

CONFIDENTIAL MEMORANDUM
ATTORNEY WORK PRODUCT - PRIVILEGED

WILLIAMS & CARTER LLP
Mergers & Acquisitions Litigation Practice

RE: MegaCorp Acquisition of TechSolutions, Inc. - Transaction Timeline Analysis
MATTER: MegaCorp Shareholder Derivative Litigation
CASE NO.: 2024-DEL-CH-8843 (Delaware Court of Chancery)
DATE: November 30, 2024

=====

=====

EXECUTIVE SUMMARY

=====

=====

This memorandum analyzes the timeline of MegaCorp's acquisition of TechSolutions, Inc., focusing on allegations that certain board members and executives possessed material non-public information about TechSolutions' financial difficulties and used that information for personal benefit prior to deal announcement. The transaction closed on June 30, 2023, for \$2.1 billion. Shareholder plaintiffs allege breach of fiduciary duty, insider trading, and fraudulent concealment.

TRANSACTION PERIOD: January 1, 2022 - September 30, 2023
ACQUISITION PRICE: \$2.1 billion (\$45/share)
CURRENT LITIGATION: Shareholder derivative action alleging breaches of fiduciary duty
CENTRAL ALLEGATION: Board members had insider knowledge of TechSolutions' undisclosed problems, negotiated favorable terms for themselves, and failed to disclose material information to shareholders

=====

=====

PART I: KEY COMPANIES AND ENTITIES

=====

=====

ACQUIRER: MEGACORP INDUSTRIES, INC.
Founded: 1995
Business: Large publicly-traded conglomerate specializing in enterprise software and cloud services
Market Cap (pre-deal): \$45 billion
NYSE Ticker: MEGA
CEO: Robert Harrison

Board Size: 11 directors

TARGET: TECHSOLUTIONS, INC.

Founded: 2010

Business: Mid-sized software company providing customer relationship management (CRM) solutions

Market Cap (pre-deal): \$1.8 billion (est.)

NASDAQ Ticker: TECH

CEO: Jennifer Chang

Board Size: 7 directors

REGULATORY/ADVISORY ENTITIES:

- Goldman Sachs: Financial advisor to MegaCorp
- Morgan Stanley: Financial advisor to TechSolutions
- Wachtell Lipton: Legal counsel to MegaCorp
- Skadden Arps: Legal counsel to TechSolutions
- Federal Trade Commission (FTC): Antitrust review
- Securities and Exchange Commission (SEC): Securities law compliance review
- Department of Justice (DOJ): Antitrust investigation

=====

PART II: KEY INDIVIDUALS AND ROLES

=====

MEGACORP LEADERSHIP:

1. ROBERT HARRISON - CEO OF MEGACORP

Tenure: January 2018 - Present

Background: Former McKinsey consultant and tech executive. MBA from Harvard Business School. Led three previous acquisitions. Compensation heavily tied to stock performance.

Relevance: Primary deal architect. Allegations include that he learned of TechSolutions' problems through personal relationship with Chang before deal announcement, yet negotiated premium price.

2. DAVID MARTINEZ - CFO OF MEGACORP

Tenure: March 2019 - Present

Background: Former investment banker at JP Morgan. CPA with 20 years finance experience. Responsible for financial due diligence.

Relevance: Allegedly aware of TechSolutions' accounting irregularities during due diligence but failed to properly disclose to board or shareholders.

3. SARAH THOMPSON - GENERAL COUNSEL OF MEGACORP

Tenure: June 2017 - Present

Background: Corporate attorney with 25 years experience. Former partner at Cravath. Oversees all legal aspects of transactions.

Relevance: Responsible for legal due diligence and disclosure obligations. Allegedly advised Harrison that certain TechSolutions issues need not be disclosed.

MEGACORP BOARD MEMBERS (Allegedly Conflicted):

4. THOMAS BLACKWELL - MEGACORP BOARD CHAIR

Board Service: January 2015 - Present

Background: Former CEO of telecom company. Serves on 4 public company boards. Close personal friend of Harrison.

Conflict Allegations: Blackwell owned significant TechSolutions stock (acquired in 2021) and stood to profit from acquisition premium. Did not disclose this conflict when voting on deal. Made \$8.5 million profit on his TechSolutions shares.

5. MARGARET WILSON - MEGACORP BOARD MEMBER

Board Service: August 2016 - Present

Background: Private equity investor and former Silicon Valley executive. Chairs MegaCorp audit committee.

Conflict Allegations: Wilson's private equity firm (Wilson Ventures) held convertible notes in TechSolutions that became much more valuable upon acquisition announcement. Profit: \$12 million. Failed to disclose this conflict.

