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## **Delaware Supreme Court Provides Guidance on Standard of Review in Certain Merger Related Actions**

In *Corwin v. KKR Financial Holdings LLC*, the Delaware Supreme Court clarified that, in situations where entire fairness review does not apply (e.g., a merger without a controlling stockholder), a transaction that is approved by a fully-informed, uncoerced vote of disinterested stockholders, even where statutorily required, will invoke the business judgment rule, to the exclusion of other heightened standards of review, such as *Revlon* or *Unocal*.

In 2014, the stockholders of KKR Financial Holdings LLC (“KFN”) that were not affiliated with KKR & Co. L.P. (“KKR”) approved an acquisition of KFN by KKR by a requisite majority vote. Plaintiff stockholders brought suit, alleging that KKR was a controlling stockholder on account of a contractual management agreement and that the KFN board of directors breached their fiduciary duties in approving the acquisition of KFN. The Delaware Court of Chancery dismissed these claims, holding that the plaintiffs failed to allege that KKR was a controlling stockholder, noting that KKR owned less than 1% of KFN’s stock and had no right to appoint any directors or right to veto any board action.

On appeal, the Delaware Supreme Court affirmed the Court of Chancery’s decision, agreeing with Chancellor Bouchard that the plaintiffs failed to plead facts that would show that KKR could prevent the KFN board from freely exercising its independent judgment in considering the merger. Plaintiffs asserted that even if the entire fairness standard of review did not apply, because KKR was not a controlling stockholder, an enhanced scrutiny standard under *Revlon* still controlled. The Delaware Supreme Court reasoned that, as the merger was not subject to entire fairness, the business judgment standard of review was invoked because the merger was approved by a majority of disinterested stockholders in a fully-informed vote.

Notably, the Delaware Supreme Court’s decision also confirms that standards of review under *Revlon* and *Unocal* are designed to give the stockholders and the Court of Chancery the ability to enjoin a merger before closing, not to address post-closing money damages.

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