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Valuation Case

The Bondholders' Liquidating Trust of At Home Corporation v. AT&T Corp.

As the financial advisor to the equity security holders of At Home Corporation, Cogent Valuation was hired to (a) evaluate potential claims of At Home Corporation against AT&T, Cox Communications and Comcast, among others, focusing on the damage element of such claims, and (b) determine whether the lowest level of reasonability had been met in the proposed settlement with AT&T and the AT&T defendants, pursuant to Bankruptcy Rule 9019.

Actions and Scope of Assignment

Cogent Valuation ("CV") was retained by the Official Committee of Equity Security Holders (the "Committee") in the bankruptcy case of At Home Corporation ("At Home" or the "Company") to prepare a report (the "Report") in connection with certain actions initiated by the Bondholders' Liquidating Trust (the "BHLT" or the "Plaintiff") of At Home against AT&T Corp. and certain directors of AT&T Corp. (together, "AT&T" or the "Defendants") in Richard A. Williamson, on behalf of and as trustee for, The Bondholders' Liquidating Trust of At Home Corporation v. AT&T Corp. et al., Case No. CV 812506. This action was filed in the Superior Court of Santa Clara (the "Santa Clara Court") in November of 2002.

The BHLT was formed as a result of the Company's bankruptcy filing on September 28, 2001 in the United Stated Bankruptcy Court for the Northern District of California, San Francisco Division (the "Court"). Under the Company's Plan of Liquidation, filed on January 28, 2002 as amended, the BHLT was assigned the fiduciary duty of representing certain stakeholders in the Company, including the Class 7 minority shareholders.

In the course of the legal actions between the BHLT and AT&T, the parties retained retired California Superior Court Judge William Cahill as mediator (the "Mediator") and on April 25, 2005, the Mediator proposed a settlement (the "Settlement"). The Settlement recommended a total payment of $340 million by AT&T plus a $60 million release of funds from the bankruptcy reserve account to the BHLT as damages. The proposed Settlement amount was not sufficient to cover all of the outstanding claims and interests in the At Home bankruptcy. In particular, the Class 7 claimholders of At Home would not have received any payment from the Settlement.

The purpose of CV's analysis and Report was to determine: (a) if the Settlement lacked reasonable basis in light of the written materials that were made available to the Mediator; (b) if the materials presented to the Court are sufficient to establish the reasonableness of the Settlement; (c) which of the Plaintiff's or the Defendant's expert witnesses delivered a more accurate, compelling, and supported computation of damages; and (d) CV's opinion of reasonable damages owed by AT&T to the BHLT.

Findings of the Analyses

Through an analysis of the documents provided to the Mediator and to the Court, and based on the two expert witness depositions and accompanying exhibits, CV concluded that:

- The Court did not have sufficient information to judge the reasonableness of the Settlement.
- The Mediator did not have sufficient information to propose a reasonable Settlement.
- One expert witness for the Plaintiff, presented a demonstrably more accurate, compelling, and supported computation of damages.
- Damages to be awarded to At Home should have been at least $2.1 billion.

Valuation Analyses

CV's valuation analyses section was comprised of four sub-sections. First, CV presented the conceptual framework of a litigation valuation analysis for the Santa Clara Action, introducing the concepts of legal course mapping, probabilities, discount rates, and present value calculations.

Second, CV discussed the valuation theory applicable to intellectual property infringement as applicable to the Patent Action. Third, CV developed the theoretical framework of the solvency analysis with respect to the Preference Action.

Fourth, based on the theory of litigation valuation, intellectual property infringement, solvency analysis, and the facts of the case, CV determined: (i) whether the Court had sufficient information to determine the reasonableness of the Settlement, and (ii) whether the Mediator had sufficient information to propose a fair and reasonable Settlement.

About the Firm

Cogent Valuation is a nationally recognized firm that has provided independent valuation and financial advisory opinions in thousands of situations since 1991. Cogent Valuation utilizes proprietary research, intensive due diligence, and the experience and insights of its professionals to produce thoughtful, well-documented opinions that have consistently withstood the scrutiny of clients and their advisors, investors, regulators, and courts.

Litigation Valuation Versus Damages Calculation

The value of a litigation differs from the value of damages in that the former encompasses not only the potential damages expected to be awarded, but also the risks of losing, the legal costs involved with litigating the case, and the time a party would have to wait before damages, if any, are received. The value of a litigation is lower than that of damages since it burdens and discounts the expected award by the efforts invested in obtaining this award, including the time, risk, and costs inherent in the litigation process.

To judge the reasonableness of a settlement from the plaintiff's perspective, CV considered not only the expected amount awarded for damages in the event of a verdict in favor of the plaintiff or reached through mediation or arbitration, but also the cost and time involved, the probabilities of winning, the claims of the defendant, and the present value of these future cash flows. Said differently, the reasonableness of a settlement can only be assessed relative to the full value of the litigation.

The valuation of potential litigation proceeds is typically derived based on a review of the documents produced in the actual litigation in conjunction with discussions with litigation attorneys familiar with the litigation process. In addition, the legal expenses expected to be incurred in pursuing a lawsuit to its final determination must be assessed. Access to the subject case's litigation counsel is essential to value the case, as their input is critical with respect to the timing and length of the legal phases, the probabilities of actions by the two parties, the legal costs involved and the expected outcome. The valuation model traditionally utilized in litigation is a decision tree detailing all the courses and events that the subject legal action could have taken through the court system, the time it would have taken to bring the action to an end, the probability of each outcome, and the time value of the monetary award (if any) for each event.

Patent Infringement Valuation

The second case involving the BHLT concerned the Patent Action initiated against AT&T, with respect to a patent covering the architecture of the At Home system. To calculate an indication of damages resulting from a patent infringement, CV considered the royalty expenses that the alleged infringer should have paid the patent owner for use of the patent. Such calculation involved: (a) the determination of the alleged infringer's historical revenue base, and (b) the application of a royalty rate that could reasonably be charged for the use of the subject patent, thus deriving a representative royalty stream, and (c) the application of a discount rate to derive the net present value of the royalty streams.

Once a reasonable indication of damages was derived, CV valued the Patent Action lawsuit in the same way the Santa Clara Action was valued, i.e., based on a decision tree analysis that contemplated and mapped all of the potential outcomes of that action in the court system.

Preference Claim Valuation

The third action initiated by the BHLT against AT&T was a preference action in which the BHLT was seeking recovery of certain payments by At Home to AT&T that were considered preferential transfers under bankruptcy rules.

To value such a preference claim, it was necessary to demonstrate whether the debtor was insolvent during the period in which the disputed payments were made, and second that these payments enabled the creditors to receive more than what they would have received as payments under Chapter 7 of the U.S. Bankruptcy Code.

According to the U.S. Bankruptcy Code, insolvency is defined as a financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation, exclusive of: (i) property transferred, concealed, or removed with intent to hinder, delay, or defraud such entity's creditors; (ii) property that may be exempted from property of the estate of this title.

Reasonableness of the Settlement

Finally, CV was engaged to determine whether: (a) the Court had sufficient information to conclude the reasonableness of the Settlement and (b) the Mediator had sufficient information to propose a reasonable and fair Settlement. CV was provided with written materials only and no representation had been made to CV as to any oral communications that might have taken place between the parties and the Mediator. Therefore, CV's opinion as to the adequacy and sufficiency of the information provided to the Mediator and to the Court to determine the reasonableness of the Settlement was entirely based on the review of the written materials submitted to the Court and those presented to the Mediator.

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