AUTUMN 2020

Saxena White

EXCHANGE

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Saxena White Secures Historic Settlement in Wells Fargo Fake Account Scandal

In September 2016, Wells Fargo admitted to a long-running scheme that *The Wall Street Journal* dubbed "the scandal of the year": for over a decade, Wells Fargo employees across the country created millions of fake bank and credit card accounts on behalf of the bank's customers without their knowledge or consent. These employees were coerced into these fraudulent practices and a variety of other improper sales tactics in order to meet unreasonably high sales quotas and to avoid severe employment penalties—including termination—imposed by the bank's management. To resolve regulatory actions stemming from this scheme, Wells Fargo agreed to settlements in September 2016 with the U.S. Consumer Financial Protection Bureau, the Office of the Comptroller of the Currency, and the Los Angeles City Attorney, and announced that fines of more than $185 million had been imposed on Wells Fargo for the bank's misconduct.

Shortly after this fraudulent conduct came to light, Saxena White initiated a landmark shareholder derivative action in the United States District Court for the Northern District of California, *In re Wells Fargo & Company Shareholder Derivative Litigation*, Case No. 3:16-cv-05541 (N.D. Cal.) on behalf of the City of Birmingham Retirement and Relief System—a long-term shareholder of Wells Fargo. By proceeding under a *Caremark* duty of oversight theory (what has been referred to as "the most difficult legal theory of corporate law"), the shareholder derivative action sought to hold Wells Fargo's management and its Board of Directors accountable for their breaches of fiduciary duties and other violations of state and federal law stemming from the illicit account creation scheme. Over considerable competition from the top law firms in the industry, the Court selected Saxena White and its co-counsel to lead this high-profile case, noting the superior quality of Saxena White's representation and its strong track record of success in shareholder representative litigations across the country.

Over the ensuing three years, Saxena White vigorously prosecuted the action alongside its co-lead counsel. In particular, immediately after its appointment, Saxena White conducted a thorough investigation of the relevant claims, including: interviews of numerous former Wells Fargo employees who recounted the

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A Note to Our Clients & Friends

September 18th marked the passing of a true American hero, Supreme Court Justice Ruth Bader Ginsburg. As eloquently stated by *New York* magazine author Irwin Carmon in a moving tribute, "Only someone so stubborn and single-minded, someone so in love with the work, could have accomplished what she did — as a woman, survived discrimination and loss; as a lawyer, compelled the Constitution to recognize that women were people; as a justice, inspired millions of people in dissent."[1]

> "Real change, enduring change, happens one step at a time."
>
> *- As quoted in "Notorious RBG"*

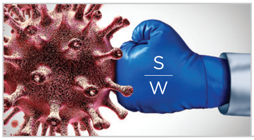
RBG paved the way for millions of American women following in her footsteps. It strains credulity to think that when she was in law school, the Dean of Harvard Law School asked the nine women in the class to stand up and justify why they were taking those places at the law school from men.

[1] https://nymag.com/intelligencer/2020/09/the-glorious-rbg.html

RBG was also a personal hero and inspiration to me as a young law student and then lawyer. She grew up in Brooklyn a few miles away from my home. Reading her oral arguments and her opinions, I was inspired by her intelligence, her preparation, and her tenacity. No jurist has left such an indelible mark on American history – her opinions impacted gender equality, civil rights, reproductive rights, civil procedure, and everything in between. She was not afraid to take unpopular positions, and her dissents were legendary. As she articulated in an interview with Bill Maher, "Dissents speak to a future age. It's not simply to say, 'my colleagues are wrong and I would do it this way,' but the greatest dissents do become court opinions." RBG's opinions reflect an underlying optimism that widespread societal change is not only possible but inevitable – an optimism that will be sorely missed. As Professor Laurence Tribe from Harvard Law School aptly stated: "The Constitution's heart aches at Ruth Bader Ginsburg's passing."

RIP RBG. For a woman so small in stature, you sure have left us some pretty big shoes to fill.

Maya Saxena



COVID-19 Support

We are committed to helping those who help others. Behind each fund we represent, there are people on the front lines who are impacted by the current COVID-19 crisis. We are highly involved in our clients' communities and are working to support them during this pandemic.

When the pandemic first hit in the spring of 2020, we immediately reached out to our vendors and partnered with another law firm to purchase and donate PPE. We started in Michigan, where supplies were scarce, and officers were dying while trying to save others. Working with Michigan Attorney General Dana Nessel, we identified cities that were most in need and donated more than 3,500 face masks, 3,000 plastic face shields, and hundreds of individual pocket-sized hand sanitizers. We also sent supplies to clients in other hard-hit states like Georgia, Oklahoma, and Mississippi. Our biggest PPE donations were closer to home, and we felt fortunate that we could provide these necessary and hard to find supplies to clients around the state of Florida. Our firm also expanded its community support efforts to include food and supplies to essential workers, and when we learned of a local police officer who tested positive, we scheduled in-home meal delivery service to the officer and his family while in quarantine.

We are living in uncertain times, but one thing is for certain – our commitment to our clients, their families, and the communities they serve.

HIGH RETURNS & HIGH ANXIETY

Can Institutional Investors Reshape American Corporate Governance?

Written by
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With the rise of index funds, exchange traded funds, and 401(k) retirement plans in recent years, large institutional investors have enjoyed enormous inflows of capital and have become, by far, the most significant shareholders in the country. Indeed, institutional investment firms like BlackRock, Vanguard, and Fidelity now control over 75% of the shareholder voting power in American corporations.[1] Traditionally, these institutional shareholders have been passive investors, doing little to pressure corporate leaders and instead rubberstamping management's plans.[2] But recent pronouncements from several powerful corners of the business world, from the CEO of BlackRock to the former Chief Justice of the Delaware Supreme Court, may be signaling a shift in the role that these investors, and the companies that they invest in, play in our society.

In his January 2020 annual letter to the chief executives of the world's largest companies, BlackRock CEO Laurence Fink announced that his firm would make investment decisions with environmental sustainability as a core goal.[3] "The evidence on climate risk is compelling investors to reassess core assumptions about modern finance," Fink wrote in the letter, and further stated that BlackRock would begin to exit certain investments that "present a high sustainability-related risk," like coal producers.

This announcement was previewed in Fink's groundbreaking January 2018 annual letter, which contained a simple yet radical message: companies must not only deliver financial performance to their shareholders but must also make a positive contribution to society.[4] Without this sense of purpose, according to Fink, companies "will succumb to short-term pressures to distribute earnings, and, in the process, sacrifice investments in employee development, innovation, and capital expenditures that are necessary for long-term growth."

