PURPOSE, POPULISM AND MARKETS IN DELAWARE CORPORATE LAW: A CONVERSATION WITH PROFESSOR LAWRENCE HAMERMESH

LAWRENCE A. HAMERMESH, AS INTERVIEWED BY PAUL L. REGAN

ABSTRACT

Lawrence Hamermesh is the Executive Director, Institute for Law & Economics at The University of Pennsylvania Carey Law School and is Professor Emeritus at Delaware Law School. He is a member and former chair of the Council of the Corporation Law Section of the Delaware State Bar Association and is the Reporter for the Corporate Laws Committee of the American Bar Association Business Law Section. He previously served as senior special counsel in the Office of Chief Counsel of the Division of Corporation Finance of the U.S. Securities and Exchange Commission in Washington, D.C. (2010–2011) and as Reporter for the American Bar Association's Task Force on Corporate Responsibility (2002–2003). Hamermesh recently published Finding the Right Balance in Appraisal Litigation: Deal Price, Deal Process, and Synergies, 73 Bus. Law. 961 (Fall 2018) (with Michael Wachter). Professor Hamermesh practiced law with Morris, Nichols, Arsht & Tunnell in Wilmington, Delaware, from 1976 to 1994. He is a graduate of Haverford College (1973) and Yale Law School (1976).

Professor Hamermesh talked about corporate populism, short-term and long-term shareholder value, the ups and downs of stockholder litigation under Delaware corporate law from the early takeover cases to the present, the corporate law oral history project at the University of Pennsylvania, and other topics.

I. INTRODUCTION

Smolla: My name is Rod Smolla , I'm the Dean of the [Widener University Delaware] Law School, and I want to welcome all of you to this festive event. It's a delight every year to have the Pileggi Lecture, and we want to thank and welcome members of the [Pileggi] family who are here. It is an enormously important part, not only of the academic calendar of the Delaware Law School, but the way Delaware celebrates its unique position in the world of corporate law.

I see we have Chancellor [Andre] Bouchard here and others. We want to welcome all the members of the judiciary and the bar who are here. I am going to, in just a second, let my colleague Bruce Grohsgal introduce Larry [Hamermesh] and Paul [Regan]. But before I do, I just want to share this one thought with you.

My three colleagues who are on the program this morning share a common characteristic, and it's somewhat unusual in the world of American legal education. All three of them had very long, strong runs as practicing lawyers, including very important positions within the Delaware Bar. And then after that, they decided they wanted to contribute to the world of ideas and to teaching and to move into the world of academic life at the Delaware Law School. I think that's a wonderful model and an underutilized model in American legal education. It's a terrific benefit to our law students, scores of whom are here today, to have the blend of legal theory and legal doctrine and practical legal experience. And so, Bruce [Grohsgal] came to us most recently after a distinguished career, and he's added enormously to our commercial, bankruptcy, and corporate curriculum.

Paul [Regan] is not only a terrific lawyer and terrific teacher, but the most naturally good natured, happy person I've known in my life. You cannot be around Paul without feeling a bit lifted and happy and saying that's the way to live a good life. To live a good life with that sense of optimism, which is not always easy being a lifelong Philadelphia Phillies fan. But as a lifelong Chicago Cubs fan, we commiserate about that together.

And then Larry [Hamermesh] is truly one of the state's great men for all seasons. You will see in just a few days the newest issue of the *Delaware Lawyer* coming out. And in that issue of the *Delaware Lawyer*, there is an Of Counsel Section, which is the final page, which features a lawyer who is retiring. I don't really think retirement is actually the right word to ever use for Larry, but Larry happens to be the person featured. And my colleague Erin Daily, who is a former Interim Dean of the law

school, a terrific lawyer and scholar in her own right, writes a wonderfully beautiful, humane piece about Larry.

Of course, you know about his great career as a litigator and lawyer in the corporate world. You know about his outstanding teaching. You know, of his extraordinarily generous public service, serving on just about every committee and task force dealing with corporate law that has been in the free world for the last two decades. He's also an extraordinary father and husband, an outdoorsman, musician and contributor of leadership to his synagogue. He is the example of what Oliver Wendell Holmes once said, "Living greatly in the law."

So there's a lot of pride in the room today as we celebrate the Pileggi family's legacy here in this wonderful lecture series, and get to hear a kind of Oprah Winfrey interview with Paul and Larry.

So welcome, everybody, and I'll let Bruce add a few more formalities.

Grohsgal: Thank you.

[APPLAUSE]

Grohsgal: Thank you, Dean Smolla and now, unlike Dean Smolla, I cannot just stand here without notes, so I have my notes. And also, he's a great mind reader because a lot of what I was going to say, Rod did from the top of his head. I'm delighted that we have Professor Larry Hamermesh being interviewed today by Paul Regan.

I would like to thank the Pileggi family, in particular. No less a light than Abraham Lincoln wrote, and I'm going to make sure I get the quote right, "The leading rule for the lawyer is diligence." Francis G. Pileggi was a Lincoln lawyer in the truest sense. He was the diligent and tireless counselor and advocate for his clients. His diligence and devotion extended to his family and to his church, to the numerous associations of which he was a member. And fortunately for Delaware Law School, to all of us here when he founded the Pileggi lectures 35-years ago and we appreciate the support that we've gotten.

Professor Hamermesh is a fitting speaker today. For many years, he fostered these lectures and brought many eminent scholars and commentators to Delaware to speak, and he is prominent among them. When Professor Hamermesh left the practice of law at Morris, Nichols [Arsht & Tunnell LLP], the word on Market Street [in Delaware] was that Morris Nichols' loss would be the academy's gain, and that prediction was true.

Professor Hamermesh over the years has been an insightful and prolific commentator on Delaware and US corporate law. He has continued in that capacity. The Delaware Law School's loss now that he's at [the University of Pennsylvania Law School], is Penn's gain. So please

welcome Professor Hamermesh. He will be interviewed, as Rod said, by his long, long standing colleague of many years, Professor Paul Regan, who I know will not embarrass him one iota. Thank you very much.

Smolla: Thank you, Bruce.

[APPLAUSE]

Regan: Thank you, everyone. So thank you for those very kind and warm introductions and we're really happy to be here today. And I'm delighted to have my colleague Larry Hamermesh to have this Q&A. Larry and I were adversaries, but always collegial and friendly, from the mid-eighties when I landed here in this state [of Delaware]. And Larry had been there a few years before me.

