

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISH NETWORK DERIVATIVE LITIGATION.	Case No.: 69012	Electronically Filed Feb 21 2017 08:05 a.m. Elizabeth A. Brown Clerk of Supreme Court
JACKSONVILLE POLICE AND FIRE PENSION FUND, Appellant, vs. GEORGE R. BROKAW; CHARLES M. LILLIS; TOM A. ORTOLF; CHARLES W. ERGEN; CANTEY M. ERGEN; JAMES DEFRANCO; DAVID K. MOSKOWITZ; CARL E. VOGEL; THOMAS A. CULLEN; KYLE J. KISER; and R. STANTON DODGE, Respondents.	Case No.: 69729	

APPELLANT'S NOTICE OF SUPPLEMENTAL AUTHORITY

McDONALD CARANO WILSON LLP
Jeff Silvestri (NSBN 5997)
Amanda C. Yen (NSBN 9726)
2300 W. Sahara Avenue, Suite 1200
Las Vegas, NV 89102
Telephone: (702) 873-4100
Facsimile: (702) 873-9966
jsilvestri@mcdonaldcarano.com
ayen@mcdonaldcarano.com

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP
Mark Lebovitch (*pro hac vice*)
Jeroen van Kwawegen (*pro hac vice*)
Adam D. Hollander (*pro hac vice*)
1251 Avenue of the Americas
44th Floor
New York, NY 10020
Telephone: (212) 554-1400
markl@blbglaw.com
jeroen@blbglaw.com
adam.hollander@blbglaw.com

Attorneys for Appellant Jacksonville Police and Fire Pension Fund

NOTICE OF SUPPLEMENTAL AUTHORITY

Pursuant to Nevada Rule of Appellate Procedure Rule 31(e), Appellant Jacksonville Police and Fire Pension Fund (“Appellant”) provides this notice of supplemental authority in order to bring to the Court’s attention a recent ruling addressing when corporate directors lack independence and are accordingly not entitled to deference under the business judgment rule. On December 5, 2016, after the last brief had been filed in this matter, the Supreme Court of Delaware issued its opinion in *Sandys v. Pincus*, Case No. 157, 2016, 2016 WL 7094027 (Del. Dec. 5, 2016).

Appellant respectfully highlights the *Sandy’s* decision at pages 4-6. Specifically, the Court noted in the demand futility context that at the pleading stage, “[a] plaintiff is only required to plead facts supporting an inference – or in the words of *Rales*, ‘create a reasonable doubt’ – that a director cannot act impartially.” *Sandys*, 2016 WL 7094027, at *4.¹ The Court stated:

“Our law is based on the sensible intuition that deference ought to be given to the business judgment of directors whose interests are aligned with those of the company's stockholders. Precisely because of that deference, if our law is to have integrity, Delaware must be cautious about according deference to directors unable to act with objectivity. To consider directors independent on a [Rule 23.1](#) motion generates understandable skepticism in a high-salience context where that determination can short-circuit a merits determination of a fiduciary duty claim.” *Id.*, at *6.

Appellant respectfully submits that this ruling is instructive for this Court's determination of a number of issues in this appeal set forth at pages 43-61 of Appellant's Opening Brief, including the applicable pleading standard and questions of director independence in the context of a special litigation committee that is specifically created to assess the merits of a breach of fiduciary duty claim. This Court has found that "[t]he Delaware court's approach is a well-reasoned method for analyzing demand futility and is highly applicable in the context of Nevada's corporations law." *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 641 (2006).

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Dated: February 17, 2017

McDONALD CARANO WILSON LLP

By: /s/ Jeff Silvestri

Jeff Silvestri (NSBN 5997)
Amanda C. Yen (NSBN 9726)
2300 W. Sahara Avenue, Suite 1200
Las Vegas, NV 89102
Telephone: (702) 873-4100
Facsimile: (702) 873-9966
jsilvestri@mcdonaldcarano.com
ayen@mcdonaldcarano.com

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP

Mark Lebovitch (*pro hac vice*)
Jeroen van Kwawegen (*pro hac vice*)
Adam D. Hollander (*pro hac vice*)
1251 Avenue of the Americas
44th Floor
New York, NY 10020
Telephone: (212) 554-1400
markl@blbglaw.com
jeroen@blbglaw.com
adam.hollander@blbglaw.com

*Attorneys for Appellant Jacksonville Police
and Fire Pension Fund*

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 17th day of February, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

James J. Pisanelli, Esq. jjp@pisanellibice.com	Debra L. Spinelli, Esq. dls@pisanellibice.com
Kirk B. Lenhard, Esq. klenhard@bhfs.com	Jeffrey S. Rugg, Esq. jrugg@bhfs.com
Brian W. Boschee, Esq. Bboschee@nevadafirm.com	William N. Miller, Esq. wmiller@nevadafirm.com
Robert Cassity, Esq. bcassity@hollandhart.com	J. Stephen Peek, Esq. speek@hollandhart.com
Joshua Reisman, Esq. JReisman@rsnvlaw.com	

I hereby further certify that on the 17th day of February, 2017, I caused a true and correct copy of this document to be placed in the U.S Mail, postage prepaid, and mailed to those listed below:

Bruce Braun, Esq.
Sidley Austin LLP
One South Dearborn
Chicago, IL 60603

Brian T. Frawley, Esq.
Sullivan & Cromwell
125 Broad Street
New York, NY 10004-2498

Tariq Mundiya, Esq.
James Dugan, Esq.
Willkie Farr & Gallagher, LLP
787 Seventh Avenue
New York, NY 10019

Robert Warns, III, Esq.
Reisman Sorokac
8965 South Eastern Avenue
Suite 382
Las Vegas, NV 89123

C. Barr Flinn, Esq.
Robert Brady, Esq.
David C. McBride, Esq.
Young, Conway, Stargatt & Taylor, LLP
Rodney Square
1000 North King Street
Wilmington, DE 19801

Holly Sollod, Esq.
Holland & Hart LLP
555 17th Street, Suite 3200
Denver, CO 80202

By: /s/ *Brian Grubb*
An Employee of McDonald Carano Wilson LLP