Dissenters' Rights: Business Valuation Issues Post-*Pueblo* and *Szaloczi*

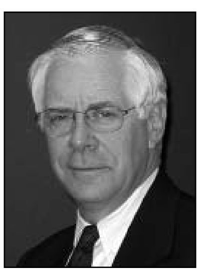
by Stephen A. Duree and Larry M. Barton

This column is sponsored by the CBA Business Law Section and focuses on business law topics, including antitrust, bankruptcy, business entities, commercial law, corporate counsel, financial institutions, franchising, nonprofit entities, securities law, and small business law.

Column Editors:

David P. Steigerwald of Sparks Willson Borges Brandt & Johnson, P.C., Colorado Springs—(719) 475-0097, dpsteig@sparkswillson.com; Rob Fogler of Kamlet Shepherd & Reichert LLP, Denver—(303) 825-4200, rfogler@ksrlaw.com; Curt Todd (Bankruptcy) of Lottner Rubin Fishman Brown & Saul P.C., Denver— (303) 292-1200, ctodd@lrflegal.com

About The Authors:



This month's article was written by Stephen A. Duree, CPA/ABV, MBA, CFE and Larry M. Barton, CPA/ABV, DABFA. Mr. Duree and Mr. Barton are accredited in Business Valuation by the American Institute of Certified Public Accountants and each has more than thirty-five years of experience in forensic accounting, business valuation, and auditing. They are principals of Duree Barton PC, Denver—(303) 293-9966.

The Colorado Supreme Court decisions in *Pueblo* and *Szaloczi* provide an appropriate backdrop for an expanded discussion of: (1) the meaning of "valued as a going concern"; (2) the quantification of the effect of "illegality or fraud" on the value of a dissenting shareholder's interest in the corporation within an appraisal proceeding; and (3) appreciation and depreciation in anticipation of the corporate action in the determination of fair value in Colorado.

This article is presented as a follow-up to "Dissenters' Rights: The Colorado Supreme Court Finally Speaks," by E. Lee Reichert and John R. Chadd.[1] That article discussed the Colorado Supreme Court's decisions in *Pueblo Bancorporation v. Lindoe, Inc.*[2] and *Szaloczi v. John R. Behrmann Revocable Trust*.[3] Collectively, *Pueblo* and *Szaloczi* provide guidance to the quantification of fair value in a dissenters' rights appraisal action. Such actions might occur when the controlling shareholder(s) cause a corporate action that fundamentally changes the nature of a minority shareholder's investment in the corporation. A list of events that could lead to a dissenters' rights appraisal action is set forth in CRS § 7-113-102.

Pueblo provides meaningful clarification and certainty with respect to the quantification of fair value in a dissenters' rights appraisal action in three respects. First, and of extreme importance to those engaged in the practice of business valuation, the corporation is to be "valued as a going concern."[4] Second, by virtue of its specific holding, marketability discounts are not to be applied at the shareholder level.[5] Third, because the Colorado Supreme Court limited its *certiorari* grant to the issue of marketability discounts, the court of appeals' finding that neither a minority discount nor a marketability discount is to be applied when valuing a dissenter's shares[6] was (with respect to the minority discount) *de facto* confirmed. In summary, *Pueblo* establishes that a dissenting minority shareholder's fair value is his or her proportionate interest in the corporation "valued as a going concern."[7]

The Court left undecided the propriety of a marketability discount applied at the corporate level.[8] The Court also recognized (and left undecided) the possibility of "extraordinary circumstances" in which a marketability discount might be appropriate at the shareholder level.[9]

Szaloczi clarifies that a dissenting shareholder can obtain only compensatory damages in an appraisal action[10] and cannot maintain a separate action for compensatory damages following the effective date of the event giving rise to the appraisal action;[11] "[t]he jurisdiction of the [appraisal action] court is plenary and exclusive."[12] The court can hear both the appraisal action and an action for equitable relief, if brought.[13]

Pueblo, in concert with *Szaloczi*, provides an appropriate backdrop for an expanded discussion of the following issues:

1) the meaning of "valued as a going concern;"
2) the quantification of the effect of "illegality or fraud" on the value of a dissenting shareholder's interest in

> *"Simply stated, 'valued as a going concern' means the highest non-speculative value that the corporation's management is capable of realizing for all shareholders, including any non-controlling, dissenting shareholders."*

the corporation within an appraisal proceeding; and

3) appreciation and depreciation in anticipation of the corporate action when determining fair value in Colorado.