We're going to talk about some of those years and the doctrine that came out of all that, and what's going on in the law today. But it was always a privilege and a pleasure to have cases in which my colleague today, Larry, was on the other side of the lawsuit, because I knew that we could actually enjoy the intellectual pursuit of the adversarial process. What you hope the practice of law would be like. And it was just a blast. And then to wake up and realize, hey, we're colleagues as academics together in the same space and for all these years it has been a great pleasure and a privilege. And I'd like to think, and I haven't shared this with Larry, but I would like to think that what we're doing today is actually part of what we have done for years together as academics, hallway conversations. So what do you think about this *Corwin* case?[1] And on and on it goes, right. Were they really doing this? And we're getting a little more of that with some structure, but hopefully some helpful conversational context. So, Larry, welcome. Great to have you this morning.

Hamermesh: Thank you very much. And then just before we get underway with the substance, I did want to make a point of personal privilege, which is that it is a great honor to have been invited to present here this morning. If you look at your booklets, you've got the list of previous speakers, previous presenters and, I suppose I could say I don't know what I'm doing here. The other way to put it is that, you know the expression, if I've seen farther than other men it's because I've stood on the shoulders of giants. If I've seen anything at all, it's because I've been peering through their ankles. And the giants who have preceded me in this make this a little bit daunting. But go ahead. We'll have a conversation.

Regan: Let's do this. And thank you for that. We were talking about baseball just beforehand at breakfast. A game I love. You get the great luminaries of the game and you say, well, who's this Hamermesh guy in the lineup? Oh, I see why. Hall of Famer in my book, brother. Okay?

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[1] *See Corwin v. KKR Fin. Holdings LLC*, 125 A.3d 304 (Del. 2015).

Just saying. All right let's get started. So let's go back. You land here in Delaware and you're at Morris Nichols right from the beginning. And let's just enter in where you are then. And what's happening in the law? An early case experience and things of that nature.

II. APPRAISAL VALUE

Hamermesh: Yeah. Sure. So I came to Delaware at Morris Nichols in the summer of 1976. I want to talk about the first bit of legal work I did at Morris Nichols because it was a memo. That's what we did. Legal memos. And this memo was about judicial estoppel. Why judicial estoppel? Because of a case called *Bell vs. Kirby Lumber*.[2] And if you know that case at all, it's because you've been looking at appraisal law. And this was an appraisal case. This is one of the old appraisal cases. This was before *Weinberger v. UOP*[3] and it was so old a case that because the merger that gave rise to it was in 1974, the procedure was the one that was in force before the merger statute was amended. The appraisal statute was amended in 1976.[4] And the big difference was there was a trial not in front of the Court of Chancery. Chancellor Bouchard, you would have been relieved by that time I think. But it was in front of a court appointed appraiser. And the appraiser in that case was actually a colleague or former colleague of yours, Paul, Rodman Ward Jr. I did not see him at work because my recollection, vague as it is, was that the trial occurred before I came in 1976, merger in 1974, and I think there was a lot of discovery and other proceedings before I got there. But the judicial estoppel thing, to come back to that, came about because of a report that the [minority] stockholders had been given, which set forth an asset appraisal of $770 per share. And in the case the respondent, Kirby Lumber, wanted to disavow that number. Wanted to come in for something much lower. And the question was whether or not they would have been stopped for some reason from asserting a lower asset value.

So that was the memo I did. And I actually looked at it not too long ago and thought, it's not so bad for a first time out. And ultimately, Kirby prevailed on that question and was able to argue for a lower number.

The reason I want to talk about that case, and I'm sorry to go into such detail about it, but because it set the stage, at least in hindsight, for so

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[2]*See Bell v. Kirby Lumber Corp.*, Civil Action No. 4706, 1978 Del. Ch. LEXIS 569 (Del. Ch. Dec. 28, 1978).

[3]*See Weinberger v. UOP, Inc.*, Civil Action No. 5642, 1985 Del. Ch. LEXIS 378 (Del. Ch. Jan. 30, 1985).

[4]*See* Del.Code Ann. tit. 8, § 262.

many of the issues that we still talk about today in corporate law and corporate governance. So as I said, it's an appraisal case. And not only was there a court appointed appraiser, but this was from the era when the Delaware valuation law was based on the so-called Delaware block method, which students of history will appreciate. It's sort of a formulaic thing where you would say, well, is there a trading market for the stock? Let's look at the stock price. Market price. That was one element that you look at. What could you sell the assets for, lock, stock and barrel? Asset value. Let's take that into account and then let's look at something called earnings value. What's that? Well, that's supposed to be a value that reflects the prospects, the earnings prospects of the company. How do you do that? Oh, very simple. There's a very formulaic way you do it. You look at the previous five years' reported net income. You choose, I was going to say thin air, but maybe just something. You choose a multiplier to apply to that.

In hindsight, I now know that that was the world's most primitive discounted cash flow analysis because the multiplier was simply the inverse of the discount rate, and you would assume that the future returns were in perpetuity the average of the previous five years' earnings. Pretty crude, but that's what we did back then. So that's the doctrinal and valuation framework we were operating under. Now, here's where it got kind of weird because the case was one in which we're dealing with a forest products company. They had a huge swath of timber land in East Texas, and I think north or northwest Louisiana. And I remember one of the opinions goes out of its way to say the holdings were about half the size of the state of Delaware. It's a big, big, big forest company. And they had a pretty simple business model. They would just go down, cut out to cut down trees and put them through the mill and turn them into lumber and sell it. That was the business. Pretty steady earnings flow.

Here's where the problem came. There was really no market for the stock. It was not widely held, certainly not traded on the stock exchange, so market price was out the door. We're down to asset value and earnings value. Earnings value, you know, you put the lumber through the mill and turn it out and sell it. Pretty steady flow of earnings. Nothing to write home about. Nothing exciting. Using any kind of reasonable numbers, you come up with an earnings value of about $120 per share. That gets us to the asset side of things. The original figure I mentioned from the proxy statement information statement was $770 per share, even as adjusted downward by the defendant's contention in the case, it was still like $450 per share. So, you had this enormous gap between earnings value and asset value. And I remember thinking at the time, what? How can you have that kind of disparity? Something has got to be wrong with the input. Something has

got to be wrong with the method. What's going on here? So that disparity set the tone, I said, for a lot of the developments that were to come later on. Should I just go on and talk about some of those, or shall I let you ask a question?

