

Delaware Supreme Court Upholds Chancery Court Ruling that Applied Business Judgment Rule to Going Private Transaction with Controlling Stockholder

Article By:

Mark J. Reyes

Mark D. Wood

In **Kahn v. M&F Worldwide Corp.**, the Delaware Supreme Court unanimously upheld the Chancery Court's decision in *In re MFW Shareholders Litigation*. In that decision, the Chancery Court had granted summary judgment in favor of the board of directors of **M&F Worldwide Corp.** (M&F) in a suit brought by former stockholders of M&F challenging the going private acquisition of M&F by **MacAndrews & Forbes** Holdings Inc., the owner of 43.4 percent of M&F's common stock. The Chancery Court held that a going private acquisition by a controlling stockholder that is conditioned, from the outset, on approval by both a properly empowered, independent committee, and an informed, uncoerced majority-of-the-minority vote would be reviewed under the business judgment standard of review, rather than the entire fairness standard of review. A summary of the Chancery Court's decision in *In re MFW Shareholders Litigation* is included in the June 7, 2013 issue of *Corporate & Financial Weekly Digest*.

In upholding the Chancery Court's decision, the Delaware Supreme Court held that the business judgment standard of review would apply to a going private acquisition by a controlling stockholder if, but only if, the following facts were established: (1) the controlling stockholder conditioned the transaction on the approval of both a special committee, and a majority-of-the-minority stockholders; (2) the special committee was independent; (3) the special committee was empowered to freely select its own advisors and to say no definitively; (4) the special committee acted with care; (5) the minority vote was informed; and (6) there was no coercion of the minority.

Notably, the Delaware Supreme Court left open the possibility for plaintiffs to question a special committee's independence and its process for selling a target company. The Delaware Supreme Court indicated that if, following discovery, triable issues of fact remain about whether either of the procedural protections were established or were effective, the case would survive a motion for summary judgment and would be subject to entire fairness review at trial. In upholding the Chancery Court's decision, the Delaware Supreme Court confirmed the Chancery Court's findings that the plaintiffs had failed to raise any genuine issues of material fact as to whether the procedural protections had been established or were effective. Accordingly, the Chancery Court's application of

the business judgment standard of review at the summary judgment stage was found to be appropriate.

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