IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE 217

IN AND FOR NEW CASTLE COUNTY

LINDA PARNES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 15192
	)	
BALLY ENTERTAINMENT CORPORATION, HILTON HOTELS CORPORATION, ARTHUR M. GOLDBERG, BARRIE K. BRUNET, J. KENNETH LOOLOIAN, JAMES M. ROCHFORD, GEORGE N. ARONOFF, PATRICK L. O'MALLEY, ROCCO J. MARANO and EDWIN M. HALKYARD,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

Robert D. Goldberg, of BIGGS AND BATTAGLIA, Wilmington, Delaware; OF COUNSEL: Sidney Silverman and John F. Harnes, of SILVERMAN, HARNES, HARNES, PRUSSIN & KELLER, New York, New York, Attorneys for Plaintiff.

Stephen E. Jenkins and Richard D. Heins, of ASHBY & GEDDES, Wilmington, Delaware; OF COUNSEL: Dennis J. Block, Jonathan D. Polkes, Douglas I. Koff and Jennifer L. Hurley, of CADWALADER, WICKERSHAM & TAFT, New York, New York, Attorneys for Defendants Bally Entertainment Corporation, Arthur M. Goldberg, Barrie K. Brunet, J.

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Jesse A. Finkelstein and Raymond J. DiCamillo, of RICHARDS, LAYTON & FINGER, Wilmington, Delaware; OF COUNSEL: Everett C. Johnson, Jr., Curtis P. Lu and Mary E. Britton, of LATHAM & WATKINS, Washington, D.C., Attorneys for Defendant Hilton Hotels Corporation.

CHANDLER, Chancellor

The plaintiff, Linda Parnes, instituted this purported class action against the defendants Bally Entertainment Corporation ("Bally"), the eight members of Bally's board of directors (the "Bally Board" or the "Board"), and Hilton Hotels Corporation ("Hilton"). Pames' amended and supplemental complaint challenge the fairness of the merger between Bally and Hilton in 1996 (the "Merger") and the agreement governing that transaction (the "Merger Agreement").

Specifically, Parnes contends that (i) Bally's Chairman, President, and Chief Executive Officer ("CEO") Arthur M. Goldberg breached his duty of loyalty by misusing his position for his own personal benefit by extracting from Hilton excessive payments to himself in exchange for his consent to the Merger on terms that were less favorable than they should have been to the Bally public shareholders; (ii) Goldberg breached his duty of candor to the Bally Board and the Bally shareholders by misrepresenting material facts concerning the negotiation of the Merger, as well as the negotiation of several transactions related to the Merger that benefited Goldberg personally (the "Goldberg Transactions"); (iii) the remaining members of the Bally Board breached their fiduciary duties of good faith, loyalty, and due care by approving the Merger and the Goldberg Transactions; (iv) Hilton aided and abetted these breaches of fiduciary duty by knowingly participating in these violations by the Bally directors in general, and Goldberg in particular; (v) Hilton attempted to manipulate its stock price, by announcing a share repurchase plan (the "Repurchase Plan") and dividend increase on September 19, 1996, so as to deprive Bally shareholders of the cash consideration that they would have otherwise received due to the price protection provisions of the Merger Agreement; and (vi) the Bally Board aided and abetted this stock price manipulation scheme by making no affirmative effort to have the Repurchase Plan or the dividend increase modified or rescinded.

These are serious allegations. As the following discussion will demonstrate, however, the allegations are, not supported by the facts presented at trial. At various times in this litigation, Pames has employed terms such as "bribe," "fabrication," "manipulation," "corrupted," "fraud," and "conspiracy" in an effort to destroy the credibility of each and every participant in the Merger negotiations. She has asserted that the testimony of every fact witness presented before me was 'manufactured expressly for trial," fabricated, and fraudulent.' In my opinion, however, Pames has failed to adduce credible evidence of wrongdoing on the part of any of the defendants. Pames has even failed to satisfy her initial burden to rebut the

[1] See, e.g., Pl.'s Proposed Findings of Fact and Conclusions of Law, 9.

presumption of the business judgment rule based on the facts presented before me. Furthermore, even if Pames were to have satisfied her initial burden, the testimony at trial not only attests to the entire fairness of both the price and process of the merger, but, indeed, that the merger, by conventional measures, was an exceptional deal from the perspective of a Bally shareholder. No doubt that is the reason the Bally shareholders voted overwhelmingly in favor of the merger. For the reasons set forth at length later, I find for the defendants on each of Parnes' claims.

I. FACTUAL BACKGROUND

A. The Parties

Linda Pames is a former shareholder of Bally. She purchased her Bally shares in 1995 for $8.50 a share and exchanged them for Hilton shares on December 18, 1996 in connection with the Merger. As a result of the Merger, Pames received about $29.00 in value for each of her Bally shares, more than tripling her initial investment.

Hilton owns and operates hotels and hotel-casinos throughout the United States. Hilton is a Delaware corporation with its principal offices located in Beverly Hills, California.

Before its merger into Hilton, Bally was a Delaware corporation that owned and operated casinos and hotel-casino resorts in Atlantic City, Las

Vegas, Mississippi, and Louisiana. The Bally Board consisted of eight individuals during the period in question. Arthur Goldberg[2] was the Chairman of the Board, President, and CEQ of Bally at the time of the Merger and owned approximately 8.2% of Bally's issued and outstanding securities at the time of the Merger. The remaining seven Bally directors were all non-management, outside directors. Each of these seven, outside directors owned a significant amount of Bally stock at the time of fhe Merger: Barrie K. Brunet (4,334 shares); J. Kenneth Looloian (13,334 shares); James M. Rochford (34,334 shares); George N. Aronoff (99,818 shares); Patrick L. O'Malley (77,140); Rocco J. Marano (13,334 shares), and Edwin M. Halkyard (17,186 shares).

B. The Merger Negotiations[3]

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[2] One week after testifying at the trial in this case, Mr. Goldberg died an untimely death from illness.

