

## Leadership in Corporate Governance Reform

From setting new standards of director independence, diversity, regulatory compliance and workplace conduct, to restructuring board practices in the wake of persistent illegal conduct; from challenging the improper use of defensive measures and deal protections for management's benefit, to addressing stock options backdating abuses and other self-dealing by executives; we have confronted a variety of questionable, unethical and proliferating corporate practices. Seeking to reform faulty management structures and address breaches of fiduciary duty by corporate officers and directors, we have obtained unprecedented victories on behalf of shareholders seeking to improve governance and protect the shareholder franchise.

Some examples include:

- **21st Century Fox/Fox News** - Before the birth of the #MeToo movement, BLB&G leads the prosecution of an unprecedented shareholder derivative litigation against Fox News parent 21st Century Fox, Inc. arising from the systemic sexual and workplace harassment at the embattled network. After nearly 18 months of litigation, discovery and negotiation related to the shocking misconduct and the Board's extensive alleged governance failures, the parties unveil a landmark settlement with two key components: 1) the first ever Board-level watchdog of its kind - the "Fox News Workplace Professionalism and Inclusion Council" (WPIC) of experts - majority independent of the Murdochs, the Company and Board; and 2) one of the largest financial recoveries - \$90 million - ever obtained in a pure corporate board oversight dispute. The WPIC is expected to serve as a model for public companies in all industries.
- **Allergan** - As alleged in groundbreaking litigation, billionaire hedge fund manager Bill Ackman and his Pershing Square Capital Management fund secretly acquire a near 10% stake in pharmaceutical concern Allergan, Inc. as part of an unprecedented insider trading scheme by Ackman and Valeant Pharmaceuticals International, Inc. What Ackman knew - but investors did not - was that in the ensuing weeks, Valeant would be launching a hostile bid to acquire Allergan shares at a far higher price. Ackman enjoys a massive instantaneous profit upon public news of the proposed acquisition and the scheme works for both parties as he kicks back hundreds of millions of his insider-trading proceeds to Valeant after Allergan agreed to be bought by a rival bidder. After a ferocious three-year legal battle over this attempt to circumvent the spirit of the US securities laws, BLB&G obtains a \$250 million settlement for Allergan investors, and creates precedent to prevent similar such schemes in the future.
- **IAC/InterActiveCorp** - Landmark victory for shareholder rights against IAC/InterActiveCorp and its controlling shareholder and chairman, Barry Diller. For decades, activist corporate founders and controllers seek ways to entrench their position atop the corporate hierarchy by granting themselves and other insiders "supervoting rights." Diller lays out a proposal to introduce a new class of non-voting stock to entrench "dynastic control" of IAC within the Diller family. BLB&G litigation on behalf of IAC shareholders ends in capitulation with the Defendants effectively conceding the case by abandoning the proposal. This becomes critical corporate governance precedent, given trend of public companies to introduce "low" and "no-vote" share classes, which diminish shareholder rights, insulate management from accountability, and can distort managerial incentives by providing controllers voting power out of line with their actual economic interests in public companies.

