

Delaware Supreme Court weighs in on materiality standard for board disclosure in merger negotiations

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In *City of Fort Myers General Employees' Pension Fund v. Haley*, the Delaware Supreme Court delivered its most recent admonition to directors and officers negotiating merger transactions to err on the side of disclosure to boards in connection with potential conflicts. The case arose out of negotiations over the 2016 merger between Towers Watson and Willis Group Holdings Public limited company. Plaintiffs alleged that the Chairman and CEO of Towers Watson, who led the negotiations for Towers, breached his fiduciary duties by failing to disclose to the company's board a compensation proposal that he had received from Willis' second-largest stockholder regarding his potential post-merger compensation as CEO of the combined entity. The Delaware Court of Chancery dismissed the claims, holding that the business judgment rule applied because a reasonable director would not have deemed the compensation proposal to be significant information, given that the board knew that if the transaction was consummated, the CEO was in line for a substantial pay increase. The Delaware Supreme Court reversed (in a 4-1 decision), finding that the Chancery Court erred in summarily discounting the undisclosed information as immaterial and holding that plaintiffs' allegations were sufficient to rebut the application of the business judgment rule.

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