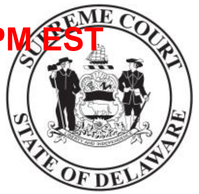
EFiled: Feb 13 2017 05:38PM EST
Filing ID 60195467
Case Number 603,2016



IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHESTER COUNTY RETIREMENT SYSTEM, individually, and on behalf of all those similarly situated, Plaintiff-Below, Appellant, v. JOSHUA L. COLLINS, DAVID A. WILLMOTT, ROBERT E. BEASLEY, JR., RONALD CAMI, ANDREW C. CLARKE, NELDA J. CONNORS, E. DANIEL JAMES, HAROLD E. LAYMAN, MAX L. LUKENS, DANIEL J. OBRINGER, BLOUNT INTERNATIONAL, INC., AMERICAN SECURITIES LLC, P2 CAPITAL PARTNERS, LLC, P2 CAPITAL MASTER FUND I, L.P., ASP BLADE INTERMEDIATE HOLDINGS, INC., ASP BLADE MERGER SUB, INC. and GOLDMAN SACHS & CO., Defendants-Below, Appellees.	No. 603, 2016 Court Below: Court of Chancery of the State of Delaware C.A. No. 12072-VCL

APPELLANT'S OPENING BRIEF

Pamela S. Tikellis (DE ID No. 2172)
Robert J. Kriner, Jr. (DE ID No. 2546)
A. Zachary Naylor (DE ID No. 4439)
Tiffany J. Cramer (DE ID No. 4998)
CHIMICLES & TIKELLIS LLP
222 Delaware Avenue
P.O. Box 1035
Wilmington, DE 19899
(302) 656-2500

Attorneys for Plaintiff-Below, Appellant

DATED: February 13, 2017

TABLE OF CONTENTS

	Page
TABLE OF CITATIONS	iv
NATURE OF PROCEEDINGS	1
SUMMARY OF ARGUMENT	4
STATEMENT OF FACTS	5
A. Blount and its Board Members Came from a Background Rooted in a Private Equity Mindset	6
1. Blount's History as a Lehman Property Informs the Claims	6
2. Defendants Collins, Willmott and James Were Lehman Insiders	7
3. Defendants Cami and Beasley Had Deep Private Equity Ties to Lehman and Others	8
B. In 2014, the Management Directors Were Approached with a Leveraged Buyout Inquiry	11
C. In 2015, the Management Directors Were Again Approached and Co-Opted	12
1. Blount Faced Business "Headwinds" in 2015, but Had a Credible Plan to Sustain Growth	12
a. Management Directors' Statements in March 2015 Acknowledge Challenges	12
b. Investor Presentation in June 2015 Demonstrates the Management Directors' Strategic Plan for Growth	13

c. August 2015 Guidance Triggers the LBO 13

2. With a Leveraged Buyout in the Cards, the Management Directors Materially Changed Their Outlook 15

a. Management Directors Understood Their Role in a Post-LBO Blount 15

b. The Change in the Company's Projections Manipulated its Value 15

D. The Subsequent Sale Process was Tilted in Favor of the Management Directors and Impaired By Conflict 17

1. Unchecked Management Directors Dominated the Sale Process 17

2. The Investment Banking Advisor to the Board and Special Committee Was Likewise Conflicted and/or Ineffective 18

a. Goldman's Long History with Blount and Extensive Relationships with the Private Equity Buyers Undermined its Independence 18

b. The Belatedly Retained Greenhill Played Second Fiddle to Goldman 20

E. The Challenged Omissions and Misleading Disclosures Were Material and Related Directly to the Conflicts of Interest that Plagued the Buyout 20

ARGUMENT 23

I. The Court of Chancery's Determination that There was No Material Information Undisclosed Constitutes Reversible Error 23

A. Question Presented 23

B. Scope of Review 23

C. Merits of the Argument 24

1. Defendants Soliciting the Stockholder Vote Cannot Withhold Material Facts or Make Materially Deceptive Disclosures 24

2. An LBO with Management Participation Raises Important Questions Relevant to Disclosures Made 27

a. The LBO Buyout Structure Engenders Significant Conflicts of Interests 27

b. Unfair Process Allegations Demonstrating the Dangers of the LBO Structure Warrant Closer Review of Related Disclosures 29

3. The Three Omissions and Misleading Disclosures Challenged in this Appeal are Material and the Court of Chancery's Decision Otherwise Should be Reversed 31

a. Cami Had Undisclosed Conflicts as the Lead of the Special Committee 32

b. The Extent of Goldman's Relationship with the Buyers was Misleadingly Disclosed 34

c. Material Valuation Information Possessed by Management Directors and Buyers was Withheld 37

CONCLUSION 41

TABLE OF CITATIONS

Case	Pages
Alessi v. Beracha, 849 A.2d 939 (Del. Ch. 2004).	24
Arnold v. Society for Sav. Bancorp., 650 A.2d 1270 (Del. 1994).	25
In re Atheros Commc'ns, Inc. S'holder Litig., 2011 Del. Ch. LEXIS 36 (Mar. 4, 2011).	35
Barkan v. Amsted Industries, Inc., 567 A.2d 1279 (Del. 1989).	30
Branson v. Exide Elecs. Corp., 1994 Del. LEXIS 129 (Apr. 25, 1994).	24
Cambridge Ret. Sys. v. Bosnjak, 2014 Del. Ch. LEXIS 107 (June 26, 2014).	38
Cinerama, Inc. v. Technicolor, Inc., 663 A.2d 1156 (Del. 1994).	33
In re Comverge, Inc. S'holders Litig., 2016 Del. Ch. LEXIS 196 (Oct. 31, 2016).	26, 27
Corwin v. KKR Fin. Hldgs. LLC, 125 A.3d 304 (Del. 2015).	4, 27, 29
Crescent/Mach I Partners, L.P. v. Turner, 846 A.2d 963 (Del. Ch. 2000).	38
David P. Simonetti Rollover IRA v. Margolis, 2008 Del. Ch. LEXIS 78 (June 27, 2008).	36
Del. Cty. Empls. Ret. Fund v. Sanchez, 124 A.3d 1017 (Del. 2015).	23

In re: Appraisal of Dell Inc., 27, 28, 30, 31
2016 Del. Ch. LEXIS 81 (May 31, 2016).

In re Appraisal of DFC Global Corp., 30
2016 Del. Ch. LEXIS 103 (July 8, 2016).

In re Dole Food Co., Inc. S'holder Litig., 28, 29
2015 Del. Ch. LEXIS 223 (Aug. 27, 2015).

Eisenberg v. Chicago Milwaukee Corp., 31
537 A.2d 1051 (Del. Ch. 1987).

In re Emerging Commc'ns, Inc. S'holders Litig., 29
2004 Del. Ch. LEXIS 70 (May 3, 2004).

In re Formica Corp. S'holders Litig., 28
1989 Del. Ch. LEXIS 27 (Mar. 22, 1989).

Frank v. Elgamal, 31
2014 Del. Ch. LEXIS 37 (Mar. 10, 2014).

Harbor Fin. Partners v. Huizenga, 25
751 A.2d 879 (Del. Ch. 1999).

In re John Q. Hammons Hotels Inc. S'holder Litig., 33, 34
2009 Del. Ch. LEXIS 174 (Oct. 2, 2009).

Kahn v. M&F Worldwide Corp., 30
88 A.3d 635 (Del. 2014).

In re KKR Fin. Holdings LLC S'holder Litig., 25
101 A.3d 980 (Del. Ch. 2014).

Lynch v. Vickers Energy Corp., 39
383 A.2d 278 (Del. 1977).

