A Message From Your Volume 41 External Managing Editor:

Greetings!

We are pleased to present the Fall edition of our semi-annual Delaware Journal of Corporate Law Alumni Newsletter, which includes information on Journal events and on our Volume 41 Board and Staff.

This semester we begin our first year as Widener University Delaware Law School, an institution independent from our Harrisburg counterpart. We are excited to proceed under the leadership of Dean Rodney Smolla and look forward to his contributions to our continuing success. As a symbol of his commitment to the law school, Dean Smolla will take the Delaware bar exam this summer.

The Journal and the Institute of Delaware Corporate and Business Law are also excited to continue the second year of our collaborative blog. Our members' essays include timely updates in corporate and business law. These essays can be found in full on the Journal's website and in abstract on the Institute's website.

We also have a number of upcoming events we encourage you to attend. We are honored to present the 31st Annual Francis G. Pileggi Distinguished Lecture in Law titled "Shareholder Activism: The Triumph of Delaware's Board Centered Model and the New Role for the Board of Directors" which will be presented by Professor Jeffrey N. Gordon. We also invite you to our semi-annual happy hour on November 4 at Deep Blue Bar & Grill.

The Journal is constantly looking for opportunities to improve, and we always welcome your feedback.

I look forward to seeing you at our upcoming events.

Best Regards,

Sabrina M. Hendershot
External Managing Editor, Volume 41

Upcoming Events:

31ST ANNUAL FRANCIS G. PILEGGI DISTINGUISHED LECTURE IN LAW:

"Shareholder Activism: The Triumph of Delaware's Board Centered Model and the New Role for the Board of Directors"

Presented by Professor Jeffrey N. Gordon

Date: October 16, 2015
Time: 8:00 a.m. Breakfast
8:45 a.m. Lecture
Location: Hotel du Pont, Green Room
42 West 11th Street
Wilmington, DE 19801

ENCORE LECTURE

Date: October 16, 2015
Time: 11:00 a.m.
Location: Widener University Delaware Law School
Ruby R. Vale Courtroom

ALUMNI HAPPY HOUR

Date: November 4, 2015
Time: 6:00 p.m. to 8:00 p.m.
Location: Deep Blue Bar & Grill
111 West 11th Street
Wilmington, DE

RSVP: Thursday, October 29, 2015.
Please email sabrinamarieh@gmail.com.
Francis G. Pileggi Distinguished Lecture in Law

The Delaware Journal of Corporate Law is honored to present the 31st annual Francis G. Pileggi Distinguished Lecture in Law to the Delaware Bench and Bar on Friday, October 16th at 8:00 a.m. at the Green Room in the Hotel du Pont, followed by an encore lecture at Widener University Delaware Law School at 11:00 a.m. in the Vale Courtroom.


"Shareholder Activism: The Triumph of Delaware's Board-Centered Model and the New Role for the Board of Directors"

Professor Gordon's Pileggi Lecture is entitled "Shareholder Activism: The Triumph of Delaware's Board-Centered Model and the New Role for the Board of Directors." He will argue that Delaware jurisprudence should embrace shareholder activism because it focuses governance attention on the board of directors, the central objective of Delaware's takeover law. This means rejecting the poison pill as a managerial defense measure against an activist campaign. Rather the focus should be on broadening the role of directors to become credible monitors and, if necessary, defenders of the firm's business strategy and chosen time horizon. This is the next step in the evolution of directors' role in the public firm.

We encourage you to attend. Please fill out a Registration Form at http://delawarelaw.widener.edu/pileggi2015/.
Alumni Happy Hour

Please attend our semi-annual Alumni Happy Hour Wednesday, November 4, 2015.

This year, the Journal is partnering with the Office of Development & Alumni Engagement to host our fall happy hour.

TIME: 6:00 p.m. to 8:00 p.m.

DEEP BLUE BAR & GRILL
111 WEST 11TH STREET
WILMINGTON, DE 19801

Hors d'oeuvres will be served!

Please RSVP for this event by Thursday, October 29, 2015 by email at sabrinamarielh@gmail.com or phone 302-477-2145.
Kaitlin E. Maloney Named John F. Schmutz Fellow

The Journal would like to congratulate Kaitlin E. Maloney, Delaware Journal of Corporate Law Articles Editor, this year's recipient of the John F. Schmutz Corporate and Business Law Institute Fellowship Award. As the Fellowship recipient, Kaitlin works closely with the Institute of Delaware Corporate and Business Law. She will help organize the Annual Symposium, assist with the development of the Institute website, help with the Ruby R. Vale Moot Court competition, and provide occasional research assistance for Institute faculty.