Regan: Yes, I want you to go on, but in that space, you're looking at this complete cognitive dissonance moment at the end of the day, the appraisal statute, whether it's the old version of a trial when someone like Rod Ward could serve as the appraiser subject to Chancery Court review or as now, the Chancellor does it stand alone.

You've got the value of a corporation as the only issue, no fiduciary duty stuff. Just what's the fair value of this company on the day of the merger? And there you are, a neophyte to the Delaware experience representing the defendants or the respondents we would call in an appraisal case, saying, well, it makes no sense to use this higher value. How are you processing this disconnect? And at that time what kind of conversations are going on about how are we going to argue this and why?

Hamermesh: Yeah, this step in the valuation analysis in this block method that I didn't talk about was what do you do when you get these different components? You pick one, you pick the other. And no, you come up with a weight to attribute to each one of them. And so how do we pick? Well, I remember having extended conversations with Clipper Lamotte, who was sort of my senior guy working on the case at the time. He and Gil Sparks essentially tried the case. And Clipper and I would talk about what kind of number to put on the weight for asset value. And of course, we took the position for the respondent that this company was going to continue to be run the way it's been run, cranking out the lumber. And the only way stockholders would ever see anything, from their investment would be through dividends based on what the company would earn. So earnings value ought to be given predominant, if not exclusive weight. I thought that was eminently logical.

The plaintiff side said, what are you kidding? You've got a company that, even on your state of analysis, the assets are worth $450 a share. That's real value. You ought to take that into account. That ought to be the predominant number, because certainly if you ever sold this company to a third party, they wouldn't pay for this sort of little stream of earnings that you generate by cranking out the lumber. They'd pay for all this vast Delaware sized forest land that you've got, so 100% on asset value. Guess what Rod Ward did? It wasn't quite 50/50, but it was 40/60. 40 percent on earnings, 60 percent on asset value. I think he came out with something like $256 per share. Something like that.

Regan: The interest in the case, and this relates to our larger discussion today, is the argument that you were making, or that you and

your colleagues were making, that the Court should not look at asset value. This is an earnings story because on the day of the merger, this was our business model. So, you can't impose some larger asset-based value as if we were selling it all in a mergers and acquisitions ("M&A") moment. Our business model is to keep operating our existing plan. It was actually a reference to the way we earn money, on what they referred to as a sustained yield.

Hamermesh: Right, yeah.

Regan: Sustained yield means?

Hamermesh: Whatever we cut has to be replaced by new growth in the forest.

Regan: Right. So, a sustainable business model, if you will.

Hamermesh: Exactly.

Regan: So they had a valuation earnings model that had long term wealth creation, not this "sell it all, realize its value, and there are no more trees."

Hamermesh: Right.

Regan: And that plays out in the larger conversation that we're going to have today about constituencies, things of that nature. And so let's move forward into the crazy decade where we met.

Hamermesh: Well not quite. If I could?

Regan: Please.

Hamermesh: Because I want to say a couple words about what I now know in hindsight was going on at the time. Number one. Totally unbeknownst to me, because I didn't do any federal court stuff -- I kind of knew what 10b-5 was, but barely -- there was a case pending arising out of the same transaction. Same short-form merger. And we know it as *Green v. Santa Fe Industries*.[5] Santa Fe Industries was the parent company of Kirby Lumber. It's the one that was the 90 plus percent stockholder and it did the short-form merger. And that short form merger was challenged in federal court in a case that went all the way up to the U.S. Supreme Court where the Supreme Court said, "You know, 10b-5 is really only about deception, and this is really . . . you just got a fiduciary duty case here, that's state law stuff." And you know, in hindsight, if that case had come out the other way, you'd see a whole lot fewer people here today than you see now. We would not be here.

Regan: And little did I know when I'm studying *Santa Fe v. Green* in law school, I got what I needed to know for this. Basically, it's don't make a federal case out of a squeeze out merger.

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[5]*See Green v. Santa Fe Indus., Inc.*, 70 N.Y.2d 244, 519 N.Y.S.2d 793, 514 N.E.2d 105 (N.Y. 1987).

Hamermesh: That's it.

III. HOSTILE TAKEOVERS IN THE 1980'S

Regan: If you told them all this stuff, it's a fiduciary loyalty issue. But it's not a federal disclosure case and Delaware has all that M&A stuff going on in our state courts, not in federal court jurisdiction.

Hamermesh: Right. So, like so much in my life, wonderful things are being done for my benefit that I have no idea about.

Regan: The stars were aligned.

Hamermesh: They really did. But the other things that I think might have been leading up to that were implicit in this case were, first of all, this enormous disparity between asset value and earnings value, and something's got to give. And what gave in the succeeding decade was what we came to know as the takeover boom. Because a lot of the companies that were the targets of the famous hostile bids were natural resource companies; Unocal, Gulf Oil, all of those types of companies, during those early 1980's, late 70's period. And so increasingly the disparity between what you could sell off the assets for and what you could expect by operating in the same way as you had, played out in the form of these remarkably rich, hostile takeover bids. And what do you do about that? And that created sort of the central jurisprudential problem for the State of Delaware in the succeeding decade. In hindsight, I now see that the seeds of that were sown in cases like *Kirby Lumber*.

Regan: It's fascinating because, you know, I show up here in the decade, middle 80's, 1985, *Unocal*'s happening, *Moran*, *Revlon*, all in that crazy season. And I'm just trying to catch up. But it turns out this little appraisal case is sitting there, ok not so little, but this notion of what's the value on a sustained earnings basis versus what some hostile bidder can come in and pay? And as you mentioned, all these early cases in the 80's are resource companies. And so, an outsider with access to public SEC disclosure filings could do a basic math calculation. These are commodities. There's this much in terms of reserves of oil in this company plus infrastructure and plant. And this is the price of a barrel of oil. I multiply them out, and that's worth 40 percent more than the aggregated stock price. Right. It's like I could pay 15 to 20 percent over the aggregated stock price and I'd still make a fortune on all these resources. Again, if I'm minded to just monetize the assets.

Hamermesh: Exactly right.

Regan: So along comes that era of the hostile bidder, also made possible by the availability of debt-based financing in that season. And we're off to the races. And now, sooner or later, the Delaware courts are

going to have to confront who's got what role in this story, given the disparity in apparent values between stock price, at least of a single share trading on any given day, asset value, and the "who decides?" governance question in these battles. And I guess this gets to the question of the role of markets, the role of courts and what should be the role? And let's go to Chicago and talk about Judge Easterbrook, the law and econ scholars, and Professor Fischel. They had a view.

