CHANCELLOR ALLEN AND THE DIRECTOR

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Chancellor Allen's term as the nineteenth Chancellor of the State of Delaware will be long and well remembered by corporate practitioners throughout the nation. Corporate counselors will recall the Chancellor's clarity of expression and insight grounded in real-world experience and knowledge, coupled with a certain grasp of the supremely Delawarean mission of corporate governance. Corporate litigators will recall the supreme mastery of doctrine that eliminated box-like categories and focused directly on the underlying facts, as only a master can dare, always combined with an unerring sense of the reality that the modes of modern litigation sometimes seem to mask. All will recall a searching, rigorous, and towering intellect that returned all issues to first principles, and treated the oft-invoked "we-always-do-it-this way" argument as an invitation for a lesson in good law and good advocacy.

There is danger in any attempt to extract a common thread from so rich a fabric. There is the further inherent peril in any effort attempted so soon after the fabricator's departure for other work. Nonetheless, at least one of Chancellor Allen's enduring legacies will undoubtedly be his reformulation of the proper role and function of the corporate director in a variety of contexts, and the independent director in particular, not only in the celebrated takeover defense case but also in the more significant "everyday" setting in which good corporate governance principles play their most important part. Eschewing formalism at every twist and turn, the Chancellor's decisions and writings steadily achieved a thorough reassessment of the modern corporate director — a reassessment so sound and so soundly presented as to sometimes render almost imperceptible the significance of the achievement. And the Chancellor's teachings in this area reflect well the solid mix of the practical and the philosophical that so indelibly marked his term at the helm of the nation's corporate court — realism coupled with a healthy skepticism but tempered by an abiding optimism in the good faith of the men and women who serve as directors (and even those who would be their counsel).

Throughout the Chancellor's term, his opinions reflected an engagement with the intellectual and social currents affecting the theory and practice of directorship. His tenure began with *Unocal*,[1] which set a new analytical standard at a time of feverish takeover activity. His tenure continued through a period of economic recession, with directors challenged more by the imminence of "zones of insolvency" than by premium takeover bids. The Chancellor's tenure ended during a period of unprecedented merger activity that once again put the issue of director responsibility in the forefront of the law.

Equally important, the Chancellor's years coincided with the academic and (on some courts) judicial project for the recasting of classical corporation law along the lines of "law and economics." To some, these intellectual currents seemed to reduce themselves to law *versus* economics: if Chicago was right, then Delaware had been wrong. Chancellor Allen saw things in a far more nuanced way, and his opinions

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[23]*Id.*

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reflect an effort to start a conversation with the economists, while not surrendering the fundamental point that law is not reducible to economics.

SPECIAL COMMITTEES AND MBOs

It is not surprising that some of the most direct of Chancellor Allen's statements on the role of directors came in the context of special committees appointed to function on proposed management buyouts. That context, of course, puts the question of independence squarely at issue, and raises the question of role quite sharply.

In important decisions in this area, the Chancellor provided essential justification and guidance for the utilization of the special committee device to ameliorate the conflicts inherent in the management buyout (MBO). In *Restaurant Associates*,[2] the Chancellor noted that the committee's actions — turning down management bids at several turns and seeking out competitive bids from other parties — demonstrated that the special committee technique can be "a close surrogate for the structure that ordinarily provides protection to shareholders" even while recognizing that reliance on the technique may be seen "as providing a possible escape-hatch for the unprincipled."[3] In *Fort Howard*,[4] Chancellor Allen criticized the fact that the CEO had effectively picked the committee members and its counsel, noting that "[a] suspicious mind is made uneasy contemplating the possibilities when the interested CEO is so active in choosing his adversary."[5] In *TWA*,[6] the Chancellor criticized the committee for merely considering the fairness of a proposed insider buyout rather than striving "to negotiate the highest or best available transaction for the shareholders whom they undertook to represent."[7] The Chancellor concluded (preliminarily) that the committee "did not supply an acceptable surrogate for the energetic, informed and aggressive negotiation that one would reasonably expect from an arm's-length adversary."[8] In *RJR Nabisco*,[9] Chancellor Allen ruled that the

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[2]Freedman v. Restaurant Assocs. Indus., Inc., [1987-1988 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 93,502 (Del. Ch. Oct. 16, 1987), *reprinted in* 13 DEL. J. CORP. L. 651 (1988).

