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FOCUS AREAS

Securities Fraud

Corporate Governance & M+A

EDUCATION

Haverford College
B.A. 1999

Villanova University School of Law
J.D. 2006

ADMISSIONS

New Jersey

Pennsylvania

Matthew Benedict, an associate of the Firm, concentrates his practice in the area of mergers and acquisition litigation and stockholder derivative litigation. Matthew has represented both plaintiffs and defendants in numerous high-profile securities fraud class actions concerning Wall Street institutions' conduct before, during, and in the wake of the 2008 financial crisis.

Ongoing Cases

- Investors Challenge Tesla's $2.6 Billion Acquisition of Elon Musk's Cousins' Company

Kessler Topaz is co-lead counsel in a derivative and class action on behalf of Tesla, Inc. and its minority stockholders challenging Tesla's 2016 acquisition of SolarCity Corporation. Plaintiffs allege that the acquisition was essentially a bailout of the financially struggling SolarCity, which was founded and run by Elon Musk's cousins. At the time of the acquisition, Elon Musk was chairman of both boards of directors and the largest stockholder of both Tesla and SolarCity. Six of the seven members of Tesla's Board of Directors, their family members and/or business partners were investors in SolarCity and therefore benefited from the acquisition, which allowed SolarCity to escape an impending threat of bankruptcy.

Plaintiffs' consolidated action in the Delaware Court of Chancery alleges that the Board's approval of the acquisition constituted a breach of fiduciary duties and a waste of Tesla's assets. On January 22, 2020, Plaintiffs reached an agreement in principle with all Defendants other than Elon Musk to resolve all claims asserted against them for $60 million. On February 4, 2020, the Court denied the remaining parties' cross-motions for summary judgment, holding that Plaintiffs had raised genuine issues of material fact regarding whether Elon Musk controlled Tesla's Board of Directors in connection with the acquisition and whether material information was withheld from Tesla shareholders when they were asked to vote on the transaction. Previously scheduled to commence on March 16, 2020, the trial has been adjourned until July 12, 2021 in response to the pandemic.

Settled

- Ebix Settles CEO Bonus Claims After Trial
  Nearly six years of litigation were concluded in April of this year when the parties settled Plaintiffs' claims concerning a board-approved agreement to pay the Company's Chairman and CEO Robin Raina more than 25% of Ebix's market capitalization upon a change of control.
  An August 2018 trial had revealed that Raina appropriated Company resources to shape the agreement to his benefit and used deliberately false disclosures concerning his agreement to coerce the Company's directors to accede to his desired terms. The evidence also showed that the Company's directors aimed only to make Raina "happy," regardless of the agreement's cost, and that the directors had not considered whether the agreement would deter premium takeover offers, despite repeated disclosures that they had conducted such an analysis. Pursuant to the terms of the settlement, Ebix amended the change-of-control agreement to reduce the cost of Raina's bonus by more than $215 million. Ebix additionally agreed to numerous governance reforms, including the hiring of an in-house general counsel and the development of a CEO succession plan, that will help protect the Company from future overreach by Raina.

- ExamWorks Group, Inc.: Kessler Topaz Secures $86.5 Million Settlement on Behalf of Former Stockholders
  On September 12, 2017, the Delaware Chancery Court approved one of the largest class action M&A settlements in the history of the Delaware Chancery Court, a $86.5 million settlement relating to the acquisition of ExamWorks Group, Inc. by private equity firm Leonard Green & Partners, LP.
  The settlement caused ExamWorks stockholders to receive a 6% improvement on the $35.05 per share merger consideration negotiated by the defendants. This amount is unusual especially for litigation challenging a third-party merger. The settlement amount is also noteworthy because it includes a $46.5 million contribution from ExamWorks' outside

legal counsel, Paul Hastings LLP.

- Facebook and Founder Mark Zuckerberg Capitulate to KTMC on Eve of Trial
  Just one day before trial was set to commence over a proposed reclassification of Facebook's stock structure that KTMC challenged as harming the company's public stockholders, Facebook abandoned the proposal.
  The trial sought a permanent injunction to prevent the reclassification, in lieu of damages. By agreement, the proposal had been on hold pending the outcome of the trial. By abandoning the reclassification, Facebook essentially granted the stockholders everything they could have accomplished by winning at trial.
  As background, in 2010 Mark Zuckerberg signed the "Giving Pledge," which committed him to give away half of his wealth during his lifetime or at his death. He was widely quoted saying that he intended to start donating his wealth immediately.
  Facebook went public in 2012 with two classes of stock: class B with 10 votes per share, and class A with 1 vote per share. Public stockholders owned class A shares, while only select insiders were permitted to own the class B shares. Zuckerberg controlled Facebook from the IPO onward by owning most of the high-vote class B shares.
  Facebook's charter made clear at the IPO that if Zuckerberg sold or gave away more than a certain percentage of his shares he would fall below 50.1% of Facebook's voting control. The Giving Pledge, when read alongside Facebook's charter, made it clear that Facebook would not be a controlled company forever.
  In 2015, Zuckerberg owned 15% of Facebook's economics, but though his class B shares controlled 53% of the vote. He wanted to expand his philanthropy. He knew that he could only give away approximately $6 billion in Facebook stock without his voting control dropping below 50.1%.
  He asked Facebook's lawyers to recommend a plan for him. They recommended that Facebook issue a third class of stock, class C shares, with no voting rights, and distribute these shares via dividend to all class A and class B stockholders. This would allow Zuckerberg to sell all of his class C shares first without any effect on his voting control.
  Facebook formed a "Special Committee" of independent directors to negotiate the terms of this "reclassification" of Facebook's stock structure with Zuckerberg. The Committee included Marc Andreeson, who was Zuckerberg's longtime friend and mentor. It also included Susan Desmond-Hellman, the CEO of the Gates Foundation, who we alleged was unlikely to stand in the way of Zuckerberg becoming one of the world's biggest philanthropists.
  In the middle of his negotiations with the Special Committee,