Malone v. Brincat, 24
722 A.2d 5 (Del. 1998).

In re MONY Group Inc. S'holders Litig., 25
852 A.2d 9 (Del. Ch. 2004).

In re Morton's Rest. Grp., Inc. S'holders Litig., 29, 30
74 A.3d 656 (Del. Ch. 2013)

In re Netsmart Techs., Inc. S'holders Litig., 39
924 A.2d 171 (Del. Ch. 2007).

Paramount Communications, Inc. v. QVC Networks, Inc., 33
637 A.2d 34 (Del. 1993).

Pinson v. Campbell-Taggart, Inc., 30
1989 Del. Ch. LEXIS 50 (Del. Ch. Feb. 28, 1989).

RBC Capital Mkts., LLC v. Educ. Loan Tr. IV, 23
87 A.3d 632 (Del. 2014).

Rosenblatt v. Getty Oil, 24
493 A.2d 929 (Del. 1985).

In re Rural Metro Corp. S'holders Litig., 35, 36
88 A.3d 54 (Del. Ch. 2014)

Sealy Mattress Co. of N.J. v. Sealy, Inc., 29
532 A.2d 1324 (Del. Ch. 1987).

Skeen v. Wadsworth, 27, 34
2003 Del. Ch. LEXIS 63 (June 18, 2003).

In re Solera Holdings, Inc. S'holders Litig., 26
2017 Del. Ch. LEXIS 1 (Jan. 5, 2017).

In re SS&C Techs., Inc., S'holders Litig., 28
911 A.2d 816 (Del. Ch. 2006).

Stroud v. Grace, 24
606 A.2d 75 (Del. 1992).

In re Tele-Communications., Inc. S'holders Litig., 27
2005 Del. Ch. LEXIS 206 (Dec. 21, 2005).

In re Volcano Corp. S'holder Litig., 26
143 A.3d 727 (Del. Ch. 2016).

Weinberger v. UOP, Inc., 30
457 A.2d 701 (Del. 1983).

Wells Fargo & Co. v. First Interstate Bancorp, 24
1994 Del. Ch. LEXIS 3 (Jan. 18, 1996).

Zirn v. VLI Corp., 25
621 A.2d 773 (Del. 1993).

Zirn v. VLI Corp., 39
681 A.2d 1050 (Del. 1996).

NATURE OF PROCEEDINGS

Plaintiff appeals the dismissal of claims challenging the $10 per share leveraged buyout ("LBO") of Blount International, Inc. ("Blount" or the "Company") by a private equity buyout group, which includes Blount's two most senior executive officers, Joshua L. Collins ("Collins") and David A. Willmott ("Willmott," together with Collins, the "Management Directors"), P2 Capital Partners LLC ("P2 Partners," and together with P2 Capital Master Fund I, L.P., "P2"), and a private equity firm, American Securities LLC ("American Securities," and together with P2, "Buyers") (the "Buyout"). P2, with its affiliates, was Blount's second largest stockholder at the time the Buyout was announced.

The Buyout was an opportunistic LBO of the Company at an unfair price timed to take advantage of a low point in the Company's stock trading price. The Management Directors used their superior knowledge of the Company's value and prospects and their control over the Company's projections (and consequent manipulations of those projections) to exploit the web of conflicts present in the Special Committee (defined below) and its primary financial advisor and to enrich themselves at the expense of the unaffiliated stockholders.

Plaintiff stated claims against Defendants for breach of fiduciary duty against the members of the Blount Board of Directors ("Board") and aiding and abetting those breaches against the Buyers and Goldman Sachs & Co.

("Goldman"). Goldman had been the long-time investment banking advisor to Blount, participating regularly in its Board meetings and operating under a nearly eight-year engagement to sell Blount. Goldman was the lead advisor to the Management Directors, the Board and the Special Committee in the Buyout.

The inherent conflicts faced by management in LBOs, combined with the short target window for expected returns, require close scrutiny of disclosures to ensure that all material information concerning conflicts of management, directors and advisors be disclosed to voting stockholders.

However, three material disclosure failures plagued this Buyout.[1] Those disclosure failures concern conflicts affecting the Special Committee,[2] Goldman and the Management Directors.

The Court of Chancery, in a summary Order,[3] erroneously dismissed each of

---

[1] These disclosure claims arise from Blount's Definitive Proxy Statement filed with the U.S. Securities and Exchange Commission on March 9, 2016 ("Proxy"). The Proxy was preceded by a Preliminary Proxy Statement filed on January 12, 2016, and Amendment No. 1 to the Preliminary Proxy Statement, filed on March 2, 2016. (A043).

[2] The "Special Committee," discussed below, consisted of Defendants Ronald Cami ("Cami"), Robert E. Beasley ("Beasley"), Max L. Lukens ("Lukens") and Daniel J. Obringer ("Obringer"). (A070). Of these, only Cami and Beasley played any substantive role on the Special Committee as set forth in the Proxy. (A083-A084).

[3] The Order Granting Motions to Dismiss, by the Honorable J. Travis Laster, dated December 6, 2016, in C.A. No. 12072-VCL (Transaction ID No. 59915956) (the "Order") is attached hereto as Exhibit A.

these disclosure claims and, thus, determined the business judgment rule applied to the Buyout as a whole.

SUMMARY OF ARGUMENT

The Court of Chancery's Order erroneously rejected three claims alleging the Board made disclosures that were materially misleading and/or omitted material information from the Proxy.

The Order resulted in the Court-below dismissing Plaintiff's complaint in full by invoking the business judgment rule under *Corwin v. KKR Fin. Hldgs. LLC*, 125 A.3d 304 (Del. 2015).

The Court of Chancery's analysis of the disclosure claims failed to consider the disclosures in the factual context of the Buyout. The Buyout, an LBO with material management participation, was wrongly influenced by conflicted Management Directors, Special Committee leaders and Goldman in its dual role of advising the Company (by and through the Management Directors) and the Special Committee. All conflicts permeating the Buyout process must be fully and fairly disclosed. Nothing less can support the resulting application of the business judgment rule to absolve Defendants of any liability for their unfair and unreasonable conduct.

STATEMENT OF FACTS

This appeal will be decided based upon a determination of materiality regarding certain key omissions and misleading disclosures in the context of a proxy solicitation to approve a leveraged buyout. The materiality of those omissions and misleading disclosures and whether they alter the "total mix" of information is inextricably linked to the background of the Company and the various motivations and interests of Blount's fiduciaries and their advisors in reaching the decision to recommend the Buyout.

Blount's private equity history (and future) is typical of the LBO model. Lehman Brothers Merchant Banking ("Lehman"), for example, would use its principals' relationships with corporate executives to identify and "source" acquisitions, investments and transactions. (A058). Lehman ingratiates itself to target management and gets those individuals "on board" with a transaction by offering equity participation opportunities and management incentives. (A059). Because the LBO model aligns the individuals most knowledgeable about the target company with the potential buyer, stockholders must be assured of independent representation by special committees and their advisors. And, stockholders are entitled to make an informed decision to accept an LBO in the short-term while forsaking the opportunity to share in the Company's future cash flows.

Typically, a private equity buyer aims for a three to five year window in which to extract returns and to exit its investment in whole or in part. (A105). Lehman followed that pattern with Blount, purchasing the Company in 1999 and taking it public again in 2004. (A058, A061). The Buyers have followed similar patterns. For the five portfolio companies American Securities has acquired since 2008, the average investment horizon was 3.3 years. (A105). P2 acquired two companies in that period selling one after 3.1 years and another after 1.6 years.[4] (A105).

