



EXHIBIT B

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CITY OF MONROE EMPLOYEES'
RETIREMENT SYSTEM, derivatively
on behalf of TWENTY-FIRST
CENTURY FOX, INC.,

Plaintiff,

v.

RUPERT MURDOCH, LACHLAN
MURDOCH, JAMES MURDOCH,
CHARLES G. CAREY, DAVID F.
DEVOE, RODERICK I.
EDDINGTON, ROGER S.
SILBERMAN, JACQUES A.
NASSER, JAMES W. BREYER,
JEFFREY W. UBBEN, VIET DINH,
DELPHINE ARNAULT, TIDJANE
THIAME, AND THE ESTATE OF
ROGER AILES,

Defendants,

and

TWENTY-FIRST CENTURY FOX,
INC.,

Nominal Defendant.

C.A. No. _____

**DECLARATION OF
PROFESSOR LAWRENCE A. HAMERMESH,
WIDENER UNIVERSITY DELAWARE LAW,
IN SUPPORT OF SETTLEMENT**

1. I respectfully submit this declaration in connection with the parties' application for approval of the settlement reached in this matter involving Twenty-First Century Fox, Inc. ("Fox"). In particular, I have reviewed the document reflecting the creation of the Fox News Workplace Professionalism and Inclusion Council (the "Council") and related governance and compliance enhancements, to be put in place in response to allegations of harassment, discrimination, and retaliation at Fox News Channel ("Fox News") (hereinafter, the "Council Agreement" or "Agreement").

2. I submit this declaration to highlight certain of the more important and atypical aspects, from a corporate governance perspective, of the Council Agreement that I believe should and hopefully will create particularly significant value for Fox and its public investors for years to come.

Background On Engagement

3. I was engaged in late May 2017 by co-lead counsel for Plaintiff City of Monroe Employees' Retirement System's ("Plaintiff") counsel in late May 2017 to consult with respect to what was then an unfiled shareholder derivative litigation, but that I was informed had already progressed through the provision by the Plaintiff of one or more complaints

and had resulted in several rounds of discovery. As Plaintiff's co-lead counsel were preparing for an upcoming formal mediation process, they asked me to monitor and be in position to comment on the negotiation of what became the Agreement, and, in connection with any potential settlement of the matter, to present my views concerning the efficacy of the terms of that settlement as a matter of corporate governance.¹

4. In the course of that consultation I reviewed and gave general comments upon the pleadings, as well as several drafts of what became the Agreement. As I understood it, counsel were focused on requiring Fox to implement various structures and supporting provisions designed to deter or remedy action involving "sexual harassment, race discrimination, and all other forms of discrimination prohibited by law," and to "create[] a safe, productive and welcoming workplace for all of [Fox's] employees." (Agreement ¶1).

5. As I understood it, counsel had retained an expert in the field of sexual harassment and racial discrimination in the workplace, and corporate policies pertaining to the same. At my suggestion and with counsel's agreement, I neither took responsibility for nor ownership over the actual terms being proposed or compromises made. Rather, I viewed my role as

¹ Rather than set forth a standard recitation of qualifications, I respectfully refer the Court to my resume, a copy of which is attached as Exhibit A.

keeping apprised of the reasoning behind proposals and counterproposals and sharing insights when appropriate. In other words, rather than opining about aspects of a remedial process that turn on areas that are not within my core expertise, I sought to stay informed and to suggest improvements or refinements, or object if necessary, with respect to elements of the process implicating overarching corporate governance practices.

6. Based on the allegations of the complaint, as well as my understanding from the extensive media coverage of the underlying events at Fox, I viewed this matter as calling for attention to several important issues from that corporate governance perspective:

- a. In general, even for widely held companies that find themselves in legal trouble in circumstances raising questions about whether board involvement in legal and regulatory compliance issues was sufficient, effective internal reporting of potentially unlawful or improper conduct by corporate employees is important.
- b. Similarly, public disclosure of corporate legal compliance efforts, as well as significant legal risks, is important.
- c. The events at Fox raised particularly challenging compliance issues for several reasons.

i. Most importantly, Fox is a controlled company, which from all publicly available sources appears to have a controlling family that wields significant influence over corporate decision making, and which takes a very active role in exercising authority over a wide range of strategic as well as day to day business affairs.

ii. Moreover, I note that the core allegation in this suit is that the Fox board of directors (the “Board”) deferred so much responsibility to the controlling family that it allowed the creation, over a period of many years, of a corporate culture of pervasive harassment and discriminatory conduct at the Fox News business.

