JUDICIAL DEVELOPMENTS SHARPENING THE FOCUS OF THE *MFW* STANDARD: INDEPENDENCE OF THE SPECIAL COMMITTEE AND DIRECT NEGOTIATIONS BY THE CONTROLLER WITH STOCKHOLDERS

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ABSTRACT

Under Delaware corporate law, when a controller intends to acquire its controlled entity, minority stockholders in such entity may challenge such transaction under the high-scrutiny "entire fairness" standard, unless the business judgment rule is restored for the controller by the MFW standard. Under this standard, two procedural devices protect the minority's interest: an independent special negotiation committee and an approval by the majority-of-the-minority stockholders. This article deals with two issues of the MFW standard addressed by the Delaware Court of Chancery in 2020:

First, when considering the independence of a single member of the special committee, a court dealing with the MFW standard may look at precedents in demand-excuse cases which give guidance in the specific case. Different from the demand-excuse cases, the MFW standard likely requires each member of the special committee to be independent. Second, direct negotiations between the controller and certain stockholders without involving the special committee may likely make the protections of MFW unavailable.

TABLE OF CONTENTS

I. INTRODUCTION 28
II. *MFW*-DOCTRINE FOR CONTROLLER BUYOUT-TRANSACTIONS ... 29
  A. *Standard of Review – Restoring the Business Judgment Rule* 29
  B. *Requirements on Special Negotiation Committee and Minority Plebiscite* 31
III. INDEPENDENCE OF COMMITTEE MEMBERS..... 31
  A. MFW 32
  B. In re Dell 33
    1. Special Committee 33

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