Blackrock's message is a reaction to several different narratives. First, Fink's January 2018 letter recognized that, though equities have enjoyed an extraordinary run in the current bull market, "popular frustration and apprehension about the future simultaneously reached new heights. We are seeing a paradox of high returns and high anxiety." In short, American capitalism is not working for much of our population, with slow wage growth, rising automation, outsourcing, and climate change threatening America's future. Second, governments have failed to adequately address these challenges, with the result being an increasing reliance on the private sector to step up. Third, BlackRock's fiduciary responsibility has been transformed by the increasing use of index funds. In its actively managed funds, BlackRock can sell the securities of a company if it is skeptical of that company's strategic direction. But with its index funds, as long as that company remains in the relevant stock index, BlackRock can't express its disapproval by selling the company's securities. For this reason, index investors are the ultimate long-term investors, and BlackRock, which is doubling the size of its "investment stewardship" team, intends to engage with companies in a year-round conversation about improving long-term value.

Fink's letter calls for companies to publicly articulate their strategic framework for long-term value creation and explicitly affirm that the plan has been reviewed by the board of directors. And BlackRock believes that ESG (environmental, social, and governance) factors are important for long-term value creation: "A company's ability to manage environmental, social, and governance matters demonstrates the leadership and good governance that is so essential to sustainable growth, which is why we are increasingly integrating these issues into our investment process."

Not to be outdone, in August 2019 the Business Roundtable, a non-profit whose members are the CEOs of major U.S.

[1] Leo E. Strine, Jr., "Toward Fair and Sustainable Capitalism," Discussion Paper No. 1018, Harvard Law School (2019).
[2] Andrew Ross Sorkin, "BlackRock's Message: Contribute to Society, or Risk Losing Our Support," *The New York Times* (Jan. 15, 2018).
[3] Andrew Ross Sorkin, "BlackRock CEO Larry Fink: Climate Crisis Will Reshape Finance," *The New York Times* (Jan. 14, 2020).
[4] https://www.blackrock.com/hk/en/insights/larry-fink-ceo-letter.

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companies, released its "Statement on the Purpose of a Corporation."[5] The statement outlined a modern standard for corporate responsibility, shifting from the so-called Friedman Doctrine of shareholder primacy to a stakeholder model of corporate governance. The Friedman Doctrine, named after the influential University of Chicago economist Milton Friedman, holds that a corporation's only responsibility is to its shareholders, a view that has held tremendous sway since

the 1970s. Under this free market view, a pharmaceutical company that exponentially increases drug prices isn't engaged in price gouging but is instead delivering value to shareholders. While the Business Roundtable had officially endorsed shareholder primacy since 1997, its updated view is that shareholder value isn't everything. The one-page statement, signed by the CEOs of 181 companies, including Apple, American Express, Amazon, and American Airlines (and that's just a few of the A's), stated, "We believe the free-market system is the best means of generating good jobs, a strong and sustainable economy, innovation, a healthy environment and economic opportunity for all." The group committed to serving the purposes of all of its stakeholders: delivering value to customers, investing in employees, dealing fairly and ethically with suppliers, supporting communities, as well as generating long-term value for shareholders.

This reframing was applauded by many, including legendary corporate advisor Martin Lipton of Wachtell, Lipton, Rosen & Katz, an attorney who revolutionized corporate defense work in the 1980s. But others saw the statement, which was almost entirely lacking in details, as merely a public relations stunt. Indeed, who can really argue that a company should not deliver value to its customers, or that a company should deal unethically with its suppliers? The Council of Institutional Investors (CII), an association of pension funds and other employee benefit funds, expressed concern with the Business Roundtable's announcement, stating that it "undercuts notions of managerial accountability . . . . Accountability to everyone means accountability to no one." While the CII welcomed the focus on long-term value for shareholders, it stated, "It is government, not companies, that should shoulder the responsibility of defining and addressing societal objectives with limited or no connection to long-term shareholder value."

So what should be the government's role in enhancing corporate governance? How much regulation is too much? Into this debate stepped the outgoing Delaware Chief Justice Leo E. Strine Jr., a highly influential jurist who, as the former Chancellor of the Delaware Court of Chancery, has written some of the most important corporate law opinions in recent decades. Strine has also written dozens of papers and law review articles over the years on a wide range of topics, and on the eve of his retirement from the bench, he published perhaps his most comprehensive (and controversial) views on how American corporations should be governed in the future.

In "Toward Fair and Sustainable Capitalism,"[6] Strine faults institutional investors for failing to align the interests of corporations with the human beings whose capital they control. Noting that "corporations are societally chartered institutions of enormous importance and value," Strine proposes "a new accountability system that supports wealth creation with a system of enlightened capitalism." His proposals are grouped into five categories:

- Enhancing disclosures for companies on environmental, social, and governance matters. More specifically, Strine's plan would require annual corporate reporting on ESG issues; would require the boards of large, societally important companies to create workforce committees to address workforce issues at the board level; and would tweak accounting rules to allow investments in human capital to be treated like other long-term investments, thus encouraging companies to invest in their workers.
- Strengthening institutional investors' obligation to promote sustainable, long-term growth. Specific proposals include incentivizing proxy advisor firms to develop voting recommendations tailored to long-term index investors, and closing loopholes which benefit activist hedge funds focused on short-term returns.
- Reforming the corporate electoral system. Specific proposals include changing the "say-on-pay" voting system from an annual vote to every four years, with a focus on sustainable, long-term corporate growth and long-term pay contracts.
- Updating the tax system. Specific proposals include changing the holding period for long-term capital gains from one year to five; establishing a financial transaction tax; closing the carried interest loophole; and creating an infrastructure, innovation, and human capital trust fund.

[5] https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans
[6] See footnote 1.

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Exxon Escapes First of Many Climate Change Investor Lawsuits

A Sign of Things to Come?

Written by
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Last December, New York state court judge Barry R. Ostrager absolved ExxonMobil Corporation of charges brought by the State of New York accusing the company of misleading shareholders about the financial impact of climate change. The decision brought an end to a years-long saga between Exxon and the state, which began investigating the company in 2015. The case presented a rare example of a securities fraud action taken all the way to a trial verdict, and the decision in favor of Exxon holds several implications for the future. Though Exxon still faces multiple shareholder actions concerning climate change (as similar lawsuits were filed in the wake of New York's investigation), Judge Ostrager's decision is an ominous sign for the plaintiffs in those cases, especially considering the company evaded liability under one of the nation's most investor-friendly securities laws.

