

Delaware Court of Chancery Upholds Termination of Merger Agreement Based on Material Adverse Effect

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On October 1, 2018, the Delaware Court of Chancery issued its decision in *Akorn, Inc. v. Fresenius Kabi AG*, finding a buyer had validly terminated a merger agreement due to the occurrence of a material adverse effect at the target. Pursuant to an agreement and plan of merger, Fresenius Kabi AG (“Fresenius”) agreed to acquire Akorn, Inc. (“Akorn”). Between the signing of the agreement and the anticipated close of the transaction, Akorn endured significant financial losses and discovered a host of regulatory compliance issues. The Court found that the financial losses and regulatory compliance issues were sufficiently significant and sustained to support a finding of material adverse effect, allowing Fresenius to validly terminate the agreement.

Attached is the firm memorandum discussing the case.

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