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SPECIAL COMMITTEE REPORT

This issue of the Debevoise & Plimpton Special Committee Report surveys corporate transactions announced during the period from July through December 2021 that used special committees to manage conflicts and key Delaware judicial decisions during this period ruling on the effectiveness of such committees.

While four of the 12 special committee transactions surveyed in this issue involved the proposed acquisition by a controlling stockholder of a controlled corporation, in only two of those did the controlling stockholder agree to subject the transaction to the vote of a majority of the unaffiliated stockholders. In the other two transactions the special committee approved the transaction notwithstanding the unwillingness of the controller to agree to the committee's request for a majority of the minority approval condition. That unwillingness should not be surprising. As discussed further below, if the special committee has to negotiate for this condition—as opposed to it being offered by the controller up front—the benefit to the controller of agreeing is limited.

MFW's *Ab Initio* Requirement: When Does the Beginning End and How Long Must It Last?

The Delaware Supreme Court's 2014 *MFW* decision[1] provided a path by which a going-private merger—as well as other conflicted transactions between a Delaware corporation and its controlling stockholder—may be subject to business judgment review rather than the exacting test of entire fairness. *MFW* set forth six conditions required for a transaction to receive business judgment rule treatment, the first of which is that the controller condition the transaction *ab initio* on the approval of a special committee of independent and disinterested directors and on a majority-of-the-minority stockholder vote.[2] While one may debate the contours of the "independence" and "disinterest" required of the directors serving on the special committee and which stockholders are properly considered part of the "minority," the requirement that *MFW*'s procedural protections be in place "from the beginning" presents particular conundrums. At what point is it too late to be *ab initio*? And why is this a requirement at all?

The *MFW* protections are designed to replicate in a controller take-private transaction the dynamic that exists in a merger negotiation between unaffiliated parties. While that dynamic must be artificially imposed, the analogy to a transaction that is truly arm's-length does not provide an obvious answer as to when the conditions intended to replicate arm's-length bargaining must be in place. Delaware courts have raised the specter that unless the controller's commitment to observe *MFW* conditions is given up front, it will become something for which

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1 *Kahn v. M&F Worldwide Corp.*, 88 A. 3d 365 (Del. 2014)

2 The other conditions are: (ii) the committee is independent; (iii) the committee is empowered to select its own advisors and to say no definitively; (iv) the committee meets its duty of care in negotiating a fair price; (v) the vote of the minority is informed; and (vi) there is no coercion of the minority. *MFW*, 88 A.3d at 645.

the special committee must bargain, requiring it to expend negotiating leverage that might otherwise be deployed to improve the financial terms offered to the minority stockholders.[3] There appears to be scant evidence, however, that parties in this situation would otherwise in fact trade process for price. Moreover, it is not entirely clear why a transaction that is in fact approved by an independent committee having the power to say no and acting with due care, as well as by a fully informed and uncoerced vote of minority stockholders, should be subject to the same standard of review as one that is imposed by the controller unilaterally merely because the agreement to impose the majority-of-the-minority vote requirement came in the middle of the negotiations rather than at the beginning.

The Delaware courts have had more to say on the question of when the *ab initio* period ends, having adjudicated multiple disputes on this question over the seven years since the *MFW* decision. The courts have consistently declined to impose a bright-line test, such as a requirement that the commitment of the controller to condition the transaction on special committee and majority-of-the-minority approval must accompany or precede the controller's initial proposal. Instead, the Delaware Supreme Court has held that in order to satisfy the *ab initio* requirement, the *MFW* conditions have to be in place "before any substantive economic negotiations begin."[4] In that case, the Delaware Supreme Court determined that the inclusion of the *MFW* conditions for the first time in a follow-up letter sent by a controller two weeks after the date of its initial going-private proposal was not too late because the parties had not yet begun to bargain over price.[5] On the other hand, the Court of Chancery found in another case that a controller's commitment to the *MFW* conditions came too late to be effective where it followed preliminary discussions on value that were admittedly "entirely exploratory," because it was reasonable to infer that presentations delivered by the controller to the company in connection with those discussions "set the field of play for the economic negotiations to come by fixing the range in which offers and counteroffers might be made."[6]

