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FOCUS AREAS

Corporate Governance & M+A

EDUCATION

Haverford College
B.A. in English, 2017

Temple University Beasley School of Law
J.D., 2022, Beasley Scholar

ADMISSIONS

Pennsylvania

Lauren Lummus, an associate of the Firm, concentrates her practice in the areas of corporate governance and merger and acquisition litigation.

Lauren received her law degree from the Temple University Beasley School of Law in 2022 and her undergraduate degree from Haverford College in 2017. While in law school, Lauren interned as a law clerk for the Honorable Carolyn H. Nichols of the Pennsylvania Superior Court and U.S. Magistrate Judge Timothy R. Rice of the U.S. District Court for the Eastern District of Pennsylvania. Lauren also served as Co-President of the Women's Law Caucus, Research Editor for the Temple International & Comparative Law Journal, and Teaching Assistant for two legal research and writing courses.

Current Cases

- Activision Blizzard, Inc.

CASE CAPTION

Sjunde AP-Fonden v. Activision Blizzard, Inc.

COURT

Court of Chancery of the State of Delaware

CASE NUMBER

2022-1001-KSJM

JUDGE

Honorable Kathaleen St. J. McCormick

PLAINTIFF

Sjunde AP-Fonden

DEFENDANTS

Activision Blizzard, Inc., Robert Kotick, Brian Kelly, Robert Morgado, Robert Corti, Hendrik Hartong III, Casey Wasserman, Peter Nolan, Dawn Ostroff, Barry Meyer, Reveta Bowers, Kerry Carr, Microsoft Corporation, and Anchorage Merger Sub Inc.

CHANCERY COURT ALLOWS PENSION FUND TO PURSUE CLAIMS THAT MICROSOFT-ACTIVISION MERGER IS INVALID UNDER DELAWARE LAW

On behalf of plaintiff Sjunde AP-Fonden ("AP-7"), Kessler Topaz recently secured a ruling largely denying defendants' motions to dismiss AP-7's claims challenging the \$68.7 billion merger between Microsoft Corporation and Activision Blizzard, Inc., the company behind popular video games *Call of Duty* and *World of Warcraft*.

AP-7 originally instituted this litigation in response to allegations of sexual harassment against Activision's CEO Robert Kotick. AP-7 sought to hold Activision's board of directors ("Board") and management accountable for a widespread toxic corporate culture that negatively impacted the company and its stockholders.

As the scandal deepened, Activision's competitors perceived that Activision was wounded and its shares were trading for less than their fair value. Kotick also knew that a sale of the company would potentially insulate him from further scrutiny and legal claims.

Activision's stock, which had traded over \$100 per share in February 2021, dropped to the low \$60s by the second half of November and stood at \$65.39 on January 14, 2022, the last trading day before the Board approved the Merger Agreement. On January 22, 2022, Kotick and Microsoft agreed that Microsoft would buy Activision for \$95 per share.

AP-7 alleges that the Merger undervalued Activision's shares and was engineered to protect Kotick and management rather than to maximize stockholder value. AP-7 also alleges that the Merger failed to comply with multiple provisions of the Delaware General Corporation Law ("DGCL").

Among other claims, Plaintiff alleged that the Activision Board did not properly approve the Merger under Section 251 of the DGCL because material terms of the deal had not been finalized at the time the Board approved it. Plaintiff also alleged that the Board

improperly delegated to a committee the decision of whether Activision stockholders would receive dividends while the Merger was pending. That committee had then agreed with Microsoft that it would only pay one \$0.47/share dividend during the Merger's pendency. Plaintiff also alleged that as a result of these statutory violations, Microsoft unlawfully "converted" Activision stockholders' shares when it completed the Merger.

As expected, the Merger drew regulatory and antitrust scrutiny, and thus took a long time to complete. After AP-7 filed its complaint challenging the Board's handling of stockholders' right to dividends, on July 18, 2023, Activision and Microsoft agreed to let Activision pay a dividend of \$0.99/share, a total of more than \$700 million.

On June 5, 2023, the defendants moved to dismiss the Complaint's statutory and conversion claims. On October 13, 2023, the defendants consummated the Merger. On February 29, 2024, Chancellor Kathaleen St. J. McCormick issued two opinions that largely denied defendants' motions to dismiss AP-7's claims.

Chancellor McCormick ruled that AP-7 had adequately pled that (1) the Merger was invalid under Section 251 of the DGCL; (2) the Board improperly delegated to a committee the negotiation and approval of the dividend provision of the merger agreement; and (3) Microsoft had unlawfully converted Activision stockholders' shares when it closed the Merger. Chancellor McCormick determined that boards of directors "must strictly comply with statutory requirements governing mergers," and that "requiring a board to approve an essentially complete version of a merger agreement" merely reflects "the basic exercise of fiduciary duties, not to mention good corporate hygiene."

