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LAW AND FACT IN JUDICIAL REVIEW OF CORPORATE TRANSACTIONS

CHIEF JUSTICE E. NORMAN VEASEY*

I.	INTRODUCTION	1
II.	A THEMATIC FRAMEWORK	1
	A. <i>The Enabling Model</i>	3
	B. <i>Recent Data on Business Cases</i>	4
	C. <i>A Slice of History</i>	5
	D. <i>The 1985 Watershed</i>	5
	E. <i>Time Warner and QVC</i>	7
III.	FACTUAL SETTING AND PROCEDURAL POSTURE OFTEN DETERMINATIVE	7
IV.	WHAT ADVICE IS APPROPRIATE?	10
V.	CONCLUSION	12

I. INTRODUCTION

Let me begin by noting what a great program this is. Significantly, I think it is good for judges to hear you, and to appreciate the real world in which the factual settings that come before the courts have their genesis. It is important for us to understand the transactional dynamics and the time pressures within which business and legal strategic decisions are made. Likewise, it may be relevant for you to hear us say that the factual setting and procedural posture of each judicial decision are important, and may be outcome-determinative.

There are very few bright line rules to govern the adjudication of fiduciary duties. Post-1985, we know in general about the duty of loyalty and the duty of care. For example, we know about the traditional business judgment rule, the enhanced business judgment rule of *Unocal/Unitrin*, and the duty to obtain the best value for stockholders in a sale of control.¹

II. A THEMATIC FRAMEWORK

These general principles are just that - general. Most scholars would say that Delaware should not move to a mandatory or codified system. A

* Delaware Supreme Court.

¹ *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (Del. 1985); *Unitrin, Inc. v. Am. Gen. Corp.*, 651 A.2d 1361 (Del. 1995).

rational corporation law/corporate governance regime depends on a rich body of case law and the expertise, prompt service, independence, and trust in the Delaware Court of Chancery and the Supreme Court.

The relationship between law and fact in our jurisprudence is generally determined by the form of the law to be applied. For example, the law may be a broad, fact-intensive standard, or a bright-line rule that focuses on a few key facts. The choice between a broad standard and a bright-line rule is not - or at least should not be - an arbitrary choice. Each form of law carries with it various costs and benefits that make it more or less attractive in a given context.

Standards are extremely flexible in the face of unusual facts or a rapidly changing environment because standards do not limit the range of factors that a court may consider in reaching its judgment. This flexibility also reduces the risk of legal error because the court is not required to apply a standardized solution to a unique factual problem. But flexibility comes at a cost; it is sometimes difficult to predict how the standard will apply to a given case, and parties may be exposed to some legal uncertainty.

In contrast, bright-line rules provide greater certainty, and are well suited to regulate repeated and relatively homogeneous activities. Rules enhance certainty by focusing attention on a set of key factors, but they are necessarily inflexible, and may effectively ignore other important factors. Choosing a law's optimal form depends on careful consideration of these costs and benefits in a given context.

It is my thesis that this cost-benefit analysis explains the structure of the Delaware law applied to corporate transactions - that is, the manner in which the courts have defined the duty of care and the duty of loyalty. Law in this context often takes the form of coherent and stable principles driving fact-intensive decisions because the law must handle a wide variety of conduct. As a result, it is impracticable to devise a bright-line regulatory scheme that could: 1) adequately cover the vast corporate landscape, 2) prevent circumvention by unscrupulous actors, and 3) keep pace with changes in corporate governance, takeover strategies and defenses, and financial devices.

Last December 7th (Delaware Day), I had the honor of giving the keynote address in Stockholm to the Conference on Company Law Reform of the Organization for Economic Cooperation and Development (OECD). Some of what was discussed there is relevant here.

At this conference, all European countries, and many other countries around the world, were represented in a kind of United Nations setting. The conferees were exchanging ideas on issues of company law reform. One theme emerged as dominant; many conferees were yearning for a judicial system like the well-developed system of judge-made fiduciary duty law we have in Delaware. They all seemed to believe our system works well, even

with all its warts. They were amazed by, and envious of, our expertise, fact-specificity, and the speed of our decisions. Nevertheless, they seemed to be resigned to the reality that their judicial systems were not set up to replicate Delaware's.