Commentary from sources cited as authoritative within *Pueblo*, including the American Law Institute ("ALI"),[14] the Model Business Corporation Act ("MBCA"),[15] and Professor Barry Wertheimer[16] are included in this discussion. A summary of the underlying facts of the *Pueblo* and *Szaloczi* cases and proceedings is set forth in the article's sidebar entitled "Summary of the Underlying Cases and Proceedings."

Colorado's Dissenters' Rights Statute

Colorado's dissenters' rights statute[17] is based on the MBCA.[18] CRS § 7-113-101(4), a standard provision from the 1984 MBCA states:

> Fair value, with respect to dissenters' shares, means the value of the shares immediately before the effective date of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action except to the extent that exclusion would be inequitable.

The 2002 MBCA does not include the above-stated exclusion for "appreciation or depreciation in anticipation of the corporate action."[19]

CRS § 7-113-102(1.3), a provision enacted by the Colorado General Assembly in 1996, states:

> A shareholder is not entitled to dissent and obtain payment . . . of the fair value of the shares of any class or series of shares which either were listed on a national securities exchange registered under the federal "Securities Exchange Act of 1934," as amended, or on the national market system of the national association of securities dealers automated quotation system, or were held of record by more than two thousand shareholders. . . .

This Colorado statutory exception is similar to the market exception set forth in the 2002 MBCA.[20]

With the addition of this 1996 amendment, Colorado's dissenters' rights statute is, but for rare exceptions, applicable only to closely held entities. As described below in the section entitled "'Appreciation and Depreciation' in the Determination of Fair Value in Colorado," the fact that Colorado's statute is essentially limited to closely held, non-publicly traded corporations affects the practical significance and meaning of the phrase "excluding any appreciation or depreciation in anticipation of the corporate action" in Colorado's dissenters' rights statute.

The Corporation "Valued As a Going Concern"

As previously noted, *Pueblo* establishes that "fair value" for purposes of dissenters' rights in Colorado is the proportionate value of the entity "valued as a going concern." An informed understanding of "valued as a going concern" will answer questions that are sometimes asked, but not explicitly answered, in the statute or current Colorado case law. For example, does "fair value" in a dissenters' rights case require the exclusion of facts other than the earn-out of the entity's cash flows—for example, the effects of marketplace realties? Specifically, does "valued as a going concern" preclude or permit consideration of:

1) valuation methods that incorporate market data and/or market transactions;
2) synergy that is reflected in market transactions;
3) the dissented from transaction; and/or
4) any realized synergy that may be included in the dissented from transaction?

As explained below, all of the above factors can and should be considered in determining fair value.

Black's Law Dictionary *Definition*

The Colorado Court of Appeals adopted the *Black's Law Dictionary* ("*Black's*") definition of "going concern" in *Pueblo*, as it had in at least one prior dissenters' rights case.[21] That definition provides that a "going concern" is an "existing solvent business, which is being conducted in the usual and ordinary way for which it was organized."[22] The Colorado Supreme Court did not provide a definition of "going concern" in *Pueblo*; thus, the court of appeals' definition is applicable to the Supreme Court's *Pueblo* opinion.

Black's definition of "going concern" requires nothing more than a point-in-time evaluation of whether the business is meeting its obligations as they come due. This definition is less rigorous than that applied by auditors reporting on financial statements. When auditors evaluate the likelihood that an entity will continue as a "going concern," a requirement in nearly all financial statement audits, the auditor typically focuses on the adequacy of the entity's projected net cash flows over the next year, sometimes longer.[23] When projected net cash flows are nominally positive or are negative, the auditor might consider additional facts in the process of forming an opinion as to the entity's ability to continue as a going concern, including the company's existing cash reserves, borrowing capabilities, and longer-term prospects.

Black's definition rarely would preclude a cash-strapped company from being considered a going concern when it is obvious, in light of the dissented from transaction, that the corporation can realize value by merger with or sale of its assets to another entity. *Black's* definition of "going concern" is consistent with business valuation theory and practice, the business valuation concepts employed in typical merger and acquisition transactions, and the concepts of valuation employed in bankruptcy proceedings. The objective of "going concern" is to realize the highest and best use of the corporation's operations and assets, meaning the greatest return to all of the shareholders.