[3] The conduct of this litigation has been marked by acute contentiousness and posturing by both the plaintiff and the defendants. Perhaps due to this unusual and unfortunate behavior, the parties have expended an extraordinary amount of effort in not only seeking to explore the relevant factual record during the course of numerous discovery disputes, but also in arguing before me the most minute of details that at times were only peripherally related to this case. In my opinion, this case does not turn on the ability to piece together every action and statement of every person and party involved over the roughly 6 month period leading up to the Merger's announcement. Rather, this is a case that concerns the negotiations surrounding the Merger Agreement and the related Goldberg Transactions. To the extent that any factual disputes that the parties have fought over do not relate to those contracts (the Merger Agreement and the Goldberg Transactions), they are irrelevant and I will not address them.,

Finally, I want the record to reflect that I have totally ignored the repeated (improper) attempts by counsel for the plaintiff and the defendants to testify or "vouch" for the truth of certain facts or propositions. See, e.g., Defendants' Proposed Findings of Fact and Conclusions of Law, ¶ 5-8 (describing certain proceedings before the Delaware

By the beginning of 1996, the Bally Board was confronted with the very real possibility that the best way to effectively compete in the increasingly competitive casino gaming industry while concurrently maximizing shareholder value was through the sale or merger of Bally. In particular, the Board recognized that although Bally's financial outlook had markedly irnproved over the preceding five years since Goldberg had become CEO in the fall of 1990,[4] Bally remained a highly leveraged company in a capital intensive industry. Bally faced increasing competition from both established casinos and newly emerging gaming operations in geographic areas where gambling had only recently been legalized.

In order to compete with large competitors such as MGM Grand, Inc., Hilton, and ITT Corporation ("ITT"), Bally pursued the potential construction of two large casino hotels, the Paris Hotel in Las Vegas and the Wild Wild West Hotel in Atlantic City. Both of these projects, however, required a significant amount of capital that Bally could not obtain without

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Supreme Court) and Plaintiffs Proposed Findings of Fact and Conclusions of Law (Affidavit of John F. Hames) (purporting to describe results of certain "investigations by counsel" into Goldberg's negotiations with ITT on behalf of Bally). Such statements by counsel are not "facts" and I dismiss them entirely.

[4] Bally stock was trading around $2.00 or $3.00 per share when Goldberg became CEO. It owed about $2 billion in debt, some of which was in default, and had negative cash flow.

paying interest rates of at least 12%. Bally's chief competitors received interest rates closer to 7%. Bally therefore found itself at a severe competitive disadvantage vis-à-vis its largest and most successful competitors. On the one hand, Bally needed to expand to survive. On the other hand, Bally could not afford to finance the expansion that was necessary for its survival. The Board believed that a merger or sale of Bally to another company with significant access to capital would give Bally its best chance to grow and effectively compete.

Bally management moved quickly to begin to explore the possibility of a merger or sale of the company. A promirient investment bank, Goldman Sachs, was retained in February 1996 to survey the corporate landscape for potential buyers and to assist management in analyzing Bally's options for a possible business combination. In April 1996, Bally retained another prominent investment bank, Merrill Lynch, for additional advice.

In February 1996, ITT approached Bally regarding the possibility of a merger. Thereafter, Hilton contacted Bally in early March regarding a potential merger. Both ITT and Hilton exchanged certain non-public. information with Bally pursuant to confidentiality agreements. The February and March discussions with ITT and Hilton, however, did not proceed to either company making a formal offer for Bally. Bally believed the initial prices being discussed, ranging roughly from the high teens to the low twenties, were simply too low.

In April, representatives of ITT again approached Bally, attempting to restart discussions regarding a possible business combination. In these negotiations, Bally was represented by Goldberg, Bally's Chief Financial Officer Lee Hillman, Emmanuel Pearlman, and bankers from Merrill Lynch and Goldman Sachs. These discussions culminated in an offer by ITT of $26.00 in ITT stock for each share of Bally common stock. The April ITT proposal did not include price protection for Bally shareholders should the price of ITT stock decline before the transaction closed. This type of shareholder protection, in the form of "downside protection" or a "downside collar," was of critical importance to the Bally management and Board as the time delay between approval by the Bally Board and the closing could take up to a year due to the stringent approval requirements for gaming companies. ITT refused Bally's requests for downside protection and, as a result, discussions did not progress any further.

Also in. early April, Hilton renewed merger discussions by proposing an offer consisting of $23.75 of Hilton stock for each share of Bally stock. Based on ITT's $26.00 offer, Bally viewed Hilton's April offer as inadequate. As Hilton refused to further increase its offer, negotiations between Hilton and Bally again stalled.

Although the merger discussion with ITT and Hilton had both stopped moving forward, Bally did not give up its hopes of reaching an agreement. The Bally Board had been constantly apprised of the merger discussions with ITT and Hilton and the Board knew that although a deal had not been reached, the reasons for making a deal remained strong. Representatives of Bally and Hilton, in particular, proceeded with pre-scheduled due diligence and continued to engage in informal discussions in hopes that a deal still could be reached.

In late May, Hilton contacted Bally to officially resume negotiations. During a series of phone calls on or around May 29, 1996, Hilton's CEO Stephen Bollenbach, a representative of Hilton's investment banker, Donaldson, Lufkin & Jenrette, and Bally's CEO Goldberg discussed the basic deal components that would become embodied in the Merger Agreement between Hilton and Bally. Hilton made an offer of $27.00 of' Hilton stock for each share of Bally stock (after giving effect to a 4 for 1 stock split of Hilton common). Hilton also agreed to provide the downside price protection Bally sought. In other words, Hilton agreed to pay cash to compensate Bally shareholders for any drop in the value of Hilton shares up to $3.00 per share below the $27.00 protected price. This "downside collar" was highly unusual and extremely beneficial to Bally shareholders as it had no corresponding "upside collar" to protect Hilton should its stock price increase. Furthermore, if Hilton stock fell below $20.00 per share before the closing, Bally had a "walk away" provision., that is, the right to terminate the proposed Merger.

During a meeting on June 1, 1996, Bollenbach and Goldberg confirmed the details of their earlier discussions and directed their respective financial and legal advisors to work out the terms of the Merger Agreement. Because Hilton insisted that the Bally Board approve the transaction no later than June 6, -the financial and legal advisors worked feverishly to conduct all their due diligence and to negotiate and finalize the details of the Merger Agreement. At the time of the approval of the Merger by both the Bally and Hilton Boards on June 6, the basic structure of the Merger, that is, the $27.00 price, the $3.00 downside collar, and the $20.00 walk away clause, remained in place exactly as they had been discussed and confirmed on June 1 by Bollenbach and Goldberg.

C. The Goldberg Transactions

1. The Bally Total Fitness Warrant

Parnes specifically challenges the propriety of the Goldberg Transactions, negotiated and agreed to during the hectic first week of June 1996. The first of the Goldberg Transactions' that she challenges concerned a warrant to purchase approximately 20% of the equity of Bally Total Fitness ("BTF"). Before January 1996, BTF was a wholly owned subsidiary of Bally with a checkered financial past. In January 1996, Bally spun off BTF to the Bally shareholders but it retained the warrant. Following the spin-off, BTF's financial condition continued to deteriorate as the company was in danger of not being able to meet its significant debt obligations when they became due. These debt obligations included a $15.2 million intercorporate debt owed to Bally. As a result, Moody's Investor Services lowered BTF's credit rating from a B3 rating to a Caa rating, indicating that BTF was on credit watch for a potential bankruptcy or other type of liquidity crisis.

