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Case Study: AJRD Successful Takeover Defense



Background

- Aerojet Rocketdyne (AJRD) develops and manufactures advanced propulsion and energetics systems, including Javelin and Stinger missile engines, NASA vehicle propulsion and power systems, and other systems for customers in the United States and abroad.
- In February 2022, Warren Lichtenstein, AJRD's executive chair and founder of an activist hedge fund, launched a proxy fight and litigation aimed at replacing the AJRD directors without ties to his hedge fund.
- The AJRD's eight-member Board was evenly split between (1) Mr. Lichtenstein and his three allies, and (2) CEO Eileen Drake, who was supported by three independent directors.
- Each side nominated a separate slate of directors for shareholder consideration at the 2022 annual meeting.



Strategic Considerations

- Mr. Lichtenstein's ultimate goal was to take control of the Board and to install a new CEO.
- Due to the deadlocked Board and a court-issued order, Ms. Drake had to quickly assemble an independent slate of highly qualified directors and a professional team of advisors without relying on company funds.
- In April 2022, facing resistance from the Lichtenstein faction to call the regular annual meeting, the Drake Slate made the tide-turning strategic decision to solicit and obtain shareholder consents necessary to call a special meeting of shareholders to elect a new Board.
- In May 2022, Ms. Drake's public consent solicitation won the support of more than 40% of outstanding shares for a special shareholder meeting to elect a new Board (only 25% were needed).
- Leading independent proxy advisory firms, Institutional Shareholder Services (ISS) and Glass Lewis, endorsed the Drake slate.
- On June 30, 2022, the entire Drake Slate was elected with 75% of votes cast by shareholders.



Key Takeaways

- ***Board Size.*** The AJRD contest presents a cautionary tale about the perils that can befall a board with an even number of directors.
 - Corporate boards typically act in a collegial and collaborative fashion, and decisions are consensus driven. However, it is prudent to keep an odd number of directors to eliminate the possibility of a deadlock that could paralyze board decision-making.
- ***Settlements with Activists.*** Boards need to consider the long-term implications of settling proxy contests via the addition of activist representatives to the board.
 - If a settlement with an activist investor is appropriate, a corporate board should strongly consider insisting that any activist designee be independent, as opposed to an insider employed by - or affiliated with - the activist fund.
 - Consider that Mr. Lichtenstein and two of his supporters on the AJRD Board were originally added to the AJRD Board in 2008 as part of a settlement that resolved a proxy contest launched by Mr. Lichtenstein's activist fund.
- ***Be Mindful of Potential Litigation.*** Well-funded activist funds are prepared to bring costly litigation to pressure corporate board members and executives into a settlement. Mr. Lichtenstein brought claims against Ms. Drake and her colleagues in both state and federal court. The effort was aimed at leveraging Mr. Lichtenstein's financial resources, pressuring the individual defendants and seeking "sound bites" and press headlines to advance the proxy contest.
 - Board members and management need to be mindful that activist situations can escalate to litigation, and written materials (including e-mails and other electronic communications) may have to be produced and could be misconstrued and taken out of context.
- ***Take the High Ground.*** The AJRD contest presented two contrasting narratives of AJRD's performance and future. But maybe more importantly, the campaigns displayed a remarkably different style in communications with shareholders and other stakeholders. Mr. Lichtenstein's hyperbolic and sensationalist style ultimately backfired, as reflected in the reports issued by the independent proxy advisory firms.
- ***Antitrust Risks in M&A.*** The AJRD contest was ultimately precipitated by the termination of AJRD's announced acquisition by Lockheed Martin, which was blocked by the FTC. Dealmakers need to continue to act with prudence and experienced insight in navigating the current regulatory environment and potential risks of regulatory opposition to business combination transactions.

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