particularly machine-to-machine technology, was exploding.[49](#co_tablefootnoteblock_49_1) Data usage was projected to explode:[50](#co_tablefootnoteblock_50_1)

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That AT&T viewed 4G and the explosion of data traffic it would drive to be a “game-changer” is an understatement. Anticipating data-driven network products, AT&T established an entirely new Emerging Device Organization (“EDO”), which was expected to deliver steady margins over 45% after year three and produce an IRR over 50% by 2014.[51](#co_tablefootnoteblock_51_1) This initiative aimed to attract application developers to create applications to be used on the “Network.”[52](#co_tablefootnoteblock_52_1) After its first year, EDO was 37.6% ahead of projected revenue because of stronger than expected tablet sales.[53](#co_tablefootnoteblock_53_1)

AT&T's objective was to mobilize “everything that you do.”[54](#co_tablefootnoteblock_54_1) The convergence of its Network was indeed arriving.[55](#co_tablefootnoteblock_55_1) For example, by August 2010, Netflix released its iPhone and iPad apps allowing users to stream (not just download) their instant queues.[56](#co_tablefootnoteblock_56_1) While AT&T repeatedly claims revenues suffered because of “nationwide unlimited plans,”[57](#co_tablefootnoteblock_57_1) in reality, AT&T delayed the release of these heavy traffic apps until it “stopped offering iPhones with those unlimited data plans in June [2010].”[58](#co_tablefootnoteblock_58_1)

By the end of 2009, consistent with its EDO initiatives, AT&T released its AT&T Network Services API Overview[59](#co_tablefootnoteblock_59_1) to encourage “application development on the AT&T network and device platforms.”[60](#co_tablefootnoteblock_60_1) Showing what was possible, AT&T partnered with companies such as Ericsson to demonstrate how news organizations could livestream feeds directly over the Network.[61](#co_tablefootnoteblock_61_1) In 2010, AT&T took steps to launch its cloud-based location information services platform.[62](#co_tablefootnoteblock_62_1) AT&T partnered with LOC-AID Technologies Inc. to provide domestic tracking abilities to its enterprise customer base.[63](#co_tablefootnoteblock_63_1) EDO allocated approximately 36% of its budget to develop these types of cloud based services.[64](#co_tablefootnoteblock_64_1)

AT&T's wireless operating profit margin improved from 5.3% in 2005, to 27% in 2010.[65](#co_tablefootnoteblock_65_1) Apple had introduced the iPhone, iPod, and iPad, sales of which approached 100 million units and were still climbing.[66](#co_tablefootnoteblock_66_1) By January 2010, AT&T reported 46.4% of its 65.1 million postpaid subscribers had network-integrated devices,[67](#co_tablefootnoteblock_67_1) and, for the second quarter of 2010, AT&T experienced record iPhone activations, 27% of which were new AT&T customers.[68](#co_tablefootnoteblock_68_1)

**b. AT&T Did Not Want to Share Profits with Partners.**

The Transactions were not about “administrative cost-savings,” they were about not sharing profits with partners. AT&T accounted for its partners' profit distributions, including Plaintiffs' profit distributions, as minority interest expense, which affected AT&T's earnings per share.[69](#co_tablefootnoteblock_69_1) After the introduction of the iPhone in the second half of 2007, AT&T's minority interest expense increased 82% from the year prior.[70](#co_tablefootnoteblock_70_1) Immediately after the close of the 4th quarter of 2007, AT&T's Corporate Development department prepared an analysis for reducing the minority interest expense (the “Acquisition Summary”).[71](#co_tablefootnoteblock_71_1) AT&T saw low-hanging fruit in eighteen entities, including the Partnerships, where the minority interest expense could be eliminated “without partner consent.”[72](#co_tablefootnoteblock_72_1) AT&T recognized the accelerating values of the Partnerships and eliminating minority interests would allow AT&T to retain the “lift in value driven by projected growth of the business.”[73](#co_tablefootnoteblock_73_1) The trial evidence showed the whole point of the Transactions was to acquire the Partnerships at “a discount to future growth.”[74](#co_tablefootnoteblock_74_1) AT&T understood “[a] buyout [of the minority] today will be much less expensive than a buyout tomorrow.”[75](#co_tablefootnoteblock_75_1)

However, while AT&T projected its minority interest expense would continue to increase, AT&T understood the technological cycles of the industry and only expected an increase of 14% in 2009,[76](#co_tablefootnoteblock_76_1) as compared to an 82% and 31% increase in 2007 and 2008, respectively. In other words, AT&T believed it had absorbed the peak growth of the minority interest expense associated with the iPhone and 3G. But AT&T would not make the same mistake as it planned its 4G rollout.

**2. AT&T Initiated the Transactions for Its Own Benefit.**

In October 2009, at approximately the same time AT&T kicked off its next-generation business plan[77](#co_tablefootnoteblock_77_1) and EDO was getting up and running,[78](#co_tablefootnoteblock_78_1) AT&T reinitiated its minority buyout plan. Eric Wages began working with Phil Teske[79](#co_tablefootnoteblock_79_1) and Debbie Dial's project team to update the Acquisition Summary for executive review. AT&T's litigation counsel was part of this team.[80](#co_tablefootnoteblock_80_1)

The Acquisition Summary was retitled as “Project Smoothie,” and revised to provide “National Roll-up,” “Regional Roll-up,” or buy-out of the minority scenarios.[81](#co_tablefootnoteblock_81_1) The options addressed “operational processes” that were “inconsistent with the manner in which management [was running] the business.”[82](#co_tablefootnoteblock_82_1) For example, AT&T was only accounting for intra-carrier roaming because of minority interests (such as the Plaintiffs' Partnership interests), and it was unable to track data roaming.[83](#co_tablefootnoteblock_83_1) While the roll-up scenarios would help, they did not eliminate or reduce the minority interest expense, would expand rather than limit fiduciary duties owed to partners, and required, in most cases, partner consent.[84](#co_tablefootnoteblock_84_1) Like the Acquisition Summary, Project Smoothie identified the low-hanging fruit: a “[c]lear legal path forward on buyout of 17 former AWE partnerships and corporations.”[85](#co_tablefootnoteblock_85_1) Project Smoothie also updated AT&T's target price: to entirely eliminate the minority interest expense would cost $2.4 billion; however, the low-hanging fruit required only a “[l]imited use of capital” - $200 million at 8x EBITDA.[86](#co_tablefootnoteblock_86_1) Like the Acquisition Summary, Project Smoothie included detail on minority distributions and valuation backup based on an EBITDA multiple.

Project Smootie was greenlit in December 2009 John Stephens renamed the initiative under “Project LESS,” an acronym AT&T had used fortwo decades and continues to use today.[87](#co_tablefootnoteblock_87_1) The cost-benefit analysis, however, remained project specific[88](#co_tablefootnoteblock_88_1) and was presented to AT&T's CEO for his signature. Mr. Stephens' team and Corporate Development, with the aid of litigation counsel, idenfied three benefits to justify a budgeted 140 million cost[89](#co_tablefootnoteblock_89_1) for the Transactions:

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The only benefit not valued was the “decreased distribution payment stream (which was valued into perpetuity in the Acquisition Summary).[90](#co_tablefootnoteblock_90_1) The difference between this memo for the CEO and the Acquisition Summary is litigation counsel did not help prepare the Acquisition Summary.[91](#co_tablefootnoteblock_91_1) Regardless, the underlying analysis prepared by Austin Summerford, then AT&T's Director of Corporate Development,[92](#co_tablefootnoteblock_92_1) show the substantial benefit AT&T expected to gain from the Transactions. Through 2014 AT&T expected to save at least $43.1 million (net of additional tax expenses) by “avoid[ing] partnership distributions”[93](#co_tablefootnoteblock_93_1)

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Over the same period, AT&T estimated it would save approximately $1.9 million in administrative costs[94](#co_tablefootnoteblock_94_1) Both savings continue in perpetuity: the savings of the avoided distributions were projected to grow at 3% and the administrative savings were projected to grow at 2%.[95](#co_tablefootnoteblock_95_1)

**3. Transaction Terms Were Dictated, Not Negotiated.**

AT&T dealt unfairly with the Minorty Partners by dictating the terms of the Transactions rather than negotiating with them. To defend this, AT&T relies on *Delaware Open MRI*[96](#co_tablefootnoteblock_96_1) to argue fair dealing does not require “a controller to bargain with the minority.”[97](#co_tablefootnoteblock_97_1) The reliance is misplaced and teeming with irony: AT&T ignored *Delaware Open MRI* in setting a “fair price” for the pass-through Partnerships,[98](#co_tablefootnoteblock_98_1) but relies on it for “fair dealing.” In any event, unlike AT&T here, in *Delaware Open MRI* the majority partners tried to negotiate with the minority partners and invited them to participate with and submit information to the independent valuator.[99](#co_tablefootnoteblock_99_1)

While *Delaware Open MRI* acknowledges a direct negotiation with the minority is not always required to prove entire fairness, it does not sanction unilateral conduct. Rather, it supports the use of an independent and well advised[100](#co_tablefootnoteblock_100_1) negotiating agent like a special committee to “bargain for the best price and ... say no if the agents believe the deal is not advisable” for the minority.[101](#co_tablefootnoteblock_101_1) This is uncontroversial: “fair dealing” under Delaware law is grounded in the idea of replicating arm's-length negotiations.

Nothing here replicated arm's-length negotiations. Mr. Wages, a member of the Partnership Executive Committees, was a career employee of AT&T who acted in AT&T's interests with regard to the Partnerships. This was “the guy”[102](#co_tablefootnoteblock_102_1) who did not bother understanding the MNSAs “literally.”[103](#co_tablefootnoteblock_103_1) Instead, he subjectively limited the scope of the Partnerships' business and interests in subscribers to AT&T's favor.[104](#co_tablefootnoteblock_104_1) This is “the guy” who simultaneously reviewed and participated in the preparation of minority buyout analyses projecting perpetuity growth of 3%[105](#co_tablefootnoteblock_105_1) while reviewing and participating in the preparation of the PwC Valuations that only assumed perpetuity growth of 1% to 1.5%.[106](#co_tablefootnoteblock_106_1) This is “the guy” who secretly shared confidential partnership information with PwC[107](#co_tablefootnoteblock_107_1) while holding Executive Committee meetings and telling Minority Partner representatives there was “no further business” to discuss.[108](#co_tablefootnoteblock_108_1) This is “the guy” double checking to make sure the PwC Valuations fell within AT&T's target[109](#co_tablefootnoteblock_109_1) - a target based on “this guy's” work.[110](#co_tablefootnoteblock_110_1) This is “the guy” who failed to tell the Minority Partners the PwC team engaged to prepare the valuations had also performed most of AT&T's wireless valuations for the last six years,[111](#co_tablefootnoteblock_111_1) generally did not understand he had a duty to communicate honestly with AT&T's partners,[112](#co_tablefootnoteblock_112_1) and would not stray from the company-line as to the Transactions' purpose even when asked by this Court.[113](#co_tablefootnoteblock_113_1) Mr. Wages was not the “Warren Buffett” imagined in *Delaware Open MRI*[114](#co_tablefootnoteblock_114_1) as negotiating on the minority partners' behalf.

AT&T also relies on *ACP Master, Ltd. v. Sprint Corp.*[115](#co_tablefootnoteblock_115_1) to suggest events after its preparation of the Acquisition Summary “freshened the atmosphere.”[116](#co_tablefootnoteblock_116_1) AT&T's reliance again is misplaced. There, a third-party bidder made a topping-bid to the price at which Sprint had negotiated with a special committee to acquire Clearwire. The bid “freshened the atmosphere *and created a competitive dynamic.”*[117](#co_tablefootnoteblock_117_1) No comparable event occurred here. The only thing between the Acquisition Summary and the Transactions is time, and everything in the record suggests the Transactions are the culmination of the planning set forth in the Acquisition Summary.

**4. AT&T's Coercive Offer.**

AT&T offered to buy its partners' interest in the Partnerships at a 5% premium to the PwC Valuations.[118](#co_tablefootnoteblock_118_1) In making that offer, AT&T did not disclose it had used the PwC team “in valuing wireless assets in most of [its] wireless acquisitions over the last 6 years.”[119](#co_tablefootnoteblock_119_1) Instead, AT&T described PwC's valuation as “independent.”[120](#co_tablefootnoteblock_120_1) In its offer, AT&T stated if the offer was not accepted, AT&T would cash-out its partners at the lower PwC Valuation.[121](#co_tablefootnoteblock_121_1) AT&T's threat coerced some (not “many”) partners to sell their interests to AT&T. At the special meetings called by AT&T to vote on the Transactions, Minority Partners asked whether other valuations were prepared and were falsely told no.[122](#co_tablefootnoteblock_122_1) They asked whether PwC had other business with AT&T and instead were told the “procedure for selecting PwC.”[123](#co_tablefootnoteblock_123_1) Minority Partners proposed adjourning meetings to provide more time to consider the Transactions and were voted down by AT&T.[124](#co_tablefootnoteblock_124_1) They proposed setting up a committee to discuss the Transactions or receiving AT&T stock instead of cash, both of which AT&T rejected.[125](#co_tablefootnoteblock_125_1) Minority Partners even offered to buy AT&T's interests at the PwC Valuation price which AT&T rejected.[126](#co_tablefootnoteblock_126_1) None of AT&T's partners voted in favor of the Transactions.

In sum, AT&T failed to proffer any evidence at trial to show it dealt fairly with the Minority Partners in timing, initiating, structuring, negotiating, disclosing or approving the Transactions.

**B. AT&T Did Not Pay a Fair Price.**

AT&T has failed to prove the Transaction prices were fair. The only evidence on price AT&T presented at trial were the opinions of Carlyn Taylor. Those opinions cannot withstand entire fairness scrutiny. Ms. Taylor did not use a “fair value” definition of a willing-buyer and willing-seller. Instead, she assumed the seller had no choice.[127](#co_tablefootnoteblock_127_1) She even acknowledges a seller theoretically would not agree to sell under the assumptions she modeled.[128](#co_tablefootnoteblock_128_1) But if nothing else, trial showed the great wisdom in this Court's oft-observed truism that an unfair process infects the price.[129](#co_tablefootnoteblock_129_1)

**1. PwC's Valuations Are Unreliable.**

The trial evidence shows AT&T itself essentially prepared the PwC Valuations. AT&T used the purportedly “independent” PwC team AT&T used “in valuing wireless assets in most of [AT&T's] wireless acquisitions over the last 6 years.”[130](#co_tablefootnoteblock_130_1) AT&T told PwC where the PwC Valuations should end-up,[131](#co_tablefootnoteblock_131_1) gave PwC the model to use,[132](#co_tablefootnoteblock_132_1) and directed how key inputs should apply.[133](#co_tablefootnoteblock_133_1) PwC and AT&T's Corporate Development team then met in-person, leaving Mr. Teske “optimistic that the [valuation] model portion of [PwC's] report won't elicit much comment” from the team during their “review session” of the draft report.[134](#co_tablefootnoteblock_134_1) The team “review session” was held via WebConnect “based upon input from” litigation counsel.[135](#co_tablefootnoteblock_135_1) The conflicted and self-serving process alone renders the PwC Valuations unreliable. And for a second-time AT&T decided not to call PwC to testify in support of its valuations. AT&T has never explained its failure to do that. “[T]he only logical inference-and the inference this Court [should draw] is that [PwC's] testimony would have been unfavorable to [AT&T's] position.”[136](#co_tablefootnoteblock_136_1) Inference or not, the PwC Valuations are unreliable and even Ms. Taylor's opinions prove that they substantially understate the value of the Partnerships.

**2. Ms. Taylor's Opinions Are Neither Reliable nor Credible.**

Ms. Taylor's opinions are not reliable, or even credible. Ms. Taylor recreated the PwC Valuations and opined that they fall within a “range of reasonableness.”[137](#co_tablefootnoteblock_137_1) The fact that her value range midpoint “serendipitously turned out to be” within 95% of the PwC Valuations “cannot help but render [her] valuation position highly suspect and meriting the most careful judicial scrutiny.”[138](#co_tablefootnoteblock_138_1) Highly suspect indeed: trial showed Ms. Taylor pulled levers to create “serendipity,” carefully offsetting her higher discount rates with lower projected cashflows and weighted methodologies. Pre-trial, Plaintiffs noted Ms. Taylor paints an even bleaker future for Partnership EBITDA margins than PwC:[139](#co_tablefootnoteblock_139_1)

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Rather than explaining why in Ms. Taylor's world the Partnerships face an even more dire fate, AT&T mischaracterizes the argument, responding with irrelevant differences in accounting for Mobility's EBITDA margin.[140](#co_tablefootnoteblock_140_1) Mobility's EBITDA margin has nothing to do with the fact that in every year Ms. Taylor projects, the Partnerships have lower profit margins than PwC assumed.

