The Mergers & Acquisitions Review

Sixth Edition

Editor
Simon Robinson

Law Business Research

The Mergers & Acquisitions Review

SIXTH EDITION

Reproduced with permission from Law Business Research Ltd.

This article was first published in The Mergers & Acquisitions Review, 6th edition
(published in August 2012 – editor Simon Robinson).

For further information please email
Adam.Sargent@lbresearch.com

The Mergers & Acquisitions Review

Sixth Edition

Editor
Simon Robinson

Law Business Research Ltd

The Law Reviews

THE MERGERS AND ACQUISITIONS REVIEW

THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

THE DISPUTE RESOLUTION REVIEW

THE EMPLOYMENT LAW REVIEW

THE PUBLIC COMPETITION ENFORCEMENT REVIEW

THE BANKING REGULATION REVIEW

THE INTERNATIONAL ARBITRATION REVIEW

THE MERGER CONTROL REVIEW

THE TECHNOLOGY, MEDIA AND
TELECOMMUNICATIONS REVIEW

THE INWARD INVESTMENT AND
INTERNATIONAL TAXATION REVIEW

THE CORPORATE GOVERNANCE REVIEW

THE CORPORATE IMMIGRATION REVIEW

THE INTERNATIONAL INVESTIGATIONS REVIEW

THE PROJECTS AND CONSTRUCTION REVIEW

THE INTERNATIONAL CAPITAL MARKETS REVIEW

THE REAL ESTATE LAW REVIEW

THE PRIVATE EQUITY REVIEW

THE ENERGY REGULATION AND MARKETS REVIEW

THE INTELLECTUAL PROPERTY REVIEW

www.TheLawReviews.co.uk

PUBLISHER
Gideon Roberton

BUSINESS DEVELOPMENT MANAGER
Adam Sargent

MARKETING MANAGERS
Nick Barette, Katherine Jablonowska, Alexandra Wan

PUBLISHING ASSISTANT
Lucy Brewer

EDITORIAL ASSISTANT
Lydia Gerges

PRODUCTION MANAGER
Adam Myers

PRODUCTION EDITOR
Joanne Morley

SUBEDITOR
Caroline Rawson

EDITOR-IN-CHIEF
Callum Campbell

MANAGING DIRECTOR
Richard Davey

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
© 2012 Law Business Research Ltd
No photocopying: copyright licences do not apply.
The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of August 2012, be advised that this is a developing area.
Enquiries concerning reproduction should be sent to Law Business Research, at the address above. Enquiries concerning editorial content should be directed to the Publisher – gideon.roberton@lbresearch.com

ISBN 978-1-907606-41-0

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

AABØ-EVENSEN & CO ADVOKATFIRMA

ABDULAZIZ ALGASIM LAW FIRM
IN ASSOCIATION WITH ALLEN & OVERY LLP

ADVOKAADIBÜROO GLIMSTEDT OÜ

ÆLEX

AGUILAR CASTILLO LOVE

ANDERSON MŌRI & TOMOTSUNE

ARIAS, FÁBREGA & FÁBREGA

BEITEN BURKHARDT RECHTSANWALTSGESELLSCHAFT MBH

BERNOTAS & DOMINAS GLIMSTEDT

BOWMAN GILFILLAN INC

BOYANOV & CO

BREDIN PRAT

BRIGARD & URRUTIA ABOGADOS SA

BULBOACA & ASOCIATII SCA

CRAVATH, SWAINE & MOORE LLP

DEBEVOISE & PLIMPTON LLP

DF ADVOCATES

DITTMAR & INDRENIUS

DRYLLERAKIS & ASSOCIATES

ELİG ATTORNEYS-AT-LAW

EUBELIUS

F CASTELO BRANCO & ASSOCIADOS

FONTES, TARSO RIBEIRO ADVOGADOS

GLIMSTEDT & PARTNERS

GORRISSEN FEDERSPIEL

HARNEYS ARISTODEMOU LOIZIDES YIOLITIS LLC

HARNEY, WESTWOOD & RIEGELS

HENGELER MUELLER

JIMÉNEZ DE ARÉCHAGA, VIANA & BRAUSE

KBH KAANUUN

KEMPHOOGSTAD, S.R.O.

KIM & CHANG

KING & WOOD MALLESONS

KINSTELLAR S.R.O., ADVOKÁTNÍ KANCELÁŘ

MAKES & PARTNERS LAW FIRM

MANNHEIMER SWARTLING ADVOKATBYRÅ

MARVAL, O'FARRELL & MAIRAL

MATHESON ORMSBY PRENTICE

MNKS

MORAVČEVIĆ VOJNOVIĆ ZDRAVKOVIĆ
in cooperation with SCHÖNHERR

NAGY ÉS TRÓCSÁNYI ÜGYVÉDI IRODA

NOERR OOO

OSLER, HOSKIN & HARCOURT LLP

PIROLA PENNUTO ZEI
& ASSOCIATI

RUBIO LEGUÍA NORMAND

RUŽIČKA CSEKES, S.R.O.

S HOROWITZ & CO

SALANS

SANTAMARINA Y STETA, S.C.

SCHELLENBERG WITTMER

SCHÖNHERR RECHTSANWÄLTE GMBH

SHEARMAN & STERLING LLP

SLAUGHTER AND MAY

STAMFORD LAW CORPORATION

TORRES, PLAZ & ARAUJO

URÍA MENÉNDEZ

VAN DOORNE

VASIL KISIL & PARTNERS

WILSON SONSINI GOODRICH & ROSATI

YOUNG CONAWAY STARGATT & TAYLOR, LLP

CONTENTS

Editor's Preface xi
Simon Robinson

Chapter 1 EUROPEAN OVERVIEW 1
Simon Robinson

Chapter 2 EUROPEAN COMPETITION.. 15
Götz Drauz and Michael Rosenthal

Chapter 3 EUROPEAN PRIVATE EQUITY 22
Thomas Sacher, Steffen Schniepp and Guido Ruegenberg

Chapter 4 US ANTITRUST 33
Scott A Sher, Christopher A Williams and Bradley T Tennis

Chapter 5 US ENERGY TRANSACTIONS 46
Sarah A W Fitts

Chapter 6 SHAREHOLDERS AND BOARDS OF DIRECTORS IN US MERGERS & ACQUISITIONS 61
George A Casey and Cody L Wright

