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Delaware Chancellor's Opinion in the Disney/Ovitz Case Confirms that the Business Judgment Rule is Alive and Well

Yesterday's decision in the Disney/Ovitz case is an important, and welcome, reaffirmation of fundamental concepts underlying our corporate law. Delaware Chancellor Chandler found that the Disney directors did not breach their fiduciary duties in the 1995 hiring and 1996 termination of Michael Ovitz. The opinion focused carefully on the core question of whether the directors had acted in good faith in what they believed to be the corporation's best interests. The opinion illustrates that no special legal duties or enhanced judicial scrutiny are attached to often difficult and sensitive decisions about executive compensation, hiring and severance – either on the part of the officers and directors charged with responsibility for making these decisions, or the incoming or departing executives themselves.

Importantly, the decision means that the current emphasis on improved governance practices will not boomerang into new bases of personal liability for officers and directors by seeping into, and distorting, long-standing fiduciary duty requirements. ***The Business Judgment Rule is alive and well.*** The Chancellor forcefully stated that aspirational "best practices" are not synonymous with legal requirements that result in liability, and that the protection from liability accorded directors who act honestly is essential to maximizing shareholder and societal value:

> "Unlike ideals of corporate governance, a fiduciary's duties do not change over time. How we understand those duties may evolve and become refined, but the duties themselves have not changed, except to the extent that fulfilling a fiduciary duty requires obedience to other positive law. This Court strongly encourages directors and officers to employ best practices, as those practices are understood at the time a corporate decision is taken. But Delaware law does not—indeed, the common law cannot—hold fiduciaries liable for a failure to comply with the aspirational ideal of best practices. . . .
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> Fiduciaries are held by the common law to a high standard in fulfilling their stewardship over the assets of others, a standard that (depending on the circumstances) may not be the same as that contemplated by ideal corporate governance. Yet therein lies perhaps the greatest strength of Delaware's corporation law. Fiduciaries who act faithfully and honestly on behalf of those whose interest they represent are indeed granted wide latitude in their efforts to maximize shareholders' investment. Times may change, but fiduciary duties do not. Indeed, other institutions may develop, pronounce and urge adherence to ideals of corporate best practices. But the development of aspirational ideals, however worthy as goals for human behavior, should not work to distort the legal requirements by which human behavior is actually measured. Nor should the common law of fiduciary duties become a prisoner of narrow definitions or formulaic expressions. . . .

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Even where decision-makers act as faithful servants, however, their ability and the wisdom of their judgments will vary. The redress for failures that arise from faithful management must come from the markets, through the action of shareholders and the free flow of capital, and not from this Court. Should the Court apportion liability based on the ultimate outcome of decisions taken in good faith by faithful directors or officers, those decision-makers would necessarily take decisions that minimize risk, not maximize value. The entire advantage of the risk-taking, innovative, wealth-creating engine that is the Delaware corporation would cease to exist, with disastrous results for shareholders and society alike. That is why, under our corporate law, corporate decision-makers are held strictly to their fiduciary duties, but within the boundaries of those duties are free to act as their judgment and abilities dictate, free of *post hoc* penalties from a reviewing court using perfect hindsight. Corporate decisions are made, risks are taken, the results become apparent, capital flows accordingly, and shareholder value is increased. ”

M. Lipton
T.N. Mirvis
P.K. Rowe