6. JAMES PORTER - MEGACORP BOARD MEMBER

Board Service: May 2018 - Present

Background: Technology entrepreneur who sold his company to MegaCorp in 2017. Retained board seat as part of that transaction.

Conflict Allegations: Porter served as paid consultant to TechSolutions from 2020-2022, creating divided loyalties. Did not recuse himself from acquisition vote despite this relationship.

TECHSOLUTIONS LEADERSHIP:

7. JENNIFER CHANG - CEO OF TECHSOLUTIONS

Tenure: January 2015 - June 2023 (deal close)

Post-Acquisition: Senior VP at MegaCorp (June 2023 - Present)

Background: Computer science PhD from Stanford. Founded TechSolutions' core product division. Rose to CEO in 2015.

Relevance: Allegedly knew of company's deteriorating financial condition as early as Q4 2021 but concealed problems to maximize acquisition price. Received \$45 million in acquisition proceeds plus lucrative employment contract with MegaCorp.

8. MICHAEL ANDERSON - CFO OF TECHSOLUTIONS

Tenure: March 2017 - June 2023 (deal close)

Post-Acquisition: Retired with \$15 million golden parachute
Background: Former controller at Oracle. CPA with 18 years experience in software industry.
Relevance: Central figure in alleged accounting fraud. Allegations include revenue recognition manipulation, capitalization of expenses that should have been expensed, and concealment of customer churn data. Under investigation by SEC.

9. RACHEL FOSTER - CHIEF REVENUE OFFICER OF TECHSOLUTIONS

Tenure: January 2019 - December 2022 (Resigned)
Background: Former Salesforce executive with 15 years sales leadership experience.
Relevance: Foster resigned in December 2022, three months before deal announcement, reportedly due to concerns about aggressive revenue recognition practices. Her resignation was not disclosed to MegaCorp during due diligence.

FINANCIAL ADVISORS:

10. GOLDMAN SACHS (Advising MegaCorp)

Lead Banker: Jonathan Miller, Managing Director
Role: Provided fairness opinion, valuation analysis, and deal structuring advice
Fees: \$28 million success fee
Conflict Allegations: Goldman held long positions in TechSolutions stock and profited from deal announcement. This conflict not adequately disclosed to MegaCorp board.

11. MORGAN STANLEY (Advising TechSolutions)

Lead Banker: Susan Wright, Managing Director
Role: Provided fairness opinion and marketed company to potential acquirers
Fees: \$35 million success fee
Allegations: Morgan Stanley allegedly knew of TechSolutions' accounting issues but delivered positive fairness opinion anyway to ensure deal closed and fees paid.

LEGAL ADVISORS:

12. WACHTELL LIPTON (Counsel to MegaCorp)

Lead Partner: Richard Stevens
Role: Advised on deal structure, drafted merger agreement, managed regulatory approvals
Allegations: Failed to adequately flag issues discovered during due diligence

13. SKADDEN ARPS (Counsel to TechSolutions)

Lead Partner: Linda Martinez
Role: Advised on deal structure, negotiated seller protections, managed disclosure obligations
Allegations: Advised TechSolutions executives on what could be withheld from disclosures

REGULATORY ENTITIES:

14. FEDERAL TRADE COMMISSION (FTC)

Relevant Personnel: FTC Bureau of Competition staff
Role: Antitrust review of transaction under Hart-Scott-Rodino Act
Action: Extensive second request issued, ultimately cleared deal with minor divestitures

15. SECURITIES AND EXCHANGE COMMISSION (SEC)

Relevant Personnel: SEC Division of Enforcement
Role: Review of proxy disclosures; post-deal investigation of accounting irregularities
Action: Opened investigation in October 2023; ongoing

WHISTLEBLOWERS AND KEY WITNESSES:

16. KEVIN RODRIGUEZ - FORMER TECHSOLUTIONS CONTROLLER

Employment: June 2019 - January 2023 (Resigned)
Background: CPA with 12 years experience. Reported directly to CFO Anderson.
Relevance: KEY WHISTLEBLOWER. Rodriguez resigned in January 2023 and subsequently provided information to SEC about accounting fraud. His testimony reveals CFO Anderson directed improper revenue recognition and concealment of customer cancellations.

17. AMANDA JACKSON - FORMER TECHSOLUTIONS VP OF FINANCE

Employment: March 2018 - March 2023 (Terminated)
Background: MBA with 10 years financial planning experience.
Relevance: Jackson was terminated allegedly for "performance issues" but claims it was retaliation for questioning accounting practices. Her testimony corroborates Rodriguez's allegations.

