

December 22, 2015

Responding to Attacks by Activist Hedge Funds and to Hostile Takeover Bids

In a November 2015 paper, [Hedge Fund Activism and Long-Term Firm Value](#), K.J. Martijn Cremers, Erasmo Giambona, Simone M. Sepe, and Ye Wang (CGSW) described a very impressive econometric study showing that hedge fund activism more likely destroys long-term value, rather than creates it. It shows that the study by Lucian Bebchuk, Alon Brav and Wei Jiang, [The Long-Term Effects of Hedge Fund Activism](#) (BBJ), that Harvard Law School Professor Lucian Bebchuk relies on to validate his policy argument supporting unfettered attacks by activist hedge funds does not warrant the credibility he claims.

Within a few weeks, Professor Bebchuk, joined by Alon Brav, Wei Jiang and Thomas Keusch (BBJK) published a paper, [The Long-Term Effects of Hedge Fund Activism: A Reply to Cremers, Giambona, Sepe and Wang](#), replying to the CGSW study. The BBJK reply takes issue with the metrics and methodology of the CGSW study. CGSW do not accept the BBJK reply and reassert and strengthen their argument that it is the BBJK study that has the flawed metrics and methodology, CGSW, [Reply](#). I will leave it to the statisticians to continue the battle, a battle in which I fired the first shot, [The Bebchuk Syllogism](#), as to what is statistically significant and the other disputed issues. However, what is clear from

- (a) the unresolved and presumably continuing dispute between BBJK and CGSW,
- (b) other recent studies, [Coffee](#), [Allaire](#), [Larcker](#), [Strine](#), [Conference Board](#), pointing out defects in the BBJ study and the studies purporting to be “empirical evidence” of the benefits of shareholder-centric governance and unfettered activism and takeovers, and
- (c) the Airgas case where shareholders were very well served by the successful use of a staggered board and a poison pill [“Just Say No” – The Long-Term Value of the Poison Pill](#)

***is that unproved and disputed statistics should not be accepted as a basis for overturning long-standing corporate law that leaves it to the business judgment of the board of directors to determine the appropriate governance of a corporation and the appropriate response to a takeover bid or an activist attack.***

Martin Lipton