



707 Preparing Bulletproof Corporate Minutes

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BULLETPROOF MINUTES

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I. WHY HAVE MINUTES?**A. State Statutory Requirements.****1. Responsible Officer.**

- a. "One of the officers [of a corporation] shall have the duty to record the proceedings of the meetings of the stockholders and directors in a book to be kept for that purpose." 8 *Del. C.* § 142(a).

2. Written Consents.

- a. A unanimous written consent must be filed with the minutes of board proceedings. 8 *Del. C.* § 141(f).
- b. Note that a written consent must be effected by each director to be effective.

3. Dividends And Stock Repurchases.

- a. A director must cause his or her dissent from a vote to repurchase shares or pay a dividend to be entered on the books containing the minutes of board proceedings. 8 *Del. C.* § 174.

B. Evidentiary Value.**1. Prima Facie Evidence.**

- a. Minutes of a meeting are *prima facie* evidence of what took place at that meeting and are *prima facie* correct. *Oberly v. Howard Hughes Med. Instit.*, 472 A.2d 366, 385-86 (Del. Ch. 1984); *Young v. Janas*, 103 A.2d 299, 303 (Del. Ch. 1954).

2. Not Conclusive.

- a. Parties can use parol evidence to contradict or supplement minutes. *See Cheff v. Mathes*, 199 A.2d 548, 555 (Del. 1964) (stating that oral testimony can be used to show that minutes are inaccurate); *Schroder v. Scotten, Dillon Co.*, 299 A.2d 431, 440 (Del. Ch. 1972) ("Although the minutes of a directors' meeting are the best evidence of what took place there, parol evidence is admissible to supplement or contradict the events as reported in the minutes."); *Phoenix Fin. Corp. v. Iowa-Wisconsin Bridge Co.*, 16 A.2d 789, 794 (Del. Super. Ct. 1940) (stating that "competent testimony is admissible in supplementing . . . minutes where a matter has been omitted").

3. Minutes Serve As Evidence Of Process.

- a. Courts regularly use minutes to determine a case's merits, including whether directors have discharged their duties. *See, e.g., Smith v. Van Gorkom*, 488 A.2d 858, 879 (Del. 1985) (examining minutes to determine whether directors exercised their duty of care in approving a transaction); *Carlson v. Hallinan*, 2006 Del. Ch. LEXIS 58, at *65 (Del. Ch. Mar 21, 2006) (citing board minutes as evidence that directors had not employed a fair process to determine compensation and management fee); *Chesapeake Corp. v. Shore*, 771 A.2d 293, 306-307 (Del. Ch. 2000) (using board minutes to establish when board learned of a threat, in order to determine whether defensive measure was justified); *Bowen v. Imperial Theatres, Inc.*, 115 A. 918, 920 (Del. Ch. 1922) (stating that minutes are "where we generally look for evidence of the acts of the directors").

II. FORM OF MINUTES.**A. Statutory Requirement.****1. 8 Del. C. § 224.**

- a. "Any records maintained by a corporation in the regular course of its business, including its . . . minute books, may be kept on, or by means of, or be in the form of, any information storage device, or method provided that the records so kept can be converted into clearly legible paper form within a reasonable time. . . ."

* *The author wishes to thank Melissa A. DiVincenzo and Eric Wilensky for their assistance in preparing this outline.*

B. Detail Of And Descriptions In Minutes.

1. Time Spent.

- a. Minutes should probably indicate when a substantial amount of time is spent deliberating an issue. *See In re The Walt Disney Co. Deriv. Litig.*, 2005 Del. Ch. LEXIS 113, at *215-*217 & n.539 (Aug. 9, 2005) (using minutes to determine whether directors had discharged duties of good faith and due care in considering an officer's hiring and compensation and stating that "[i]t would have been extremely helpful to the Court if the minutes had indicated in any fashion that the discussion relating to the OEA [Ovitz's employment agreement] was longer and more substantial than the discussion relating to the myriad of other issues brought before the compensation committee that morning").

