

ESSAYS ON THE LAW OF MERGERS AND ACQUISITIONS

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I certify that I have read this dissertation and that, in my opinion, it is fully adequate in scope and quality as a dissertation for the degree of Doctor of Philosophy. □

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ABSTRACT

This thesis consists of three papers. The first examines the effect of *In re Cox Communications, Inc. Shareholder Litigation*, 879 A.2d 604 (Del. Ch. 2005) on the gains of the target shareholders in freezeout transactions (that is, transactions in which a controlling shareholder acquires the remaining shares of a corporation for cash or stock). Historically, Delaware corporate law provided different standards of judicial review for buyouts by controlling shareholders: deferential business judgment review for freezeouts executed as tender offers and stringent “entire fairness” review for transactions structured as mergers. In *Cox*, then Vice Chancellor Leo Strine proposed in dicta a “unified approach” that would close this doctrinal gap. The results of this paper indicate that deal outcomes in tender offers and mergers converged after this opinion, which provides support to the notion that entire fairness review is a significant protection in the context of conflict transactions and that buyers reacted to *Cox*.

The second paper examines the effect of *Revlon* duties on the gains of target shareholders in third-party acquisitions. In *Revlon v. MacAndrews & Forbes Holdings*, 506 A.2d 173 (Del. 1986), the Delaware Supreme Court held that when a “sale” or “break-up” of a company becomes “inevitable,” the duty of the directors is not to maintain the independence of the company or otherwise give priority to long-term considerations, but rather to obtain the highest price possible for the shareholders in the transaction (that is, to *maximize short-term value*). To satisfy this duty, the directors are generally supposed to conduct an auction for the shares of the company or, as clarified in subsequent decisions, “check” in the market that the shareholders are receiving the best price available. In an attempt to examine the effect of these duties, this paper used *Paramount Communications, Inc. v. Time, Inc.*, 571 A.2d 1140 (Del. 1989) as a potential source of exogenous variation because prior literature has suggested that *Time* appeared to create an exemption from *Revlon* duties for stock-for-stock mergers. Broadly speaking, the results indicate that the cumulative abnormal returns to the target shareholders and the incidence of stock-for-stock deals were not affected by *Time-Warner*. As further discussed in the text, this result might be interpreted as indicating that *Revlon* duties do not increase significantly the gains of the target company. However, it is also possible that *Time* was simply not a clear and/or sufficiently strong shock to test the significance of *Revlon*. I plan to continue analyzing this topic in future work and therefore the results of this paper should be taken only as preliminary findings.

Finally, the third paper explores the efficiency effects of freezeout transactions, particularly by examining industry-adjusted changes in the ROA and Tobin’s Q of the controlling shareholder after the execution of the deal. The results suggest that although the controlling shareholder does not experience statistically significant drops in ROA, Tobin’s Q generally falls. As further discussed in the text, this result has implications for the regulation of freezeout transactions, especially in terms of standards of judicial review. Similarly to the second paper of the dissertation, however, I plan to perform additional analyses and therefore the conclusions of this paper should be taken only as preliminary findings.

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