

The Delaware Court of Chancery Concludes Directors' Action To Reschedule A Stockholder Vote Satisfies *Blasius*' Compelling Justification Standard

In his August 14, 2007 opinion in *Mercier v. Inter-Tel (Delaware), Incorporated*, Vice Chancellor Strine held that the special committee of the board of directors of Inter-Tel had a “compelling justification” for rescheduling a special meeting of stockholders to vote on a proposed merger with Mitel Networks Corporation, and denied the plaintiff stockholders’ motion to preliminarily enjoin the closing of the merger. The court held that the compelling justification standard of *Blasius Indus., Inc. v. Atlas Corp.*, 564 A.2d 651 (Del. Ch. 1988), is satisfied “[w]hen directors act for the purpose of preserving what the directors believe in good faith to be a value-maximizing offer. . . .” In so doing, the court noted that “no decision has, before today, found [the compelling justification standard] satisfied.” Op. at 44.

After Inter-Tel and Mitel entered into a merger agreement, Inter-Tel’s directors scheduled a June 29, 2007 special meeting of stockholders to vote on the merger. The court found that, as the date for the meeting approached, the directors came to understand that the merger would not be approved and that, to the contrary, a majority of the shares would be voted against the merger and against a companion proposal to adjourn the meeting. On the morning of June 29, Inter-Tel’s special committee decided to reschedule the special meeting to allow stockholders more time to digest recent developments, including deterioration of the debt capital markets which would adversely affect the availability and cost of financing for acquisition transactions, Inter-Tel’s lower-than-expected sales numbers, the recent announcement by Mitel that it would not raise its bid, and the filing of definitive proxy materials by the company’s founder, who was advocating a recapitalization proposal as an alternative to the merger. The special committee changed the record date for the meeting and rescheduled it for August 2, 2007. At the special meeting on August 2, an overwhelming majority of Inter-Tel’s stockholders voted in favor of the proposed merger.

Plaintiffs filed a motion for a preliminary injunction to prevent consummation of the merger on the grounds that the special committee had thwarted the will of Inter-Tel’s stockholders by rescheduling the June 29 special meeting at the eleventh hour when it knew the proposed merger would be voted down. Plaintiffs also complained that the change in the record date had permitted hedge funds and arbitrageurs to acquire Inter-Tel stock which they would vote in favor of the merger to gain a short-term profit. In denying the motion for a preliminary injunction, the court observed that it would be “reluctant to premise an injunction on the notion that some stockholders are ‘good’ and others are ‘bad short-termers,’” that there was no selective announcement or “tipping” of the new record date and that, in all events, the change in the record date “was not what determined the outcome of the ultimate Merger vote. What determined the outcome was that ISS and Inter-Tel stockholders who held on both record dates came to view the Mitel Merger as the value-maximizing option.” Op. at 52-56. Based on the record before it, the court ruled that there is no breach of fiduciary duty under the *Blasius* standard “when independent directors believe that: (1) stockholders are about to reject a third-party merger proposal that the independent directors believe is in their best interests; (2) information useful to the stockholders’ decision-making process has not been considered adequately or not yet been publicly disclosed; and (3) if the stockholders vote no, the acquiror will walk away without making a higher bid and that the opportunity to receive the bid will be irretrievably lost.” Op. at 60-61. Reasoning “backwards,” the court also found that the directors’ primary purpose was not to disenfranchise stockholders, but to give them more time to deliberate before making an uncoerced decision about the merger, such that the compelling justification standard of *Blasius* was not applicable.

The Vice Chancellor's opinion also continues his thoughtful analysis regarding the analytical ambiguities surrounding application of the *Blasius* "compelling justification" standard. Specifically, the court stated that in situations where a vote "touch[es] on matters of corporate control," the standard of review "that ought to be employed is a reasonableness standard consistent with the *Unocal* standard." Under that standard, the directors must demonstrate that there was a legitimate corporate objective in taking the action in question, that their motivations were proper, that their actions were reasonable in relation to their legitimate objective, and that their actions did not preclude the stockholders from exercising their right to vote or coerce them into voting a particular way. Op. at 45. Here, the court held that the special committee had a proper and legitimate objective in rescheduling the meeting: to better the chances that stockholders would vote in favor of the proposed merger based upon a more fully informed vote. The court further held that a short delay in the meeting was a reasonable action in relation to the directors' objective and that by delaying the meeting, the directors had not precluded the stockholders from voting or coerced them into voting a certain way. Accordingly, the court held that the Inter-Tel's directors' actions met the "reasonableness standard."

The court's decision in *Inter-Tel* demonstrates that disinterested and independent directors continue to have flexibility in exercising their fiduciary duties, even with respect to issues touching on matters of corporate control such as a vote on a merger proposal. Although notable for its holding that the demanding and infrequently applied compelling justification standard can in fact be satisfied, the court's decision also signals that practitioners should continue to focus on the applicable standard of review and watch for further developments in this evolving area of Delaware law.



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