The above-described attributes of the going concern concept are consistent not only with *Black's* definition but also with the previously referenced *Pueblo* authorities and marketplace realities. The shareholders of many marginally solvent development-stage companies ("start-ups") re-

Pueblo and *Szaloczi*
Summary of the Underlying Cases and Proceedings

The* Pueblo *Case

Pueblo Bancorporation v. Lindoe, Inc. has its roots in a corporate action designed to change Pueblo Bancorporation ("Bancorp"), a Subchapter C corporation, to a Subchapter S ("Sub-S") corporation. A new Sub-S-qualified corporation was formed, into which "old" Bancorp was merged. Old Bancorp shares owned by those meeting the legal requirements for share ownership in a Sub-S corporation were exchanged for shares in the new S corporation. Old Bancorp shareholders—such as Lindoe, Inc. ("Lindoe")—that did not qualify for Sub-S share ownership were offered a cash buyout. Lindoe dissented and Bancorp filed an appraisal action.

The trial court determined Bancorp's fair value and determined the fair value of Lindoe's shares to be equal to its proportionate share of the corporation after deducting a 30 percent discount to account for Lindoe's minority status and the difficulty of marketing such shares. The Colorado Court of Appeals concurred in the trial court's determination of Bancorp's fair value, taken as a whole, but reversed with respect to the discount.[1] The Colorado Supreme Court addressed the propriety of a "marketability discount" in the determination of "fair value" under the Colorado dissenters' rights statute.

Bancorp urged the Court to adopt a rule by which marketability discounts would be applied on a case-by-case basis.[2] The Court rejected this suggestion and concluded that "[a] case-by-case interpretation of 'fair value' results in a definition that is too imprecise to be useful to the business community."[3]

The Court concluded that:

> [T]he term "fair value," for the purpose of Colorado's dissenters' rights statute, means the dissenting shareholder's proportionate interest in the corporation "valued as a going concern." The trial court must determine the value of the corporate entity and allocate the dissenting shareholder his proportionate ownership interest of that value, without applying a marketability discount "at the shareholder level."[4]

The* Szaloczi *Case

Szaloczi v. John R. Behrmann Revocable Trust is one of two companion cases resulting from the sale of assets by Preston Reynolds & Company, Inc. ("PRC"), a closely held Colorado corporation engaging in the oil and gas exploration and leasing business. The Behrmann Trust ("Behrmann") was a minority shareholder of PRC. PRC's controlling shareholders caused PRC to sell substantially all of its assets to a public company in exchange for cash, stock, and contingent compensation.

Berhmann alleged that members of the Szaloczi shareholder group acting as PRC's officers and directors had engaged in a series of self-dealing transactions (wrongdoing) in the sale of the company's assets.[5] These wrongdoing issues were addressed in a separate shareholder case that ultimately formed the basis of the *Szaloczi* opinion.[6] After Behrmann objected to and dissented from the PRC asset sale, PRC offered Behrmann a cash buyout. Behrmann rejected the offer and PRC filed an appraisal action.[7]

The underlying wrongdoing case was dismissed concurrent with the trial court's finding that Behrmann no longer was a shareholder and had no standing to pursue such claims. Behrmann appealed, and the Colorado Court of Appeals reversed the trial court's dismissal of the wrongdoing case and reinstated Berhmann's right to "pursue a claim for constructive fraud."[8] The Colorado Supreme Court granted Szaloczi's petition for *certiorari* and subsequently issued its *Szaloczi* opinion reversing the court of appeals' remand, and clarifying that "[t]he court [in an appraisal action] can hear both the appraisal action and an action for equitable relief, if brought."[9]

---

1. *Pueblo Bancorporation v. Lindoe, Inc.*, 37 P.3d 492, 496 (Colo.App. 2001).
2. *Pueblo Bancorporation v. Lindoe, Inc.*, 63 P.3d 353, 360 (Colo. 2003).
3. *Id.* at 361.
4. *Id.* at 369.
5. *Behrmann Revocable Trust v. Szaloczi*, 74 P.3d 371 (Colo.App. 2002).
6. *Szaloczi v. John R. Behrmann Revocable Trust*, 90 P.3d 835 (Colo. 2004).
7. *Preston Reynolds & Co., Inc. v. John R. Behrmann Revocable Trust*, Case Nos. 02CA2236 and 03CA0461 (Colo.App. May 27, 2004) (affirming judgment in non-published opinion).
8. *Behrmann, supra* note 5.
9. *Szaloczi, supra* note 6 at n.5.