=====

PART III: DETAILED TRANSACTION TIMELINE

=====

PHASE 1: INITIAL CONTACT AND PRELIMINARY DISCUSSIONS (January 2022 - May 2022)

January 15, 2022: Initial Exploratory Contact

- Robert Harrison (MegaCorp CEO) and Jennifer Chang (TechSolutions CEO) attend same industry conference in Las Vegas
- Private dinner between Harrison and Chang
- Chang mentions TechSolutions might be open to "strategic discussions" with right partner
- No formal discussions yet, but seeds of deal planted

February 1, 2022: MegaCorp Board Strategic Planning Session

- Board discusses M&A strategy for upcoming 12-18 months
- TechSolutions identified as potential target due to complementary product lines
- Board authorizes Harrison to explore acquisition possibilities

- No specific conflicts disclosed at this meeting

March 10, 2022: Preliminary Valuation Analysis

- MegaCorp CFO Martinez conducts preliminary valuation using publicly available information
- Estimates TechSolutions worth \$35-42/share vs. trading price of \$38/share
- Analysis based on TechSolutions' publicly reported financials (later proven to be inflated)

March 25, 2022: Harrison Contacts Chang - Formal Interest

- Harrison calls Chang to express formal acquisition interest
- Chang responds positively but states company not currently for sale
- Chang agrees to "keep door open" for future discussions

April 18, 2022: TechSolutions Q1 2022 Earnings Release

- TechSolutions reports strong Q1 results: Revenue up 18% YoY, EBITDA up 22%
- Stock rises from \$38 to \$42/share on earnings beat
- UNDISCLOSED: Internal documents later show revenue included improperly recognized deals and customer churn rate was accelerating

May 5, 2022: MegaCorp Re-Engages

- Harrison calls Chang again, citing strong Q1 results as validation of strategic fit
- Proposes meeting between executive teams to explore potential synergies
- Chang agrees to preliminary meeting

May 20, 2022: First Executive Team Meeting

- Harrison, Martinez (MegaCorp CFO), and Thompson (MegaCorp GC) meet with Chang and Anderson (TechSolutions CFO)
- Discussion of strategic rationale, product integration opportunities, and preliminary financial structure
- Chang provides high-level overview of TechSolutions business
- Both parties sign mutual non-disclosure agreement (NDA)

PHASE 2: UNDISCLOSED PROBLEMS EMERGE INTERNALLY (June 2022 - September 2022)

June 1, 2022: Internal TechSolutions Finance Meeting - First Red Flags

- CFO Anderson meets with Controller Rodriguez and VP Finance Jackson
- Discusses "revenue timing challenges" - euphemism for slowing business
- Anderson instructs team to be "creative" about revenue recognition to hit Q2 targets
- Rodriguez expresses concern about ASC 606 compliance (revenue recognition standard)
- Anderson dismisses concerns, says "we need to show growth trajectory for potential acquirers"

June 15, 2022: Customer Churn Data Hidden

- Internal TechSolutions report shows customer churn rate jumped from 8% to 17% in Q2
- This data not included in materials prepared for board or external parties

- Customer success team raises concerns with Anderson
- Anderson instructs team to "focus on positive metrics" in reporting

July 1, 2022: Board Member Blackwell Purchases TechSolutions Stock

- Thomas Blackwell (MegaCorp Board Chair) purchases 75,000 shares of TechSolutions stock for \$3.2 million
- Purchase occurs through personal brokerage account
- Blackwell aware from board discussions that MegaCorp interested in acquiring TechSolutions
- Blackwell does NOT disclose this purchase to MegaCorp board or general counsel
- This purchase later generates \$8.5 million profit when acquisition announced

July 18, 2022: TechSolutions Q2 2022 Earnings Release

- TechSolutions reports continued growth: Revenue up 15% YoY
- Stock rises to \$44/share
- UNDISCLOSED: Revenue included \$12 million from deals that did not meet revenue recognition criteria
- UNDISCLOSED: Customer churn rate doubled but not disclosed to investors

August 3, 2022: Preliminary Offer from MegaCorp

- Harrison proposes to Chang a preliminary acquisition price range of \$42-47/share
- Values TechSolutions at approximately \$1.8-2.0 billion enterprise value
- Offer contingent on due diligence and board approvals
- Chang indicates price range is "in the ballpark" but wants to see upper end

August 15, 2022: Board Member Wilson's Private Equity Fund Invests

- Margaret Wilson's private equity firm (Wilson Ventures) purchases \$8 million in TechSolutions convertible notes
- Wilson sits on MegaCorp audit committee and is aware of acquisition interest
- Convertible notes structured to convert to equity upon change of control, capturing acquisition premium
- Wilson does NOT disclose this investment to MegaCorp board
- Later profit: \$12 million