2. Omissions.

- a. If an important fact is omitted from the minutes, while other similar facts are included, a court may find it "logical to assume" it was because the fact did not occur. *See Weinberger v. UOP, Inc.*, 457 A.2d 701, 709 (Del. 1983) (deciding, in part based on minutes, that a feasibility study was not provided to outside directors where minutes described in "considerable detail" the materials that were distributed); *see also Loft, Inc. v. Guth*, 2 A.2d 225, 242 (Del. Ch. 1938), *aff'd* 5 A.2d 503 (Del. 1939) (holding that if a board wanted to show that it discussed and debated whether the president of the company engaged in self-dealing, there should be some mention of the issue in the minutes).

3. Conclusory Statements May Not Be Sufficient.

- a. Words such as "lengthy" may be conclusory and unhelpful to a court. *See In re Maxxam, Inc.*, 1997 Del. Ch. LEXIS 51, at *49 (Del. Ch. Apr. 4, 1997) (stating, when determining the quality of a board's decision-making process in approving a transaction, that the word "lengthy" was merely "conclusory," and then going on to examine whether a director had actually questioned any material term of the proposal).

C. The Manner In Which Minutes Are Prepared Affects Evidentiary Value of Minutes.

1. Minutes Not Conclusive.

- a. Although minutes are normally *prima facie* evidence of an event's occurrence, one case determined that despite the existence of minutes, and because of the manner in which minutes were

prepared, a board meeting did not occur and the minutes were essentially counterfeit. *See Box v. Box*, 1996 Del. Ch. LEXIS 16, at *29-*32 (Del. Ch. Feb. 15, 1996), *aff'd* 687 A.2d 572 (Del. 1996). There, only one director had signed the minutes, whereas the board typically acted unanimously; the minutes contained suspicious errors as to the meeting's start time; and another set of minutes existed for a different meeting that had conclusively not occurred. *Id.*

- b. A court has questioned the integrity and validity of minutes where minutes were prepared long after the meetings occurred and where the minutes were made by dictation from notes that had been destroyed. *See Loft, Inc. v. Guth*, 2 A.2d 225, 247 (Del. Ch. 1938), *aff'd* 5 A.2d 503 (Del. 1939) (questioning the integrity of minutes prepared "sometime" in 1935 after meetings occurred at the end of 1934, and where the minutes from the whole of 1932 were written all at one time). The court referred to this as a "slipshod practice" admitting of "the opportunity to make a post-events record to meet any exigencies that may arise." *Id.*

2. Presence Of Preparer.

- a. Minutes had no evidentiary value, independent of a director's testimony and absent any corroborating evidence, where they were prepared by counsel who was not present at the meeting and who simply reduced to writing what the director had told counsel about the meeting. *In re Bigmar, Inc.*, 2002 Del. Ch. LEXIS 45, at *69-*70 (Del. Ch. Apr. 5, 2002), *aff'd* 2004 Del. LEXIS 309 (Del. July 16, 2004).

D. When a Board Resolution, Rather Than Simply Recording A Board Action In Minutes, May Be Necessary.

1. There are circumstances under which a board should formally adopt resolutions, rather than simply recording its actions in the minutes. The resolutions should then become part of the minutes of the meeting at which they are adopted.
- a. Example: Where the Delaware General Corporation Law calls for a resolution or formal action by the board or a committee. *See, e.g.*, 8 *Del. C.* § 251 (calling for a board to adopt a resolution approving a merger or consolidation and declaring its advisability); *id.* § 151(a) (calling for a board resolution upon the issuance of stock); *id.* § 170(a) (allowing a board to declare and pay dividends).

- b. Example: When a third party requires that it be provided with a board resolution (*e.g.*, when a corporation is entering a credit agreement with a bank).

E. *Practical Drafting Tips From The Trenches.*

1. Procedural Details.

- a. An introductory paragraph should document the participants at the meeting (including directors and advisors), whether such participants are present in person or by telephone, whether a quorum is present, the chairperson of the meeting, and the secretary of the meeting. If an individual departs from a meeting or enters the meeting after the meeting has formally begun, this should be documented as well.

2. Not A Transcript.

- a. Avoid long recitations of the directors' discussions. The minutes should document that a discussion took place; they need not document all considerations of the directors.

3. Document Active Involvement.

- a. Document questions asked by directors of their advisors. This will illustrate that the directors are actively involved in the process and are not abdicating their decision-making responsibilities to their advisors.

4. Timing.

- a. Generally, it is good practice to include a start and end time to board meetings. Do not, however, engage in this practice for some, but not all, meetings. This may create a negative implication for meetings in which no start and end time is recorded.

