

From the desk of Jeanne M. Kerkstra, Esq., CPA

Viewpoint

Conflicted Boards and Self-Dealing

In *Gantler v. Stephens*¹, the Delaware Supreme Court recently reversed a Court of Chancery's dismissal of a case against officers and directors of a bank holding company for rejecting an acquisition offer due to a majority of the Board of Directors' conflict of interest.

In the *Gantler* case, the Delaware Supreme Court confirmed that *officers as well as directors* could be charged with breach of loyalty. The Court also confirmed how if a disclosure is made, then it must be a *full* disclosure. The Court refused to allow conflicted Boards to hide behind the shareholder ratification doctrine. In other words, shareholders' claims against Boards were not extinguished by a favorable shareholder vote when there was partial disclosure to shareholders by a Board having a conflicted majority.

The facts in this case most assuredly have been played out many times with other banks whereby the Board put its self-interest ahead of the shareholders. A careful and thorough examination of all the facts will be necessary to ensure that the proper parties are called on the carpet for their self-dealings.

¹ 2009 WL 188828 (Del.Supr.)

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