Around June 4, 1996, representatives from Bally and Hilton, including Bruce Rosenblum, a lawyer representing Hilton, and Hillman and Pearlman representing Bally, met to discuss all remaining issues in connection with

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[5] Goldberg was represented by his personal attorney regarding each of these transactions.

the Merger. At that meeting, Hilton expressed concerns regarding BTF's financial condition and made clear that it desired no association with BTF following the Merger. Hilton stated that Bally needed to dispose of the BTF warrant because Hilton wanted to distance itself from the struggling fitness company and any potential liability to BTF's creditors. Hilton believed that the holder o:f the BTF warrant would be considered an affiliate of BTF and would be required to tile a Schedule 13D with the Securities and Exchange Commission ("SEC") describing its interest in BTF.

In order to completely separate itself from BTF as Hilton insisted, Bally agreed to dispose of the warrant before the June 6 Bally Board meeting (the "Board meeting"). Pearlman, Hillman, and Rosenblum together decided to ask Goldberg to purchase the warrant for its book value of $250,000.[6] Goldberg agreed to acquire the warrant as a means of facilitating the Merger with Hilton.[7] Additionally, to further sever any ties between Bally and BTF before the closing and to help guarantee that BTF would remain solvent at least until the Merger closed, Bally and Hilton

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[6] The $250,000 value of the BTF warrant was calculated six months earlier when Bally spun off BTF. As BTF's financial condition had only worsened during the period leading up to June, the parties did not seek any further valuations of the warrant.

[7] Goldberg later sold 25% of the warrant to Hilhnan, for 25% of the $250,000 purchase price so as to give Hilhnan an incentive to operate and to turn around BTF.

agreed to forgive the $15.2 million intercorporate debt owed by BTF to Bally."

2. The Maryland and Cancun Projects

Before the Merger, Bally had interests in joint venture projects to develop gaming facilities in Cancun, Mexico and at two horse racing tracks in Maryland. Both of these projects were entirely speculative, as neither the governments of Mexico nor Maryland had yet legalized gaming in their respective jurisdictions and even if gaming were ever legalized in those two places, the Bally joint ventures would have to receive gaming licenses."

Due to the unclear future prospects of these endeavors, representatives of Hilton testified that they did not view either interest as important or material to the Merger. Further, Hilton reasoned that if either of these two projects ever became feasible, Goldberg's continued involvement would be essential due to his gaming industry experience and his relationships with developers and other local people in each venue Accordingly, Hilton transferred to Goldberg 20% of Bally's 50% interest and right to participate

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[8] In addition to the BTF warrant and the $15 million intercorporate debt, Bally and BTF were linked by an administrative services agreement and a corporate tax sharing arrangement whereby the two companies filed taxes on a consolidated basis. Termination of these two agreements was also discussed during the June 4 meeting, but the parties concluded that nothing could be done immediately to sever these agreements, beyond waiting for them to cease by their own terms in several months.

[9] To date, Maryland and Mexico still have not legalized gaming.

in the Maryland racetrack project and 40% of Bally's 50% interest in the Cancun project. Goldberg was thereby given the right to invest his own money along with Hilton on the same basis, subject to Hilton's prior approval. The transfer of these participation rights to Goldberg was discussed and agreed to during the first week of June 1996.

3. The Consulting Contract

Parnes also challenges the propriety of Hilton's retention of Goldberg as a consultant to the combined company to help with the integration of the two companies. In short, Hilton retained Goldberg for a period of three years at a fee of $2 million per year, the same salary Goldberg was receiving at that point in time from Bally. Goldberg also received an option to purchase 600,000 shares of Hilton stock each year for the three years of the contract term at a per share exercise price equal to the average high and low prices of Hilton common stock on the date of the grant. Hilton also purchased Goldberg's home in New Jersey for its fair market value so that Goldberg, not Hilton, could purchase a house in Nevada where he would be required to spend much of his time as a consultant after the Merger.

The consulting contract was negotiated by Goldberg with Hilton during the first week of June 1996. It was considered and approved by the Hilton board of directors (the "Hilton Board") at its June 6 board meeting.

The Bally Board was fully informed of the details of the consulting contract, but did not need to vote to approve its adoption.

4. The Severance Payments

Based upon Goldberg's 1990 employment contract with Bally—entered into more than six years before the Merger-Goldberg was entitled to receive $15,821,000 in severance payments following the Merger's closing. Goldberg was one of ten Bally executive officers who had employment agreements that provided for certain benefits upon a "change o-f control" of Bally.

D. The June 6 Bally Board Meeting

In the days leading up to the June 6 Board meeting, Bally management and the Board diligently prepared themselves for discussions concerning, and the final vote on, whether to approve the Merger. During the first week of June 1996, the Bally directors were individually contacted and informed of the terms and structure of the possible transaction with Hilton. The directors also were provided with written materials in connection with the proposed Merger to review before the Board meeting.

At the Board meeting, the Bally Board, aided by their legal and financial advisors, reviewed and discussed every significant aspect of the Merger. To begin the meeting, legal counsel to Bally, representatives of the firm Weil, Gotshal & Manges, as well as investment bankers from Goldman Sachs and Merrill Lynch, made presentations to the Board concerning the legal and financial terms of the proposed Merger. Each investment bank provided the: Board with a fairness opinion praising the proposed transaction. The fairness opinions stressed the large premium Bally shareholders were receiving from Hilton in that Bally stock traded at about $18.00 per share before the announcement of merger negotiations, while Hilton offered $27.00 of Hilton stock per Bally share with upside potential and downside protection. In fact, on June 6 when the Bally Board voted to approve the transaction, the transaction's value based on the trading price of Hilton stock had already risen from the protected price of $27.00 to nearly $29.00 per share and remained at that level through the closing. Because of the unusual asymmetrical collar negotiated by Bally and its advisors, the Bally shareholders received the benefit of the appreciation in Hilton's stock at the closing.

The Board reviewed and discussed the background to the Merger, including the merger negotiations with ITT and Hilton that had occurred episodically throughout 1996. The Board was also informed that shortly before the Board meeting, Bally management had instructed Merrill Lynch to contact ITT one last time to see if that company would be willing to better

Hilton's offer. Merrill Lynch did so and the Board was informed that ITT had declined to make a new offer. In addition, during the Board meeting Goldberg excused himself from the room and the Bally Board discussed, along with Bally's legal and financial advisors, each item of consideration Goldberg would receive in connection with the Merger.