A. *The Enabling Model*

An overarching global debate is whether corporate law rules should be mandatory or enabling. I agree with those scholars whose thesis is that the enabling model is the better economic model for the stockholders. The enabling model, patterned after the Delaware approach, is based on a few fundamental statutory guideposts and latitude for private ordering, with primary reliance on self-governance centered on judicial decisionmaking in applying fiduciary duties to fact-intensive settings.

A word of caution is that the judge-made law must not be of a freewheeling or ad hoc quality. It must involve a disciplined and stable *stare decisis* analysis based on precedent and a coherent economic rationale. The private ordering aspect of it must provide, *ex ante*, the contractual stockholder protections deemed important, as distinct from *ex post* judicial rewriting of the contractual framework.

At the end of the day the enabling model - at least in Delaware - rests on a two-fold trust in the judiciary, and in the board of directors. That trust, in turn, is predicated on two fundamental principles. The first is character - by that I mean expertise, diligence, good faith, independence, and professionalism. The second is a sound economic rationale dedicated to the best interests of stockholders.

First the courts. Investors, as the owners of corporations, have certain expectations of the role of courts in the enforcement of fiduciary duties. The judicial process is a key ingredient in the overall corporate construct among the four parties involved - the stockholders, directors, management, and state government (legislative, executive, and judicial). Courts should be prompt, clear, predictable, stable, and economically coherent.

Second the directors. All the attributes of character are important, but perhaps the most effective stockholder protection device is the independence of directors. Stockholders vote for directors and expect proper governance from them. The expectation is a strong bond of trust vested in the directors. Courts enforce that trust. At the same time, courts should be reluctant to interfere with business decisions and should not create surprises or wild doctrinal swings in their expectations of directorial behavior.

The duties of directors are defined in broad outline by the enabling act. The fiduciary aspects of the directors' duties are fleshed out by the caselaw. That is the corporate law dimension. The remainder of the corporate

governance regime consists of private ordering, norms, and aspirations of well-motivated directors to achieve best practices with the precatory encouragement of courts.

Modern and enlightened corporation law, driven primarily by judicial decisions, is a remarkable vehicle in our jurisprudence. There is a significant self-governing aspect to the corporation law, in that daily functions of the enterprise are based largely on norms - i.e. non-legally enforceable governance mechanisms. Self-governance works for the most part because of the sensitivity of directors to do what is right, what is professional, what is honorable, and what is profitable. There are also negative motivators such as peer pressure, shaming, and fear of lawsuits.

B. *Recent Data on Business Cases*

Over the past several years, the Court of Chancery has had a docket of over 500 active cases per year, on average. Seventy-five percent of them are business cases. I use the term business cases to include typical corporate cases - those involving the internal affairs of Delaware corporations. These may arise as injunctive, derivative, individual, or class actions. Business cases also include cases relating to limited liability companies, limited partnerships, joint ventures, and other types of contract disputes.

That is a staggering caseload, considering the complexity and importance of the cases. Moreover, it should be understood that the remaining 25% of the Chancery docket consists of other important and urgent equity cases (e.g. wills, trusts, injunctions, contract interpretation, right-to-die cases, government affairs issues, and many others).

The Supreme Court is one of general jurisdiction, with a docket of nearly 600 cases per year. We have an all-inclusive jurisdiction (criminal, constitutional, business, tort, contract, family, first amendment, prisoner cases, etc.), as Delaware is a microcosm of America. Less than 10% of the Delaware Supreme Court's docket consists of business cases on appeal from the Court of Chancery. Probably about 5% are purely corporate cases. (There are additional business cases that come up on appeal from Superior Court, and the important role of that Court is another topic for another day.) However, as you may expect, many of the business cases adjudicated by the Supreme Court are of such precedential importance that they probably take more than 20% of our time.

The disposition rate of the Delaware Courts is rather prompt. The Supreme Court moves about ten cases per week. Since the Supreme Court usually sits in panels of three, this means that each of the five justices must function on the disposition of one case per day, every day of the year on average. We are able to average about 30 days from submission to

disposition, though some cases may take 60-90 days, and a few take longer. As you all know, the Court of Chancery is famous for prompt dispositions and expedited cases. The foregoing is a glimpse at the quantitative dimension. Now for the qualitative analysis.

In recent years, over 90% of the business cases disposed of by the Court of Chancery were not appealed to the Delaware Supreme Court. There are various reasons for that phenomenon (the changing dynamics of individual corporate transactions, satisfaction with the Chancery decision, delay, costs, settlement, etc.). Nevertheless, I see it as a tribute to the expertise and prompt work of this very special trial court that has had a consistently distinguished record over its 209-year existence.