Hamermesh: Yeah.

Regan: Right?

Hamermesh: Oh, yeah. And again, with my supremely attuned sensitivity to what's going on in the world, I was totally unaware of that whole dialogue at the time.

Regan: We were too busy.

Hamermesh: It was me. I was doing briefs and stuff. Right.

Regan: Exactly.

Hamermesh: But I did have some vague awareness, only because some of their articles got cited in some cases, that there was a fundamental debate. And that context was the first time I heard of the concept of law and economics, which is kind of ironic because that's sort of my title now, Director of the Institute for Law and Economics at Penn. But that's the first place I heard about this concept. And that school of thought, as most everybody knows, did hold quite strongly that markets are an important force that need to be reckoned with. And if someone is prepared to pay more than what the market is saying stock is worth, the property, the asset ought to go to the highest valuing user. And if someone makes a bid for a company at a premium to market, the last thing we want the world to see happen is have a board of directors stand in the way of that efficient allocation of resources. And so, the Chicago school of economics, with Easterbrook and Fischel would say, the directors ought to just be passive, take the hands off, let the market work. And of course being at Morris Nichols, where we tended to represent takeover target directors, we developed a different view.

We had the view that there should have been an active role for the board to protect stockholders. And there was a tension here. And the tension was, why would we trust directors to have a better knowledge of the value of the company than this all powerful, all seeing, invisible hand of the market? And we still see that all playing out today. How is it that we would trust the market price to determine the value of a company when in hindsight we now know that we give directors a great deal of latitude to say, no that's not right. This company is worth more than the market's giving credit for. Give us a chance to work our magic with our business plan, and let us do what we can to resist the blandishments of this high to

market premium. It's better for the stockholders if you'll let us get in their way and not let them sell their shares.

So that's what was playing out in the early 1980's. But by the way, the other player in this time was not just the board and management on one side versus the takeover bidders, the Drexel Burnham financed bidders on the other. One of the more colorful cases I ever worked on was the defense of the bid by Martin Marietta for Bendix, which was a company based in Michigan.[6] Not a natural resource company for a change but followed kind of the classic mold. Except, I think it was an all cash, all shares offer that Martin Marietta was putting to them. And the other constituency that got involved was labor. I was you know, I would have thought, given the upbringing I had, that the labor unions versus management; there were just like—there was irreconcilable antagonism there.

And all of a sudden with Bendix, it was kumbaya. The bad guy was the bidder. Martin Marietta. And so you had demonstrations by the Bendix workers. We love Bendix. You know, I'm not kidding about that. They were the signs with a heart on it that said, "We love Bendix."

Regan: And meanwhile the highly compensated corporate executives on the board were saying, in effect "Let's not get taken over. We like the gig we've got going on right here, right?"

Hamermesh: It was good for everybody.

Regan: And rank and file are out, save labor. Right?

Hamermesh: That's right. And then all that the bidder had was these jokers from Chicago, that's the market. You ought to let the market play, right. And of course, we all know how it came out with Unocal, sort of this marvelously creative middle ground that said the directors do have some role. Part of the reason I think it came out that way was that those early tests of doctrine in cases like Unocal[7] were not the ideal laboratory for examining the really hard issues, because the way that Mesa Petroleum and Boone Pickens went about their business was to present an offer to the stockholders that had a pretty significant thumb on the scale. They were two tiered offers, cash up front, what we disparagingly called junk bonds in the back end. And so there really was not a fully voluntary market choice being made by the stockholders. And the Chicago school folks, to the extent they had adherents out there in the real world, that horse was being ridden too far. Because the market was not working the way I think you wanted it too.

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[6] *See Martin Marietta Corp. v. Bendix Corp.*, Civil Action No. 6942, 1982 Del. Ch. LEXIS 535 (Ch. Sep. 19, 1982).

[7] *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (Del. 1985).

Regan: Just to clarify. The Unocal offer, that is the Mesa offer for Unocal, everybody is probably familiar with this. Just to make sure we've got this squared up, a hostile bidder is offering cash to get to just over 50 percent by offering a premium price, but not a great premium price in cash. Almost everyone was thinking, well, I don't like the $54 a share offer price, but it's more than I paid for the stock. What if I say no? Well, says Mesa, once I get 50% of the stock, I'm going to merge you out of existence. And then I'll give you a piece of paper that says I promise to pay you later. Right, you get a junk bond and you're junior to some 2 billion in Mesa's acquisition debt. So it's really a prisoner's dilemma kind of a deal. But the *Unocal* case didn't give you the right laboratory experiment that you more ideally would have had if Mesa had offered an all cash all shares kind of deal.

Hamermesh: Right. Exactly. And so it wasn't too hard for the Delaware Supreme Court to say, "Look, that's not a real market test. That's a situation where the directors can and protectively should exercise judgment and authority to interfere with the offer."

Regan: Yes. And so it's a curious thing when someone says, hey, this is my stock. You run the corporation. I invested in this piece of paper, and I would like to sell it, please. And directors jump in, "I'm from the board. I'm here to save you from yourself. Don't sell that stock to the highest bidder. It looks like good money, but it's fool's gold. You'll thank me later."

Hamermesh: Right. That's exactly what they did.

Regan: But of course, the elegance of *Unoca*l and just, you know, a point of personal privilege for me. I landed in Delaware, my first day is June 3rd, 1985. I'm at Skadden Arps, and I have my memos to write. A week later, Rod Ward, who was the appraiser in that earlier case, throws the *Unocal* opinion on the desk, which upheld the board's defensive measures. And Skadden represented a lot of hostile bidders at the time. He says something like, "Looks like you're doing products liability because corporate takeovers are dead." Oh, uh, what does that mean? Then I read the opinion and I think, wait a second, the game's just getting started. Right?

Hamermesh: And it was.

Regan: But there would be this notion that sure, the board has this role. We reject this passivity thesis from out of Chicago. The board has the power and a duty to be involved actively and stand between the dispersed shareholders and the bidder and figure out how to make sure there's no unfairness or injury to them. But on the other hand, they are inherently conflicted, at least some of them are, because they have jobs there. Even if most of the directors are outside directors, nobody likes to

be tossed out or perhaps their motivations are pure. So, we've got this *Unocal* higher level of judicial review to make sure the agents are doing their jobs.