- **Pfizer** – Representing a large institutional shareholder, we successfully prosecuted a derivative action against pharmaceutical giant Pfizer, Inc.'s senior management and Board, alleging that they knowingly breached their fiduciary duties to the company by, among other things, allowing the illegal marketing of many of its bestselling drugs, which led to the largest criminal fine ever imposed and the largest healthcare civil fraud settlement in history. We obtained a landmark settlement, under which defendants contributed \$75 million to fund a new Regulatory and Compliance Committee of the Board to oversee and monitor Pfizer's compliance and drug marketing practices. Multiple corporate governance experts, including two former SEC Chairs, have said this new Committee, and numerous other provisions obtained through the litigation to prevent such conduct, could set the industry standard for similar highly regulated public companies.
- **Caremark/CVS** – Representing institutional shareholders challenging the terms of a proposed merger between CaremarkRx and CVS Corporation, we obtained a landmark court ruling granting statutory appraisal rights to Caremark's shareholders, ordering Caremark's Board to disclose previously withheld information, and enjoining a shareholder vote on a merger offer from CVS Corporation. CVS was ultimately forced to raise its offer, equal to more than \$3.3 billion in additional consideration.
- **UnitedHealth** – We represented eight institutional investors against the former officers of UnitedHealth Group, Inc., and obtained the clawback of \$920 million in ill-gotten compensation. In addition, the company also agreed to adopt far-reaching corporate governance reforms to curb future executive compensation abuses, including accepting shareholder nominated director candidates and the separation of CEO and Chairman functions.
- **Landry's** – We challenged multiple attempts by the CEO of Landry's Restaurants to take control of the company through improper means. Our litigation forced the CEO to increase his buyout offer by four times the price and obtained an additional \$14.5 million cash payment for the shareholder class.
- **WorldCom** – The firm's high-profile prosecution of the *WorldCom* litigation was one of the more significant developments impacting Wall Street practices in the last decade. On behalf of defrauded investors in the now infamous telecom bankruptcy, BLB&G and Lead Plaintiff the New York State Common Retirement Fund (NYSCRF) obtained over \$6 billion from the investment banks who underwrote WorldCom bonds and nearly \$25 million directly from the pockets of former WorldCom director defendants – more than 20% of the aggregate net worth of these individuals. *WorldCom* had a profound impact on how Wall Street investment banks perform due diligence and how corporate directors perform their duties. According to *The Wall Street Journal*, the events and the case law arising from this litigation "[shook] Wall Street, the audit profession and corporate boardrooms."
- **Dollar General** – Our litigation on behalf of a shareholder class helped obtain \$40 million following a private equity buyout, with a potential for \$17 million more for the class.
- **ACS** – We challenged an attempt by Affiliated Computer Services, Inc.'s founder, chairman and CEO to extract a premium on his stock not shared with the company's public shareholders in a sale of ACS to Xerox. On the eve of trial, we obtained a \$69M recovery for shareholders – with a substantial portion of the settlement personally funded by the founder himself.

- **Ceridian** – In seeking to avoid its ouster in a proxy contest, Ceridian’s Board negotiated a “going-private” deal to a favored bidder which included provisions that restricted the sale process and prevented an effective election. On behalf of our institutional shareholder client, we sued to invalidate multiple coercive provisions to the deal and compel an annual shareholder meeting. On the eve of trial we obtained a settlement which required Ceridian to hold a prompt shareholder meeting, void restrictive provisions of the merger agreement, waive standstill provisions so other possible takeover partners could extend a superior offer, and make additional public disclosures relating to the sale process and executive compensation.
- **Amylin** – In our prosecution of the Amylin Pharmaceuticals Shareholder Litigation, we challenged a growing corporate practice — “proxy puts” in debt agreements which undermine the most important voting rights of shareholders. After trial, the Delaware Chancery Court accepted our position that “proxy puts” — provisions that trigger acceleration of debt upon a change in the majority of the board of directors — inherently coerce shareholders to vote for the existing directors and can undermine shareholders’ rights and might be “unenforceable as against public policy.”
- **Columbia/ HCA** – BLB&G also obtained an unprecedented corporate governance plan as part of the settlement of *Columbia/HCA Derivative Litigation (McCall V. Scott)*, a lawsuit filed against the directors and officers of Columbia/HCA Healthcare Corporation. The case alleged extensive Medicare and Medicaid fraud by management making the company the subject of the largest healthcare fraud investigation in history. On behalf of 12 public pension funds, including the New York State Common Retirement Fund, CalPERS, LACERA and other institutional investors, BLB&G obtained corporate governance changes which go beyond the requirements both of the Sarbanes-Oxley Act and of the rules that the New York Stock Exchange has proposed to the SEC. Under the sweeping governance plan, the HCA Board of Directors will be substantially independent, and will have increased power and responsibility to oversee fair and accurate financial reporting. A summary of the corporate governance plan and its significance was detailed in our [October 2003 Advocate for Institutional Investors](#). Corporate governance expert Professor Melvin A. Eisenberg called it an "excellent, state-of-the-art corporate governance plan."

For more information on our corporate governance practice, click [here](#).