[3]*Id.* at 97,220, *reprinted in* 13 DEL. J. CORP. L. at 663.

[4]*In re* Fort Howard Corp. Shareholders Litig., No. 9991 (Cons.), 1988 Del. Ch. LEXIS 110 (Del. Ch. Aug. 8, 1988), *reprinted in* 14 DEL. J. CORP. L. 699 (1989).

[5]Id. at *36, *reprinted in* 14 DEL. J. CORP. L. at 720.

[6]*In re* Trans World Airlines, Inc. Shareholders Litig., No. 9844 (Cons.), 1988 Del. Ch. LEXIS 139 (Del. Ch. Oct. 21, 1988), *reprinted in* 14 DEL. J. CORP. L. 870 (1989).

[7]*Id.* at *12, *reprinted in* 14 DEL. J. CORP. L. at 880.

[8]*Id.* at *21, *reprinted in* 14 DEL. J. CORP. L. at 884.

special committee had acted appropriately, at the end of a lengthy process, in not revisiting other bidders before accepting a KKR proposal and rejected the attack that the committee members had been motivated to disassociate themselves from the public criticism of CEO F. Ross Johnson and his initial buyout proposal.

These intense experiences preceded the Chancellor's more general statements on these and related subjects in a 1990 address, later published as "Independent Directors in MBO Transactions: Are They Fact or Fantasy?"[10] Perhaps reflecting his in-court experience, the Chancellor declared himself "open to the possibility" that such committees could be effective but, at the same time, confessed "a painful awareness of the ways in which the device may be subverted and rendered less than useful."[11] While terming the contrary "structural bias" point of view as supported by "sensible" arguments,[12] the Chancellor stuck steadfastly to his judgment that outside directors can be real, not ornamental. The Chancellor's analysis was suffused with realism:

> Consider the outside director who is asked to serve on a special committee to preside over a sale of the company. While he may receive some modest special remuneration for this service, he and his fellow committee members are likely to be the only persons intensely involved in the process who do not entertain the fervent hope of either making a killing or earning a princely fee. Couple that with the pressure that the seriousness and urgency of the assignment generate; the unpleasantness that may be required if the job is done right; and, the fact that no matter what the director does he will probably be sued for it, and you have, I think, a fairly unappetizing assignment.[13]

It is only, wrote the Chancellor, "a sense of duty" that stands against the inevitable pressures to accommodate the CEO.[14] And that sense of duty, he suggested, will arise only if the directors fully understand what is

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[9]*In re* RJR Nabisco, Inc. Shareholders Litig., [1989 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 94,194 (Del. Ch. Jan. 31, 1989), *reprinted in* 14 DEL. J. CORP. L. 1132 (1989).

[10]William T. Allen, *Independent Directors in MBO Transactions: Are They Fact or Fantasy?*, 45 BUS. LAW. 2055 (1990).

[11]*Id.* at 2056.

[12]*Id.*

[13]*Id.* at 2060-61.

[14]Allen, supra note 10, at 2061 (footnote omitted).

expected of them — and that is the responsibility of the committee's advisors, the lawyers and investment bankers, the "largely unexamined variable in the process":

> I regard the role of the advisors in establishing the integrity of this process as absolutely crucial. Indeed, the motives and performance of the lawyers and bankers who specialize in the field of mergers and acquisitions is to my mind the great, largely unexamined variable in the process. In all events, it is plain that quite often the special committee relies upon the advisors almost totally. It is understandable why. Frequently, the outside directors who find themselves in control of a corporate sale process have had little or no experience in the sale of a public company. They are in *terra incognito*. Naturally, they turn for guidance to their specialist advisors who will typically have had a great deal of relevant experience.[15]

And in a conclusion that echoes a theme he was never loathe to strike even at the risk of quaintness, the Chancellor exhorted the bar to fulfill its role in particular:

> My intuition is that the jury is still out on the question whether the special committee device works well enough, often enough, for the law to continue to accord it weight. I am sure, however, of this: if the future leads us to view that that process does offer to shareholders protections that are consistent with justice, it will in large measure be because lawyers have been true to their professional responsibilities and have used their talent and power to see that outside directors understand and strive to satisfy their duty.
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> I conclude now. In doing so, I wish to refer to the special role of the lawyer. I do not mean to be moralistic, but I do wish to remind you that lawyers are not engaged in a strictly commercial enterprise. You have accepted an obligation that transcends the obligations of investment bankers or businessmen or women. That obligation is to

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[15] *Id.*

justice. While such a grand word may seem quaint at the close of the decade of self-promotion and the mega-deal, it *is* in pursuit of that concept that laws are made, courts established, and lawyers trained and licensed.