This is just the tip of the iceberg. There are many other aspects of Ms. Taylor's analyses that are neither credible nor reliable:

**a. Weighting of Methodologies Is Contrived.**

In three different cases, Ms. Taylor has advocated for three different weightings of her valuation methodologies. Here, she placed 50% weight on her DCF, 25% weight on her guideline public company analysis and 25% weight on her guideline transaction analysis.[141](#co_tablefootnoteblock_141_1) In the Appraisal Action - which concerned minority stockholders in corporations whose holdings were also eliminated by AT&T as part of “Project LESS”[142](#co_tablefootnoteblock_142_1) - Ms. Taylor placed 50% weight on her DCF, 30% weight on her guideline public company analysis, and 20% weight on her guideline transaction analysis:[143](#co_tablefootnoteblock_143_1)

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If Ms. Taylor applied the same weighting here, PwC's Valuation of Melbourne would have fallen below her value-range for Melbourne.[144](#co_tablefootnoteblock_144_1) The Appraisal Action was tried and on June 24, 2013 the Court issued its post-trial order finding Ms. Taylor's guideline transaction analysis unreliable.[145](#co_tablefootnoteblock_145_1)

After the Appraisal Action, Ms. Taylor issued her opening report in the *B&I Cellular* litigation in which she placed 50% weight on her DCF analysis and 50% weight on her guideline public company analysis:[146](#co_tablefootnoteblock_146_1)

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Ms. Taylor prepared a guideline public transaction analysis in *B&L Cellular,* but placed no weight on it because of “the lack of transactions that occurred in the recent period” and “the material adjustments required to strip out the significant strategic premium that were included in these deals.”[147](#co_tablefootnoteblock_147_1) If Ms. Taylor applied the same weighting here as she did in the *B&L Cellular* litigation, the PwC Valuations of Bloomington, Bradenton Galveston and Melbourne would have fallen below her value-range for those Partnerships.[148](#co_tablefootnoteblock_148_1)

Ms. Taylor even admitted at trial that she performed this calculation.[149](#co_tablefootnoteblock_149_1) It is therefore no accident her weighting here is different than *B&L Cellular* and the Appraisal Action. The nature of the businesses is the same and the public companies and transactions she considered are all the same in all three cases, except for her addition in this case of the busted AT&T/T-Mobile deal. Ms. Taylor does not explain why she changes her weightings,[150](#co_tablefootnoteblock_150_1) and admitted that she played with the weightings,[151](#co_tablefootnoteblock_151_1) apparently using trial and error until all 14 of the PwC Valuations fell within her value-range for each Partnership.

**b. Contradictory Prior Opinion on Tax Benefits Realized by Corporate Buyers of Pass-Though Entity Assets.**

Pretrial, Plaintiffs argued the Court could set aside the entire trial record and focus on a single issue to determine AT&T breached its duty of loyalty: Ms. Taylor's contradictory opinion in *B&L Cellular* on the valuable tax benefit a corporate buyer would realize from the acquiring a pass-through entity.[152](#co_tablefootnoteblock_152_1) Trial proved this point. Had Ms. Taylor used the same methodology here to value the tax benefit as she did in *B&L Cellular,* her value-ranges would have significantly exceeded the PwC Valuations for each Partnership. Notwithstanding her written opinions in this matter, Ms. Taylor still believes the Court could rely on her *B&L Cellular* methodology:

Q. So the approach you took in B&L Cellular, using a step-up analysis to determine the value of the tax benefit that the corporate buyer would receive, are you telling the Court today that it can't rely on that, that would be wrong, in your professional opinion?

A. No, I don't think it would be wrong.

Ms. Taylor claims she did not follow the same methodology here because what she has “done this time fits the fact and circumstances better.”[153](#co_tablefootnoteblock_153_1) The explanation is absurd. Here, AT&T actually prepared and applied the very same step-up tax benefit value analysis Ms. Taylor used in *B&L Cellular* to support the business case presented to AT&T's CEO:[154](#co_tablefootnoteblock_154_1)

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AT&T's tax step-up analysis also disproves AT&T's contention that “the only potential buyers of the Partnerships are C-corporations, which would not get any benefit from their pass-through status.”[155](#co_tablefootnoteblock_155_1) To the contrary, as AT&T's own analysis shows, a corporate buyer with a similar WACC and marginal tax rate as AT&T would obtain a tax shield benefit with a present value of approximately 25%[156](#co_tablefootnoteblock_156_1) of the purchase price.[157](#co_tablefootnoteblock_157_1) AT&T could not get this tax benefit by acquiring corporate minority interests (*i.e.,* Hood River, Ocala, Pine Bluff and St. Cloud), so it should have paid up to 33% more[158](#co_tablefootnoteblock_158_1) to acquire a partnership interest, but no one negotiated on the Minority Partners' behalf so AT&T kept the entire benefit.

At trial, Ms. Taylor attempted to minimize this issue by claiming that adjusting her models to account for the tax benefit using the *Delaware Open MRI* (as opposed to her *B&L Cellular*) methodology “only changes the aggregate results by less than $80 million.”[159](#co_tablefootnoteblock_159_1) Ms. Taylor's unsupported *ad-hoc* testimony is wrong and misleading. Ms. Barrick testified, and her rebuttal report shows, that applying *Delaware Open MRI* increases Ms. Taylor's DCF values by $400 million,[160](#co_tablefootnoteblock_160_1) not $80 million.

Ms. Taylor's testimony is misleading because, as Ms. Barrick explained, Ms. Taylor likely only adjusted her DCF analyses.[161](#co_tablefootnoteblock_161_1) We know this is misleading because she told the Court previously all her valuation methodologies required an adjustment. Ms. Taylor opined in *B&L Cellular* that the tax shield “value is additive to the valuation indications of both the DCF and the guideline public company analyses”:[162](#co_tablefootnoteblock_162_1)

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Moreover, on a percentage basis, Ms. Taylor's *B&L Cellular* methodology applied here would be significantly more valuable because the partnership in *B&L Cellular* had substantial tangible assets on its balance sheet, which are subtracted from the purchase price in calculating the tax shield.[163](#co_tablefootnoteblock_163_1) In contrast, here, AT&T was realizing a tax shield on its entire purchase price.[164](#co_tablefootnoteblock_164_1)

Plaintiffs are entitled to an adverse inference on this issue.[165](#co_tablefootnoteblock_165_1) Applied here, Ms. Taylor's *B&L Cellular* methodology would have proven that (i) the prices AT&T paid in the Transactions were grossly unfair, and (ii) AT&T's step-up tax benefit would not have indicated “a very similar” result as applying *Delaware Open MRI*[166](#co_tablefootnoteblock_166_1) but a substantially higher value. Regardless, on this one aspect alone, AT&T fails to meet its burden of proving the Transactions were entirely fair.

**c. The So-Called “Size Premium.”**

Ms. Taylor's supposed “size premium” is really “a means to smuggle improper risk assumptions into the discount rate so as to affect dramatically [her] opinion on value.”[167](#co_tablefootnoteblock_167_1) Her opinion should be stricken under [Delaware Rule of Evidence 702](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1007675&cite=DERREVR702&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)) because it is not supported by facts or data, is not the product of any reliable principle and method, and there is no evidence that her technique or method is generally acceptable in the financial community.[168](#co_tablefootnoteblock_168_1) Plaintiffs' motion is timely because “the importance of addressing issues raised under *Daubert* and [Rule 702](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1007675&cite=DERREVR702&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)) before an expert testifies is more attenuated in a bench trial.”[169](#co_tablefootnoteblock_169_1) The Rules of Evidence, however, still apply.[170](#co_tablefootnoteblock_170_1) If her opinion is not stricken, it should be given no weight.

Ms. Taylor claims her size premium accounts for nonsystematic risk,[171](#co_tablefootnoteblock_171_1) but however one defines it, her risk factors and methodology are nowhere to be found in Ibbotson, the sole source on which she relies.[172](#co_tablefootnoteblock_172_1) Nor do her risk factors have anything to do with the measurement of market capitalization or the statistical regressions on which Ibbotson's size premium tables are based. Instead, Ms. Taylor's risk premium factors and methodologies are dependent entirely on her “valuation credentials” and “career doing valuations.”[173](#co_tablefootnoteblock_173_1) Ms. Barrick testified at trial that there was no question Ms. Taylor's “size premium” risk factors are the “stuff of a” company specific risk premium.[174](#co_tablefootnoteblock_174_1) Ms. Taylor understands this. *InB&L Cellular,* she included an unsupported company specific risk premium to account for what she saw as additional risk of competition not generally faced by U.S. Cellular.[175](#co_tablefootnoteblock_175_1) The Court rejected it.[176](#co_tablefootnoteblock_176_1) Here, Ms. Taylor seeks to apply the same competition risk but renames it “size premium.”[177](#co_tablefootnoteblock_177_1)

“To judges, the company specific risk premium often seems like the device experts employ to bring their final results in line with their client' objectives, when other valuation inputs fail to do the trick.”[178](#co_tablefootnoteblock_178_1) Fact-based evidence must be produced at trial to support the discount, including “specific financial analyses on which the court could rely to derive such a discount.”[179](#co_tablefootnoteblock_179_1)

Ms. Taylor offered no objective analysis to support her company specific risk premiums. Her premium risk factors are undefined, vague, unsupported and irrationally applied to the Partnerships.[180](#co_tablefootnoteblock_180_1) At trial, she described one risk as undefined “Weather/Acts of God.”[181](#co_tablefootnoteblock_181_1) That is not a term used in her reports or Ibbotson.[182](#co_tablefootnoteblock_182_1) Ms. Taylor offered no analysis on how many or how often “Acts of God” occurred in the Partnership geographic areas.[183](#co_tablefootnoteblock_183_1) Similarly, at trial she called another risk “Dominant Employer Presence,” which is also not used in her reports or Ibbotson.[184](#co_tablefootnoteblock_184_1) We did not even know until Ms. Taylor testified at trial that she considered “Dominant Employer Presence” to be “as a rule of thumb,” the presence of an employer that employs 10 percent of the workforce in the geographic area.[185](#co_tablefootnoteblock_185_1) Ms. Taylor provided no analysis to support her theory.[186](#co_tablefootnoteblock_186_1)

Ms. Taylor increased the cost of equity for each Partnership by 3% even though not all the Partnerships faced the same supposed risks. According to Ms. Taylor, Bellingham, Bradenton, Bremerton, Las Cruces, Salem and Sarasota faced only one risk factor, while Alton, Bloomington, and Galveston faced all three.[187](#co_tablefootnoteblock_187_1)

A comparison of PwC's and Ms. Taylor's risk assumptions further proves Ms. Taylor's opinions are not reliable. The only instance where Ms. Taylor ties weather risks to a Partnership is a hurricane that caused $2,362,000 damage to Galveston in 2008.[188](#co_tablefootnoteblock_188_1) PwC - which did not apply any size premium to the Partnerships used the hurricane tojustify a 1% company specific risk premium to Galveston:[189](#co_tablefootnoteblock_189_1)

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Ms. Taylor tripled PwC's risk assumption, renamed it a “size premium” and applied it to every Partnership. As to Galveston, this reduced Ms. Taylor's DCF value by approximately $107 million,[190](#co_tablefootnoteblock_190_1) which is an irrational and unsupported reduction for a $2.4 million expense the actual hurricane caused in 2008. Ms. Taylor did not consider if or when it would happen again, or whether the risk could be mitigated altogether with insurance.[191](#co_tablefootnoteblock_191_1) This Court rejected a similar effort to reduce a DCF value by adding a “company-specific incremental premium for hurricane risk” to the discount rate in *Emerging Communications* because, like here, the defendants had “not supported their argument that the appropriate way” to account for risk of future storm losses was “by increasing the cost of equity.”[192](#co_tablefootnoteblock_192_1) Like Ms. Taylor, *in Emerging Communications* the “[d]efendants cite[d] no finance literature supporting that approach” and they did not support “their argument empirically.”[193](#co_tablefootnoteblock_193_1)

Ms. Taylor's premium is not a size premium just because she uses those magic words. As the adage goes, “if it walks like a duck and quacks like a duck, it's probably a duck.”[194](#co_tablefootnoteblock_194_1) Ms. Taylor's subjective application of an unsupported company specific risk premium under the guise of it being a “size premium” cannot survive challenge under [Delaware Rule of Evidence 702](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1007675&cite=DERREVR702&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)). The opinions she offers on size premium should be stricken and deserve no evidentiary weight.

**d. Unsupported Use of a 10-Year Projection.**

Ms. Taylor's use of the 10-Year Plan is also unsupported. Ms. Taylor used the 10-Year Plan without understanding how and why AT&T prepared it. In their pretrial briefing, Plaintiffs set out in detail the way the 3-Year Plan and 10-Year Plan were prepared and how each was used differently by AT&T.[195](#co_tablefootnoteblock_195_1) The trial evidence stands uncontested. AT&T used the 3-Year Plan to set budgets and performance analyses.[196](#co_tablefootnoteblock_196_1) The board of directors approved the 3-Year Plan, not the 10-Year Plan.[197](#co_tablefootnoteblock_197_1) Contrary to AT&T's claims, AT&T used the 3-Year Plan to set management's “long-term” incentive awards,[198](#co_tablefootnoteblock_198_1) not “short-term compensation.”[199](#co_tablefootnoteblock_199_1) The AT&T Mobility Planning Team did not use the 10-Year Plan for any purpose.[200](#co_tablefootnoteblock_200_1)

Ms. Taylor understood none of this. Ms. Taylor had no idea the 3-Year Plan and 10-Year Plan were prepared by different AT&T departments,[201](#co_tablefootnoteblock_201_1) and misunderstood the order in which they were prepared.[202](#co_tablefootnoteblock_202_1) While Ms. Taylor was quick to identify Mr. Kobos as the person who prepared the 10-Year Plan, she had no idea who was responsible for the 3-Year Plan.[203](#co_tablefootnoteblock_203_1) Ms. Taylor did not know Mobility had no use for the 10-Year Plan, and the Mobility Planning Team did not forecast more than three years.[204](#co_tablefootnoteblock_204_1) Nor did she know the Mobility Planning Team did not use the subscriber forecasts in the 10-Year Plan.[205](#co_tablefootnoteblock_205_1)

Despite being the only instance where Ms. Taylor cites to Mr. Paoletti's deposition transcript in her opening report, Ms. Taylor did not know when “he source[d] information from subject matter experts from marketing, finance, customer care, IT and the Emerging Devices Organization,”[206](#co_tablefootnoteblock_206_1) he only pulled three years of information.[207](#co_tablefootnoteblock_207_1) Ms. Taylor did not know in preparing the 3-Year Plan, Mr. Paoletti started from scratch every year.[208](#co_tablefootnoteblock_208_1) She did not know when AT&T's board of directors asked for forecasts, it typically asked for three-year forecasts.[209](#co_tablefootnoteblock_209_1) And, Ms. Taylor also did not know when AT&T's board of directors wanted to pay management long-term incentive awards, it used the 3-Year Plan.[210](#co_tablefootnoteblock_210_1)

Knowing little about the 10-Year Plan, Ms. Taylor nevertheless relied on it and mistakenly believed AT&T management was “very specific in preparing it.”[211](#co_tablefootnoteblock_211_1) But she did not know, for example, Mr. Kobos was simply averaging capital expenditures over the outyears of the plan.[212](#co_tablefootnoteblock_212_1) She relied on the 10-Year Plan despite being aware of the Partnership analyses prepared by Corporate Development using higher free cashflow growth assumptions. She reviewed these documents in preparing her report but chose not to rely on them, nor even discuss them in her report.[213](#co_tablefootnoteblock_213_1)

Just as troubling as her unsupported reliance on the 10-Year Plan is how she used the 10-Year Plan to project performance of the Partnerships. This is not a case where projections exist; experts prepared their own. In preparing hers, Ms. Taylor designed her outyears to offset the effect of an increase to the long-term growth rate in her valuation models.[214](#co_tablefootnoteblock_214_1) Ms. Barrick explained Ms. Taylor's out-year assumptions make no sense:[215](#co_tablefootnoteblock_215_1)

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[W]ell, I have never seen something like that before. I mean, usually, I'm used to seeing a growth rate that may be high in the early years, especially whenyou are talking about an industry that hasn't reached maturity ... and then that declines down to a stable growth over a projection period.

But in this case, it actually declines well below what she thinks stable growth of 1.5 percent is, and then, presumably, beginning in 2020, it pops back up to 1.5 percent.