Two recent Court of Chancery decisions, discussed further in the second section of this *Report*, provided further gloss on *MFW*'s *ab initio* requirement. The first involved a merger between two companies under common control, in connection with which the controller committed in its initial offer letter to condition the transaction on the approval of a special committee of independent directors and a majority-of-the-minority target stockholder vote. That letter, however, came several months following the initial discussion between the two companies' CEOs about the possibility of a merger and only after the substantial completion by the acquiring company of its due diligence review of the target. Particularly in light of the fact that those pre-offer activities took place over a period 10 times longer than the 18 days it took the special committee to approve the transaction once it received the controller's offer letter, the

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3 *Flood v Synutra Int'l, Inc.*, 195 A.3d 754 at 763 (Del. 2018) ("The essential element of *MFW*, then, is that these requirements cannot be dangled in front of the Special Committee, when negotiations to obtain a better price from the controller have commenced, as a substitution for a bare-knuckled contest over price.").

4 *Synutra Int'l*, 195 A.3d 754 (Del. 2018).

5 *Id.*

6 *Nicholas Olenik v. Frank A. Lodzinski et al. and Earthstone Energy, Inc.*, [full cite] (Del. Apr. 5, 2019). A similar conclusion was reached by the Delaware Supreme Court in *Olenik v Lodzinski*, 208 A.3d 704 (Del. 2019).

court concluded that both the offer and the controller's commitment to the *MFW* conditions fell outside of the *ab initio* period.[7]

In the second case, the Court of Chancery held that the *ab initio* requirement means not only that the *MFW* conditions must be in place from the beginning of negotiations, but also that they must remain in place until the end. The controller had entered into a letter agreement with the company long before any particular transaction was contemplated, promising not to take the company private without the prior approval of both a special committee of independent directors and a majority-of-the-minority stockholder vote. However, that agreement was due to expire a few months following the controller's take-private proposal. The special committee twice requested that the controller extend the term of that commitment, but the controller declined to do so. The refusal of the controller to commit to *MFW*'s procedural requirements beyond the term of the letter agreement led the court to refuse to dismiss fiduciary duty claims brought by minority stockholders following the merger. The court held that *ab initio* required that the commitment to special committee and unaffiliated stockholder approval "be irrevocable, in the sense that it remains in place for the duration of the negotiations over the offer."[8]

The requirement that *MFW*'s procedural protections be in place "from the beginning" can in some cases be a trap for the unwary. A stockholder contemplating taking its controlled company private may not know the steps of the *MFW* dance until it hires counsel and bankers, by which time it may be too late. If nothing else, the continued prevalence of Delaware disputes over when the beginning ends for purposes of imposing the procedures required under *MFW* to get the benefit of business judgment rule review of conflicted party transactions indicates the need for controllers and members of controlled company boards to retain advisors experienced in controlled company transactions *ab initio*.

Recent Special Committee Decisions

MFW's *ab initio* requirement was not met where initial offer was delayed until after acquiror's due diligence was substantially complete.

VMware and Pivotal Software—each controlled by Michael Dell—combined pursuant to a merger agreement that was approved by a special committee of each company and by a majority of the shares held by Pivotal's unaffiliated stockholders. Minority stockholders of Pivotal, who were cashed out in the transaction, brought breach of fiduciary duty and aiding and abetting claims against VMware, Dell and the officers and directors of Pivotal. Defendants sought dismissal on the basis that the transaction complied with *MFW*. The Delaware Court of Chancery denied the motion, holding that defendants failed to satisfy *MFW*'s requirement that the transaction be subject to *MFW*'s procedural protections *ab initio*.

All parties acknowledged that VMware's initial offer to acquire Pivotal was conditioned on the approval of Pivotal's special committee and majority-of-the-minority stockholder approval.

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7 *HBK Master Fund LP et al. v. Pivotal Software, Inc. et al.*, C.A. No. 2020-0165-KSJM, tr. ruling (Del. Ch. June 29, 2021).

