Irreconcilable Differences: Director, Manager, and Shareholder Conflicts in Takeover Transactions

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Takeover transactions involving directors, managers, and shareholders are rife with conflicts. These conflicts can be stark, as in a freeze-out or management buy-out, but they can also be more subtle. Management can be requested to remain part of the management group, a so-called management buy-in. A controlling shareholder can receive a differential benefit in a takeover. Directors and management can skew the takeover process to preferred bidders through control of the sale process and negotiation of acquisition agreement lock-ups. From a buyer's perspective, directors can structure the takeover to further entrench themselves.

The Delaware courts have tackled many of these issues lately. Recent opinions have addressed the appropriate standard to govern judicial review of freeze-out transactions, differential treatment of controlling and noncontrolling shareholders, the parameters of accepted lock-ups in a takeover with a post-announcement market check, and issues arising from undue management influence in the management buy-out process. Delaware courts are also grappling with the appropriate remedy when proper procedures are not utilized in a takeover.

This conference, hosted by the Delaware Journal of Corporate Law, will bring together academics, judges, and practitioners to discuss the current Delaware case law on these issues, appropriate standards to regulate these conflicts, and related research.

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