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**Two Chancery Court Decisions Address
Applicability of *Revlon* Duties**

In two recent decisions, the Delaware Court of Chancery provided further guidance on when *Revlon* duties attach. In *Revlon, Inc. v. MacAndrews & Forbes Holding, Inc.*, 506 A.2d 173 (Del. 1986), the Delaware Supreme Court held that when directors decide to sell the company, their role changes from protectors of the corporate entity to "auctioneers" whose duty is to get the best price for stockholders. Subsequently, the Court explained that a board enters the "*Revlon* mode" whenever the corporation initiates an active bidding process aimed at selling itself, seeks a transaction that will result in its break-up, or pursues a change of control. See *Paramount Communications, Inc. v. QVC Network Inc.*, 637 A.2d 34 (Del. 1994) ("*QVC*"). In particular, the courts have focused on whether a transaction represents the only chance for stockholders to receive a premium for control of the corporate enterprise.

Accordingly, the Supreme Court has said that *Revlon* duties do not generally apply when stockholders receive stock in the acquiring corporation as consideration, see *Paramount Communications, Inc. v. Time Inc.*, 571 A.2d 1140 (Del. 1990), although such duties will apply if the acquiror has a controlling stockholder. See *QVC*. Furthermore, the Court has held that the *Revlon* standard is not applicable when a controlling stockholder cashes out minority stockholders. See *Bershad v. Curtiss-Wright Corp.*, 535 A.2d 840 (Del. 1987).

The recent Chancery Court decisions further refine these concepts. In *re Lukens Inc. Shareholders Litigation*, Del. Ch., C.A. No. 16102 (Dec. 1, 1999), addressed the question whether a mixed cash and stock deal implicates *Revlon* duties. The Chancery Court dismissed a claim based on *Revlon* because the plaintiff failed to allege with adequate specificity that the directors had acted disloyally or in bad faith. In an important footnote, however, Vice Chancellor Lamb said that a transaction "in which over 60% of the consideration is cash" does trigger *Revlon* duties. This decision should be read with the Delaware Supreme Court's holding, in *In re Santa Fe Pacific Corp. Shareholders Litigation*, 669 A.2d 59 (Del. 1995), that a transaction with a 33% cash component did not necessarily implicate *Revlon*.

In *McMullen v. Beran*, Del. Ch., C.A. No. 16493 (Dec. 1, 1999), the Chancery Court held that the sale to a third party of a corporation having a controlling stockholder does not trigger *Revlon* duties because the minority stockholders do not have a right to a control premium.

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