And a lawyer, no matter in what setting she functions — whether as an advisor to a special committee or as a propounder of discovery in a civil litigation; whether as the court appointed defender of one charged with a crime or as an advocate in a civil rights case — a lawyer has an obligation that courts will be bound to review and enforce, to pursue her special task in a way consistent with the pursuit of systematic justice.[16]

INTERCO: PULLING THE PILL

The Chancellor's 1988 decision in the *Interco*[17] matter represented an extremely creative treatment of the then critical issue in corporate takeover jurisprudence: whether, and under what circumstances, a Delaware board of directors could be obliged by a legal rule to redeem a shareholder rights plan in favor of a hostile all-cash, all-shares tender offer that the directors in good faith and advisedly believed inadequate (and, in that case, thought to be less attractive than a restructuring whose future value was inherently, as the Chancellor noted, "a debatable proposition").[18] Although important parts of *Interco* proved short-lived, it nonetheless seems fair to include *Interco* in a quick canvass of the Chancellor's writings on director responsibilities, since that opinion addressed the difficult judgments that directors must make in takeover defense cases.

Interco was a shock. Chancellor Allen held that the directors were obliged to redeem the rights plan[19] — the first time any court had so ruled, and a Delaware court at that. The Chancellor did so under *Unocal*, which he introduced as "the most innovative and promising case in our recent corporation law" and explained as resting on the recognition that in takeover defense "human nature may incline even one acting in subjective good faith to rationalize as right that which is merely

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[16] *Id.* at 2062-63.

[17] City Capital Assocs. Ltd. Partnership v. Interco Inc., 551 A.2d 787 (Del. Ch. 1988), *appeal dismissed as moot*, 556 A.2d 1070 (Del. 1988).

[18] *Id.* at 795.

[19] *Id.* at 790-91.

personally beneficial."[20] The opinion further insightfully placed *Unocal* in a special context:

> Delaware courts have employed the *Unocal* precedent cautiously. The promise of that innovation is the promise of a more realistic, flexible and, ultimately, more responsible corporation law. . . . The danger that it poses is, of course, that courts — in exercising some element of substantive judgment — will too readily seek to assert the primacy of their own view on a question upon which reasonable, completely disinterested minds might differ. Thus, inartfully applied, the *Unocal* form of analysis could permit an unraveling of the well-made fabric of the business judgment rule in this important context. Accordingly, whenever, as in this case, this court is required to apply the *Unocal* form of review, it should do so cautiously, with a clear appreciation for the risks and special responsibility this approach entails.[21]

Exercising that care, Chancellor Allen carefully noted, and defended, Delaware's decision to permit unilateral director action to preclude shareholder acceptance of a noncoercive offer deemed inadequate in value:

> We have held that a board is not required simply by reason of the existence of a noncoercive offer to redeem outstanding poison pill rights. . . . The reason is simple. Even where an offer is noncoercive, it may represent a "threat" to shareholder interests in the special sense that an active negotiator with power, in effect, to refuse the proposal may be able to extract a higher or otherwise more valuable proposal, or may be able to arrange an alternative transaction or a modified business plan that will present a more valuable option to shareholders. . . . Our cases, however, also indicate that in the setting of a noncoercive offer, absent unusual facts, there may come a time when a board's fiduciary duty will require it to redeem the rights and to permit the shareholders to choose.[22]

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[20]*Id.* at 796 (emphasis in original omitted).
[21]*Interco*, 551 A.2d at 796-97 (citations omitted).
[22]*Id.* at 799-98 (citations omitted).

