

**DELAWARE COURT OF CHANCERY CERTIFIES DEFENDANT
NOTEHOLDER CLASS AND APPOINTS HEDGE FUND AS CLASS REPRESENTATIVE**

In *Regal Entertainment Group v. Amaranth LLC*, (Del. Ch. Apr. 12, 2006), the Delaware Court of Chancery certified a defendant class of all holders of a series of convertible notes issued by Regal. In early 2005, Amaranth, a hedge fund and one of Regal's largest Noteholders, publicly contested the manner in which Regal was calculating adjustments to the Conversion Price of the Notes pursuant to a formula in the Indenture (the "Dividend Reduction Formula") in connection with dividends Regal paid on its common stock. Regal disputed Amaranth's interpretation and further asserted that any ambiguity in the Dividend Reduction Formula was the result of a "scrivener's error."

Regal corrected the "scrivener's error" in the Dividend Reduction Formula through a First Supplemental Indenture and filed a declaratory judgment action in the Court of Chancery seeking a declaration that (i) its interpretation of the original Indenture was correct, and that (ii) its approval of the First Supplemental Indenture was valid. Amaranth asserted counterclaims, including a claim for a declaration that its interpretation of the Dividend Reduction Formula was correct. Thereafter, Regal filed a motion for certification of a defendant class of all Noteholders under the Indenture (the "Class") and appointment of Amaranth as the Class representative. Despite admitting that it beneficially owns over \$80 million face amount of the Notes, Amaranth argued it was not a proper class representative because (a) its status as a hedge fund obligated it to fulfill its fiduciary obligations to its investors by selling its position in the Notes if such a strategy was in the best interests of its investors, and (b) its position regarding the Dividend Reduction Formula was not typical because of its unique investment strategies.

Vice Chancellor Strine rejected each of Amaranth's arguments, holding that Amaranth was "extremely well-positioned" to serve as an adequate Class representative because (i) it owned a large position in the Notes and publicly challenged Regal's reading of the Dividend Reduction Formula; (ii) although Amaranth could sell its Notes at any time, it had already stated a claim based on its conversion of \$1,000 worth of Notes; and (iii) even if Amaranth chose to sell the remainder of its Notes, the price that a buyer of the Notes would be willing to pay would be affected by the meaning of the Dividend Reduction Formula. In rejecting Amaranth's typicality objection, the Court stated that "[a]lthough it may be a psychic blow to some titans of trading to read this, the reality is that so-called hedge funds are not so special and their trading strategies are often more different in degree than in kind from that of other common investment funds." The fact that Amaranth hypothetically could suffer different damages than other Class members as a result of its trading strategies did not sway the Court. Rather, the Court concluded that "Amaranth meets the relatively non-stringent test for typicality" because Amaranth's position regarding the Dividend Reduction Formula was "obviously" typical of the interests of the other Noteholders.

Given the relative paucity of case law regarding defendant class actions as compared to plaintiff class actions – particularly in Delaware – this opinion is worth reading. The opinion reinforces the viability of a defendant class action as an effective vehicle for an issuer of securities to seek declaratory relief regarding the terms of the securities in the event a dispute arises.

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