8 *MH Haberkorn 2006 Trust et al. v. Empire Resorts, Inc. et al.*, C.A. No. 2020-0619-KSJM, tr. ruling (Del. Ch. July 23, 2021).

However, that offer came over seven months after the VMware CEO initially contacted the Pivotal CEO regarding a potential combination of the companies. The complaint alleged that during that period—and before any formal offer was made by VMware—Pivotal formed a special committee, the committee engaged legal counsel and financial advisors, the parties executed an NDA, an "enormous amount" of confidential information was shared by Pivotal, numerous due diligence meetings were held, the respective CEOs had discussions regarding integration and how the combined company would be run after the merger was completed and the acquirer substantially completed its preliminary due diligence.

The court determined that these alleged facts, together with the fact that only 18 days passed between VMware's offer and the approval of the transaction by the Pivotal special committee—as compared to the 199 days that had passed between the initial discussions between the CEOs and the date of the offer, supported a reasonable inference that the special committee and majority-of-the-minority conditions were not in place "at the outset of the process" as required by *MFW*. *HBK Master Fund LP, et al. v. Pivotal Software, Inc., et al.*, C.A. No. 2020-0165-KSJM, tr. ruling (Del. Ch. June 29, 2021).

Application of *MFW* requires majority-of-the-minority stockholder approval—even if the transaction itself is not subject by statute to stockholder approval.

Turning Point Brands acquired its controlling stockholder, Standard General, in a stock-for-stock, forward triangular merger. The transaction was approved by a special committee of Turning Point independent directors, but it was not subject to majority-of-the-minority stockholder approval, or indeed to any vote of Turning Point's stockholders, no such vote being required under the Delaware General Corporation Law. Minority stockholders of Turning Point brought breach of fiduciary duty claims against the company's directors and its controlling stockholder. Defendants moved to dismiss, arguing in part that the board's decision was subject to the business judgment rule under *MFW*. Defendants asserted that, although *MFW* normally requires majority-of-the-minority stockholder approval, that requirement is inapplicable where the underlying transaction is not itself subject to a stockholder vote.

The Court of Chancery disagreed, observing that "to accept business judgment review [as the standard for] a controlling stockholder transaction merely because it can be structured to avoid a statutory stockholder vote would . . . undermine the entire rationale for the [*MFW*] doctrine." Nonetheless, the court left open the possibility that there may be circumstances—not present here and not otherwise identified by the court—in which "the standard-shifting effect of *MFW* might be available without a stockholder vote." *Paul-Emile Berteau v. David E. Glazek et al. and Turning Point Brands, Inc.*, C.A. No. 2020-0873-PAF, memo. op. (Del. Ch. June 30, 2021).

Commitment of controlling stockholder to comply with *MFW* for only a limited period does not satisfy *MFW*'s *ab initio* requirement; vote of stockholder that has a material business relationship with the target does not count towards *MFW*'s majority-of-the-minority vote requirement.

Empire Resorts was acquired by an entity formed by its controlling stockholder in a freeze-out merger. The transaction was approved by a special committee of Empire directors as well as by 52.7% of the shares held by stockholders not affiliated with the controller. Plaintiff stockholders brought breach of fiduciary claims against the controller and members of the board. Defendants moved to dismiss on the basis that the transaction complied with *MFW*.

The Court of Chancery denied the motion, holding that the *ab initio* and majority-of-the-minority requirements of *MFW* were not satisfied. Although the controller previously entered into a letter agreement committing that it would not pursue a going-private transaction that was not subject to special committee and unaffiliated stockholder approval, that agreement would terminate seven months after the formation of the special committee. The controller refused requests by the committee to extend the expiration date of the letter agreement and to include in the parties' confidentiality agreement a standstill provision that applied beyond that expiration date.

