Bloomberg Law Reports®

Wisconsin Courts Reject Heightened Scrutiny in Mergers and Acquisitions Litigation

Contributed by Richard B. Kapnick, Courtney A. Rosen and Veena Gursahani, Sidley Austin LLP

Other than Delaware, very few states have well-developed jurisprudence concerning the law to be applied in shareholder lawsuits challenging merger and acquisition transactions. Over the last few years, the Wisconsin courts have had the opportunity to develop law in this area, applying the business judgment rule to evaluate the validity of merger transactions, and rejecting Delaware-style heightened scrutiny. Absent specific allegations of a breach of the duty of loyalty or bad faith, the Wisconsin courts are not likely to interfere with a board's decision to enter into a merger transaction. The Wisconsin courts have also suggested that the same analytical framework may apply to the judicial review of proxy materials.

"The Business Judgment Rule, Plain and Simple"

The board of directors generally is responsible for overseeing the business and affairs of the corporation. Under Wisconsin law, as in most states, a board's decisions are governed by the business judgment rule, which recognizes that boards, rather than individual shareholders or the courts, are best positioned to make complex business decisions.[1] Under the business judgment rule, directors' actions are not subject to judicial review if the board acted in a manner "consistent with the exercise of honest discretion." A court "will not substitute its judgment for that of the board of directors and assume to appraise the wisdom of any corporate action."[2] The business judgment rule creates an evidentiary presumption "that the acts of the board of directors were done in good faith and in the honest belief that its decisions were in the best interest of the company."[3]

In Delaware, under the *Revlon* standard,[4] once a company has decided to enter into a sale that will result in a change of control, the board is "charged with the obligation to secure the best value reasonably attainable for its shareholders, and to direct its fiduciary duties to that end."[5] Similarly, defensive measures adopted to thwart a hostile offer for a Delaware corporation are evaluated under the *Unocal* standard.[6]

By contrast, in Wisconsin, recent cases have held that neither *Revlon* nor *Unocal* apply under Wisconsin law in evaluating corporate merger transactions. Instead, in Wisconsin, a board's decision to enter into a merger transaction is governed by "the business judgment rule, plain and simple."[7]

For instance, in *In re ShopKo Stores, Inc. S'holder Litig.*, a Wisconsin circuit court denied a motion for a temporary injunction against a sale of the company, finding that money damages were an adequate remedy at law, that the deal protection provisions were "not coercive," and that "there is very little or no uncontroverted evidence in support of the allegations of collusion, self dealing, [or] improper acts . . . that provides a basis for

© 2011 Bloomberg Finance L.P. All rights reserved. Originally published by Bloomberg Finance L.P. in the Vol. 5, No. 20 edition of the Bloomberg Law Reports—Corporate and M&A Law. Reprinted with permission. Bloomberg Law Reports® is a registered trademark and service mark of Bloomberg Finance L.P.

This document and any discussions set forth herein are for informational purposes only, and should not be construed as legal advice, which has to be addressed to particular facts and circumstances involved in any given situation. Review or use of the document and any discussions does not create an attorney-client relationship with the author or publisher. To the extent that this document may contain suggested provisions, they will require modification to suit a particular transaction, jurisdiction or situation. Please consult with an attorney with the appropriate level of experience if you have any questions. Any tax information contained in the document or discussions is not intended to be used, and cannot be used, for purposes of avoiding penalties imposed under the United States Internal Revenue Code. Any opinions expressed are those of the author. Bloomberg Finance L.P. and its affiliated entities do not take responsibility for the content in this document or discussions and do not make any representation or warranty as to their completeness or accuracy.

concluding that the plaintiffs have a reasonable probability of success on the merits."[8] In evaluating these allegations, the *ShopKo* court declined to apply heightened scrutiny to the board's decision to sell a Wisconsin corporation. The court interpreted Wisconsin's corporate statutory scheme and held that *Revlon* does not state the law in Wisconsin.[9]

In reaching this decision, the *ShopKo* court relied heavily on Wisconsin's unique statutory scheme. In 1990, post-*Revlon*, Wisconsin enacted a statute authorizing directors to consider constituencies other than shareholders when making corporate decisions. Commonly referred to as an "other constituencies" statute, the statute provides that:

> [I]n discharging his or her duties to the corporation and in determining what he or she believes to be in the best interests of the corporation, a director or officer may, in addition to considering the effects of any action on shareholders, consider the following:
>
> (1) The effects of the action on employees, suppliers and customers of the corporation.
>
> (2) The effects of the action on communities in which the corporation operates.(3) Any other factors that the director or officer considers pertinent.[10]

