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Xerox-ACS pact elicits price query

Experts: M&A activity often spawns lawsuits
Dallas Business Journal - by Jeff Bounds Staff writer

Like all acquisitions, the announced buyout of **Affiliated Computer Services Inc.** by **Xerox Corp.** for about \$6.4 billion is aimed partly at solving problems. Like growth. And penetrating new markets.

But the pending marriage of Dallas-based ACS and Norwalk, Conn.-based Xerox could create a new issue of its own.

On Tuesday, a day after ACS' pending nuptials with Xerox were announced, the New York law firm Wolf Haldenstein Adler Freeman & Herz LLP announced that it was "investigating possible breaches of fiduciary duty" by ACS' board stemming from the proposed deal, though the release did not name a client.

Under the deal, which is expected to close in the first quarter of 2010, "Xerox may be underpaying for ACS, thus unlawfully harming ACS shareholders," according to the release from Wolf Haldenstein, whose Web site says it handles a variety of class-action suits. The release invited any owners of ACS common stock who had questions about their rights to contact the firm. ACS shareholders must still approve the deal, though a voting date has not been determined.

No litigation had been filed by Wednesday, when the Dallas Business Journal went to press, and an attorney for Wolf

Haldenstein could not be reached. Representatives of both ACS and Xerox declined to comment.

Spurred by a variety of factors, including tough foreign competition, firms that help businesses install and maintain technology are going to the altar with makers of technology products. But as is the case with any large, publicly traded company, there is a risk that the deal could provoke litigation alleging that the board of directors of the business being acquired failed to get enough money for its shareholders, experts say.

And with more technology-services companies getting snapped up, such as Plano 's Perot Systems and Electronic Data Systems Corp., there likely will be a jump in related securities class-action claims, experts say.

“Anytime you have large companies that get bought or merged, you always see an uptick in shareholder litigation,” says Trey Branham, managing partner of the Law Offices of Charles W. Branham III in Dallas . In cases where the acquisition is voluntary, he said, the board of directors is typically targeted with allegations that it sold the company on the cheap.

The goal of the suits, he said, is generally to make the acquiring company cough up more to close the deal. That is accomplished by seeking to block the merger in court or force the suitor to pay more, he said.

The possible uptick in lawsuits of this type follows a decline in all types of federal class-action securities suits this year, largely because there has been less volatility in the stock markets, according to the Stanford Law School Securities Class Action

Clearinghouse. Eighty-seven federal class-action securities suits were filed in the first half of this year, according to the latest data available from the Clearinghouse. The Clearinghouse is a data resource on federal class-action securities lawsuits run by Stanford University's Law School and by a firm called Cornerstone Research.

Some 224 such suits were filed last year, the most since 2004. The Clearinghouse, which is run through Stanford's law school, does not break out how many of those suits involved allegations that businesses did not fetch sufficiently high prices in mergers or acquisitions.

Securities suits over mergers and acquisitions can be big-money affairs.

Bill Katz, a partner at Thompson & Knight in Dallas who typically does defense work in securities cases, says plaintiffs lawyers in those cases can sometimes secure six- or seven-figure payments for attorneys' fees alone. In settlements with the companies, the businesses usually agree to make additional disclosures about the transactions in question.

In addition, in securities class-action suits alleging that a business is not receiving enough from a buyout offer, settlements can follow in five or six months, Katz said. "It's a more compressed time period," with less time devoted to "discovery," or a pretrial exchange of information, he said.

"The time frame (for settlement of the suits) is typically driven by whatever the closing schedule is for the transaction in question," along with the timing of the vote by shareholders to approve the deal, he said.

Most M&A-related class-action suits get settled, Katz said.
“There are incentives on everyone to try to settle so that the deal can get done,” he said.