A. Blount and its Board Members Came from a Background Rooted in a Private Equity Mindset

Five of the ten Blount Board members had long-term and material relationships rooted in private equity business transactions over two decades. (A059, A070-A075). Of these, four (Collins, Willmott, Cami and Beasley) were the primary actors and decision makers in connection with the Buyout. (A068-A069, A083-A085, A090-A098).

1. Blount's History as a Lehman Property Informs the Claims

Blount is a manufacturer and marketer of agricultural machine parts including chain and guide bars for chainsaws. (A045-A046). The Company was founded in 1946, but its modern history, relevant to this action, began in 1999

[4] One of these investments, the purchase of Interline Brands, Inc. ("Interline"), was a joint purchase by Goldman and P2. (A080-A081).

when Lehman acquired the Company. (A058). Since then, the Company has been a captive of the private equity mindset embraced by its Board and members of management. (A058-A061, A070-A075). Following Lehman's acquisition of Blount, Collins, Willmott and James became Principals at Lehman. (A049-A050, A053, A072).

When Lehman acquired Blount, two Lehman insiders, Defendants Collins and James, became closely involved with the management of the Company, and James was placed on the Board. (A061). That involvement installed Lehman's private equity model front-and-center within Blount's corporate culture. (*See* A058-A061). In 2004 Lehman took Blount public, after which, Collins, who had been intimately involved with Blount, joined James on the Board. (A061). Not surprisingly, Collins and Willmott (Collins' private equity partner) were soon placed within Company management, eventually taking over the top two executive positions, with Willmott joining the Board, and Collins and James remaining on the Board. (A049-A050, A061).

2. Defendants Collins, Willmott and James Were Lehman Insiders

Defendant Collins became the Company's Chief Executive Officer ("CEO") in December 2009 and Chairman of the Board in May 2010, having been a Blount director since January 2005. (A049). Collins joined Lehman in 1996, and was a Principal of Lehman from 2000 to January 2008, a Senior Vice President of

Lehman Brothers Inc. from 2003 to January 2006, and a Managing Director of Lehman Brothers Inc. from 2006 to January 2008. (A049). At Lehman, one of Collins' first clients was Blount. Collins and his colleagues at Lehman acquired Blount in 1999, with Collins taking the lead on the leveraged buyout. (A049, A058).

Defendant Willmott became the President and Chief Operating Officer at Blount beginning March 10, 2011 and a director beginning 2012. Willmott joined Defendant Collins at Lehman in 1997, was Principal of Lehman from 2000 to 2008, and was Managing Director of Lehman Brothers Inc. from 2007 to 2008. (A050).

Defendant James was a long time business colleague of Collins and Willmott and part of the team at Lehman that took Blount private in 1999. (A053, A059-A061). James joined the Blount Board in 1999 and continued on the Board until the Buyout's closing. (A053, A061).

3. Defendants Cami and Beasley Had Deep Private Equity Ties to Lehman and Others

Two other directors, the leaders of the Special Committee, also demand particular scrutiny for their conflicts based on their long relationship with the Management Directors and their private equity mindset. (A070-A075).

Defendant Cami's private equity ties run deep and particularly so with respect to the Management Directors. Cami represented Lehman (led by Collins,

Willmott and James) in connection with its acquisition of Blount for over $1 billion, including the related financings. (A072-A073). Lehman's 1999 buyout of Blount was, at the time, one of its biggest deals. (A072).

Just as for Collins and Willmott, the Blount deal became a career springboard for Cami. One year later, in 2000, Cami was elected partner at Cravath. (A072). From 1999 through 2004, Cami continued to represent Lehman in connection with its control over Blount, including with respect to refinancings, acquisitions, dispositions and Blount's 2004 IPO. (A072-A073). Cami also involved himself in charitable activities led by Collins. (A073-A074). During his time at Cravath, Cami also represented American Securities, one of the Buyers in the challenged Buyout. (A074-A075).

After leaving Cravath, Cami was appointed in 2010 to the Board of Blount. (A073). Cami also became general counsel to the private equity firm, TPG until April 2015. (A073, A085). In April 2015, Cami left TPG stating his intention to explore new opportunities about which he had been approached. (A085).

Almost immediately after the closing of the Buyout, in April 2016, Cami joined Davis Polk & Wardwell LLP ("Davis Polk") as a partner. (A085). There is a strong inference this move back to private practice was in the works while Cami was leading a purportedly independent sale process on behalf of public stockholders across from his once and, from his perspective, future clients. This

inference has not been rebutted or challenged by Defendants. Indeed, the Davis Polk press release announcing Cami's joining lauded his "unique insights into the needs of private equity firms." (A052). On his Davis Polk firm website, posted just after the Buyout closed, Cami touts his past in the private equity space, including the acquisition of Blount by Lehman and his representation of American Securities.[5] (A052-A053, A073, A075).

Like Cami, Beasley had a long-term relationship with the Management Directors and, in particular, Willmott. While at Lehman, Willmott was part of the team that evaluated and negotiated the acquisition of a controlling stake in Hunter Fan Company ("Hunter Fan") in December 2003. (A070). Hunter Fan had been run by Defendant Beasley prior to Lehman's acquisition. (A051, A071). Following the acquisition of Hunter Fan, Willmott was appointed Chairman of the Board of Directors of Hunter Fan, in which capacity he served side-by-side with Beasley until Lehman exited its investment in 2007. (A071). As alleged in the Complaint, Lehman's business strategy "continuous[ly] [] relie[d] on its Principals' long-term relationships to source transactions." (A058). Beasley was the President, CEO and a director of Hunter Fan, from 1991 until his retirement in 2007, and was Chairman from 1991 until Willmott took over as Chairman. (A051, A071). Undoubtedly, Collins, Willmott (in particular) and James, as Principals of

---

[5] Davis Polk represented the Special Committee in the Buyout process. (A085).

Lehman, had a long-term relationship with Beasley leading to Lehman's interest in acquiring Hunter Fan. (A058, A071-A072). After Lehman sold Hunter Fan, Beasley almost immediately joined the Board of Blount. (A071-A072).

B. In 2014, the Management Directors Were Approached with a Leveraged Buyout Inquiry

The challenged Buyout finds its immediate roots in a 2014 overture from P2 and another, unnamed private equity firm. In January 2014, with Blount stock trading at $13 per share, P2, the second largest stockholder of Blount, advised Collins that it and another private equity firm, "Party A," wanted to acquire the Company. It was understood as communicated by P2 and its partner at that time that the Management Directors would be retained with the acquisition. (A064). Discussions between P2 and Collins and other senior management took place for over five months and confidential information was provided to P2 and Party A. (A064-A065).

From January to May 2014, the Management Directors repeatedly met with P2 and its partner to discuss public and confidential Company information. P2 and its partner also discussed with the Management Directors their plans for the Company in the event of a leveraged buyout. (A065, A169-A170).

It was not until mid-May 2014 that the Board finally formed a special committee of Beasley, Clarke and Connors. That committee was short-lived because P2 soon thereafter determined not to move forward with an offer. (A065).

The events of 2014 laid the groundwork for the relationship between P2 and the Management Directors that would be exploited the next year. The 2014 events surrounding P2's approach also demonstrate a supine Board allowing the Management Directors to explore a transaction of an LBO nature without meaningful independent oversight.