Member Scholarship & Awards

Congratulations to the Journal members selected for the following honors:

Jennifer P. Buckley, Articles Editor
William Prickett Corporate & Business Law Scholarship
Alfred Avins Memorial Scholarship
William Conner Memorial Scholarship

Ashley DiLiberto, Copy Editor
Harvey Alan Chernoff Memorial Scholarship

Sabrina M. Hendershot, External Managing Editor
Dean Anthony J. Santoro Scholarship
Fairfax Leary, Jr. Memorial Scholarship

Cheneise V. Wright, Member
Linda L. Ammons Diversity Scholarship

Michael Laukaitis II, Member
Howard M. Berg Memorial Scholarship

AD MAIOREM GLORIAM DIURNI
Congratulations 2015-2016 Josiah Oliver Wolcott Fellows!

Articles Editor Jennifer P. Buckley will serve as a Wolcott Fellow to Justice Karen Valihura.

Editor-in-Chief Jacob J. Fedechko will serve as a Wolcott Fellow to Chief Justice Leo E. Strine.

External Managing Editor Sabrina M. Hendershot will serve as a Wolcott Fellow to Justice Collins J. Seitz, Jr.

Delaware Journal of Corporate Law Alumni-Mentor Program

The Alumni Mentor Program is off to a great start! Thanks to all who have graciously volunteered this year.

If you want to get involved, please contact Sabrina Hendershot at sabrinamarieh@gmail.com
COMMENTARY FROM THE INSTITUTE OF DELAWARE CORPORATE AND BUSINESS LAW: 
Delaware Fiduciary Duties: Case Dispositive Pre-Trial Motions
By Kaitlin E. Maloney

This year's first installment of the Ruby R. Vale Distinguished Speaker Series was held on September 29 and featured Justice Randy J. Holland of the Delaware Supreme Court. Justice Holland's lecture, "Delaware Fiduciary Duties: Case Dispositive Pre-Trial Motions," discussed central Delaware decisions establishing how independent directors can prevail on a motion to dismiss or motion for summary judgment, thereby avoiding costly and protracted litigation.

Justice Holland enumerated three variables of a shareholder action that determine the success of directors' pre-trial motions: the fiduciary duty allegedly breached, the nature of the suit, and the standard of judicial review. As Justice Holland described it, corporate directors owe a triad of fiduciary duties to the corporation and its shareholders: care, loyalty, and good faith. If any of these duties are breached, shareholders may challenge the directors' actions by way of a direct or derivative suit, which, upon judicial review, will be afforded the deference of the business judgment rule or reviewed under the entire fairness doctrine. Under Aronson v. Lewis, a shareholder plaintiff must present particularized facts contending that a majority of the directors were interested and lacked independence or that the challenged transaction was not the product of a valid business judgment. Justice Holland thus emphasized that if a majority of disinterested directors approves the board's decision, the defendant corporation will be given the deference of the business judgment rule, and its motion to dismiss will be granted.

Conversely, if the shareholder plaintiff successfully overcomes the business judgment rule's strong presumption that the board's action was undertaken with due care, loyalty, and good faith, the court reviews the transaction under the entire fairness doctrine, which requires that the board decision be supported by proof of fair dealing and fair price. The board's decision in Smith v. Van Gorkom was reviewed under the business judgment rule standard of review. Because the directors breached their fiduciary duty of care, the Delaware Supreme Court held that the directors were personally liable. Although holding directors personally liable for such a breach would most certainly discourage companies from incorporating in Delaware, Justice Holland opined that Van Gorkom is but one case of many that illustrates the Delaware Supreme Court consistently remains "above the fray."
The likelihood of defendants' success at the pre-trial stage is "materially advanced" if the board uses an independent committee to inform its decision. Under Kahn v. Lynch, an independent committee's decision, when reviewed under the entire fairness doctrine, causes the burden to shift to the shareholders to show there was an unfair deal and unfair price, but the directors' decision does not automatically receive business judgment rule deference. Alternatively, under In re MFW Shareholders Litigation, directors who condition action on approval by an independent committee and a majority-of-the-minority vote with full disclosure are awarded the great deference of the business judgment rule.

Justice Holland concluded by summarizing the Delaware Supreme Court's message to shareholders and independent directors over the past decade. The Court recommends that shareholders to "use the tools at hand" to ensure their case survives dismissal, such as filing a DGCL §220 demand to inspect a corporation's books and records, and instructs that directors make independent decisions and uphold their fiduciary duties. The Delaware Supreme Court has long recognized that shareholders have legitimate expectations that directors will act with care, loyalty, and good faith, and that directors have an equally legitimate expectation that they will not be forced to endure prolonged meritless lawsuits brought by shareholders. Delaware has grappled with these conflicting expectations for decades, and has developed a stable and predictable body of law that informs directors how to avoid protracted litigation, which includes the requisite showings of successful pre-trial motions.
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