That's a pretty odd result. I can't reconcile 2019 with all the years after at 1.5 percent.[216](#co_tablefootnoteblock_216_1)

The same is true for nearly every Partnership:[217](#co_tablefootnoteblock_217_1)

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The weighted[218](#co_tablefootnoteblock_218_1) average projected compound annual growth rate of Ms. Taylor's cashflows for years 7 through 10 is -0.49%. Ms. Taylor then assumes a perpetuity growth rate that is 365% higher than the CAGR reflected in the outyears of her model. Ms. Taylor admits this is because her projected outyears do not reflect a steady-state.[219](#co_tablefootnoteblock_219_1) She also admits AT&T would have just finished an upgrade within the 3-Year Plan,[220](#co_tablefootnoteblock_220_1) but she decided to speculate about future upgrades[221](#co_tablefootnoteblock_221_1) while not understanding AT&T had no specific plans for capital expenditures in the outyears of the 10-Year Plan.[222](#co_tablefootnoteblock_222_1)

**e. Long-Term Demise.**

Ms. Taylor's perpetuity free cashflow growth rate assumptions of 1% to 1.5% are factually and theoretically unsound. The trial record does not support her rates: she ignores the 3% perpetuity free cashflow growth rate consistently used by Corporate Development to value the Partnerships from 2008 through the date of the Transactions;[223](#co_tablefootnoteblock_223_1) she ignores above-average population growth in the Partnership geographic areas;[224](#co_tablefootnoteblock_224_1) and, she ignores the 2% perpetuity growth rate used by AT&T for its 2010 goodwill impairment testing[225](#co_tablefootnoteblock_225_1) - even though she relies on the 10-Year Plan and the very purpose of the 10-Year Plan was to support the goodwill impairment testing. She instead assumes significantly lower growth in perpetuity despite admitting “on balance” the Partnerships “are fairly representative of AT&T as a whole.”[226](#co_tablefootnoteblock_226_1)

Ms. Taylor uses a growth rate below inflation - reflecting a real risk of insolvency - without performing any analysis or opining insolvency was actually a risk.[227](#co_tablefootnoteblock_227_1) In contrast, as AT&T was planning the Transactions, Ralph de la Vega, then AT&T's Mobility and Consumer Markets President, was telling the world the “industry [was] growing five times as fast as the U.S. economy;”[228](#co_tablefootnoteblock_228_1) and the Transactions' purpose was to avoid paying profit distributions to Plaintiffs because profits were growing and a buyout now would be cheaper than a buyout later.[229](#co_tablefootnoteblock_229_1) Both Mr. Musey and Ms. Barrick opined Ms. Taylor's assumptions were unreasonably low,[230](#co_tablefootnoteblock_230_1) and Ms. Barrick explained at trial Ms. Taylor's industry “deflationary” claims were half-truths.[231](#co_tablefootnoteblock_231_1) Ms. Taylor claims the wireless consumer price index is evidence that both industry revenue and free cashflow have declined on real terms historically and should be expected to decline in the long-run:[232](#co_tablefootnoteblock_232_1)

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The trial evidence showed consumer prices are only one-side of the coin. Historically, AT&T's profitability margins have expanded, not contracted:[233](#co_tablefootnoteblock_233_1)

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As Ms. Barrick explained, this “means that if the prices of telecommunications services are falling, that the costs of wireless must be falling even more ... [a]nd that's what's really relevant” in projecting free cashflow.[234](#co_tablefootnoteblock_234_1) AT&T's own statements even contradict Ms. Taylor's argument: “[r]evenue is expected to decline from the 2010 forecasted growth ... to an inflationary growth rate.”[235](#co_tablefootnoteblock_235_1) In fact, the only evidence to support Ms. Taylor's dark story of long-term growth for the Partnerships are the inputs AT&T directed PwC to use in its valuation models.[236](#co_tablefootnoteblock_236_1)

**f. Subscriber Revenue Assumptions Are Unreliable.**

Ms. Taylor's subscriber projections are unreliable. Ms. Taylor uses the same flowshare model as PwC to project subscribers. Ms. Taylor explained “a Flowshare model is basically predicting the size of the pie available in a particular market to get subscribers from” and “your Flowshare is your slice of that pie.”[237](#co_tablefootnoteblock_237_1)

Mr. Musey, however, explained how sensitive a flowshare model is to its inputs,[238](#co_tablefootnoteblock_238_1) for which there are no reliable data sources for the Partnerships.[239](#co_tablefootnoteblock_239_1) Mr. Musey also explained both Ms. Taylor and PwC understated the “size of the pie” by using unreasonably low population growth rates for the Partnerships[240](#co_tablefootnoteblock_240_1) and understated the Partnerships' slice of the pie by, *inter alia,* overstating each Partnership's chum. In recreating PwC's work, Ms. Taylor mistakenly believed the Partnerships had higher chum than AT&T (and its competitors).[241](#co_tablefootnoteblock_241_1) AT&T's chum (and its competitors' chum), however, was reported using net reseller disconnects (*i.e.,* chum excluding resellers) whereas Ms. Taylor used gross reseller disconnects to calculate Partnership chum (*i.e.,* chum including resellers).[242](#co_tablefootnoteblock_242_1) The error caused Ms. Taylor to overestimate how many subscribers each Partnership was projected to lose on a monthly basis, leading to unreasonable flowshare subscriber estimates for her projected period. Because she overstated chum, she also overstated her gross add expense.[243](#co_tablefootnoteblock_243_1) AT&T nevertheless continues to argue Ms. Barrick understated gross add expense,[244](#co_tablefootnoteblock_244_1) ignoring its own statements and Ms. Taylor's concession on cross-examination that she did not know what she was talking about.[245](#co_tablefootnoteblock_245_1)

Ms. Taylor's ARPU projections are also unreliable. Ms. Taylor stressed throughout her report and testimony that subscriber mix is the primary driver of ARPU.[246](#co_tablefootnoteblock_246_1) Yet she did not consider why the ARPU derived by AT&T's accounting for the Partnerships was so much less than the ARPU implied by the Partnerships' purported subscriber mix. In only three instances does Ms. Taylor's ARPU assumption exceed the ARPU implied by the Partnership's subscriber mix, and in each of those instances only slightly.[247](#co_tablefootnoteblock_247_1) In eight other instances, Ms. Taylor's ARPU assumption is a substantial discount to the ARPU implied by the Partnership's subscriber mix.[248](#co_tablefootnoteblock_248_1) Approximately 70% of Ms. Taylor's projected Partnership subscriber revenue is projected using an ARPU assumption that is less than the ARPU implied by the Partnership subscriber mix.[249](#co_tablefootnoteblock_249_1)

Notwithstanding the emphasis she places on subscriber mix, Ms. Taylor assumes the Partnerships will continue to experience discounted ARPUs to what the Partnership subscriber mix implies throughout her projected period,[250](#co_tablefootnoteblock_250_1) and forevermore.[251](#co_tablefootnoteblock_251_1) Ms. Taylor did no analysis to determine why the disparity existed despite knowing rate and pricing plans were set by AT&T on a nationwide basis to serve all AT&T subscribers.[252](#co_tablefootnoteblock_252_1) Ms. Taylor's only explanation was that she used the “actual” financial results for the Partnerships,[253](#co_tablefootnoteblock_253_1) the same “actual” financial results AT&T's accounting department prepared by playing with numbers until somebody thought it looked right,[254](#co_tablefootnoteblock_254_1) and AT&T concedes are as inaccurate as its subscriber mapping.[255](#co_tablefootnoteblock_255_1)

Another striking inconsistency with Ms. Taylor's prior testimony is that she projected changes in subscriber mix here. In every instance, Ms. Taylor projects Partnerships to have a lower percentage of post-paid subscribers by the end of her projected period, with a decline of nearly 10% for Provo, Galveston and Bradenton.[256](#co_tablefootnoteblock_256_1) These assumptions lower Partnership ARPU.[257](#co_tablefootnoteblock_257_1) But in the Appraisal Action, Ms. Taylor claimed she did not have enough information to make this sort of projection:[258](#co_tablefootnoteblock_258_1)

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Apparently, while three years and six months of information was not enough there, three years and nine months did the trick here.[259](#co_tablefootnoteblock_259_1) Once again, trial showed Ms. Taylor is not credible, and her opinions are contrived.

**g. Market Approach Assumptions and Adjustments Are Unreliable.**

A market approach cannot be used to value the Partnerships. AT&T has never voluntarily sold an asset like the Partnerships[260](#co_tablefootnoteblock_260_1) and AT&T claims none of its FCC license assets would ever be sold individually.[261](#co_tablefootnoteblock_261_1) There is no evidence any other telecom company has voluntarily sold assets like the Partnerships. We know in an arm's-length transaction the price would have to be higher than the PwC Valuations because AT&T was not a seller at that price.[262](#co_tablefootnoteblock_262_1) We also know from *B&L Cellular* and AT&T's step-up analysis that a hypothetical corporate buyer would have an economic incentive to pay a premium for the pass-through tax status of the Partnerships.

Accordingly, none of Ms. Taylor's selected guideline companies or transactions are comparable. As Ms. Barrick testified, the Partnerships are unique investment opportunities, “what is, in essence, a direct investment in kind of the crown jewel of AT&T, which was its network,”[263](#co_tablefootnoteblock_263_1) and tax efficient to boot.[264](#co_tablefootnoteblock_264_1) None of Ms. Taylor's guideline companies share these unique characteristics, nor do they pay anything close to the distributions paid by the Partnerships.[265](#co_tablefootnoteblock_265_1)

The Court has appropriately rejected these market approaches before. Ms. Taylor's comparable company analysis includes for the most part the same selected guideline companies this Court determined to be unreliable in both the Appraisal Action (identical companies) and *B&L Cellular* (practically identical except for the addition of AT&T and Verizon). Ms. Taylor's comparable transaction analysis also includes all the same transactions this Court has previously determined to be unreliable. The only exception is Ms. Taylor's addition in this case of the busted AT&T/T-Mobile deal. This inclusion does not help make the analysis any more comparable to the Partnerships. It does, however, show how just how absurd of an assumption Ms. Taylor is willing to make and how contradictory her reports are here compared to *B&L Cellular* where she did not rely on the methodology because she would need to make “material adjustments ... to strip out the significant strategic premium that were included in these deals.”[266](#co_tablefootnoteblock_266_1)

To derive her EBITA multiple for the AT&T/T-Mobile busted deal, Ms. Taylor adds $1.8 billion to T-Mobile's trailing twelve-month profitability based on what she believed to be deal synergies.[267](#co_tablefootnoteblock_267_1) Adding her assumed $1.8 billion of purported synergies, Ms. Taylor changes the 17. 1x EBITA multiple based on the broken deal terms to fabricate a hypothetical 9.6x EBITA multiple to apply to the Partnerships.[268](#co_tablefootnoteblock_268_1) She does this by ignoring T-Mobile's actual financial performance and instead used a LTM EBITA that implies T-Mobile was 80% more profitable than it actually was.[269](#co_tablefootnoteblock_269_1) Ms. Taylor testified her $1.8 billion assumption on synergistic value was based on public information. The trial record shows this is wrong, and it comes from a misinterpretation of an AT&T board presentation. Ms. Taylor thought AT&T expected to realize operational savings of $1.8 billion in 2012.[270](#co_tablefootnoteblock_270_1) The “synergistic opportunities” identified by AT&T, however, included “avoided spectrum acquisitions”[271](#co_tablefootnoteblock_271_1) that were already included in its three-year plan.[272](#co_tablefootnoteblock_272_1) It was those avoided spectrum acquisitions that were causing any estimated positive cash impact in 2012. Without them, the acquisition was estimated to have a *negative* cash impact of $1.8 billion in 2012:[273](#co_tablefootnoteblock_273_1)

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Had Ms. Taylor understood the data she was relying on and used it correctly, her financial ju-jitsu would have indicated AT&T was paying 81x Adjusted EBITA, a multiple Ms. Taylor would claim is absurd[274](#co_tablefootnoteblock_274_1)

Deal context also matters. Ms. Taylor agrees. She excluded FCC divesture transactions for that very reason.[275](#co_tablefootnoteblock_275_1) The context of AT&T's price considerations for T-Mobile are not comparable to its price considerations for the Partnership minority interests. AT&T knew with certainty in acquiring the Partnerships that it was acquiring free cashflow generated by its own operations with a tax advantaged purchase price. By contrast, AT&T expected to invest billions of dollars in integration costs before realizing any estimate of positive operational cashflow from acquiring T-Mobile. AT&T knew with certainty that it could unilaterally close on the Transactions. By contrast, AT&T could not complete the T-Mobile acquisition, instead paying T-Mobile $4.3 billion for nothing and financially strengthening a key competitor.

Comparability matters in reliably applying a market approach. Here, there is none. The assets are unique; the context is unique. Adding to that Ms. Taylor's manipulative weighting of her methodologies, her failure to adjust for the premium *she* opined a corporate buyer would pay for the pass-through status of the Partnerships, and her willingness to make the unsupported adjustments she did make, her market approach only proves that her opinions are contrived and unreliable.

**II. PLAINTIFFS ARE ENTITLED TO $148,289,060 IN DAMAGES**[**276**](#co_tablefootnoteblock_276_1)

“Once a breach has been established, this court's ‘powers are complete to fashion any form of equitable and monetary relief as may be appropriate.’ ”[277](#co_tablefootnoteblock_277_1) Delaware “law does not require certainty in the award of damages.”[278](#co_tablefootnoteblock_278_1) “Responsible estimates that lack mathematical certainty are permissible so long as the Court has a basis to make a responsible estimate of damages.”[279](#co_tablefootnoteblock_279_1) Furthermore, any uncertainty in calculating damages is resolved against the wrongdoer.[280](#co_tablefootnoteblock_280_1) In determining an appropriate damage award, the Court must consider “[f]actors such as coercion, overreaching, the misuse of confidential information, or secret conflicts (a list that is explicitly non-exclusive).” Each of those factors are present here as AT&T “set out to extract value rapaciously from the minority.”[281](#co_tablefootnoteblock_281_1)

In a breach of fiduciary duty action like this, the Court must award damages that “eliminate the possibility of profit flowing to defendants from the breach of the fiduciary relationship.”[282](#co_tablefootnoteblock_282_1) “Once disloyalty has been established, the standards evolved in *Oberly v. Kirby* and *Tri-Star* require that a fiduciary not profit personally from his conduct, and that the beneficiary not be harmed by such conduct.”[283](#co_tablefootnoteblock_283_1) AT&T's conduct here is “exactly the type of case where ‘[t]he imposition of damages should eliminate the possibility of profit flowing to defendants from the breach of the fiduciary relationship.’ ”[284](#co_tablefootnoteblock_284_1)

Ms. Barrick's $148,289,060 estimate of damages to the Minority Partners is a responsible estimate of the damages that ensures AT&T does not profit from its disloyal conduct.

**A. Plaintiffs' Estimation of Damages Is Responsible.**

Ms. Barrick's estimation of damages is a straightforward calculation of the present value of distributions the Minority Partners (and AT&T) expected to receive as equity holders in the Partnerships.[285](#co_tablefootnoteblock_285_1) Notably, AT&T presented no rebuttal expert evidence on this issue: Ms. Taylor was not asked by AT&T to opine on the topic.[286](#co_tablefootnoteblock_286_1) Ms. Barrick relies on a discounted cashflow analysis to estimate damages[287](#co_tablefootnoteblock_287_1) and Ms. Taylor disputes certain assumptions Ms. Barrick has made: (i) should damages be calculated pretax; (ii) is a projected period of three-years sufficient; (iii) are Mr. Musey's revenue projections overstated; (iv) are Ms. Barrick's expenses understated; (v) is AT&T's WACC appropriate; and (vi) is 3% a reasonable long-term growth rate for purposes of calculating a terminal value.

These disputes should be resolved in the context of Plaintiffs' burden of proof: a responsible estimate, not mathematical certainty. If reasonable minds could differ on an input or assumption, but the input/assumption is not wrong or lacking foundation, the difference should be resolved in Plaintiffs' favor. When the dispute arises from uncertainty created by AT&T, however, the law requires that it be resolved in Plaintiffs' favor.[288](#co_tablefootnoteblock_288_1) With this framework in mind, each dispute must be resolved in Plaintiffs' favor.

**1. Damages Should Be Calculated Pre-Tax.**

Ms. Barrick - an expert on the subject of calculating damages - explained in her report and testified at trial that “damage awards are given pre-tax, so that after paying the tax, the plaintiff is whole.”[289](#co_tablefootnoteblock_289_1) As argued pre-trial and above, that, among other reasons, is why *Radiology Associates* controls here.[290](#co_tablefootnoteblock_290_1) AT&T has never joined issue on this topic. To the contrary, Ms. Taylor conceded that a damage estimate is not what she was asked to prepare[291](#co_tablefootnoteblock_291_1) and that she does not have an understanding as to what the measure of damage is for a breach of duty of loyalty.[292](#co_tablefootnoteblock_292_1)

Delaware courts have long-held that appropriate relief from a breach of loyalty is rescissory damage.[293](#co_tablefootnoteblock_293_1) The purpose of this relief is to “to restore the plaintiff-beneficiary to the position it could have been in had the plaintiff or a faithful fiduciary exercised control over the property in the interim.”[294](#co_tablefootnoteblock_294_1) Ms. Barrick's damage estimate is the financial equivalent of restoring the Minority Partners to the position they could have been in had AT&T not breached its duty of loyalty to them.[295](#co_tablefootnoteblock_295_1) That is the very intent of Ms. Barrick's analysis. Ms. Barrick's damage estimate also ensures that AT&T is disgorged of wrongful profits. Again, this is the purpose of rescissory damages, “to force the defendant to disgorge profits that the defendant may have achieved through the wrongful retention of the plaintiffs property.”[296](#co_tablefootnoteblock_296_1)

Following *Delaware Open MRI* here does not achieve these important policy goals and instead leaves AT&T with “ill-gotten gains,” encouraging rather than “discourag[ing] disloyalty.”[297](#co_tablefootnoteblock_297_1) As Plaintiffs have explained, application of *Delaware Open MRI* results in a controller retaining a 20% “ill-gotten gain.”[298](#co_tablefootnoteblock_298_1) It is easy to understand why: in reality, when distributions are made by a partnership and taxed, the tax paid by the investor goes to the government; but when a hypothetical tax is assumed to be paid under *Delaware Open MRI,* the hypothetically paid tax in reality stays in the pocket of the wrongdoer.

The other short-coming *of Delaware Open* M*RI* is that it only considered the valuable tax benefits of a pass-through entity from the selling partner's perspective, and not the perspective of the faithless fiduciary that acquires the minority interest unfairly. The court did not consider, for example, the valuable step-up tax-benefit a corporate buyer gains for such a transaction.[299](#co_tablefootnoteblock_299_1) In contrast, here, the trial record puts that benefit directly at issue: AT&T's step-up tax benefit analysis shows if AT&T paid $76 million to cash out its partners it would enjoy a tax shield with a present value to AT&T (at AT&T's WACC) of $18.9 million, making AT&T's net cost only $57.1 million (75% of $76 million).[300](#co_tablefootnoteblock_300_1) AT&T recognized that this benefit was unique to acquiring the Partnership interests, and there is “no step-up on the purchase of shares in any of the corporations.”[301](#co_tablefootnoteblock_301_1) As AT&T's workpapers show, while AT&T paid the PwC Valuation prices for the corporate minority interests, AT&T recognized that for the Partnership minority interests it would only pay 75% of the PwC Valuation prices because its cash outlay was offset by the tax shield.[302](#co_tablefootnoteblock_302_1)

This shows that a corporate buyer with a similar WACC and marginal tax rate as AT&T (as of the time of the Transactions) would pay approximately 33% more for pass-through partnership cashflows than it would be willing to pay for corporate taxed cashflows. AT&T paid nothing and kept that premium for itself.

Ensuring disgorgement is therefore especially appropriate here. In breaching its duty of loyalty, AT&T knew that (i) under Delaware law the tax benefit value of the pass-through status of the Partnerships would be recognized and attributed to the Minority Partners as part of the fair value of their interests in the Partnerships and (ii) that *Delaware Open MRI* provided a widely accepted methodology to conservatively account for that value from the seller's perspective, yet AT&T instructed PwC to ignore the methodology. AT&T's deliberate choice to keep the valuable tax-benefit for itself should not be rewarded with a mulligan.