September 1, 2022: TechSolutions Engagement Letter with Morgan Stanley

- TechSolutions formally engages Morgan Stanley as financial advisor
- Engagement letter includes \$35 million success fee contingent on deal closing
- This fee structure creates incentive for Morgan Stanley to support deal even if concerns arise

September 12, 2022: MegaCorp Engages Goldman Sachs

- MegaCorp formally engages Goldman Sachs as financial advisor
- Similar fee structure: \$28 million success fee
- Goldman has existing TechSolutions stock positions in proprietary trading accounts (not disclosed)

September 20, 2022: Formal Due Diligence Process Begins

- TechSolutions sets up virtual data room with company documents
- MegaCorp due diligence team begins document review
- Due diligence team includes lawyers from Wachtell Lipton and accountants from Deloitte

PHASE 3: DUE DILIGENCE PERIOD - CONCEALMENT AND CONFLICTS (October 2022 - January 2023)

October 5, 2022: Due Diligence Kick-Off Meeting

- MegaCorp team presents due diligence request list: financial statements, customer contracts, employee data, legal proceedings, etc.
- TechSolutions agrees to provide documents on rolling basis

October 15, 2022: Revenue Recognition Questions Arise

- Deloitte accountants (working for MegaCorp) identify potential revenue recognition issues in TechSolutions' financials
- Specific concern: Large deals booked as revenue when customer payment terms extended to 18-24 months (questionable under ASC 606)
- Deloitte raises questions with Anderson (TechSolutions CFO)
- Anderson provides explanation dismissing concerns as "timing differences"

October 25, 2022: MegaCorp Due Diligence Team Memo - Red Flags

- Deloitte prepares memo for MegaCorp summarizing due diligence findings
- Memo flags: (1) aggressive revenue recognition, (2) high customer churn (based on limited data available), (3) declining renewal rates
- Memo recommends further investigation before proceeding
- CFO Martinez receives memo but does not widely circulate to board

November 1, 2022: Harrison-Chang Private Dinner

- Harrison and Chang meet for dinner in San Francisco (without others present)
- Discussion of due diligence findings and how to "position" issues
- No written record of conversation (suspicious)
- Shortly after this dinner, MegaCorp backs off certain due diligence inquiries

November 10, 2022: Customer Contract Review Limited

- MegaCorp requests copies of top 50 customer contracts
- TechSolutions provides contracts but heavily redacts terms and conditions
- When MegaCorp pushes back, TechSolutions claims "customer confidentiality"
- MegaCorp accepts limited disclosure rather than walking away from deal

November 20, 2022: Goldman Sachs Preliminary Valuation

- Goldman Sachs presents preliminary valuation to MegaCorp board
- Valuation range: \$40-50/share based on publicly reported financials and limited due diligence data

- Goldman does NOT disclose its own TechSolutions stock holdings
- Board authorizes Harrison to negotiate in \$43-48/share range

December 1, 2022: TechSolutions VP of Finance Terminated

- Amanda Jackson (VP of Finance) terminated allegedly for "performance issues"
- Jackson had raised concerns about revenue recognition with CFO Anderson
- Termination prevents Jackson from being available during due diligence
- MegaCorp never informed of this termination during due diligence

December 8, 2022: Chief Revenue Officer Rachel Foster Resigns

- Rachel Foster (CRO) resigns effective December 31, 2022
- Her resignation letter (not shared with MegaCorp) cites concerns about "unsustainable business practices"
- TechSolutions tells MegaCorp that Foster resigned for "personal reasons"
- Foster's departure was a significant red flag that was concealed

December 15, 2022: Confidential Offer Submitted

- MegaCorp submits written offer: \$45/share, all cash, subject to final due diligence and approvals
- Total deal value: \$2.1 billion
- Offer includes \$45 million retention package for Chang (TechSolutions CEO) including employment agreement
- TechSolutions board meets to consider offer

December 20, 2022: TechSolutions Board Approves Sale Process

- TechSolutions board votes 7-0 to proceed with negotiations with MegaCorp
- Morgan Stanley advises board that \$45/share represents "fair value"
- Board does NOT adequately discuss or disclose accounting concerns or recent executive departures

PHASE 4: FINAL NEGOTIATIONS AND INSIDER TRADING (January 2023 - March 2023)

January 5, 2023: TechSolutions Controller Rodriguez Resigns

- Kevin Rodriguez (Controller) resigns, effective January 31, 2023
- Resignation letter states he "cannot in good conscience continue" given revenue recognition practices
- Rodriguez not made available to MegaCorp due diligence team
- TechSolutions tells MegaCorp that Rodriguez leaving for "better opportunity"

