



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE MFW SHAREHOLDERS  
LITIGATION

) CONSOLIDATED  
) C.A. No. 6566-CS  
)  
) **REDACTED VERSION**  
) **EFILED JUNE 21, 2012**

**THE SPECIAL COMMITTEE MEMBERS PAUL M.  
MEISTER, MARTHA L. BYORUM, VIET D. DINH, AND  
CARL B. WEBB'S MOTION FOR SUMMARY JUDGMENT AND  
JOINDER TO THE MACANDREWS DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

Special Committee members Paul M. Meister, Martha L. Byorum, Viet D. Dinh, and Carl B. Webb (the "Special Committee") submit this motion and joinder in support of the motion of MacAndrews & Forbes Holdings, Inc., Ronald O. Perelman, Barry F. Schwartz and William C. Bevins ("MacAndrews Defendants") for summary judgment. For all the reasons outlined in the MacAndrews Defendants' brief, the Court should grant summary judgment to the Special Committee Defendants.

The MacAndrews Defendants' brief sufficiently describes how the Special Committee was well functioning and independent. This submission further highlights parts of the evidentiary record (i) demonstrating that the Special Committee was composed of highly qualified directors, who were disinterested and independent, and (ii) confirming that the Special Committee did precisely what was expected of them in these circumstances under Delaware law:

- The Special Committee was composed of individuals who had no material disabling ties to Ronald Perelman or MacAndrews & Forbes Holdings, Inc. *See, e.g.*, Special Committee Minutes dated June 21, 2011 (Ex. 20), and June

28, 2011 (Ex. 21); Webb Dep. 20, 39, 142 (Ex. 7); Meister Dep. 51-53, 56-58 (Ex. 4).<sup>1</sup>

- The so-called “conflicts” identified by Plaintiffs (Amended Complaint ¶¶ 50-55 (Ex. 1)) confirm that the challenges to the Special Committee are without merit. The fact that Special Committee member Carl Webb had some business with Mr. Perelman **ten years ago** (Am. Compl. ¶¶ 53-55 (Ex. 1)) (which was fully known to the Board and the Special Committee) is not a disabling conflict. *See Beam ex rel. Martha Stewart Living Omnimedia, Inc. v. Stewart*, 845 A.2d 1040, 1050 (Del. 2004) (“In order to show lack of independence, the complaint . . . must create a reasonable doubt that a director is not so ‘beholden’ to an interested director . . . that his or her ‘discretion would be sterilized.’”); *Wisc. Inv. Bd. v. Bartlett*, 2000 WL 238026, at \*6 (Del. Ch. Feb. 24, 2000) (“[e]vidence of personal and/or past business relationships does not raise an inference of self-interest”).
- Plaintiffs’ half-hearted attack on Mr. Webb’s knowledge and experience (Am. Compl. ¶¶ 66-68 (Ex. 1)) are similarly misplaced. A full review of Mr. Webb’s deposition transcript confirms that Mr. Webb was a key member of the Special Committee. Indeed, his years of experience as President and CEO of First Gibraltar Bank (1988-1993) and First Madison Bank (1993-1994) gave him a unique insight into the refinancing challenges facing MFW. Plaintiffs do not dispute that such a refinancing risk was a real and potent one. The record is replete with Mr. Webb’s substantive input into the Special Committee’s decision making process and negotiation strategy. *See, e.g.*, Webb Dep. (Ex. 7) at 70-72 (on the refinancing risks facing the company), 49, 91-94 (on the strategy to maximize stockholder value in negotiations), and 112-13 (on the fairness of the \$25 per share price).
- The Special Committee minutes reflect an exhaustive attention to potential conflicts of each of the Special Committee members, further confirming that the Special Committee and its advisors were keenly sensitive of having a Special Committee whose independence could not be – and cannot be – challenged. The Special Committee concluded, after several discussions with counsel and among themselves (all of which are disclosed in the minutes produced in the litigation), that the Special Committee was independent and disinterested. *See, e.g.*, Special Committee Minutes dated June 21, 2001 (Ex. 20) and June 28, 2011 (Ex. 21). That conclusion is supported by well-settled Delaware law. *See, e.g.*, *Beam*, 845 A.2d at 1050; *Bartlett*, 2000 WL 238026, at \*6.