Given the politically charged nature of the claims, the New York Attorney General's lawsuit was hotly contested and shrouded in controversy. Before New York filed its complaint, Exxon filed several lawsuits to halt investigations by the New York and Massachusetts attorneys general, claiming that the probes were part of a conspiracy between regulators and environmental groups. Exxon ultimately produced millions of pages of documents to regulators as the company's attempts to block the investigations failed.

New York's lawsuit alleged that Exxon fraudulently downplayed the risks that climate change would have on the company's business operations. Exxon had told investors that the company addressed climate change by utilizing a proxy cost of carbon, which was aimed at quantifying all possible regulations that countries around the world may enact to suppress the use of oil and gas. Unbeknownst to investors, however, Exxon's financial statements did not actually take these costs into account. In determining the value of Exxon's reported assets, the company used a separate, undisclosed set of proxy costs that was lower than the costs disclosed to the public. By representing that the company was applying higher projected carbon costs than it was actually using, Exxon made its assets appear more valuable than they really were. The state claimed that Exxon built "a Potemkin village to create the illusion that it had fully considered the risks of future climate change regulation and had factored those risks into its business operations." The state sought up to $1.6 billion in damages, aiming to establish a restitution fund for Exxon shareholders that suffered losses after revelations of the company's conduct caused its stock price to decline.

The trial lasted twelve days, and the court heard testimony from eighteen witnesses. Among the witnesses was former CEO and Secretary of State Rex Tillerson, who took the stand for three and a half hours. Tillerson testified that the state's claims were "false" and asserted that Exxon would have been "irresponsible" to disregard the implications of climate change.

During the trial, New York experienced several setbacks. First, counsel for the state drew Judge Ostrager's ire when, at the end of the fourth day of trial, he was caught flat-footed without a witness to present, causing the judge to threaten to cut the state's case short. Next, the state's accounting expert mistakenly referred to Exxon as "Enron" at least half a dozen times, frustrating the judge and Exxon's counsel. Beyond the Enron-Exxon gaffe, Judge Ostrager displayed skepticism of the expert, describing his testimony as "rambling." Finally, during closing arguments, the state unexpectedly dropped two out of the four claims asserted in its complaint. The discarded claims, for common law fraud and equitable fraud, required the state to prove Exxon's fraudulent intent. By voluntarily dismissing these claims, the state essentially conceded it lacked the evidence to prove them, foreshadowing the final result.

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Saxena White Achieves
$50 Million Settlement Against HD Supply

On July 21, 2020, the U.S. District Court for the Northern District of Georgia approved a landmark $50 million settlement achieved by Saxena White in a securities class action against HD Supply Holdings, Inc. and its CEO and CFO. The settlement constitutes the fourth largest securities class action ever achieved in the district, and the second largest in the last ten years.

In the spring and summer of 2016, commercial distributor and Home Depot spin-off HD Supply experienced debilitating supply chain disruptions that crippled its Facilities Maintenance business, which distributes products for multifamily housing, hospitals, hotels, government, and other facilities. HD Supply's distribution centers became clogged with inventory, its inventory tracking systems collapsed, and the company struggled to fill orders correctly and on-time, damaging its sales and profit margins and sending customers fleeing to competitors. But in November 2016, HD Supply's executives publicly assured investors that their supply chain recovery was "on track," and by February 2017, they insisted the problems were "behind us" and that the supply chain was "in as good a condition as it's ever been."

Behind the scenes, however, HD Supply's executives knew the picture was very different from the one they presented to shareholders. HD Supply's supply chain was dysfunctional and needed a massive, multi-year overhaul that would cost tens of millions of dollars and create an enormous drag on sales and profitability for years to come. With full knowledge of these problems, HD Supply's CEO, Joseph DeAngelo, quietly exited his holdings in company stock, dumping nearly all of his HD Supply stock—and virtually every share of stock he could sell under company policy—for a total of $53 million, over the course of one week.

Just two months after DeAngelo dumped his HD Supply stock, on June 6, 2017, HD Supply announced disappointing financial results and reduced guidance for its Facilities Maintenance business, and made a surprise announcement that it would "invest" tens of millions of additional dollars in its supply chain. The announcement revealed to the market that, in fact, the supply chain problems were not "behind" the company but would continue to harm financial results for the foreseeable future. In response to these disclosures, HD Supply's share price fell more than 20%, wiping out a total of $1.7 billion in market capitalization.

Shortly after this fraudulent conduct came to light, Saxena White initiated a federal securities class action in the United States District Court for the Northern District of Georgia, *In re HD Supply Securities Litigation*,[1] with three institutional investors—City Pension Fund for Firefighters & Police Officers in the City of Miami Beach, Pembroke Pines Pension Fund for Firefighters and Police Officers, and Hollywood Police Officers' Retirement System—as proposed lead plaintiffs to represent the class. The court selected these three institutions and their chosen counsel, Saxena White, to represent the class, over several other institutional and individual investors and their counsel.

Over the more than two years that followed, Saxena White vigorously prosecuted the action on behalf of the class. Saxena White first initiated an in-depth investigation of the fraud, interviewing numerous high-ranking former HD Supply employees and learning critical, previously non-public information underlying the fraud. The investigation culminated in Saxena White's 79-page Amended Complaint, which plaintiffs then successfully defended against defendants' motion to dismiss. In the ensuing discovery process, Saxena White reviewed hundreds of thousands of pages of documents produced by defendants and several key third parties. Saxena White further fully briefed their motion to certify the class and engaged in two full-day mediation sessions before reaching a resolution of the case.

Saxena White's extensive efforts culminated on July 21, 2020, when Judge Eleanor L. Ross approved a $50 million settlement for the class—a substantial settlement reflecting the fact that defendants understood that Saxena White and its co-lead counsel were determined and willing to prosecute these claims through trial. This outstanding recovery is a testament to the commitment and dedication of Saxena White's attorneys to hold HD Supply and its officers accountable for materially misleading HD Supply's public shareholders. Moreover, the hard work, dedication, and commitment of the institutional investors that served as co-lead plaintiffs over more than two years made it possible to achieve this outstanding result for shareholders nationwide.

[1] Case No. 17-CV-02587-ELR (N.D. Ga.).

