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Justice Holland's Lasting Imprint on Corporate Law

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In early February, Justice Randy Holland, the longest-tenured member of the Delaware Supreme Court, announced his plans to retire at the end of March. At the time of his appointment in 1986 by Gov. Michael N. Castle, Holland was the youngest person ever to serve on the court. He became its longest-serving member in 2009.

According to our research, during his 33-year tenure, Holland authored over 800 electronically reported decisions and imparted a legacy of addressing several key areas of Delaware corporate law. In reviewing his most cited decisions, it is clear Holland has left a lasting imprint—most notably through his jurisprudence articulating the fiduciary duties of the directors of Delaware corporations and on the standard for judicial review of controlling shareholder takeovers. These four landmark decisions are among his most cited:

- Kahn v. M&F Worldwide, 88 A.3d 365 (Del. 2014).
- Stone ex rel. AmSouth Bancorporation v. Ritter , 911 A.2d 362 (Del. 2006).
- Malone v. Brincat , 722 A.2d 5 (Del. 1998).
- Kahn v. Lynch Communication Systems , 638 A.2d 1110 (Del. 1994).

A discussion of these decisions reveals Holland's lasting impact on Delaware corporate law.

In his two most cited decisions, *Stone* and *Malone*, Holland established

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critical bounds for the fiduciary duties owed by directors under Delaware corporate law. In *Stone*, the Delaware Supreme Court affirmed the Chancery Court's standard for director oversight responsibility set forth in *In re Caremark International Derivative Litigation*, 698 A.2d 959 (Del. Ch. 1996), requiring directors to take some affirmative measures to ensure legal compliance. Rejecting the theory of the so-called "triad" of fiduciary duties, the Supreme Court, through Holland, also confirmed that the duty of good faith does not set forth an independent basis, in addition to the duties of care and loyalty, for director liability under Delaware corporate law, but is instead included within the duties of care and loyalty. As a result, the court confirmed that directors' failure to act in good faith toward the corporation may result in a (nonexculpated) breach of the duty of loyalty.

The Court of Chancery characterized the *Stone* complaint as "a classic *Caremark* claim." In *Caremark*, the Court of Chancery laid out a test for assessing a director's potential personal liability for failing to act in good faith in discharging his or her oversight duties: "where a claim of directorial liability for corporate loss is predicated upon ignorance of liability creating activities within the corporation ... only a sustained or systemic failure of the board to exercise oversight ... will establish the lack of good faith that is a necessary condition to liability." In *Stone*, the Court of

Chancery dismissed the shareholder plaintiffs' derivative claims against the director defendants, based on the *Caremark* standard, and the Supreme Court upheld that decision, finding that demand was not excused because there was no basis for an oversight claim where there had been a reasonable reporting system in place for directors to rely upon in their oversight role. The *Stone* decision presents a nuanced standard—a high bar to demonstrate liability, and an emphasis on good faith to spur appropriate director conduct—that is likely to endure and add to Holland's legacy.

In *Malone*, the Delaware Supreme Court further clarified, and significantly broadened, the standard for a state law breach of fiduciary duty arising out of alleged disclosure violations. The court also addressed the intersection of Delaware corporate law and federal securities laws on corporate disclosure rules. In *Malone*, the plaintiffs filed a class action against the directors of Mercury Finance Corp., alleging they breached their fiduciary duty of disclosure by intentionally overstating the company's financial condition. The Court of Chancery dismissed the case, finding that the directors had no fiduciary duty of disclosure in the absence of a request for shareholder action and that the shareholders must therefore seek any remedy solely under federal law.

The Supreme Court upheld the dismissal of the plaintiffs' suit, but under a different rationale. Holland opined that, even in the absence of a request for shareholder action, "directors who knowingly disseminate false information that results in corporate injury or damage to an individual stockholder violate their fiduciary duty." Directors have a responsibility to exercise their fiduciary duties whenever they communicate publicly or directly with shareholders about corporate matters. Further, federal securities laws did not preclude a state suit for breach of fiduciary duty. Similar to his emphasis on director "good faith" in *Stone*, Holland in *Malone* highlighted the need for "honesty" on the part of Delaware directors when dealing with shareholders and the corporation. As the *Malone* court stated, under Delaware law, "directors' fiduciary duties include the duty to deal with their stockholders honestly." This emphasis on basic, common sense director duties serves as another enduring legacy stemming from Holland's decisions in the area.

Finally, Holland has left a lasting imprint on the law regarding transactions involving controlling stockholders. In the third of his most cited decisions, *Kahn v. Lynch*, the Supreme Court, with Holland writing, concluded that entire fairness remained the exclusive standard for breach of fiduciary duties when a corporation is acquired by a controlling shareholder in a "interested merger." The court also clarified the burden of proof in controlling shareholder buyouts. Before *Lynch*, Delaware courts placed the burden on controlling shareholders to demonstrate fairness to minority shareholders. In the *Lynch* decision, the Delaware Supreme Court held that defendants can shift the burden of persuasion to plaintiffs if the defendants show that the transaction was either approved by "an independent committee of directors," or "an informed majority of the minority shareholders."

Holland modified the standard for these so-called "freeze-out transactions" 20 years later in *M&F Worldwide*, another of his oft-cited decisions. In *M&F Worldwide*, the Delaware Supreme Court held that, while entire fairness remains the standard for review for mergers involving the controlling shareholder, the court can instead apply the highly deferential business judgment standard "if and only if" the following six necessary conditions are met: "the controller conditions the procession of the transaction on the approval of both a special committee and a majority of the minority stockholders; the special committee is independent; the special committee is empowered to freely select its own advisers and to say no definitively; the special committee meets its duty of care in negotiating a fair price; the vote of the minority is informed; and there is no coercion of the minority." In revisiting this closely followed issue and adopting the business judgment standard under certain specific situations, Holland once again returned to his emphasis on nuanced and practical analysis of the fiduciary obligations of Delaware corporate directors.

These oft-cited decisions demonstrate Holland's lasting impact on Delaware jurisprudence and will continue to shape these important areas of corporate law.

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