Chapter 7 ARGENTINA... 75
Ricardo W Beller and Agustina M Ranieri

Chapter 8 AUSTRALIA 90
Nicola Wakefield Evans and Lee Horan

Chapter 9 AUSTRIA 101
Christian Herbst

Chapter 10 BAHRAIN 113
Haifa Khunji, Jessica Lang Roth and Sumana Abdelkarim

Chapter 11 BELGIUM.. 129
Koen Geens and Marieke Wyckaert

Chapter 12 BRAZIL ... 137
Marcus Fontes, Max Fontes, Paulo de Tarso Ribeiro and Julia Elmôr

Chapter 13 BRITISH VIRGIN ISLANDS ... 150
Leonard A Birmingham and Simon Hudd

Chapter 14 BULGARIA ... 158
Yordan Naydenov and Nikolay Kolev

Chapter 15 CANADA ... 168
Robert Yalden, Ward Sellers and Emmanuel Pressman

Chapter 16 CAYMAN ISLANDS ... 183
Wendy L Lee

Chapter 17 COLOMBIA ... 203
Sergio Michelsen Jaramillo

Chapter 18 COSTA RICA ... 217
John Aguilar Jr and Alvaro Quesada

Chapter 19 CYPRUS ... 224
Nancy Ch Erotocritou

Chapter 20 CZECH REPUBLIC ... 229
Lukáš Ševčík, Jitka Logesová and Bohdana Pražská

Chapter 21 DENMARK ... 237
Henrik Thouber and Anders Ørjan Jensen

Chapter 22 ESTONIA ... 247
Anne Veerpalu

Chapter 23 FINLAND ... 259
Jan Ollila, Anders Carlberg and Wilhelm Eklund

Chapter 24 FRANCE ... 269
Didier Martin

Chapter 25 GERMANY ... 282
Heinrich Knepper

Chapter 26 GREECE 294
Cleomenis G Yannikas, Vassilis-Thomas G Karantounias and Sophia K Grigoriadou

Chapter 27 HONG KONG 305
Jason Webber

Chapter 28 HUNGARY 314
Péter Berethalmi and Balázs Karsai

Chapter 29 INDONESIA 322
Yozua Makes

Chapter 30 IRELAND 335
Fergus Bolster

Chapter 31 ISRAEL 343
Clifford Davis and Keith Shaw

Chapter 32 ITALY 353
Maurizio Bernardi, Roberta di Vieto and Luca Occhetta

Chapter 33 JAPAN 366
Hiroki Kodate and Kenichiro Tsuda

Chapter 34 KOREA 374
Sang Hyuk Park and Gene (Gene-Oh) Kim

Chapter 35 LATVIA 386
Baiba Vaivade and Sabīne Andzena

Chapter 36 LITHUANIA 395
Audrius Žvybas

Chapter 37 LUXEMBOURG 404
Marie-Béatrice Noble and Stéphanie Antoine

Chapter 38 MALTA 417
Jean C Farrugia and Bradley Gatt

Chapter 39 MEXICO 427
Aarón Levet V and Alberto Solís M

Chapter 40 MONTENEGRO 437
Slaven Moravčević and Jovan Barović

Chapter 41 NETHERLANDS 447
Onno Boerstra and Guus Kemperink

Chapter 42 NIGERIA 465
L Fubara Anga

Chapter 43 NORWAY 470
Ole K Aabø-Evensen

Chapter 44 PANAMA 495
Julianne Canavaggio

Chapter 45 PERU 503
Emil Ruppert and Sergio Amiel

Chapter 46 POLAND 514
Paweł Grabowski, Gabriel Olearnik and Rafał Celej

Chapter 47 PORTUGAL 525
Rodrigo Almeida Dias

Chapter 48 ROMANIA 535
Corina G Ionescu and Costin Teodorovici

Chapter 49 RUSSIA 545
Evgeny Maslennikov and Björn Paulsen

Chapter 50 SAUDI ARABIA 553
Johannes Bruski and Zeyad Khoshaim

Chapter 51 SERBIA 566
Matija Vojnović and Vojimir Kurtić

Chapter 52 SINGAPORE 576
Lee Suet-Fern and Elizabeth Kong Sau-Wai

Chapter 53 SLOVAKIA 587
Petra Starková

Chapter 54 SOUTH AFRICA 595
Ezra Davids and Ashleigh Hale

Chapter 55 SPAIN 607
Christian Hoedl and Javier Ruiz-Cámara

Chapter 56 SWEDEN 622
Biörn Riese, Eva Hägg and Cecilia Björkwall

Chapter 57 SWITZERLAND 631
Lorenzo Olgiati, Martin Weber, Jean Jacques Ah Choon, Harun Can and David Mamane

Chapter 58 TURKEY 642
Tunç Lokmanhekim and Nazlı Nil Yukaruç

Chapter 59 UKRAINE 651
Anna Babych and Artem Gryadushchyy

Chapter 60 UNITED ARAB EMIRATES 664
DK Singh and Laena Rahim

Chapter 61 UNITED KINGDOM 675
Simon Robinson

Chapter 62 UNITED STATES 701
Richard Hall and Mark Greene

Chapter 63 UNITED STATES: DELAWARE 730
Rolin P Bissell and Elena C Norman

Chapter 64 URUGUAY 743
Fernando Jiménez de Aréchaga (Jr), Ignacio Menéndez and Ignacio Mendiola

Chapter 65 VENEZUELA 753
Guillermo de la Rosa, Juan D Alfonzo, Nelson Borjas and Adriana Bello

Appendix 1 ABOUT THE AUTHORS 767

Appendix 2 CONTRIBUTING LAW FIRMS' CONTACT DETAILS ... 811

EDITOR'S PREFACE

Deal-making has remained on the agenda in the past year, although the first half of 2011 showed a stronger performance than the second half, which saw a significant fall in transactional activity. In the wake of continuing economic uncertainty, opportunities for acquisitions remain limited to companies and institutions on a stable financial footing. At the same time, corporates are beginning to focus on their core business and looking for ways to return value. Valuations remain favourably low for purchasers, and the prospect of striking a bargain makes cross-border M&A attractive for those who can afford it. While access to the loan market has remained difficult, cash-rich corporations have begun to swing the balance in their favour. Shareholder participation and a desire for control and accountability are on the rise, and an atmosphere of increased regulation, reform and austerity is building. We remain in a state of geopolitical flux, and these factors continue to complicate the global economic scenario. The period of widespread unrest in the Middle East and North Africa seems to be reaching a settled conclusion, although the situation in Syria (and possibly Mali and Sudan) is still volatile. A number of countries have seen fresh elections and a transition of leadership, including France and Russia, and a change of leadership in China is expected following the 18th National People's Congress this autumn, when the US presidential elections will also take place. The sovereign debt crisis and the ongoing uncertainty over the fate of the eurozone are further contributing to the lack of confidence in the markets.