New Senior Derivative Action Settles for $53 Million

Described as a "landmark" settlement by Law360, on July 31, 2019, the Delaware Court of Chancery approved a $53 million settlement in the shareholder derivative action captioned *John Cumming v. Wesley R. Edens, et al*. The suit targeted New Senior Investment Group's $640 million acquisition of a portfolio of senior living properties owned by an affiliate of its investment manager, which, according to Plaintiff's experts, damaged New Senior by over $100 million. The settlement is the largest derivative action settlement as a percentage of market capitalization to date in Delaware and is one of the top ten derivative action settlements in the history of the Court of Chancery. Saxena White served as co-lead counsel in this case.

New Senior is a publicly traded real estate investment trust (a "REIT") specializing in senior living properties. The company was managed (and partially owned) by Fortress Investment Group, a global investment management firm. As New Senior's manager, Fortress dominated the company's board and its executive team: Fortress co-founder Wesley Edens was New Senior's Chairman, and Fortress managing director Susan Givens serves as New Senior's CEO. Though these two directors had a fiduciary duty to act in the best interest of New Senior, their long-standing ties to Fortress meant that their loyalties were divided. This management structure exposed New Senior to the risk that these insiders would manipulate the company to serve Fortress's interests. And that is exactly what happened.

In June 2015, the board of directors of New Senior approved the purchase of a portfolio of 28 senior-living properties for $640 million from Holiday Retirement. The majority owner of Holiday Retirement was none other than Fortress, representing a classic self-dealing transaction. With New Senior motivated to get the lowest price possible for the transaction and Fortress seeking the highest price possible, Edens and Givens were obviously conflicted. In situations like these, a properly functioning board of directors should appoint a special committee of independent directors to lead the negotiations. Here, not only did the special committee allow Givens to control the negotiations, but the special committee itself had a number of disabling conflicts of interest. Every member of the special committee had ties to Edens or Fortress which called into question their independence. For example, one board member was a co-owner of the Milwaukee Bucks with Edens, while another worked for a non-profit that had received substantial donations from Edens and his family. Based on these conflicts, the court ruled in its order denying defendants' motion to dismiss that the plaintiff had "pled sufficient facts to raise a reasonable doubt regarding the disinterestedness and independence of the New Senior board."

While the complaint alleged that the $640 million price was too high, even more damaging to New Senior was a secondary public offering of New Senior stock, part of which was used to finance the transaction. The price of the secondary offering was set by a committee made up of the directors Edens and Givens, and their conflicts contributed to an offering that benefited Fortress while harming New Senior. The stock offering was priced at $13.75, a significant discount to its then-trading price of $15.25, and the market reacted poorly to the offering, with the company's shares falling over 7%. Fortress was incentivized to direct New Senior to issue an excess amount of stock, as Fortress received a management fee of 1.5% of New Senior's gross equity (which was substantially increased by the secondary offering). And in fact, Fortress's management fees increased from $8.5 million in 2014 to $14.3 million in 2015.

On February 20, 2018, Vice Chancellor Joseph R. Slights denied in its entirety the defendants' motion to dismiss, concluding, "It can be reasonably inferred from these allegations that New Senior's directors engaged in an unfair process when negotiating and approving the challenged transactions."[1]

Discovery followed, which included the review of more than 800,000 pages of documents, 16 depositions, and the filing of six motions to compel by the plaintiff. Following fact discovery, the parties exchanged ten expert reports related to the damages from the real estate portfolio purchase and the secondary stock offering. After a mediation and extensive follow-up negotiations, the parties agreed to settle the litigation in exchange for the payment of $53 million in cash to New Senior. The settlement also included valuable corporate governance reforms, including the board's agreement to approve and submit to New Senior's stockholders for adoption at the 2019 annual meeting amendments to New Senior's bylaws and certificate of incorporation which would (a) provide that directors be elected by a majority of the votes cast in any uncontested election of directors, and (b) eliminate New Senior's staggered board, so that all directors are elected on an annual basis.

In his remarks at the final settlement hearing on July 31, Vice-Chancellor Slights called the settlement "impressive" and further described counsel's efforts as "hard fought, but fought in the right way to reach a productive result."

[1] *Cumming on behalf of New Senior Inv. Grp., Inc. v. Edens,* No. CV 13007-VCS, 2018 WL 992877, at *24 (Del. Ch. Feb. 20, 2018).

Recent Trends in Securities Fraud Cases:

Corporate Spin-Offs and Environmental Liabilities

Written by
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In 2019, two new trends emerged in securities fraud class action filings. Several new cases involved the fallout from corporate spin-offs, while other cases involved misrepresentations relating to environmental liabilities. And some cases even involved both.

First, there has been a flurry of actions against companies that were spun off from larger, corporate parents, including cases against Covetrus, Inc., Resideo Technologies, Inc., and the Chemours Company. Covetrus, based in Maine, was formed in 2019 after medical and dental supply distributor Henry Schein spun-off its Animal Health segment and merged it with private veterinary technology company Vets First Choice. Resideo Technologies, headquartered in Texas, was created in 2018 when Honeywell spun off its traditional climate control and security business. And Delaware-based Chemours was spun off from DuPont in 2015 from what had been that company's Performance Chemicals division.

These cases share a number of similarities. All three companies lacked a traditional initial public offering of shares, as all or the bulk of shares in the new companies came as share dividends to shareholders of the parent companies. In each case, the parent saddled the spun-off company with debt in order to pay a large, one-time dividend to the parent. Covetrus paid Henry Schein nearly $1.2 billion, Resideo paid Honeywell nearly $1.2 billion, and Chemours paid Dupont a hefty $3.9 billion. Thus, each spin-off functioned as a back-door sale of a corporate asset. Additionally, Honeywell and DuPont forced Resideo and Chemours respectively into long term agreements to indemnify the parent for a portion of the parent's environmental liabilities.

The plaintiffs in each case alleged that these spin-offs misrepresented their financial health and sustainability to investors. In the Covetrus case, the plaintiff alleged that Covetrus understated the integration costs of the two components of the new company and overstated its capabilities with regard to inventory management and supply chain services. Resideo was alleged to have assured investors that it would meet 2018 guidance at the high end, that it would achieve an organic growth rate of over 4% in 2019, and that operational disruptions related to the spin-off were resolved, all while knowing these to be untrue statements. The complaint against Chemours alleged that the company misrepresented that it was accurately reserving for its liabilities, that it was well capitalized, and that the possibility of incurring environmental liabilities greater than its accruals was "remote."