In *Ponds Edge Capital LLC v. Outlook Group Corp.,* a Wisconsin circuit court agreed with the *ShopKo* decision, explaining, "I don't think [*Revlon* is the] law in Wisconsin. I think it's the business judgment rule."[11] The *Ponds Edge* plaintiff alleged that certain deal protection provisions were coercive and that there were fundamental flaws in the sales process, including an improper contingent financial advisor fee and a failure to shop the company to a potential strategic buyer.[12] The court rejected the plaintiff's contention that heightened scrutiny applied and held that "in Wisconsin it's the business judgment rule plain and simple. I think that's a high burden that plaintiffs have to get over. So is there heightened scrutiny? Yeah, on [the *plaintiff's*] behalf."[13] The court initially denied a motion to dismiss the plaintiffs' complaint and invited the defendants to present more facts concerning the merger transaction in a motion for summary judgment.[14] Ultimately, the *Ponds Edge* court granted summary judgment.[15]

Three very recent Wisconsin court decisions have reaffirmed the *ShopKo* and *Ponds Edge* holdings. The first two, *Dixon v. Ladish Co.,* and *Praslin v. Bianchi,* arose out of a proposed merger between Ladish Company, Inc. and Allegheny Technologies, Inc. Each concerned allegations that the Ladish board of directors breached its fiduciary duties by failing to maximize value in the merger transaction and misstating and omitting material information from the proxy relating to the financial advisors and the sales process.[16]

In *Dixon*, the complaint alleged that certain directors had employment contracts with the buyer and that the company's financial advisor had an investment stake in the buyer. The court concluded that these allegations did not amount to bad faith and were insufficient to rebut the presumption of the business judgment rule. The court also concluded that only two directors on the seven-member board had any financial relationships with the buyer and that the financial advisor's investment in the buyer was disclosed, noting, "[Plaintiff] never alleges anything to suggest that the board members acted with an eye toward self-dealing, or otherwise in bad faith."[17]

In dismissing the *Dixon* complaint, the District Court observed that the Wisconsin other constituencies statute "is in direct conflict with a rule that would require directors to focus solely on maximizing value for the benefit of shareholders."[18] The court concluded that "neither *Unocal* nor *Revlon* are applicable in the case at hand and the business judgment rule applies in the first instance."[19] The court explained that it is "not implying that the value secured in a merger transaction is irrelevant, it is one of a number of considerations a board may take into account and is properly reviewed through the lens of the business judgment rule."[20]

© 2011 Bloomberg Finance L.P. All rights reserved. Originally published by Bloomberg Finance L.P. in the Vol. 5, No. 20 edition of the Bloomberg Law Reports—Corporate and M&A Law. Reprinted with permission. Bloomberg Law Reports® is a registered trademark and service mark of Bloomberg Finance L.P.

The *Dixon* court also concluded that it was entirely appropriate to decide the business judgment rule issue on a motion to dismiss:

> While [plaintiff] is correct that the motion in *Shopko* was not for dismissal, that fact does not displace the circuit court's finding that *Revlon* is not the law in Wisconsin. Further, while the *Ponds Edge* court did state that it was uncomfortable deciding the case on a motion to dismiss rather than one for summary judgment, that decision is necessarily limited to the factual content of the complaint and other circumstances unique to each case. If the instant case is properly dismissed on the complaint, then it is properly dismissed, and it is of no consequence whether a different court came to a different decision in a case with different circumstances.[21]

In *Praslin*, the second case arising out of the Ladish-Allegheny transaction, the plaintiff alleged that the board failed to explore the possibility of a sale to a potential strategic buyer who materialized in the midst of negotiations to sell the company to another buyer.[22] In addition, one of the company's directors voted against the proposed transaction.[23] After initially granting very limited discovery, the Wisconsin circuit court denied the plaintiff's motion for a preliminary injunction. In evaluating whether the plaintiff demonstrated a likelihood of success on the merits, the court rejected the plaintiff's application of *Revlon*, finding that it conflicted with the Wisconsin other constituencies statute.[24] The court explained: "Despite the Delaware courts' proficiency in corporate law, when a Wisconsin Statute[] does conflict with a Delaware case law, this court is bound to apply the Wisconsin Statute[]."[25] Applying the business judgment rule to the board's decision to recommend the proposed transaction, the court found that the evidentiary record did not support plaintiff's claim of bad faith.[26]

