
From: Davis, Gardner F. [GDavis@foley.com]
Sent: 11/23/2019 6:02:39 PM
To: Hyde, Kevin E. [KHyde@foley.com]
CC: Hosay, Robert H. [RHosay@foley.com]
Subject: Re: JEA - observation about process which causes me concern - privileged and confidential attorney work product

Pigs v hogs

On Nov 23, 2019, at 1:04 PM, Hyde, Kevin E. <KHyde@foley.com> wrote:

I advised them months ago that the PUP was an incredibly bad idea and would kill the whole deal.

Sent from my iPad

On Nov 23, 2019, at 1:01 PM, Davis, Gardner F. <GDavis@foley.com> wrote:

Robert and Kevin-

Saying pressure is on these folks is a total understatement.

I was on a call with two rational men Friday afternoon, the president of Jacksonville University and the chair of Baptist Hospital board. They were talking about the need for a grand jury in light of the whatever you call the executive bonus plan.

FYI - given the values discussed on my two calls by investment bankers, I suspect the plan payout would approach a billion dollars. In private company context, board would lose shareholder suit alleging bad faith approving the plan - or worse a bad faith claim is not subject to indemnification by company - personal liability - worst possible outcome in corporate law.

Also FYI - the paper had story about how JEA board cancelled the November meeting for light agenda.

I believe the JEA board has similar fiduciary duties to board of public company when considering the sale of company, so-called Revlon duties.

In private company context, the board receives repeated briefings from counsel about fiduciary duties. I think that would be advisable here.

One of hallmarks of good sale process under Revlon is board meets very often to receive reports and be actively engaged. A private company sale can involve 30 or more meetings. It's much more difficult for shareholder plaintiff to overcome presumption board made correct decisions when the directors are fully informed and engaged.

The reasons for sale appear extremely compelling- best market in past 100 years. Huge windfall. Value on sale far exceeds value as publicly owned utility. But I think JEA is botching the process and pr.

The President of JU and chair of Baptist Hospital would immediately understand the sale is a "no brainer" if they understood economics.

Just saying. But I do not know anything about political world.

G

On Nov 23, 2019, at 8:19 AM, Hosay, Robert H. <RHosay@foley.com> wrote:

Thanks for the update. Appreciate you getting involved and adding value. There are a lot of balls in the air and pressure is on these folks. Keep up the good work and advising based on your knowledge, experience and insight!

Robert H. Hosay

Foley & Lardner LLP
106 East College Avenue | Suite 900
Tallahassee, FL 32301
P 850.513.3382
M 850.559.0356

[View My Bio](#)
[Visit Foley.com](#)
<image001.png>

• Austin • Boston • Brussels • Chicago • Dallas • Denver • Detroit • Houston • Jacksonville • Los Angeles • Madison • Mexico City • Miami • Milwaukee • New York • Orlando • Sacramento • San Diego • San Francisco • Silicon Valley • Tallahassee • Tampa • Tokyo • Washington D.C. •

From: Davis, Gardner F.

Sent: Saturday, November 23, 2019 7:30 AM

To: Hosay, Robert H. <RHosay@foley.com>

Cc: Hyde, Kevin E. <KHyde@foley.com>

Subject: JEA 4.5 hour call yesterday

Robert-

To keep you in the loop – yesterday morning on two hours' notice, I was invited to JEA call about draft purchase agreement. I may have made them mad because I suggested a couple of times that perhaps they wanted to ask me the questions for Foley and then I would drop off for sake of being efficient.

For what it's worth, JEA senior management does not appear to be listening to guidance from its professionals and the other professionals (not me) are reluctant to suggest they have more expertise than the client. I spoke up on a couple of points, to be told I did not know what I was talking about. (The senior bankers knew that I was right.) I am pretty certain that time will prove me right. Biggest example, JEA wants the Buyer to pay JEA a "reverse break-up" fee of 5% of gross price (\$375 million) if the voters fail to approve the sale in the referendum.

Gardner F. Davis

Foley & Lardner LLP
1 Independent Drive
Suite 1300
Jacksonville, FL 32202-5017
P 904.359.8726

[View My Bio](#)
[Visit Foley.com](#)

<image003.jpg>