Executive departures and precipitous stock declines were also common themes in these cases. Covetrus's shares began trading at $42.96 in February 2019 but had collapsed to under $14 just six months later, including a $9 drop after the company announced the departure of its first CEO (and later its CFO). Resideo's shares began trading in October 2018 at $28 but had crashed to $9.50 not even a year later. That company also announced the departure of its first CEO and CFO barely a year after the spin-off. And after reaching a high in October 2017 of over $57, Chemours' share price had fallen to under $12 by August 2019 after a series of disclosures that it faced much higher environmental liabilities than it had previously disclosed.

A second major trend in 2019 were cases claiming that companies had misrepresented environmental liabilities and safety standards. Early in the year, investors sued Brazil-based mining company Vale S.A. after that company's tragic January 2019 mine collapse near Brumadinho, Brazil (discussed in the Exchange's Spring 2019 newsletter). Vale's ensuing share price drop prompted shareholders to assert that the company had misrepresented its sub-standard mine safety inspection and

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sustainability records. In August, St. Paul, Minnesota-based conglomerate 3M was sued by investors who alleged that the company failed to adequately warn about risks that 3M could face legal liability from the decades-long manufacture and use of per-and polyfluoroalkyl substances ("PFAS"). PFAS were used to increase the surface tension of water, allowing for better sealing and water proofing of hundreds of items, and were used in industrial and consumer products like Scotchguard, Teflon, and Gore-Tex. But these chemicals have since been increasingly linked to a number of cancers, deformities, and auto-immune disorders, leading to scores of lawsuits. After a settlement with 3M in early 2018, the Minnesota Attorney General released internal 3M emails and memos revealing that the company was aware of the harmful effects of PFAS years before they were phased out in 2002. In April 2019, 3M announced a new $235 million reserve for PFAS litigation exposure, and in May 2019, New Jersey and New Hampshire sued 3M over PFAS contamination, joining several other states that had already sued. The securities fraud plaintiff alleged that 3M knew it was potentially facing billions in liabilities for PFAS but failed to adequately disclose these liabilities or make sufficient reserves.

Like 3M, DuPont had employed PFAS materials for decades. The complaint against Chemours alleges that DuPont spun-off Chemours to unload historical environmental liabilities relating to PFAS through an indemnity agreement it had foisted on Chemours, requiring that company to reimburse DuPont for most of its existing and future environmental liabilities. Despite having an executive suite stocked with former long-term DuPont managers—who were presumably well apprised of the full extent of DuPont's PFAS liabilities—Chemours assured investors that its liabilities were "well understood and well managed." In each quarterly and annual SEC filing during the class period, Chemours even provided accruals for environmental liabilities and potential maximum labilities, which implied maximum liabilities of roughly $800 million to $1.5 billion depending on the period.

At an investor conference in May 2019, an analyst stated that Chemours in fact faced $4-6 billion in environmental labilities. The next month, a Delaware court unsealed a complaint filed by Chemours against DuPont in which Chemours is seeking a declaration that its indemnity liability is capped or that DuPont return the $3.9 billion dividend Chemours had paid at the time of the spin-off. In its suit, Chemours made several incendiary claims against its former parent, including that DuPont deliberately sought to "bury Chemours in liability," that DuPont forced a separation agreement on Chemours without any negotiation (such that "the use of the word 'Agreement' is simply a farce"), and that overall the result was "an extreme transaction with an abnormally skewed distribution of liability." But most shockingly, Chemours disclosed that it faces a number of additional environmental liabilities, which analysts totaled at $2.5 billion, far beyond the maximums disclosed in its SEC filings. It wasn't until August that Chemours belatedly updated its potential environmental liabilities to reflect the potential $2.5 billion, having only the day before drastically cut its full year expected free cash flow from $550 million to $100 million. The complaint against Chemours asserts that the company and its executives repeatedly and knowingly understated these liabilities for years.

While these spin-off and environmental liability securities fraud actions reflect new trends in case filings, these realities have been present in corporate America for decades. Corporate cost-cutting and environmental destruction have a price, and when investors feel the pain of corporate misdeeds, the companies and their executives will be called to answer. No doubt, the litigation of these cases will be closely watched by investors, corporate executives, and attorneys throughout 2020 and beyond.

PATTERSON SECURITIES LITIGATION:

Plaintiffs Overcome Defendants' Motion to Dismiss

On September 10, 2019, a federal court in Minnesota partially denied the defendants' motion to dismiss in *Plymouth County Retirement System v. Patterson Companies. Inc., et al.,*[1] a securities fraud class action against dental product distributor Patterson Companies, Inc. and its former CEO. Saxena White is serving as co-lead counsel for the plaintiffs.

The amended complaint in this action alleges that Patterson, one of the nation's only full-service distributors of dental products, engaged in a price fixing conspiracy with one of its chief rivals, Benco Dental Supply. In the years leading up to the class period, Patterson faced significant pricing pressure from the emergence of organized groups of independent dentists that banded together (through Group Purchasing Organizations or "GPOs") to negotiate discounts from Patterson and other distributors. Patterson's response to the growing threat that GPOs posed to its business was to enter into an unlawful agreement with Benco—orchestrated by the senior-most officers of the companies—to freeze out GPOs from the dental supply industry. Significantly, the FTC recently determined—after a multi-year investigation and a four-month trial featuring testimony from 65 witnesses and over 5,000 exhibits—that Patterson's agreement constituted an illegal conspiracy to "refuse to offer discounted prices or otherwise negotiate with [GPOs]" in violation of federal antitrust laws.

Patterson's fraudulent scheme to eliminate GPOs from the dental supply industry began in February 2013 when upper management at Benco and Patterson exchanged assurances that each company would refuse to offer discounts to or compete for the business of buying groups. Patterson employee communications cited in the FTC's decision and the amended complaint confirm that the conspiracy to boycott GPOs was well-known throughout the company and continued for years. But in its public statements, the defendants represented the opposite: that Patterson "fully complie[d] with the antitrust laws" and actively "competed" with Benco. Indeed, the defendants assured investors that Patterson had systems in place to "[a]void even the appearance of improper or collusive conduct."