The Delaware Supreme Court affirms about 75% of the Chancery business cases that are appealed. In nearly half of the 75% that are affirmed, the affirmance is substantially on the basis or rationale of the Chancery decisions. Only about 15% are reversed outright and about 10% are affirmed in part and reversed in part. When a Chancery decision is reversed, it is often a case of first impression, or a new approach to the law by the Delaware Supreme Court.

C. A Slice of History

The reason for Delaware's preeminence in the corporate area began with the 1897 Delaware Constitution. That document depoliticized the Delaware Judiciary, creating a gubernatorial-appointed, Senate-confirmed, and bipartisan Judicial Branch. From a time early in the 20th Century to the present, the Court of Chancery has distinguished itself as the premier trial court in the nation for corporate cases.

The adjudication of corporate cases was primarily in the context of stockholder derivative and class actions from the early 20th Century until the hostile takeover days beginning in the late 1970s and early 1980s. Deciding those cases in the context of the high stakes and high velocity of the takeover era put a great strain on the Delaware Judiciary and its stable body of jurisprudence.

D. The 1985 Watershed

The year 1985 was a watershed year in Delaware corporate jurisprudence. Also, it was a particularly interesting year to examine the interaction between the Court of Chancery and the Delaware Supreme Court. The first two of the landmark cases that year involved reversals of the Court of Chancery by

the Supreme Court: *Smith v. Van Gorkom*² and *Unocal*.³ In the next two cases, *Moran v. Household*⁴ and *Revlon v. MacAndrews*,⁵ it was the Court of Chancery that presaged the landmark pronouncements of the Supreme Court in affirming the Chancery decisions.

Smith, of course, is famous for the proposition that directors may be personally liable if they fail to use due care in decision making.⁶ That case led to a new dimension in legal analysis of process due care, and a new statutory regime designed to protect directors.

Unocal, however, represented a *sea change* in the judicial review of the conduct of directors of a target corporation.⁷ The Court of Chancery had enjoined a selective self-tender primarily because of its exclusivity (i.e., excluding the bidder). The Supreme Court reversed, holding that there was no clear-cut Delaware law that precluded such director action. Instead, the Supreme Court established the landmark *enhanced business judgment rule* with its intermediate burden on the directors to show that they reasonably perceived a threat, and that the defensive measures they had taken in response were reasonable in relation to the threat. This rubric has now become commonplace in Chancery analysis, but it was an innovative doctrine at that time.

The Court of Chancery got it right in the other two landmark cases that year. In *Household*, Vice Chancellor (now Justice) Walsh conducted a trial to examine the workings of the poison pill, holding that the directors had the power to install the pill, but future boards of directors had to be mindful of their fiduciary duties in considering the obligation to redeem the pill in the face of certain threatened takeovers.⁸ The Chancery decision was essentially ratified, though explicated authoritatively, by the Supreme Court.⁹

The final shoe to fall in 1985 was the decision in *Revlon* enjoining a lock-up in a sale of control.¹⁰ The teaching of *Revlon* is that as directors move from the mode of defending the firm's independence, to the mode of selling control, they must obtain the best value reasonably available for stockholders. Again, the Supreme Court explicated the precedent authoritatively. But in

² *Smith v. Van Gorkom*, 488 A.2d 858 (Del. 1985).

³ *Unocal*, 493 A.2d 946.

⁴ *Moran v. Household Int'l, Inc.*, 490 A.2d 1059 (Del. Ch. 1985); *Moran v. Household Int'l, Inc.*, 500 A.2d 1346 (Del. 1985).

⁵ *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986); *MacAndrews & Forbes Holdings, Inc. v. Revlon, Inc.*, 501 A.2d 1239 (Del. Ch. 1985).

⁶ *Smith*, 488 A.2d 858.

⁷ *Unocal*, 493 A.2d 946.

⁸ *Moran*, 490 A.2d 1059.

⁹ *Moran*, 500 A.2d 1346.

¹⁰ *Revlon*, 501 A.2d 1239.

its essential holding, the Supreme Court ratified the decision of then Vice Chancellor Walsh.¹¹

E. *Time Warner and QVC*

Sometimes the Delaware Supreme Court ultimately comes to realize the articulation of the Court of Chancery was right after all. In the *Time Warner* case in the late 1980s, the Court of Chancery found the directors of the target had acted properly under the *Unocal* standard because the board had broad discretion to determine the strategy and destiny of the firm, as long as the sale of control was not implicated.¹² The Supreme Court affirmed, but reformulated the test.¹³ That reformulation was seen by some as providing an argument for a target that *Revlon* applied only when there was a change of control and a break up.