AT&T argues this is a windfall for Plaintiffs because “actual distributions are taxed as income” and “any damage award based on the transaction price would be taxed at a lower capital gains rate.”[303](#co_tablefootnoteblock_303_1) But rescissory damages are designed to disgorge the wrongdoer's ill-gotten gains, even if the wronged party may end up in better position than the *status que ante.*[304](#co_tablefootnoteblock_304_1) As a matter of policy, Delaware law has determined that this is preferable to letting the wrongdoer keep ill-gotten gains.

In any event, AT&T has not presented evidence of a windfall, and the trial record does not show that AT&T could have extracted the tax benefits it kept for itself in an arm's-length negotiation. In an arm's-length negotiation, a selling partner with the ability to say no would rely on *Radiology Associates,* and not discount the value of their interest by a hypothetical tax rate as the Court did in *Delaware Open MRI.* Even if the seller considered *Delaware Open MRI,* the seller would recognize that the “hypothetical” tax was real value left in AT&T's pocket, rather than being paid to the government. The seller would also recognize *Delaware Open MRI* unduly discounted its interests by assuming the highest personal income tax rate where a retiree or tax efficient beneficial trust, such as many of the Plaintiffs here, had no reasonable expectation to pay materially more than the capital gains tax rate on future distributions. In other words, an arm's-length negotiation would have ended with a deal value at least as high as *Radiology Associates* or somewhere between *Delaware Open MRI* and *Radiology Associates.* And, from the buyer's perspective, AT&T had the economic incentive from the tax-shield benefit to pay the price.

Applying *Radiology Associates* here therefore awards damages of no more than what any willing hypothetical seller in Plaintiffs' position would have negotiated hard to obtain.

The only other criticism AT&T makes relating to tax is that Ms. Barrick uses a tax-effected WACC while not tax-effecting cashflows.[305](#co_tablefootnoteblock_305_1) Ms. Barrick explained these are “two different things.”[306](#co_tablefootnoteblock_306_1) The pre-tax cashflows are the estimated distributions to the partners of the Partnerships; the tax-effected WACC is the “cost of capital that these partnerships have access to.”[307](#co_tablefootnoteblock_307_1) The cost of capital that the Partnerships have access to will be expensed and allocated to the Partnerships as AT&T buys equipment and makes capital improvements in the Network,[308](#co_tablefootnoteblock_308_1) reducing the amount of cashflow available for distribution. The distributions themselves, however, would be made to the partners of the Partnerships without taxation.

**2. A 3-Year Projection Period Is Reliable.**

AT&T does not take issue with Ms. Barrick's 3-year projected period.[309](#co_tablefootnoteblock_309_1) That is unsurprising considering both experts' models reflect a steady state after three years.[310](#co_tablefootnoteblock_310_1) This is undisputed. Holding all other assumptions the same, the sum of Ms. Taylor's valuations is virtually the same whether terminal value is calculated after three or ten years of projected performance in her model.[311](#co_tablefootnoteblock_311_1) Plaintiffs examined Ms. Taylor at her deposition on this point, made the point again pre-trial and AT&T has never responded to or disputed it. But as discussed above, the real purpose of Ms. Taylor's ten-year projected period is to offset any adjustment to her terminal growth rate, only more reason that the Court should reject her valuation models.

**3. Mr. Musey Provides the Most Reliable Revenue Projections.**

Ms. Barrick relies on Mr. Musey's revenue projections, and trial proved that they are reliable.[312](#co_tablefootnoteblock_312_1) AT&T nevertheless takes issue with his projections because they are supposedly not grounded in the “actual performance of the Partnerships.” But neither is AT&T's accounting of the Partnerships. Trial showed that AT&T operated and accounted for the Partnerships in accordance with neither the Partnership Agreements nor the MNSAs in place.[313](#co_tablefootnoteblock_313_1) In this regard, AT&T failed to include revenue in the pool of “Shared Revenue” that should have been allocated to the Partnerships,[314](#co_tablefootnoteblock_314_1) and we have no idea how much more money the Partnerships were entitled to receive if AT&T had accounted for the Partnerships in accordance with those agreements.[315](#co_tablefootnoteblock_315_1) AT&T did not allocate “Shared Revenue” by Traffic,[316](#co_tablefootnoteblock_316_1) and instead continued to attribute subscriber revenue directly to Partnerships by NPA-NXX association, despite knowing the numerous problems with this approach. AT&T had no meaningful controls to ensure subscriber mapping to the Partnerships were accurate,[317](#co_tablefootnoteblock_317_1) its accounting ledger could only assign a block of NPA-NXX numbers to a single Partnership (company code),[318](#co_tablefootnoteblock_318_1) and subscribers were not updated to reflect moves into and out of Partnerships. As a result, AT&T had no idea who the Partnership subscribers were[319](#co_tablefootnoteblock_319_1) and did not accurately account for subscriber revenue generated by the traffic on the Network covered by the Partnerships. AT&T did no analysis on an on-going basis to determine whether subscribers' usage occurred within specific geographic areas,[320](#co_tablefootnoteblock_320_1) and AT&T had a self-interested economic incentive to, and in fact did, assign subscribers to itself rather than the Partnerships.[321](#co_tablefootnoteblock_321_1)

Mr. Musey considered these issues and the demographics of the Partnership geographic areas.[322](#co_tablefootnoteblock_322_1) Mr. Musey “thought they were slightly better than AT&T as a whole,”[323](#co_tablefootnoteblock_323_1) and, notably, Ms. Taylor also believed that “on balance ... these partnerships are fairly representative of AT&T as a whole.”[324](#co_tablefootnoteblock_324_1) In light of these considerations, Mr. Musey did not blindly accept a Partnership ARPU derived from AT&T's guesswork accounting or mistakenly believe the Partnerships had materially higher chum than AT&T, as Ms. Taylor did.[325](#co_tablefootnoteblock_325_1)

Rather, given the limitations of AT&T's Partnership-level data, Mr. Musey determined the most reasonable way to project subscriber revenue was to use the number of subscribers AT&T attributed to the Partnerships as his baseline,[326](#co_tablefootnoteblock_326_1) the only data he had available to him, project subscriber growth from that baseline using Census population data and AT&T DMA chum, and multiply his projected subscribers by AT&T's national ARPU.[327](#co_tablefootnoteblock_327_1) Mr. Musey had more confidence in his top-level approach than a flowshare model for two reasons: (i) generally the smaller the geographic area, the less reliable a flowshare model becomes;[328](#co_tablefootnoteblock_328_1) and (ii) because AT&T did not manage its business to the Partnership level, there were no reliable Partnership level inputs for the model.[329](#co_tablefootnoteblock_329_1) Specifically, Partnership geographic area data was unavailable for AT&T's market share, its competitors' market share and its competitors' chum.[330](#co_tablefootnoteblock_330_1) Mr. Musey explained that the flowshare model is very sensitive to these inputs and if any one of them is wrong, the output of the flowshare model is useless. He instead used AT&T's DMA chum for the Partnership, appropriately adjusting for reseller chum.[331](#co_tablefootnoteblock_331_1) Prior to her cross-examination, Ms. Taylor repeatedly surmised that Mr. Musey's concerns regarding a flowshare model were self-correcting because “if you increase the pie size but reduce the slice, you end up getting back to almost exactly the same position.”[332](#co_tablefootnoteblock_332_1) But that is only true when “the pie and the slice are changing in size proportionately.[333](#co_tablefootnoteblock_333_1) That is not what Ms. Taylor assumed.[334](#co_tablefootnoteblock_334_1)

While Mr. Musey and Ms. Taylor projected subscribers differently, the biggest reason for their divergent revenue forecasts is ARPU, as Ms. Taylor acknowledged.[335](#co_tablefootnoteblock_335_1) But as discussed above, not only is Ms. Taylor's assumed ARPU for the Partnerships unreliable because of AT&T's “lackadaisical approach to the related-party transaction of deciding who owned a particular subscriber,”[336](#co_tablefootnoteblock_336_1) it is also unsupported and unreliable based on AT&T's own reported subscriber mix for the Partnerships.

AT&T has taken every opportunity to point out Ms. Barrick's and Mr. Musey's original disconnect in roaming revenue and expense. The error was corrected, unlike Ms. Taylor's errors that AT&T refuses to acknowledge. More importantly, after the correction, Ms. Taylor's criticism is with their methodology, not the value of the net roaming.[337](#co_tablefootnoteblock_337_1)

There is, however, a big problem with Ms. Taylor's roaming. Mr. Musey assumes that declining voice roaming will be offset with data roaming maintaining steady growth in line with subscriber revenue generally. Mr. Musey also projects roaming as a percentage of subscriber revenue partly because he recognizes AT&T is only reimbursing the expense of data-roaming to the Partnerships instead of also sharing data roaming profits with the Partnerships. In contrast, Ms. Taylor projects continued decline in voice roaming, and declining expense reimbursement data roaming. Mr. Musey explained that Ms. Taylor's reliance on declining industry roaming minutes is due to wireless carrier consolidation, a factor that does not reduce how often non-Partnership AT&T subscribers will roam into Partnership territories.[338](#co_tablefootnoteblock_338_1) Ms. Taylor and Ms. Barrick nearly converge in their roaming assumptions at the time Ms. Barrick calculates a terminal value. Ms. Taylor's roaming revenue, however, continues with substantial declines to 2019:

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Ms. Taylor's assumptions are unreasonable, and inconsistent with her opinion that because roaming will make the Partnerships whole, it does not matter that AT&T inaccurately accounts for Partnership subscribers.[339](#co_tablefootnoteblock_339_1) Ms. Barrick, however, makes reasonable and responsible revenue assumptions. Moreover, whatever uncertainty there may be respecting Partnership subscribers and ARPU, that is uncertainty that AT&T created, and as a matter of law, should be decided in Plaintiffs' favor.

**4. Expenses Are Not Understated.**

The only “expense” item AT&T takes issue with is Ms. Barrick's decision to use PwC's capital expenditure projections.[340](#co_tablefootnoteblock_340_1) But Ms. Taylor's insistence that Ms. Barrick should have increased her capital expenditure projections is based on AT&T's insistence on mischaracterizing Mr. Musey's higher revenue projected for the Partnerships. AT&T insists on framing the issue as a spike of volume in usage on the network.[341](#co_tablefootnoteblock_341_1) As Ms. Barrick explained at trial, it is not that “in 2010 or 2011, these partnerships are all of a sudden going to have a huge influx of brand-new subscribers.” Rather, the assumption that Mr. Musey is making, and she is relying on, is that “these are subscribers that are already using the partnerships' geography.”[342](#co_tablefootnoteblock_342_1) Again, AT&T's argument is inconsistent with Ms. Taylor's admission that the biggest difference in the models is Mr. Musey's use of AT&T's average ARPU, not the number of subscribers.[343](#co_tablefootnoteblock_343_1)

**5. AT&T's WACC Is Appropriate.**

Ms. Barrick's WACC is appropriate to prepare a responsible estimate of damages. It is a “simple, straightforward AT&T WACC calculation.”[344](#co_tablefootnoteblock_344_1) For purposes of determining fair value of Hood River, Ocala, Pine Bluff and St. Cloud, corporate entities but otherwise identical in nature and cashed-out under the same set of facts at issue here, this Court also determined AT&T's WACC was appropriate.[345](#co_tablefootnoteblock_345_1) Ms. Taylor disagrees. Ms. Taylor believes it would be double-counting the benefits the Partnerships experience from AT&T to discount their expected cashflows by using both AT&T's capital structure and AT&T's cost-of-equity. In her view, you either have to forego AT&T's capital structure as PwC did, or add a “size premium” like she did.

But the operative reality of the Partnerships was that AT&T's cost-of-capital financed the Network,[346](#co_tablefootnoteblock_346_1) and that financing at AT&T's cost-of-capital was the expense allocated to the Partnerships.[347](#co_tablefootnoteblock_347_1) In other words, AT&T's WACC is the actual WACC that impacted the Minority Partners' distributions. If AT&T's cost-of-debt increased, the Partnerships would have been allocated higher interest expenses. If AT&T's cost to raise capital in public markets increased, the higher cost of capital would have affected investment in the Network as a whole. The fact that AT&T did not necessarily use all the capital it financed on the Network is irrelevant to the fact that all the capital used to finance the Network was raised by AT&T.

In any event, as discussed above, the key difference between Ms. Taylor's and Ms. Barrick's assumed WACCs concerns Ms. Taylor's size premium, which is entirely unsupported. The other differences are nominal but just as specious. For example, Ex. 31 of Ms. Taylor's opening report shows her selected AT&T's debt/total capital ratio (29.1%) as opposed to the Median of her group (43.8%).[348](#co_tablefootnoteblock_348_1) Because AT&T's cost-of-debt is lower than its cost-of-equity, the lower debt/total ratio increases her WACC.[349](#co_tablefootnoteblock_349_1) In contrast, Ex. 31 shows she selected the Median unlevered beta (0.61) when AT&T's was slightly lower (0.60), again increasing her WACC.[350](#co_tablefootnoteblock_350_1) This difference as of the October 12, 2010 valuation date is hardly noticeable, but the purpose becomes clear when one considers the difference as of December 23, 2010 (AT&T: 0.50; Median: 0.63); May 5, 2011 (AT&T: 0.62; Median: 0.71); and June 30, 2011 (AT&T: 0.62; Median: 0.69).[351](#co_tablefootnoteblock_351_1) Ms. Taylor cherry-picked between AT&T and the median depending on which better served AT&T's interests.

Other differences, such as Ms. Barrick's equity risk premium, weigh in AT&T's favor, though it certainly would be within the Court's broad discretion to adjust Ms. Barrick's WACC to account for AT&T's admission as to its lower equity risk premium. But the overwhelming trial record shows that Plaintiffs have met their burden in providing the Court with an appropriate WACC for the purpose of preparing a responsible estimate of damages.

**6. 3% Growth Rate Is a Responsible Estimate.**

Ms. Barrick's 3% long-term growth rate is the same perpetuity free cashflow growth rate AT&T's Corporate Development department consistently used from 2008 through 2010.[352](#co_tablefootnoteblock_352_1) AT&T used this 3% perpetuity free cashflow growth rate in the Acquisition Summary prepared in January 2008,[353](#co_tablefootnoteblock_353_1) and it continued to use the same growth rate two years later in preparing its internal analysis to support AT&T's CEO's approval of the Transactions.[354](#co_tablefootnoteblock_354_1)

Notwithstanding AT&T's prolonged and consistent use of the same 3% perpetuity free cashflow growth rate, AT&T claims “Barrick's terminal growth rate of 3% is devoid of reality.”[355](#co_tablefootnoteblock_355_1) While AT&T claims that *its* use of a 3% long-term free cashflow growth rate in internal analysis is justified because it used higher discount rates, neither AT&T nor Ms. Taylor has pointed to any theory, literature, or fact that ties a long-term growth rate to the discount rate used in a discounted cashflow analysis. They are two different parts of a DCF analysis that are derived from different and independent inputs and considerations.[356](#co_tablefootnoteblock_356_1)

**B. A Gut Check: AT&T Knew the Value of What It Was Wrongfully Taking from the Minority Partners.**

AT&T wants a “reality check” on Ms. Barrick's damage estimate. AT&T thinks “[t]he absurdity of Barrick's conclusions is best evidenced by comparing them to ... AT&T's never-completed acquisition of T-Mobile.”[357](#co_tablefootnoteblock_357_1) That is the deal where AT&T ended-up paying $4.3 billion for nothing. It received no EBIDTA, spectrum or subscribers. The multiples implied by the AT&T/T-Mobile deal price reflect AT&T's much greater risk that the transaction would not close (and AT&T would pay $4.3 billion) or that it would close and AT&T would have to spend $1.8 billion in the first year to integrate a different business with different subscribers into its own. These risks would lead a rational buyer like AT&T to pay a lower multiple than if there were no risks like in its acquisition of the Partnerships, which AT&T operated as an integral part of the Network. The AT&T/T-Mobile deal offers no useful “reality check” here.

Rather, reality itself is the best “reality check” here. AT&T actually prepared an analysis of the savings it would realize by avoided distributions to its partners. AT&T's “savings” were the difference between the unfair price it planned to pay in the Transactions and the present value of the avoided distributions. This “savings” was real for AT&T and increased its profitability. As Ms. Barrick explained, when this analysis is adjusted using AT&T's WACC instead of its “hurdle rate,” for the specific Partnerships at issue, the present value of distributions (minority and majority) is $8,792,246,000:

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Ms. Barrick's calculation of the present value of the Partnership's distributable cashflow was $8,941,000,000, less than a 2% difference.

At trial, Ms. Barrick presented a different look for this analysis, forgoing the interim growth of a projected period (*i.e.,* the 8% in 2010, 6.5% in 2011 and 3.5% through 2018) and simply capitalized 2009 Partnership distributions using AT&T's WACC and 3% growth rate:[358](#co_tablefootnoteblock_358_1)

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The $149.6 million value of Plaintiffs' interests is slightly above Ms. Barrick's $148.3 million damage calculation (a less than 1% difference). In essence, this is the very same capitalization that Corporate Development performed in preparing its analysis for the CEO's sign-off on the Transactions.[359](#co_tablefootnoteblock_359_1) Both approaches conform with Ms. Barrick's estimated damages.

Running from its own analysis, AT&T claims that Ms. Barrick “extrapolates these excessive [2009] distributions in perpetuity, which is impossible.”[360](#co_tablefootnoteblock_360_1) Setting aside its self-critical nature, the contention is wildly overstated. In its analysis to determine the cashflow per share impact the Transactions would have, AT&T assumed 95% of free cashflow would be **distributed** by the Partnerships:[361](#co_tablefootnoteblock_361_1)

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Had Ms. Barrick instead used 95% of what Ms. Taylor claims was distributable - EBITDA less CapEx - to prepare JX-3604, the resulting capitalization of Plaintiffs' distributions would have equaled 90% of Ms. Barrick's estimate of damages instead of 101% shown in JX-3604 above. This makes clear, as Plaintiffs briefed pre-trial, that the real difference in opinion is not the value of the distributions capitalized, but the capitalization rate, growth and tax assumptions used. Plaintiffs demonstrated, and AT&T has not rebutted, that if the ‘hurdle rate,’ growth, and tax assumptions used by PwC are used to calculate the present value of distributions in AT&T's avoided distribution analysis, the total value falls over 73% - from $8,792,246,000 to $2,351,017,000:

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The sum of PwC Valuations of the Partnerships is $2,344,700,000 - a mere 0.27% rounding error off AT&T's $2.4 billion internal estimate to eliminate its minority interest expense, which is not a coincidence.[362](#co_tablefootnoteblock_362_1)

The trial evidence shows that each of Ms. Barrick's assumptions are reasonable and that her damage estimate is responsible.