Chancellor McCormick has not yet ruled on the viability of AP-7's claims that the Board breached its fiduciary duties by agreeing to the Merger for an inadequate price. AP-7 is gratified by the Court's ruling and looks forward to pressing its claims forward.

KTMC's case team includes [Lee Rudy](#), [Eric Zagar](#), and [Lauren Lummus](#).

[Read February 29, 2024 Memorandum Opinion Here](#)

[Read February 29, 2024 Letter Decision Here](#)

[Read February 1, 2023 Verified Amended Class Action Complaint \[Public Version\] Here](#)

- AmerisourceBergen Corporation

CASE CAPTION	<i>In re Lebanon County Employees' Retirement Fund, et al. v. Collis, et al.</i>
COURT	Court of Chancery of the State of Delaware
CASE NUMBER	C.A. No. 2021-1118-JTL
JUDGE	Vice Chancellor Travis Laster
PLAINTIFFS	Lebanon County Employees' Retirement Fund, <i>et al.</i>
DEFENDANTS	Steven H. Collis, Richard W. Gochnauer, Lon R. Greenberg, Jane E. Henney, Kathleen W. Hyle, Michael J. Long, Henry W. McGee, Ornella Barra, D. Mark Durcan, Chris Zimmerman, and Nominal Defendant AmerisourceBergen Corporation

On December 18, 2023, the Delaware Supreme Court reversed the dismissal of a 2021 shareholder derivative action against AmerisourceBergen Corporation (now known as Cencora, Inc.) (the “Company”) and the Company’s directors and officers for their role in the United States’ opioid epidemic.

The shareholders’ action seeks billions of dollars in damages for allegations that the Company’s directors and officers caused or permitted the Company to abandon its opioid anti-diversion obligations and violate laws regulating distribution of controlled substances. Plaintiffs’ complaint was supported by thousands of pages of internal corporate documents that plaintiffs were awarded in 2020 after litigating a 8 *Del. C. § 220* books and records demand through trial.

On December 22, 2022, the Delaware Chancery Court granted

defendants’ motion to dismiss plaintiffs’ complaint, despite finding that plaintiffs had pled viable claims against the Company’s directors for breaching their corporate oversight duties, and observing that the Company’s directors “did not just see red flags; they were wrapped in them.” Notwithstanding these findings, the Chancery Court dismissed plaintiffs’ claims based on a federal court decision that found that certain of the Company’s actions did not rise to the level of a public nuisance in West Virginia. Plaintiffs subsequently appealed, arguing, *inter alia*, that the Chancery Court took improper judicial notice of the West Virginia decision to dismiss plaintiffs’ otherwise well-pled derivative claims.

The Delaware Supreme Court agreed with plaintiffs. In reversing, the Delaware Supreme Court found that the Chancery Court’s dismissal represented a “departure from the principles” of judicial notice. The Supreme Court also recognized that “the inference drawn by the Court of Chancery that the defendants were aware for years of the deficiencies in the Company’s controls but consciously chose not to address them, was, if not the only inference, at least a reasonable one.”

KTMC’s appeal team included Eric Zagar and Lauren Lummus. Since their case was remanded, plaintiff shareholders are now pursuing discovery from defendants and third parties.

- [Read December 18, 2023 Supreme Court of the State of Delaware Opinion Here](#)
- [Read December 22, 2022 Court of Chancery of the State of Delaware Memorandum Opinion Here](#)
- [Read December 30, 2021 Verified Stockholder Derivative Complaint \[Public Version\] Here](#)

- Fannie Mae/Freddie Mac

CASE CAPTION	<i>In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations</i>
	United States District Court for the District

	of Columbia
CASE NUMBER	Misc. Action No. 13-mc- 01288 (RCL)
JUDGE	Honorable Royce C. Lamberth
PLAINTIFF	Joseph Cacciapalle
DEFENDANTS	Federal Housing Finance Agency ("FHFA"), the Federal National Mortgage Association ("Fannie Mae"), and the Federal Home Loan Mortgage Corporation ("Freddie Mac")

On August 14, 2023, after a three-week trial in the U.S. District Court for the District of Columbia, a federal jury unanimously found in favor of plaintiff shareholders of the Federal National Mortgage Association ("Fannie Mae"), and the Federal Home Loan Mortgage Corporation ("Freddie Mac"). The jury found that in August 2012 the Federal Housing Finance Agency ("FHFA") breached the implied covenant of good faith and fair dealing inherent in the Fannie Mae and Freddie Mac shareholder contracts and awarded shareholders damages of \$612.4 million. Kessler Topaz served as Co-Lead Plaintiffs' counsel for this momentous trial verdict, which was reached after a decade of litigating stockholders' claims through multiple rounds of pleadings, appeals, and after a previous jury was unable to reach a verdict after a twelve-day trial in November 2022.