All is not doom and gloom, however, and whereas the global picture remains difficult, there are signs of hope. The emerging markets have shown a persistent growth in outbound investment, spurred on by a desire to build a more prominent global presence and for the purpose of accessing new markets. European targets remain of interest to both US and Middle and Far-Eastern buyers. Inbound investment from the emerging markets into both Africa and Australia is on the rise, and this has strengthened activity in the energy, mining and utilities sector. The technology, media and telecoms sector has also shown signs of promise with some high-profile deals, and must be watched with interest in the coming year. There is hope that, as political and economic factors

stabilise, M&A activity will once more gather pace and momentum, and enter a new era of resurgence. We shall see.

Once again, I would like to thank the contributors for their continued support in producing this book. As you read the following chapters, one hopes the spectre of the years past will provide a basis for understanding, and the prospect of years to come will bring hope and optimism.

Simon Robinson
Slaughter and May
London
August 2012

Chapter 63

UNITED STATES: DELAWARE

Rolin P Bissell and Elena C Norman[1]

I OVERVIEW OF DELAWARE M&A LAW DEVELOPMENTS 2011/2012

Although one of the smallest of the 50 United States in both size and population, Delaware plays an outsized role in US corporation law. Delaware corporations comprise more than 60 per cent of the Fortune 500 companies and more than 50 per cent of the corporations listed on the NYSE, NASDAQ and AMEX. As one law professor put it: 'The Delaware brand is to corporate law what Google is to search engines.'[2] As a result, Delaware courts oversee much of the mergers and acquisitions litigation in the United States – and that litigation is extensive. As of 2011, a hefty 96 per cent of acquisitions worth more than $500 million were challenged in court according to Robert Daines of Stanford University and Olga Koumrian of Cornerstone. The average deal attracted 6.2 lawsuits, many filed within hours of the deal's announcement.[3]

Over the past 12 months, one can observe a proliferation of Delaware lawsuits of wildly uneven merit. Stockholders seeking to challenge transactions in Delaware have experienced both historic victories and stinging losses. At one end of the spectrum lies the $1.263 billion damage award in *Southern Peru Copper*[4] – the largest award in Delaware history. The *Southern Peru Copper* decision underscores the importance of addressing and sterilising conflicts of interest effectively through vigorous and empowered special committees and other conflict-mitigation procedures. At the other end of the spectrum,

1 Rolin P Bissell and Elena C Norman are partners at Young Conaway Stargatt & Taylor, LLP.

2 Simmons, Omari Scott, 'Branding the Small Wonder: Delaware's Dominance and the Market for Corporate Law'. 42 *University of Richmond Law Review* 1129 (May 2008).

3 Cornerstone Research, 'Recent Developments in Shareholder Litigation involving Mergers and Acquisitions' (April 2012).

4 *In re Southern Peru Copper Corp S'holder Deriv Litig* ('*Southern Peru Copper*'), 30 A.3d 60 (Del. Ch. 14 October 2011).

Delaware courts have been highly sceptical of the merits of and motives behind many of the stockholder suits challenging transactions.[5] In particular, the courts have repeatedly criticised weak claims leading to 'disclosure-only' settlements – settlements in which the stockholders receive additional disclosure about a transaction in advance of the stockholder vote to approve the transaction and the stockholders' attorneys seek a fee award based on the arguable benefit the incremental disclosures created. In several instances, the courts have refused to approve disclosure-only settlements and award attorneys' fees, rebuking stockholders' counsel both for pursuing weak claims and for their lackadaisical efforts on behalf of the class.

Overall, cases over the past 12 months demonstrate that the Delaware courts remain ready to engage in a searching inquiry concerning M&A transactions that are allegedly tainted with serious conflicts of interest. At the same time, the Delaware courts are actively discouraging stockholders from bringing weak claims that merely seek to delay closing of an M&A transaction so that non-material details of the transaction can be disclosed.

II GENERAL INTRODUCTION TO THE FRAMEWORK AND SOURCES OF DELAWARE M&A LAW

The framework of Delaware law related to mergers and acquisitions has two main sources – state statutes and judicial decisions, primarily issued by the Delaware Court of Chancery (a court that has unmatched experience and expertise in resolving corporate disputes) and the Delaware Supreme Court. The Delaware General Corporation Law ('the DGCL') is a broad enabling statute that governs the formation and internal affairs of Delaware corporations. The statutory framework for director and stockholder approval of mergers appears in Section 251 of the DGCL.

Legal challenges to M&A transactions under Delaware law come in the form of private lawsuits by hostile bidders or, more often, by stockholders, individually, on behalf of a class of similarly situated stockholders, or derivatively on behalf of the corporation. Over the last century, the Delaware courts have promulgated an extensive body of decisional law pertaining to the obligations that directors, controlling stockholders and corporations owe to stockholders in connection with M&A transactions. Although this decisional law often addresses interpretation and application of the statutory provisions of the DGCL, it even more frequently concerns application of judge-made concepts of fiduciary duty and other equitable principles.

At their core, Delaware fiduciary duty cases are based on judicial interpretation of the duty of care (a director's obligation to act with due care and on an informed basis in decision making) and the duty of loyalty (a director's obligation to refrain from self-dealing and act in the corporation's best interest). The complex factual context of M&A

---

5 Vice Chancellor J Travis Laster of Delaware's Court of Chancery has stated: 'I don't think for a moment that 90 per cent – or based on recent numbers, 95 per cent – of deals are the result of a breach of fiduciary duty.' *Stourbridge Investments LLC v. Bersoff*, C.A. No. 7300-VCL (Del. Ch. 13 March 2012).

transactions and the sheer number of decisions have resulted in the application of these two basic fiduciary duties in a wide variety of ways. It is possible to discern four standards of review the Delaware courts are most apt to apply in assessing a legal challenge to an M&A transaction:

First is the business judgement rule, which, if applicable, means the courts will give deference to the business judgement of a corporation's directors, typically causing the legal challenge to the M&A transaction to fail.