**III. AWARD OF ATTORNEYS' FEES AND EXPENSES**

Plaintiffs' attorneys' fees and expenses should be awarded. The Court shifts fees “*‘to* discourage outright acts of disloyalty’ and to avoid penalizing plaintiffs ‘for bringing a successful claim.’ ”[363](#co_tablefootnoteblock_363_1) AT&T does not brief this issue.[364](#co_tablefootnoteblock_364_1)

AT&T merely footnotes that a fee award does not always follow a successful claim. AT&T does not explain why it should not follow here. AT&T cites inapposite caselaw. Neither *Weinberger nor B&L Cellular* involved a controller that hired a conflicted advisor who the controller thought would be “effective[] as a potential witness”[365](#co_tablefootnoteblock_365_1) to put its name on valuations the controller essentially prepared itself. This Court cannot encourage such outright disloyalty, particularly when AT&T walks from this litigation with the distinction of being the party most obstructive of the discovery process in this Court's experience.[366](#co_tablefootnoteblock_366_1)

**IV. INTEREST AND COSTS**

Plaintiffs request pre-judgment interest on any judgment. “[A] successful plaintiff is entitled to interest on money damages as a matter of right from the date liability accrues.”[367](#co_tablefootnoteblock_367_1) Plaintiffs are also entitled to post-judgment interest on any award. Defendants are sophisticated business enterprises. Interest should be awarded at the legal rate[368](#co_tablefootnoteblock_368_1) and compounded monthly.[369](#co_tablefootnoteblock_369_1)

Plaintiffs are also entitled to costs. Ct. Ch. [Rule 54(d)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1007662&cite=DERCHCTR54&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)).

**CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that judgment in the amount of $148,289,060, plus interest, costs and attorneys' fees and expenses be entered against AT&T.

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**(Limit exceeded per Order governing Post-Trial briefing.)**

