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# Big Screen Damages

## Cineplex Awarded Damages of \$1.23 billion

In December 2019, Cineworld agreed to purchase all of the shares of Cineplex. In June 2020, Cineworld repudiated the deal. Litigation ensued.

In December 2021, Justice Conway of the Ontario Superior Court of Justice awarded Cineplex \$1.236 billion on account of lost synergies.

The court considered three alternative damages calculations:

1. The consideration that Cineworld would have paid to the Securityholders, less the value of the securities retained;
2. Diminution in value of Cineplex's future cash flow; and
3. Loss of synergies expected to be achieved by Cineplex.

**Alternative 1** was rejected on the basis that these are the damages of the shareholders, not Cineplex. "The only damages recoverable by Cineplex are the losses sustained by Cineplex, not its shareholders." (para 167)

**Alternative 2** was not given serious consideration.

**Alternative 3** was accepted. The court heard that the rationale for the transaction was to achieve synergies through the combination of the two businesses. Prior to agreeing to purchase Cineplex, Cineworld had engaged Ernst & Young, who estimated \$163.5 million in annualized combination benefits to Cineplex. Cineplex's damages expert calculated the present value of the lost synergies to Cineplex to be \$1.236 billion.

In situations like this, where: a) the shareholders have clearly suffered damages, and b) the courts do not allow the shareholders to recover their damages, lawyers have resorted to having the company sue. This approach can lead to very counterintuitive results.

Interestingly, the court said:

“Although the ultimate benefit of the synergies would have accrued to Cineworld as the shareholder of Cineplex ... it does not change the fact that these synergies would have been realized by the corporate entity, Cineplex.” (para 176)

Cineworld’s arguments against the decision include:

- The synergies would only have been achieved if the two businesses were combined, and as such, the benefit of the synergies would have accrued to Cineworld;
- Cineplex was not contractually entitled to the synergies;
- The present value of the synergies was not sufficiently discounted for the probability of achieving them; and
- As part of this transaction, up to \$2 billion in debt would have been placed at the Cineplex level. This would have offset the value of the synergies.

## **Appeals**

Not surprisingly, both parties have filed appeals to this decision. This is not “The End”.

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