Infusing Principles of Corporate Governance in Corporate Law: A Proposed Hierarchy of Director Accountabilities to Various Stakeholders

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50 ATENEO L.J. 480 (2005)
SUBJECT(S): CORPORATE LAW
KEYWORD(S): CORPORATE GOVERNANCE

This Note is an abridged version of the Author's thesis. This Note examines the principles of Corporate Governance and identifies the different stakeholders of a corporation. Foremost is the role of the board of directors who are tasked to enhance the corporate value and are answerable to more constituencies under the SEC Code of Corporate Governance. In the face of the increased number of constituencies is the inevitable conflict of claims. As a result of these conflicting claims, the issue of how to address these claims arises. The Author therefore proposes a manner by which these claims can be harmonized under the principles of Commercial Law. Furthermore, the Note takes the initial steps to clarify the precise nature of this social fiduciary duty of the directors to named constituencies who can make demands against the corporation by virtue of these parties' own stake in the corporation. Thus, this Note sets down a proposed hierarchy of values in which the board of directors can measure actions to satisfy conflicting demands against the corporation. The Note also seeks to illustrate the effects of ordinary fault and negligence by analyzing examples such as accounting fraud as seen in Enron, WorldCom, and the Philippine Long Distance and Telecommunications Company Takeovers, as well as the damage to society in employment practices, environmental management, creditor fraud, and consumer protection.

The hierarchy proposed by the Author, based on rank, is: (a) shareholders, (b) employees; (c) creditors, (d) local community, and (e) managers. This hierarchy is based on the principle that those who have greater pecuniary investment stand to obtain more benefits. This hierarchy, however, is not inflexible, but can be fashioned for a corporation's unique circumstances. It merely reflects the idea that the duty of the board of directors is the greatest. The shareholders, meanwhile, enjoy the most number of claims against the corporation and its board of directors, being

able to command the directors the three duties of obedience, diligence, and loyalty. Next in the hierarchy are the employees. They are an integral part of the organization and contribute to its sustainability. The next in the hierarchy are the creditors, whose contribution is limited to financial resources. The local community comes after. Its contribution to the corporation merely affects the company's expenses through the utilization of government services. Last in the hierarchy are the managers. By virtue of their contribution to the corporate business enterprise, managers are entitled to certain claims in the corporation.

The Author concludes that by following this proposed hierarchy, directors are able to enhance the value of the corporation for long-term. This can only benefit the corporation given the growing global economy because investments follow the path where efficient governance standards have been implemented.