| **Footnotes** |  |
| [1](#co_tablefootnote_1_1) | Capitalized terms not otherwise defined herein have the same meaning as set forth in the Joint PreTrial Stipulation and Order (Trans. ID 66179385) (“PTO”). Citations to evidence from the Joint Exhibit List are made as “JX-\_\_\_.” Citations to depositions lodged with the Court pursuant to ¶ 533 of the PTO are made as “[Witness Last Name] Dep. Tr \_\_\_.” Citations to the trial transcript are made as “Tr..” Defendants' Opening Post-Trial Brief on the Asset Sale Transactions (Trans. ID 66403733) is referred to herein as “Defs. OPTB.” Plaintiffs' Post-Trial Opening Brief in Support of their Breach of Contract Claims (Trans. ID 66400697) is referred to herein as “Pls. OPTB.” |
| [2](#co_tablefootnote_2_1) | JX-2590 at 7 (“A buyout would result in an avoidance of $186M in distribution and dividend payments over 10 years: $113M on a DCF basis over 10 years; Total savings of $243M in perpetuity”). |
| [3](#co_tablefootnote_3_1) | Tr. 584:13-585:13 (Teske-Cross). |
| [4](#co_tablefootnote_4_1) | Tr. 585:14-18 (Teske-Cross). |
| [5](#co_tablefootnote_5_1) | JX-616 at 2. |
| [6](#co_tablefootnote_6_1) | *See* JX-1473 (showing the minority interest expense attributable to the Partnerships was the fastest growing part); Tr. 665:17-666:8 (Teske-Cross) (“Q. And they were reporting to you telling you that the 21 proposed buyouts were growing 3 percent quicker than all the other minority entities; right? A. That is what this says, yes.”). |
| [7](#co_tablefootnote_7_1) | [*In re Pure Res., Inc. S'holders Litig.,* 808 A.2d 421, 436 (Del. Ch. 2002)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2002650308&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_436&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_436). |
| [8](#co_tablefootnote_8_1) | JX-2522 at 2 (“These are the only entities where we can execute purchase without partner consent”); JX-616 at 6 (“Clear legal path forward on buyout...”), 12 (8x 2008 EBITDA). In fact, the first of the transactions were the short-form corporate mergers at issue in the Appraisal Action because they were the easiest for AT&T to execute. Tr. 583:7-10 (Teske-Cross) (“Q. Right. Because all along, AT&T knew that those were the easiest to execute and the first to go, isn't that right, Mr. Teske? A. Yes.”) |
| [9](#co_tablefootnote_9_1) | Tr. 265:9-15 (Wages-Cross) (testifying that it was the avoided distributions that were a “byproduct of the transactions”); *see also infra,* Sections I.A. 1-2. |
| [10](#co_tablefootnote_10_1) | JX-3516 ($57.8 million in avoided distributions less $10.2 million of additional taxes on avoided distributions). |
| [11](#co_tablefootnote_11_1) | *Id.* |
| [12](#co_tablefootnote_12_1) | *Id.* |
| [13](#co_tablefootnote_13_1) | JX-2113 at 263-64 (Appraisal Action Trial Tr. (Wages-Direct)). |
| [14](#co_tablefootnote_14_1) | Tr. 31:14-23 (Stephens-Direct) (“Q. We're going to talk about it in detail in a minute, but at some point, did Project LESS get applied to these partnerships that are at issue in this case? A. Oh, yes. The opportunities to reduce the partnership entities, the opportunity to buy out the partners, was definitely part of that thought process of simplification, of everything. This is an opportunity to simplify and provide a more efficient operation.”). |
| [15](#co_tablefootnote_15_1) | Tr. 598:3-10 (Teske-Cross) (“Q. I just want to make sure that when I say ‘administrative efficiencies,’ at least I thought I understood that to be everything you believed Project LESS was about. Isn't that right? A. In connection with this particular initiative, yes.”). |
| [16](#co_tablefootnote_16_1) | Tr. 1073:14-20 (Hall-Direct) (“Q. Was Project LESS applied to the partnerships at issue here in this case? A. Yes. We had communicated that, you now, we had to retain a staff and do a lot of extra work and go through a lot of processes and costs, and including audits, and that we might be able to reduce some of those costs.”). |
| [17](#co_tablefootnote_17_1) | Tr. 263:13-20 (Wages-Cross) (“Q. What question would [the Court] have needed to ask, a transparently honest man, a man steeled with candor, a man who was attempting to be devoid of deception, in order to get that particular piece of information? A. So I didn't think about the avoidance of distributions as being a reason that we undertook these activities and these changes.”). |
| [18](#co_tablefootnote_18_1) | Defs. OPTB at 15-19, 31 (“The evidence is clear that - consistent with the goal of Project LESS more generally - the Transactions were pursued to reduce costs and improve efficiencies.”). |
| [19](#co_tablefootnote_19_1) | *Compare* Defs. OPTB at 4 *with* Pls. OPTB. Defendants cite JX-119 as support for contending “[y]ears before the Transactions, the executive committees delegated management of the Partnerships to the majority partner or its affiliates.” Defs. OPTB at 4. The Cellular System Operating Agreement and Switch Share Agreement included in JX-119 were replaced by the MNSAs. Pls. OPTB at 12-14 and 24-25. |
| [20](#co_tablefootnote_20_1) | *Compare* Defs. OPTB at 12-13 *with* Tr. 406:16-407:6 (Wages-Cross). |
| [21](#co_tablefootnote_21_1) | Tr. 364:6-370:2 (Wages-Cross). |
| [22](#co_tablefootnote_22_1) | Defs. OPTB at 11-12. Verizon ported “pristine blocks” of NPA-NXX ranges to Mobility. JX-1251 at 41-42. Blocks of NPA-NXX ranges that had numbers in use (*i.e.,* assigned to a subscriber) - “contaminated blocks” - were ported by SPID Migration. *See id.* at 42 and 91 § 9.0: Customer Migration. Ms. Taylor - AT&T's wireless “expert” - had no idea that “contaminated blocks” were blocks of NPA-NXXs that had numbers assigned to subscribers. *Compare* JX-3596 at 2 (“ ‘Contamination’ refers to the fact that some telephone numbers are working in the block.”) *with* Taylor Dep. Tr. 143:4-6 (“Q. What about ‘contaminated’? A. Yeah, that's where you've got problems with the blocks. Q. What type of problems? A. Some reason that they're not usable.”). |
| [23](#co_tablefootnote_23_1) | Defs. OPTB at 12; *Compare* Tr. 963:2-6 (Taylor-Cross) *with id.* 964:15-965:11 (Taylor-Cross). |
| [24](#co_tablefootnote_24_1) | Tr. 406:16-407:6 (Wages-Cross). Ignoring its own testimony at trial, AT&T instead cites to the Special Discovery Master's report that concerned nothing but AT&T's purported “burden” of responding to Plaintiffs' discovery. The report does not even mention the contractual agreements by which the Partnerships were to be managed, let alone what defined “Shared Revenue” and how “Shared Revenue” was to be allocated under those agreements. |
| [25](#co_tablefootnote_25_1) | Defs. OPTB at 9; Tr. 1150:12-22 (Hall-Cross) (discussing AT&T's history of mistreating its partners, including the substantial $5.3 million in switching expenses charged by AT&T to Salem in 2007 compared to the significantly lower cost of the Partnership instead acquiring a switch); *see also* JX-298. |
| [26](#co_tablefootnote_26_1) | [*In re Radiology Assocs., Inc. Litig.,* 611 A.2d 485 (Del. Ch. 1991)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1992154977&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)). |
| [27](#co_tablefootnote_27_1) | To avoid redundancy and given the fact-intensive nature of entire fairness review, Plaintiffs state facts supporting AT&T's unfair dealing and unfair price in the arguments below. Plaintiffs also set forth detailed facts in their pretrial brief that stand uncontested. Prickett Pls. Pretrial Br. at 3-22. |
| [28](#co_tablefootnote_28_1) | Defs. OPTB at 27. |
| [29](#co_tablefootnote_29_1) | [*Americas Mining Corp. v. Theriault,* 51 A.3d 1213, 1239 (Del. 2012)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2028677543&pubNum=0007691&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_7691_1239&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_7691_1239). |
| [30](#co_tablefootnote_30_1) | Defs. OPTB at 29-34. |
| [31](#co_tablefootnote_31_1) | *See, e.g.,* [*Kahn v. Lynch Commc'n Sys., Inc.,* 638 A.2d 1110, 1117-21 (Del. 1994)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1994079320&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_1117&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_1117). |
| [32](#co_tablefootnote_32_1) | Tr. 277:17-20 (Wages-Cross). |
| [33](#co_tablefootnote_33_1) | JX-344 at 2 (“These are the only entities where we can execute a purchase without partner consent.”) |
| [34](#co_tablefootnote_34_1) | Defs. OPTB at 27 n. 17. |
| [35](#co_tablefootnote_35_1) | [2005 WL 1126924 (W.D. Wash. May 10, 2005)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2006594456&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)). |
| [36](#co_tablefootnote_36_1) | *See* Defs. OPTB at 29-30. |
| [37](#co_tablefootnote_37_1) | [*J&J Celcom,* 2005 WL 1126924, at \*14](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2006594456&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_999_14&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_999_14). |
| [38](#co_tablefootnote_38_1) | [*In re Dell Techs. Inc. Class VS'holders Litig.,* 2020 WL 3096748, at \*33 (Del. Ch. June 11, 2010)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2051245044&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_999_33&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_999_33) (quoting A.A. Berle, Jr., [*Corporate Powers as Powers in Trust,* 44 Harv. L. Rev. 1049, 1049 (1931)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=0344381467&pubNum=0003084&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=LR&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo))). |
| [39](#co_tablefootnote_39_1) | [*Schnell v. Chris-Craft Indus., Inc.,* 285 A.2d 437, 439 (Del. 1971)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1971102724&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_439&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_439). |
| [40](#co_tablefootnote_40_1) | [*Weinberger v. UOP, Inc.,* 457 A.2d 701, 711 (Del. 1983)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1983112756&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_711&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_711). |
| [41](#co_tablefootnote_41_1) | Defs. OPTB at 32-33. |
| [42](#co_tablefootnote_42_1) | *Id.* at 30-31. |
| [43](#co_tablefootnote_43_1) | *Id.* at 32. |
| [44](#co_tablefootnote_44_1) | *See, e.g.,* JX-1011 at 3:18-5:01 (Mr. Lurie discussing 5, 6, 700% penetration rates with the “Internet of Things” connectivity). |
| [45](#co_tablefootnote_45_1) | *See, e.g.,* JX-876 at 1 (“[W]e noted that 3G was installed in 2008 and 2009. Additionally, 4G is expected to be installed in this market in mid-to-late 2013.”). |
| [46](#co_tablefootnote_46_1) | Tr. 1191:15-24 (Musey-Direct); *id.* 719:22-720:1 (Taylor-Direct) (testifying that “it was just starting with the new technology for 4G, that you might be able to [download] without waiting forever. So you are starting to get this explosion of data.”). |
| [47](#co_tablefootnote_47_1) | Tr. 1191:15-24 (Musey-Direct). |
| [48](#co_tablefootnote_48_1) | *Id.* at 1192:10-23. |
| [49](#co_tablefootnote_49_1) | *Id.* at 1192:24-1193:12. |
| [50](#co_tablefootnote_50_1) | JX-1902 at 8. |
| [51](#co_tablefootnote_51_1) | JX-532 at 16. EDO would support an entire class of subscribers of devices with no NPA-NXX number associated. Tr. 402:5-11 (Wages-Cross); JX-2468 at 8. |
| [52](#co_tablefootnote_52_1) | *See, e.g.,* JX-180 defining “Entire Network”; JX-532 at 13. |
| [53](#co_tablefootnote_53_1) | JX-3865. |
| [54](#co_tablefootnote_54_1) | JX-1340 at 1:45. |
| [55](#co_tablefootnote_55_1) | *Id.* |
| [56](#co_tablefootnote_56_1) | JX-1384. |
| [57](#co_tablefootnote_57_1) | *See, e.g.,* Defs. OPTB at 32 (“Revenue was not increasing with these increasing costs, in part because subscribers were switching to nationwide unlimited plans, which increased data usage without necessarily increasing data revenues.”). |
| [58](#co_tablefootnote_58_1) | *See* JX-1384 at 4 (“For one thing, Apple and AT&T almost certainly waited until AT&T stopped offering iPhones with those unlimited data plans in June (existing customers were able to keep their unlimited plans), before approving a Netflix app that could stream over 3G.”). |
| [59](#co_tablefootnote_59_1) | JX-1435 at 66-70. |
| [60](#co_tablefootnote_60_1) | JX-532 at 5. |
| [61](#co_tablefootnote_61_1) | JX-1800 at 1:44-2:40. |
| [62](#co_tablefootnote_62_1) | JX-1436. |
| [63](#co_tablefootnote_63_1) | JX-1806. |
| [64](#co_tablefootnote_64_1) | JX-532 at 14. |
| [65](#co_tablefootnote_65_1) | JX-2461 at 13-14. |
| [66](#co_tablefootnote_66_1) | *Id.* at 15. |
| [67](#co_tablefootnote_67_1) | *Id.* at 16. |
| [68](#co_tablefootnote_68_1) | *Id.* |
| [69](#co_tablefootnote_69_1) | Tr. 585:14-18 (Teske-Cross). |
| [70](#co_tablefootnote_70_1) | JX-616 at 20 (increasing from $106 million in 2006 to $186 million in 2007); Tr. 610:12-612:18 (Teske-Cross). |
| [71](#co_tablefootnote_71_1) | JX-2522; Tr. 612:15-21 (Teske-Cross). |
| [72](#co_tablefootnote_72_1) | JX-2522 at 2. |
| [73](#co_tablefootnote_73_1) | *Id.* at 8. |
| [74](#co_tablefootnote_74_1) | JX-347 at 9; *see also* Prickett Pls. Pretrial Br. at 11-17. |
| [75](#co_tablefootnote_75_1) | JX-310 at 10; JX-2522; JX-616. |
| [76](#co_tablefootnote_76_1) | JX-3515. |
| [77](#co_tablefootnote_77_1) | *See, e.g.,* JX-748 (announcing in February 2010 selection of LTE equipment suppliers). |
| [78](#co_tablefootnote_78_1) | JX-3896 at 10 (“In Fall 2009, the Emerging Devices Organization was formed... ”). |
| [79](#co_tablefootnote_79_1) | Tr. 599:15-20 (Teske-Cross). |
| [80](#co_tablefootnote_80_1) | *See* JX-3587. |
| [81](#co_tablefootnote_81_1) | JX-616 at 5 and 6. |
| [82](#co_tablefootnote_82_1) | *Id.* at 5. |
| [83](#co_tablefootnote_83_1) | JX-2522 at 4. |
| [84](#co_tablefootnote_84_1) | JX-616 at 6. |
| [85](#co_tablefootnote_85_1) | *Id.* at6. |
| [86](#co_tablefootnote_86_1) | *Id.* at 19. |
| [87](#co_tablefootnote_87_1) | Tr. 27:2-15 (Stephens-Direct); JX-640. |
| [88](#co_tablefootnote_88_1) | Tr. 75:17-76:12 (Stephens Cross); id. at 599:21-600:13 (Teske-Cross). |
| [89](#co_tablefootnote_89_1) | JX-3514 at 1. |
| [90](#co_tablefootnote_90_1) | JX-2522 at 7; JX-3516. |
| [91](#co_tablefootnote_91_1) | Tr. 491:14-18 (Wages Cross) (“The document that you're showing here was an older document. And so I'm not aware that, you know, any of my attorneys you know, like external attorneys would have been a party to that document at all back in the time frame.”). |
| [92](#co_tablefootnote_92_1) | Tr. 91:5-11 (Stephens-Cross). |
| [93](#co_tablefootnote_93_1) | JX-3516. |
| [94](#co_tablefootnote_94_1) | *Id.* |
| [95](#co_tablefootnote_95_1) | *Id.* |
| [96](#co_tablefootnote_96_1) | *Del.* [*Open MRI Radiology Assocs., P.A. v. Kessler,* 898 A.2d 290 (Del. Ch. 2006)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2009118667&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)). |
| [97](#co_tablefootnote_97_1) | Defs. OPTB at 29. |
| [98](#co_tablefootnote_98_1) | JX-892; *see also* Prickett Pls. Pretrial Br. at 20-21. |
| [99](#co_tablefootnote_99_1) | [*Del. Open MRI,* 898 A.2d at 311-12](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2009118667&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_311&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_311). |
| [100](#co_tablefootnote_100_1) | *Id.* at 312. |
| [101](#co_tablefootnote_101_1) | [*In re Dell Techs.,* 2020 WL 3096748, at \*17-19](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2051245044&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_999_19&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_999_19). |
| [102](#co_tablefootnote_102_1) | Tr. 491:10 (Wages-Cross). |
| [103](#co_tablefootnote_103_1) | *Id.* at 406:4-22. |
| [104](#co_tablefootnote_104_1) | Pls. OPTB at 26-34. |
| [105](#co_tablefootnote_105_1) | JX-546; JX-547; JX-2522; JX-616; JX-3514; Tr. 672:4-16 (Teske-Cross). |
| [106](#co_tablefootnote_106_1) | JX-888. |
| [107](#co_tablefootnote_107_1) | *See* [*B&L Cellular v. USCOC of Greater Iowa, LLC,* 2014 WL 5342715 (Del. Ch. Oct. 20, 2014)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2034650724&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)) (ruling identical conduct breach of contract). |
| [108](#co_tablefootnote_108_1) | *See, e.g.,* JX-1078. |
| [109](#co_tablefootnote_109_1) | JX-1123. |
| [110](#co_tablefootnote_110_1) | JX-611; JX-559. |
| [111](#co_tablefootnote_111_1) | *Compare* JX-1703 *with* JX-3511. |
| [112](#co_tablefootnote_112_1) | Tr. 257:15-258:23 (Wages-Cross). |
| [113](#co_tablefootnote_113_1) | Tr. 260:1-263:12 (Wages-Cross). |
| [114](#co_tablefootnote_114_1) | [*Delaware Open MRI,* 898 A.2d at 312](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2009118667&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_312&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_312). |
| [115](#co_tablefootnote_115_1) | [2017 WL 3421142 (Del. Ch. July 17, 2017)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2042330733&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)). |
| [116](#co_tablefootnote_116_1) | Defs. OPTB at 31-32. |
| [117](#co_tablefootnote_117_1) | [2017 WL 3421142, at \*29](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2042330733&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_999_29&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_999_29) (emphasis added). |
| [118](#co_tablefootnote_118_1) | PTO ¶ 59. |
| [119](#co_tablefootnote_119_1) | JX-3511; Tr. 80:12-81:1 (Stephens-Cross). |
| [120](#co_tablefootnote_120_1) | JX-1306. |
| [121](#co_tablefootnote_121_1) | PTO ¶ 59. |
| [122](#co_tablefootnote_122_1) | *See, e.g.,* JX-1703 at 2. |
| [123](#co_tablefootnote_123_1) | *Id.* |
| [124](#co_tablefootnote_124_1) | *See, e.g.,* JX-1708 at 2. |
| [125](#co_tablefootnote_125_1) | *See, e.g.,* JX1529 at 2. |
| [126](#co_tablefootnote_126_1) | JX-1996 at 4. |
| [127](#co_tablefootnote_127_1) | Tr. 874:6-876:20 (Taylor-Cross); Taylor Dep. Tr. 263:6-18. |
| [128](#co_tablefootnote_128_1) | Taylor Dep. Tr. 222:2-23 and 261:6-262:12. |
| [129](#co_tablefootnote_129_1) | [*AT&T Mobility Wireless Operations Holdings LLC v. North American Cellular Telephone, Inc.,* 2013 WL 1213810, at \*3 (Del. Ch. Mar. 25, 2013)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2030223696&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_999_3&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_999_3) (ORDER); *see also* [*ACP Master,* 2017 WL 3421142, at \*19](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2042330733&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_999_19&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_999_19); *accord* [*Bomarko, Inc. v. Int'l Telecharge, Inc.,* 794 A.2d 1161, 1183 (Del. Ch. 1999)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2002141663&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_1183&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_1183), *aff'd,* [766 A.2d 437 (Del. 2000)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2001180188&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)). |
| [130](#co_tablefootnote_130_1) | JX-3511. |
| [131](#co_tablefootnote_131_1) | JX-767. |
| [132](#co_tablefootnote_132_1) | Tr. 641-3-8 (Teske-Cross) (“Q.... Before PwC began its work, you sent Mr. Gilcreast AT&T's valuations previously prepared by Duff & Phelps, right? A. I did send them the valuations that were done in connection with the annual impairment tests.”). |
| [133](#co_tablefootnote_133_1) | Tr. 651:8-12 (Teske-Cross) (“Q. Mr. Teske, you provided PwC with perpetuity growth rate of 1 percent and a WACC of 7.7 per cent from Mr. Kobos, right? A. I did pass that information along to PwC.”); *id.* 651:13-18 (Teske-Cross) (“Q. Did you also pass along to PwC information about what AT&T consider to be a hurdle rate for an investment? A. I recall that in PwC's discussions with members of the treasury team, that they may have referenced a hurdle rate.”); *id.* 652:5-10 (Teske-Cross) (“Q. Let me try a difference way at this. The hurdle rate that we're talking about, that's AT&T's desired return, right? A. In the deposition last year, I did mention to you that I would think of the hurdle rate as a desired rate of return.”); *id.* 669:2-4 (“Q. In fact, Mr. Summerford told PwC, ‘You should use 38.5 percent [tax rate];’ right? A. I do recall the 38 1/2 percent.”); *see also* Prickett Pls. Pretrial Br. at 17-22. |
| [134](#co_tablefootnote_134_1) | JX-889. |
| [135](#co_tablefootnote_135_1) | *Id.* |
| [136](#co_tablefootnote_136_1) | [*In re Emerging Commc'ns, Inc. S'holders Litig.,* 2004 WL 1305745, at \*25 (Del. Ch. May 3, 2004)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2004582784&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_999_25&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_999_25). |
| [137](#co_tablefootnote_137_1) | Tr. 697:22-698:10 (Taylor-Direct). |
| [138](#co_tablefootnote_138_1) | *SeeLeBeau v.* [*M.G. Bancorporation, Inc.,* 1998 WL 44993, at \*7 (Del. Ch. Jan. 29, 1998)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1998046975&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_999_7&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_999_7). |
| [139](#co_tablefootnote_139_1) | Prickett Pls. Pretrial Br. at 36. |
| [140](#co_tablefootnote_140_1) | Defs. OPTB at 69; JX-2636 at 17; Tr. 750:13-751:4 (Taylor-Direct), 765:8-15 (Taylor-Direct), and 837:14-838:13 (Taylor-Direct). |
| [141](#co_tablefootnote_141_1) | JX-2463 at 122. |
| [142](#co_tablefootnote_142_1) | JX-2522; JX-616; JX-3514; JX-3515; JX-3516: none of these documents were produced in the Appraisal Action. |
| [143](#co_tablefootnote_143_1) | JX-3554 at 46; Tr. 968:14-969:5 (Taylor-Cross). |
| [144](#co_tablefootnote_144_1) | Tr. 969:21-970:5 (Taylor-Cross) (at first claiming that while she “look[ed] at it” buy could not “remember the answer to [the] question”); Tr. 970:14-971:11 (walking Ms. Taylor through JX-3519) |
