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Majority Voting

A recent decision by the Delaware Supreme Court City of Westland v. Axcelis provides important guidance for situations where a director who has failed to obtain the requisite majority for reelection resigns in accordance with the company's resignation policy and the resignation is not accepted by the board of directors.

The board had adopted a standard majority-vote-resignation policy. A shareholder attacking the rejection of the resignation argued—citing the famous Blasius case—that the board had the burden of showing a “compelling justification” for rejecting the resignation and continuing the director in office. The court rejected the argument and applied the business judgment rule.

The less-than-majority shareholder vote may be viewed as a judgment by the holders of a voting majority that those director-candidates were no longer suitable to serve (or continue to serve) as directors. Correspondingly, the Board's decision not to accept those resignations may be viewed as a contrary, overriding judgment by the Board. At stake, therefore, is the integrity of the Board decision overriding the determination by a shareholder majority. Stated differently, the question arises whether the directors, as fiduciaries, made a disinterested, informed business judgment that the best interests of the corporation require the continued service of those directors, or whether the Board had some different, ulterior motivation.

Thus, in the typical resignation-rejection situation careful and well documented consideration of the reasons (e.g., experience, judgment, expertise, and independence) for rejection by the board will protect the decision from attack.

Martin Lipton