The truth of the defendants' illegal conspiracy was revealed to the market in three disclosures, each resulting in significant stock price declines that wiped out hundreds of millions of dollars in Patterson's market capitalization. Details about the fraud began to emerge on November 22, 2016, when the company revealed a 2.5% decrease in consumable dental supplies and a reduction in annual guidance by almost 15%. Then, in early 2018, the FTC announced that it had filed its antitrust complaint against Patterson. Three weeks later, the company announced a dramatic decline in earnings of 26% and the resignation of its CFO.

On October 16, 2019, the FTC issued its 250-page decision holding that the defendants' misconduct was "so plainly anticompetitive" and lacking in "any redeeming virtue" that it was "unlawful per se" under the federal antitrust laws. Patterson reached a settlement with the FTC shortly thereafter.

In adopting the magistrate's report and recommendation on defendants' motion to dismiss, Judge Michael J. Davis held that the amended complaint alleged "a long-running scheme at Patterson, concocted in the upper echelons of corporate management, to collude with its direct competitors to stifle new entrants to the market to protect its artificially inflated prices charged by reason of unorganized buyers with little power." The case is now in the discovery phase.

For more information on the *Patterson* case, please contact Lester Hooker at lhooker@saxenawhite.com.

[1] Case No. 18-cv-00871 (D. Minn.)

HIIQ Securities Litigation:

Plaintiffs Overcome Defendants' Motion to Dismiss

On November 4, 2019, a federal court in Florida denied in full the defendants' motion to dismiss in *Keippel v. Health Ins. Innovations, Inc., et al.*,[1] a securities fraud class action against Health Insurance Innovations, Inc. ("HIIQ") and certain of its top executives. Saxena White is serving as lead counsel for the plaintiffs, Oklahoma Municipal Retirement Fund and City of Birmingham Retirement and Relief System.

HEALTH™ INSURANCE INNOVATIONS

HIIQ sells short-term health insurance products and limited medical plans that do not qualify as comprehensive health insurance under the Affordable Care Act ("ACA"). To sell its products, HIIQ contracted with a distributor called Simple Health, which employed classic bait-and-switch techniques whereby unwitting consumers were deceived into believing they were purchasing comprehensive medical insurance, but in reality, were sold HIIQ's limited health plans. While HIIQ was reliant on Simple Health's fraud to drive sales, the company's top executives falsely represented to investors that HIIQ had best-in-class compliance standards and experienced "incredibly low" rates of consumer complaints. At the same time, HIIQ executives enriched themselves by engaging in insider trading, selling millions of dollars worth of their own HIIQ shares while the company's shares were artificially inflated.

Simple Health's fraud was aimed at deceiving consumers at every step of the sales process. The fraud began with a series of "lead generation" websites designed to mislead consumers into believing they were purchasing comprehensive health insurance. Simple Health paid these lead generators to solicit consumers using search terms associated with the ACA, such as "Obamacare." Then, Simple Health's telemarketers sold HIIQ products using carefully crafted sales scripts that were reviewed and edited by HIIQ. Regulators stated that "the intent of the scripts is unmistakable—to leave consumers with the impression that they were purchasing comprehensive health insurance or its equivalent."

Internal emails demonstrated that HIIQ and its management was fully aware of Simple Health's fraud and that HIIQ experienced a flood of customer complaints about deceptive practices. For example, HIIQ executives acknowledged that "the incorrect information being given by Simple Health to members is getting out of control." Another email noted that HIIQ's customer service representatives were "getting bombarded with calls" from consumers complaining that Simple Health misrepresented HIIQ's policies as comprehensive health insurance.

Investors began to learn the truth about HIIQ when the Federal Trade Commission announced an enforcement action aimed at shutting down Simple Health's operations. Findings in the FTC's action have confirmed that Simple Health's business "was never legally viable and cannot be viable in the future" because "deception permeated [Simple Health's] entire business relationship with their customers." The FTC's

enforcement action was the first in a series of corrective disclosures that revealed HIIQ's active role in Simple Health's fraud, leading to a steep decline in HIIQ's share price. All told, HIIQ's shares fell from $63.13 on October 1, 2018 to $23.85 on April 12, 2019—more than 60%—wiping out over $550 million in market cap.

In addition to damaging shareholders, Simple Health's deceptive practices resulted in substantial unpaid medical bills for tens of thousands of consumers. These consumers paid for what was marketed as comprehensive health insurance, believing their HIIQ plans would cover necessary medical expenses. In reality, as alleged in the complaint, consumers received relatively worthless short-term policies that failed to provide the coverage they were promised and often couldn't be used for healthcare services typically covered by health insurance. In many cases, consumers didn't realize they were essentially uninsured until after incurring major medical expenses.

In denying the defendants' motion to dismiss, Judge William F. Jung held that the complaint "alleges an elaborate scheme to deceive consumers in which Defendants were not only involved but, to a great extent, orchestrated." The case is now in the discovery phase.

For more information on the *HIIQ* case, please contact Brandon Grzandziel at bgrzandziel@saxenawhite.com.

[1] No. 8:19-cv-0421 (M.D. Fla.)

The Ups and Downs of IPOs in 2019

Written by
Scott Koren
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2019 was a tough year for some highly publicized initial public offerings ("IPOs"). An IPO is when a company first offers shares of stock to the public, allowing a private company to raise capital from public investors and trade on a stock exchange. To begin the IPO process, a company will select an underwriter (typically an investment bank) which prepares and files the IPO documentation, markets and issues the company's shares, and, most importantly, ensures the sale of the full issue. Before a company's initial public offering, the SEC requires the company to file an S-1 registration statement, which includes a prospectus and filing information. If the S-1 registration statement or any other related documents contain false or misleading information, the company may be the target of lawsuits by shareholders who have suffered losses on their shares.

A few of the more disastrous IPOs of 2019 are summarized below and include the ride-sharing apps Lyft and Uber, a tele-dentistry service called Smile Direct Club, and an at-home interactive stationary bike company called Peloton. Shareholders have already brought class actions against Uber, Lyft, and Smile Direct for misstatements and omissions related to the registration statements and prospectuses for their IPOs.

Lyft began offering shares to the public through its IPO on March 29, 2019 at a price of $72.00 per share. Just over two weeks later, its shares had fallen to $57.00. A few weeks later, shareholders filed a class-action lawsuit[1] in the Northern District of California against Lyft and several of its executives. The complaint alleged that Lyft made false and misleading statements in its registration statement and prospectus related to domestic market share, safety issues surrounding its bike sharing program, and labor issues. The stock reached a low of $16.05 on March 18, 2020.