| [145](#co_tablefootnote_145_1) | [*In re AT&T Mobility Wireless Operations Holdings Appraisal Litig.,* 2013 WL 3865099, at \*3 (Del. Ch. June 24, 2013)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2031171366&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_999_3&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_999_3). Notably, the analysis included all the transactions Ms. Taylor advocates here except for the bused AT&T/T-Mobile deal. *Compare* JX-3554 at 40 *with* JX-2465 at 114. |
| [146](#co_tablefootnote_146_1) | JX-3552 at 56. |
| [147](#co_tablefootnote_147_1) | JX-3552 at 54. |
| [148](#co_tablefootnote_148_1) | Tr. 971:12-22 (walking Ms. Taylor through JX-3519). |
| [149](#co_tablefootnote_149_1) | Tr. 970:11-12 (“A. I did that, also, and I think a couple of them would have been below the low.”) |
| [150](#co_tablefootnote_150_1) | Taylor Dep. Tr. 234:16-235:6 (“Q.... Why does your weighting keep changing? ... A. They're pretty close. Q. They bring you down. Using the guideline transaction brings you down, doesn't it? It's lower? A. Well, it depends...”). |
| [151](#co_tablefootnote_151_1) | Tr. 970:6-12 (Taylor-Cross). |
| [152](#co_tablefootnote_152_1) | Prickett Pls. Pretrial Br. at 36-41. |
| [153](#co_tablefootnote_153_1) | Tr. 912:18-19 (Taylor-Cross). |
| [154](#co_tablefootnote_154_1) | JX-3514 at 3. |
| [155](#co_tablefootnote_155_1) | Defs. OPTB at 54. |
| [156](#co_tablefootnote_156_1) | JX-3514 at 3 ($18.9 million/$76 million). |
| [157](#co_tablefootnote_157_1) | *Id.* |
| [158](#co_tablefootnote_158_1) | (corporate value)/(100%-tax shield benefit(25%)); *see also* JX-3516. |
| [159](#co_tablefootnote_159_1) | Tr. 775:15-20 (Taylor-Cross). |
| [160](#co_tablefootnote_160_1) | Tr. 1302:2-20 (Barrick-Direct); JX-2469 at 18; *see also* Tr. 882:21-24 (Taylor-Cross) (admitted she had plenty of time to challenge Ms. Barrick's math and has never done so). |
| [161](#co_tablefootnote_161_1) | Tr. 1302:2-20 (Barrick-Direct); Ms. Taylor admitted on cross-examination she only adjusted her income approach. Tr. 922:11-13 (Taylor-Cross). |
| [162](#co_tablefootnote_162_1) | JX-2107 at 55-56. |
| [163](#co_tablefootnote_163_1) | JX-3552 at 55. |
| [164](#co_tablefootnote_164_1) | JX-3516. |
| [165](#co_tablefootnote_165_1) | [*Smith v. Van Gorkom,* 488 A.2d 858, 879 (Del. 1985)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1985114193&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_879&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_879) (“It is a well established principle that the production of weak evidence when strong is, or should have been, available can lead only to the conclusion that the strong would have been adverse.”). |
| [166](#co_tablefootnote_166_1) | *See* JX-3505 at 147:9-10 (Taylor-Direct). |
| [167](#co_tablefootnote_167_1) | *Gesoffv.* [*IIC Industries, Inc.,* 902 A.2d 1130, 1158 (Del. Ch. 2006)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2009683626&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_1158&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_1158). |
| [168](#co_tablefootnote_168_1) | Del. R. of Evidence 702; [*Daubert v. Merrell Dow Pharmaceuticals, Inc.,* 509 U.S. 579 (1993)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1993130674&pubNum=0000780&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)); [M.G. *Bancorporation, Inc. v. Le Beau,* 737 A.2d 513, 521-22 (Del. 1999)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1999119877&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_521&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_521) (adopting “*Daubert* ... as the correct interpretation of [Delaware Rule of Evidence 702](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1007675&cite=DERREVR702&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo))). |
| [169](#co_tablefootnote_169_1) | [*Beard Research, Inc. v. Kates,* 2009 WL 7409282, \*6 (Del. Ch. Mar. 31, 2009)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2024570377&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_999_6&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_999_6). |
| [170](#co_tablefootnote_170_1) | *Id., see also, e.g.,* [*Kansas City Southern Railway Co. v. Sny Island Levee Drainage District,* 831 F.3d 892, 900 (7th Cir. 2016)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2039489860&pubNum=0000506&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_506_900&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_506_900) (“Where a trial judge conducts a bench trial, the judge need not conduct a *Daubert* (or [Rule 702](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1007675&cite=DERREVR702&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo))) analysis before presentation of the evidence, even though he must determine admissibility at some point.”). |
| [171](#co_tablefootnote_171_1) | Tr. 891:20-892:4 (Taylor-Cross). |
| [172](#co_tablefootnote_172_1) | *Compare* JX2636 at 6 *with* JX-3594 (2010) and JX-3595 (2011); *see also* Tr: 890:24-891:16, *id.* 905:1-6 (Taylor-Cross). |
| [173](#co_tablefootnote_173_1) | Tr. 904:12-905:6 (Taylor-Cross). |
| [174](#co_tablefootnote_174_1) | Tr. 1321:9-1322:16 (Barrick-Direct). |
| [175](#co_tablefootnote_175_1) | JX-3505 at 242:1-245:2 (Taylor-Cross) (admitting her “judgmental add-back” was unsupported). |
| [176](#co_tablefootnote_176_1) | [*AT&T Mtobility,* 2013 WL 3865099 at \*4](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2031171366&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_999_4&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_999_4). |
| [177](#co_tablefootnote_177_1) | JX-2636 at 6 (identifying “size premium risk factors” of risk of competition from Leap and Metro for all Partnerships except for Bradenton, Melbourne and Sarasota). |
| [178](#co_tablefootnote_178_1) | [*Delaware Open MRI,* 898 A.2d 290 at 339](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2009118667&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_339&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_339). |
| [179](#co_tablefootnote_179_1) | *Gesoffv.* [*IIC Industries, Inc.,* 902 A.2d 1130, 1159 (Del. Ch. 2006)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2009683626&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_1159&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_1159). |
| [180](#co_tablefootnote_180_1) | “A discount rate cannot and is not meant to be a receptacle for all your hopes and fears, a number that you can tweak until you get to your comfort zone.” Aswath Damodaran, *The Small Cap Premium: Where is the beef?* Musings on Markets (Apr. 11, 2015) (available at http://aswathdamodaran.blogspot.com/2015/04/the-small-cap-premium-fact-fiction-and.html). |
| [181](#co_tablefootnote_181_1) | Tr. 889:12-17 (Taylor-Cross) (“Q. Well, I'm just trying to understand how you're calling it. Did you define the “Weather/Acts of God” anywhere? A. No, that's just a -- it says it's in footnote 2 what it is, like hurricanes, tornadoes, earthquakes, propensity for those sorts of things.”). |
| [182](#co_tablefootnote_182_1) | *See generally* JX-2463 (Taylor Opening Report), JX-2467 (Taylor Rebuttal Report), JX-3594 (Ibbotson 2010 size premium excerpt); JX-3595 (Ibbotson 2011 size premium excerpt). |
| [183](#co_tablefootnote_183_1) | Tr. 895:10-17 (Taylor-Cross). |
| [184](#co_tablefootnote_184_1) | *See generally* JX-2463 (Taylor Opening Report), JX-2467 (Taylor Rebuttal Report), JX-3594 (Ibbotson 2010 size premium excerpt); JX-3595 (Ibbotson 2011 size premium excerpt). |
| [185](#co_tablefootnote_185_1) | Tr. 896:1-9 (Taylor-Cross) (“That's not in your report, is it? A. No. The additional information that I provided in testimony on what we actually -- what we did just wasn't mentioned in the report.”). |
| [186](#co_tablefootnote_186_1) | Tr. 896:18-897:2 (“We don't have any study in your report about what consequence the absence or presence of a dominant employer, as you define it, has on any of these areas that the partnerships operate, do we? A. Not specifically that, no.”). |
| [187](#co_tablefootnote_187_1) | JX-2636 at 6; Tr. 1322:13-1323:5 (Barrick-Direct) (“[M]aybe all of these would be specific company risks. They're not based on size. They're not size premium risk factors.... And you can see that her justification here, in some cases she thinks that, for example, Galveston has a triple threat. It has risk of all three of these. Whereas Bremerton only has one X here. But she used 3 percent for both of them. So I guess I don't understand how that's a consistent application. And it just, again, says to me this is not size, maybe it's specific company.”). |
| [188](#co_tablefootnote_188_1) | JX-2467 (Taylor Rebuttal Report) at 45-46; *see generally* JX-2463 (Taylor Opening Report); *see also* Tr. 901:4-7 (Taylor-Cross) (“Q. Now, that was one example, but, in fact, your rebuttal report doesn't have any other examples, right? A. I think none in the rebuttal report.”). |
| [189](#co_tablefootnote_189_1) | JX-1919 (PwC Galveston Profile Memo) at 17; JX-1040 (PwC Galveston Valuation) at 35. |
| [190](#co_tablefootnote_190_1) | JX-2469 at 28 (Taylor DCF: $284 million Taylor DCF w/o SSP: $391 million). |
| [191](#co_tablefootnote_191_1) | Neither did PwC, and both penalized Galveston for AT&T's decision to self-insure the risk. Ms. Taylor is aware that insurance is available but did no research onthe price. Tr. 901:12-20. |
| [192](#co_tablefootnote_192_1) | [*Emerging Commc'ns,* 2004 WL 1305745 at \*21](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2004582784&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_999_21&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_999_21). |
| [193](#co_tablefootnote_193_1) | *Id.* |
| [194](#co_tablefootnote_194_1) | [*Hillsboro Energy, LLC v. Secure Energy, Inc.,* 2008 WL 4561227, at \*1 (Del. Ch. Oct. 3, 2008)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2017267209&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_999_1&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_999_1). |
| [195](#co_tablefootnote_195_1) | Prickett Pls. Pretrial Br. at 9-11. |
| [196](#co_tablefootnote_196_1) | Paoletti Dep. Tr. 21-23. |
| [197](#co_tablefootnote_197_1) | Even the evidence AT&T redirected Taylor on at trial proves this. JX-1269 at 2; *see also* PTO ¶ 237. |
| [198](#co_tablefootnote_198_1) | PTO ¶ 235; Stephens Dep. Tr. 32:18-33:6; *see also* at AT&T 2010 Proxy at 31 (“Executive Compensation Program: Long-term Incentive” stating “Performance shares are a long-term equity award that we structure to be paid at the end of a 3-year performance period to the extent applicable performance goals are met.”)(https://www.sec.gov/Archives/edgar/data/0000732717/000119312510053795/ddefl 4a.htm#toc63614\_16). |
| [199](#co_tablefootnote_199_1) | Defs. OPTB at 22, n12. |
| [200](#co_tablefootnote_200_1) | Paoletti Dep. Tr. 38 (“Did you ever use the ten-year plan prepared by Mr. Kobos for anything? A. I don't recall offhand. I recall having seen them from time to time, but I don't recall really using them for much.”). |
| [201](#co_tablefootnote_201_1) | Tr. 857-18:23 (Taylor-Cross). |
| [202](#co_tablefootnote_202_1) | Tr. 852:21-853:6 (Taylor-Cross). |
| [203](#co_tablefootnote_203_1) | Tr. 858:14-859:6 (Taylor-Cross). |
| [204](#co_tablefootnote_204_1) | Tr. 861:2-15 (Taylor-Cross). |
| [205](#co_tablefootnote_205_1) | Tr. 862:1-863:9 (Taylor-Cross). |
| [206](#co_tablefootnote_206_1) | JX-2463 at 55. |
| [207](#co_tablefootnote_207_1) | Tr. 863:10-864:13 (Taylor-Cross). |
| [208](#co_tablefootnote_208_1) | Tr. 852:2-7 (Taylor-Cross). |
| [209](#co_tablefootnote_209_1) | Tr. 864:15-865:10 (Taylor-Cross). |
| [210](#co_tablefootnote_210_1) | Tr. 869:6-869:11 (Taylor-Cross). |
| [211](#co_tablefootnote_211_1) | Tr. 865:11-14 (Taylor-Cross). |
| [212](#co_tablefootnote_212_1) | Tr. 865:15-866:3 (Taylor-Cross); JX-3577. |
| [213](#co_tablefootnote_213_1) | Tr. 870:20-872:23 (Taylor-Cross). |
| [214](#co_tablefootnote_214_1) | Tr. 1314:24-1315:16. |
| [215](#co_tablefootnote_215_1) | JX-3604 at 11. |
| [216](#co_tablefootnote_216_1) | Tr. 1311:8-21. |
| [217](#co_tablefootnote_217_1) | JX-3604 at 13. |
| [218](#co_tablefootnote_218_1) | The purpose of weighting rather than taking a simple average is to reflect in the average the fact that certain Partnerships have substantially greater free cashflow than Las Cruces, for example. |
| [219](#co_tablefootnote_219_1) | Taylor Dep. Tr. 206:18-208:10. |
| [220](#co_tablefootnote_220_1) | Taylor Dep. Tr. 206:14-17 (“Q. So they had just finished an upgrade, right? A. They would have finished it sometime in ‘12, ‘13, yeah.”). |
| [221](#co_tablefootnote_221_1) | *Compare* Taylor Dep. Tr. 206:18-207:5 (“Q. Well, why wouldn't you cut it off there...? A. That's just the way AT&T estimated their long-term plans. So you'd have to ask them that question.”) *with* Tr. 1369:14-1370:24 (Barrick-Cross)(“if you look at the years, specifically projected CAPEX for these partnerships, for 2010, ‘11 and ‘13, they contained some of the highest capital expenditure, and in particular ‘13, one of the highest years for capital expenditure for these partnerships... I'm confident that I captured the kind of capital expenditures that are needed for the next rollout in my terminal year.”). |
| [222](#co_tablefootnote_222_1) | JX-3577 (“I wouldn't necessarily keep this in your perpetuity calculation.”); Tr. 865:15-866:10 (Taylor-Cross). |
| [223](#co_tablefootnote_223_1) | JX-3515; JX-3516. |
| [224](#co_tablefootnote_224_1) | Tr. 948:2-14 (Taylor-Cross); Tr. 1157:15-23 (Musey-Direct); JX-3605; JX-2469 at 21. |
| [225](#co_tablefootnote_225_1) | JX-3551 at 4. |
| [226](#co_tablefootnote_226_1) | Tr. 703:1-3 (Taylor-Direct). |
| [227](#co_tablefootnote_227_1) | “A viable company should grow at least at the rate of inflation and ... the rate of inflation is the floor for a terminal value estimate for a solidly profitable company that does not have an identifiable risk of insolvency.” [*Global GT LP v. Golden Telecom, Inc.,* 993 A.2d 497, 511 (Del. Ch. 2010)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2021845111&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_511&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_511), *aff'd,* [11 A.3d 214 (Del. 2010)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2024248625&pubNum=0007691&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)). |
| [228](#co_tablefootnote_228_1) | JX-578 at 3. |
| [229](#co_tablefootnote_229_1) | *Supra* Section 1.A.1.b. |
| [230](#co_tablefootnote_230_1) | JX-3590 at 76; JX-2469 at 18-21; JX-3604 at 6-13; Tr. 1196:15-1198:14 (Musey-Direct); Tr. 1305:23-1310:12 (Barrick-Direct). |
| [231](#co_tablefootnote_231_1) | *Compare* Tr. 793:11-19 (Taylor-Direct) *with* Tr. 1313:6-1314:21 (Barrick-Direct). |
| [232](#co_tablefootnote_232_1) | JX-2467 at 47. |
| [233](#co_tablefootnote_233_1) | JX-3604 at 12. |
| [234](#co_tablefootnote_234_1) | Tr. 1314:9-14 (Barrick-Direct). |
| [235](#co_tablefootnote_235_1) | JX-3551 at 4. |
| [236](#co_tablefootnote_236_1) | Tr. 651:8-12 (Teske-Cross). |
| [237](#co_tablefootnote_237_1) | Tr. 738:4-8 (Taylor-Direct). Ms. Taylor also assumes lower subscribers for Las Cruces without understanding AT&T converted many Las Cruces subscribers for itself. Pls. OPTB at 49-51; *Compare* JX-1295 *with* Taylor Dep. Tr. 293:14-296:4. |
| [238](#co_tablefootnote_238_1) | JX-3590 at 73. |
| [239](#co_tablefootnote_239_1) | Tr. 1187:8-15 (Musey-Direct); *see also* JX-3590 at 38-59; JX-2468 at 40-46. Ms. Taylor's testimony and opinions on this topic should be stricken. Plaintiffs objected to Ms. Taylor's testimony and opinions on this topic at trial and the Court instructed the parties “to take this up in post-trial briefing.” Tr. 748:1-2. The Court stated that “if, indeed, there's a basis for me to effectively exclude it and not consider it and leave the record on Mr. Wages' admittedly agnostic testimony, we'll do that.” Tr. 748:2-5. There is good reason exclude Ms. Taylor's testimony and opinions on this topic. In response to a [Rule 30(b)(6)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1007662&cite=DERCHCTR30&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)) notice on the topic, AT&T designated Mr. Wages to testify and Mr. Wages was deposed on the topic. *See, e.g.,* Wages Dep. (6-19-2019) Tr. 53:22-55 and 335-344. Mr. Wages testified that in preparing for the deposition, Viday Gaddamanugu educated him on SMARTFlow including how it works and what it provides to AT&T. *Id.* Unsatisfied with Mr. Wages deposition testimony, on which Mr. Musey relied (*see, e.g.,* JX-3590 at 42 and JX-2468 at 5-6), Ms. Taylor instead relied on a call “someone on [her] team” had with Mr. Gaddamanugu after opening expert reports were exchanged. JX-2467 at 36-37; Taylor Dep. Tr. 93:6-96:1. Yet even at trial, AT&T presented Mr. Wages not Mr. Gaddamanugu to testify on the topic. AT&T cannot alter the factual record to its liking based on Ms. Taylor's hearsay. *See, e.g.,* [*Emerging Commc'ns,* 2004 WL 1305745, at \*30](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2004582784&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_999_30&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_999_30) (rejecting valuation for, *inter alia,* relying on discussions with management rather than doing what “litigation experts in the valuation area customarily do: conducting careful due diligence using the sworn testimony and contemporaneous discovery record.”). |
|  | *See, e.g.,* JX-2467 at 36-37 (relying on “call with Mr. Gaddamanugu” after the close of fact discovery instead of AT&T's [Rule 30(b)(6)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1007662&cite=DERCHCTR30&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)) testimony on the issue); Taylor Dep. Tr. 93:6-96:1; Tr. 743:17-748:9 (Plaintiffs objecting to Ms. Taylor's testimony and opinions based on contradictory hearsay outside fact discovery and Court ruling preserving the objection). |
| [240](#co_tablefootnote_240_1) | Tr. 948:2-14 (Taylor-Cross); Tr. 1157:15-23 (Musey-Direct); JX-3605; JX-2469 at 21. |
| [241](#co_tablefootnote_241_1) | JX-2636 at 1; *see also* JX-2463 at 75 (Ex. 12) and 106 (Ex. 35); *see also* Tr. 1183:4-9 (Musey-Direct). |
| [242](#co_tablefootnote_242_1) | JX-3563 at 51; Tr. 960:6-962:22 (Taylor-Cross). Reseller chum is substantially higher than other subscriber chum. Tr. 742:21-23 (Taylor-Direct). |
| [243](#co_tablefootnote_243_1) | JX-2467 at 34 and 39. |
| [244](#co_tablefootnote_244_1) | Defs. OPTB at 41-42. |
| [245](#co_tablefootnote_245_1) | Tr. 962:15-22 (Taylor-Cross) (“Q. You're an expert in the industry, yet you're comparing apples and oranges between a partnership and AT&T chum rates, aren't you? A. I don't know.... I don't know the answer. Q. You don't know. A. No, I don't.”). |
| [246](#co_tablefootnote_246_1) | Tr. 717:22-24 (Taylor-Direct) (“average revenue per user came down significantly, but it's really driven by subscriber mix.”); *id.* 722:7-9 (Taylor-Direct) (“And what's really driving ARPU is that subscriber mix we were talking about before.”); *id.* 737:10-18 (Taylor-Direct) (“And the biggest driver of that difference is the mix in terms of how many subscribers of each category.”); *id.* 928:9-17 (Taylor-Cross) (“Q. What's the other dispute relating to ARPU? A. The mix. He [Mr. Musey] ignores the mix of the partnerships. Q. Okay. A. Subscriber mix, just so I'm clear. Q. Which, in your opinion, plays into projecting ARPU right? A. Yes. Absolutely.”). |
| [247](#co_tablefootnote_247_1) | JX-3525 Galveston (Taylor ARPU assumption: $56.57; subscriber mix: $53.38; 6% premium); JX-3528 Provo (Taylor ARPU assumption: $59.25; subscriber mix: $56.85; 4% premium); JX-3531 Sarasota (Taylor ARPU assumption: $43.17; subscriber mix: $42.74; 1% premium). |
| [248](#co_tablefootnote_248_1) | JX-3526 Las Cruces (Taylor ARPU: $48.41; subscriber mix: $56.80; 15% discount); JX-3527 Melbourne (Taylor ARPU: $44.66; subscriber mix: $51.49; 13% discount); JX-3522 Bloomington (Taylor ARPU: $44.45; subscriber mix: $51.33; 13% discount); JX-3520 Alton (Taylor ARPU: $41.68; subscriber mix: $48.11; 13% discount); JX-3532 Visalia (Taylor ARPU: $49.62; subscriber mix: $56.14; 12% discount); JX-3524 Bremerton (Taylor ARPU: $42.55; subscriber mix: $46.19; 8% discount); JX-3530 Salem (Taylor ARPU: $45.68; subscriber mix: $49.92; 8% discount); JX-3529 Reno (Taylor ARPU: $52.42; subscriber mix: $54.75; 4% discount). |
| [249](#co_tablefootnote_249_1) | Based on Taylor's 2010 projected subscriber revenue for the Partnerships. *See supra* n244 and n245, and JX-2665 at 147-59. |
| [250](#co_tablefootnote_250_1) | Tr. 931:22-932:10 (Taylor-Cross). |
| [251](#co_tablefootnote_251_1) | Tr. 931:11-15 (Taylor-Cross). |
| [252](#co_tablefootnote_252_1) | Tr. 887:6-20 (Taylor-Cross); *see also* JX-3597. |
| [253](#co_tablefootnote_253_1) | Tr. 933:14-23 (Taylor-Cross). |
| [254](#co_tablefootnote_254_1) | Tr. 594:10-596:9 (Teske-Cross); JX-487. |
| [255](#co_tablefootnote_255_1) | Tr. 589:16-590:7 (Teske-Cross). |
| [256](#co_tablefootnote_256_1) | JX-2465 at 147-159. |
| [257](#co_tablefootnote_257_1) | Tr. 935:13-19 (Taylor-Cross). |
| [258](#co_tablefootnote_258_1) | JX-2107 at 25; Tr. 936:7-937:4 (Taylor-Cross). |
| [259](#co_tablefootnote_259_1) | Tr. 938:12-24 (“Q. So those few months of data, that was enough for you to be able to project subscriber mix for a ten-year period? Is that what you're testifying to? A. Well, you're -- no. In the prior ones -- maybe, I'd have to go back and look, but there wasn't much of a change, right? And in here, there's only a few where there's a big trended change. And it's really the one that Metro and Leap have entered.”) Recall, “Metro and Leap” were also Ms. Taylor's rationale - indeed, her only rationale for Bellingham, Bremerton, Las Cruces for adding her “size premium.” *See* JX-2636 at 6; *see also* Tr. 1320:8-1323:6 (Barrick-Direct) (noting Ms. Taylor is double and triple counting for competition in her models). |
| [260](#co_tablefootnote_260_1) | *See* JX-3551 at 3 (AT&T “does not have a significant past practice of voluntarily selling licenses where it currently provides wireless service.”). The FCC has forced AT&T to divest assets in the past, but Ms. Taylor concedes that an FCC ordered divestiture of assets is not a comparable transaction. *See, e.g.,* JX-2463 at 118. |