III. DIRECTOR LIABILITY.

- A. Under appropriate circumstances—apparently where some cognizable harm results—a director's falsification of a corporation's minute might constitute a breach of the director's duty of candor. *See Oberly v. Kirby*, 592 A.2d 445, 465 (Del. 1991).
- B. Former Chief Justice Norman Veasey, along with co-author Ira M. Millstein, has suggested that, in the wake of Enron and WorldCom, directors, as part of an effort to protect themselves from liability, should take the following steps: "Review board and committee minutes carefully. Ensure that they accurately reflect the matters considered, and capture the general extent and nature of the board's

discussions, deliberations, considerations, decisions, and directions." *See* Ira M. Millstein P.C. and E. Norman Veasey, "Some Thoughts on Director Protection in Light of the WorldCom and Enron Settlements; Suggestions for Directors," *Metropolitan Corporate Counsel*, June 2005.

IV. A CAUTIONARY TALE—THIRD PARTIES' ABILITY TO INSPECT AND DISCOVER MINUTES.

A. *The Right To Inspect Minutes Under 8 Del. C. § 220.*

- 1. In Section 220 actions, plaintiffs can inspect minutes when they show that they have a "proper purpose" and that the minutes are necessary, essential, and sufficient. *See Haywood v. Ambase Corp.*, 2005 Del. Ch. LEXIS 131, at *27 (Del. Ch. Aug. 22, 2005) (allowing inspection of minutes by plaintiffs investigating alleged excessive payments to executives, mismanagement, and breach of fiduciary duties, and granting "broad access" to minutes); *Amalgamated Bank v. UICI*, 2005 Del. Ch. LEXIS 82, at *13-*15 (Del. Ch. June 2, 2005) (allowing inspection of minutes by plaintiffs investigating breach of fiduciary duties and holding that plaintiffs would not be limited to minutes specifically addressing the transactions in question, but would have broad access in order to evaluate whether directors' conduct has generally satisfied fiduciary duties). *But see Thomas & Betts Corp. v. Leviton Mfg. Co., Inc.*, 685 A.2d 702, 715 (Del. Ch. 1995), *aff'd* 681 A.2d 1026 (Del. 1996) (refusing inspection of minutes when plaintiff's purpose was valuation and minutes were not "essential to a valuation").

B. *Litigation Issues.*

1. Discoverability Of Draft Copies Of Minutes.

- a. In one case, the Court of Chancery would not compel discovery of draft copies of minutes because finalized versions of minutes would adequately inform plaintiffs of what occurred at a board meeting without compromising the board's right to edit and certify the content of the minutes privately in a process that normally relies on legal counsel. But when defendants took advantage of that decision, and devised a minutes "finalization" process that deliberately protracted handing over the minutes, the court ordered the defendants to hand over draft copies of minutes. *See Frank v. Engle*, 1998 Del. Ch. LEXIS 43, at *6-*8 (Del. Ch. Mar. 25, 1998).

2. Waiver of Privilege.

- a. A defendant company waives any attorney-client privilege that attaches to minutes by making the minutes available to a third party conducting due diligence on the company. *See Almeroth v.*

Innovative Clinical Solutions Ltd., 2004 Bankr. LEXIS 1271, at *1-*2 (Bankr. D. Del. Aug. 27, 2004).

- i. *Redacted Documents.*
 - (a) The Delaware courts have permitted a corporation to redact portions of its minutes, otherwise discoverable, that are "protected by the attorney-client privilege and/or work product immunity." *In re Asbestos Litigation*, 1992 Del. Super. LEXIS 409, at *3 (Del. Super. Aug. 7, 1992). Presumably, then, a defendant company would not waive any attorney-client privilege in regard to the redacted portion of minutes made available to a third party.
- b. Board minutes otherwise protected by the work product privilege must be disclosed to plaintiff when plaintiff can show (i) that it has asserted a colorable claim; (ii) that it has a substantial need for the minutes; (iii) that it is unable to obtain the substantial equivalent of the minutes by other means; (iv) that it is not merely fishing for evidence; and (v) that the documents do not disclose strategies or theories relating to the defense of the suit. *See Grimes v. DSC Commc'ns. Corp.*, 724 A.2d 561, 570 (Del. Ch. 1998), *aff'd sub nom Grimes v. Donald*, 784 A.2d 1080 (Del. 2001); *In re Dairy Mart Convenience Stores, Inc. Deriv. Litig.*, 1997 Del. Ch. LEXIS 173, at *6-*7 (Del. Ch. Nov. 13, 1997).