After further deliberation, the Bally Board unanimously approved the Merger Agreement. Shortly thereafter, on that same day, the Hilton Board met and unanimously approved the Merger Agreernent as well. The Merger later closed in December 1996.

The Hilton offer, accepted on June 6, was the best offer in terms of both price and price protection made by Hilton or any other bidder during the five months that Bally and its advisors pursued a transaction. Hilton never considered making, and would not have made, a better offer for Bally than the one that it made and that the Bally Board ultimately accepted on June 6, 1996. Finally, no other potential bidder emerged between June 6 and the December closing, despite the absence of lock-ups or other impediments to a third party bid in the Merger Agreement.

E. Shareholder Approval of the Merger

The Bally proxy statement (the "Proxy Statement") proposing approval of the Merger Agreement was mailed to Bally shareholders on

August 19, 1996. In addition to describing the history, background, and terms of the Merger and Merger Agreement, the Proxy Statement disclosed each of the Goldberg Transactions. The holders of over 99% of Bally's stock voted to approve the Merger Agreement.

F. Hilton's Announcement of a Dividend Increase and a Share Repurchase Plan

As described above, the Merger Agreement was a stock-for-stock transaction involving the exchange of one share of Hilton common stock for each share of Bally common stock after giving effect to a four for one split of Hilton stock (the "Stock Split"). On September 19, 1996, Hilton's shareholders and the Hilton Board voted to approve the previously announced Stock Split. Before the Stock Split, each share of Hilton stock paid a dividend of $0.30. If this customary dividend would have remained in place after the Stock Split, the dividend rate on Hilton stock would have been $.075. In connection with the Stock Split, Hilton increased its dividend rate by one half of one cent per share to $.08.

Also on September 19, 1996, the Hilton Board approved the Repurchase Plan, thereby enabling Hilton to repurchase up to 20 million shares of its own stock after the Stock Split. The Repurchase Plan was designed along the lines of a standard operating plan to repurchase shares to fund employee option exercises. Hilton management believed that standing authorization to engage in share repurchases gave the company increased financial flexibility more appropriate for a growth company. Hilton announced the adoption of the Repurchase Plan on September 19, 1996 as well. Bally was not informed before September 19 of Hilton's plans to authorize share repurchases.

II. PROCEDURAL HISTORY

As it is sometimes easier to know where one is going if one remembers where one has already been, I pause to recite briefly the past twists and turns of this case. On August 29, 1996, Parnes filed a complaint on behalf of a class consisting of all Bally shareholders who exchanged Bally stock for Hilton stock pursuant to the Merger Agreement. On May 12, 1997, I dismissed all but one of Parnes' claims for failure to plead facts establishing either a duty on the part of the Bally directors to maximize shareholder value or for the Court to exercise "enhanced scrutiny" in accordance with the doctrine announced in cases such as *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*[10] and *Paramount Communications Inc. v. QVC Network Inc.*[11] I further held that Parnes had failed to plead facts sufficient to overcome the presumption of the business judgment rule

[10] Del. Supr., 506 A.2d 173, 184 (1985).
[11] Del. Supr., 637 A.2d 34, 43-44 (1994).

except with respect to what I described as an attempt to plead corporate waste. This waste claim was therefore the only claim to survive the defendants' initial motion to dismiss.[12]

Later, on May 27, 1997, the defendants answered the complaint and moved for judgment on the pleadings with respect to the waste claim on the ground that this claim was derivative in nature and as Pames was no longer a shareholder of Bally following the Merger,, she had no standing to bring a derivative suit. The parties then briefed the waste claim. On February 3, 1998, I granted the defendants' motion and dismissed plaintiffs complaint on the waste claim.[13]

Pames then appealed the *Parnes II* decision to the Delaware Supreme Court by asserting that she actually had not pled a waste claim. Instead, she argued to the Supreme Court that her case was based on the allegation that the merger price was unfair because the negotiating process was corrupted by Goldberg when he allegedly demanded *bribes* from potential bidders. Parnes did not appeal this Court's earlier decision *(Pames I)* that she had failed to plead facts sufficient to establish a basis for a breach of duty to maximize shareholder value and that the Merger required review under an

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[12] *Parnes v. Bally Ent. Corp.,* Del. Ch., C.A. No. 15192, Chandler, V.C. (May 12, 1997) *("Parnes I")*.

[13] *Parnes* v. *Bally Ent. Corp.,* Del. Ch., C.A. No. 15 192, Chandler, C. (Feb. 3, 1998) *("Parnes II")*.

"enhanced scrutiny" standard. The *Parnes I* claims were thus abandoned. Nevertheless, the *Parnes II* claim was recharacterized, at the Supreme Court level, as a claim alleging a bribe extracted by Goldberg, and willingly paid by Hilton.

On January 25, 1999, the Supreme Court reversed this Court's dismissal of Parne's complaint, finding that her claims concerning the Goldberg Transactions were direct, not derivative, corporate waste claims. As the Supreme Court noted, "to state a direct claim with respect to a merger, a stockholder must challenge the validity of the merger itself, usually by charging the directors with breaches of fiduciary duty resulting in unfair dealing and/or unfair price."[14] The Supreme Court continued:

> Pames' complaint, although not a model of clarity, directly challenges the fairness of the process and the price in the Bally/Hilton merger. It alleges that Arthur M. Goldberg, Bally's Chairman and Chief Executive Officer, controlled the merger negotiations. Goldberg allegedly informed all potential acquirors that his consent would be required for any business combination with Bally and that, to obtain his consent, the acquiror would be required to pay Goldberg substantial sums of money and transfer to him valuable Bally assets.[15]

Nevertheless, as the Supreme Court recognized, although Parnes alleged facts that rebutted the business judgment rule for purposes of the

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[14] *Parnes v. Bally Ent. Corp.,* Del. Supr., 722 A.2d 1243, 1245 (1999) (citation omitted) ("*Parnes III*").
[15] *Parnes IIZ, 722* A.2d at 1245-46.

pleading stage of the litigation, "the facts that are developed during the course of the litigation may cast a very different light on the merger and the Bally directors' decisions."[16] The Supreme Court's decision is therefore quite clear that as the facts of this matter are established before this Court at trial, I no longer "must accept all of Parnes' allegations as true and give her the benefit of all inferences that may be drawn from those facts."[17]

Next, on December 17, 1999, Parnes submitted an amended and supplemental complaint following from the Supreme Court's decision. Among its many additional contentions, the amended complaint included new allegations that Hilton improperly manipulated its stock price. Over the course of two full weeks in early October 2000, this Court held a trial in this matter. This constitutes the Court's findings of fact and conclusions of law and represents the Court's final decision on the merits after trial.