Uber offered their IPO in May 2019 at $45.00 per share. By August 5, the stock closed at $39.05 per share, representing a 13.2% decline from the IPO price. On October 4, 2019, a class-action complaint was filed in the Northern District of California against Uber on behalf of shareholders who purchased shares in connection with the IPO. The lead plaintiffs' amended complaint alleged that defendants' statements about Uber's business, operations, and prospects were materially false and misleading and/or lacked a reasonable basis because they failed to disclose that (1) at the time of the offering, Uber was rapidly increasing subsidies for customers' rides and meals in a bid for market share, which caused the company's sales and marketing expenses to swell; and (2) Uber was cutting (or planned to cut) costs in key areas that undermined the company's central growth opportunities.

Smile Direct Club offered their IPO in September 2019 at $23.00 per share. By the beginning of October, Smile Direct was trading at $12.94 per share, about 44% below the IPO price. A class action complaint[3] was filed on behalf of investors in the Eastern District of Michigan alleging that defendants' positive statements about the company's business, operations, and prospects, were materially false and/or misleading because Smile Direct failed to disclose to investors (1) that administrative personnel, rather than licensed doctors, provided treatment to the company's customers and monitored their progress; (2) that, as a result, the company's practices did not qualify as tele-dentistry under applicable standards; (3) that, as a result, the company was subject to regulatory scrutiny for the unlicensed practice of dentistry; (4) that the efficacy of the company's treatment was overstated; and (5) that the company had concealed these deceptive marketing practices prior to the IPO.

Peloton opened its IPO at $29.00 per share on September 26, 2019. After one month of trading, its shares had dropped to $22.40. To date, no shareholder class actions have been filed against Peloton, and the company's share price improved slightly over the holiday season. But Peloton is no stranger to litigation, having settled a $300 million lawsuit for copyright infringement in September 2019.

Not all IPOs fared poorly in 2019, however. A few big-name companies had successful IPOs, increasing their market capitalizations and delivering value to early investors. Some examples include Beyond Meat, Zoom Video Communications, and Turning Point Therapeutics. Beyond Meat was originally priced at $26, opened at $46, and currently trades around $140. Zoom Video listed at $26 and steadily increased from there, currently trading in the $400 range. And Turning Point currently trades around $73 after initially offering its shares at $18.

Although the 2020 stock market has been erratic due to the global coronavirus pandemic, well-known companies are still preparing for their IPOs. This will be a critical time for these companies, and potential investors should carefully review the companies' filings before investing.

[1] *In re Lyft Inc. Securities Litigation*, 4:19-cv-02690.
[2] *Stirratt v. Uber Technologies, Inc. et al.*, 3:19-cv-06361.
[3] *Andre v. SmileDirectClub, Inc., et al.*, 2:19-cv-12883.

 continued from page 1

bank's fraudulent practices, consultation with banking and corporate governance experts, and an extensive review of the publicly-available information concerning the misconduct of the bank's management and directors. The end product of this extensive investigation was a highly detailed, 181-page Amended Complaint that set forth defendants' numerous violations of state and federal law.

After the filing of the Amended Complaint, Saxena White defeated two rounds of motions to dismiss filed by several of the most prominent defense counsel in the country. *See Shaev v. Baker,* No. 16-CV-05541-JST, 2017 WL 1735573 (N.D. Cal. May 4, 2017); *In re Wells Fargo & Co. S'holder Derivative Litig.*, 282 F. Supp. 3d 1074 (N.D. Cal. 2017). Once in discovery, Saxena White obtained and reviewed over 3.5 million pages of documents from Wells Fargo, the individual defendants, and numerous third parties. Moreover, in an effort to preserve the valuable claims in the action, Saxena White also intervened in several parallel derivative actions pending in California state court and the Delaware Court of Chancery, successfully obtaining stays or dismissals of these actions—a significant achievement given that an adverse ruling in these parallel (and largely duplicative) cases could have been applied against Plaintiffs in the action, thereby posing an existential threat to the viability of the case. Saxena White also conducted extensive settlement negotiations spanning seven mediations over several months before two of the most prominent mediators in the country.

The culmination of these litigation and settlement efforts came in February 2019, when the parties to the action agreed to a historic $320 million settlement. *See In re Wells Fargo & Co. S'holder Derivative Litig.*, No. 16-CV-05541-JST (N.D. Cal. Feb. 28, 2019). The settlement included a $240 million cash component that was fully funded from Directors' and Officers' Insurance—a precedent-setting recovery that represented the largest insurer-funded monetary component of a derivative settlement in history by over $100 million; the second-largest overall cash recovery in a derivative action settlement in history; and by far the largest ever cash recovery in a *Caremark* case. This substantial amount reflects the fact that defendants understood full well that Saxena White and its co-lead counsel were determined and willing to prosecute these claims through trial.

In addition to the historic $240 million monetary component of the settlement, defendants also explicitly acknowledged that facts alleged in the action were "significant factors" taken into account by the company and its Board of Directors in implementing a series of remedial measures to prevent future wrongdoing. These measures included changes to top-level management and the composition of the Board, new and improved internal controls, a stronger risk management framework, expanded monitoring of company culture, and enhanced oversight functions. In addition, the Board reduced compensation for several senior officers and required others to forfeit past compensation. The parties agreed that the portion of the corporate governance reforms and the compensation clawbacks attributable to Co-Lead Plaintiffs' efforts had a combined value to Wells Fargo of $80 million—for a total settlement value of $320 million.

Judge Jon Tigar of the United States District Court for the Northern District of California granted final approval of the settlement on April 7, 2020. *See In re Wells Fargo & Co. S'holder Derivative Litig.*, No. 16-CV-05541-JST, 2020 WL 1786159 (N.D. Cal. Apr. 7, 2020). In the Court's Order, Judge Tigar found that the settlement achieved by Saxena White

"represents an excellent result for the shareholders," and that Plaintiffs and co-lead counsel "faced a great deal of risk" in successfully litigating what the Court described as "'possibly the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment.'" The Court also approved incentive awards of $25,000 each to the City of Birmingham Retirement and Relief System and the Fire & Police Pension Association of Colorado for their "significant time and effort on the litigation" as Co-Lead Plaintiffs, which the Court recognized were "substantially greater than the average lead plaintiff's" and were thus "justified and reasonable" given Co-Lead Plaintiffs' pivotal role in the action.