Finally, in *In re TomoTherapy Inc.*, another Wisconsin circuit court dismissed a breach of fiduciary duty complaint arising out of a proposed merger transaction for failure to allege sufficient facts to overcome the business judgment rule. Although the *TomoTherapy* complaint alleged in conclusory fashion bad faith and breach of the duty of loyalty by the board of directors, those allegations were mere legal conclusions without facts to back them up.[27] The *TomoTherapy* court held that none of the plaintiffs' allegations gave rise to any suggestion other than complete good faith on part of the TomoTherapy board of directors.[28]

As in the Ladish-Allegheny transaction cases, the *TomoTherapy* court held that the Wisconsin business judgment rule applied, and not *Revlon* or *Unocal*.[29] In its ruling, the court stated:

> In light of our other constituency statute, *Revlon* is not applicable. We're not to judge the decisions of the Board here according to whether they maximize the value to the shareholder, and on that basis alone. Rather, we're to invoke the business judgment doctrine, which, as applied here, then establishes the standard being whether the individual defendants failed to act in good faith and with a belief that their actions were in the company's best interest.[30]

The *TomoTherapy* court also concurred with the decision in *Dixon* that the issue was appropriate to address in a motion to dismiss: "[t]o place an action outside of the business judgment rule there needs to be evidence to rebut the presumption. And so while this is phrased in terms of an evidentiary presumption, there's no question that it can and does apply to the analysis of a motion to dismiss."[31] The court further explained: "Putting the business judgment rule in the context of a motion to dismiss, the question becomes whether this complaint alleges facts that make rebuttal of the presumption plausible."[32]

In all these cases, the Wisconsin courts have rejected the plaintiffs' conclusory allegations of bad faith against directors, in part, for reasons of public policy. For example, the *ShopKo* court expressed concern about discouraging qualified individuals

© 2011 Bloomberg Finance L.P. All rights reserved. Originally published by Bloomberg Finance L.P. in the Vol. 5, No. 20 edition of the Bloomberg Law Reports—Corporate and M&A Law. Reprinted with permission. Bloomberg Law Reports® is a registered trademark and service mark of Bloomberg Finance L.P.

from serving as directors by embroiling them in litigation and sullying their reputations without any justification:

> The very troubling aspect of this is that the approach now seems to be to place some very harsh, direct or indirect personal attack on those business leaders who are called upon to make decisions, to somehow undermine the shareholder confidence in the process, and ultimately, perhaps, coerce the company or the buyer, whomever, to make some sort of a better offer. But it's the observation of this court that the effect is that is rather to undermine the confidence of the public in the process itself. This is a fairly dangerous way of proceeding, particularly given our profession.[33]

The *TomoTherapy* court was similarly troubled by baseless and unsubstantial allegations of bad faith against individual directors. The court struggled with whether to permit the plaintiff to amend his conclusory complaint, ultimately permitting such amendment only if the plaintiff could plead specific allegations of bad faith or disloyalty. The court stated that when "[p]utting the business judgment rule in the context of a motion to dismiss, the question becomes whether this complaint alleges facts that make rebuttal of the presumption plausible," and that if the plaintiffs were going to replead, they would have to overcome the "high standard" established by the business judgment rule by "pleading facts that would overcome that rule and truly establish bad faith."[34] Subsequently, the plaintiff agreed to voluntarily dismiss the complaint with prejudice.

Wisconsin law now is absolutely clear that, in the absence of specific factual allegations of bad faith or a breach of the duty of loyalty, a breach of fiduciary duty claim challenging a merger or acquisition transaction cannot survive.[35] Plaintiffs must point to specific facts demonstrating critical failings in the board's decision making process, such as self-dealing by conflicted board members or actions that are "patently harmful" to the corporation.[36]

Wisconsin Disclosure Claims May Require Bad Faith

In cases challenging corporate transactions, it is common for breach of fiduciary duty claims also to be accompanied by disclosure claims, most often to the effect that a proxy statement or other disclosure document contains material misstatements or omits material information. It is well established that "material" misstatements or omissions must significantly alter the "total mix" of information.[37] What is unique in Wisconsin is that a plaintiff may only be able to state a disclosure claim by showing that the alleged material misstatements or omissions were the result of bad faith.