III. THE CLAIMS AGAINST BALLY, THE BALLY BOARD, AND GOLDBERG IN PARTICULAR

The disposition of this matter is almost entirely dependent on the factual record as it has been developed through the trial. Without any credible evidence of improper behavior by Goldberg or the seven

[16] *Parnes III*, 722 A.2d at 1247.
[17] *Id.* (citation omitted).

independent Bally directors, Pames' contentions utterly collapse under, their own weight, devoid of any credible factual foundation to support them,

A. The Application of the Business Judgment Rule

As is well established under Delaware law, the business judgment rule "is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company."'" This presumption "initially attaches to a director-approved transaction within a board's conferred or apparent authority in the absence of any evidence of 'fraud, bad faith, or self-dealing in the usual sense of personal profit or betterment.""" Where the business judgment rule applies, the business decisions of disinterested directors "will not be disturbed if they can be attributed to any rational business purpose. A court under such circumstances will not substitute its own notions of what is or is not sound business judgment."[20]

Pames bears the burden of rebutting the business judgment rule by introducing evidence of director self-interest or self-dealing, or that "the

[18] *Aronson v. Lewis,* Del. Supr., 473 A.2d 805, 812 (1984).
[19] *Citron v. Fairchild Camera & Instrument Corp.,* Del. Sups., 569 A.2d 53, 64 (1989) (quoting *Grobow v. Perot,* Del. Supr., 539 A.2d 180, 187 (1988)).
[20] *Sinclair Oil Corp. v. Levien,* Del. Supr., 280 A.2d 717, 720 (1971).

directors lacked good faith or failed to exercise due care."[21] If Parnes fails to present evidence that meets her burden, the business judgment rule, as a substantive rule of law, will protect the directors and their decisions.[22]

Here, Parnes largely relies on her contention that Goldberg and the remaining Bally directors did not act in good faith. Parnes, however, also has made several contentions challenging the disinterest, independence, and due care of the seven Bally directors besides Goldberg. Before turning to my analysis of the "bribery" allegations against Goldberg, I will first examine Parnes' attempts to rebut the business judgment rule based on these alternative theories.

1. Was a Majority of the Bally Board Disinterested and Independent?

To overcome the presumption of the business judgment rule, Parnes may prove that the Bally directors were not disinterested and independent. She may meet this burden as to interest by demonstrating that a majority of the directors

> will receive a personal financial benefit from a transaction that is not equally shared by the stockholders . . . [or] where a corporate decision will have a materially detrimental impact on a director, but not on the corporation and the stockholders.[23]

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[21] *Citron, 569* A.2d at 64.
[22] *Id.*
[23] *Rales v. Blasband*, Del. Supr., 634 A.2d 927,936 (1993).

She also may rebut the presumption based on a lack of independence by demonstrating that a majority of the directors were "beholden" to an interested party or so under the influence of an interested party that the directors' discretion would be sterilized.[24]

Parnes failed to submit evidence that would satisfy any of these inquiries. Parnes' sole evidence regarding a disabling financial interest on the part of any director besides Goldberg is that each of the Bally directors would be paid a fee of $50,000 by Hilton to serve on an advisory board to assist in transition matters for the year following the Merger. Each of these directors was already receiving $50,000 a year from Bally to serve on the Bally Board. Therefore, approving the Merger would confer no net benefit to the Bally directors if they voted for the Merger beyond increasing the value of their Bally equity holdings.[25] Further, there is absolutely no evidence in the record that the $50,000 fee was enough to constitute a material interest to any of the Bally directors, much less a majority of them. To the contrary, all the evidence put before this Court made clear that this

[24] *Id* (citations omitted).
[25] Given each Bally director's substantial holdings of Bally stock, I note that these directors had ample motivation and incentive to obtain as high a price as possible for their Bally shares.

fee was not a material interest to any of the Bally directors and in no way affected their decision to approve the Merger.[26]

As to independence, Parnes alleges that Goldberg dominated or controlled the other Bally directors and that those directors therefore lacked independence. With respect to four of the Bally directors, Brunet, Rochford, O'Malley, and Halkyard, Parnes has made no arguments that in any way call into question their independence beyond the contention in the amended complaint that these four directors "did not act independently."[27] This bald assertion is not enough to convince this Court of any lack of directorial independence. Because four of the eight Bally directors were clearly independent, a majority of the Bally Board could not have lacked independence.

Moreover, I am unpersuaded by Parnes' arguments challenging the lack of independence of the three remaining Bally directors, Marano, Aronoff, and Looloian. Specifically, as Marano testified, he had no business or social relationship with Goldberg whatsoever beyond his role as a Bally director. Pannes points to Marano's relationship with Looloian as proof that

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[26] *See Moran v. Household Intern., Inc.,* Del. Ch., *490* A.2d *1059,* 1074-75, *aff'd on other grounds,* Del. Supr., 500 A.2d 1346 (1985) ("Where a majority of the directors are independent or outside directors receiving no income [as directors of the company] other than the usual directors' fees the presumption of good faith is heightened.")

[27] Pl.'s Am. Compl. ¶ 158(d). For further discussion of the directorial independence of Brunet and Rochford, *see Parnes I,* mem. op. at 4-5.

Marano was beholden to Goldberg. This tenuous set of relationships, without more, is not enough to destroy a director's independence. Parnes challenges the independence of Aronoff by pointing out that Aronoff was a partner in a law firm that was one of Bally's outside counsel. Parnes has produced no other evidence of a social or business relationship between Aronoff and Goldberg beyond this representation of Bally. The retention of Aronoffs firm by Bally, absent any evidence that Aronoffs firm was economically or otherwise beholden to Goldberg, is not enough to disqualify Aronoff as interested. Similarly, Pames points out that defendant Looloian served on the boards of several companies with Goldberg. She has not, however, made any meaningful argument as to why, as a consequence of these positions, Looloian was influenced in his consideration of the Merger. Based on the evidence, therefore, it is quite easy for me to find the seven outside Bally Board members to be completely disinterested and independent.

2. Did the Bally Board Act With Due Care in Approving the Merger Given the Existence of the Goidberg Transactions?

The standard for determining whether a business judgment reached by a board of directors was informed and complied with their duty of due care is gross negligence." The evidence in this matter overwhelmingly demonstrates that the Bally Board was fully informed and acted with due care.