C. In 2015, the Management Directors Were Again Approached and Co-Opted

1. Blount Faced Business "Headwinds" in 2015, but Had a Credible Plan to Sustain Growth

a. Management Directors' Statements in March 2015 Acknowledge Challenges

There is no dispute that Blount expressed concerns about a cyclical business low point in 2015. The "headwinds" articulated by management facing the Company and the effect on the Company's projected 2015 financial performance were disclosed by the Company beginning with the March 2015 disclosure of 2014 full-year and 2014 fourth quarter results. (A062).

Seeing an opportunity and wanting to take advantage of the potential of a lull in the Company's stock price, in March 2015, P2 again contacted a "representative of the Company" and had discussions regarding acquiring additional Company common stock with a goal of not becoming an "interested stockholder" by triggering Section 203. (A066).

b. Investor Presentation in June 2015 Demonstrates the Management Directors' Strategic Plan for Growth

In June 2015, the Management Directors issued an investor presentation touting future EBITDA prospects and the Company's strategic opportunities. The June investor presentation acknowledged the near-term "headwinds" but articulated a plan to strategically and organically achieve substantial growth of the Company. The plan included the redeploying of manufacturing capacity and opening new product lines. (A062-A064, A108).

Specifically, in the June 2015 investor presentation, the Management Directors projected $1.1 billion in revenue by 2018 and over $175mm in EBITDA for 2018. (A108). However, as discussed below, once an LBO offer was proposed, those plans and projections vanished. (A068, A090-A093).

c. August 2015 Guidance Triggers the LBO

On August 5, 2015, the Company reported results for its second quarter 2015. This report included revised guidance for its full year 2015 adjusting for the near-term headwinds. That adjustment reflected the near-term issues but did not reflect the long-term value to be realized by implementing the Company's previously articulated strategic plan. (A067-A068).

Indeed, factors unrelated to the near-term performance metrics bolstered the validity of the plan presented by the Management Directors in the June 2015 investor presentation. For example:

- P2, which had held Blount stock since at least February 2013, when the stock traded at $13.71, continued to express interest in buying some or all of all of Blount (A105-A106);
- After the Buyout was announced, a hedge fund Blount stockholder called Pacific Ridge Capital Partners criticized the timing and price based on, among other things, the Company's previously announced projections and strategic plan (A108-A109); and
- The Company's stock repurchase program resulted in the Company purchasing its own stock at prices well-above the Buyout price during 2015 (A104).

Following the Company's August 5, 2015 announcement of its second quarter 2015 results and its full year 2015 guidance, the stock closed at $6.85 per share, down approximately 13.3% from its previous close of $7.90 per share. (A067-A068).

Immediately following the Company's August 2015 financial disclosures and the corresponding revision of its full year guidance, American Securities and P2 pounced with their proposal to acquire the Company. (A068).

2. With a Leveraged Buyout in the Cards, the Management Directors Materially Changed Their Outlook

a. Management Directors Understood Their Role in a Post-LBO Blount

The Buyout proposal included an indication that the Buyers expected the Management Directors would retain positions at the Company after the closing. (A068). Given the Management Directors' previous discussions with P2 and their extensive private equity experience, the Management Directors surely understood they would have the opportunity to participate in the equity ownership of the post-Buyout Company and would be aligned with and incentivized to aid P2 and American Securities to obtain their financial objectives. (A068).

b. The Change in the Company's Projections Manipulated its Value

The Management Directors' previous representations regarding their projections and growth expectations went out the window when P2 and American Securities emerged with the Buyout offer in August 2015. Suddenly, the standalone strategic operational and growth plan provided to investors was gone, replaced by diminished projections and an unrelenting drive toward an LBO. (A090-A093, A096).

Specifically, Blount's projections set forth in the Proxy deviated materially downward from the June 2015 investor presentation. (A108). The Proxy projections show slow and modest growth over a five-year timeframe built from a

reduced baseline. The projections do not reflect a rebound from the performance in 2015. And, the Proxy projections do not come close to the projected levels of EBITDA set forth in the June 2015 investor presentation. Rather, the projections show Blount not even returning to 2014 levels of EBITDA until 2019. The projections set forth in the Proxy merely build in a linear manner from 2015 adding $10 million in EBITDA per year without showing a return to normal performance or reflecting the various initiatives and strategies Management Directors previously indicated would be implemented. (A105, A197-A198).

The fair and strong inference is that the Management Directors manipulated the projections to justify the Buyers' lower bids, which would also increase the Management Directors' future upside, while dissuading other potentially interested purchasers. (A090-A094). Based on the lower projections in the out-years, no private equity investor could reasonably expect to achieve the level of internal rates of returns required prior to a typical LBO exit horizon without some undisclosed information. Nevertheless, the Buyers and Management Directors remained willing participants on the buy-side. (A104-A107). In an LBO, participating management has powerful incentives to agree to a price and terms suboptimal for the public investors so long as it results in the desired deal for them. (A092-A093). *See infra* Argument § I(C)(2)(a).

D. The Subsequent Sale Process was Tilted in Favor of the Management Directors and Impaired By Conflict

The manner in which the sales process unfolded provides no comfort that the conflicts of interests were controlled. Rather, the process was dominated by conflict.

1. Unchecked Management Directors Dominated the Sale Process

The Board did not form a Special Committee for a month after the Buyout proposal. (A069-A070). Instead, the Management Directors were allowed continual unsupervised access to the Buyers. (A068-A069). Not only was that the case during the month before the Special Committee was formed, but it remained so throughout the entire process. The Management Directors were in the driver's seat to get to an LBO with the Buyers, including the well-known P2. (A083-A084, A090-A096).

The Management Directors, joined by long-time Company advisor Goldman, repeatedly met with the Buyers with little or no oversight by the Special Committee even after its formation. No report to the Special Committee of these meetings was required. (A068-A069, A083-A084, A091-A092).

For example, the Management Directors met with American Securities in its New York offices privately on October 15, 2015 without any oversight and without any report of the meeting back to the Special Committee. The Special Committee

allowed this meeting before it retained its own, purportedly independent advisors, Greenhill & Co., Inc. ("Greenhill") and Davis Polk. (A084-A085, A091).

Even once formed, there is no indication that the Board made a determination as to whether the members of the Special Committee were independent or even qualified to act in their designated capacity. (A075-A076). The Special Committee was chaired by Beasley and led, in fact, by Cami. (A070, A083-A084). Neither was objectively independent from the Management Directors. (A070-A075). And, in Cami's case, the private equity buyer American Securities was a major past client and expected future client. (A074-A075). The other, passive members of the Special Committee were the Board's two most recent members, including Lukens who joined the Board just one week prior to the presentation of the LBO offer. (A054, A083-A084). The Proxy describes no material action taken by the passive Special Committee members. (A083-A084).

2. The Investment Banking Advisor to the Board and Special Committee Was Likewise Conflicted and/or Ineffective

a. Goldman's Long History with Blount and Extensive Relationships with the Private Equity Buyers Undermined its Independence

Goldman had extensive past and current relationships with all of the Buyout Group members. (A046, A070, A076-A081, A086). These included Goldman earning fees on transactions worth approximately $14 billion. (A077-A081). Goldman was also P2's partner in the LBO acquisition of Interline and was

actually involved with P2 to sell Interline during 2015 as the Buyout unfolded. (A080-A081). And, Goldman had acted as the Company's advisor for nearly a decade.[6] (A046, A070, A086). Despite these conflicts, Goldman advised the Company and the Special Committee throughout the entire process. (A070, A083, A085-A086, A089-A100). Once the Buyers made the August 2015 Buyout proposal, Goldman knew 1) the Management Directors were conflicted; 2) it would be paid under its then 7.5-year-old engagement agreement with Blount if the Buyers acquired Blount; and 3) it would have the opportunity to leverage its relationships with post-Buyout Blount and the Buyers. (A068, A076-A081, A086).