January 15, 2023: Merger Agreement Negotiations Begin

- Lawyers begin drafting definitive merger agreement
- Key terms: \$45/share cash, no collar or price adjustment, limited representations and warranties

- TechSolutions successfully negotiates extremely broad exclusions to representation regarding financial statements
- These exclusions later prevent MegaCorp from recovering damages for accounting fraud

January 20, 2023: TechSolutions Q4 2022/FY2022 Earnings Release - LAST BEFORE DEAL ANNOUNCEMENT

- TechSolutions reports FY2022 results: Revenue \$850 million (up 17% YoY), EBITDA \$180 million
- Stock remains at \$44/share
- UNDISCLOSED: Revenue includes at least \$40 million improperly recognized, customer churn accelerating
- This earnings release critical to justifying \$45/share acquisition price

January 25, 2023: Goldman Sachs Final Fairness Opinion

- Goldman Sachs delivers written fairness opinion to MegaCorp board
- Opinion states \$45/share is "fair from a financial point of view"
- Opinion based on TechSolutions' reported (inflated) financials
- Goldman's conflicts (own TechSolutions stock positions) not adequately disclosed

January 27, 2023: Morgan Stanley Fairness Opinion to TechSolutions

- Morgan Stanley delivers fairness opinion to TechSolutions board
- Opines that \$45/share is fair to TechSolutions shareholders
- Analysis based on inflated projections provided by TechSolutions management
- Morgan Stanley's \$35 million success fee creates incentive to deliver positive opinion

February 1, 2023: Suspicious Stock Trading - Week Before Deal Announcement

- Trading volume in TechSolutions stock spikes 300% above normal levels
- Stock price rises from \$44 to \$47/share on no news
- Later SEC investigation reveals several MegaCorp and TechSolutions insiders' friends/family members purchased stock during this period
- Classic pattern of insider trading ahead of M&A announcement

February 5, 2023: Board Member Porter's Undisclosed Consulting Relationship Surfaces

- During final due diligence, junior associate at Wachtell discovers that MegaCorp board member James Porter was paid consultant to TechSolutions in 2020-2022
- Porter earned \$450,000 for consulting services over 2-year period
- This conflict never disclosed to MegaCorp board before Porter voted to approve acquisition
- When raised, senior Wachtell partner (Stevens) advises conflict is not material enough to require Porter's recusal

February 10, 2023: Final MegaCorp Board Vote - Deal Approved

- MegaCorp board meets to vote on acquisition
- Board presented with final merger agreement, fairness opinion, and summary of due diligence
- Vote: 11-0 to approve transaction

- UNDISCLOSED CONFLICTS: Blackwell (owns TechSolutions stock), Wilson (PE fund owns TechSolutions convertible notes), Porter (former paid consultant)
- If these conflicts properly disclosed and conflicted directors recused, vote would be 8-0 (not unanimous)

February 12, 2023: Final TechSolutions Board Vote - Deal Approved

- TechSolutions board votes 7-0 to approve merger agreement
- Morgan Stanley presents fairness opinion
- CEO Chang and CFO Anderson assure board that financial statements are accurate (later proven false)
- Board approves without adequately investigating recent executive departures

PHASE 5: DEAL ANNOUNCEMENT AND REGULATORY REVIEW (February 2023 - June 2023)

February 15, 2023: DEAL PUBLICLY ANNOUNCED

- Pre-market press release: MegaCorp to acquire TechSolutions for \$2.1 billion (\$45/share cash)
- TechSolutions stock jumps to \$45/share (immediately)
- MegaCorp stock drops 3% on concerns about purchase price (investors think MegaCorp overpaid)
- Conference call held at 8am ET with investors and analysts

February 15, 2023: Insider Profits Realized

- Thomas Blackwell (MegaCorp Board Chair): Purchased TechSolutions stock at \$42.67 avg in July 2022, now worth \$45 = \$8.5 million profit
- Margaret Wilson's PE fund: Convertible notes convert at premium = \$12 million profit
- Various friends/family of insiders who bought stock in early February: Collective profits estimated \$15-20 million

February 16, 2023: Joint Proxy Statement/Prospectus Filed with SEC

- Both companies file preliminary proxy materials with SEC for shareholder approval
- Proxy statement discloses deal terms, fairness opinions, voting agreements
- MATERIALLY MISLEADING: Proxy fails to disclose:
 - * Blackwell's TechSolutions stock ownership
 - * Wilson's PE fund investment
 - * Porter's consulting relationship
 - * Recent executive departures at TechSolutions (Rodriguez, Jackson, Foster)
 - * Internal concerns about revenue recognition
 - * Customer churn problems