Second, in transactions between an interested party and a corporation – for example, a controlling stockholder attempting to take a corporation private through a freeze-out transaction – the entire fairness doctrine applies. Under the entire fairness doctrine, the courts will look more closely to determine both whether the transaction was the result of fair dealing and whether it was at a fair price. The burden of demonstrating that the transaction was fair may shift from the defendant to the plaintiff based on circumstances of the transaction, such as whether defendants employed safeguards to protect minority interests in the challenged transaction.

Third, when a corporation has embarked on a transaction that has made a change of control inevitable (whether on its own initiative or in response to an unsolicited offer), the board must seek to get 'the best price reasonably available' for the stockholders under the *Revlon* [6] line of cases. In general, Delaware corporations are under no obligation to sell themselves and are free to 'just say no' to unwanted suitors. But under *Revlon*, once a change of control becomes inevitable, the directors are transformed into auctioneers of the corporation.

Fourth, when a target responds to a proposed M&A transaction, particularly a hostile one, courts review defensive maneouvres the target has employed to see whether those defensive maneouvres are both reasonable and proportionate responses to a reasonably perceived threat to corporate policy under the *Unocal* [7] line of cases. Defensive maneouvres, such as the poison pill and deal protection measures to lock up a deal (for example, termination fees, superior proposal provisions, and voting covenants found in merger agreements), are typically reviewed under *Unocal*.[8] With this overview in mind, we turn to the developments of the past year.

6 *Revlon Inc v. MacAndrews & Forbes Holdings Inc*, 506 A.2d 173 (Del. 1986).

7 *Unocal v. Mesa Petroleum*, 493 A.2d 946 (Del. 1985).

8 In addition, defensive and other actions in response to a proposed transaction that interfere with the stockholder franchise must have a compelling justification under *Blasius Industries Inc v. Atlas Corp*, 564 A.2d 651 (Del. Ch. 1988). Over the past several years, Delaware courts have questioned the analytic force of *Blasius* and have suggested that issues arising out of directors' actions affecting the stockholder franchise can be properly analysed under *Unocal*. See, e.g., *Mercier v. Inter-Tel (Delaware) Inc*, 929 A.2d 786 (Del. Ch. 2007). There have been no significant developments in the *Blasius* doctrine during the past four years.

III CONFLICT TRANSACTIONS AND CONFLICTED ADVISERS

Over the past several months, Delaware courts have given exacting attention to their review of transactions that involved claims of conflict of interest. Conflict transactions are not protected by the business judgement rule. As a result, stockholder lawsuits that convincingly plead that the transaction is tainted by a conflict can usually survive a motion to dismiss, and often proceed to discovery and trial on the merits. When conflict transactions proceeded to trial during the past year, they resulted in very different outcomes, from the damages awarded in *Southern Peru Copper* and *Hazelett Strip-Casting*,[9] to a finding that the parties to the transaction took effective steps to address and sterilise the conflict, thus making the transaction entirely fair, as in *Hallmark* and *Hammons*.[10] In addition, 2011 and early 2012 saw a number of decisions in which the courts criticised a board's advisers for having conflicts and therefore tainting the transaction.

i Board and controlling stockholder conflicts

Pre-trial decisions involving board and controlling stockholder conflicts

Over the past year, multiple pre-trial decisions involving board conflicts have demonstrated that conflicted transaction processes receive little deference in the Delaware courts. Among these cases were those involving the classic scenario of controlling stockholders misusing their power to pursue their preferred course of action at the expense of the non-controlling stockholders. *Frank* and *Encite* [11] are two examples of such cases. *Frank* involved a challenge to a third-party merger in which an alleged control group of American Surgical Holdings Inc sold its shares to Great Point Partners, I LP on the same terms as the public stockholders, but also received a minority interest in the acquiring entity and employment agreements with the surviving entity. The stockholders asserted claims against the board of American Surgical and the alleged 'control group', which included the chairman of the board (who was also the CEO), a director who was the COO and two non-director officers. The control group collectively held nearly 72 per cent of America Surgical's common stock. The court found that when controlling stockholders are sellers in a company but receive a material interest in the acquiring entity and employment contracts with the surviving entity, the merger is subject to the entire fairness standard unless the merger was recommended by a disinterested and independent special committee and was otherwise subject to 'robust procedural protections' such as approval by a non-waivable vote of a majority of all minority stockholders. Although the board had created a 'special committee' of two independent directors to negotiate the terms and conditions of any potential transaction, the transaction was not otherwise

9 *Reis v. Hazelett Strip-Casting Corp*, 28 A.3d 442 (Del. Ch. 2011).

10 *S Muoio & Co LLC v. Hallmark Entm't Invs Co*, 2011 Del. Ch. LEXIS 43 (Del. Ch. 9 March 2011), aff'd, 2011 Del. LEXIS 670 (Del. 20 December 2011); *In re John Q Hammons Hotels Inc S'holder Litig*, 2011 Del. Ch. LEXIS 1 (Del. Ch. 14 January 2011), aff'd sub nom, *Lemon Bay Partners v. Hammons*, 27 A.3d 551 (Del. 2011).

11 *Frank v. Elgamal*, 2012 Del. Ch. LEXIS 62 (Del. Ch. 30 March 2012); *Encite LLC v. Soni*, 2011 Del. Ch. LEXIS 177 (Del. Ch. 28 November 2011).

subject to 'robust procedural protections'. Accordingly, the entire fairness standard applied, and the motion to dismiss was denied.

In *Encite*, the court denied cross-motions for summary judgment because there was evidence that a controller group's attempted self-dealing impaired the value that the controlled company could obtain in a sale of all its assets. IFCT was a start-up company that lacked sufficient capital to develop its fuel-cell technology. Sale of all of IFCT's assets was the only way to avoid bankruptcy and obtain a return for the investors. In order to finance an auction, the directors appointed by IFCT's senior preferred investors (who controlled IFCT at the time) caused IFCT to issue notes to the controllers on terms that were not favorable to IFCT, and gave the controllers additional control over the auction process. The resulting auction process was flawed in that IFCT's controllers and founder improperly used information obtained about bids submitted in the auction process. When the auction process collapsed, IFCT was put into bankruptcy, pursuant to which the founder acquired all of IFCT's assets. The court applied the entire fairness standard of review and held that there was sufficient evidence in the record to proceed to trial on the issues of whether the controllers had allegedly used their control both to cause IFCT to issue notes to them on terms that were not entirely fair and to ignore competing bidders in the auction process.