In *Paramount v. QVC*, just four years later, the directors of the target company selling control *did* argue that the Supreme Court's *Time Warner* decision required both a sale of control and an inevitable break up.¹⁴ In affirming Vice Chancellor Jacobs' decision, we held in *QVC* that no such double requirement was intended in *Time Warner*, and we effectively reinstated the notion articulated by the Chancellor in *Time Warner* that the appropriate inquiry implicating *Revlon* "is whether a change of control is contemplated."¹⁵

III. FACTUAL SETTING AND PROCEDURAL POSTURE OFTEN DETERMINATIVE

The fact-intensive aspect of Delaware corporate jurisprudence is well illustrated by cases involving the spectrum of modern mergers and acquisition cases. The Court of Chancery, on a regular and urgent basis, undertakes to apply the sometimes incompletely developed legal principles articulated in the occasional Delaware Supreme Court decisions in the area.

Why are these principles incompletely developed? The main reason not all jurisprudential principles are fully developed by the Supreme Court is because most cases stop in the Court of Chancery, so the Supreme Court doesn't regularly get a chance to pronounce new principles. Given the small

¹¹ *Revlon*, 506 A.2d 173.

¹² *In re Time, Inc., S'holder Litig.*, Del. Ch., C.A. No. 10670, 1989 WL 79880, Allen, C. (July 14, 1989).

¹³ *Paramount Communications, Inc. v. Time, Inc.*, 571 A.2d 1140 (Del. 1990) ("*Time Warner*").

¹⁴ *QVC Network Inc. v. Paramount Communications, Inc.*, 635 A.2d 1245 (Del. Ch. 1993).

¹⁵ *Paramount Communications, Inc. v. QVC Network, Inc.*, 637 A.2d 34 (Del. 1994).

percentage of Chancery's busy docket that is appealed to the Supreme Court, it naturally falls to the Chancellor and Vice Chancellors to make most of the law in the corporate area. And they do a superb job.

Take, for example, several recent Court of Chancery cases that have dealt in detail with deal protection measures. A number of these cases in the past two years have analyzed various everyday transactional issues such as standstill agreements, material adverse change, breakup fees, no-shop, window-shop, and no-talk provisions in the context of fiduciary duties. The results in these cases differ, but they may differ largely because of the varying factual circumstances.

Three of these cases dealing with the fiduciary out issue in varying forms are: *Phelps Dodge v. Cyprus*,¹⁶ *Ace v. Capital Re*,¹⁷ and *IXC v. Cincinnati Bell*.¹⁸ None of these cases was appealed, so the Court of Chancery has made the law in this area, at least until some case raising these issues makes its way to the Supreme Court in the future.

I would like to focus on only one of these cases - Vice Chancellor Strine's decision in *Ace v. Capital Re*.¹⁹ This was an emergency case if there ever was one! It was decided in one day with a very analytical, well-crafted sixteen page opinion. I say very analytical and well-crafted, but I am not saying it was necessarily correct or incorrect.

In this case, the merger partner (*Ace*) of the target (*Capital Re*) went to court for injunctive relief to enforce its interpretation of a no-talk/fiduciary-out deal-protection provision in the face of the target board's desire to move toward the higher bidder. *Ace* did not succeed. The Vice Chancellor refused to enjoin the target board from spurning the merger with *Ace* in favor of a higher proposed deal with a third party (*XL Capital*). This case illustrates the tension between:

- The economic desirability of protecting a deal with a no-talk/limited fiduciary out and the target board's fiduciary duty.
- The principles applicable to stock-for-stock mergers (which this was) and sale of control transactions like *Paramount*²⁰ (which this case was not).

¹⁶ *Phelps Dodge Corp. v. Cyprus Amax Minerals Co.*, Del. Ch., C.A. Nos. 17398, 17383, 17427, 1999 WL 1054255, Chandler, C. (Sept. 27, 1999) (bench ruling, decided in a one-month period).

¹⁷ *Ace Ltd. v. Capital Re Corp.*, 747 A.2d 95 (Del. Ch. 1999).