The court found that the controller's position defeated the purpose of the *ab initio* requirement, holding that the commitment to special committee and unaffiliated stockholder approval "must be irrevocable, in the sense that it remains in place for the duration of the negotiations over the offer." The court also found that it was reasonably conceivable that the stockholder vote did not meet the majority-of-the-minority vote requirement since that threshold was achieved only with the vote of shares held by a stockholder who was had a material contractual relationship with Empire, which relationship might be impaired if the transaction were not approved. The court stated that "what constitutes an unaffiliated majority-of-the-minority vote pursuant to *MFW* does not appear to have been fully litigated" by the Court of Chancery but that "then-Vice Chancellor Strine's discussion of the requirement that the minority stockholders be disinterested calls into question the propriety of including a stockholder with significantly divergent interests from the other minority stockholders." *MH Haberkorn 2006 Trust et al. v. Empire Resorts, Inc. et al.*, C.A. No. 2020-0619-KSJM, tr. ruling (Del. Ch. July 23, 2021).

MFW applies only if stockholders are fully informed.

Isramco, Inc. was acquired by its indirect controlling stockholder, Naphtha Israel Petroleum Corp., in a cash-out merger. The transaction had been approved by a special committee of Isramco's independent directors as well as by the holders of a majority of the Isramco shares unaffiliated with the controller, which conditions were present from the outset of the transaction. Minority stockholders of Isramco brought breach of fiduciary duty claims against Isramco's directors, Naphtha Israel and Naphtha Israel's ultimate controller. Defendants moved to dismiss on the basis that the transaction was subject to the business judgment rule rather than entire fairness review because the conditions of *MFW* had been satisfied.

A material element of Isramco's value was an oilfield royalty payable by an affiliate of the controller, the amount of which was in dispute. While these facts had been disclosed to Isramco's stockholders, the company did not disclose that the board had authorized the controller to participate in the arbitration of that dispute. Plaintiffs asserted that such participation in the arbitration was a material fact. The Delaware Court of Chancery agreed, finding that it was plausible that the controller's participation, and the board's decision to allow it, were material to the minority stockholders in evaluating the merger, that the failure to disclose those matters meant that the vote was not fully informed and that as a result the transaction was not eligible for business judgment review. *Ligos v. Isramco, Inc. et al.*, C.A. No. 2020-0435-SG (Del. Ch. Aug. 31, 2021).

Personal admiration for controlling stockholder and director fees constituting a majority of income call into question independence of special committee members.

BCG Partners acquired Berkeley Point Financial LLC from an affiliate of its controlling stockholder, Howard Lutnick, in a transaction that was approved by a special committee of BCG directors. Stockholders brought derivative breach of fiduciary duty claims against BCG directors, the company's parent and Ludnick. After discovery, defendants moved to dismiss on the grounds of failure to show demand futility and failure to show that the claims against the directors were not exculpated. Defendants also alleged that plaintiffs had the burden to prove lack of entire fairness because the transaction had been approved by a disinterested and independent committee.

The Court of Chancery denied summary judgment, finding that there were material questions of fact as to two of the three defendant directors' independence from Lutnick: one because BGC director fees constituted over 50% of his income over the prior eight years and the other because he testified as to his admiration for Lutnick, calling him an "inspiration" and a "wonderful … good human being" with whom he was "proud to be associated." The court found that these allegations raised material factual questions as to whether those directors could impartially consider a demand. On the other hand, the court found that the director fees from Lutnick-controlled entities received by the other two committee members—which in one case constituted 7.6% of the director's income over the past eight years and which in the other case the court described as "hardly material"—did not raise questions as to independence. The case went to trial and as of the date of this report is awaiting a ruling by the court. *In re BGC Partners, Inc. Derivative Litigation*, C.A. No. 2018-0722-LWW (consol.), memo. op. (Del. Ch. Sept. 20, 2021).

