

December 2014

New York Appellate Court Affirms Business Judgment Rule for Kenneth Cole Going-Private Transaction

Mergers and going-private transactions have become a common target for costly and time-consuming shareholder litigation, but New York companies may now be less vulnerable to these attacks. On November 20, 2014, the New York Appellate Division, First Department, affirmed a New York trial court's dismissal of a minority shareholder challenge to the going-private transaction of Kenneth Cole Productions, Inc. (KCP). Key to the decision was the KCP board's implementation of procedural safeguards to protect minority shareholders, namely, (1) empowering a special committee of independent directors to negotiate the deal and (2) requiring approval by KCP's minority shareholders. The court found that the minority shareholder protections entitled KCP and its directors to rely on the deferential "business judgment rule" in lieu of the more stringent "entire fairness" standard of review. The case marks the first time a New York state court has applied the business judgment rule in a challenge to a going-private transaction with a majority shareholder.

Continue reading [here](#).

What Does This Mean for You?

Prior to the *Kenneth Cole* decision, New York courts generally applied the entire fairness standard of review to transactions with a majority shareholder. The Appellate Court ruling indicates that corporations will be entitled to the more deferential business judgment rule as long as a special committee acts on behalf of the company and minority shareholders approve the transaction. New York companies seeking to go private may be able to mitigate the risk of shareholder litigation by taking care to structure their transactions with similar procedural safeguards.

For more information, contact a member of our [Deal Team](#) or the Robinson+Cole lawyer with whom you normally consult.

Robinson+Cole is an Am Law 200 law firm of approximately 200 lawyers, with offices in the finance, technology, and research-rich corridor from New York to Boston. We serve as U.S. counsel to a range of businesses and investors, from start-ups to Fortune 100 companies.

Boston | Hartford | New York | Providence | Stamford | Albany | Los Angeles | Miami | New London | [rc.com](#)

© 2014 Robinson & Cole LLP. All rights reserved. No part of this document may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission. This document should not be considered legal advice and does not create an attorney-client relationship between Robinson+Cole and you. Consult your attorney before acting on anything contained herein. The views expressed herein are those of the authors and not necessarily those of Robinson+Cole or any other individual attorney of Robinson+Cole. The contents of this communication may contain attorney advertising under the laws of various states. Prior results do not guarantee a similar outcome.