The Chancellor reasoned that *Interco* was such a case because the "end-stage" of the takeover contest had been reached.[23] No increases in price or improvements in the recapitalization were in the offing.[24] The Chancellor harkened back to fundamental concepts in ordering the pill redeemed at that "end-stage":

> Our corporation law exists, not as an isolated body of rules and principles, but rather in a historical setting and as a part of a larger body of law premised upon shared values. To acknowledge that directors may employ the recent innovation of "poison pills" to deprive shareholders of the ability effectively to choose to accept a noncoercive offer, after the board has had a reasonable opportunity to explore or create alternatives, or attempt to negotiate on the shareholders' behalf, would, it seems to me, be so inconsistent with widely shared notions of appropriate corporate governance as to threaten to diminish the legitimacy and authority of our corporation law.[25]

Interco proved to be stillborn. In its *Time/Warner* opinion,[26] the Delaware Supreme Court (while affirming Chancellor Allen's decision below) put down its stake against court-ordered pill redemptions. Acknowledging the weight of the Chancellor's *Interco* opinion, the Delaware Supreme Court singled out *Interco* and its progeny as having misconceived *Unocal* as a basis for "substituting [the court's] judgment as to what is a 'better' deal for that of a corporation's board of directors."[27] But *Interco* remains as the classic statement of a carefully-drawn contrary view, much like an historic dissent in a supreme court of last resort. The *Interco* opinion was likely meant to be the beginning of a line of cases to work out the ins-and-outs of the Chancellor's "end-stage" views. Even for those, like us, who would argue strenuously for the opposite position, it was something of a loss for that contrary approach to have been rejected before it could be more fully refined.

But if *Interco*'s "end-stage" concept was stillborn, the Chancellor's opinion only months prior to *Interco* in *Blasius*[28] pointed a different path

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[23] *Id.* at 798.
[24] *Id.*
[25] *Interco*, 551 A.2d at 799-800.
[26] Paramount Communications, Inc. v. Time Inc., 571 A.2d 1140 (Del. 1990).
[27] *Id.* at 1153.
[28] Blasius Indus., Inc. v. Atlas Corp., 564 A.2d 651 (Del. Ch. 1988).

to a similar conclusion. Perhaps the courts would not play the direct role envisioned for them in *Interco* of declaring a takeover contest in its final stage and requiring board passivity. But the shareholders themselves could engineer such a conclusion through the exercise of the corporate franchise to replace a board of directors to change corporate policy. Thus, *Blasius* — with its emphasis on the high importance given to shareholder voting rights, even through the apparent creation of a "compelling justification" standard more stringent than earlier categories — foreshadowed the most important innovation in hostile bids in the 1990s: offers coupled with proxy fights. It is not too much to say that, where the Chancellor beckoned in 1988, bidders followed.

OUTSIDE DIRECTORS AS "ACTIVE MONITORS"

The Chancellor's strong statements on directorial responsibility in the corporate control context were linked to a perhaps more elemental restatement of their role in corporate performance. In a 1992 speech that was a breakthrough on the subject, Chancellor Allen explained:

> Outside directors should function as active monitors of corporate management, not just in crisis, but continually; they should have an active role in the formulation of the long-term strategic, financial, and organizational goals of the corporation and should approve plans to achieve those goals; they should as well engage in the periodic review of short and long-term performance according to plan and be prepared to press for correction when in their judgment there is need.[29]

Relatedly, Chancellor Allen has interpreted the post-*Van Gorkom*[30] case law in Delaware as reflecting the courts' demand for "some level of active involvement by directors in the governance of the enterprise."[31] In

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[29]William T. Allen, *Redefining The Role of Outside Directors in an Age of Global Competition* 11-12, Address at Ray Garrett Jr. Corporate and Securities Law Institute, Northwestern University, Chicago (Apr. 30, 1992) (on file with *The Delaware Journal of Corporate Law*).

[30]Smith v. Van Gorkom, 488 A.2d 858 (Del. 1985).

[31]William T. Allen, *The Evolving Role of Corporate Boards* 10, Address at the Harvard University Graduate School of Business Administration, Leadership Workshop: Making Corporate Boards More Effective 10 (June 24, 1994) (on file with *The Delaware Journal of*

that vein, the Chancellor has urged that outside directors "understand and assume the burden of active long-term monitoring."[32]

This emphasis on the outside directors' role in corporate performance did not come in a vacuum. In those 1992 remarks, Chancellor Allen traced the nation's shortfalls in the global economic competition to a higher real cost of capital, undersaving and overconsumption, systemic educational deficiencies, and the failure of our corporate governance system to provide "sources of countervailing power that operate to check and to balance the power that corporate management holds over the enterprise."[33] The Chancellor noted that, in contrast to the Japanese and German systems which feature stable long-term investors able to monitor management performance, our system is characterized by dispersed "investors" and management that may be immune to accountability for long periods. The Chancellor predicted criticism of our "managerialist model" in light of the Japanese and German successes, and identified the board of directors as "the correct place for appropriate adaption to the new realities to occur."[34] On this basis a call was placed for "a redefinition, in the minds of those men and women who serve on corporate boards, of the legal and social requirements of the role of corporate director."[35] Turning from the theoretical to the practical, the Chancellor acknowledged that the associated burdens would have to be borne:

