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Cash Deal Without An Auction

The general wisdom is that a Delaware corporation cannot be sold for cash unless it has satisfied Revlon duties by auctioning itself to the highest bidder or, at least, canvassing the market for potential buyers and choosing the highest price.

In Pennaco Energy, a very well -written and well -reasoned decision, dated February 5, 2001, Vice Chancellor Strine, of the Delaware Court of Chancery, held that a company may negotiate with only one buyer and enter into a tender offer -merger agreement with that buyer which had a 3% buy-out fee, and a shop provision that permitted the target to respond to rival bidders and provided about two weeks extra time between announcement of the deal and the commencement of the tender offer in order to facilitate a market check.

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