February 20, 2023: Hart-Scott-Rodino (HSR) Filing

- Both companies submit HSR filings to FTC and DOJ for antitrust clearance
- 30-day initial waiting period begins

March 1, 2023: SEC Issues Comment Letter on Proxy

- SEC Division of Corporation Finance issues comment letter requesting additional disclosures
- SEC particularly focused on fairness opinion methodology and potential conflicts of interest
- Companies provide supplemental responses but do not disclose major conflicts

March 15, 2023: TechSolutions Q1 2023 Earnings Release

- TechSolutions reports Q1 2023 results (last earnings before deal close)
- Revenue and EBITDA "in line" with expectations
- Stock remains at \$45 (deal price) - no reason for it to trade differently since cash deal

March 22, 2023: FTC Issues Second Request

- FTC issues extensive Second Request seeking detailed information about competitive effects
- This extends review timeline by months
- Companies must substantially comply before deal can close

March 30, 2023: Shareholder Lawsuits Filed

- First shareholder lawsuit filed in Delaware Chancery Court by MegaCorp shareholder
- Allegations: Breach of fiduciary duty by board members who had conflicts of interest
- Seeks to enjoin transaction or obtain monetary damages
- Lawsuit is a "strike suit" common in M&A deals but allegations have some merit given undisclosed conflicts

April 15, 2023: Second Shareholder Lawsuit Filed

- TechSolutions shareholder files lawsuit alleging proxy statement materially misleading
- Seeks to enjoin shareholder vote
- These lawsuits typically settle for modest disclosure supplements and attorney's fees

May 1, 2023: Supplemental Proxy Disclosures

- In response to shareholder litigation threats and SEC comments, companies file supplemental proxy materials
- Supplemental disclosures include SOME additional information about due diligence process
- Still fail to disclose Blackwell stock ownership, Wilson PE investment, or accounting concerns

May 10, 2023: MegaCorp Shareholder Vote

- MegaCorp shareholders vote to approve acquisition
- Vote: 78% in favor
- Many shareholders likely unaware of full extent of conflicts and accounting issues

May 12, 2023: TechSolutions Shareholder Vote

- TechSolutions shareholders vote to approve merger
- Vote: 94% in favor (not surprising since receiving \$45 cash vs. \$44 market price before announcement)

May 25, 2023: FTC Clears Transaction (with conditions)

- After extensive Second Request review, FTC clears acquisition
- Conditions: MegaCorp must divest TechSolutions' small healthcare vertical CRM product (potential overlap)
- Divestiture expected to fetch \$50 million (minimal compared to \$2.1 billion deal)

June 15, 2023: Final Regulatory Approvals Obtained

- All conditions satisfied
- Outside legal counsel delivers closing opinion letters
- Companies ready to close

June 30, 2023: TRANSACTION CLOSES

- Merger agreement effective 11:59pm ET June 30, 2023
- TechSolutions shareholders receive \$45/share in cash
- TechSolutions ceases to exist as separate public company, becomes wholly-owned subsidiary of MegaCorp
- TechSolutions delisted from NASDAQ

June 30, 2023: Executive Golden Parachutes Paid

- Jennifer Chang (CEO): \$45 million retention bonus + new employment agreement as Senior VP at MegaCorp (annual comp \$2.5 million)
- Michael Anderson (CFO): \$15 million golden parachute, retires
- Other executives receive aggregate \$25 million in retention and severance payments

PHASE 6: POST-CLOSING - PROBLEMS EMERGE (July 2023 - Present)

July 15, 2023: Integration Begins - Problems Discovered

- MegaCorp integration team begins detailed review of TechSolutions operations
- Team immediately identifies accounting irregularities that were not evident in due diligence
- Customer churn rate much worse than represented
- Revenue quality issues apparent

August 1, 2023: Internal Investigation Launched

- David Martinez (MegaCorp CFO) initiates internal investigation into TechSolutions' pre-acquisition accounting
- Deloitte engaged to conduct forensic accounting review
- Investigation discovers \$40-65 million of improperly recognized revenue in 2022-2023

August 15, 2023: MegaCorp Q2 2023 Earnings - First Post-Acquisition Results

- MegaCorp reports Q2 earnings including 2 weeks of TechSolutions results
- Announces "integration charges" and notes TechSolutions performance "below initial expectations"
- Stock drops 8% on disappointing results
- Investors begin questioning acquisition rationale

September 1, 2023: Whistleblower Kevin Rodriguez Contacts SEC

- Former TechSolutions Controller Rodriguez files whistleblower complaint with SEC
- Provides detailed information about revenue recognition fraud directed by CFO Anderson
- SEC opens investigation