Specifically, both courts involved in the Ladish-Allegheny transaction lawsuits found that, to state a disclosure claim under Wisconsin law, a plaintiff must allege both: (1) material misstatements or omissions; and (2) that the alleged misstatements or omissions were made in "bad faith."[38] In denying the plaintiff's motion for a preliminary injunction with respect to his disclosure claims, the *Praslin* court found that "the omissions alleged by plaintiff do not rise to the level of bad faith even by looking at the entirety of the mix. Because plaintiff has presented no evidence of bad faith, the court will not set aside the business judgment rule."[39] The *Dixon* court found likewise, stating that:

> [I]t makes little sense to argue that the business judgment rule does not apply where a breach of the duty of candor is alleged. If that were the case, the rule would be eviscerated, as it would have seemingly no application to actions without a bad faith requirement, and would be superfluous as applied to actions already containing a bad faith requirement.[40]

Similarly, the *TomoTherapy* court found that the "better argument" is that the business judgment rule applies to disclosure claims.[41] The court held that if the standard required bad faith, then it was

© 2011 Bloomberg Finance L.P. All rights reserved. Originally published by Bloomberg Finance L.P. in the Vol. 5, No. 20 edition of the Bloomberg Law Reports—Corporate and M&A Law. Reprinted with permission. Bloomberg Law Reports® is a registered trademark and service mark of Bloomberg Finance L.P.

clear that the plaintiff's disclosure allegations were insufficient.[42] Thus, the court left for another day the question of whether disclosure claims are to be evaluated under a bad faith standard. The court concluded that even if the materiality standard advocated by the plaintiff applied, the disclosure allegations still failed.[43]

Conclusion

Recent Wisconsin state and federal court decisions make clear that boards of directors have broad latitude when considering merger and acquisition transactions. Consistent with that state's post-*Revlon* "other constituencies" statute, the Wisconsin courts evaluate a board's consideration of such transactions under the business judgment rule. It is also clear that the Wisconsin courts will grant motions to dismiss when the pleadings are insufficient to overcome the business judgment rule's presumption of good faith.

Nearly a dozen state legislatures have enacted statutes similar to Wisconsin permitting directors to consider interests besides those of shareholders in deciding whether to sell a corporation.[44] Depending on each state's statutory framework and case law, these "other constituencies" statutes may make it more difficult for plaintiff shareholders to challenge merger and acquisition transactions in these states. In defending breach of fiduciary duty lawsuits brought against directors, counsel should consider whether the corporation at issue is incorporated in a jurisdiction where a similar statutory framework has been enacted. Although Delaware case law is the most well developed in this area, there may be solid arguments against application of heightened scrutiny, especially where facts supporting bad faith or disloyalty have not been specifically alleged.

Richard B. Kapnick and Courtney A. Rosen are partners, and Veena Gursahani is an associate, at Sidley Austin LLP in Chicago. Their litigation practice includes matters involving mergers and acquisitions, securities fraud, breaches of fiduciary duties, fraud, and contracts. This article reflects the views of the authors only and not necessarily those of Sidley Austin LLP. The authors represented TomoTherapy Inc. in connection with the litigation described herein.

---

1 *See, e.g.*, *Einhorn v. Culea*, 2000 WI 65, ¶19, **235 Wis. 2d 646**, **656**, 612 N.W.2d 78, 84; *Reget v. Paige*, 2001 WI App 73, ¶17, **242 Wis. 2d 278**, **293**, 626 N.W.2d 302, 310.

2 *Reget,* 626 N.W.2d at 310; *see Steven v. Hale-Haas Corp.*; **249 Wis. 205**, **221**, 23 N.W.2d 620, 628, 630-31 (Wis. 1946) (holding that without explicit evidence of injury to the corporation, the court will not substitute its judgment for that of the board of directors).

3 *Reget*, 626 N.W. 2d at 310; *see also Gauger v. Hintz*, **262 Wis. 333**, **345**-46, 55 N.W.2d 426, 433 (Wis. 1952).; *Dixon v. Ladish Co*., No. 10-cv-1076, **2011 BL 84594** at 7 (E.D. Wis. Mar. 30, 2011) (holding that plaintiffs must allege facts that directors failed to act in good faith for the business rule presumption to be rebutted).

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

5 *In re Dollar Thrifty S'holder Litig.*, **14 A.3d 573**, **595** (Del. Ch. 2010) (citations omitted).