7. Further informing my view of both the problem presented at Fox and the efforts to achieve an appropriate solution was my sensitivity to a challenge continually facing many corporate boards. Specifically, when a board is, in fact, alerted to what appear to be isolated “red flags” that a particular person within the company may have engaged in morally or legally abhorrent behavior, such as sexual harassment or racial discrimination, when should a board realize that the problem is widespread rather than simply reflective of deviant behavior by the individual involved?

8. Thus, from a governance perspective, I perceived the possibility that even a seemingly independent board of directors could fail to respond appropriately to morally or legally reprehensible conduct because it is difficult for those directors to conceive that such misconduct is, in fact, widespread and, perhaps, the product of a corporate culture that permits, tolerates or even encourages such deviant behavior. That resistance to perceiving widespread misconduct may be particularly powerful where the business in question is experiencing significant success, at least in the short run, from a financial point of view.

9. The allegations in this litigation conveyed to me the sense that within Fox News, Roger Ailes had been given almost unfettered power, and he used that power in a way that fostered a culture marked by harassment and discrimination. Ailes's own alleged sexual misconduct was by any measure abhorrent, and it appears that such misconduct was not isolated at Fox News, or even (as we now see reported) limited to Fox. At some level, the failure of the Fox Board to take action may have reflected a failure to acknowledge that not only sexual harassment in general, but even more appallingly predatory behavior, was and is far more prevalent than is comfortable to acknowledge. Nevertheless, a flawed culture and a tolerance

for pervasive sexual misconduct at Fox News was ultimately the responsibility of the Board.

Observations About the Agreement

10. Some shareholder derivative cases arising from legal noncompliance for which the board allegedly bears responsibility are resolved, at least in part, through the creation of a board-level committee that is given specific responsibilities for overseeing legal compliance with respect to the operations or subject matter that gave rise to the underlying lawsuit. While that is presumably of value in general, the Plaintiff's counsel here believed, and I agreed, that the creation of a corporate body that has a fair degree of independence from the controller and, thus, relative independence from the Board itself, was particularly important.

11. In my view, and without delving into what I consider to be "routine" or typical benefits arising from the creation of a board-level compliance committee, the Agreement is notable and reflects a corporate (and controller) level decision to break from the problems of the past and genuinely seek to implement a corporate policy of lawful conduct. Among the most important elements of the Agreement, in my view, is the Council's independence from the controller and, in effect, from the Board.

12. At the same time, unlike a completely extra-corporate body, which may face difficulty doing its work because employees or supervising managers might view such an external group with suspicion and be inclined to withhold important information or otherwise decline to cooperate fully with its work, this Council will have the benefit of the two most senior human resources personnel (both of whom joined Fox in 2017), thus giving the Council the express support and endorsement of Fox's Board and senior management.

13. In addition, for various reasons discussed below, but driven by the ability of any single member of the Council to issue a publicly disclosed report that serves as an objection to decisions with which the Council member does not agree, the Council enjoys significant power and influence.

14. For present purposes, I highlight the following elements of the Agreement:

- Adoption and public announcement of a corporate commitment statement (the "Commitment Statement") including the following language:

Twenty-First Century Fox and Fox News are affirmatively committed and obligated to a business practice and corporate value of zero tolerance for sexual harassment, race discrimination, and all other forms of discrimination prohibited by law, and a corporate policy that creates a safe, productive and welcoming workplace for all of their

employees. Twenty-First Century Fox and Fox News are also affirmatively committed and obligated to a business practice and corporate value of zero tolerance for retaliation. This commitment and obligation to zero tolerance for retaliation includes retaliation against anyone who in good faith complains about harassment or discrimination, or who provides support, as a witness or otherwise, for a complaint regarding harassment or discrimination.

(Agreement ¶1).