¹⁸ *In re IXC Communications, Inc. v. Cincinnati Bell, Inc.*, C.A. Nos. 17324, 17334, 1999 WL 1009174, Steele, V.C. (Del. Ch. Oct. 27, 1999) (Mem. Op.).

¹⁹ *Ace Ltd.*, 747 A.2d 95.

²⁰ *Paramount*, 637 A.2d 34.

- The scope of judicial review: whether to apply a substantive reasonableness standard of scrutiny or a lesser standard in evaluating director conduct in deal protection decisions.

In *Ace*, a no-talk provision in the merger agreement would have prohibited the target - Capital Re - from soliciting, initiating, encouraging, or taking any action to knowingly facilitate the submission of any inquiries, proposals, or offers from any person. That provision also would have prohibited the target from even providing information to a third party bidder unless the Capital Re board decided "in good faith ... based on the written advice of its outside counsel" that negotiations, or giving information to a third party bidder was required to prevent a breach of fiduciary duty.²¹ The facts in detail are very important. One key fact was that the stockholder vote was virtually assured for the *Ace* merger as *Ace* controlled 46% of the votes.

In short, the Court construed the fiduciary out provision to leave the decision to the board's - not counsel's - judgment. That would make it valid, and would justify the board's action in opting for the third party bid. Alternatively, the court held that if the contract were construed as *Ace* wanted (that counsel's advice was determinative), then the provision would be against public policy. Apparently, either way *Ace* would lose.

The facts and procedural posture of *Capital Re* thus differed from *Cincinnati Bell* (where the board had already conducted a market canvass),²² and *Phelps Dodge* (where the Chancellor's decision seemed to turn on the board's willful blindness in the context of the duty of care).²³ In the context of its facts and procedural posture, *Capital Re* seems to stand for the proposition that a no-talk provision without a fiduciary-out, or a fiduciary-out that requires a lawyer to sign an opinion that the board is *required* to consider other options, is unenforceable when the board seeks to consider other and potentially better options.²⁴

All three cases (*Capital Re*, *Phelps Dodge* and *Cincinnati Bell*) seem consistent with the proposition that no-talk provisions are not invalid per se if accompanied by a meaningful fiduciary-out that would allow the board to do what it believes appropriate in the face of a superior deal, although the original partner may insist on notice and an opportunity to top. At the heart of any jurisprudence in this area should be a concern for the best interests of stockholders.

²¹ *Ace Ltd.*, 747 A.2d 95, at 98-99.

²² *Cincinnati Bell*, 1999 WL 1009174.

²³ *Phelps Dodge*, 1999 WL 1054255.

²⁴ *Ace Ltd.*, 747 A.2d 95.

The factual texture and procedural posture of each case is determinative. For example, what would have been the analysis in *Capital Re* if the board had wanted to stay with *Ace* rather than wanting to consider other alternatives? That would be an interesting scenario, but it would not be appropriate for me to express any views on these cases, or any of these hypotheses.

Another example of the need to look carefully at the facts and procedural posture is demonstrated by the recent Delaware Supreme Court decision in *McMullin v. Beran (ARCO)*.²⁵ For example, there was some discussion today that our decision in the *ARCO* case was questionable. But I think those questioning the decision need to understand that the case arose on the pleadings only, in the context of a Rule 12(b)(6) motion to dismiss. In that context, we must accept as true the well-pleaded allegations of the complaint. Those allegations included sharp criticism of the processes of the board and the claim that the transaction was driven in part by the parent company's appetite for cash.

IV. WHAT ADVICE IS APPROPRIATE?

Before turning to advice, it is important to reach the following general conclusions and observations about the state of Delaware's jurisprudence in this area:

- The cases are fact intensive.
- The Court of Chancery is doing a great job of analysis and service to the bar and the business community.
- The Court is defining and applying the law on a daily basis by filling in the gaps left by pending further Supreme Court development.
- If any case is appealed, the Supreme Court may clarify these legal principles (or perhaps not if the case before us is shown to be purely factual).

I would always advise counsel for the parties to identify the safe harbors, and then let the clients make the risk assessment. Usually if the clients stay within a safe harbor they need not worry, but the economics or exigencies of a given transaction may require one to consider pushing the envelope beyond the safe harbors. One easy example is that in many contexts a break-up fee of about 2.5% may be in the safe harbor range.²⁶ But what about 6%?²⁷

²⁵ *McMullin v. Beran*, 765 A.2d 910 (Del. 2000) ("ARCO").