3. Whether Minutes Must Remain Sealed During Litigation.

- a. In two cases applying Court of Chancery Rule 5(g), which requires "good cause" to keep documents sealed during litigation, the Court of Chancery has been unwilling to keep minutes or references to minutes sealed. *See Romero v. Dowdell*, 2006 Del. Ch. LEXIS 82, at *14-*17 (Del. Ch. Apr. 28, 2006) (holding that there was not good cause shown when vast majority of minutes were publicly available, were historical in nature, and contained no trade secrets, third party confidential information, or nonpublic financial information, and that disclosure would not chill deliberations of the board because minutes did not reflect private communications or deliberations by the board); *Stone v. Ritter*, 2005 Del. Ch. LEXIS 146, at *3-*6 (Del. Ch. Sept. 26, 2005) (holding that the expectation of confidentiality abates in the litigation context and that disclosing references to minutes would not chill deliberations of the board or its committees, since the references did not reveal preliminary discussions, opinions, or assessments by board members).

UNANIMOUS WRITTEN CONSENT OF DIRECTORS

OF

The undersigned, being all of the directors of _____, a Delaware corporation (the "Company"), do hereby consent to and adopt the following resolutions pursuant to Section 141(f) of the Delaware General Corporation Law:

WHEREAS,

RESOLVED,

RESOLVED, that the proper officers of the Company are authorized to do and perform any and all such acts, including the preparation and execution of any and all documents, as such officers shall deem necessary or advisable in order to carry out the purpose and intent of the foregoing resolutions.

IN WITNESS WHEREOF, the undersigned hereby consent to, approve and adopt the foregoing actions. The Consent may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

EXHIBIT B

MINUTES OF A MEETING

OF THE BOARD OF DIRECTORS

OF _____, 2006

Dated: _____, 2006
Name _____

Dated: _____, 2006
Name _____

Dated: _____, 2006
Name _____

Dated: _____, 2006
Name _____

Telephonic Meeting: A telephonic meeting of the Board of Directors (the "Board") of _____, a Delaware corporation (the "Company"), was held on _____, 2006. [Director A], [Director B], [Director C], and [Director E], [representing a quorum] [constituting all of the members] of the Board of Directors, were present. Also in attendance were _____ of _____, and _____ of _____. The meeting was called to order at approximately _____ [a.m./p.m] [EST].

OR

Meeting in Person: A meeting of the Board of Directors (the "Board") of _____, a Delaware corporation (the "Company"), was held on _____, 2006, at the offices of _____ in _____. Present were [Director A] [by telephone], [Director B] [by telephone], [Director C] [by telephone], and [Director D] [by telephone], [representing a quorum] [constituting all of the members] of the Board of Directors. Also in attendance were _____ of _____, and _____ of _____. The meeting was called to order at approximately _____ [a.m./p.m.] [EST].

_____ acted as chairman of the meeting and _____ acted as secretary of the meeting.

[BODY OF THE MINUTES]

The meeting of the Board was adjourned at approximately ____ [a.m./p.m.] [EST].

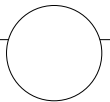
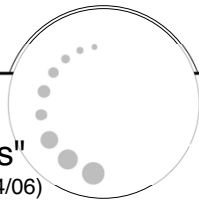
Secretary of the Meeting

Overview

- Why minutes matter in today's corporate governance and litigation climate.
- Discuss the scope and content of board minutes.
- Discuss recent Delaware case law developments and resulting court-described best practices.
 - Lessons from Walt Disney Co. Derivative Litigation (Delaware).
- Discuss special legal, corporate governance and ethical issues that can arise:
 - Extraordinary transactions (e.g., mergers, acquisitions).
 - Conflicts of interest.
 - Independent committees of the Board.
 - Attorney-Client Privilege.
- Practical suggestions for preparing corporate minutes
 - Best practices and examples.