On September 6, 2008, at the height of the financial crisis, FHFA placed Fannie Mae and Freddie Mac into conservatorship, giving FHFA full authority to run the companies. The law authorizing conservatorship directed FHFA as conservator to "preserve and

conserve assets,” and FHFA told stockholders at that time that the conservatorship would be temporary, and was designed to return Fannie Mae and Freddie Mac to safe and solvent condition, and to return the entities to their stockholders.

Also in 2008, the U.S. Treasury bought senior preferred stock in Fannie Mae and Freddie Mac, and provided a funding commitment of up to \$100 billion for each of Fannie Mae and Freddie Mac in exchange for a 10% annual dividend on any amount Fannie Mae or Freddie Mac drew on the commitment. Treasury’s funding commitment was later raised to \$200 billion, and was later amended to be unlimited through the end of 2012. Treasury, Fannie Mae, and Freddie Mac memorialized this agreement in the Senior Preferred Stock Purchase Agreements (“PSPAs”). Treasury ultimately invested a total of \$189 billion in Fannie Mae and Freddie Mac to help support each companies’ critical mission of backstopping the nation’s housing finance system through the financial crisis.

Four years later, Fannie Mae and Freddie Mac had just posted their first two quarters of profitability in four years. The housing market was recovering, and Fannie Mae and Freddie Mac management projected that the companies were on their way to sustained profitability. Stockholders reasonably believed that Fannie Mae and Freddie Mac were on a path to begin building capital and ultimately exit conservatorship. Instead, with no notice to stockholders, on August 17, 2012, Treasury and FHFA agreed to amend the PSPAs, changing the 10% dividend into a “Net Worth Sweep.” The Net Worth Sweep required Fannie Mae and Freddie Mac to pay the full amount of their net worth to Treasury every quarter. As a result, Plaintiffs alleged that Fannie Mae and Freddie Mac were unable to build capital, or ever pay dividends to private shareholders, regardless of how profitable either company was.

The Net Worth Sweep has continued to sweep all of Fannie Mae’s and Freddie Mac’s profits to the U.S. Treasury every quarter since 2012, resulting in Treasury receiving over \$150 billion in dividends in excess of what it would have received under the original PSPAs, and all at stockholders’ expense. Moreover, Fannie Mae and Freddie Mac still remain in conservatorship after fifteen years.

Plaintiffs proved at trial that FHFA’s agreeing to the Net Worth Sweep was an “arbitrary and unreasonable” violation of stockholders’ reasonable expectations under their shareholder contracts. Plaintiffs sought \$1.61 billion in damages, which was the amount that Fannie Mae’s and Freddie Mac’s common and preferred stock prices collectively fell on August 17, 2012 when the Net Worth Sweep was announced. At trial, Plaintiffs called twelve witnesses, including stockholder class representatives, former Fannie Mae and Freddie Mac management, and three expert witnesses. Plaintiffs also cross-examined representatives of FHFA

and Defendants' expert, who opined that the Net Worth Sweep was reasonable.

After ten hours of deliberations, the jury awarded damages of \$612.4 million to Fannie Mae and Freddie Mac stockholders. Appeals are anticipated.

KTMC's trial team consisted of attorneys [Lee Rudy](#), [Eric Zagar](#), [Grant Goodhart](#), [Lauren Lummus](#), plus numerous additional staff.

The case is titled *In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations, No. 13-mc-1288 (RCL) (D.D.C.)*.

News

- January 16, 2024 - Delaware Supreme Court Revives Derivative Claims Against the Directors and Officers of AmerisourceBergen Corporation n/k/a Cencora, Inc.
- August 15, 2023 - KTMC Wins Historic \$612 Million Jury Verdict For Fannie Mae and Freddie Mac Stockholders

Publications

- Clear Error in *Monasky v. Taglieri*: The Need to Include Coercion and Domestic Violence in Habitual-Residence Determinations, 36 TEMP. INT'L. & COMP. L.J.

Awards/Rankings

- Henry J. Richardson III Award, Temple Law School, 2022
- Fellow, Rubin Public Interest Law Honor Society, 2022

Memberships

- American Bar Association
- Hispanic National Bar Association
- National Association of Women Lawyers