September 10, 2023: Forensic Accounting Report Completed

- Deloitte completes internal investigation for MegaCorp
- Findings: TechSolutions improperly recognized \$40-65 million revenue in 2022-2023
- Customer churn rate was 22% (not 8% as represented)
- Renewal rates declining sharply in Q4 2022 and Q1 2023 (not disclosed)
- Report concludes TechSolutions was materially overvalued at \$45/share; fair value closer to \$32-35/share

September 15, 2023: MegaCorp Discloses Investigation

- MegaCorp discloses to public that it discovered accounting irregularities at acquired TechSolutions
- Announces \$150 million goodwill impairment charge
- Stock drops another 12%
- Class action securities lawsuits filed against MegaCorp alleging inadequate due diligence

September 20, 2023: Board Conflicts Finally Disclosed

- Delaware Chancery Court litigation discovers (through discovery) that:
 - * Board Chair Blackwell owned TechSolutions stock
 - * Board member Wilson's PE fund owned TechSolutions convertible notes
 - * Board member Porter had consulting relationship with TechSolutions
- None of these conflicts properly disclosed in proxy statement
- Plaintiff's attorneys amend complaints to add these allegations

October 10, 2023: SEC Investigation Expands

- SEC investigation expands from accounting fraud to insider trading
- Subpoenas issued to Blackwell, Wilson, and others who traded TechSolutions stock before announcement
- SEC also investigating whether proxy disclosures were materially false/misleading

October 25, 2023: Derivative Lawsuit Filed

- MegaCorp shareholders file derivative lawsuit (on behalf of company) against:
 - * Board members Blackwell, Wilson, Porter for breach of fiduciary duty (conflicts of interest)
 - * CEO Harrison, CFO Martinez, GC Thompson for inadequate due diligence
 - * Goldman Sachs and Morgan Stanley for providing misleading fairness opinions
- Allegations: But for defendants' breaches, MegaCorp either would not have acquired TechSolutions or would have paid much lower price
- Damages sought: \$400-600 million (difference between what MegaCorp paid and actual value)

November 15, 2023: TechSolutions CFO Anderson Invokes Fifth Amendment

- Michael Anderson (former TechSolutions CFO) invoked Fifth Amendment privilege against self-incrimination in deposition in derivative litigation
- Refusal to testify is strong evidence of wrongdoing
- Anderson represented by white-collar criminal defense attorney

December 1, 2023: MegaCorp Files Lawsuit Against TechSolutions Executives

- MegaCorp sues Jennifer Chang (former TechSolutions CEO) and Michael Anderson (former CFO) for fraud and breach of representations in merger agreement
- Seeks to recover acquisition premium paid based on false financials
- Problem: Merger agreement's limited representations and broad exclusions limit MegaCorp's recovery rights
- Aggressive negotiation by TechSolutions' counsel (Skadden) limited MegaCorp's remedies

January 15, 2024: SEC Brings Enforcement Action Against Anderson

- SEC files civil enforcement action against Michael Anderson (former TechSolutions CFO)
- Allegations: Securities fraud, books and records violations, making false statements to auditors
- Seeks disgorgement, penalties, and officer/director bar
- Anderson settles: \$2 million penalty, disgorgement of \$8 million, 5-year officer/director bar, neither admits nor denies

February 1, 2024: Delaware Derivative Litigation Proceeds

- MegaCorp files motion to dismiss derivative lawsuit
- Motion denied in significant ruling: Court finds plaintiff pled sufficient facts that conflicted directors breached fiduciary duties
- Court: "Board members' undisclosed financial interests in target company created disabling conflicts that tainted entire process"
- Case proceeds to discovery

March 10, 2024: Board Members Blackwell and Wilson Resign

- Thomas Blackwell and Margaret Wilson resign from MegaCorp board
- Resignations do not admit wrongdoing but remove them from board before damaging depositions
- MegaCorp shareholders lose confidence in remaining board members

April 15, 2024: Goldman Sachs and Morgan Stanley File Motions to Dismiss

- Both banks file motions to dismiss claiming:
 - * Fairness opinions protected by business judgment rule
 - * Relied on information provided by companies
 - * Conflicts were adequately disclosed
- These motions still pending

May 1, 2024: MegaCorp Writes Off Entire TechSolutions Acquisition

- MegaCorp takes \$1.2 billion goodwill impairment charge, writing down entire TechSolutions acquisition

- Effectively admits deal was disaster
- MegaCorp's market cap declines \$8 billion since deal announcement
- CEO Harrison faces pressure to resign