Zuckerberg made another public pledge, at the same time he and his wife Priscilla Chan announced the birth of their first child. They announced that they were forming a charitable vehicle, called the "Chan-Zuckerberg Initiative" (CZI) and that they intended to give away 99% of their wealth during their lifetime.

The Special Committee ultimately agreed to the reclassification, after negotiating certain governance restrictions on Zuckerberg's ability to leave the company while retaining voting control. We alleged that these restrictions were largely meaningless. For example, Zuckerberg was permitted to take unlimited leaves of absence to work for the government. He could also significantly reduce his role at Facebook while still controlling the company.

At the time the negotiations were complete, the reclassification allowed Zuckerberg to give away approximately $35 billion in Facebook stock without his voting power falling below 50.1%. At that point Zuckerberg would own just 4% of Facebook while being its controlling stockholder.

We alleged that the reclassification would have caused an economic harm to Facebook's public stockholders. Unlike a typical dividend, which has no economic effect on the overall value of the company, the nonvoting C shares were expected to trade at a 2-5% discount to the voting class A shares. A dividend of class C shares would thus leave A stockholders with a "bundle" of one class A share, plus 2 class C shares, and that bundle would be worth less than the original class A share. Recent similar transactions also make clear that companies lose value when a controlling stockholder increases the "wedge" between his economic ownership and voting control. Overall, we predicted that the reclassification would cause an overall harm of more than $10 billion to the class A stockholders.

The reclassification was also terrible from a corporate governance perspective. We never argued that Zuckerberg wasn't doing a good job as Facebook's CEO right now. But public stockholders never signed on to have Zuckerberg control the company for life. Indeed at the time of the IPO that was nobody's expectation. Moreover, as Zuckerberg donates more of his money to CZI, one would assume his attention would drift to CZI as well. Nobody wants a controlling stockholder whose attention is elsewhere. And with Zuckerberg firmly in control of the company, stockholders would have no recourse against him if he started to shirk his responsibilities or make bad decisions.

We sought an injunction in this case to stop the reclassification from going forward. Facebook already put it up to a vote last year, where it was approved, but only because Zuckerberg voted his shares in favor of it. The public stockholders who voted cast 80% of their votes against the reclassification.

By abandoning the reclassification, Zuckerberg can still give away as much stock as he wants. But if he gives away more than a certain amount, now he stands to lose control. Facebook's stock price has gone up a lot since 2015, so Zuckerberg can now give away approximately $10 billion before losing control (up from $6 billion). But then he either has to stop (unlikely, in light of his public pledges), or voluntarily give up control. There is evidence that non-controlled companies typically outperform controlled companies.

KTMC believes that this litigation created an enormous benefit for Facebook's public class A stockholders. By forcing Zuckerberg to abandon the reclassification, KTMC avoided a multi-billion dollar harm. We also preserved investors' expectations about how Facebook would be governed and when it would eventually cease to be a controlled company.

KTMC represented Sjunde AP-Fonden ("AP7"), a Swedish national pension fund which held more than 2 million shares of Facebook class A stock, in the litigation. AP7 was certified as a class representative, and KTMC was certified as co-lead counsel in the case. The litigation at KTMC was led by KTMC attorneys Lee Rudy, Eric Zagar, J. Daniel Albert, Grant Goodhart, and Matt Benedict.

- KCG Holdings, Inc.: Kessler Topaz Secures $22 Million Settlement for Former Stockholders

  On April 2, 2020, the Delaware Chancery Court approved a $22 million settlement on behalf of former stockholders of KCG Holdings, Inc. in connection with KCG’s acquisition by Virtu Financial, Inc. on July 20, 2017. As a result of the settlement, KCG stockholders received a significant improvement on the $20.00 per share transaction consideration.

  The settlement followed Kessler Topaz first securing expedited relief for KCG stockholders in the summer of 2017, before the stockholder vote on the transaction. Kessler Topaz challenged the negotiation process and asserted that KCG’s largest stockholder, Jefferies LLC, had reached an agreement with Virtu to support the acquisition in violation of Delaware’s anti-takeover statute. To resolve the expedited claims, the defendants agreed to modify the stockholder vote to seek approval of the transaction by a 66 2/3% supermajority vote of KCG stockholders, excluding Jefferies, and issued significant additional disclosures concerning the negotiation process.

News

- September 22, 2017 - Facebook and Founder Mark Zuckerberg Capitulate To KTMC On Eve Of Trial