There is no indication that the Board or Special Committee made any effort to analyze the conflicts facing Goldman in connection with the Buyout until October 2015. Even then, the Special Committee extracted, at best, vague assurances from Goldman that it had no present intention to participate in debt financing, but the Special Committee did not conduct a formal review of Goldman's conflicts. (A087). Still, the Special Committee allowed Goldman to act as its primary advisor and did not extract or confront Goldman's multi-layered

---

[6] Pursuant to a letter agreement dated May 21, 2008, the Company engaged Goldman Sachs to act as its financial advisor in connection with the possible sale of all or a portion of the Company, and continued to be engaged as the Company's financial advisor pursuant to this letter agreement through the closing of the Buyout. (A046).

conflicts with the Buyers. (A087-A088).

b. The Belatedly Retained Greenhill Played Second Fiddle to Goldman

The belated hiring of Greenhill as an additional financial advisor to the Special Committee did not cleanse the conflict created by Goldman's lead advisor role. (A089-A090). Greenhill was not hired until two months after the Special Committee was formed. (A085). Goldman, for the two preceding months, had unfettered involvement in the process. (A070, A086-A087, A091). Goldman continued to lead the charge in every respect even after Greenhill's retention. (A089-A090, A095-A096). Greenhill never met with Management Directors until the eve of the approval of the Merger. (A098-A099). By contrast, Goldman participated in the discussions with the Management Directors and the Buyers regarding the Company's value and prospects on many occasions. (A038-A040, A083, A086, A091).

E. The Challenged Omissions and Misleading Disclosures Were Material and Related Directly to the Conflicts of Interest that Plagued the Buyout

First, the Proxy failed to disclose any of the material conflicts facing Cami, the driving force on the Committee. (A083-A085, A090, A096, A111-A112). There is no disclosure of his prior work engagements on behalf of Lehman (during which time the Management Directors were Principals) in its investment in Blount or of his work for American Securities. (A051-A052, A072-A075, A111-A112,

A522). Likewise there is no disclosure that Cami had arrangements to re-enter private practice with a focus on private equity immediately after the Buyout. (A051-A052, A085, A112-A113).

Second, the Proxy is selective and intentionally misleading with respect to Goldman's conflicts. The Proxy omits the extent of Goldman's relationship with the Buyers. (A114). In truth, Goldman had relationships with the Buyers in transactions worth over $13 billion. (A076-A081). Goldman's private equity purchase alongside P2, in 2012, and subsequent sale, in 2015, of Interline is also disclosed in a deceptive manner. (A081, A114, A205). The $3 billion of transactions (with $45 million in fees to Goldman) over a two-year period disclosed by the Proxy pale in comparison with the total magnitude of representations overlapping with Goldman's nearly eight-year representation of Blount. (*Compare* A076 *with* A046, A061, A066, A077-A081, A086-A087, A508).

Third, the Proxy discloses that the Management Directors will receive an equity interest in the post-LBO Blount in the form of options. Defendants disclosed the existence of these options and some of their terms. (A115-A116). Plaintiff has alleged, however, that Management Directors publicly abandoned their outlook for Blount and provided stockholders and the Special Committee with the Management Directors' projections that were negatively manipulated. (A090-

A093). Yet, the same Management Directors negotiated an equity position based, in part, on options vested based upon Company performance, but refused to disclose the relevant performance benchmarks.[7] (A106-A107, A115-A116). That information is material to assess the Management Directors' true financial outlook for the Company. Those performance benchmarks represent a material data point for voting stockholders seeking to resolve the conflicting information presented by the June 2015 investor presentation and the Proxy projections. (*See* A104-A105, A108).

Despite the ample opportunity to do so, including as prompted by the pleadings in this Action, Defendants refused to disclose material information regarding these conflicts of interest. (A043-A044, A051-A052, A081, A114-A116).

[7] The Management Directors' equity rollover is relatively small in comparison to the magnitude of their interest in the post-Buyout Company pursuant to these options. (A106-A107).

ARGUMENT

I. The Court of Chancery's Determination that There was No Material Information Undisclosed Constitutes Reversible Error

A. Question Presented

Did the Court of Chancery commit reversible error in its determination that the Proxy was not materially misleading or did not omit material information leading to its application of the business judgment rule to the Buyout and dismissal of the Complaint? This issue was preserved for appeal. (A111-A118, A382-A414, A416-464, A595-A613, A616-A634).

B. Scope of Review

The Court reviews *de novo* a Rule 12(b)(6) dismissal. *RBC Capital Mkts., LLC v. Educ. Loan Tr. IV*, 87 A.3d 632, 639 (Del. 2014). The Court must "accept all well-pleaded allegations as true and draw all reasonable inferences in the plaintiff's favor." *RBC,* 87 A3.d at 639 (the trial court must "(1) accept all well pleaded factual allegations in the Complaint as true, (2) accept even vague allegations as 'well pleaded' if they give the opposing party notice of the claim, (3) draw all reasonable inferences in favor of the non-moving party, and (4) [ ] not affirm a dismissal unless the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances.") (quotation and citation omitted).

Moreover, rather than parse Plaintiff's claims, the Court must view them holistically. *See, e.g., Del. Cty. Empls. Ret. Fund v. Sanchez*, 124 A.3d 1017, 1021

(Del. 2015). Disclosure claims turning on materiality typically raise factual issues not amenable to disposition at the pleadings stage. *See, e.g. Branson v. Exide Elecs. Corp.*, 1994 Del. LEXIS 129, at *8 (Apr. 25, 1994) ("Whether or not a statement or omission … was material is a question of fact that generally cannot be resolved on a motion to dismiss, but rather it must be determined after the development of an evidentiary record."); *Alessi v. Beracha*, 849 A.2d 939, 949 n.68 (Del. Ch. 2004) ("In such a fact-sensitive inquiry as materiality, dismissing a complaint outright before any discovery is uncommon."); *Wells Fargo & Co. v. First Interstate Bancorp*, 1994 Del. Ch. LEXIS 3, at *29 (Jan. 18, 1996) ("[Q]uestion of materiality is difficult to treat as a question of law on a motion to dismiss.").

C. Merits of the Argument

1. Defendants Soliciting the Stockholder Vote Cannot Withhold Material Facts or Make Materially Deceptive Disclosures

When directors submit a merger for stockholder approval, directors "are under a fiduciary duty to disclose fully and fairly all material information within the board's control." *Stroud v. Grace*, 606 A.2d 75, 84 (Del. 1992).

The primary focus of a court's inquiry into alleged inadequate disclosures is on the materiality of the alleged omissions or misrepresentations. *Malone v. Brincat*, 722 A.2d 5, 12 (Del. 1998). "An omitted fact is material if there is a

substantial likelihood . . . that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available." *Rosenblatt v. Getty Oil*, 493 A.2d 929, 944 (Del. 1985). This materiality standard contemplates "a showing of a substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable shareholder," but it is not necessary that the omitted information would have actually changed the shareholders' decision. *Arnold v. Society for Sav. Bancorp.*, 650 A.2d 1270, 1277 (Del. 1994). Furthermore, materiality is to be assessed from the viewpoint of the "reasonable" stockholder, not from a director's subjective perspective. *Zirn v. VLI Corp.*, 621 A.2d 773, 779 (Del. 1993). And, "once a company 'travel[s] down the road of partial disclosure of the history leading up to the Merger ..., [it has] an obligation to provide the stockholders with an accurate, full, and fair characterization of those historic events.'" *In re MONY Group Inc. S'holders Litig.*, 852 A.2d 9, 25 (Del. Ch. 2004) (quoting *Arnold,* 650 A.2d at 1280).