"Preparing Bulletproof Corporate Minutes"

Annual Meeting of the Association of Corporate Counsel (10/24/06)
Scott B. Townsend, VP of Legal Affairs & General Counsel
Frederick H. Alexander, Partner, Morris, Nichols, Arsht & Tunnell LLP



Why minutes matter

- Governance reform (e.g., Sarbanes-Oxley).
- Litigation environment--court-described best practices (e.g., Disney).
 - Courts reliance on minutes in evaluating board members' satisfaction of duty of care.
 - Minutes and informal notes can be discoverable.
 - Protect attorney-client privilege.
- Variety of legal, corporate governance and ethical issues that can arise in certain transactions.
- Auditors' quarterly review.

Scope and Content of Board Minutes

- Level of detail: more vs. less.
- Vote—esp. who voted against or abstained.
- Relative length of board or committee discussion and Q&A regarding topic:
 - Start/End Time for meeting
 - Start/end time by topic
 - Start time alone
 - Level and nature of questions
 - If this is done for one meeting, it should be done for all meetings.
- Privileged matters.

Disney Litigation

- In the recent *Disney* litigation, the Court of Chancery found that a compensation committee discussed a compensation agreement for "significantly more time than the brief discussion reflected in the minutes would seem to indicate." 2005 Del. Ch. LEXIS 113, at *215 (Del. Ch. Aug. 9, 2005).
 - **"It would have been extremely helpful to the Court if the minutes had indicated in any fashion that the discussion relating to the OEA was longer and more substantial than the discussion relating to the myriad of other issues brought before the compensation committee that morning." 2005 Del. Ch. LEXIS 113, at *216 n.539 (Del. Ch. Aug. 9, 2005).**
 - **Important director discussions should take place within formal board setting and should be memorialized.**

Disney Litigation (Cont.)

- In describing "best practices" of compensation committee, Delaware Supreme Court advises that committee should have reviewed spreadsheet prepared by expert, "which ultimately would become an exhibit to the minutes." 2006 Del. LEXIS 307, at *67 (Del. June 8, 2006).
 - Delaware Supreme Court finds committee documentation "far less than what best practices would have dictated." 2006 Del. LEXIS 307, at *70 (Del. June 8, 2006).
 - Important material should be distributed sufficiently in advance of meeting to allow time for adequate consideration and should be retained in corporate records.

Court-described Best Practices

- Omissions.
 - If an important fact is omitted from the minutes while other similar facts are included, a court may find it "logical to assume" it was because the fact did not occur. *Weinberger v. UOP, Inc.* 457 A.2d 701, 709 (Del. 1983).
- Conclusory Statements.
 - Words such as "lengthy" may be "conclusory" and unhelpful to a court. *In re Maxxam, Inc.*, 1997 Del. Ch. LEXIS 51, at *49 (Del. Ch. Apr. 4, 1997).
- Time Between Meeting And Preparation Of Minutes.
 - A court may question the integrity of minutes prepared long after a board meeting occurs. *Loft, Inc. v. Guth*, 2 A.2d 225, 247 (Del. Ch. 1938).

Court-described Best Practices (Cont.)

- Presence Of Preparer.
 - A court may question evidentiary value of minutes if they are prepared by counsel not present at the meeting. *In re Bigmar, Inc.*, 2002 Del. Ch. LEXIS 45, at *69-*70 (Del. Ch. Apr. 5, 2002).
- Follow A Pattern.
 - If preparation of a specific set of minutes does not follow the normal course of preparation of a corporation's minutes, a court may question genuineness of minutes. *Box v. Box*, 1996 Del. Ch. LEXIS 16, at *29-*32 (Del. Ch. Feb. 16, 1996).

Delaware General Corporation Law Requirements

- Written Consents.
 - A unanimous written consent must be filed with the minutes of board proceedings. 8 *Del. C.* § 141(f).
- Dividends And Stock Repurchases.
 - A director must cause his or her dissent from a vote to repurchase shares or pay a dividend to be entered on the books containing the minutes of board proceedings. 8 *Del. C.* § 174.
- Board Resolutions.
 - Mergers and Charter Amendments- 8 *Del. C.* §§ 242 and 251. Final form must be approved by board
 - Issuance of Stock; resolutions must establish consideration; cannot be delegated - 8 *Del. C.* §§ 152, 153 and 161.
 - Dividends - 8 *Del. C.* § 170. Resolutions should address legally available funds.