Hamermesh: Right.

Regan: At least in theory.

Hamermesh: At least.

Regan: Okay, so that brings us to this question in *Unocal*, we're looking at a hostile bidder. The bid is cash for the first half of that company and the second part of the offer is junk bonds in the back end of the transaction. So it's a two tiered offer. It's a hostile offer. And it's junk bond debt financed. And if I win, I'm going to break up the company up and sell it for its assets. In the jargon of the time, this would have been a two-tier bootstrap bust-up hostile takeover bid

Hamermesh: It was a very pejorative term, as you can imagine. That we attributed to these kind of prisoner's dilemmas deliberately structured in a coercive and unfair manner.

Hamermesh: And the only person who could ever say that phrase with the requisite venom was the late, great, much missed, Drew Moore.

Regan: Yes.

Hamermesh: Who would speak it from the bench and say, wasn't this a bust up junk bond financed, highly leveraged take over? Yeah.

Regan: Justice Moore did not play the cards too close to the vest.

Hamermesh: Not at all.

IV. OTHER CONSTITUENCIES FOR A BOARD OF DIRECTORS

Regan: In this is part of our conversation on other constituencies, I think we want to first refer back to your Bendix experience where workers were rallying in the middle of a bid between an outside financed bidder and the shareholders as the capital providers. Here's labor trying to say we're with management, that the capital contributors to this enterprise shouldn't realize this game because we have a stake here too and we think this is unfair and ultimately a net negative for us personally, for society in general, and so on. And then in *Unocal*, we see this little paragraph that drops in the middle of the opinion about other constituencies -- about employees, communities, creditors, customers and the like -- and the Delaware Supreme Court says the target board can also properly consider the effects of the hostile bid on these

other constituencies. Would you mind speaking to that a little bit? Because it gets to the arc of this part of our conversation today.

Hamermesh: We thought it was a big paragraph. We thought this was an opinion that was clearly written with a lot of attention, intention and attention. And it has this reference to the list of things that directors consider in evaluating in a hostile takeover bid. And it includes the interests of creditors and suppliers and communities served. All these other constituencies, including those that are out there demonstrating, we love Bendix. And that opinion comes down in June of 1985 and within four months after that, I think, we are litigating the Revlon case.[8] And you all know the story, basically, but of course, the Revlon directors, in choosing to hop into bed with a an LBO firm, instead of selling out to Ron Perelman and Pantry Pride, rely on the proposition that the holders of Revlon debt, Revlon notes that had just been issued in an exchange offer for the stock, as a defensive measure by the way, their interests were something that the board could take into account because just a few months earlier in Unocal, Justice Moore wrote that the board could consider the interests of these other constituencies. And the Revlon directors say that's exactly what we're doing. The lawyers argue that unsuccessfully in the Court of Chancery. But we know once we get to the Delaware Supreme Court, they're going to remember what they wrote and they're going to say, yes, you Revlon directors, that's what we had in mind. And of all the experiences in my legal career that are vivid, this is one of the ones that stands out the most. And actually, I've looked at the transcript of the argument in the Delaware Supreme Court. It doesn't read nearly as vividly as I remember it. But truth is not just in the printed word. So my partner, Gil Sparks, is making the argument. And he gets up, and one of his first comments is that in Unocal, this court said, "Directors could take constituencies into account." And Justice Moore leans over the bench and says, "Mr. Sparks, that's not what we meant." Which is one of the great Gilda Radner moments of all time, because all that Gil can say is, "Never mind."

Regan: I've got nothing left. Right.

Hamermesh: —We all know the argument is basically over at that point. And sure enough it was, but yeah. So that was one of the great stories.

Regan: Sorry, I interrupted you.

Hamermesh: Yeah. Yeah. No, it still to this day leaves the question of well, what did they mean by that reference to other constituencies? And that takes me back to *Kirby Lumber* because as you

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[8] *See Revlon, Inc. v. Macandrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986).

pointed out, one of the key elements of the company, business elements, was its adherence to a sustained yield basis for logging. Again, with the benefit of hindsight, it occurs to me that maybe at least part of the disparity between asset value and earnings value was the fact that, if you just clear cut, sell off land, put all of that lumber on the market, you would get maybe $450 a share. Whereas if you are careful and preserve the resources for generations to come and only log on a sustained yield basis, maybe those earnings won't spit out. They won't spit out $450 a share, they'll only spit out like $120. Now, I'm not sure that accounts for the entire disparity. But look, the fact is we know that there are ways to run a business that will impose negative externalities on the world but create short term gains for the holders of that company's shares. And I think that the transition to where we are today is questioning whether or not and how those externalities can be justified or controlled.

I promised Rick Alexander, who's here today, that I would acknowledge his contribution to this field, because I think, and I have no reason to butter Rick up here. We go back a long way. He doesn't need my adulation, but adulation I have, because Rick has been the person who has most forcefully and clearly advanced the idea that when we think about stockholder interests and the idea that directors are obliged to maximize those interests, we might be making a mistake by thinking of stockholders as one dimensional, financially interested people who only care about returns on this company.

Regan: This company or that company, right.

Hamermesh: Because I'm a stockholder, I'm a stockholder in a lot of companies. Not that I make investment decisions company by company. I have a financial advisor and I hold mutual funds, and a lot of what gets done for me financially gets done by intermediaries. But ultimately, it's my money and my labor such as it is that created that wealth. And do I care about whether my stock is worth $25 per share today versus $20 per share? I do. I do care about that. But if it meant that my grandchildren— [shows photo of grandchildren]

Regan: Awesome.

Hamermesh: Really cute, right? If it meant that my grandchildren would not have air to breathe, clean air to breathe, fifty years from now if I go with $25, I'm going to take the $20. And so my interests are much more nuanced than I think classical, neoclassical economics would hold. And so, when you think about an investor, you've got to think about that investor as what Rick describes as the universal owner. Someone who is not just the holder of a share of stock, but someone who has interests that extend to a much larger perspective. Now, how directors and corporations are supposed to manage those perspectives is a

very difficult question. But in the Business Roundtable statement that we saw from this past August that some people interpret as saying stockholders are last in line in their considerations, that's not how I interpret it. But it's certainly suggested a much more welcoming approach to managerial discretion in taking account interests other than the narrow today's stock price focused wealth of shareholders.

