
<i>Air Products & Chemicals, Inc., v. Airgas, Inc.</i>: Delaware Court of Chancery Upholds Longest-Lasting Litigated Poison Pill

Date: 02/24/11

On February 15, 2011, Chancellor William B. Chandler III of the Delaware Court of Chancery issued a decision in *Air Products & Chemicals, Inc., v. Airgas, Inc.*, addressing one of the most fundamental questions debated in corporate law: between the board of directors and shareholders, whose judgment prevails when the corporation is faced with a hostile tender offer? More specifically, in the context of a hostile tender offer, who gets to decide when and if the corporation is for sale? On the facts presented, the Court sided with the board of directors, holding that a board may use its poison pill to defeat a hostile tender offer, as long as the board has articulated a legally cognizable threat posed by the offer and the board's use of the pill falls within a range of reasonable responses proportionate to the threat. The Court found that the likelihood that a majority of the target board's shareholders would tender into an offer the board deemed inadequate constituted a legally cognizable threat, and that the target board's poison pill fell within a range of reasonable responses proportionate to that threat.

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