Disclosure of Minutes

- Section 220.
 - Stockholders may have a right to inspect minutes under Section 220 of the Delaware General Corporation Law if they have a "proper purpose" and the minutes are essential to that purpose. *Haywood v. Ambase Corp.*, 2005 Del. Ch. LEXIS 131, at *27 (Del. Ch. Aug. 22, 2005).
- Discovery In Litigation.
 - Draft copies of minutes may not be discoverable if reviewed by counsel, but excessive delay in finalizing may be problematic. *Frank v. Engle*, 1998 Del. Ch. LEXIS 43, at *6-*8 (Del. Ch. Mar. 25, 1998).
 - Other notes and evidence of what happened at board meeting discoverable.

Attorney-Client Privilege

- Generally protects advice reflected in minutes. *In re Asbestos Litig.*, 1992 Del. Super. LEXIS 409, at *3 (Del. Super. Aug. 7, 1992).
- May be waived if nonredacted minutes provided to third party. *Almeroth v. Innovative Clinical Solutions Ltd.*, 2004 Bankr. LEXIS 1271, at *1-*2 (Bankr. D. Del. Aug. 27, 2004).
- Will not protect minutes if plaintiff meets a five-part test, requiring, among other things, proof of a colorable claim and a substantial need for the minutes. *Grimes v. DSC Commc'ns Corp.*, 724 A.2d 561, 570 (Del. Ch. 1998).
- Corporation may ultimately waive privilege for tactical reasons in litigation: reliance on legal advice may be defense.

Special Legal and Governance Considerations

- Special legal, corporate governance and ethical issues that can arise:
 - Extraordinary transactions (e.g., mergers, acquisitions).
 - Will be a focus of litigation.
 - Obtain litigation advice upfront.
 - If outside counsel involved, use as resource for documenting process.
- Conflicts of interest: disclose and document disclosure.
- Independent committees of the Board.
 - Process generally in the hands of outside counsel.
 - Minutes may not be available to insiders.
 - Important to preserve independence of process— information should be flowing to conflicted board members.

Considerations for Minutes for Board Committees

- Audit Committee.
 - Sarbanes-Oxley considerations.
 - Rule 2-06 and 2-07 under Regulation S-X.
 - Attorney-client privilege considerations.
- Compensation Committee.
 - Decisions can trigger disclosure.
 - Stock option grants can raise significant state law issues as to delegation and timing.
- Nominating/Corporate Governance Committee.
 - Heightened scrutiny in current environment– majority voting; pill policies; other activist issues.
- Independence Issues.
 - Disclosure of conflicts and appropriate recusal.

Best Practices in Preparing Minutes

When preparing minutes:

- ✓ Draft accurately and carefully (words matter).
- ✓ Consider Form 8-K reporting obligations—timely review to confirm if disclosure obligation triggered.
- ✓ Consider scope of authority *vis a vis* action between board and committees (e.g., committee charter).

Best Practices in Preparing Minutes (cont.)

When preparing minutes:

- ✓ Consider advice from litigators
- ✓ Not a transcript:
 - Avoid long recitations of the directors' discussions
 - Simply document discussion took place
 - Do not document all considerations of directors
 - Document active involvement
 - Document questions asked by directors of their advisors
 - Document directions from board

Best Practices in Preparing Minutes (cont.)

When preparing minutes:

- ✓ Will you be in the room for the meeting? If not, pre-plan.
- ✓ Board packages—technology and timing.

Generally distributed in writing to the directors before the meeting—some companies using new technology to deliver.

How to handle certain items to be discussed at a board or committee meeting that may be of an extremely confidential or time-sensitive nature.
- ✓ Inform directors, officers and attendees of the company's document retention policies and status of notes.

Practical Tips from the Trenches

- Introductory Paragraph.
 - Participants at meeting.
 - Include both directors and advisors.
 - How present?
 - In person or by telephone?
 - Whether a quorum is present.
 - Name the chairperson of the meeting and the secretary of the meeting.
- Individual Participant Attendance.
 - Document if an individual departs from a meeting or enters the meeting after the meeting has formally begun.

Practical Tips from the Trenches (cont.)

- Documents.
 - Retain any important documents considered by directors at a meeting.
- Disclosure Of Interest.
 - If meeting touches upon any form of self-dealing, document any disclosure of interest made to the outside and independent directors.
- Next Meeting.
 - Some companies practice is if a subsequent meeting is scheduled, document that fact in the minutes.