

**COMMITTEE ON
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**COMMITTEE ON
MERGERS, ACQUISITIONS AND
CORPORATE CONTROL CONTESTS**

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William Patrick Brady, Esq.
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Delaware State Bar Association
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Dear Mr. Brady,

The Corporation Law Committee and the Committee on Mergers, Acquisitions and Corporate Control Contests of the New York City Bar Association (the Committees)¹ have been observing with concern recent efforts to discredit the Court of Chancery of the State of Delaware, using highly inappropriate *ad hominem* attacks against the Chancellor of that Court, Andre Bouchard. The Committees have noted your statements on the matter and are writing to express that we, too, find these events extremely troubling.

The members of the Committees are expressing no view on the substance of any particular judicial decisions or on the substance of any initiatives being proposed with respect to the Delaware court system. We strongly support the right of free speech, including the right of litigants or members of the public to criticize judicial decisions, and we support the right of individuals and groups to advocate for transparency and diversity initiatives at any institution. However, we

¹ The Committees are composed of a diverse range of experienced attorneys, including partners at law firms and in-house counsel to issuers, investors and financial advisors, as well as legal academics, who focus on corporation law, merger and acquisition transactions and corporate governance matters, often practicing in the Delaware courts and counseling clients in matters governed by Delaware law.

deplore the inappropriate advertisement being employed by a group known as *Citizens for a Pro-Business Delaware* to discredit the Delaware Courts in general and to attack the Chancellor in particular, and we believe you were right to speak out in defense of judges who, due to ethical limitations, cannot publicly defend themselves.

We believe that it is appropriate for us to express our views on this matter for two main reasons. First, it is a fundamental element of the social compact that binds us that corporations, like individuals, submit themselves to the jurisdiction of competent juridical authorities for resolution of contractual disputes, and accept the legitimacy of their decisions, even if they do not like them. All litigants and members of the public, of course, are entitled to criticize decisions issued by the courts. However, resorting to bullying and intimidating tactics intended to punish judges because one disagrees with the outcome of a dispute, or to paint a judge or a decision as corrupt, biased or out-of-touch based on the judge's gender, race or socioeconomic status, not only goes beyond the bounds of civility, but threatens to undermine the very basis of our civil justice system.

Second, the Delaware courts are among the leading venues for resolution of business disputes in America and, as such, are vitally important elements of the national corporate and M&A legal environment. Most publicly listed corporations and a large plurality of other business entities are formed in the State of Delaware and this is in no small measure due to the quality, integrity and efficiency of the Delaware Courts as venues for resolving disputes. Many of the business disputes that members of the Committees advise on are resolved in Delaware and, while we naturally have not agreed with every decision emanating from those fora, we have always been satisfied that the Delaware Courts, and the Court of Chancery in the first instance, are venues where disputes can be heard and resolved by sophisticated and unbiased judges. Accordingly, anything that threatens the credibility of these important institutions through the deployment of advertisements such as the one at-issue here threatens to undermine the vitality of the American corporate system, which vitality relies upon its ability to resolve disputes through the courts.

For all of these reasons, it is our sincere hope that the inappropriate *ad hominem* attacks on the Delaware Court of Chancery and the Chancellor will cease and be replaced by civil discourse and debate.

Sincerely,



Trevor S. Norwitz
Chair, Committee on Mergers,
Acquisitions and Corporate Control
Contests



Robert T. Miller
Chair, Committee on Corporation
Law