Over the past year, the entire fairness standard was also used to review transactions involving boards with a majority of disinterested directors. In *Answers* and *InfoGROUP*,[12] a majority of the directors was not interested in the transaction. But because Answers' non-interested directors acted in bad faith, and InfoGROUP's non-interested directors were intimidated by a conflicted director with significant stockholdings, entire fairness review was triggered, and motions to dismiss were denied.

In *Answers*, the court denied a motion to dismiss a challenge to a third-party merger between Answers Corp and Summit Partners LP, based on allegations that three of the seven directors were conflicted and the other four directors acted in bad faith. The chairman and CEO of Answers was interested in the transaction because Answers' largest shareholder, Red Point Ventures (which owned 30 per cent of the stock), had threatened to terminate his employment if he did not sell the company. Two other directors, who were partners in Red Point, were interested in the merger because Red Point sought to monetise its investment in Answers and selling the entire company was the only practical means of doing so. As to Answers' four independent directors, the court found that there were sufficient allegations to provide a challenge to their good faith such that their motion to dismiss the complaint was denied. In particular, there were allegations that they had conducted a flawed sales process by providing non-public information about Answers' improving performance to Summit Partners, while failing to make such information public before the merger agreement was executed. There were also allegations that the execution of the merger agreement was rushed so it could be signed

12 *In re Answers Corp S'holders Litig*, 2011 Del. Ch. LEXIS 59 (Del. Ch. 11 April 2012); *New Jersey Carpenters Pension Fund v. InfoGROUP Inc*, 2011 Del. Ch. LEXIS 147 (Del. Ch. 30 September 2011) (revised 6 October 2011).

and announced before Answers' public stockholders became aware of the company's improving financials.

In *InfoGROUP*, the court denied a motion to dismiss a challenge to a completed merger on the basis of allegations that (1) a member of the board was interested in the merger because of his need for liquidity, and (2) the interested board member had threatened and intimidated the other members of the board to such a degree that they lacked independence. Vinod Gupta was a member of the board of InfoGROUP and owned 37 per cent of the company's common stock. Gupta also carried millions of dollars of debt (much of it owed to the company) for legal settlements and loans taken out to buy company stock.

Without the board's approval, Gupta issued a press release recommending that InfoGROUP explore strategic alternatives including a possible sale of the company. InfoGROUP issued its own press release stating that market conditions would make it difficult to obtain a good price and the board was confident in the company's current plan. In response, Gupta began attempting to 'persuade' the board to sell the company by threatening board members with lawsuits, claiming to uncover evidence of fraud that would result in personal liability for board members, being disruptive at board meetings, and denigrating and calling for the termination of InfoGROUP's management, including some board members.

In response to Gupta's pressure, the board created an M&A committee and proceeded with a sales process despite the advice of its financial adviser. The sales process was marked by significant deficiencies, including providing preferential access to data and other information to bidders Gupta favoured, and failing to solicit additional bids from another interested bidder that had earlier indicated it might be willing to raise its bid.

The court found that Gupta had a material interest in the merger. Even though Gupta would receive the same consideration per share as other stockholders, the liquidity offered to Gupta by the merger ($100 million in cash) was a benefit unique to Gupta because other stockholders had smaller and already liquid positions. The court also found that although board members were not financially dependent on Gupta, it was 'reasonable to infer that Gupta dominated the [board defendants] through a pattern of threats and intimidating them, thus rendering them non-independent for purposes of voting on the merger'. The court concluded that entire fairness review was appropriate.

In the *Delphi Financial* case,[13] the court reviewed a conflict transaction in the context of plaintiffs' application for a preliminary injunction. There, the court ultimately denied the motion to enjoin an uncoerced and fully informed 'majority of the minority' stockholder vote on a third-party merger, based on the lack of irreparable harm and a balancing of the equities. The court nevertheless determined that plaintiffs had established a reasonable probability of proving that the target's controlling stockholder violated duties to the target's stockholders in negotiating for disparate and higher merger consideration, and agreeing to support the merger only if he received it.

13 *In re Delphi Financial Group S'holder Litig*, 2012 Del. Ch. LEXIS 45 (Del. Ch. 6 March 2012).

In that case, Tokio Marine Holdings Inc made an offer to acquire Delphi Financial Group Inc in an all-cash, third-party merger. Robert Rosenkranz was the founder, chairman and CEO of Delphi. Delphi had two classes of stock. Class A, held by the public, had one vote per share. Class B, held by Rosenkranz, had 10 votes per share, representing 49.9 per cent of the voting power. The certificate of incorporation provided that the class B stock was convertible into class A stock upon the sale of the company and would receive the same consideration in the sale as the class A stock. Rosenkranz advised the Delphi board that he would not vote for a sale at $45 per share but was willing to vote for a merger that provided greater consideration for his class B shares. Tokio Marine agreed to pay $46 per share. Delphi then informed Tokio Marine that the aggregate amount of the consideration should be allocated $53.875 per share for class B and $44.875 per share for class A. The merger was conditioned upon a majority of the publicly held class A shares being voted in favor of the merger and in favor of an amendment to the certificate of incorporation allowing the class B shares to receive different merger consideration than the class A shares.

The court found that plaintiffs had purchased Delphi's stock with the understanding that its charter structured the corporation in a way that denied Rosenkranz a control premium, and that Rosenkranz nevertheless extracted a control premium from the sale of the class A shares. While it found a reasonable likelihood that plaintiffs could establish that Rosenkranz breached his fiduciary duties, it denied the application for an injunction. It found that plaintiffs' claim, if successful, could be remedied by a judgment requiring Rosenkranz to disgorge to the class A public stockholders the excess consideration he received, including any post-closing benefits he received from Tokio Marine in connection with contracts between Delphi and Rosenkranz's affiliates. Moreover, full disclosure had been made to the stockholders in connection with the merger vote, including disclosure of the process leading to the merger 'warts and all.' The merger price was a 76 per cent premium over Delphi's market price the day before the merger was announced. The stockholder vote would permit 'the stockholders to decide whether they wish to go forward with the Merger despite the imperfections of the process leading to its formulation'. The court concluded that enjoining the merger would risk losing the merger completely or causing the price to be reduced.