Regan: Do you see the Business Roundtable's latest statement -- which is different in the way they've previously expressed the purpose of a corporation, the Shareholder Primacy Principle -- with this newly framed perspective on sustained production in a sustainable manner for the benefit of employees, communities, and yes, capital providers as consistent with the Delaware corporate law? I think you do?

Hamermesh: I do. I do certainly as a practical matter, because the cases that stand for the proposition that the obligation of the directors is to maximize the wealth of the corporation and its shareholders - *Dodge v. Ford*[9] is the classic wellspring of that - we all know that if Henry Ford had simply said, my goal is to create more cars so that more and more people can be employed, and that society will do better, if all he had said after that was, and so that the stockholders of Ford Motor Company can be ultimately most greatly enriched. If he had said that at the end of his deposition or whatever he was in at the time, he would have won. Because the court would have said, it's okay. It's rational. All of these things you're doing for employees and community, that's all rationally related to serve the financial interests of the stockholders. He didn't say that, so we have authority saying that you can't think about other people except the stockholders. But in reality, there's never been anything that's prevented a board of directors from saying, "Look, we know that we want to do better by our employees. We want to pay them the $15 minimum wage because in the long run that's going to lead to a more highly educated workforce, a stronger body of consumers for our products, and that's going to be good for stockholders." The Business Roundtable statement, to use the expression I used before, does have a little bit of the kumbaya moment to it because it reads as if we can all just get along.

If directors manage the company right, everybody's going to be happy. Everything's going to be all right. But, as Rick will point out, that's not always quite true. That companies do still somehow benefit, and their stockholders benefit as stockholders from dumping environmental and other negative externalities on the world. We used to be able to say, I remember saying this to myself, "Well, that's okay. I'm still Chicago

[9] *See Dodge v. Ford Motor Co.*, 170 N.W. 668 (Mich. 1919).

school because that's the job of the political process; to minimize those externalities."

Regan: Regulatory requirements.

Hamermesh: Regulatory requirements.

Regan: Clean water.

Hamermesh: Congress will fix it. And I know I'm not alone in this room in thinking that maybe I'm not as optimistic about how that process works as I used to be.

Regan: So I hear two threads. Maybe I'm wrong about that. One is, sure, there's the win-win argument. Like if I'm an employer, I'm a corporation and we have a policy where we invest in labor in ways that's credible, it's sustainable. We value their contributions to the enterprise and we're going to attract and retain good people and that leads to productive workers which in turn leads to profit for the shareholders. And in *Revlon*, when the argument got rejected in the sale of the company context, the Court did at least say in effect, "Hey, look, you can do that in a non-sale of the company space so long as there's a rational connection to shareholder value."

Yes, you can do all that so long as there's shareholder value. And that's the win-win side. But it won't always be the win-win. There are times where you're facing that situation and say, look, we're just going to make a decision about big picture expanded thinking that doesn't have the obvious win-win argument. For example, we're going to make less net profits because we're doing more than what is federally required by minimum clean air standards. And we're self-imposing these higher standards on ourselves. We're also going to self-impose standards about human rights compliance in our value chain from suppliers and vendors, things like that. Because that's a model we think is better in serving the big picture in a universal kind of perspective. That doesn't always lead to the stockholders saying, oh, I see how I still win in the end. It's like, well, you still win, but maybe not as much.

Hamermesh: No, it does not at all lead to that. And in fact, the response of the Council of Individual Investors, to the Business Roundtable statement was, "I know what you're up to. You're just trying to put the sustainability stuff out there as a way to make your life easier so that you don't have to listen to investors and all those agency costs that we've worried about; that the Chicago school has worried about for decades, you're just going to allow them to creep back in. You're going to use sustainability as a way to say, well, we can just relax a little more and pay ourselves a little more. And it's bad for investors and it's a scam." Now, that's not quite what they said, but there was—

Regan: They've taken the worry that this gives refuge for management to articulate lesser value creation paths without having to defend it as vigorously.

Hamermesh: Right, And so I am sure that the Council of Institutional Investors would have some serious misgivings about seeing companies migrate to become benefit corporations, which is where there is an explicit charter based state-sanctioned approval for directors explicitly considering some public purpose that is not simply maximization of shareholder wealth.

Regan: Right. So as an investor in a benefit corporation, that's what I signed up for. I see and support this benefit corporation's charter as I am passionate about environmental sustainability. And so, yes, I'm okay with and consent to the company's business model. Sure, it's for profit. But I also want this to be a good investment bounded by these things about which I have concerns.

Hamermesh: Right.

Regan: Right.

Hamermesh: The grandkids.

V. FIDUCIARY DUTY

Regan: Right. The grandkids. But outside the B-corp, now, we're having this conversation obviously really jumpstarted by the Business Roundtable's recent statement of corporate purpose. So fascinating. And as you said, it's a question of how do you solve this? What if you are selling a company? What if a company's board says, look, I can do the greater long-term value win-win argument. The shareholder lawsuit argues the directors could have made more and therefore it's a breach of fiduciary duty. Our courts outside of *Revlon* sale cases say, if it's a longer-term horizon business decision, and the directors are informed and unconflicted, they're fine. But then when they go to sell the company, *Revlon* does seem to have a bright line rule that says other constituencies are not in the equation in the sale moment.

Hamermesh: Yeah. I'll go back to Rick Alexander's universal owner idea. Because, you know, I've always thought that Revlon made a lot of sense. If you're selling the company, and you've got one offer at 50 and the other one at 45, why would you take 45? That doesn't make any sense. And so *Revlon* stands for the proposition that the board has got to take the 50 because there is no tomorrow for the stockholders. At that point, it's 50, except, if you take the universal owner idea into account. There is a tomorrow because that company is going to be still doing business. It's going to still be affecting me, the stockholder, not as a

stockholder, but in other ways. So I don't know, I don't think I've talked to Rick about this, but I wonder whether or not that universal owner perspective forces us to modify the *Revlon* "this is the end of the line" perspective?

Regan: So, you tee up the issue directly. Everybody's getting a substantial premium in the sale. Do want a 48 or 52 percent premium?

Hamermesh: Like the buyer who's going to clear cut that East Texas forest.

