

October 9, 1998

The AMP Decision

In most respects the AMP decision is peculiar to Pennsylvania law. This is specially the case with respect to the holding that the dead hand provision in the AMP pill is valid.

The most interesting part of the decision is the discussion of the conflict of interest of the nominees of Allied Signal for election to the AMP Board for the purpose of gaining a majority that would dismantle AMP's takeover defenses and facilitate the acquisition by Allied Signal. While the decision permits the solicitation to elect the Allied Signal nominees to go forward if the proxy statement is amended to disclose that, if elected, the new directors' sole fiduciary duty will be to AMP, the decision also points out that since the nominees are also directors or employees of Allied Signal who owe a fiduciary duty to Allied Signal, any action they might take as directors of AMP would be subject to challenge. The Court says:

Allied Signal is a Delaware corporation subject to Delaware corporate law. Under Delaware law, officers and directors of Allied Signal owe a fiduciary duty to Allied Signal and its shareholders to act in their best interest. If Allied Signal's directors and officers are elected to AMP's board of directors, they will have an inherent conflict that will necessarily put them at risk of violating Pennsylvania's fiduciary duty standard. Allied Signal has not suggested how their interested nominees may discharge their duty of exclusive loyalty to AMP.

The court cannot speculate that interested directors will not respect their fiduciary duty. However, it is imperative that the nominees state that each is committed to discharging that duty, which is solely to AMP. This is particularly acute where the nominees have fiduciary duties to Allied Signal's board's merger directives that may be completely antithetical to the interests of AMP.

The decision goes on to cast doubt on the ultimate ability of directors nominated by Allied Signal to cause AMP to agree to the takeover by Allied Signal and to recognize that there will likely be future litigation attacking any such action by those directors.

M. Lipton