This outstanding recovery is a testament to the commitment and dedication of Saxena White's attorneys to hold Wells Fargo's directors and officers accountable for the misconduct they perpetrated on the bank and its shareholders—all of which significantly damaged one of America's largest financial institutions. The hard work, dedication, and commitment of the institutional investors that served as Co-Lead Plaintiffs over the better part of three years made it possible to achieve this outstanding result for shareholders nationwide. This case is a prime example of the vital role of institutional investors in actively leading important cases to ensure that officers and directors of publicly-traded companies meet their fiduciary obligations and comply with the federal securities laws. In so doing, these institutional investors ensure the integrity and proper functioning of the financial markets, while safeguarding the valuable investments of their constituents and other investors nationwide.

For more information on the *Wells Fargo* case, please contact Lester Hooker at lhooker@saxenawhite.com.

High Returns and High Anxiety... *continued from page 4*

- Curbing corporate power. Specific proposals include prohibiting companies from political spending without the consent of at least 75% of their shareholders, and restoring state sovereignty over the enforceability of forced arbitration clauses.

While Strine's Fair and Sustainable Capitalism Proposal is undeniably ambitious (overturn *Citizens United* anyone?), the adoption of any of these measures would be a step in the right direction.

In conclusion, it's hard to believe that the very nature and purpose of corporations is being openly debated by some of America's most powerful business leaders. But the pressures of American capitalism have forced executives to take a closer look at how their businesses fit into the country's future. Though corporate profits have hit record highs, the pay of the average American worker has stagnated, companies continue to offshore jobs, and climate change and environmental degradation have reached a tipping point. And while well-intentioned, it's hard to imagine that the Business Roundtable's one-page announcement on the pivot to stakeholder governance will result in any meaningful changes.

The fact is, businesses have rarely taken such major steps—which could materially lower profits in the short term—without a push from the government. But given the extreme polarization of our political system (and the near-paralysis of Congress), any major legislation on corporate governance is a near impossibility for the foreseeable future. Could a nudge from BlackRock, the world's largest asset manager, be the difference maker? "We will increasingly be disposed to vote against management and board directors when companies are not making sufficient progress on sustainability-related disclosures and the business practice and plans underlying them," Fink wrote in his January 2020 annual letter. Corporate leaders, govern yourselves accordingly.

Exxon Escapes... *continued from page 5*

Ultimately, Judge Ostrager held that the state failed to show that Exxon made any material misstatements or omissions that would mislead a reasonable investor. Based on the record before him, the judge stated that the core misrepresentations in the case "had no market impact" and were "essentially ignored by the investment community," adding that the state "produced no testimony...from any investor who claimed to have been misled by any disclosure." Judge Ostrager credited the testimony of Exxon's witnesses and stated that Exxon "eviscerated" the state's expert witnesses. And while the judge threw a bone to environmentalists by noting that "[n]othing in this opinion is intended to absolve ExxonMobil from responsibility for contributing to climate change," his opinion succinctly summarized the high bar faced by plaintiffs, noting, "This is a securities fraud case, not a climate change case."

While Exxon was able to score a victory in New York, it still faces multiple shareholder lawsuits related to climate change. Two days after trial began in New York, the Massachusetts Attorney General filed a lawsuit against Exxon on behalf of investors, which, in addition to securities fraud charges added deceptive advertising charges. Those claims allege that Exxon deceived consumers about how its fossil fuel products contribute to climate change and misled consumers with "greenwashing" advertisements that promoted Exxon as environmentally responsible. In 2016, a securities fraud class action was filed in federal court in Texas on behalf of Exxon shareholders arising out of similar facts as the New York lawsuit. Exxon's motion to dismiss that case was denied in August 2018.

It remains to be seen how Judge Ostrager's ruling will impact these actions. The decision in New York is not binding on courts in Texas or Massachusetts, but Judge Ostrager's 55-page opinion following a 12-day trial may carry persuasive weight. Notably, New York asserted claims under the Martin Act, the state's securities statute. The Martin Act is an extremely powerful tool for prosecutors, as it does not require a showing of fraudulent intent or reliance, both of which investors pursuing claims under the federal securities laws will have to prove. The fact that Exxon was able to defeat claims under the formidable Martin Act could spell trouble for future investors' actions and the broader attempt to fight climate change through securities fraud actions.

Saxena White Opens Delaware Office


Thomas Curry

Saxena White is proud to announce that Thomas Curry has joined the firm as a Director. Mr. Curry, a highly regarded lawyer specializing in corporate governance litigation, will head Saxena White's new Wilmington, Delaware office.

Prior to joining Saxena White, Mr. Curry was associated with the Wilmington office of Labaton Sucharow LLP, where he represented investors in many of the most significant and highest profile corporate governance matters to arise in recent years. Mr. Curry has particular expertise in representing public investors shortchanged by corporate sales and other merger and acquisition activity influenced by insider conflicts of interest. He has successfully represented investors in a wide variety of derivative, class, and appraisal matters challenging conflicted M&A transactions in the Delaware Court of Chancery and other jurisdictions around the United States. Mr. Curry also has significant experience advising United States-based investors seeking to protect their interests in connection with M&A activity subject to the law of foreign jurisdictions. In both 2019 and 2020, he was recognized nationally by The Legal 500 as a "Rising Star" in the field of M&A Litigation. Mr. Curry began his legal career at the prominent Wilmington defense firm Morris, Nichols, Arsht & Tunnell LLP. He is a graduate of Cornell Law School and Temple University.

"Saxena White has an incredible track record of realizing significant recoveries for its clients, including in the area of corporate governance litigation. It is an honor to join the firm and to head its new Wilmington office," Mr. Curry said. "A majority of the Fortune 500 companies are incorporated in Delaware and, therefore, subject to Delaware's corporate governance laws. Establishing a presence in Delaware will bolster Saxena White's ability to successfully represent our clients' interests where their investments are threatened by conflicted transactions, board oversight deficiencies, and other corporate governance failures. It will also provide a platform for us to advocate for developments in Delaware law to protect the interests of public investors and promote good corporate citizenship and governance practices," Mr. Curry added.

"Last year we settled one of the largest shareholder derivative cases in history against Wells Fargo Bank stemming from a myriad of improper practices. Our decision to open the Delaware office reflects the confidence we have in Tom to add another dimension to our already strong corporate governance practice," said Maya Saxena, co-founder of Saxena White. "Many of our clients are interested in strengthening the value of their investments through derivative and other litigation. Based on Tom's successful track record we know that the Delaware office will further enhance our ability to produce strong results for our clients."

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