---

alize the value of their investment by selling to or merging into a much larger corporation. With the exception of an occasional company such as Microsoft Corporation, such companies rarely realize the value of their products, assembled work forces, intellectual property, and other intangible assets by continuing as a standalone operation. Although such entities might be only marginally solvent and have limited potential as stand-alone going concern entities, their businesses typically are conducted in the usual and ordinary way for which such entities were organized and intended to function—to realize ultimate value by asset sale or merger. Simply stated, "valued as a going concern" means the highest non-speculative value that the corporation's management is capable of realizing for all shareholders, including any non-controlling, dissenting shareholders.

Business Valuation Concepts And Techniques

The MBCA, on which Colorado's dissenters' rights statute is based, states that the value of a dissenter's shares is to be determined using "customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal."[24] As described within professional literature adopted or commonly used by business valuation accreditation organizations, techniques employed in the quantification of a corporation's "going concern" value typically include a consideration of:

1) the sum of expected future net cash flows discounted at an appropriate discount rate to the date immediately prior to the dissented from transaction (the discounted cash flows method);
2) the value of the entity determined by an appropriate comparison to the value of similar businesses having securities traded in the public securities markets (the guideline company method);
3) the value of the entity—or of its assets net of liabilities—determined by appropriate comparison to the value of reported sales transactions, (the transaction method); and
4) the value of the entity under the special facts and circumstances that might have caused a specific buyer, or merger partner, to give more than otherwise would have been realized

(facts and circumstances particularly relevant when the dissented from transaction is tainted by controlling shareholder misdeeds).

"Illegality and Fraud" in The Dissented From Transaction

As summarized in the Reichert and Chadd article, *Szaloczi* makes clear that a shareholder cannot assert monetary damages for equitable claims in an action separate from a dissenters' rights appraisal action. The Colorado Supreme Court cited CRS § 7-113-301(4), which states "[t]he jurisdiction of the court is plenary and exclusive." Footnote 5 to the *Szaloczi* opinion states that "[t]he court can hear both the appraisal action and an action for equitable relief, if brought." In further clarification, the Court acknowledged Delaware's "history of addressing equitable actions in the corporate setting" and highlights findings in Delaware cases:

> Where fraud, misrepresentation, self-dealing, deliberate waste of corporate assets, or gross and palpable overreaching are involved, a dissenting shareholder may bring an equitable action. *Weinberger v. UOP, Inc.*, 457 A.2d 701, 714 (Del. 1983). In Delaware, a dissenting shareholder may receive rescissory damages in an equitable action. *Id.* In this situation, the court awards rescissory damages when a traditional form of equitable relief, like rescission, is not feasible. *Nagy v. Bistricer*, 770 A.2d 43, 56 (Del. Ch. 2000) ("Only in an equitable action can [the plaintiff] possibly obtain rescission or rescissory damages.").[25]

Thus, *Szaloczi* provides a means, if properly pled, by which dissenting shareholders can recover their proportionate interest in the damage done to a corporation by the misdeed(s) of its controlling shareholder(s). The case does not, however, address the mechanics by which recovery could be realized. Based on the concepts applied in the quantification of damages in many commercial cases, this could be accomplished in a series of steps wherein the court:

1) creates a "rescissory" asset equal to the effect of controlling shareholder misdeeds on the "fair value" of the corporation immediately before the effective date of the corporate action (this amount might account for misdeeds over an extended period of time and/or in anticipation of the corporation action);
2) determines the fair value of the corporation (exclusive of the value of the "rescissory" asset) valued as a going concern immediately before the effective date of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action except to the extent that exclusion would be inequitable (the issue of appreciation or depreciation in anticipation of the transaction is discussed below);
3) restores (reverses) the oppressive effects of the controlling shareholder misdeeds (if any) on the dissenters' proportionate interest in the corporation (particularly if the dissent is in response to the effect of special bonuses, stock options, and/or the allocation of contingent—post-transaction—consideration) by finding that the corporation's "fair value" is equal to the combined value of the amounts determined in the first and second steps; and
4) award the dissenters their proportionate share of the corporation's adjusted "fair value," as determined above in the third step, without discount.