Special Committee Transaction Overview

Transaction Summary and Reasons for Special Committee	Liberty Mutual Holding Company Inc. signed a definitive agreement to acquire (i) State Automobile Mutual Insurance Company and (ii) the 41.2% publicly traded interest in State Auto Financial Corporation not owned by State Auto Mutual. Under the terms of the agreement, State Auto Mutual mutual members will become mutual members of Liberty Mutual, and Liberty Mutual will acquire all of the publicly held shares of common stock of State Auto Financial for $52 per share in cash, representing a 200% premium over the closing price on the trading day immediately preceding the announcement of the transaction. A special committee of the board of directors of State Auto Financial was formed to consider the transaction. The special committee ultimately approved the transaction notwithstanding the unwillingness of the buyer to condition the transaction on agree to a majority-of-the-minority stockholder vote.
Announced Date	7/12/2021
Target Name	State Auto Financial Corporation
Acquirer Name	Liberty Mutual Holding Company Inc.
Equity Value	$2,290,000,000
Transaction Status	Pending
Special Committee Type	Target
Was *MFW* Used?	No

Transaction Summary and Reasons for Special Committee	VICI Properties L.P. entered into a definitive agreement to acquire MGM Growth Properties LLC ("MGP") from MGM Resorts International and other shareholders. The conflicts committee of the MGP board of directors was authorized to negotiate the transaction in light of the potential conflicts of interest that could arise from MGM Resorts International's controlling interest in MGP. Unlike the MGP Class A Common Shareholders, who will receive newly issues shares of VCI Properties in the transaction, most of the consideration to be paid to MGM Resorts International will be cash. MGM Resorts International will also retain approximately 12 million units in a newly formed operating partnership of VICI Properties and will enter into an amended triple-net lease with VICI Properties that will have an initial total annual rent of $860 million and an initial term of 25 years. The transaction is subject to approval of the holders of at least a majority of the voting power of MGP, which was satisfied by delivery of a written consent by MGM Resorts International. No vote is required by any holders of Class A Common Shares.
Announced Date	8/4/2021
Target Name	MGM Growth Properties LLC

Acquirer Name	VICI Properties L.P.
Equity Value	$6,340,000,000
Transaction Status	Pending
Special Committee Type	Target
Was *MFW* Used?	No

Transaction Summary and Reasons for Special Committee	DraftKings Inc. ("DraftKings") entered into a definitive agreement to acquire Golden Nugget Online Gaming, Inc. ("GNOG") in an all-stock transaction. A special committee of GNOG's board was formed due to conflicts of interest that could arise due to GNOG's controlling stockholder having interests in the transaction that were different from those of the minority stockholder. Those potentially differing interests included contemplated long-term commercial arrangements and a potential accelerated cash payment related to a tax receivables agreement between GNOG and its controlling stockholder.
Announced Date	8/9/21
Target Name	Golden Nugget Online Gaming, Inc.
Acquirer Name	DraftKings Inc.
Equity Value	$1,560,000,000
Transaction Status	
Special Committee Type	Target
Was *MFW* Used?	No

Transaction Summary and Reasons for Special Committee	Chesapeake Energy Corporation ("Chesapeake") entered into a definitive agreement to acquire Vine Energy Inc. ("Vine") for a mix of cash and stock. A special committee of Vine's board of directors was formed due to conflicts of interest that could arise between Vine and its controlling stockholders. Those stockholders are parties to a tax receivables agreement with Vine that entitled them to a change of control payment. They agreed to waive their right to the change of control payment, and the special committee was subsequently dissolved.
Announced Date	8/10/21
Target Name	Vine Energy Inc.
Acquirer Name	Chesapeake Energy Corporation
Equity Value	$2,200,000,000

Transaction Status	Closed
Special Committee Type	Target
Was *MFW* Used?	No

Transaction Summary and Reasons for Special Committee	JBS S.A. ("JBS") made an unsolicited proposal to acquire all of the outstanding shares of Pilgrim's Pride Corporation ("Pilgrim's") that it does not already own. The proposed transaction was subject to the approval of a special committee of independent directors of Pilgrim's and to the affirmative vote of holders of a majority of the shares of Pilgrim's not owned by JBS. JBS withdrew its proposal following its failure to agree on terms with the special committee.
Announced Date	8/12/21
Target Name	Pilgrim's Pride Corporation
Acquirer Name	JBS S.A.
Equity Value	$6,900,000,000
Transaction Status	Proposal withdrawn
Special Committee Type	Target
Was *MFW* Used?	Yes