Defendants seeking to lower judicial review from enhanced scrutiny to the business judgment rule "bear the burden of establishing that the [proxy] disclosed all material facts." *In re KKR Fin. Holdings LLC S'holder Litig.*, 101 A.3d 980, 999 (Del. Ch. 2014), *aff'd, Corwin*, 125 A.3d at 304. Placing the burden on defendants conforms to longstanding precedent, as "Delaware law does not make it

easy for a board of directors to obtain [any] 'ratification effect' from a stockholder vote. The burden to prove that the vote was fair, uncoerced, and fully informed falls squarely on the board." *Harbor Fin. Partners v. Huizenga*, 751 A.2d 879, at 898-99 (Del. Ch. 1999), *quoted with approval in Corwin*, 125 A.3d at 312 n.27.

The Court of Chancery recently described the allocation of burden as follows:

> Although a plaintiff generally bears the burden of proving a material deficiency when asserting a duty of disclosure claim, a defendant bears the burden of demonstrating that the stockholders were fully informed when relying on stockholder approval to cleanse a challenged transaction.

In re Volcano Corp. S'holder Litig., 143 A.3d 727, 78 (Del. Ch. 2016) (citing *KKR*, 101 A.3d at 999), *aff'd*, *Lax, et al. v. Goldman, Sachs & Co., et al.*, 2017 Del. LEXIS 56, *1 (Feb. 9, 2017). *See In re Solera Holdings, Inc. S'holders Litig.*, 2017 Del. Ch. LEXIS 1, *20-21 (Jan. 5, 2017) ("a plaintiff challenging the decision to approve a transaction must first identify a deficiency in the operative disclosure document, at which point the burden would fall to defendants to establish that the alleged deficiency fails as a matter of law in order to secure the cleansing effect of the vote."); *In re Comverge, Inc. S'holders Litig.*, 2016 Del. Ch. LEXIS 196, *9 (Oct. 31, 2016) (holding in a summary judgment decision that stockholders were not fully informed of material facts "taking all reasonable inferences in Plaintiffs' favor and considering that Defendants bear the burden of

proving that [] stockholders were fully informed in this case.”).

As for the specific disclosures at issue here, Delaware law requires defendants to disclose all material information regarding actual and potential conflicts of interests suffered by them and their advisors. *See*, *e.g.*, *Skeen v. Wadsworth*, 2003 Del. Ch. LEXIS, at *6 (June 18, 2003); *In re Tele-Communications., Inc. S'holders Litig.*, 2005 Del. Ch. LEXIS 206, at *18-19 (Dec. 21, 2005). The *Corwin* case was dismissed because “all of the objective facts regarding the board's interests, KKR's interests, and the negotiation process, were fully disclosed.” *Corwin*, 125 A.3d at 312. Had the Court of Chancery properly applied *Corwin* to this case, it would inevitably have held that Defendants failed to carry their burden to show that stockholders were “fully informed” when voting on the Buyout.

2. An LBO with Management Participation Raises Important Questions Relevant to Disclosures Made

a. The LBO Buyout Structure Engenders Significant Conflicts of Interests

In LBOs, financial sponsors attempt to arbitrage the value of a company by buying as low as possible and selling high, thereby maximizing their internal rates of return. *See In re: Appraisal of Dell Inc.*, 2016 Del. Ch. LEXIS 81, *90-91, 99 (May 31, 2016). LBOs commonly include management participation, in which circumstances management has an unremitting fiduciary duty to maximize the sale

price for the benefit of stockholders but also has a financial incentive to pay as little as possible to maximize the value of their investment in the continuing company. *See In re Formica Corp. S'holders Litig.*, 1989 Del. Ch. LEXIS 27, *32 (Mar. 22, 1989) ("In any transaction where corporate management seeks to acquire the equity interest owned by the public shareholders, a conflict of interest is inherent. Management's personal motivation as a potential buyer is to pay as little as possible.").[8]

To further their financial incentives, "[m]anagement[,] [who has] non-public knowledge of the corporation [...] can use this informational asymmetry between itself and public shareholders to time the buy-out process ... at advantageous times in the business cycle or history of the corporation." *Dell*, 2016 Del. Ch. LEXIS 81, at *102-103 n.29 (internal quotation and citation omitted).

"Management may [also] actively depress the price of the shares prior to the management buyout in order to reduce the price they have to pay." *Id.* at *103-104 n.29. "Academic research has found a correlation between management-led buyouts and lowered guidance, increased reserves, and other measures that reduce the apparent performance of a company during periods before the announcement of

---

[8] *See also Dell*, 2016 Del. Ch. LEXIS 81, at *144 ("Because Mr. Dell was a net purchaser, any increase in the deal price would cost him money."); *In re SS&C Techs., Inc., S'holders Litig.*, 911 A.2d 816, 820 (Del. Ch. 2006) ("a manager who has the opportunity to both take [. . .] cash from the transaction and roll a portion of his equity into a large equity position in the surviving entity has a different set of motivations than one who does not.").

the buyout." *In re Dole Food Co., Inc. S'holder Litig.*, 2015 Del. Ch. LEXIS 223, *88 n.13 (Aug. 27, 2015) (collecting academic research). Delaware case law has provided real-world examples of this phenomenon.[9]

b. Unfair Process Allegations Demonstrating the Dangers of the LBO Structure Warrant Closer Review of Related Disclosures

Under *Corwin*, absent *de jure* application of the entire fairness standard, the fully informed, uncoerced vote of disinterested stockholders lowers the standard of review in a transaction to the business judgment rule, resulting in dismissal. 125 A.3d at 308. This principle is based on the premise that a fully-informed stockholder vote is a strong assurance of arm's length negotiations and, ultimately, of fairness. *See id.* at 313-14 & n.28.[10]

---

[9] *See, e.g., Dole*, 2016 Del. Ch. LEXIS 223, at *89-94 (finding that defendant fiduciaries engaged in "a calculated effort to depress the market price" as part of the plan to take the company private) (quotation marks omitted); *In re Emerging Commc'ns, Inc. S'holders Litig.*, 2004 Del. Ch. LEXIS 70, *118 (May 3, 2004) ("Prosser abandoned that proposal at the eleventh hour and 'flipped' the deal for his sole personal benefit to take advantage of the temporarily and artificially depressed stock price [which] then became the 'floor' for the equally depressed and unfair Privatization price…."); *Sealy Mattress Co. of N.J. v. Sealy, Inc.*,532 A.2d 1324, 1336 (Del. Ch. 1987) (finding defendants engaged in a "calculated effort to depress the price of Sealy until the minority stockholders were eliminated by merger or some other form of acquisition").

[10] *See also In re Morton's Rest. Grp., Inc. S'holders Litig.*, 74 A.3d 656, 663 n.34 (Del. Ch. 2013) ("Traditionally, our equitable law of corporations has applied the business judgment standard of review to sales to arms'-length buyers when an informed, uncoerced vote of the disinterested electorate has approved the transaction. This effect on the standard of review is, of course, only available to

However, LBOs with management participation "present different concerns than true arms' length transactions" "[b]ecause of management's additional and conflicting role as buyer." *Dell*, 2016 Del. Ch. LEXIS 81, *86.[11] "[I]n [such] a self dealing transaction, the minority shareholders' interests are not being adequately safeguarded, because the fiduciaries charged with protecting the minority have a conflicting self-interest. Our law, therefore, creates compensating procedural safeguards [such as informed and uncoerced stockholder approval]." *Pinson v. Campbell-Taggart, Inc.*, 1989 Del. Ch. LEXIS 50, (Del. Ch. Feb. 28, 1989) (citation omitted). Thus, in this LBO context, "courts [must] be particularly mindful of the danger of omissions and misrepresentations." *Barkan v. Amsted Industries, Inc.*, 567 A.2d 1279, 1288 (Del. 1989) (citation omitted).