June 15, 2024: Criminal Investigations Reported

- Wall Street Journal reports DOJ opened criminal investigation into potential securities fraud and insider trading
- Grand jury subpoenas issued to TechSolutions executives, MegaCorp board members
- Investigation focuses on insider trading before deal announcement and false statements in proxy

August 1, 2024: Settlement Discussions Begin

- Parties in derivative litigation attend mediation
- MegaCorp's D&O insurance carriers involved (policies provide \$250 million coverage)
- No settlement reached but discussions ongoing

September 15, 2024: SEC Sues Additional Defendants

- SEC brings enforcement actions against:
 - * Jennifer Chang (former TechSolutions CEO): aiding and abetting Anderson's fraud
 - * Thomas Blackwell (former MegaCorp Board Chair): insider trading
- Chang settles: \$5 million penalty, 3-year officer/director bar
- Blackwell fights charges, claims stock purchase was lawful

November 30, 2024: Litigation Ongoing (Current Status)

- Derivative litigation in discovery phase
- Depositions of Harrison, Martinez, remaining board members scheduled
- Criminal investigation ongoing
- Trial potentially set for 2025

=====

=====

PART IV: LEGAL ANALYSIS AND DAMAGES

=====

=====

CAUSES OF ACTION (Derivative Lawsuit):

COUNT I: BREACH OF FIDUCIARY DUTY - DUTY OF LOYALTY

Defendants: Blackwell, Wilson, Porter (conflicted directors)

Theory: Directors had undisclosed financial interests in transaction, creating disabling conflicts

Evidence: Stock ownership, PE investment, consulting fees - all undisclosed

Delaware Standard: Directors with material financial interest in transaction must disclose and recuse themselves

Likely Outcome: Strong liability case against these directors

COUNT II: BREACH OF FIDUCIARY DUTY - DUTY OF CARE

Defendants: All directors, Harrison, Martinez, Thompson

Theory: Failed to conduct adequate due diligence and ignored red flags

Evidence: Due diligence memo flagged issues but not properly addressed; recent executive departures not investigated; aggressive revenue recognition not pursued

Delaware Standard: Gross negligence standard (difficult but not impossible to prove)

Likely Outcome: Closer question, but plaintiff has evidence of conscious disregard of red flags

COUNT III: AIDING AND ABETTING BREACH OF FIDUCIARY DUTY

Defendants: Goldman Sachs, Morgan Stanley

Theory: Banks knew of conflicts and accounting issues but provided positive fairness opinions anyway

Evidence: Goldman's own stock positions; both banks' large success fees created incentive to support deal

Likely Outcome: Harder to prove, banks have defenses, but discovery may reveal damaging evidence

DAMAGES CALCULATION:

Acquisition Premium Paid Due to Fraud: \$300-450 million

- TechSolutions acquired for \$2.1 billion (\$45/share)
- Fair value based on accurate financials: \$1.5-1.7 billion (\$32-36/share)
- Overpayment: \$400-600 million

Lost Market Capitalization: \$8 billion

- MegaCorp market cap declined \$8 billion since deal announcement
- Not all attributable to acquisition (market factors), but substantial portion is
- Difficult to quantify precisely but represents shareholder harm

Goodwill Impairment Charges: \$1.2 billion

- MegaCorp has written off \$1.2 billion in goodwill related to TechSolutions acquisition
- Direct measure of overpayment

LIKELY SETTLEMENT RANGE: \$150-300 million

- D&O insurance: \$250 million available
- Individual director contribution: \$20-50 million
- Investment bank contribution: \$30-100 million (if they settle)

TRIAL RISK ASSESSMENT:

- Plaintiff has strong case on breach of duty of loyalty (conflicts)
- Duty of care case is harder but viable given red flags ignored
- Damages are large and provable
- Settlement likely before trial given strength of plaintiff's case

=====

=====

CONCLUSION

=====

=====

The MegaCorp/TechSolutions acquisition represents a cautionary tale of conflicts of interest, inadequate due diligence, and accounting fraud. Board members with undisclosed financial interests in the target company approved a transaction at an inflated price based on materially false financial statements. The failure to properly investigate red flags and recent executive departures compounded the breach of fiduciary duty.

The case is currently in active litigation with substantial exposure for defendants. Settlement discussions ongoing but positions remain far apart. Trial likely in 2025 absent settlement.

This matter demonstrates the critical importance of:

1. Full disclosure of director conflicts
2. Rigorous due diligence even when deal seems attractive
3. Investigation of executive departures during due diligence period
4. Independent verification of target company's financial statements
5. Careful scrutiny of investment banker conflicts of interest

END OF MEMORANDUM