Regan: There you go. There is an analogy in my mind. We haven't vetted this, but, there was a season in the 70s when you had majority stockholders who would just sell their block of stock to a new buyer and majority shareholders owed fiduciary duties to the remaining minority shareholders. And what if you had good intelligence from the buyer of your majority block that the buyer's business plan was to plunder the company and put one over on the minority. And with eyes open as seller, you're aware of that. Then that might be a fiduciary issue for you as a majority shareholder. So I wonder if there's some principle there in an analogous context if we're in *Revlon* sale mode and we're not in a controlling shareholder situation. As directors we're fiduciaries for all the dispersed shareholders and we have a perspective that's broader than that, say, maybe we could defend a decision to sell at a substantial premium that is not necessarily the absolute highest premium. I don't know, we're testing judicial boundaries here and at the end of the day this is an equity play. The other constituencies don't have a place at this table in the *Revlon* context. And the question again is there room in our jurisprudence for that to be determined in *Revlon* mode?

Hamermesh: Yeah. And I'm not sure it's a good thing. We live in a world, in a real world, and if you want accountability of some sort the unitary focus on stockholder wealth, at least is a tool that will permit you to measure performance. Whereas if you allow considerations like the effect on the air, the effect on employment in Bangladesh; if you allow that to enter into the picture, it gets a little hard to judge the quality and behavior of managers.

Regan: And then the other perspective is many investors, including me, own shares indirectly through mutual funds and the shares of stock in these funds are held through intermediaries acting on behalf of mutual fund investors. These institutions, a relative handful of them, hold a majority of the stock of all the public companies in the US. And sure these intermediaries owe me fiduciary duties, but on the other hand, they are the significant voices and they vote the stock. I don't vote the stock. So that's a space where institutional investors have a big role to play.

Hamermesh: Absolutely.

Regan: If I am a mutual fund manager and my fund owns 7 percent of Acme Inc., and I say to the CEO, can I get some face time and talk about some concerns? I'm probably going to get it. Contrast that with me as an individual personally owning 100 shares of Disney and I want to grumble to Disney corporate management that I don't like the way Main Street in Disney World is lined up. Imagine me as an individual asking for access to Disney's CEO to voice my concerns. I don't think I'm going to get an opportunity to have that conversation. So it's just institutional investors that have significant voice and the opportunity for access.

Hamermesh: Yeah. I mean, one of the remarkable features about corporate law, and particularly in academia, has been sort of overwhelming focus on the agency costs of directors and officers; managers of the corporation and how they can misbehave through self-aggrandizement or laziness. But there's been very little focus on similar agency costs on the part of financial intermediaries. And that question, I think, is becoming a little bit more in focus now, and the idea is that not only do we want to think about articulating responsibilities in regard to sustainability of corporate managers, but sustainability type thinking standards applicable to those who vote and those who make investment decisions and allocate capital. So there's a lot of growth, I think, ahead on that front.

VI. SHAREHOLDER LITIGATION

Regan: I can remember way back in the 80s, then Chancer Allen, giving a speech about shareholder proxy voting and asking if this is just an empty ritual or something that gives real validity to a duly elected board's power. Our courts defer to the directors when they're informed and unconflicted financially. And some argued that the annual election of directors by shareholders was in effect an empty ritual. But in response to this claim, Chancellor Allen suggested, correctly I believe, that institutional shareholder voices were gaining influence in these annual elections. I think his comment then was something to the effect that we may now be seeing larger institutional forces aligning as a result of the vast aggregation of shares in retirement funds and other institutional investors. So speaking of agency costs, while we have a few minutes to talk about shareholder litigation and the whole idea that structurally the agency costs of your fiduciaries is a systemic problem and then you have Professor Cary and his race to the bottom argument. So in theory, the shareholder lawsuit has to be the way to save the day. Could open up your thinking on that a little bit about?

Hamermesh: Sure. Actually, it kind of goes back to how I chose my career path because when I was a good liberal college student, the idea that I would be a corporate lawyer was about the furthest thing from my mind.

Regan: Total sell out, man.

Hamermesh: Never would've occurred to me.

Regan: Yeah, I hardly know you, man. [LAUGHTER]

Hamermesh: Right on.

So I had to come up with a rationalization. Which I actually do believe. And that is why am I doing this kind of work. Why am I so reluctant to do criminal defense work or family law? Really important practical stuff. Or some other kind of law, maybe insurance law? I don't know, something. And I decided early on that if I'm representing corporations or takeover bidders, and I have done both, I'm really only working for people who are fighting about money. And I'm okay with that. Nobody's going to die because of the kind of work I'm doing. But to respond more directly to your question, a lot of what I did starting with *Bell v. Kirby Lumber* was be involved in disputes between management and stockholders essentially, and stockholder litigation has been an important part of your life, my life, lives of most everybody in this room. And is it a good thing? Is it a bad thing? And I think it's, it can be both, and a lot of what I've done over the course of my career is trying to think about when it is a good thing, when it is a bad thing.

From the very beginning of my career, which started soon after Bill Cary wrote his famous Race to the Bottom, Reflections Upon Delaware article, what I've perceived as the prevailing wind in academia and in corporate law has been that the key problem is accountability of management to shareholders. And the key mechanism for achieving that accountability is litigation. And I get that litigation can be useful that way, but I've always sort of resented the kind of populist cast that people have attributed to the shareholder.

Regan: The oppressed shareholder.

Hamermesh: Yeah, the oppressed shareholder. I'm thinking especially that the longer I practice law in, the wealthier I got, not that it's anything to write home about, but the wealthier I got, the more I thought, Hey, I'm a shareholder, I ain't oppressed at all. And I'm looking around at the clients I represent: they're shareholders too, and there isn't an oppressed one of them in the bunch. So what's this oppression business about? Let's reserve that for people who really are victimized. So that that got me past a lot of the guilt phase. Okay.

Regan: We're unburdening here, which is good.

Hamermesh: Yeah, hang in there Oprah.

Regan: So Crosby, Stills, Nash and Young, no, go ahead. Sorry.

Hamermesh: Yeah. Don't do that.

Regan: Sorry.

Hamermesh: So where is this whole stockholder litigation thing going? And I began to think, you know, there really are agency costs on the other side. When shareholder class and derivative representatives and more importantly, their lawyers take up these cases, their interests don't always coincide with the interests of the stockholders that they represent. And the most vivid example in my experience was the unfortunate period in our history about 8, 10 years ago when we started to see multiforum class litigation arising out of merger transactions. And I saw a race to the bottom there, because what invariably would happen, as most everybody knows, is that the defendants would say, well, of all these forums in which I could litigate, which is the one I would rather be in if I have to be anywhere? Where can I get the best result? Well, it's probably Delaware, so I'll do a dance with the Delaware plaintiffs' lawyers. I'll give them the sort of limited discovery. We'll do a settlement. Basically, it will be disclosure. We'll pay the lawyers a fee. They'll give me this so-called intergalactic release and everybody's happy. The case will go away. The deal will go through, all is good.