Post-trial decisions involving board and controlling stockholder conflicts

Several post-trial Delaware decisions over the past year, including *Southern Peru Copper* and *Hazelett Strip-Casting*, show how high the cost of running a conflicted process can be. In *Southern Peru Copper*, the court found that the board of Southern Peru Copper Corporation, a NYSE-listed mining company, breached its duty of loyalty in connection with a transaction with its controlling stockholder, Grupo Mexico SAB de CV, that was found to be unfair. Southern Peru had acquired Grupo Mexico's 99.15 per cent ownership interest in Minera, a Mexican mining company, for 67.2 million shares of Southern Peru stock, valued at $3.672 billion as of the merger date.

Because Grupo Mexico, the controlling stockholder, stood on both sides of the transaction, the entire fairness standard applied. Defendants argued that the burden of showing unfairness should be shifted to plaintiffs because the transaction was negotiated by a special committee composed of independent directors who selected independent advisers and had the ability to reject the transaction. The court concluded that the

defendants were not entitled to shift the burden of persuasion to plaintiffs because the special committee, though independent, was ineffective. The special committee had failed to maximise or understand its mandate to get the best deal for Southern Peru's minority shareholders, and never explored other options. The court reasoned that the special committee never suggested alternative transactions because it was of the mindset that it had one option: evaluate controller Grupo Mexico's offer to sell Minera to Southern Peru in an all-stock transaction. Even though Grupo Mexico's board had the practical ability to veto any alternative transaction the special committee might propose, the court found that the special committee's failure to explore alternatives 'took off the table other options that would have generated a real market check and also deprived the special committee of negotiating leverage to extract better terms'.

Not only was the special committee ineffective in negotiation, it and its financial advisers employed a relative-valuation approach that considerably inflated the value of Minera while discounting Southern Peru's market price. The court noted that it appeared the financial adviser worked to rationalize what its client viewed as the only option available to it due to its 'controlled mindset'. Ultimately, the court awarded $1.263 billion in damages plus non-compound interest.

In *Hazelett Strip-Casting*, the court found that a controlling stockholder's use of a reverse stock split to freeze out minority stockholders was unfair to the minority under the entire fairness standard. Hazelett Strip-Casting Corp was a small business owned for almost 40 years by the founder's two sons, Bill and Dick Hazelett, who owned 69.57 per cent and 30.43 per cent of the company respectively. In 1994, Bill contributed all of his shares to a limited partnership that he controlled. In 2002, Dick died and bequeathed all of his shares to 169 individuals.

Bill and his son opposed the bequest, and Hazelett offered to purchase Dick's estate's shares for $1,500 per share, a price unilaterally set by Bill without any valuation analysis. In making the offer, Hazelett initially indicated that, if rejected by the estate, the company might offer to purchase the shares from the individual legatees at a price not more than $990 per share. The co-executors of Bill's estate rejected the offer.

Subsequently, the company's board of directors composed of Bill, Bill's son, and three long-time company employees, approved a reverse stock split and recommended it to the stockholders. In the reverse split, every outstanding share would become a 1/400 fractional interest. Following the split, Bill's limited partnership would hold two shares, and the estate would hold 350/400 of a share. The board failed to set a price for the split but resolved 'promptly following the corporation's receipt of a stock valuation study' to 'pay in cash the fair value of such fraction of a share'. At a special meeting of stockholders, at which only Bill's limited partnership was present, the reverse split was approved. Shortly after, in order to freeze out the holders of Dick's estate's shares, the board voted to amend Hazelett's charter to preclude the outstanding fractions of a share. Four months after the board approved the split it received a valuation setting the price for a fractional interest at $1,595.17. The co-executor of the estate filed suit challenging the validity of the reverse split.

The court found that when a controlling stockholder uses a reverse split to freeze out minority stockholders without any procedural protections, the transaction will be reviewed for entire fairness with the burden of proof on the defendant board members. Under such circumstances, the court observed that a reverse split was the functional

equivalent of a cash-out merger. Bill's limited partnership effectively controlled approximately 70 per cent of Hazelett. In addition, the board members were beholden to Bill. The court concluded '[t]here was no dealing in this case that could be called "fair"'. The court noted that, among other things, the company threatened that if the $1,500 per share offer was refused, the minority would never receive dividends and the company could later offer selected minority stockholders the substantially reduced price of $990 per share. The court held that defendants failed to demonstrate that they arrived at a fair price for the minority because defendants did not attempt to determine the fair price of the shares as of the actual time of the reverse split in 2008. Instead, defendants left in place the price from a valuation as of 2005.

The court concluded that the cashed-out shareholders were entitled to receive the fair value of what had been taken from them. They were not entitled to an additional damages award, however, because defendants had not set out to extract value rapaciously from the minority, nor did they freeze out the minority before Hazelett achieved the future value of opportunities. Employing the capitalised earnings and book value approaches advanced by the parties, the court found that the fair value of the fractional interests was $3,980 per share, adding up to fair value award of $1,313,267, plus interest (less an offset for amounts that had already been paid).

Notwithstanding the foregoing cases, the application of the entire fairness standard of review to a conflict transaction will not necessarily lead to a finding of liability or damages. This is demonstrated by the *Hallmark* and *Hammons* decisions. In *Hallmark*, the court found, after trial, that a recapitalisation was entirely fair. Plaintiff stockholders sought rescission of the recapitalisation of Crown Media Holdings Inc, which they claimed was 'orchestrated' by Crown's controlling stockholder and primary debt holder, Hallmark, and was consummated at an unfair price that drastically undervalued Crown. At the time the recapitalisation was agreed upon, 'Crown was saddled with debt; it was essentially insolvent, seeking another extension of the Hallmark debt waiver, and faced a real threat of bankruptcy'. Plaintiffs contended that Hallmark dominated the negotiations, that the special committee created to consider the transaction was ineffective, and that the value of the company should have been determined using a discounted cash flow analysis. The parties agreed that entire fairness was the governing standard of review.

The court concluded following trial that the recapitalisation was entirely fair, rejecting plaintiffs' argument that 'Hallmark had devised an elaborate scheme to unfairly time the Recapitalization' by burdening Crown with debt and then forcing recapitalisation when Crown could not meet its obligations. The court found that plaintiffs' timing argument depended upon a $3 billion valuation that could not 'explain why no potential buyer or valuation expert (other than [plaintiffs' expert]) ever perceived Crown's value to exceed its debt'. The court found that Crown could not meet its debt obligations and 'had no real options other than a recapitalization or bankruptcy'.