As the facts illustrate, the Board meeting was the culmination of months of negotiations between Bally and not only Hilton, but ITT as well. Further, the Board retained not one, but two investment banks to solicit and analyze any potential offers. Throughout all of the negotiations, the Bally Board was kept apprised of all progress made between Bally management and Bally's potential suitors. In the days preceding the Board meeting, the Bally directors were individually briefed on the potential transaction with Hilton both orally and with written materials.

During the Board meeting, the Bally Board met for several hours and discussed not only all the relevant terms and conditions of the Merger and the Merger Agreement with the aid of skilled legal and financial advisors, but they also discussed each of the Goldberg Transactions. For the portion of the Bally Board meeting dealing with the Goldberg Transactions, Goldberg excused himself from the room. There is no evidence that the Bally Board voted to approve the Merger Agreement with anything even

[28] *Smith* v. *Van Gorkom,* Del. Supr., *488* A.2d *858, 873* (1985); *Citron v. Fairchild Camera & Instrument Corp.,* Del. Supr., 569 A.2d 53, 66 (1989).

approaching gross negligence. Indeed, these circumstances do not even approach ordinary negligence. Rather, the evidence clearly demonstrates that the Bally Board acted in a reasonable, informed manner in approving the Merger.

3. Did the Bally Directors, and Goldberg In Particular, Act in Good Faith?

Parnes argues that Goldberg improperly used his position as Bally's Chairman and CEO for his own personal benefit by extracting excessive payments to himself from Hilton in exchange for his consent to the Merger on terms that were less favorable than they should have been to the Bally public shareholders. Following from this allegation, Parnes further contends that the remaining Bally directors therefore violated their fiduciary duties by approving the Merger given their knowledge of the Goldberg Transactions.

In her post-trial briefs, Parnes seems to assume that her "bad faith" allegations alone are enough to rebut the business judgment rule presumption. At this stage in the litigation, this is simply not the case. Rather, if Parnes is to meet her burden, she must provide this Court with some tangible, credible evidence that Goldberg did not act in good faith and in the best interests of the Bally shareholders at all times. The Court. however, was provided with no evidence that Goldberg demanded or ever requested payoffs from Hilton, To the contrary, after reviewing the deposition testimony and listening to the trial testimony of the bankers, directors, and negotiators (lawyers) of this transaction, the sum total of all the evidence that would lead this Court to believe that Goldberg acted in a manner inconsistent with his fiduciary obligations is exactly zero.

Pames argues by inference that the amount of consideration received by Goldberg as a result of and in connection with the Merger must attest to the fact that this consideration amounted to a bribe. She seems to contend that there is no other rational basis to explain why Goldberg would have received so much consideration unless he had demanded everything he received as a payoff to allow the Merger to occur. This view is not supported by decisional authority in Delaware or by the facts of this case.

Numerous cases that have come before our courts have included payments to executives similar in size to that received by Goldberg here.[29] In addition, as the facts in this case clearly illustrate, the Goldberg Transactions were negotiated and agreed to after the parties had already reached agreement as to the price, price protection provisions, and the basic deal structure of the Merger. Further, each of the Goldberg Transactions had

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[29] See, e.g., *Citron v. Steego Corp.,* Del. Ch., C.A. No. 10171, Allen, C. (Sept. 9, 1988); *Orban v. Field,* Del. Ch., C.A. No. 12820, Allen, C. (Apr. 1, 1997); *In re Lukens Inc. Shareholders Litigation,* Del. Ch., *757* A.2d 720 *(1999). See also Brehm v. Eisner,* Del. Supr., 746 A.2d 244, 260 (2000) ("One must keep in mind that the size of executive compensation for a large public company in the current environment often involves huge numbers.")

legitimate business justifications from the perspectives of both Bally and Hilton.

The facts are clear that in the months leading up to June 1996, Bally management and Goldberg in particular judged prospective merger offers on three primary criteria: price, price protection, and the ability of a possible merger partner to capitalize Bally to allow for its continued growth. 'There is no evidence that Bally chose to proceed with the Merger because of any consideration promised to Goldberg. In fact, all of the directors of Bally, and Goldberg in particular, stood to gain substantially should Sally receive a higher offer for its stock.[30] Even further, based on the phone call placed to ITT just before the Bally Board meeting, Goldberg and Bally remained open to a superior offer in terms of price and price protection made by a Hilton competitor until the final moments before the Bally Board voted to approve the Merger with Hilton. This fact flatly contradicts Parnes' theory of this case.

In reference to each of the Goldberg Transactions, representatives of Hilton testified that due to their strong aversion to any continued relationship with BTF, Goldberg was asked to purchase the BTF warrant. The evidence

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[30] As the owner of over 8% of Daily's outstanding stock at the time of the Merger, Goldberg stood to gain more than anyone else from an increased offer for Bally stock,

presented at trial was overwhelming on this point. All of the evidence indicated that Goldberg never actually sought the warrant, but he agreed to purchase it as an accommodation to Hilton. Hilton also convincingly asserts that should the Maryland and Cancun projects have ever become viable, Goldberg's continued participation would have been vital. Hilton pointed to Goldberg's unique experience in the gaming industry as well as the personal relationships and contacts he had forged over time with developers and other important local people in each venue. Without Goldberg, Hilton believed these projects had little if any chance of success.

There also was no evidence even to suggest that Goldberg's severance payments or his consulting agreement with Hilton was related in any way to the merger consideration to be paid to the Bally shareholders. Goldberg was entitled to his severance payments pursuant to his employment agreement with Bally entered into six years before the Merger. Hilton's desire to retain Goldberg, the successful CEO of an entity being acquired, with a consulting agreement to assist in the transition phase of the merger is clearly within the purview of rational business judgment. This business decision, quite obviously, was made by Hilton's Board, not Bally's.

It simply defies logic that Goldberg would have demanded several risky, entirely speculative assets such as the BTF warrant or the interests in the Maryland and Cancún projects at the expense of receiving a higher bid for his Bally shares that would have brought him significant immediate value.[31] Parnes asks this Court to presume that the Bally directors, including Goldberg, did not act in their own economic self-interest.[32] Rather, as the facts illustrate, Goldberg, with the help of Hillman, Pearlman and several investment bankers under the ultimate supervision of the entire Bally Board, skillfully conducted a well-orchestrated sale process for Bally that resulted in several incrementally larger offers from potential bidders and a final offer from Hilton that was embraced by over 99% of Bally's shareholders.

