

The Evolving Landscape of M&A Litigation

April 28, 2011



Program

- Introduction
- Presentation
- Questions and Answers — (anonymous)
- Slides — now available on front page of Securities Docket
 - www.securitiesdocket.com
- Wrap-up

Panelists



Steven Davidoff
Professor of Law
University of Connecticut
School of Law



Peter Harkins
President and CEO
D.F. King & Co. Inc.



Bill Savitt
Partner
Wachtell, Lipton, Rosen
& Katz



Mark Lebovitch
Partner,
Bernstein Litowitz Berger &
Grossmann LLP

Agenda

1. Introduction
2. *Airgas* and the Future of the Hostile Takeover
3. Controlling Shareholder Transactions
4. Does Deal Process Matter?
5. The Future of Shareholder Activism
6. Delaware's Role in M&A Litigation

***Airgas v. Air Products* and the Future of the Hostile Takeover**

- **Case overview**
- **Impact of the Bylaw Opinion**
- **Impact of the Pill Opinion**
- **What facts, if any, will support pulling a pill?**

Controlling Shareholder Transactions

- What standard of legal review governs?
- Is the "Unified Standard" of *In re CNX* an improvement, step backward, or irrelevant?
- Should controlling shareholders skip the majority-of-the-minority and just defend entire fairness?
- Do Special Committees Make a Difference?

Does Deal Process Really Matter in M&A?

- Discuss some recent process examples (J. Crew; Del Monte; GSI/eBay, etc...)
- Do go-shops serve as a proxy to a pre-signing market check?
- Matching Rights – Creator or destroyer of value?
- Will the Court ever bring out the "blue pencil?"

The Present and Future of Shareholder Activism

- **The Role of Merger Arbs in M&A**
- **Distorters or facilitators of the shareholder franchise?**
- **Proposals to amend Section 13(d): The Death of Activism?**
- **Are Tender Offers on the Rise Again? Why?**

Delaware's Control Over M&A Litigation

- Are the threats to Chancery's influence in M&A overstated?
- Are charter provisions setting venue in Delaware a good idea?
- Chancellor's Retirement

Questions

Thank You
for Attending This Webcast