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I cover finance, the law, and how the two interact.

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New York Judge Tosses Verizon Settlement As `Misuse Of Corporate Assets'

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An early Christmas present came my way in the form of a ruling by a New York judge who decided that Faruqi & Faruqi and its colorful lead partner, Juan Monteverde — whom I once called the "Anthony Weiner of Class Actions" — don't deserve a big fat fee for negotiating some minor wording changes on the proxy accompanying Verizon's $130 billion purchase of Vodaphone's interest in Verizon Wireless.

That Faruqi & Faruqi could even have been in a position to wangle a fee out of this is incredible. As I noted at the time, Monteverde and his skilled colleagues at this legal equivalent of a Long Island bucket shop spent all of three days "investigating" the Verizon/Vodaphone deal before filing a thoroughly researched complaint based mostly on easily accessible materials from the Internet. Somehow, Monteverde & Co. came out on top in the struggle for control of this trivial piece of litigation designed to extract money from Verizon shareholders, and they negotiated a settlement that included two hugely important and hard-won concessions from Verizon: 1) a few minor changes in the wording of the proxy and 2) a solemn vow to obtain a fairness opinion on any future transactions worth more than $14 billion. Fairness opinions are the CYA documents that investment bankers provide stating why the terms of a transaction are reasonable, and pretty much standard for big M&A deals anyway.

Judge Melvin Schweitzer in New York Supreme Court tentatively approved the settlement, as judges are wont to do. Then objectors represented by Prof. Sean Griffith of Fordham University School of Law, among others, spoke at a hearing on Dec. 2. And incredibly, Judge Schweitzer listened to them. And reconsidered his approval of this ridiculous piece of lawyering designed to extract money from Verizon shareholders.

A reader sent me the Dec. 19 ruling. And it states, in plain terms, why this sort of litigation is a waste of everybody's time.

The judge starts by noting the obvious: Virtually every large takeover these days is challenged by lawyers claiming the price is too low, the price is too high, the disclosures are insufficient, the directors violated their duties by approving it, something or other. Bottom line is if the plaintiff lawyers are to be believed, the lawyers at shops like Wachtell Lipton and Skadden Arps are not only incompetent but incapable of learning from the repeated lessons they get from highly skilled attorneys like Monteverde. As Schweitzer explains:

> The remarkable parade of the most experienced, highly regarded corporate merger lawyers who ostensibly are failing to draft merger disclosure documents which do not require enhancement or correction strikes the court as implausible. Corporate lawyers drafting complex disclosure documents in connection with the sale of securities in public markets experience no such problem. They do not need litigation lawyers to teach them to correctly draft disclosure documents. Why do merger lawyers?

I've got an explanation. Because in M&A, time is money, and lawyers like Faruqi & Faruqi can be bought off cheap. Much like folks in the construction trade who know exactly how much a well-timed labor disturbance can cost the developer of a high-rise tower in New York, they go to companies like Verizon with an offer they can't refuse: Pay us a fee and we will go away. Honest.

Judge Schweitzer concluded that the disclosures the skilled practitioners at Faruqi & Faruqi negotiated — like a table showing average deal premiums for a laundry list of companies in different industries — weren't just worthless, but less than worthless.

> It is the court's judgment here, after further study and reflection, that were it to approve the Settlement ...it would be an enabler of an unwarranted divestiture of shareholder rights by virtue of plaintiff's release, as well as a misuse of corporate assets were plaintiff's legal fees to be awarded. Accordingly, the court simply cannot, and thus does not, approve this Settlement.

The only sad part is Verizon shareholders will have to spend more money disposing of this matter. When it was filed, Randal Milch, Verizon executive vice president and general counsel, said: "We believe this lawsuit is entirely without merit, and Verizon intends to defend itself vigorously." That's code for: We know this will cost a relative pittance in fees once a judge certifies it as a class action, so we'll settle.

How does this happen? The reader who sent me this ruling notes that the lawyers who specialize in M&A litigation are clever.

> One of the things counsel do is delay sending out the class action notices to reduce time to respond. In this case the notice was signed by the Court and dated October 6, 2014 but I only received that notice on October 20, 2014 (effectively reducing by two weeks my time to respond). And since the objections had to be filed at least 10 days before the hearing on December 2, 2014 that effectively only left 4 weeks to put everything together.

Also on the team challenging this deal was Avi Szenberg of Szenberg & Okun

PLLC.