- Establishment of a committee (named the “Fox News Workplace Professionalism and Inclusion Council”) charged with providing independent oversight of Fox News’ efforts to implement the Agreement. (Agreement ¶3).
- Structuring the Council so as to include a majority of members who are independent of Fox management and the controlling stockholder, and to require that two of the four independent members be chosen by Plaintiff (subject only to Fox’s approval not to be unreasonably withheld). (Agreement ¶6).
- Including high level and internal human resources leaders in the Council, instead of having the members of the Council be complete outsiders to the company, and therefore exacerbating the risk that the Council will be seen as an “outsider” that faces trust issues with the employees. (Agreement ¶6).

- Requiring the Council to report periodically to the board of directors of Fox “in sufficient detail to evaluate Fox News’s implementation of the Commitment Statement,” and to make those reports available to the public. (Agreement ¶¶12, 15).
- Conferring upon the Council the authority to engage unaffiliated expert firms to conduct periodic anonymous online surveys of employees and others working with Fox News, and committing to fund such surveys. (Agreement ¶20).
- While the Council is encouraged to reach consensus with respect to its exercise of authority and oversight, enabling any individual Council member who is dissatisfied with the Company’s handling of a matter under the Council’s authority to issue a “minority report,” which will be publicly disclosed to the Company’s stockholders. (Agreement, ¶¶12, 15).

15. I consider these components to be important responses to the corporate governance problems set forth in the complaint for several reasons:

- A public statement of corporate level commitment, as specified in the Agreement, will set a tone from the top, including the controlling family, of a proper standard of behavior and will thereby encourage

the development of a corporate culture that, unlike the behavior and culture apparently in place before this year, is likely to deter misconduct involving sexual harassment, racial discrimination, and retaliatory action.

- Establishing the Council to oversee implementation of the Agreement creates a formal mechanism that is likely to engender continued attention to addressing and preventing acts of sexual harassment, racial discrimination, and retaliatory action. The corporate undertaking to compensate Council members and to fund the Council's hiring of consultants of its choosing (Agreement ¶¶9, 17) will help assure that the mechanism of the Council exists in substance and not in name only.
- Including a majority of independent members of the Council – including two of the four independent members who are nominated by Plaintiff – is likely to reduce the possibility that senior management could discourage the presentation and confrontation of difficult personnel issues involving sexual harassment, racial discrimination, or retaliatory action.
- Having the Head of Human Resources of Twenty-First Century Fox, and the Head of Human Resources of Fox News, neither of whom

were involved in the alleged misconduct when it took place (or even employed by the Company at the time) is a significant benefit to the Company. Both Mr. Gaissmaier and Mr. Lord joined Fox and Fox News, respectively, in 2017, and are charged with reforming and improving Fox's culture and human resources practices. Instead of employees and managers viewing the Council as a completely outsider body to be treated as such, Messrs. Gaissmaier and Lord will provide credibility within Fox, and will ensure that the Board (and senior management) take seriously the role of the Council and stay informed of the Council's activities. Indeed, Mr. Gaissmaier reports directly to James and Lachlan Murdoch.

- Requiring periodic reports to the Fox Board and the public appears likely to reinforce compliance with the policies announced in the Council Statement, by requiring continued attention to issues and conduct to be addressed by the Council. Directing a flow of information to the Board enables, even forces, it to confront issues of improper conduct, and empowers the Board to more effectively carry out its oversight responsibility.
- Allowing minority reports to the Board, which must be publicly posted on the Company's website, provides the ultimate check on

misconduct or complacency. As long as the members of the Council take their responsibilities seriously, and are willing to stand up to those who may prefer the Council to serve a dormant or silent role, the Council will achieve its purposes. Minority reports provide a clear mechanism by which minority members of the Council may resist majority complicity in any misconduct relating to the work of the Council. Put simply, the possibility of public disclosure of a minority report should be significant enough to ensure that the Board actively and meaningfully engages with and supports the recommendations of the Council, and the views of any individual member of the Council.

- Requiring Fox to support the conduct of independent anonymous surveys of Fox News employees provides another mechanism to encourage disclosure of, and steps to remedy, sexual harassment, racial discrimination, and retaliatory action.

16. Other elements of the Agreement that I consider to be important and that evolved in the course of negotiation of the Agreement include:

- The provision (Agreement ¶26) that “[t]he Company’s Clawback Policy regarding the portion of discretionary bonus compensation paid to executives [] be modified to include recoupment for reasons pertaining to harassment, discrimination and/or retaliation, including,

but not limited to the failure to respond to allegations or complaints.”