²⁶ *See Brazen v. Bell Atlantic Corp.*, 695 A.2d 43 (Del. Supes. 1997).

²⁷ *See Phelps Dodge*, 1999 WL 1054255.

For example, assume, *only as a working hypothesis*, that the court may not apply the deferential business judgment rule to your transaction, but might apply a more searching reasonableness scrutiny. Will your client's business decisions pass that test? If that is problematic, you simply lay out the risks and the client decides.

Just looking at some of the materials for this conference, one can find sound advice. For example, Frank Balotti's paper points out that good faith reliance by directors on officers, committees, and experts may be a safe harbor under Section 141(e). But he points to the *Macmillan*²⁸ case, and warns that directors may not avoid their duty of oversight by such reliance in a sale of control where the insiders are among the bidders.

Other examples of advice in the materials at this conference include the Wachtel Lipton general advice letters. I suggest you simply look at some of the concluding excerpts in their memos:

The decision in *Ash v. McCall*²⁹ thus reinforces many of the traditional themes of Delaware law - deference to the business judgment of directors, protection for directors who properly rely on independent experts, avoidance of crude hindsight judgments, careful scrutiny of a board's response once clear red flags arise, and apparent problems need to be addressed at the board level. The ruling signals that, while Delaware will continue to allow shareholders to pursue genuine claims arising out of directors' actual knowledge of wrongdoing (or gross negligence in failing to oversee), Delaware will not second-guess the good faith decisions of directors who approve an acquisition based on expert advice and appropriate board process. *McKesson/HBOC* is a timely reminder that thoughtfulness and good process are as important from an acquiring board's perspective as from a seller's.

ARCO represents a further example of the Delaware courts' concern that the rights of public minority shareholders be somehow protected when a control shareholder causes a cash-out transaction to occur, even when the control person is not affiliated with the buyer and there has been arms-length negotiation.³⁰ In such situations, if, as in *ARCO*, no special committee is appointed to

²⁸ *Mills Acquisition Co. v. MacMillan, Inc.*, 559 A.2d 1261 (Del. 1989).

²⁹ *Ash v. McCall*, Del. Ch., C.A. No. 17132, Chandler, W. (Sept. 15, 2000) ("*McKesson/HBOC*").

³⁰ *See McMullin*, 765 A.2d 910.

represent the interests of the public, it will apparently be relatively easy for a shareholder complaint to survive a motion to dismiss in Delaware, if the plaintiffs can plausibly allege that the interests of the parent diverge from those of the public. Corporations involved in such potential transactions can reduce the risks of litigation, however, by thoughtful structuring of the process to protect public minorities while recognizing (as the *ARCO* opinion does itself) the business realities that are present when a majority shareholder is determined to exist.

The *Digex* decision, like the *ARCO Chemical* case, shows the continuing zeal of the Delaware courts in strictly scrutinizing the process by which transactions involving a majority shareholder occur.³¹ Where the evidence appears to show that negotiating leverage for the public minority exists but has not been tested in discussions with the buyer, the courts will be skeptical that the result is fair. Parties contemplating transactions involving a controlled company should accordingly engage in thoughtful planning of an appropriate process, and consider how representatives of a public minority can play a constructive role in the evolution of a deal that recognizes the legitimate interests of both majority and minority shareholders.

V. CONCLUSION

Stay tuned for further developments. Some of the recent Chancery cases have decided some fundamental questions that someday might come to the Supreme Court for a decision on a jurisprudential fork in the road. For example:

- Should the judicial review of deal protection mechanisms be based on the business judgment rule analysis, or should courts review these provisions for substantive reasonableness?
- Should the rules for change of control cases be applied to stock-for-stock deals to the extent of judicial scrutiny of deal protection mechanisms?

³¹ *In re Digex, Inc. S'holder Litig.*, Del. Ch., Consol. C.A. 18336, Chandler, C. (Dec. 13, 2000).

- What are the contract rights of one merger partner if the other feels it wants to, or should, go with a sweeter bid? Does the *QVC* holding need further gloss?

Without commenting on the merits of any of the cases, I can say that the Court of Chancery is carrying out in excellent fashion the goals of courts that I mentioned earlier (promptness, clarity, predictability, stability, and a coherent economic rationale). The bar and the business community are in good hands, as the Court of Chancery is doing an internationally respected and superb job of managing these exigent cases with complex facts.