Additionally, Pames challenges the Bally Board's ability to exercise its sound business judgment because Goldberg allegedly misrepresented material facts and misinformed the Bally Board concerning material aspects of the negotiation of the Merger and the Goldberg Transactions. Parnes asserts that the Bally Board was misinformed: (i) that Goldberg did not

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[31] For instance, if the Court momentarily accepts the discounted cash flow analysis of Bally prepared by Pames' expert, she would have this Court believe that Goldberg turned his back on the opportunity to receive an additional $97.8 million in Hilton stock in exchange for the consideration "demanded" by Goldberg in the Goldberg Transactions. The strange nature of this proposition would seem almost to require the Court, in order to accept it, to heed the White Queen's words to Alice, that she practice believing six impossible things before breakfast. Lewis Carroll, *Through the Looking Class* (1871) Without that kind of logical leap, it would be difficult for the Court to embrace Pames' argument.

[32] *But* see *Unitrin, Inc. v. American Gen. Corp.*, Del. Supr., 65 1 A.2d 1361, 1380-8 I (1995) (asserting that stockholders are presumed to act in their own best economic: interests).

participate :in the negotiations of the Goldberg Transactions; (ii) that the Goldberg Transactions were negotiated after the basic terms of the Merger were agreed upon; (iii) that Hilton had in part initiated discussions concerning the Goldberg Transactions; and (iv) of the sequence and contents of the April negotiations.

The evidence presented simply does not support any of these allegations. Pames presented no evidence that Goldberg participated in any of the negotiations concerning the Goldberg Transactions beyond merely assenting to terms entirely negotiated by others.[33] I also am convinced that the Goldberg Transactions were in fact negotiated after Goldberg and Bollenbach had reached an understanding regarding price, price protection, and the basic: structure of the Merger Agreement. There is no factual dispute here that Goldberg's purchase of the BTF warrant was accomplished because of Hilton's desire to avoid any connection whatsoever with BTF. Finally, Pames contends that the Bally Board was misinformed of Hilton's April offer to Bally, an offer that Pames concedes was clearly inferior to that eventually agreed to in June.[34] Further, Pames has offered no proof that this

[33] The evidence of direct discussion between Goldberg and Bollenbach concerning Goldberg's role in the combined entity after the Merger occurred at a meeting in the fall of 1996, long after the Merger had been signed and approved by the boards of both companies.

[34] Parnes contends that the April offer was actually $26 of Hilton stock per share of Bally as opposed to $23.75 of Hilton stock per share of Bally.

offer was even conveyed at any point in time to Bally. Rather, as all witnesses to this litigation have testified, this offer was not made. These arguments based on alleged misrepresentations to the Bally Board, therefore, are without merit.

In sum, the facts are clear that Goldberg acted in good faith at all times, the Bally Board was fully informed of all material aspects of the Merger and the Goldberg Transactions, and there is no reason why the Bally Board should have inferred anything improper from the existence of any of the Goldberg Transactions. The business judgment rule therefore applies. As the business decisions of the Bally Board, and Goldberg in particular, car. clearly be attributed to a rational business purpose, those decisions shall not be disturbed.

B. Entire Fairness

Even if 1 were to find that Parnes had successfully rebutted the business judgment rule, 1 would still find that the transaction in question withstands challenge as it was entirely fair to Bally's shareholders. As often summarized in our caselaw, the concept of entire fairness has two basic components, fair dealing and fair price.[35] Fair dealing concerns how the board action was initiated, structured, negotiated and timed and whether al!

[35] *Weinberger* v. *UOP, Inc.*, Del. Supr., 457 A.2d 701, 711 (1983).

of the directors were kept fully informed not only at the time of the vote, but during the relevant events leading up to the vote while negotiations were presumably occurring. Fair price relates to the economic and financial considerations of the proposed transaction, including any relevant factors that affect the intrinsic or inherent value of a company.[36] The Court shall examine these two aspects as well as any other relevant considerations in analyzing the entire fairness of the Merger.

1. Fair Dealing

The defendants provided a substantial amount of evidence, completely uncontradicted by any evidence presented by Parnes, that demonstrated the lengths to which the Bally Board went to assure themselves and the other Bally shareholders that the process through which the Merger was negotiated and approved was fair to all Bally shareholders.[37] Throughout the period from January to June of 1996, the Bally Board was kept fully apprised of all details concerning a potential. transaction. To aid them in the process of potentially selling Bally, the Bally Board retained two prominent investment banks to analyze the prospective landscape of offerors. The

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[36] *Id.*

[37] I reemphasize that besides Goldberg, the remaining seven Bally directors were all non-employees of the company. Further, all of these Bally directors were Bally shareholders whose motives for exploring and ultimately approving a transaction were directly and clearly aligned with all the non-employee Bally shareholders.

investment bankers also helped to negotiate and advise the Bally Board with regard to any potential offers, specifically those of the two interested bidders, ITT and Hilton. Further, both banks offered fairness opinions concerning the final Hilton offer that Bally accepted. The Bally Board also received the assistance and advice of experienced counsel, throughout the entire process. There was no evidence presented by Pames that disputes any of this.

Pames also put forward no evidence that calls into question the fairness of the process leading to the approval of the Merger Agreement at the Board meeting. Rather, the evidence consists of several facts: the Bally Board was fully briefed before the Board meeting with oral discussion and written materials, the Bally Board members reviewed and considered the Merger before the Board meeting, the Bally Board debated the Merger and the Merger Agreement with the aid of their legal and financial advisers at the Board meeting, and absent Goldberg the Bally Board considered the reasons and justifications behind each of the Goldberg Transactions. The process through which the Bally Board reached its unanimous vote to approve the Merger Agreement was fair.