Establishing a corporate policy for including contract terms in executive employment agreements providing for recoupment of bonus compensation for the reasons stated is likely to reinforce efforts to discourage and prevent misconduct of the sort specified in the complaint in this litigation.

- Explicitly contemplating that the Council “may convene executive sessions of all the independent members” (Agreement ¶14). This is a well-recognized governance technique for enabling non-management members of a board or committee to air concerns freely when management misconduct may be involved.
- The provision (Agreement ¶28) that at the conclusion of the five-year term of the Agreement, “any decision to modify or terminate the ... Council or the Commitment Statement ... shall be made by the Board, with a publicly posted description of the Board’s reasoning for any such decision.” In my view, this provision is a useful mechanism, because rather than simply allowing the Agreement to disappear without consideration by the Board, the Board will be required to engage with the question of whether experience under the Agreement

in regard to sexual harassment, racial discrimination, and retaliatory action suggests that the Agreement should be continued.

17. A review of the merits of the Agreement would be incomplete, however, without acknowledging and appreciating that the Board, its Nominating and Corporate Governance Committee, and senior management of Fox (particularly its chief human resources officer, its Group General Counsel, and Kevin Lord, Fox News' Vice President for Human Resources) may play a significant role in implementing the Agreement and the policies articulated in the Commitment Statement. They are designated members of the Council (Agreement ¶6); they are called upon to assist the Council in identifying and communicating with employees of Fox and Fox News in carrying out the Council's work (Agreement ¶10); drafts of majority and minority Council reports are to be submitted to the chair of the board's Nominating and Corporate Governance Committee for review and comment in advance of formal submission and publication (Agreement ¶12); and settlements for claims of sexual or racial harassment or discrimination or retaliation must be reviewed by Fox's Group General Counsel (Agreement ¶24).

18. I have recognized that excessive control by management in regard to efforts to identify and deter or remedy instances of sexual

harassment, racial discrimination, and retaliatory action might be counterproductive, and I have followed and supported efforts by Plaintiff's counsel to promote independent authority over such efforts under the terms of the Agreement.² I also recognize, however, that for such efforts to be effective, independent authorities (such as the independent members of the Council) need access to and the confidence of senior management of Fox and Fox News, and need to be able to engage and reach consensus with senior management – from a position of appropriate negotiating leverage – in order to implement the policies articulated in the Commitment Statement. In my view, the most significant aspects of that negotiating leverage are the composition of the Council (to include a majority of independent members, including two nominated by plaintiffs) and the ability of the Council to submit reports to the Board, including any minority reports, that are to become publicly available. I believe that these governance arrangements afford significant checks on any possible reversion to the practices that gave rise to this litigation.

² I further note that the Company presented certain proposals regarding the Council's reporting lines that I found objectionable. I so informed Plaintiff's counsel, and they agreed and pushed back accordingly.

The Council's Membership Reflects the Tools Needed to Make Governance Structures Effective: Strength, Experience, and Integrity

19. Of course, the quality of corporate governance structures depends on the qualities of its people. For the Council to be effective, it is critical that its members be able and willing to use the tools provided to them, including in the face of what conceivably could be resistance from within the Company. As such, below I list what I believe to be the most pertinent credentials of the four independent members of the Council. In my view, each of these individuals' experience in the field and history in working with prior companies suggests that they will be more than suited to stand up to any opposition, and that they will fight hard to materially improve the way issues of harassment and discrimination are dealt with in the future.

20. **Judge Barbara S. Jones** is a highly respected former federal district court judge with significant relevant expertise. Judge Jones' resume describes numerous other key accomplishments. She was appointed by the U.S. Secretary of Defense to chair a Congressional panel mandated to conduct a 12-month review and assessment of the systems used by the military to investigate, prosecute, and adjudicate crimes involving sexual assaults and sexual harassment. Judge Jones led a panel of nine members,

which conducted 14 days of public hearings and 65 subcommittee meetings on key relevant topics concerning sexual harassment. The panel also heard from 154 witnesses, experts in their fields, conducted site visits at military installations, and reviewed thousands of pages of reports and data. In June 2014 the panel submitted a report to Congress and the Secretary of Defense with more than 100 detailed recommendations – virtually all of which have been adopted.