Given the dangers of management overreach in the LBO context, especially when there are allegations of an unfair or unreasonable sale process at the hands of management, this warrants a closer examination of alleged omissions and

---

disinterested stockholder approval for good reason—only disinterested stockholder approval is a strong assurance of fairness." (internal citations omitted)); *Kahn v. M&F Worldwide Corp.*, 88 A.3d 635, 645 (Del. 2014) (recognizing "the shareholder-protective characteristics of third-party, arm's-length mergers, which are reviewed under the business judgment standard."). *Cf. Weinberger v. UOP, Inc.,* 457 A.2d 701, 709 n.7 (Del. 1983) (stating that "a showing that the [conflicted] action taken was . . . at arm's length is strong evidence that the transaction meets the test of fairness") (internal citations omitted).

[11] *See In re Appraisal of DFC Global Corp.*, 2016 Del. Ch. LEXIS 103, *64 (July 8, 2016) (recognizing the "potential conflicts of interest inherent in a management buyout or negotiations to retain existing management").

misrepresentations, prior to a finding that stockholder approval has indeed safeguarded stockholders' interests from such conflict. *See Eisenberg v. Chicago Milwaukee Corp.*, 537 A.2d 1051, 1058 n.9 (Del. Ch. 1987) ("'judicial review of disclosures and nondisclosures must be especially rigorous' in [the] context of management leveraged buyout[s] where material facts are 'exclusively within' the possession of management, whose interests 'are in conflict with those of the shareholders.'") (quotation and citation omitted).[12]

These circumstances, rife with conflicts, and in which the Management Directors used their inside knowledge of the Company to reap the future financial benefits for themselves and their partners to the detriment of Blount stockholders, are just such the circumstances that warrant strict review of the disclosures made seeking stockholder approval.

3. The Three Omissions and Misleading Disclosures Challenged in this Appeal are Material and the Court of Chancery's Decision Otherwise Should be Reversed

The Court of Chancery's Order concluded, in error, the following three

---

[12] *See also Frank v. Elgamal*, 2014 Del. Ch. LEXIS 37, at *113 (Mar. 10, 2014) ("[T]he overall negotiation process [must be] disclosed 'in sufficient detail' such that stockholders can reasonably determine whether the final, agreed-upon price 'is the product of arms' length negotiations and whether these negotiations succeeded in maximizing shareholder value.'") (citing *In re Transkaryotic Therapies, Inc.*, 954 A.2d 36, 362-63 (Del. Ch. 2008)). *Cf. Dell*, 2016 Del. Ch. LEXIS 81, at *86 (in appraisal action, recognizing that MBOs "should be evaluated with greater thoroughness and care than, at the other end of the spectrum, a transaction with a strategic buyer in which management will not be retained").

disclosure claims sought immaterial information. (Ex. A ¶¶6, 7, 9, 10). In doing so, the Court-below did not reach the substance of Plaintiff's process- and price-related claims, holding the Buyout to be subject to the business judgment rule. (Ex. A ¶10). Although the Order offers little in the way of rationale for its disclosure holdings, it is apparent the claims were not analyzed for materiality within the factual context of the Buyout.

a. Cami Had Undisclosed Conflicts as the Lead of the Special Committee

The Court of Chancery misapprehended the nature of the disclosure claim involving Cami, finding that his past relationships with Lehman and American Securities were stale and his future at Davis Polk would make that firm work harder on the Special Committee's behalf. (Ex. A ¶6). Those findings miss the mark and do not address the real nature of Plaintiff's claim.

Cami was the *de facto* leader of the Special Committee, formed as a supposed independent bulwark against Management Directors' conflicted interests. (A070, A072-A085, A090, A096). However, he, undisclosed to Blount's stockholders, served in that capacity knowing he would be immediately re-entering private practice. (A051-A052, A085, A112-A113). Cami also knew of his substantial prior (and potential future) representation of American Securities and a Management Directors-led Blount. (A051-A053, A072-A075, A085). Cami's once and future clients had an interest in paying as little as possible, whereas

stockholders' interests are to maximize value. Almost immediately upon the closing of the Buyout, Cami announced his joining Davis Polk. (A051-A052, A085). Davis Polk and Cami touted Cami's stature as an expert in private equity matters and his prior experience representing American Securities and Lehman (by and through Management Directors and Blount), demonstrating Cami believed these relationships to be material and hardly stale for his professional interest moving forward. (A051-A053, A073, A075).

"[W]here, as here, the minority stockholders are relying on the special committee to negotiate on their behalf in a transaction where they will receive cash for their minority shares," a special committee's potential conflicts are important facts that generally must be disclosed to stockholders before a vote. *In re John Q. Hammons Hotels Inc. S'holder Litig.*, 2009 Del. Ch. LEXIS 174, at *58 (Oct. 2, 2009).[13]

Plaintiffs allege that despite Cami being the *de facto* leader of the Special Committee, Defendants did not disclose Cami's past representations of counter-parties to the Buyout, American Securities and the Management Directors (while Principals at Lehman), or Cami's immediate expectation of re-entering private

---

[13] *Cf. Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1156, 1173 (Del. 1994) ("The independence of the bargaining parties is a well-recognized touchstone of fair dealing."); *Paramount Communications, Inc. v. QVC Networks, Inc.*, 637 A.2d 34, 44 (Del. 1993) (role of outside directors is particularly important given management may not be acting in the best interests of the stockholders).

practice as a private equity specialist. (A111-A112, A522). The facts surrounding Cami's background and future raise a reasonable inference that Cami was conflicted in his ability to act as an effective independent negotiator in the process. Of immediate concern, these material factors and conflicts impairing Cami's independence were withheld from the public stockholders as their vote on the Buyout was solicited. *See Skeen*, 2003 Del. Ch. LEXIS 63, at *6 ("the failure to disclose the connection between [an interested director] and Blaesar [a member of the Committee] would appear to have omitted material facts necessary to understand Blaesar's ability to serve as a member of the Committee which bears on the fairness of the [] deal"). *Cf. Hammons*, 2009 Del. Ch. LEXIS 174, at *55 (potential for future work is a material conflict). The stockholders were entitled to rely on the Special Committee to negotiate in their best interest, especially in light of the Proxy's numerous representations that the members of the Special Committee were "independent." (A138, A154, A172, A193, Proxy at 1, 17, 35, 56). Disclosure of these conflicts, imparting the truth of Cami's personal situation and circumstances while he acted as the leader of the supposed independent decision-making body, would alter the total mix of facts available to stockholders.

b. The Extent of Goldman's Relationship with the Buyers was Misleadingly Disclosed

The Court of Chancery also erred regarding Plaintiff's claims that disclosures regarding Goldman's conflicts were incomplete and misleading. (Ex.

A ¶7). It is well-established that because "of the central role played by investment banks ... this Court [] require[s] full disclosure of investment banker compensation and potential conflicts." *In re Atheros Commc'ns, Inc. S'holder Litig.*, 2011 Del. Ch. LEXIS 36, at *27 (Mar. 4, 2011) (citation omitted). *See e.g.*, *id.*; *In re Rural Metro Corp. S'holders Litig.*, 88 A.3d 54, 105-106 (Del. Ch. 2014) ("Information that bears on whether an investment bank faces conflicts of interest is material to stockholders when deciding how to vote on a merger" and the "partial disclosure imposed on the [] directors a duty to speak completely.").

