

Decisions, Decisions - The Thorny Problems At The Heart Of Stakeholderism

Article By:

Keith Paul Bishop

In yesterday's post, I highlighted a new discussion [paper](#) arguing that Twitter's leaders through its stakeholders "under the bus" in favor of the interests of the stockholders. According to the authors, stakeholder governance "refers to the increasingly influential view that corporate leaders should be encouraged and relied on to use their discretion to serve stakeholders and not only shareholders". Lucian A. Bebchuk, Kobi Kastiel, and Anna Toniolo, *How Twitter Pushed Stakeholders Under The Bus*, 25 (Jan. 2023).

It is easy to assert that directors should serve the interests, but it is very difficult to define how they should do so. Often there will be many potential stakeholders such as employees, customers, the community. In some cases, the interests of these stakeholders may be attenuated and difficult to identify. Even when the set of potential stakeholders can be accurately determined, how should their interests be weighed? Some may be tempted to apply the test of pareto efficiency - *i.e.*, directors may approve only those transactions in which at least one stakeholder is better off and no stakeholder is made worse off. However, this may not result in the most efficient allocation of resources. Thus, some may opt for Kaldor-Hicks efficiency - *i.e.*, directors may approve only those transactions in which the gain of some stakeholder(s) outweighs the pain of the other stakeholder(s).

Pareto efficiency and Kaldor-Hicks efficiency are economic theories, not legal standards. If legislatures or courts impose stakeholderism on corporate boards, will either of these theories become the rule of decision or will some other rule be fashioned? Today, directors at least know whose interest they serve and must advance.

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