The ALI

The ALI addresses circumstances where the dissented from transaction: (1) is with controlling shareholders; (2) is a transfer of control in which a director or principal senior executive is an interested party; or (3) involves a corporate combination to which the majority shareholder is a party. When determining fair value in these circumstances:

> [T]he court generally should give substantial weight to the highest realistic price that a willing, able, and fully informed buyer would pay for the corporation as an entirety. In determining what such a buyer would pay, the court may include a proportionate share of any gain reasonably expected to result from the combination, unless special circumstances would make such an allocation unreasonable.[26]

By this language, ALI is instructing that "fair value" is to be determined by the methods commonly applied by business valuation professionals. However, its reference to the "willing, able, and fully informed buyer" places an emphasis on the higher of: (1) the sum of the consideration conveyed in the transaction being dissented from; or (2) the highest value obtainable in the market.

Wertheimer

Within months of the publication of Professor Barry Wertheimer's *Tennessee Law Review* article referenced in *Pueblo*, Wertheimer published an expanded discussion of appraisal issues in a *Duke Law Journal* article entitled "The Shareholders' Appraisal Remedy and How Courts Determine Fair Value."[27] In this latter article, Wertheimer states:

> If the primary purpose of the appraisal remedy is to protect minority shareholders from wrongful conduct, the reported appraisal cases should evidence this purpose. In fact, the reported cases evidence a fairly consistent pattern. In cases where the dissenting shareholders achieve a favorable result, there almost invariably is evidence that the acquiring party acted inequitably or engaged in overreaching. Virtually all of these cases involve an acquisition by a controlling shareholder. On the other hand, in appraisal cases where the acquiring party achieves a favorable result, there is evidence that the acquiring party did not act inequitably. These cases typically involve a third-party, arm's-length transaction, or other indicia of fair dealing. In short, there is a strong correlation between the particular equities of each case and the result reached. Given the purpose of the appraisal remedy, this is a desirable outcome.[28]

"Appreciation and Depreciation" in the Determination of Fair Value

Colorado's dissenters' rights statue states that the fair value established for the dissenters' shares is:

> the value of the shares immediately before the effective date of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporation action except to the extent that exclusion would be inequitable.[29]

However, when this provision is considered in the context of the 1996 amendment restricting the scope of Colorado's dissenters' rights statute to securities that are closely held by not more than 2,000 holders, the question becomes: Is appreciation or depreciation in anticipation of the corporate action giving rise to dissent a meaningful possibility in Colorado?

It is common knowledge that the announcement (or rumors) of a major corporate action can trigger significant speculation in the securities of publicly held companies. However, in the absence of such public market appreciation or depreciation in anticipation of the corporate action—a near impossibility in Colorado—and/or controlling shareholder misdeeds, there are very few factors that would cause the dissented from corporate action to include anticipatory appreciation or depreciation. In the absence of controlling shareholder misdeeds that likely would result in depreciation, the corporation has the same value immediately before the transaction as it does at the moment of closing the transaction.

The ALI

The ALI, addressing circumstances where the dissented from transaction is not with controlling shareholders, is not a transfer of control in which a director or principal senior executive is an interested party, and does not involve a corporate combination to which the majority shareholder is a party, states:

> [T]he aggregate price accepted by the board of directors of the subject corporation should be presumed to represent the "fair value" of the corporation, or of the assets sold in the case of an asset sale, unless the [dissenting party] can prove otherwise by clear and convincing evidence.[30]

The MBCA

The MBCA provides guidance that is similar in concept to that provided by ALI. It states that "a court determining fair value should give great deference to the aggregate consideration accepted or approved by a disinterested board of directors for an appraisal-triggering transaction."[31] When conflicts do not exist, suggesting the controlling shareholders were not self-dealing, the sales price adopted by a company's board "should be presumed to represent the Fair Value."[32]

Wertheimer

Professor Wertheimer's *Duke Law Journal* article addresses valuation theory and practice by reference to court opinions in a number of appraisal proceedings. He found that the purpose of the appraisal remedy is more than just the creation of liquidity for a shareholder who otherwise would be trapped in an involuntarily altered investment; it also is intended to provide "fair value" for the minority shareholder's ownership interest[33] and provide a forum for the correction of inequitable conduct.[34]

Wertheimer addressed the use of "third-party" transactions, which may include the at-issue dissented from transaction, as well as representative transactions in the marketplace. Such representative transactions are of the type often considered by business valuation professionals.

Professor Wertheimer concluded that:

1. The argument that third-party sales values incorporate a control premium and therefore allocate appreciation in anticipation of the merger is flawed from an economic perspective. Valuation by reference to third-party sales is simply a method of valuing an asset (in the case of a statutory appraisal, the corporation as a whole).[35]
2. Such value determinations do not incorporate "appreciation in anticipation of the merger," but rather reflect the fair price agreement of a willing buyer and willing seller, or if representative transactions are considered, are indicative of such a fair price.[36]

Conclusion

The dissented from transaction and marketplace transaction data often are the best evidence of "fair value." When this evidence is indicative of arm's-length fair value, it should not be disregarded simply because of the remote possibility that such value includes "appreciation or depreciation in anticipation of the dissented from transaction."

