

NOTE ON *PARAMOUNT COMMUNICATIONS, INC. v. QVC NETWORK, INC.*

In *Paramount Communications, Inc. v. QVC Network, Inc.*, 637 A.2d 34 (Del. 1994), the Board of Directors of Paramount Communications, Inc. (Paramount) negotiated a strategic alliance with Viacom, Inc. (Viacom) in which Paramount would merge into Viacom. Under the terms of the merger agreement, Paramount shareholders would receive voting and nonvoting stock of Viacom, but control of Viacom would remain vested in the existing control shareholders of Viacom. The merger agreement also contained various defensive provisions designed to deter Paramount or its shareholders from seeking or accepting any competing offers to acquire Paramount.

After the Paramount-Viacom deal was announced, QVC Network, Inc. offered to acquire Paramount at a price approximately \$10 (14.3 percent) higher than offered by Viacom. When the Paramount Board of Directors rejected QVC's offer, QVC began a hostile tender offer, and sued to set-aside the defensive provision in the merger agreement.

Paramount defended on the basis of *Paramount Communications, Inc. v. Time, Inc.* Paramount argued that the Board had determined that Viacom was a better strategic alliance than QVC. As such, the Board was entitled, under *Unocal Corp. v. Mesa Petroleum Co.*, to resist the QVC offer as a threat to the Board's policy to ally with Viacom.

The Delaware Supreme Court held that, by proposing to enter into the Viacom transaction, the Board had put Paramount up for sale and invoked its *Revlon, Inc. v. MacAndrews & Forges Holdings, Inc.* duties. The Court distinguished *Paramount Communications, Inc. v. Time, Inc. (Time)* on the grounds that in *Time*, both before and after the Warner transaction, control of Time was vested in public shareholders—"the fluid aggregation of unaffiliated shareholders," 637 A.2d at 43. In the Viacom transaction, control of Paramount would pass out of public shareholders and into the hands of Viacom's controlling shareholders.

In the context of a sale of control, Paramount's Board's supervening duty was to obtain the best value reasonably available to the shareholders. Despite the Board's discretion under *Time* to determine corporate policy, upon a sale of control, Paramount's Board no longer would have the ability to control corporate policy. Thus the question of which suitor was a better "fit" was not relevant.