Transaction Summary and Reasons for Special Committee	Ocala Bidco, Inc. (an acquisition vehicle of Nordic Capital Advisors) entered into a definition agreement to acquire Inovalon Holdings, Inc. for a purchase price of $41.00 per share in cash. Dr. Keith Dunleavy, Chairman and Chief Executive Officer of the company, and Cape Capital Management, S.a.r.l. held 64.1% and 22.8% of the company's voting power, respectively, and each signed a voting agreement. Dr. Dunleavy also agreed to roll approximately 31% of his holdings ($700,000,000), and Cape Capital agreed to roll approximately 75% of its holdings ($600,000,000). The transaction is subject to approval of the holders of a majority of the outstanding voting stock, other than stock held by Dr. Dunleavy, Cape Capital, any officer or director of the company and certain of their affiliates. To address the conflicts generated by the participation of Dr. Dunleavy in the transaction, the Inovalon board delegated to a special committee of independent directors' authority to review, evaluate and negotiate potential strategic alternatives, including the power to reject one or more proposals. The board, by resolution, also provided that it would not recommend a transaction to the company's stockholders without a prior favorable recommendation from the special committee.
Announced Date	8/19/2021

Target Name	Inovalon Holdings, Inc.
Acquirer Name	Ocala Bidco, Inc. (Nordic Capital Advisors)
Equity Value	$7,300,000,000
Transaction Status	Closed
Special Committee Type	Target
Was *MFW* Used?	Yes

Transaction Summary and Reasons for Special Committee	Banco Santander made an unsolicited proposal to acquire the 19.75% interest in Santander Consumer USA Holdings that was not already owned by Banco Santander. A special committee of the board of Santander Consumer USA was formed to consider the transaction. The special committee requested a majority-of-the-minority stockholder vote requirement, which was not agreed to by Banco Santander. The special committee nonetheless approved the transaction, determining that the $41.50 per share offer price represented the highest price reasonably available.
Announced Date	8/23/2021
Target Name	Santander Consumer USA Holdings Inc.
Acquirer Name	Banco Santander, S.A.
Equity Value	$2,510,000,000
Transaction Status	Completed
Special Committee Type	Target
Was *MFW* Used?	No

Transaction Summary and Reasons for Special Committee	The Goldman Sachs Group, Inc. ("GS"), entered into a definitive agreement to acquire GreenSky, Inc. in an all-cash transaction with an exchange ratio of 0.03 shares of GS for each share of GreenSky. David Zalik, Chairman and Chief Executive Officer of GreenSky, owned (together with certain affiliates) approximately 57% of the equity of GreenSky. Additionally, Mr. Zalik would be entitled to significant benefits under a tax sharing agreement upon a change of control of the company. In connection with its original strategic review, which involved discussions with several financial sponsors, the GreenSky board delegated to a special committee of independent directors the authority to review, consider, evaluate, negotiate, accept, reject and recommend any potential transaction in which any officer or director, including Mr. Zalik, might have an interest that would be different from or additional to the interests of the unaffiliated stockholders. In particular, the board was concerned with potential conflicts in the event Mr. Zalik was asked to roll over some of his equity and/or he would benefit from the Tax Sharing Agreement. Mr. Zalik agreed in writing that he would not roll over any stock unless the transaction were approved by the special committee and the transaction was subject to a non-waivable condition requiring approval of a majority of the disinterested stockholders. In the final structure, Mr. Zalik did not roll any shares, and he waived any benefits he might have received under the Tax Sharing Agreement.
Announced Date	9/14/21
Target Name	GreenSky, Inc.
Acquirer Name	The Goldman Sachs Group, Inc.
Equity Value	$2,240,000,000
Transaction Status	Pending
Special Committee Type	Target
Was *MFW* Used?	No, given the ultimate absence of any conflict with the controlling stockholder

Transaction Summary and Reasons for Special Committee	iClick, a Cayman Islands exempted limited liability company, received separate unsolicited acquisition proposals from PAG Pegasus Fund and Oasis Management Company (9/23/21) and from Infinity Equity Management (10/17/21). iClick's board of directors formed a special committee of independent directors to evaluate the proposals and other potential strategic alternatives.
Announced Date	9/24/21 (PAG Pegasus/Oasis proposal); 10/18/21 (Infinity proposal); 10/21/21 (formation of special committee)
Target Name	iClick Interactive Asia Group Limited
Acquirer Name	PAG Pegasus Fund LP and Oasis Management Company; Infinity Equity Management Co. Ltd.