Post-*Szaloczi*, dissenting shareholders have a basis for obtaining equitable relief in an appraisal action for damage caused by illegality or fraud. Rescissory damages might be applicable when a traditional form of equitable relief, such as rescission, is not feasible.

Pueblo's instruction that the corporation be valued as a going concern is of great importance to the determination of a dissenter's proportionate ownership in a corporation. The application of liquidation concepts should be reserved for those transactions where there is no better use for the assets and liquidation achieves the "highest and best use" price for the corporation's assets.

NOTES

1. Reichert and Chadd, "Dissenters' Rights: The Colorado Supreme Court Finally Speaks," 34 *The Colorado Lawyer* 53 (April 2005).
2. *Pueblo Bancorporation v. Lindoe, Inc.*, 63 P.3d 353 (Colo. 2003).
3. *Szaloczi v. John R. Behrmann Revocable Trust*, 90 P.3d 835 (Colo. 2004).
4. *Pueblo, supra* note 2 at 369.
5. *Id.*
6. *Pueblo Bancorporation v. Lindoe*, 37 P.3d 492, 496 (Colo.App. 2001).
7. *Pueblo, supra* note 2 at 369.
8. *Id.*
9. *Id.*
10. *Szaloczi, supra* note 3 at 842.
11. *Id.* at 841–42.
12. *Id.* at 839.
13. *Id.* at n.5.
14. American Law Institute ("ALI"), *Principles of Corporate Governance: Analysis and Recommendations*, Chapter 4, "The Appraisal Remedy, Standards for Determining Fair Value" § 7.22.
15. American Bar Foundation, Model Business Corporation Act 3d ("MBCA"), Chapter 13.
16. Wertheimer, "The Purpose of the Shareholder's Appraisal Remedy," 65 *Tenn. L.Rev.* 661 (1998).
17. CRS §§ 7-113-101 *et seq.*
18. The Colorado statute does not include the 1999 amendments to the MBCA and does include some Colorado-specific provisions.
19. MBCA, *supra* note 15 § 13.01(4).
20. *Id.* at § 13.02(b)(1).
21. *Pueblo, supra* note 2; *see also M Life Ins. Co. v. Sapers & Wallack Ins. Agency, Inc.*, 40 P.3d 6 (Colo.App. 2001).
22. *Pueblo, supra* note 3, *citing Black's Law Dictionary* 691 (6th ed. 1990).
23. American Institute of Certified Public Accountants ("AICPA"), AICPA Professional Standards, U.S. Auditing Standards, AU § 341, "The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern" (June 2005).
24. MBCA, *supra* note 15 § 13.01(4)(ii).
25. *Szaloczi, supra* note 3 at 841.
26. ALI, *supra* note 14 § 7.22(c).
27. Wertheimer, "The Shareholders' Appraisal Remedy and How Courts Determine Fair Value," 47 *Duke L.J.* 613 (1998).
28. *Id.* at 678 (citations omitted).
29. CRS § 7-113-101(4).
30. ALI, *supra* note 14 § 7.22(b).
31. MBCA, *supra* note 15 § 13.02(b)(1) at 13.10 (official comment).
32. *Id.*
33. Wertheimer, *supra* note 27 at 654.
34. *Id.* at 678.
35. *Id.* at 661.
36. *Id.* ■

Bradford Publishing Book Drive For Louisiana Libraries An Overwhelming Success

Thanks to the many participants of the Denver community, especially the legal community, Bradford Publishing's recent book drive for the Louisiana libraries was an overwhelming success. Approximately 30,000 books were collected for donation to the damaged and destroyed libraries.

The book drive kicked off on Fat Tuesday, February 28, at Bradford's retail location in LoDo. All those who donated at Bradford that day received complimentary coffee (donated by Common Grounds) and baked goods (donated by Entenmanns). In the spirit of the day, many donors also accepted a gift of free Mardi Gras beads.

Fat Tuesday was chosen as a salute to New Orleans. The book donations will be shipped to the Louisiana Library Foundation, which will then distribute them to the Louisiana community libraries that are most in need.