The court further determined that the special committee was 'thorough, effective, and independent'. It operated under a mandate that it interpreted broadly, with the power to reject Hallmark's proposal, and with the guidance of independent legal and financial advisors. The special committee 'met formally twenty-nine times over a period of nine months', and the 'legal advisers were present at each one' of the meetings. Ultimately, the court concluded that 'the [special committee] got a great result for Crown's minority stockholders', and that the recapitalisation was entirely fair on its face.

In *Hammons*, the court applied the entire fairness standard to a merger and, following trial, found entirely fair the acquisition of John Q Hammons Hotels, Inc. by Jonathan Eilian, a third party with no prior relationship to the company or its controlling stockholder, John Q Hammons. Pursuant to the merger, which was negotiated by a special committee, the common stockholders received $24 per share in cash. In exchange for his class B stock and interest in a limited partnership controlled by Hammons Hotels, Mr Hammons received (1) a small equity interest in the surviving limited partnership, (2) a preferred interest with a large liquidation preference, and (3) various other contractual rights and obligations.

Plaintiffs challenged this merger, arguing, *inter alia*, that Hammons breached his fiduciary duties as a controlling stockholder by negotiating benefits for himself that were not shared with the minority stockholders, and that the company's directors breached their fiduciary duties by allowing the merger to be negotiated through an allegedly deficient process and by voting to approve the merger.

The court rejected the challenge, concluding that the transaction was the product of a fair process and at a fair price. First, the special committee that negotiated and approved the transaction satisfied the threshold requirements for independence. Second, members of the special committee were highly qualified and had extensive experience in the hotel industry. Third, members of the special committee understood their authority and duty to reject any offer that was not fair to the unaffiliated stockholders, as deonstrated by their rejection of the initial offer. Fourth, evidence at trial demonstrated that the members of the special committee were thorough, deliberate and negotiated at arm's length with two potential acquirers over a nine-month period to achieve the best deal available for the minority stockholders. The court concluded that the per-share merger price was also fair, based on a review of the valuation methodologies offered by the parties.

ii Adviser conflicts

Recent Court of Chancery decisions such as *Del Monte*[14] and *El Paso*[15] demonstrate how a board can breach its fiduciary duties by hiring a conflicted investment banker and then accepting the banker's advice without question.

In *Del Monte*, the Del Monte Corporation's investment bank, Barclays, undermined a sale process that it was running for Del Monte by getting the company's board to approve, without much deliberation, two bidders to 'team', despite anti-teaming provisions to which the bidders had previously agreed. The teaming foreclosed a potential bidding war between two potential acquirers that had been the two highest bidders in an early bidding process. In addition, the Del Monte board permitted Barclays to provide buy-side financing to one of the bidders, which allowed Barclays to earn an additional $24 million in fees in the transaction. The conflict created by Barclays' participating on the buy side caused Del Monte to pay $3 million in connection with obtaining a second fairness opinion. Moreover, despite Barclays' buy-side involvement, which raised questions concerning how vigorously it would pursue superior offers, the

14 *In re Del Monte Foods Co S'holders Litig*, 2011 Del. Ch. LEXIS 30 (Del. Ch. 14 February 2011).

15 *In re El Paso Corp S'holder Litig*, 41 A.3d 432 (Del. Ch. 2012).

Del Monte board permitted Barclays to manage a 45-day go-shop period following the entry into a merger agreement with the 'teamed' bidders. In light of the flaws in the sales process created by Barclays' multiple conflicts, the court enjoined the deal for 20 days to allow Del Monte to continue to be marketed under the go-shop provision. The court also enjoined the parties to the merger agreement from enforcing deal-protection measures (such as the termination fee) during the pre-vote period, since those provisions were secured 'as part of a negotiation that was tainted by Barclays' conflict'.

In *El Paso*, the court declined to enjoin a vote on a third-party merger by which Kinder Morgan Inc would acquire El Paso Corporation, even though plaintiffs had established a reasonable probability of proving that the merger process was tainted by questionable negotiating decisions and conflicts of interest on the part of the El Paso's CEO and one of El Paso's investment bankers. The court concluded that faithful and unconflicted fiduciaries could have secured a better price for El Paso from Kinder Morgan. El Paso's board received investment banking advice from its longstanding, but conflicted, investment banker, Goldman Sachs. As was disclosed to the El Paso board, Goldman owned approximately 19 per cent of Kinder Morgan (valued at approximately $4 billion) and had placed two senior Goldman principals on the Kinder Morgan board. Undisclosed to the El Paso board was that the lead Goldman banker working for El Paso owned approximately $340,000 of Kinder Morgan stock. In addition, all of the key negotiations with Kinder Morgan were handled by El Paso's CEO, without any board supervision or participation, and the CEO was conflicted because he was interested in acquiring from Kinder Morgan the exploration and production business that Kinder Morgan intended to sell before closing. This created a conflict because the less Kinder Morgan paid for El Paso, the less it might seek for the exploration and production business. This conflict was also not disclosed to the board.

The court ultimately declined to issue an injunction, finding that the risk of irreparable harm that would be caused to the El Paso stockholders by enjoining the merger was greater than risk of the irreparable harm if the stockholder vote went forward. There was no rival bidder for El Paso, and the merger represented a substantial premium over market. Accordingly, the court decided to leave it with the El Paso stockholders whether to approve the merger despite the 'disturbing behavior' that led to its final terms.

IV REVLON DUTIES AND DEAL PROTECTION MEASURES

As discussed in last year's review, the first half of 2011 saw an increasing number of judicial decisions concerning acquirers seeking to lock up deals to protect themselves against deal-jumpers offering a topping price or fickle targets that might seek to renegotiate the terms of a merger agreement as their economic prospects improved. This led to an increasing number of stockholder challenges under *Revlon* to a variety of deal-protection measures as being too restrictive and preventing superior offers from coming forward. Thus, 2011 was largely a year of the failed *Revlon* challenge, as the Delaware courts repeatedly dismissed challenges to common deal-protection measures such as termination fees, no-shops with a fiduciary out, matching rights and top-up options. Both 2011 and 2012 have also seen a number of challenges by stockholders to the sales processes that boards have put in place to shop companies before agreeing to merger

agreements and deal-protection measures contained in those agreements. For the most part, these cases have affirmed the validity of already well-known and litigation-tested deal protection measures. In particular, no shop clauses that are balanced by a 'fiduciary out' to consider superior proposals, matching rights that give the acquirer the right to match superior offers, informational rights that give the acquirer the right to receive the same information that the target disseminates to any other bidders, and termination fees in the neighbourhood of 3 per cent of deal price have been widely upheld, whether on their own or taken together. The cases of the past 12 months confirm this trend.[16]

