

# THE CORPORATE GOVERNANCE CASE FOR BOARD GENDER DIVERSITY

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# RATIONALE FOR BOARD GENDER DIVERSITY REGULATIONS

- Gender diversity laws introduced across the world.
- U.S. has flexible disclosure regime
- UK and Australia have targets and comply or explain models
- Many European countries have quotas
- **Rationale?**

## EQUALITY CASE

- Gender equality: Addressing the glass ceiling problem

## BUSINESS CASE

- Good for the economy to use the best talent
- Profitable for business

# WHY 'CORPORATE GOVERNANCE' CASE?

- Role of the 'board of directors'?
- Governance of the company. (Agency theory)
- Monitoring management.
- **Question 1:**
- What are the possible impediments faced by boards in performing their monitoring role?
- **Question 2:**
- Is there a corporate governance case for board gender diversity?

# METHOD: CONTENT ANALYSIS OF DELAWARE CASES

- **Why Delaware cases?**
- Delaware courts' expertise in corporate law
- Rich factual analysis
- **Data set**
- Not a random selection of cases.
- Prominent cases where the analysis offered insights into the functioning of members of the board and their interaction with management were considered. (Purposive sampling)
- **Significance:**
- The study helps us explore the impediments to board monitoring and to use the observations from these cases to assess the merits of monitoring related arguments for board gender diversity.

# CASES

- **In re Del Monte Foods Co. Shareholders Litigation** 25 A.3d 813 (2011).
- **Air Products and Chemicals, Inc. v Airgas, Inc and Ors** 16 A.3d 48 (2010).
- **Yucaipa American Alliance Fund II, L.P. v Riggio** 1 A.3d 310 (2010).
- **In re American International Group, Inc.** 965 A.2d 763 (2009).
- **In re Dollar Thrifty Shareholder Litigation** 14 A.3d 573 (2010).
- **In re Massey Energy Company** A.3d (2011) (Unreported).

# THEMES OF ANALYSIS

- (i) Attendance at board meetings
- (ii) Preparation for board meetings
- (iii) Board independence (Did they question the CEO before approving resolutions? Was there genuine discussion of merits a decision was made?)
- (iv) Decision making under crisis/ pressure
- (v) Management fault
- (vi) Qualifications
- (vii) Women directors

# SOME RELEVANT STUDIES

- **Monitoring/ Diversity versus independence**
- Rene B Adams and Daniel Ferreira, 'Women in the Boardroom and Their Impact on Governance and Performance' (2009) 94 *Journal of Financial Economics* 291.
- Beecher-Monas, Erica, 'Marrying Diversity and Independence in the Boardroom: Just How Far Have You Come, Baby?' (2007) 86(2) *Orlando Law Review* 373
- **Women directors ask more questions/ better decision making**
- Dhir, Aaron A., *Challenging Boardroom Homogeneity* (Cambridge University Press, 2015).

# FINDINGS AND DISCUSSION

- The exclusive focus of the diversity efforts on company boards and to complement this with similar efforts in the management context.
- Relevant qualifications/ experience of directors is significant and should not be overlooked to meet diversity targets.
- Viewpoint diversity might be a function of liminality rather than of gender.
- Gender diversity reforms resonate with reforms relating to independent directors in many ways. The latter has not completely prevented corporate collapses and neither can the former be considered as a panacea.

# RELATED PAPERS IN THIS SERIES

- “Are gender diverse boards better for corporate governance? Evidence from Australian judicial decisions” 30 AJCL 1 (2015) 58.
- “The Value of Board Gender Diversity vis-à-vis the Role of the Board in the Modern Company” (2015) 33 C&SLJ 90.
- "Gender Diversity as the Anti-dote to 'groupthink' on corporate boards", (2017) 21 Deakin Law Review 67-85.
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