

# Delaware Court Applies Business Judgment Rule to Going-Private Merger with Controlling Stockholder

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In a recent, landmark Delaware decision in *In re MFW Shareholders Litigation*, C.A. No. 6566-CS (Del. Ch. May 29, 2013), Chancellor Leo E. Strine, Jr. answered a frequently debated (but unresolved) question of whether a going-private merger with a controlling stockholder could be structured to invoke the business judgment rule, and not the entire fairness standard of review. Resolving this issue of first impression, the Court held that the business judgment rule will apply “when a controlling stockholder merger has, from the time of the controller’s first overture, been subject to (i) negotiation and approval by a special committee of independent directors fully empowered to say no, and (ii) approval by an uncoerced, fully informed vote of a majority of the minority investors.”

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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