| [261](#co_tablefootnote_261_1) | *See* JX-3551 at 3 (AT&T “believes that if it were to sell any of its licenses, it is probable that a substantial portion of the licenses would be sold together.”). |
| [262](#co_tablefootnote_262_1) | *See, e.g.,* JX-1996 at 4; *but see* Taylor Dep. Tr. 216:24-217:2 (testifying she was unaware of the fact). |
| [263](#co_tablefootnote_263_1) | Tr. 1326:1-7 (Barrick-Direct). |
| [264](#co_tablefootnote_264_1) | JX-2469 at 30. |
| [265](#co_tablefootnote_265_1) | JX-2469 at 32. |
| [266](#co_tablefootnote_266_1) | JX-3552 at 54. |
| [267](#co_tablefootnote_267_1) | JX-2463 at 120 (Ex. 46); Tr. 984:11-21 (Taylor-Cross). |
| [268](#co_tablefootnote_268_1) | *See* JX-2463 at 120 (Ex. 46). Ms. Taylor first adds an additional $1.8 billion to T-Multiple's profitability. She then divides her artificial LTM EBITA ($4.08 billion) by T-Mobile's actual profitability, which equals 1.8 (i.e., 80% more profitable than T-Mobile actually was). Ms. Taylor than divides the deal price ($39 billion) by 1.8 to arrive at her assumed “Adjusted EV with Control Only.” She then divides her adjusted equity value rather than T-Mobile's actual equity value by T-Mobile's actual LTM EBITA to derive her deeply discounted 9.6x EBITA multiple. |
| [269](#co_tablefootnote_269_1) | Tr. 984:17-21 (Taylor-Cross). |
| [270](#co_tablefootnote_270_1) | JX-2463 at 120 (Ex. 46, n.2: “T-Mobile synergies represent 2012E cash impact of the transaction.”). |
| [271](#co_tablefootnote_271_1) | JX-1893 at 6. |
| [272](#co_tablefootnote_272_1) | Tr. 988:5-7 (Taylor-Cross). |
| [273](#co_tablefootnote_273_1) | JX-1893 at 7 ($1.8 - $3.6 = $1.8). |
| [274](#co_tablefootnote_274_1) | T-Mobile is not the only instance of Ms. Taylor's financial ju-jitsu: Ms. Taylor assumes Alltel was 60% more profitable than it was. JX-2463 at 120 (Ex. 46). Similarly, without analysis, Ms. Taylor assumes only 15% of the 121.4% premium paid by AT&T to acquire Centennial Communications in November 2008 related to control value, and the rest reflected synergistic value. *Id.* at 119. This Court rejected this transaction as comparable in the Appraisal Action noting AT&T acquired Centennial at the trough of the Great Recession, which involved one of the direst liquidity crises the world has ever experienced. Centennial was also distressed. JX-2468 at 69. |
| [275](#co_tablefootnote_275_1) | JX-2465 at 118 (“Given that Verizon was forced to divest the assets the transaction occurred at suppressed EBITDA multiples, which make it incompatible for use in FTI's valuation.”). |
| [276](#co_tablefootnote_276_1) | AT&T has waived argument on the legal standard. [*Emerald Partners v. Berlin,* 726 A.2d 1215, 1224 (Del. 1999)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1999091924&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_1224&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_1224) (“Issues not briefed are deemed waived.”); *see also* Prickett Pls. Pretrial Br. at 45-51 (briefing the legal standard on damages). |
| [277](#co_tablefootnote_277_1) | [*In re Dole Food Co., Inc. S'holder Litig.,* 2015 WL 5052214, at \*44 (Del. Ch. Aug. 27, 2015)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2036962974&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_999_44&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_999_44) (quoting [*Weinberger,* 457 A.2d at 714](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1983112756&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_714&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_714)). |
| [278](#co_tablefootnote_278_1) | [*Bomarko,* 794 A.2d at 1184](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2002141663&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_1184&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_1184) (citing [*Red Sail Easter Ltd. Partners, L.P. v. Radio City Music Hall Prods., Inc.,* 1992 WL 251380, at \*7 (Del. Ch. Sept. 29, 1992)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1992171778&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_999_7&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_999_7)). |
| [279](#co_tablefootnote_279_1) | *Id. (citing* [*Red Sail,* 1992 WL 251380, at \*7](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1992171778&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_999_7&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_999_7)). |
| [280](#co_tablefootnote_280_1) | *See* [*Thorpe v. CERBCO, Inc.,* 1993 WL 443406, at \*12 (Del. Ch. Oct. 29, 1993)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1993210099&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_999_12&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_999_12) (“Furthermore, once a breach of duty is established, uncertainties in awarding damages are generally resolved the wrongdoer.”). |
| [281](#co_tablefootnote_281_1) | [*Reis v. Hazelett Strip-Casting Corp.,* 28 A.3d 442, 468 (Del. Ch. 2011)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2026169302&pubNum=0007691&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_7691_468&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_7691_468); Prickett Pls. Pretrial Br. at 46-47. |
| [282](#co_tablefootnote_282_1) | [*Gesoff,* 902 A.2d at 1154](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2009683626&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_1154&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_1154). |
| [283](#co_tablefootnote_283_1) | [*Thorpe v. CERBCO, Inc.,* 676 A.2d 436, 445 (Del. 1996)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1996097915&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_445&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_445) (citations omitted). |
| [284](#co_tablefootnote_284_1) | [*Int'l Telecharge, Inc. v. Bomarko, Inc.,* 766 A.2d 437, 441 (Del. 2000)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2001180188&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_441&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_441); Prickett Pls. Pretrial Br. at 46-47. |
| [285](#co_tablefootnote_285_1) | Tr. 1285:9-13 (Barrick-Direct) (“what the plaintiffs have lost in this case is the opportunity to participate in a future cash flow stream. And what they've lost is the present value of their share of that future cash flow stream.”); *id.* at 1382:16-1383:3 (Barrick-Cross). |
| [286](#co_tablefootnote_286_1) | Tr. 994:8-14 (Taylor-Cross); *see also* Taylor Dep. Tr. 257:2-13. |
| [287](#co_tablefootnote_287_1) | Tr. 1295:8-20 (Barrick-Direct). |
| [288](#co_tablefootnote_288_1) | [*Great Hill Equity Partners IV, LP v. SIG Growth Equity Fund I, LLLP,* 2020 WL 948513, at \*22 (Del. Ch. Feb. 27, 2020)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2050460584&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_999_22&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_999_22). |
| [289](#co_tablefootnote_289_1) | Tr. 1286:1-3 (“damage awards are given pre-tax, so that after paying the tax, the plaintiff is whole.”); *see also* JX-2462. |
| [290](#co_tablefootnote_290_1) | Prickett Pls. Pretrial Br. at 45-51. |
| [291](#co_tablefootnote_291_1) | Tr. 1286:1-3 (Barrick-Direct); *see also* Taylor Dep. Tr. 256:1-11. |
| [292](#co_tablefootnote_292_1) | Tr. 1286:1-3 (Barrick-Direct); *see also* Taylor Dep. Tr. 246:8-14. |
| [293](#co_tablefootnote_293_1) | *See* [*Lynch v. Vickers Energy Corp.,* 429 A.2d 497, 501-04 (Del. 1981)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1981120532&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_501&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_501), *overruled in non-pertinent part,* [*Weinberger v. UOP, Inc.,* 457 A.2d 701, 704 (Del. 1983)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1983112756&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_704&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_704); *see also* [*Cede & Co. v. Technicolor, Inc.,* 542 A.2d 1182, 1191 (Del. 1988)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1988079124&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_1191&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_1191) ( “[I]f it is determined that the merger should not have occurred due to ... breach of fiduciary duty, or other wrongdoing on the part of the defendants, then ... [the plaintiff] will be entitled to ... rescissory damages.”), *modified on subsequent appeal,* [634 A.2d 345, 372 (Del. 1993)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1993241544&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_372&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_372) (conditioning award of rescissory damages on “a defendant's failure to meet its burden of showing the entire fairness of the transaction”); [*Oberly v. Kirby,* 592 A.2d 445, 466 (Del. 1991)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1991110210&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_466&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_466) (ruling if transaction was not entirely fair “the stockholders may ... demand ... payment of rescissory damages”); [*Basho Techs. Holdco B, LLC v. Georgetown Basho Investors LLC,* 2018 WL 3326693, at \*49 (Del. Ch. July 6, 2018)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2044935086&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_999_49&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_999_49) (ruling “Delaware courts have awarded rescissory damages for adjudicated breaches of the duty of loyalty, particularly in cases where a fiduciary has selfishly appropriated the property of a beneficiary” and awarding a type of rescissory damages); [*Strassburger v. Earley,* 752 A.2d 557 (Del. Ch. 2000)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2000049100&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)) (awarding rescissory damages for breach of loyalty); Donald J. Wolfe & Michael A. Pittenger, *Corporate and Commerical Practice in the Del. Court of Chancery,* § 12.04[b] at 12-72 (“[T]he Delaware Supreme Court has suggested on more than one occasion that rescissory damages are the preferred remedial measure where a transaction fails to pass the test of entire fairness ...”). |
| [294](#co_tablefootnote_294_1) | [*In re OrchardEnters., Inc. S'holder Litig.,* 88 A.3d 1, 38-39 (Del. Ch. 2014)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2032907253&pubNum=0007691&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_7691_38&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_7691_38). |
| [295](#co_tablefootnote_295_1) | Tr. 1382:18-23 (Barrick-Cross). |
| [296](#co_tablefootnote_296_1) | *OrchardEnters.,* [88 A.3d at 38-39](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2032907253&pubNum=0007691&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_7691_38&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_7691_38). |
| [297](#co_tablefootnote_297_1) | [*Thorpe,* 676 A.2d at 445](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1996097915&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_445&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_445) (relying on [*Guth v. Loft, Inc.,* 5 A.2d 503, 510 (Del. 1939)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1939116068&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_510&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_510)); [*Int'l Telecharge,* 766 A.2d at 441](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2001180188&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_441&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_441). |
| [298](#co_tablefootnote_298_1) | Prickett Pls. Pretrial Br. at 48-50. |
| [299](#co_tablefootnote_299_1) | JX-3505 at 192:8-13 (Taylor-Direct) (“Now, on the other hand, it's a partnership that's selling. So there's - it's a tax-favored entity, and there's a huge tax benefit they can convey on a buyer. And that's a step-up basis in the assets which can then be amortized over 15 years.”). |
| [300](#co_tablefootnote_300_1) | JX-3516 also shows the value of the tax benefit moves proportionately with the purchase price. This is consistent with Ms. Taylor's testimony *inB&L Cellular. JX-* 3505 at 195:14-17 (Taylor-Direct). |
| [301](#co_tablefootnote_301_1) | JX-3514 at 3. |
| [302](#co_tablefootnote_302_1) | *Id.; see also* JX-3516. |
| [303](#co_tablefootnote_303_1) | Defs. OPTB at 70. |
| [304](#co_tablefootnote_304_1) | *See* [*Randall v. Loftsgaarden,* 478 U. S. 647, 660-64 (1986)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1986134015&pubNum=0000780&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_780_660&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_780_660) (concluding that under federal securities laws defrauded investors' damages should not be offset by tax-shelter benefits investors received). |
| [305](#co_tablefootnote_305_1) | Tr. 1381:4-7 (Barrick-Cross); *see also JX* 2467 at 16-18. |
| [306](#co_tablefootnote_306_1) | Tr. 1381:8-9 (Barrick-Cross). |
| [307](#co_tablefootnote_307_1) | Tr. 1381:10-21 (Barrick-Cross). |
| [308](#co_tablefootnote_308_1) | Tr. 1381:20-21; *see also* Tr. 786:9-11 (Taylor-Direct) (“AT&T was effectively underwriting, if you will, the availability of liquidity to build the next generation of technology, right.”). |
| [309](#co_tablefootnote_309_1) | Defs. OPTB at 39 (identifying “major drivers of differences”). |
| [310](#co_tablefootnote_310_1) | Tr. 1369:2-3 (“the emphasis really is on the point where you've achieved stable growth.”); *see also* Shannon P. Pratt, *Valuing a Business: The Analysis and Appraisal of Closely Held Companies* (5th ed. 2008) at 219. |
| [311](#co_tablefootnote_311_1) | *See* Prickett Pls. Pretrial Br. at 42-43 (“if [Ms. Taylor's] DCF analyses calculated terminal value after 3 years, instead of 10 years, while keeping all other assumptions the same including her 1.0-1.5% terminal growth rate, the sum of her DCF analyses for all the Partnerships is $2,464,125,000, just 1.3% more than the $2,432,445,000 she calculated using a 10 year period.”). |
| [312](#co_tablefootnote_312_1) | AT&T's claim that Mr. Musey is not a wireless industry expert is as credible as the rest of its positions. AT&T is well-aware of Mr. Musey's standing in the industry, including the fact that he was actively engaged by the Department of Justice in its antitrust review of the T-Mobile/Sprint merger at the time of his deposition. Musey Dep. Tr. 42:15-43:8. Knowing the engagement was no longer confidential at the time of trial, AT&T avoided the topic. |
| [313](#co_tablefootnote_313_1) | *See, generally,* Plaintiffs' Post-Trial Opening Br. in Support of Their Breach of Contract Claims; *see also, e.g.,* JX- 180 at 9 (requiring AT&T “to record the financial aspects of the Owner's Business, all consistent with the provisions of this Sharing Agreement.”). |
| [314](#co_tablefootnote_314_1) | Pls. PTOB at 28-35. |
| [315](#co_tablefootnote_315_1) | Pls. PTOB at 32; Tr. 406:16-407:6 (Wages-Cross) (“Q. And we'll never know how much more money the Partnerships were entitled to receive from operation of Emerging and Connected Devices if AT&T had accounted for them in accordance with the plain language of the Management and Network Sharing Agreements, will we? A. No, we won't, if we looked at it specifically that way.”). |
| [316](#co_tablefootnote_316_1) | Pls. PTOB at 32-34. |
| [317](#co_tablefootnote_317_1) | Tr. 1113:16:17 (Hall-Cross) (“We didn't do any analysis like that.”); *id.* 1127:6-1128:1. |
| [318](#co_tablefootnote_318_1) | Tr. 1110:3-1111:12 (Hall-Cross); JX-3606 (“NPA/NXX blocks can only be assigned to one general ledger company”). |
| [319](#co_tablefootnote_319_1) | Pls. PTOB at 40-41; Tr. 355:22-356:3 (Wages-Cross), 356:4-356:13 (Wages-Cross), 364:13-365:24 (Wages-Cross). |
| [320](#co_tablefootnote_320_1) | Tr. 1113:16-22 (Hall-Cross). |
| [321](#co_tablefootnote_321_1) | Pls. PTOB at 42; Tr. 346:10-347:2 (Wages-Cross). |
| [322](#co_tablefootnote_322_1) | JX-3590; JX-2468; Tr. 1181:8-16 (Musey-Direct); *see also id.* 1186:3-15. |
| [323](#co_tablefootnote_323_1) | Tr. 1157:15-16 (Musey-Direct). |
| [324](#co_tablefootnote_324_1) | Tr. 703:1-4 (Taylor-Direct). |
| [325](#co_tablefootnote_325_1) | *Supra,* Section I.B.2.f; Tr. 743:2-7 (Taylor-Direct) and 962:15-22 (Taylor-Cross). |
| [326](#co_tablefootnote_326_1) | Tr. 943:16-20 (Taylor-Cross). |
| [327](#co_tablefootnote_327_1) | JX-3590 at 75. |
| [328](#co_tablefootnote_328_1) | Tr. 1180:13-1181:1 (Musey-Direct); JX-3590 at 38. |
| [329](#co_tablefootnote_329_1) | JX-3590 at 74. |
| [330](#co_tablefootnote_330_1) | These are the very metrics that PwC guessed at based on an apples-to-oranges comparison of Partnership chum and AT&T chum. Taylor Dep. Tr. 131:4-132:1. |
| [331](#co_tablefootnote_331_1) | JX-3590 at 74-75. |
| [332](#co_tablefootnote_332_1) | Tr. 749:16-18 (Taylor-Direct). |
| [333](#co_tablefootnote_333_1) | Tr. 942:9-13 (Taylor-Cross) (“Q. I guess, Ms. Taylor, your hypothetical about the size of the slice of the pie that you are taking out of the pie, that's only true if the pie and the slice are changing in size proportionately, right? A. Yeah. That's the whole point.”). |
| [334](#co_tablefootnote_334_1) | *Supra,* Section I.B.2.f |
| [335](#co_tablefootnote_335_1) | Tr. 762:17 (Taylor-Direct). |
| [336](#co_tablefootnote_336_1) | Pls. PTOB at 41. |
| [337](#co_tablefootnote_337_1) | Tr. 756:19-757:15 (Taylor-Direct). Ms. Taylor notes that in the aggregate there is really no issue at all but notes a “swing factor in the individual models was like 18 percent, plus or minus.” It is impossible to know without reviewing her workpapers, but the swing she is referring to is more likely related to the difference in ARPU. |
| [338](#co_tablefootnote_338_1) | Tr. 1177:3-16 (Musey-Direct). |
| [339](#co_tablefootnote_339_1) | Tr. 963:2-6 (Taylor-Cross) (“The whole point of roaming is to make the partnership whole whenever somebody is in the network geographic footprint using its network; right? That's the whole point. A. Yes. That is -- that is the point.”). |
| [340](#co_tablefootnote_340_1) | Tr. 769:8-19 (Taylor-Direct). |
| [341](#co_tablefootnote_341_1) | Defs. OPTB at 51. |
| [342](#co_tablefootnote_342_1) | Tr. 1370:23-1371:22 (Barrick-Cross). |
| [343](#co_tablefootnote_343_1) | Tr. 762:17 (Taylor-Direct). |
| [344](#co_tablefootnote_344_1) | Tr. 781:17-18 (Taylor-Direct). |
| [345](#co_tablefootnote_345_1) | [*AT&T Mobility,* 2013 WL 3865099, at \*4](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2031171366&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_999_4&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_999_4). |
| [346](#co_tablefootnote_346_1) | Tr. 786:9-11 (Taylor-Direct) (“AT&T was effectively underwriting, if you will, the availability of liquidity”). |
| [347](#co_tablefootnote_347_1) | Tr. 1381:11-21 (Barrick-Cross). |
| [348](#co_tablefootnote_348_1) | JX-2463 at 96. |
| [349](#co_tablefootnote_349_1) | JX-2636 at 7. |
| [350](#co_tablefootnote_350_1) | JX-2463 at 96. |
| [351](#co_tablefootnote_351_1) | JX-2463 at 175-76. |
| [352](#co_tablefootnote_352_1) | Tr. 94:1-95:24 (Stephens-Cross); JX-3515; JX-3516. |
| [353](#co_tablefootnote_353_1) | JX-3515. |
| [354](#co_tablefootnote_354_1) | JX-3516. *See also* [*ACP Masters,* 2017 WL 3421142 at \*36](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2042330733&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_999_36&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_999_36) (adopting a perpetuity growth rate of 3.35% in same industry despite finding a risk of insolvency). |
| [355](#co_tablefootnote_355_1) | Defs. OPTB at 60. |
| [356](#co_tablefootnote_356_1) | Ms. Taylor knows this. Nowhere in her explanation of her discount rate is terminal growth rate mentioned, and visa-versa. *Compare* JX-2463 at 94 (discount rate) *with* 92 (terminal growth rate). |
| [357](#co_tablefootnote_357_1) | Defs. OPTB at 39. |
| [358](#co_tablefootnote_358_1) | JX-3604 at 3; Tr. 1292:8-1294:21. |
| [359](#co_tablefootnote_359_1) | JX-3516. |
| [360](#co_tablefootnote_360_1) | Defs. PTOB at 69. |
| [361](#co_tablefootnote_361_1) | JX-3516; ***see also*** JX-3514 at 5. |
| [362](#co_tablefootnote_362_1) | JX-616 at 19; *see also* Prickett Pls. Pretrial Br. at 52-53. |
| [363](#co_tablefootnote_363_1) | *In re Nine Sys. Corp. S'holders Litig.,* [2015 WL 2265669, at \*2 (Del. Ch. May 7, 2015)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2036274621&pubNum=0000999&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_999_2&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_999_2). |
| [364](#co_tablefootnote_364_1) | Defs. OPTB at 73 n34. |
| [365](#co_tablefootnote_365_1) | JX-687. |
| [366](#co_tablefootnote_366_1) | *In re Cellular Tel. P ‘ship Litig.,* Coordinated C.A. No. 6885-VCL (Del. Ch. Apr. 18, 2019) (Transcript). |
| [367](#co_tablefootnote_367_1) | [*Summa Corp. v. Trans WorldAirlines, Inc.,* 540 A.2d 403, 409 (Del. 1988)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1988047947&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_409&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_409) (citing [*Metro. Mut. Fire Ins. Co. v. Carmen Holding Co.,* 220 A.2d 778, 781-82 (Del. 1966)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1966115747&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_781&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_781)). |
| [368](#co_tablefootnote_368_1) | *Id.; see also* [*6 Del. C.* § 2301(d)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000005&cite=DESTT6S2301&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=SP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_5ba1000067d06) (5% above the Federal Discount rate). |
| [369](#co_tablefootnote_369_1) | *ValeantPharma.* [*Int'l v. Jerney,* 921 A.2d 732, 755-56 (Del. Ch. 2007)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2012322127&pubNum=0000162&originatingDoc=I42d03ae0acab11eba76c8dd6462f1d09&refType=RP&fi=co_pp_sp_162_755&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.RelatedInfo)#co_pp_sp_162_755). |

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