> [E]ffective sympathetic monitoring requires a commitment of time and resources, especially information, and sometimes independent advice. A few hours a quarter may satisfy the role of passive advisor in good times; it is not sufficient to meet the obligation to act as a monitor. The demands of the position, if properly understood, are inconsistent in my opinion, with service on an impressively long list of boards.
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> There are a host of innovations or mechanisms that might be explored to develop a board that functions like a sympathetic, long-term owner, rather than as either a passive advisor or merely as a financial investor. A non-CEO,

Corporate Law).

[32] *Id.* at 12.

[33] Allen, *supra* note 29, at 5.

[34] *Id.* at 11.

[35] *Id.*

> board chairman (along the English model) may prove to be attractive to some companies, but not for others; a periodic meeting of the outside directors outside the presence of the CEO might be helpful; direct access to corporate information and personnel might be possible; periodic, structured meetings between outside directors and large, long-term shareholders might prove productive; board size might be reduced so that meetings implicitly invite participation and acceptance of responsibility. I don't mention these possibilities as any endorsement of them, but as examples of the sort of moderate adaptation that is possible. In all, corporate governance — including the way in which the board regularly functions and the processes through which it interacts with the corporations' senior management and with the corporations' long-term stockholders — should be thought of as one source of possible competitive advantage; as one way to make the organization function more effectively. The corporations' own techniques and mechanisms of governance should themselves be the subject of explicit board discussion and review from time to time.[36]

Finally, in what may be the flip side of the shareholder/stakeholder debate on the level of overall corporate responsibility, the Chancellor noted that his positing of a role for the corporate director in the context of global economic competition implied viewing the role of outside director "as a private office imbued with a public responsibility."[37] And he concluded with a call to public service whose legitimacy rested in his own experience:

> The notion of honor and of an unenforceable but nonetheless real public duty, may strike you as quaint, as a ghost of an earlier age. But I hold to another hope: that we have not yet forgotten the claims that duty can legitimately make upon us, for the benefit of strangers. So I exhort directors and implore you their lawyers, too. For it is we lawyers, as much as those who serve on boards, who create the assumptions about roles, expectations and duties that

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[36] *Id.* at 12-13.
[37] Allen, *supra* note 29, at 14.

shape director attitudes. Your work too is tinged with a public responsibility.[38]

CAREMARK: BEYOND THE "RED FLAGS"

In his 1996 opinion in *Caremark*,[39] the Chancellor took the occasion of passing on the fairness of a proposed derivative action settlement to explore the legal standard governing the board of directors' "obligation to supervise or monitor corporate performance."[40] The case involved a corporation that pled guilty to a felony, and agreed to pay civil and criminal fines and reimbursements totaling $250 million. Describing the plaintiffs' "failure to supervise" theory as "possibly the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment,"[41] the Chancellor broke down the available theories into two: (1) liability resulting from an ill-advised decision, and (2) liability resulting from "an unconsidered failure of the board to act in circumstances in which due attention would, arguably, have prevented the loss."[42] The first category, the Chancellor noted, was well protected by the business judgment rule.[43]

As to the second category — "in which a loss eventuates not from a decision but, from unconsidered inaction"[44] — the Chancellor focused intently on the fact of corporate life that "ordinary business decisions" made well below the board level "by officers and employees deeper in the interior of the organization" can have vital impacts.[45] The Chancellor noted specifically the displacements of senior management at Salomon, Inc. and Kidder, Peabody due to trading irregularities, and the extensive loss suffered by Prudential Insurance as a result of junior level misrepresentations about limited partnership interests.[46] The Chancellor

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[38]*Id.* at 15-16.

[39]*In re* Caremark Int'l Inc. Derivative Litig., 698 A.2d 959 (Del. Ch. 1996).

[40]*Id.* at 961.

[41]*Id.* at 967.

[42]*Id.* (citation omitted) (emphasis in original omitted).

[43]Indeed, the Chancellor questioned the "moral basis" for shareholders to attack a good faith business decision as "unreasonable" or "irrational" since "[i]f the shareholders thought themselves entitled to some other quality of judgment than such a director produces in the good faith exercise of the powers of office, then the shareholders should have elected other directors." *Caremark*, 698 A.2d at 968.