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

7 *Ponds Edge Capital LLC v. Outlook Group Corp*., No. 06-cv-489 at 26 (Winnebago County Cir. Ct. Nov. 29, 2006); *see also In re TomoTherapy Inc.*, No. 11-cv-1183 at 65 (Dane County Cir. Ct. May 12, 2011) (holding the business judgment rule applies "to Board decisions involving the sale of a company," and that "the Revlon standard . . . does not apply in Wisconsin."); *Dixon*, 2011 BL 84594 at 13 (holding that "the business judgment rule applies" to a board's decision to recommend a merger); *Praslin v. Bianchi*, No. 10-cv-20015 at 7-11 (Milwaukee County Cir. Ct. Feb. 22, 2011); *In re ShopKo Stores, Inc. S'holder Litig.*, No. 05-cv-677 at 20 (Brown County Cir. Ct. Sept. 2, 2005) (rejecting claim

© 2011 Bloomberg Finance L.P. All rights reserved. Originally published by Bloomberg Finance L.P. in the Vol. 5, No. 20 edition of the Bloomberg Law Reports—Corporate and M&A Law. Reprinted with permission. Bloomberg Law Reports® is a registered trademark and service mark of Bloomberg Finance L.P.

that business judgment rule did not apply in merger context).

8 *In re ShopKo Stores, Inc. S'holder Litig*. at 8-9, 13.

9 *In re ShopKo Stores, Inc. S'holder Litig.* at 19. The court explained: "I know that Delaware is a state with a great deal of experience and . . . there are quite a number of Delaware cases that have been able to clarify these issues, that could provide important guidance, but I, frankly, am not embarrassed by our statute and I think that the statute which was enacted after Revlon is the statute of which both business citizens and other citizens in Wisconsin can be very proud, and that is that Wisconsin is a state in which business means more than simply dollars." *Id.* at 19-20.

10 **Wis. Stat. § 180.0827**; *see also Dixon*, 2011 BL 84594 at 13. Applying this statute to a shareholder's claim that a company had failed to maximize short-term shareholder value, the ShopKo court explained that the other constituencies provision recognizes that a corporation "as a corporate citizen, has a duty" to consider the effects of its decisions on non-shareholder constituencies. *In re ShopKo Stores, Inc. S'holders Litig*. at 20.

11 No. 06-cv-489 at 23 (Winnebago County Cir. Ct. Nov. 29, 2006).

12 *Id.* at 14-17.

13 *Id.* at 26 (emphasis added). In *Ponds Edge*, the plaintiff relied on *Amanda Acquisition Corp. v. Universal Foods Corp.*, **708 F. Supp. 984**, **1013** (E.D. Wis. 1989), *aff'd on other grounds*, **877 F.2d 496** (7th Cir. 1989) in arguing that *Unocal*'s heightened scrutiny should apply to a board's approval of a termination fee in a merger agreement. The plaintiff contended the termination fee was so high as to prevent other bidders from topping the favored suitor's offer. *Id.* at 24. Despite the fact that, according to the plaintiff, the board's adoption of the defensive measure would have triggered heightened *Unocal* scrutiny under Delaware law, the *Ponds Edge* court refused to apply *Unocal* or any other standard than the business judgment rule to the board's defensive measures. *See id.* at 26.

14 *Id.* at 30.

15 *Ponds Edge Capital LLC v. Outlook Group Corp.*, No. 06-cv-489 at 15-16 (Winnebago County Cir. Ct. Mar. 9, 2007).

16 *See Dixon*, 2011 BL 84594 at 1, 4-6, 15; *Praslin v. Bianchi,* No. 10-cv-20015, at 9-10.

17 *Dixon*, 2011 BL 84594 at 19.

18 *Id.* at 13.

19 *Id*.

20 *Id.* at 15.

21 *Id.* at 11-12.

22 *Praslin,* No. 10-cv-20015 at 9-10.

23 *Id.* at 15.

24 *Praslin,* Apr. 28, 2011 Order at 6.

25 *Id*.

26 *Id.* at 7-11.

27 *In re TomoTherapy Inc.*, No. 11-cv-1183 at 69.

28 *Id.* at 62-64.

29 *Id*. at 66.

30 *Id*. at 65-66.

31 *Id*. at 64.

32 *Id.*

33 *In re ShopKo Stores Inc. S'holders Litig*. at 23. The court continued: "And so it's a dangerous business to go about this sort of character assassination when ourselves, in our profession, also serve under a concept of a fiduciary obligation. You also serve under the concept of being able to work because of the great public trust that is invested in us and in our profession, and it seemed apparent to me, as I went through this process, that

© 2011 Bloomberg Finance L.P. All rights reserved. Originally published by Bloomberg Finance L.P. in the Vol. 5, No. 20 edition of the Bloomberg Law Reports—Corporate and M&A Law. Reprinted with permission. Bloomberg Law Reports® is a registered trademark and service mark of Bloomberg Finance L.P.

business leaders likewise are harmed by this, and so shareholders are, and that the harm, as I've already indicated, then because of its destabilizing effects, has a very broad impact." *Id.* at 24.