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<sup>1</sup> Exhibit references used herein are to the Transmittal Affidavit of Christopher M. Foulds filed by the MacAndrews Defendants.

- Throughout the process from June 2011 through approval of the transaction in September 2011, the Special Committee was advised by separate and independent financial advisors (Evercore Group LLC) and lawyers (Willkie Farr & Gallagher LLP). Between MacAndrews' announcement of its proposal on June 13, 2011 and the approval of the transaction on September 11, 2011, the Special Committee met (either telephonically or in person) eight times. *See* Special Committee Minutes dated June 21, 2011, June 28, 2011, July 13, 2011, July 27, 2011, August 10, 2011, August 17, 2011, September 6, 2011, and September 10, 2011. (Exs. 20, 21, 22, 23, 24, 25, 26, 26). Accordingly, the Special Committee members are entitled to the protections of 8 *Del. C.* § 141(e).
- The Special Committee, whose charter gave it the power to say “no” to any transaction, spent several months having its financial advisors work with MFW to make sure the Company's financial projections were as up to date as possible and reflected the most accurate view of the Company's prospects. *See* Special Committee Minutes dated July 13, 2011, July 27, 2011, and September 6, 2011 (Exs. 22, 23, 26); Webb Dep. 57-61 (Ex. 7).
- The Special Committee discussed, at length, all of the various options to maximize stockholder value, including the option of rejecting MacAndrews' proposal, as well as the risks inherent in following such a course. *See, e.g.,* Special Committee Minutes dated August 10, 2011 and August 17, 2011 (Ex. 24, 25); Webb Dep. 70-72 (Ex. 7).<sup>2</sup> The Special Committee also took into consideration, during its decision making process, the most recent results of MFW's various operating divisions, including the negative results of GlobalScholar (a recent acquisition of MFW's principal subsidiary Harland Clarke). Webb Dep. 55, 57, 62 (Ex. 7); Meister Dep. 158 (Ex. 4); Special Committee Minutes dated July 13, 2011 and September 10, 2011 (Exs. 22 and 27). Indeed, even without the “deterioration in the business of GlobalScholar,” Evercore opined that the \$25 per share price being offered was fair from a financial point of view. *See* Special Committee Minutes dated September 10, 2011 (Ex. 27).
- The Special Committee's decision to recommend the transaction at the \$25 per share price was the product not only of an exhaustive and exemplary process, but a reflection of the realities facing the Company in the coming months and years. *See* Special Committee Minutes dated September 10, 2011 (Ex. 27). After having had a full and fair opportunity to weigh the decision of

the Special Committee and the MFW board of directors, the majority of the minority of MFW's stockholders chose to vote in favor of the transaction in a fully informed vote. *See MacAndrews Defendants Br. at 4, 24-25.*

- In sum, the factual record establishes that the Special Committee members were disinterested and independent. Indeed, Plaintiffs only seriously challenge the independence of Mr. Webb and, for the reasons set forth above, those allegations are insufficient to raise a genuine issue of material fact regarding a disabling conflict. Furthermore, the record demonstrates that the fully empowered Special Committee followed a deliberate and thorough process negotiating at arm's length in reaching a value maximizing transaction for the stockholders. Based on the independence of the Special Committee members and the dearth of well-pleaded allegations asserting a viable claim for breach of the duty of loyalty, the Special Committee members are entitled to the protections of the exculpatory provision in the Company's certificate of incorporation adopted pursuant to 8 *Del. C.* 102(b)(7).

### **CONCLUSION**

For the reasons set forth above and for the reasons set forth in the brief filed by the MacAndrews Defendants this Court should enter summary judgment in favor of the Special Committee Defendants.

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June 18, 2012  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing THE SPECIAL COMMITTEE MEMBERS PAUL M. MEISTER, MARTHA L. BYORUM, VIET D. DINH, AND CARL B. WEBB'S MOTION FOR SUMMARY JUDGMENT AND JOINDER TO THE MACANDREWS DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (REDACTED VERSION) was served via Lexis/Nexis File & Serve on June 21, 2012, upon the following counsel of record:

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