

## MERGER ANTITRUST LAW

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Georgetown University Law Center  
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Tuesdays and Thursdays, 3:30-4:55 pm  
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### **Class 10 (September 27): Hertz/Avis Budget/Dollar Thrifty (Unit 7)**

In this third of four classes on the contested takeover battle between Hertz and Avis Budget to acquire Dollar Thrifty, we will finish the Class 9 materials and then explore the emergence of Avis Budget Group as a competing bidder for Dollar Thrifty and the ensuing bidding war.

The saga covers pages 144-309 of the reading materials. Despite the apparent length of the reading, it should be quick and easy-going. I suggest that you read these on-screen. The bulk of the materials are press releases, letters, and the occasional investor presentation, transcript of an analyst call, and excerpt from an SEC filing. Read it like a novel. Look for how Dollar Thrifty maneuvered to obtain both a higher deal price and risk-shifting provisions that provided for a higher probability of closing. At the same time, watch for how and with what success Hertz and Avis Budget each resisted. Finally, keep in mind that except for these materials, Hertz and Avis Budget knew very little about what the other was doing in the bidding.

You might wonder how Avis Budget could come into the picture with a competing bid after Hertz and Dollar Thrifty had signed (with board approval) a definitive merger agreement. The answer is that Delaware corporate law—and most corporations, including Hertz Global Holdings and Dollar Thrifty Automotive Group, are Delaware corporations—holds that iron-clad lockups of a company violate the fiduciary duties of the target company's board of directors (so-called *Revlon* duties). As a result, merger agreements contain provisions that permit the target company to terminate a signed agreement prior to the approval of the target's shareholders in order to accept a superior bid from a third party. This is called a "fiduciary out." I have a short note on this in the reading materials (pp. 148-154).

Enjoy the reading! Email me if you have any questions.

Dale