And we all know that came to be criticized essentially as creating the merger tax, where any deal, no matter how well done, no matter how arm's length, no matter how well negotiated, would be subject to class action litigation. And that was a dysfunctional period of time. Now, there was a judge at some point, I don't know who, decided that maybe that dance ought to get regulated a little more. And maybe the Court ought to look more closely at the quality of the disclosures that were the basis for the settlement. And so we have the *Trulia* case, we have a lot more going on, but we have a reaction.

But there the question that at the end of the day, and given time is fairly short, the question at the end of the day is, where do you want stockholder litigation to work and where do you want it not to work? And I see what has happened over the past five years as making a lot of intellectual progress on those questions, because I see a lot of what the courts have done, especially, our Supreme Court in cases like *Dell,*[10]

[10]*See Dell, Inc. v. Magnetar Glob. Event Driven Master Fund Ltd.*, 177 A.3d 1 (Del. 2017).

DFC,[11] *Corwin*[12] and *MFW,*[13] is saying, where people have real money and they're expressing their views in a voluntary way, on an informed basis, the courts ought to step back. Whether you want to call that a variant of the abstention doctrine or do you want to call it the business judgment rule? I don't care. But it's a concept of judicial deference to market behavior, where the judges really are not institutionally well-qualified to second guess the results of informed decisions by people with real money at stake.

Regan: And that's in a space where we have reason to trust markets.

Hamermesh: That's correct. And so, conversely, where you have reasons not to trust the markets, where the decision makers are conflicted or are beholden in some way to those who are conflicted, that's where you want to preserve the range of motion and the authority of the courts. And so there is a place, I believe, for shareholder litigation; an important place. And I think the world would be worse off if we did not allow shareholder litigation to operate in that environment. That's why I was particularly concerned on May 8th, I think it was, 2014 when the decision from the Delaware Supreme Court came down in the *ATP* case,[14] which said, Oh, yeah, no problem. You guys can have charter and bylaw provisions that impose fees on the plaintiffs and the plaintiffs' lawyers probably. It's all contract. Put them wherever you want and indiscriminately as long as the plaintiff doesn't win everything.

And actually, that the more threatening thing I always thought was the charter provision which the shareholders are incapable of amending on their own.

Regan: Yeah, you can't amend the charter without first obtaining board approval.

Hamermesh: Right. So that that led to one of the more infamous chapters in Delaware, corporate legislative history of adopting what was, for Delaware, sort of a strong piece of medicine, which is, you can't do that. 102[15] and 109[16] now in the corporation law, does say that you can't do that by charter provision or bylaw provision.

Regan: And fascinating given that there's so much permissive structure to our enabling statute. Private ordering is the day.

Hamermesh: Definitely ran against the grain.

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[11]*See DFC Global Corp. v. Muirfield Partners, LP,* 172 A.3d 346 (Del.2017).
[12]*See Corwin v. KKR Fin. Holdings LLC*, 125 A.3d 304 (Del. 2015).
[13]*See Kahn v. M&F Worldwide Corp.,* 88 A.3d 635 (Del. 2014).
[14]*See ATP Tour, Inc. v. Deutscher Tennis Bund*, 91 A.3d 554 (Del. 2014).
[15]Del.Code Ann. tit. 8, § 102.
[16]Del.Code Ann. tit. 8, § 109.

Regan: But there's the Council, of which you are a member, recommending to the legislature, which then adopts it, a prohibition against adopting such a provision. You can't have one that says shareholder plaintiffs have to pay the lawyers' fees of the defendants if the plaintiffs lose the case. That in turn leaves open that window for shareholder plaintiffs to pay a role in policing against agency costs when it's warranted.

Hamermesh: Yes. Because I still believe, and I think the Council still believes, that the centerpiece of the Delaware corporate system is our courts and the ability in an appropriate case to go to the courts and limit fiduciary misconduct. And if you have throwing baby out with the bathwater solutions that address real problems but overregulate them, the system doesn't work. I perceived *ATP* as proposing an existential threat to the way our system has to work.

Regan: And way back in *Aronson v. Lewis,*[17] there was a footnote that addresses what the Delaware Supreme Court called "[t]he dilemma of how to balance the twin concerns of managerial of freedom of action and accountability to shareholders." There has to be a judicial role in the appropriate case where markets are not worthy of trust. Contrast that with cases involving uncoerced and fully informed shareholder choices as in *Corwin*, or in an appraisal case where an arm's length deal has been well shopped. The deal price that emerges from the M&A market in that type of transaction is a powerful indicator of fair value. Unless there's some reason in a specific case not to trust the market as in a conflicted merger with a controlling shareholder, the Court is likely to defer to market forces. But of course there's not much meaning to deal price in a conflicted controlling shareholder merger case because there is no functioning arm's length market in that context. You have no choice but to do DCF studies and valuation theories and things like that.

Hamermesh: And so interestingly, I think where we're left right now, that the central problem in Delaware corporate law in shareholder litigation is, how do you know which side you're on? Are you on the free market, voluntary, disinterested court stay out, side? Or are you on the conflicted/need judicial review side? And how do you know? Well, the problem is that to some extent there is an informational gap between what shareholders and their representatives can know from what's out there in the public. And to what extent are we going to allow information gathering to shed light on which side of that divide this case is on. Are we going to use inspection rights under Section 220[18] to accomplish that? Are

[17]*See Aronson v. Lewis*, 473 A.2d 805 (Del. 1984).
[18]*See* Del.Code Ann. tit. 8, § 220.

we going to use appraisal litigation as a discovery tool to get a window into that? Where's the way to deal with the informational disparity problem?

Regan: Especially—

Hamermesh: Fortunately, it's only Chancellor Bouchard that has to figure that out. Not me.

Regan: He's got it all sorted. I think we're pretty close to time. If there's any time for questions or we're at our hour? I don't know. But maybe we could take one or two. Does anyone have a reaction or a comment or question for Larry? Looks like we've covered all the bases. Thank you, Larry.

Hamermesh: Didn't say anything worth commenting about.

Regan: Yeah, I don't know about that. Larry, I can't thank you enough for your time and for giving us such an interesting conversation this morning.

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