21. **Sylvia Ann Hewlett** is the founder and CEO of the Center for Talent Innovation. Dr. Hewlett is an economist with twenty years of experience in global talent management focused particularly on the challenges and opportunities faced by women, minorities, and other previously excluded groups. Dr. Hewlett’s clients include multiple Fortune 500 companies.

22. **Brande Stellings** leads Advisory Services, which consists of Catalyst’s Consulting Services and its Corporate Board Services. Ms. Stellings is an expert on women’s leadership and diversity, and works closely with companies to accelerate the advancement of women. Since Ms. Stellings joined Catalyst in 2005, she has conducted engagements for professional services firms and advised Fortune 500 companies on the

creation and implementation of business-driven diversity and inclusion strategies, with a focus on the advancement of women.

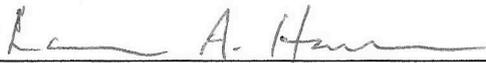
23. **Virgil Smith** is a 24-year veteran of the Gannett Company where, as the first black publisher, corporate Human Resources executive, and Chief Diversity Officer, he focused on diversity issues and talent management. Dr. Smith is currently the Chairman of the Smith Edwards Group, LLC, a coaching and consulting firm, which provides executive search services. Dr. Smith serves as a consultant and professional and career coach for the Asian American Journalists Association and works with journalism and leadership advisory boards at Florida International University, University of North Texas, and Morgan State University.

24. The credentials recited above strongly suggest to me that each member of the Council has qualities that indicate that they would function effectively in the governance activities of the Council. They have attained a level of seniority and professional recognition that reinforce their independence from Fox's controlling shareholder; they have substantial experience in the subject matters to be addressed by the Council; that experience suggests an ability to grasp and sympathize with the concerns regarding the sort of misconduct to be addressed by the Council; and their

professional achievements suggest that it would be difficult for the Board and senior management at Fox to avoid taking their assessments seriously.

Conclusion

For the reasons reviewed above, it is my view that the Council Agreement is likely to create significant value for Fox and its public investors for years to come, by creating practical and effective means to identify, remedy, and deter serious misconduct that otherwise would threaten the well-being of Fox's employees and the company itself.



Lawrence A. Hamermesh

DATE: November 20, 2017

LAWRENCE A. HAMERMESH

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PERSONAL DATA:

Home address:

126 Hitching Post Drive, Wilmington, Delaware 19803

Date of birth: June 14, 1952 Married: August 7, 1983, to Marion Yager Hamermesh

Children: Simon E., born 1984; Naomi Kate Yager Scheinerman, born 1987

EDUCATION AND CAREER HISTORY:

Admitted to the Delaware Bar, 1976; United States Supreme Court, 1999

**Professor Emeritus (formerly Ruby R. Vale Professor of Corporate and Business Law),
Widener University School of Law**

- Teaching areas: business organizations, corporate finance, securities regulation, mergers and acquisitions, professional responsibility, equity/equitable remedies
- Director, Widener Law School Institute of Delaware Corporate and Business Law, 2000-2017
- Adviser, Delaware Journal of Corporate Law

Executive Director, University of Pennsylvania Law School Institute for Law and Economics, July 2016-present

Senior Special Counsel, Office of Chief Counsel of the Division of Corporation Finance of the U.S. Securities and Exchange Commission, Washington, D.C., January 2010 to June 2011

- Advising the Staff of the Commission on matters of state corporate law pertinent to the regulatory functions of the Commission

Visiting Professor, University of Michigan Law School, Winter 2002

**Visiting Professor, University of Pennsylvania Law School, Spring 2004, Spring 2006,
Spring 2014**

Adjunct Professor of Law, New York University Law School, Fall 2008

Morris, Nichols, Arsht & Tunnell, Wilmington, Delaware

- Associate, 1976-1984
- Partner, 1985-1994

Yale Law School – J.D., 1976

Haverford College – B.A., 1973

Other Professional Qualifications and Background Information:

Member, American Law Institute (elected 1999)

Member, Council of the Corporation Law Section of the Delaware State Bar Association, 1995 to present; Vice Chair, 2000-2002; Chair, 2002-2004

American Bar Association Business Law Section:

Member, Section Council, 2009 – 2012

Corporate Laws Committee: Reporter, 2013 – present; Associate Reporter, 2011-2012; member, 2001-2007

Editorial Advisory Board, *The Business Lawyer* (2005- 2017)