34 *In re TomoTherapy Inc.*, No. 11-cv-1183 at 64, 86.

35 Defendant corporations or directors may also be able to utilize Wisconsin's "notice pleading" standard under **Wis. Stat. § 802.02**. *See, e.g., Doe v. Archdiocese of Milwaukee*, 2005 WI 123, **284 Wis. 2d 307**, 700 N.W.2d 180. In *Doe*, the Wisconsin Supreme Court affirmed the dismissal of conclusory allegations for failure to state a claim. The court held that while Section 802.02 requires "[a] reviewing court [to] accept[] the facts pled as true for purposes of [its] review," a court "[i]s not required to assume as true legal conclusions pled by the plaintiffs," nor may it "add facts in the process of liberally construing the complaint." *Id*. ¶ 19. "Rather, it is the sufficiency of the facts alleged that controls the determination of whether a claim for relief is properly pled." *Id*. (internal citations omitted). The *Doe* decision comports with a long line of Wisconsin precedents holding "[b]are legal conclusions attached to narrated facts do not suffice to meet the requirements of notice pleading." *Wilson v. Waukesha County*, **157 Wis. 2d 790**, **799**, 460 N.W.2d 830, 834 (Ct. App. 1990); *see also Lamb v. Manning*, **145 Wis. 2d 619**, **625**, 427 N.W.2d 437, 440 (Ct. App. 1988) (*quoting Barrett v. Pepoon*, **19 Wis. 2d 360**, **362**, 120 N.W.2d 149, 150 (1963).

36 *See, e.g., Hale-Haas Corp*., 249 Wis. at **221**-23; *see also Gauger*, 262 Wis. at **345**-46; *Polacheck v. Michiwaukee Golf Club,* **198 Wis. 78**, **82**, 223 N.W. 229, 234 (Wis. 1929); *see also* **Wis. Stat. § 180.0828**.

37 *See, e.g., Skeen v. Jo-Ann Stores, Inc.*, **750 A.2d 1170**, **1172** (Del. 2000); *In re TomoTherapy Inc.*, No. 11-cv-1183 at 77.

38 *Dixon*, 2011 BL 84594 at 21-22 (dismissing disclosure claim where there were no allegations of bad faith); *Praslin* Apr. 28, 2011 Order at 16 (declining to enjoin shareholder vote where "the omissions alleged by plaintiff [did] not rise to the level of bad faith").

39 *Praslin*, Apr. 28, 2011 Order at 16-17.

40 *Id.* at 15.

41 *In re TomoTherapy Inc.*, No. 11-cv-1183 at 76-77 (stating the business judgment rule applies to disclosure claims as well because "there is no end to the amount of material that could be disclosed. And at some point somebody has got to make a judgment. Somebody has got to make a judgment about what's going to be disclosed in order to adequately apprise the shareholders of the information that they need to know, without it becoming confusing, setting forth unnecessary detail that can only be distracting to the important points that people ought reasonably to be apprised of in reaching a decision on whether this is a sensible and reasonable decision for shareholders to make or not.")

42 *Id*. at 62-64.

43 *Id.*

44 **Fla. Stat. § 607.0830**(3) (2011) (A director "in discharging his or her duties," may consider "such factors as the director deems relevant, including . . . the social, economic, legal, or other effects of any action."); *see also, e.g.*, **Idaho Code § 30-1602** (2011); **I.C. § 23-1-35-1**(f) (2011); **Iowa Code § 491.101B** (2011); **Miss. Code § 79-4-8.30**(f) (2011); **RSMo § 351.347** (2011); **Neb. Rev. Stat. § 21-2095** (2011); **Ohio Rev. Code § 1701.59**(E)(1-3) (2011); **ORS § 60.357**(5); **SDCL § 47-33-4** (2011); **11A V.S.A § 8.30**(a)(3) (2011).

© 2011 Bloomberg Finance L.P. All rights reserved. Originally published by Bloomberg Finance L.P. in the Vol. 5, No. 20 edition of the Bloomberg Law Reports—Corporate and M&A Law. Reprinted with permission. Bloomberg Law Reports® is a registered trademark and service mark of Bloomberg Finance L.P.