V OTHER DEVELOPMENTS: UNOCAL AND DEFENSIVE MEASURES, ENFORCEMENT OF CONFIDENTIALITY AGREEMENTS

As discussed in last year's review, in *Airgas*,[17] the poison pill received a belated 25th birthday present. Together with *Yucaipa* [18] and *Selectica*,[19] which were decided in 2010, *Airgas* shows that the poison pill is alive and well, and that the Delaware courts

16 *In re Orchid Cellmark Inc S'holders Litig*, 2011 Del. Ch. LEXIS 75 (Del. Ch. 12 May 2011) (denying a request for preliminary injunction of a stockholder vote on merger challenged on *Revlon* grounds); *In re OPENLANE Inc S'holders Litig*, 2011 Del. Ch. LEXIS 156 (Del. Ch. 30 September 2011) (denying motion to preliminarily enjoin a merger on the basis of a faulty sale process, even though board did not employ many common *Revlon* procedures, because board was intimately familiar with the company and its market segment and because board had significant stock ownership, which aligned their interests with those of the minority stockholders); *In re Smurfit-Stone Container Corp S'holder Litig*, 2011 Del. Ch. LEXIS 79 (Del. Ch. 20 May 2011) (holding that plaintiffs were likely to succeed on the merits of their argument that the *Revlon* standard applies to board actions when merger consideration is split approximately evenly between cash and stock, but holding that plaintiffs were not likely to succeed on the merits of their argument that the directors acted unreasonably under the *Revlon* standard); *In re Answers Corp S'holders Litig*, 2011 Del. Ch. LEXIS 57 (Del. Ch. 11 April 2011) (denying motion to preliminarily enjoin deal where board permitted an interested board member to direct negotiations, conducted a discrete market check reaching out to only 10 bidders, approved commonplace deal protections – including voting agreements locking up 27 per cent of the equity – and relied on the fairness opinion of an investment banker that did not include typical valuation methodologies due to the uniqueness of the company; concluding that plaintiffs' challenges to defendants' disclosures concerning the banker's analysis were not material to the stockholders), subsequent decision at 2011 Del. Ch. LEXIS 59 (Del. Ch. 13 April 2011) (denying plaintiffs' application to delay stockholders' meeting to permit stockholders to consider a newly emerged offer that the board had determined was not a superior offer).

17 *Airgas Inc v. Air Prods & Chems Inc*, 16 A.3d 48 (Del. Ch. 2011).

18 *Yucaipa Am Alliance Fund II, LP v. Riggio*, 2010 Del. Ch. LEXIS 172 (Del. Ch. 12 August 2010), aff'd, 15 A.3d 218 (Del. 2011).

19 *Versata Enters v. Selectica Inc*, 5 A.3d 586 (Del. 2010).

continue to support a board of directors' use of defensive devices when corporate policy is threatened by a hostile bidder. The past 12 months have not seen significant developments concerning *Unocal* or defensive maneouvres.

A development that has implications concerning the defensive use of a confidentiality agreement occurred in *Martin Marietta*,[20] in which the Court of Chancery enjoined Martin Marietta Materials from pursuing an unsolicited exchange offer for an industry rival for a period of four months. The court concluded that pursuit of the offer would constitute a violation of confidentiality agreements the parties had earlier concluded in the context of pursuing a friendly merger. While those agreements did not contain express standstill provisions, they prohibited the use and disclosure of a broad class of 'evaluation material' except in connection with the consideration of a contractually negotiated business transaction. The court's opinion emphasises the importance that Delaware courts place on enforcing clearly specified contractual terms and the courts' willingness to impose injunctive relief, where necessary, to enforce contracts.

VI OUTLOOK

During the past 12 months, Delaware courts have shown their ongoing concern with the impact of conflicts of interests on transactions. Consistent with the general rule that Delaware courts will avoid second guessing board decisions in hindsight, the recent cases show that well-informed and unconflicted boards of directors served by unconflicted advisers will enjoy a great deal of latitude in determining what course of action is best for a company, even in a change-of-control situation. In contrast, conflicted or supine boards can expect a searching inquiry of their actions and motives. When there is a basis for the belief that a board has not acted in good faith or employed a fair process in a change-of-control situation, the Delaware courts do not hesitate to spring into action.

---

20 *Martin Marietta Materials Inc v. Vulcan Materials Co*, 2012 Del. Ch. LEXIS 93 (Del. Ch. 13 April 2012), aff'd, 2012 Del. LEXIS 291 (Del. 31 May 2012).

Appendix 1

ABOUT THE AUTHORS

ROLIN P BISSELL

Young Conaway Stargatt & Taylor, LLP

Rolin Bissell is chair of Young Conaway's corporate counselling and litigation section. His practice focuses on corporate advice and litigation in the Delaware Court of Chancery, including disputes about mergers and acquisitions, going private transactions, 'interested party' transactions, proxy contests, valuation and appraisal issues, indemnification and advancement and stockholder access to books and records. He has represented numerous non-US entities in Delaware litigation that needs to be coordinated with proceedings in European and other foreign jurisdictions.

Mr Bissell holds degrees from Columbia College (BA) and the University of Virginia School of Law (JD). He writes and speaks regularly on corporate law issues.

ELENA C NORMAN

Young Conaway Stargatt & Taylor, LLP

Elena Norman is a partner in Young Conaway's corporate counselling and litigation section. Her practice focuses primarily on dispute resolution relating to corporate governance and contested merger and acquisition transactions. Many of the cases in which Ms Norman is involved involve cross-border issues. Ms Norman also practised law in the New York and Tokyo offices of an international law firm, where she represented numerous US and foreign entities in federal and state courts and arbitration proceedings involving complex business disputes.

Ms Norman holds degrees from the University of Pennsylvania (BA), the University of London (MA) and Stanford University (JD). Before attending law school, Ms Norman studied English Constitutional Law and Jurisprudence as a visiting student at Somerville College, Oxford University.

Ms Norman regularly lectures on corporate governance and cross-border dispute resolution.

YOUNG CONAWAY STARGATT
& TAYLOR, LLP
1000 King Street
Rodney Square
Wilmington, DE 19801
United States
Tel: +1 302 571 6600
Fax: +1 302 571 1253