2. Fair Price

At the Board meeting, the Bally Board approved an offer from Hilton whereby each share of Bally stock would be exchanged for $27.00 in Hilton stock, with (downside protection and upside potential should Hilton's share price move before closing. This was the best offer Bally received at any time from any offeror. This offer also came after months of discussions and negotiations over the price, terms, and structure of a deal with not only Hilton, but with ITT as well. Further, to assure themselves that the final Hilton offer was in fact the best offer available, Bally not only tried to negotiate with Hilton to obtain a higher price, but instructed one of its investment bankers to contact the other possible merger partner, ITT, just before the Board meeting, to allow ITT one last opportunity to meet or exceed Hilton's latest proposal. Although ITT refused to increase their previous offer, the Bally Board's efforts to thereby assure themselves-and the rest of the Bally shareholders-that Hilton's $27.00 price protected offer constituted the best offer, was not an entirely futile exercise. That effort, as well as the efforts of the Bally Board and management over the preceding several months, strongly illustrate that this price was not only fait, but exemplary.[38]

I am further supported in my view of the price ultimately received from Hilton by the contemporaneous analyses of the two fairness opinions by Bally's investment bankers, as well as by the testimony of the defendants' expert witness. The defendants' expert, William Purcell, himself a former investment banker, testified to not only the fairness of the price Hilton offered Bally, but also to the unique value of the downside protections the Bally shareholders received without having to surrender any upside potential should the value of Hilton stock rise. Purcell relied upon several valuation techniques, all of which substantiated the fairness of the price received by Bally,

In particular, Purcell provided a premium analysis that evidences that depending on the date chosen to be Bally's "pre-merger" price, the $27 00 offer provided a premium of between 50% (using the Bally share price on April I, 1996) and 88% (using the Bally share price on January 2, 1996). In either case, because at the time of the closing Bally actually received approximately $29.00 of Hilton stock per share due to the lack of any upside

[38] By voting to approve and ratify the Merger, over 99% of Bally shareholders seem to have indicated that they too thought Bally had received a fair price.

collar in the Merger Agreement, this premium analysis actually understates the actual premium received by the Bally shareholders at the closing of the Merger.

Other valuation techniques also support the conclusion that Bally shareholders received a fair price for their shares. In fact, based on comparable merger and acquisition transactions as well as the valuations given to comparable publicly traded companies, Bally appears to have received an excellent price for its shares. I also note that the $27.00 offer tits within the range of prices one would expect using various discounted cash flow models that have been presented to this Court by both Parnes and the defendants. Even Pames' aggressive model referenced above, if the assumptions laying at its core are altered only slightly, supports the validity of Hilton's $27 offer.[39] Given the extensive evidence offered by the standard valuation techniques as well as the progression of the negotiations over price, I am convinced that the price received by the Bally shareholders and approved by the Board was entirely fair.

For all of these reasons, even if Pames had rebutted the business judgment rule, I firmly believe that the approval of the Merger by the Bally Board was entirely fair to the Bally shareholders. Therefore, I reject Pames'

[39] *See supra* note 3 1.

claims alleging breach of fiduciary **duty** in connection with the negotiation and approval of the Merger by any member of the Bally **Boar-d,** including Goldberg. Parnes' claims asserting **duty** of loyalty and candor vioiations against Goldberg as well as **duty of good** faith, loyalty, **and** due **care** violations against the other- seven independent Bally directors are without merit. Parnes' claim alleging that Hilton aided and abetted **any oi'** these alleged breaches of fiduciary duty by any of the Bally directors; including Goldberg, is therefore also without merit.

IV. THE SHARE PRICE MANIPULATION CLAIM AGAINST HILTON

Parnes asserts that Hilton attempted to manipulate its stock price by announcing the Repurchase Plan and dividend increase in order to deprive Bally shareholders of the price protection provisions of the Merger Agreement. Parnes further alleges that the Bally directors, and Goldberg in particular, participated in this manipulation by making "no effort to have the Repurchase Agreement [or dividend increase] modified or rescinded."[40] This claim is entirely without merit.

Parnes presented no evidence at trial to support this allegation. Nevertheless, she continues to assert that Hilton's announcement of the

[40] Pl.'s Proposed Findings of Fact and Conclusions of Law, 61.

Repurchase Plan and an increased dividend rate in September 1996 were accomplished with the participation of the Bally directors in "a plan and scheme" to artificially raise the market price of Hilton's common stock.[41] All the direct evidence provided on this claim disputes the existence of any wrongdoing on the part of any of the defendants as to this claim.

Scott LaPorta, the architect of the Repurchase Plan and the individual responsible for recommending its implementation, and Stephen Bollenbach (Hilton's CEO) both testified that the Repurchase Plan was put into place to give Hilton management standing authorization to purchase shares to fund employee stock option plans without diluting existing shareholders. Before September 19, 1996, Hilton management did not have this standing authorization, a common managerial tool at most similarly-sized public companies. There simply has not been a single shred of evidence to support Parnes' argument that Hilton's share repurchase plan announcement had anything to do with the cash consideration the Bally shareholders might receive under the Merger Agreement.

Similarly, there has been no evidence presented to support Parnes' claim that the Hilton board of directors approved an increase in the dividend on Hilton common stock in order to manipulate the price of that stock.

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[41] *Id.* at *59.*

Rather, the uncontested evidence before this Court rather straightforwardly explains this decision. Before the Stock Split, each share of Hilton paid a dividend of $0.30. If this customary dividend would have remained in place after the Stock Split, the dividend rate on Hilton stock would have been $.075. 'To avoid having a dividend rate that included fractions of a cent, Hilton increased its dividend rate by one half of one cent per share to $.08. There has been no evidence placed into this record which even attempts to dispute this explanation.

Not only is there no evidence of any intent on the part of Hilton to artificially raise its stock price, there is no evidence that the alleged manipulation scheme had any effect whatsoever on Hilton's stock price. Parnes has offered no evidence of any stock price manipulation beyond mere offhand comments offered by counsel and an expert who stated he had no prior qualifications to testify on this matter beyond his own common sense. In contrast, the defendants' expert witness, Harvard Professor Robert Glenn Hubbard, opined that the September 19 announcements did not have a statistically significant impact on the market price of Hilton's stock. This was the only qualified expert opinion that I heard on these issues.

Further, as to the aiding and abetting allegations asserted against the Bally Board, there is no evidence that any of the Bally directors had advance knowledge that the Hilton Board planned to approve the Repurchase Plan or the dividend increase before the September 19, 1996 approval and announcement. In fact, the testimony at trial was clear that Hilton management never discussed either of these proposals with any of the Bally directors, including Goldberg, before September 19, and as long as Hilton did not actually repurchase any shares, Hilton remained in strict compliance with the terms of the Merger Agreement.

All of Parnes' claims with respect to the allegations of share price manipulation following the September 19 Hilton Board meeting are therefore entirely without merit.

V. CONCLUSION

Through extensive discovery and a voluminous amount of briefing by both sides as this dispute has evolved over time, not to mention the culminating event of a trial held over two weeks before this Court, Parnes ultimately has failed to put forward persuasive evidence to support any of her claims in this case. Parnes has instead relied on a tangled web of innuendo to support her factual allegations and conspiracy theories. Now that I have had the opportunity to view Parnes' case in its entirety and make judgments on the entire factual record after a full tial on the merits, I find for the reasons described above that the defendants acted in clear compliance with their fiduciary obligations under the laws of Delaware.

An Order has been entered in accordance with this Memorandum Opinion.