[44]*Id.*

[45]*Id.*

[46]*See id.*

also pointedly referenced the U.S. Organizational Sentencing Guidelines which incentivize corporations to have in place detection and reporting programs and to voluntarily remediate any discovered violations of law.[47]

The Chancellor then confronted the Delaware Supreme Court's 1963 decision in *Graham v. Allis-Chalmers*[48] which had long been held out as embracing the protective "red flags" rule — that "absent cause for suspicion there is no duty upon the directors to install and operate a corporate system of espionage to ferret out wrongdoing which they have no reason to suspect exists."[49]

The problem was obviously a delicate one. *Graham*, the Chancellor reasoned, could not be generalized into a rule that, absent grounds for suspected law violation, directors had no duty to assure that an information gathering and reporting system exists to provide senior management and the board with material internal operating information, including as regards legal compliance.[50] Building on the increased "seriousness" with which the corporate law propounded by the Delaware Supreme Court in the takeover context had viewed the role of the corporate board, and noting both the federal sentencing guidelines and the logical point that information is necessary for any supervisory role, the Chancellor concluded that, even with *Graham*, a board's obligation to be reasonably informed about the corporation can require that:

> information and reporting systems exist in the organization that are reasonably designed to provide to senior management and to the board itself timely, accurate information sufficient to allow management and the board, each within its scope, to reach informed judgments concerning both the corporation's compliance with law and its business performance.[51]

Even while positing this shift, the Chancellor took pains to make clear the very narrow opening to liability that this view represented:

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[47] *See Caremark*, 698 A.2d at 969.
[48] Graham v. Allis-Chalmers Mfg. Co., 188 A.2d 125 (Del. 1963).
[49] *Caremark*, 698 A.2d at 969 (quoting *Graham*, 188 A.2d at 130).
[50] *Id.* at 970.
[51] *Id.*

> Generally where a claim of directorial liability for corporate loss is predicated upon ignorance of liability creating activities within the corporation, as in *Graham* or in this case, in my opinion only a sustained or systematic failure of the board to exercise oversight — such as an utter failure to attempt to assure a reasonable information and reporting system exists — will establish the lack of good faith that is a necessary condition to liability. Such a test of liability — lack of good faith as evidenced by sustained or systematic failure of a director to exercise reasonable oversight — is quite high. But, a demanding test of liability in the oversight context is probably beneficial to corporate shareholders as a class, as it is in the board decision context, since it makes board service by qualified persons more likely, while continuing to act as a stimulus to good faith performance of duty by such directors.[52]

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These, and the other, larger themes of Chancellor Allen's tenure should neither obscure nor eclipse the Chancellor's more "everyday" opinions and achievements that reshaped the fabric of Delaware practice. No issue, no matter how routinely arising, or embedded in common practice, escaped the Chancellor's close attention. The Chancellor addressed issues such as the standards for issuance of a temporary restraining order,[53] the precise scope of the so-called white knight privilege used to bar discovery of open alternatives in takeover cases,[54] the proper scope of the boilerplate release language in the settlement of shareholder derivative litigation,[55] whether a particular class action settlement could preclude exclusively federal securities law claims,[56] and hundreds of other topics that received the same care and attention as the most public dramas to come to Rodney Square. Corporate America is grateful for the years of the Chancellor's public service.

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[52] *Id.* at 971 (emphasis in original omitted).

[53] *See, e.g.*, Cottle v. Carr, No. 9612, 1988 Del. Ch. LEXIS 21 (Del. Ch. Feb. 9, 1988).

[54] *See, e.g.*, Vitro v. Anchor Glass Container Corp., No. 11,016, 1989 Del. Ch. LEXIS 112 (Del. Ch. Sept. 20, 1989), *reprinted in* 15 DEL. J. CORP. L. 1163 (1990).

[55] *See, e.g.*, *In re* Louisiana-Pacific Corp. Derivative Litig., No. 14,322 (Cons.), 1997 Del. Ch. LEXIS 63 (Del. Ch. May 2, 1997); Carlton Invs. v. TLC Beatrice Int'l, No. 13,950 (Del. Ch. Apr. 21, 1997).

[56] *See, e.g.*, Raskin v. Birmingham Steel Corp., [1990-1991 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 95,668 (Del. Ch. Dec. 4, 1990).