Chair, Corporate Documents and Process Committee, 2007-2010

Reporter, ABA Task Force on Corporate Responsibility (2002-2003)

2004 Daniel L. Herrmann Professional Conduct Award, Delaware State Bar Association

2006 and 2013 Douglas E. Ray Excellence in Faculty Scholarship Award

Secretary, Delaware Board of Bar Examiners, 1983-1987

Treasurer, Delaware Volunteer Legal Services, Inc., 1991-2000

Chairman, Lawyer Referral Service Committee of the Delaware State Bar Association, 1993-1998

PUBLISHED WRITINGS (partial list)

Lyman Johnson's Invaluable Contribution to Delaware Corporate Jurisprudence, 74 *Washington & Lee Law Review* 909 (2017) (with Jack B. Jacobs)

The Importance of Being Dismissive: The Efficiency Role of Pleading Stage Evaluation of Shareholder Litigation, 42 *Journal of Corporation Law* 597 (2017) (with Michael Wachter)

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Consent in Corporate Law, 70 *Business Lawyer* 161 (Winter 2014/2015)

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The Fair Value of Cornfields in Delaware Appraisal Law, 31 Journal of Corporation Law 101 (2006) (with Michael Wachter)

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Ruby R. Vale and a Definition of Legal Scholarship, 31 Delaware Journal of Corporation Law 253 (2006)

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A Kinder, Gentler Critique of Van Gorkom and its Less Celebrated Legacies, 96 Northwestern Law Review 595 (2002)

Why I Do Not Teach Van Gorkom, 34 Georgia Law Review 477 (2000)

Corporate Democracy and Stockholder-Adopted By-Laws: Taking Back the Street?, 73 Tulane Law Review 409 (December 1998)

Calling Off the Lynch Mob: The Corporate Director's Fiduciary Disclosure Duty, 49 Vanderbilt Law Review 1087 (October 1996)

Common Law Duties of Non-Director Corporate Officers (with A. Gilchrist Sparks, III), 48 BUS. LAWYER 215 (1992)

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"Defensive Techniques in Proxy Contests," Review of Securities & Commodities Regulation, May 23, 1990

"The Reliance on Counsel Defense," Review of Securities and Commodities Regulation, December 18, 1985

"Going Private Mergers After UOP," Review of Securities and Commodities Regulation, March 23, 1983

EXPERT WITNESS, *AMICUS CURIAE* AND APPOINTMENTS

In re Request of the Governor, 722 A.2d 307 (Del. 1998) (appointed by the Court *pro bono publico* to advocate on appointments clause of the State Constitution)

Goodrich v. E.F. Hutton Group, Inc., 681 A.2d 1039 (Del. 1996) (appointed by the Court to advocate on class action attorneys' fee award)

California Public Employees Retirement System v. Felzen, et al., 119 S.Ct. 720, 142 L.Ed.2d 766 (1999) (*amicus curiae* in support of petitioner on issue of appellate standing in stockholder derivative actions)

^s
AMP Inc. v. Allied Signal, Inc., C.A. Nos. 98-4405, 98-4053, 98-4109 (E.D.Pa. 1998) (expert witness on fiduciary responsibilities under Delaware law of bidder officers and directors as directors of target corporation)

Onti, Inc. v. Integra Bank, 751 A.2d 904, 931-32 (Del. Ch. 1999) (expert witness on valuation of contingent claims including shareholder derivative claims)

In the Matter of Banc of America Capital Management, LLC, et al. and *In the Matter of Columbia Management Advisors, Inc.* (Securities and Exchange Commission, 2005-2009) (appointment as independent distribution consultant in connection with mutual fund settlements)

In the Matter of the Proposed Acquisition of Royal Indemnity Company, et al., in the Insurance Department of the State of Delaware (appointed as hearing officer in contested application for acquisition of control of Delaware property/casualty subsidiaries of Royal SunAlliance Insurance Group plc).

OTHER AFFILIATIONS

Music School of Delaware, director (2014 – present)
ACLU Delaware, Inc., director (1985-2015; President, 1996-2003);
representative to the National Board of Directors 2004 –2009
Wilmington Community Orchestra, violin
Ardensingers Orchestra, violin
Beth Israel Music Appreciation Society (BIMAS), Media, Pennsylvania