Plaintiff alleges that Goldman was engaged by Blount to sell the Company for nearly eight years and that, throughout that time, Goldman had material relationships with both American Securities and P2. (A046, A061, A066, A076-A081, A086-A087). In the case of American Securities, over the course of six years, Goldman had represented American Securities and its portfolio companies in transactions worth over $11 billion. (A077-A080). Similarly, Goldman represented P2 in transactions worth nearly $3 billion. (A080-A081). Also, Goldman was P2's partner in acquiring Interline in 2012 and, during 2015 was actively involved in selling Interline alongside its partner P2. (A080-A081).

Additionally, the Proxy's disclosure with respect to the nature of Goldman's and P2's partnership in Interline is materially misleading. (A114). Goldman was a co-owner of Interline with P2, having jointly taken Interline private, and was in the

process of selling Interline (with Goldman acting as financial advisor) at the time of the Buyout offer. (A066, A080-A081, A087, A508). However, the Proxy ultimately only disclosed that Interline was an "affiliate" of "funds affiliated with Goldman Sachs" and P2. (A081, A114, A205). Goldman's significant relationship with P2, as co-owners of a company worth over $1 billion, rendered them more than mere "affiliates," and the true nature of this relationship should have been disclosed. (*See* A066, A080-A081, A087).

Defendants issued the Proxy with those infirmities despite ample opportunity to correct the disclosures. (A043-A044, A081). As the Court recognized in *Rural Metro*, "[t]he relationships between investment banks and corporate management can run deep, and an investment bank often has business with the corporation and its management that span[s] more than one transaction." *See Rural Metro*, 88 A.3d at 106 (citation omitted). Where an investment bank is providing *services* for long-standing clients or relationships, it "may be influenced ... to avoid irritating management and other corporate actors who stand to benefit from the transaction," as "[t]his will ensure future lucrative business." *Id.* (quotation omitted). *See David P. Simonetti Rollover IRA v. Margolis*, 2008 Del. Ch. LEXIS 78, at *45 (June 27, 2008) ("[T]he stockholders have every right to expect the Company to share with them any extraneous, substantial reasons [the financial advisor] may have for seeing that the transaction is consummated.").

The Court of Chancery concluded, only with the benefit of the pleadings and briefing in this action that Goldman's relationship with the Buyers to be "longstanding and thick." (Ex. A ¶7). The arbitrary two years of relationships disclosed in the Proxy (A076), however, without the additional knowledge raised in the pleadings, are insufficient to reach that conclusion. The total mix of material information is necessarily altered by Goldman's extensive representations of American Securities and P2 and its private equity partnership in the Interline deal during Goldman's coextensive, almost eight year representation of Blount to sell the Company. Defendants cannot be permitted to make partial and misleading disclosures regarding the lead investment banker's conflicted interests based on an arbitrary two-year period without regard to the facts at hand.

c. Material Valuation Information Possessed by Management Directors and Buyers was Withheld

The Court of Chancery's determination that the Proxy disclosures regarding the terms of post-Buyout equity options afforded to the Management Directors were materially complete was erroneous. The Court-below correctly stated that the Proxy discloses that the Management Directors will receive a grant of options to purchase an aggregate of 6% of post-Buyout Blount and that the vesting of those options would be based on criteria including "satisfaction of certain predetermined performance targets or predetermined cash-on-cash return thresholds." (Ex. A ¶9). With that, the Court of Chancery determined no additional disclosure was required.

Id. That holding ignores the substance of Plaintiff's allegations and the context of the omitted disclosures.

Plaintiff alleges that the Management Directors faced an inherent conflict of interest in connection with the Buyout. Their expectation and understanding was that they would be participants in the post-Buyout Blount not just as continuing employees but as equity partners with the Buyers, and, as such, had a financial incentive to ensure the Buyout price was as low as possible to enhance their personal upside. (A068, A091-A093). Plaintiff further alleges the Management Directors manipulated the Company's projections upon receiving the Buyout offer in which they had a material personal interest. (A068, A090-A093).

It is against this factual context the alleged omission must be judged. The material omission is that Defendants withheld the "predetermined performance targets" and "predetermined cash-on-cash return thresholds." (A115-A116). Failure to disclose the material terms of granted equity awards can constitute a material omission. *See Cambridge Ret. Sys. v. Bosnjak*, 2014 Del. Ch. LEXIS 107, at *25-26 (June 26, 2014). *See also Crescent/Mach I Partners, L.P. v. Turner*, 846 A.2d 963, 987 (Del. Ch. 2000) (allegations proxy statement issued in connection with merger omitted "the terms of the 'sidedeals' in which [Chairman/CEO] and his affiliates allegedly receive separate benefits" were material).

Also, of equal importance, Defendants are obligated to disclose all material

information regarding the true value of the Company and its assets. *See, e.g., Zirn v. VLI Corp.*, 681 A.2d 1050, 1057-58 (Del. 1996) (stating that "one factor [that] was particularly relevant [for a stockholder], *viz.,* [was] whether the [] offer [price] represented an adequate price given the aggregate value and prospects of the company" and finding that facts "relevant to a reasonable stockholders' valuation of the corporation" are material); *Lynch v. Vickers Energy Corp.*, 383 A.2d 278, 280-81 (Del. 1977) (finding that an additional estimate of the Company prepared by company management, which fixed the net asset value of the company at higher than the transaction value, was material in light of "[t]he Court's duty [] to examine what information defendants had and to measure it against what they gave to the minority stockholders"). "Faced with the question of whether to accept cash now in exchange for forsaking an interest in [the Company's] future cash flow, [] stockholders would obviously find it important to know what management['s] ... best estimate of those future cash flows would be. ... That is especially the case when most of the key managers seek to remain as executives and will receive options in the company once it goes private." *In re Netsmart Techs., Inc. S'holders Litig.*, 924 A.2d 171, 203 (Del. Ch. 2007).

The total mix of information available regarding the value of the Company would be altered by the inclusion of the performance metrics linked to the options. As presented, stockholders had previously received the June 2015 investor

presentation and then were presented with conflicting management projections in the Proxy for their consideration of Blount's value. (A104-A105, A108). Those are two data points. There is, however, an undisclosed and material third data point. That data point is what future performance metrics the Management Directors and Buyers negotiated to establish their equity relationship.[14] (A115-A116). Where three data points exist and only two are disclosed, the "total mix" must be materially altered by a third material data point at the 12(b)(6) stage.

14 For example, if the performance metrics that trigger the vesting of the options align with (or exceed) those contained in the June 2015 investor presentation, that would indicate the Management Directors and the Buyers believe the Company to have a value in excess of what is implied by the projections contained in the Proxy (and in which the disclosed Buyout valuations were based).

CONCLUSION

For the reasons set forth herein and argued below, Plaintiff respectfully requests this Court reverse the Order of the Court of Chancery and remand the matter for further proceedings.

February 13, 2017

CHIMICLES & TIKELLIS LLP

/s/ Pamela S. Tikellis

Pamela S. Tikellis (DE ID No. 2172)
Robert J. Kriner, Jr. (DE ID No. 2546)
A. Zachary Naylor (DE ID No. 4439)
Tiffany J. Cramer (DE ID No. 4998)
222 Delaware Avenue
P.O. Box 1035
Wilmington, DE 19899
(302) 656-2500

Attorneys for Plaintiff-Below, Appellant