
Director Independence Determinations Must Take All Facts and Circumstances into Account

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The recently completed merger of the Black & Decker Corporation and Stanley Works has brought attention to the manner in which the Board of Directors of a publicly traded company should determine whether a director is "independent" for the purposes of NYSE Section 303A. Nolan Archibald was the Chairman, President, and CEO of Black & Decker, and M. Anthony Burns was a member of its Board of Directors. Black & Decker sought shareholder approval for a proposed merger of the company with Stanley Works. During the merger negotiations, Mr. Burns served on the Transaction Committee of the Black & Decker Board of Directors. That committee was involved in putting together and reviewing the initial proposal for the combination with Stanley Works, including determining Mr. Archibald's role and compensation in the new combined company.

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