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Delaware Supreme Court Holds that Fully Informed Stockholder Approval of Third-Party Mergers Shields Transactions from Review

In an important ruling last week, the Delaware Supreme Court reaffirmed that control of Delaware companies lies in the boardroom and held that the deferential business judgment rule is the “appropriate standard of review for a post-closing damages action” when a third-party merger “has been approved by a fully informed, uncoerced majority of the disinterested stockholders.” [*Corwin v. KKR Fin. Holdings LLC*, No. 629, 2014 \(Del. Oct. 2, 2015\) \(en banc\)](#).

The ruling affirms the Court of Chancery’s dismissal of a case challenging KKR’s \$2.6 billion acquisition of KKR Financial Holdings LLC (“KFN”), about which we [previously wrote](#). Attacking the trial court’s ruling, stockholder plaintiffs argued that KKR was KFN’s controlling shareholder (notwithstanding its small equity stake) because a KKR affiliate managed KFN’s day-to-day operations pursuant to a management agreement. The Supreme Court disagreed and confirmed that a minority stockholder will not be considered a controller without “a combination of potent voting power and management control such that the stockholder could be deemed to have effective control of the board without actually owning a majority of stock.” Because KKR was not a controlling stockholder, the transaction was not subject to entire fairness review.

Chief Justice Strine’s opinion for the unanimous Court then explained that the standard of review was further reduced from the enhanced scrutiny of *Revlon* to the deferential business judgment rule, because the transaction was approved by a fully informed vote of KFN’s disinterested stockholders. Delaware’s enhanced scrutiny standard, the Court explained, was not “designed with post-closing money damages claims in mind,” and “[w]hen the real parties in interest—the disinterested equity owners—can easily protect themselves at the ballot box by simply voting no, the utility of a litigation-intrusive standard of review promises more costs to stockholders in the form of litigation rents and inhibitions on risk taking than it promises in terms of benefits to them.” Thus, the Court held, “where the stockholders have had the voluntary choice to accept or reject a transaction, the business judgment rule standard of review is the presumptively correct one and best facilitates wealth creation through the corporate form.”

The decision amplifies Delaware’s salutary respect for the informed choices of disinterested stockholders. It also offers transaction planners a clear path to deferential judicial review outside the context of controlling-stockholder entire-fairness transactions.

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