Equity Value	$711 million (based on Infinity proposal)
Transaction Status	Unclear; no transaction has been announced
Special Committee Type	Target
Was *MFW* Used?	No

Transaction Summary and Reasons for Special Committee	Stonepeak entered into a definitive agreement to acquire Teekay, a Marshall Islands limited partnership, as well as Teekay's general partner, which owned approximately 41% of Teekay's common units. A conflicts committee of the board of Teekay's general partner (the "GP Board") was authorized to (1) review and evaluate bids from Stonepeak and another party and, subject to a determination by the GP Board, to approve a 100% sale transaction, (2) determine whether such a transaction was in the best interests of Teekay and its public unitholders, (3) determine whether to approve and recommend to the GP Board to approve a 100% sale transaction and the resolution of potential conflicts of interests (which would constitute a "Special Approval" under Teekay's partnership agreement), and (4) reject a 100% sale transaction, all subject to the GP Board's determination of the final bidder. The transaction was subject to approval of the holders of at least a majority of the outstanding Teekay common units. Teekay's general partner entered into a Voting and Support Agreement to vote in favor of the transaction.
Announced Date	10/4/2021
Target Name	Teekay LNG Partners L.P.
Acquirer Name	Stonepeak Limestone Holdings LP
Equity Value	$1.5 billion
Transaction Status	Closed 1/13/22
Special Committee Type	Target
Was *MFW* Used?	No

Transaction Summary and Reasons for Special Committee	BillerudKorsnäs entered into an agreement to acquire Verso Corporation for $27.00 per share in cash. A special committee of the board of Verso had previously been formed to evaluate the initial unsolicited proposal to acquire Verso by Atlas Holdings, a financial sponsor that has been an investor in Verso for over four years, for $20.00 per share. The special committee reviewed and approved the BillerudKorsnäs transaction.
Announced Date	12/20/2021
Target Name	Verso Corporation

Acquirer Name	BillerudKorsnäs Inc.
Equity Value	$825,000,000
Transaction Status	Pending
Special Committee Type	Target
Was *MFW* Used?	No

Transaction Summary and Reasons for Special Committee	BP p.l.c. entered into a definitive agreement to acquire the 45.6% interest that it did not already own in BP Midstream Partners LP for 0.575 BP American Depositary Shares for each unit of BP Midstream Partners. The board of directors delegated to a conflicts committee of the board, consisting solely of independent directors, the authority to review, evaluate, negotiate and approve the transaction on behalf of BP Midstream Partners LP and the public unaffiliated unitholders. As the majority unitholder, BP agreed to deliver a written consent approving the merger. The unaffiliated unitholders will receive a consent statement/prospectus at least 20 days prior to the closing of the merger, which will include a form of consent that may be executed unaffiliated unitholders. However, no consent or approval is required from any unaffiliated unitholder to consummate the merger.
Announced Date	12/20/2021
Target Name	BP Midstream Partners LP
Acquirer Name	BP p.l.c.
Equity Value	$723,000,000
Transaction Status	Pending
Special Committee Type	Target
Was *MFW* Used?	No

Debevoise & Plimpton LLP has decades of experience in assisting special committees in transactions involving conflicted fiduciaries and other parties including controlling stockholders, other conflicted fiduciaries and transactional counterparties in transactions involving special committees. We keep databases of information relevant to the formation of special committees and regularly present on topics relating to special committees. We welcome the opportunity to speak with corporate general counsel, directors, advisors and others regarding these matters.

Please do not hesitate to contact us with any questions.

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