Darwin Deason Amended Complaints (Redacted)*

^{*}Scores of documents remain improperly withheld by Xerox and we believe those documents will be released through the proper court process

Summary of Amended Complaint and Deason Statement

- Darwin Deason filed amended complaints in New York state court as part of his continuing efforts to stop the Fuji/Xerox transaction
 - o Recall that in January, Fuji and Xerox announced a transaction in which Fuji will acquire 50.1% of Xerox, and Mr. Deason filed a lawsuit alleging that the transaction was the result of a fraudulently concealed "crown jewel" lock-up
 - The amended complaints reflect information Mr. Deason has learned following his team's review of hundreds of thousands of pages of documents—and they allege a shocking culture of self-dealing, deception, and concealment, particularly on the part of CEO Jeff Jacobson and the Xerox Board
- Complaint includes quote from Columbia law school Professor John Coffee, who summarized the transaction as follows:

"This is a strange and irregular transaction that is simply not comparable to any other transaction I have seen in over 45 years of observing the 'merger and acquisition' marketplace. A CEO of the target, facing likely ouster, serves as the loyal a gent of the acquirer, designing a deal that is too good to be true: a cheap price, little governance protections, no market check, and a process that ignores other bidders. Sophisticated shareholders who wish to contest the board are shut out by an advance notice bylaw that a self-interested board will not waive. . .

Worse yet, the Proposed Transaction permits [Fuji] to acquire only a 50.1% interest in Xerox. This **resembles a leverage buyout** in which the acquirer buys a **controlling stake without providing an exit for the public shareholders**. Such a transaction is **virtually unknown**. Finally, the Proposed Transaction is **conflict ridden**. Not **only do five directors remain** on the 'new' board (plus Jacobson), but they are the **five nominated by Jacobson** at Komori's request." (pg 4)

• Mr. Deason's, Xerox's third largest shareholder, statement on the matter is as follows:

"For over fourteen months, I pursued the truth at Xerox. At every turn, the Xerox board has chosen heavy handed tactics over compliance with accepted norms and laws, and that continues to this day as they withhold hundreds of highly material and relevant documents from the shareholders"

Specific Allegations – Intentional Non-Disclosure by Xerox; Jacobson Feeling the Heat From Icahn and Board, Disobeys Board Directive

- o Xerox intentionally withheld the "crown jewel" lock-up for over 17 years and only disclosed it with a demand from Mr. Deason and after the nomination window passed (pg 19-21)
- o In March 2017, the Xerox Board authorized CEO Jeff Jacobson to pursue only a 100% all cash transaction with Fuji, but those discussions were put on hold while Fuji was dealing with a massive accounting scandal at Fuji Xerox (pg 35-36)
- o In May 2017, Jacobson learned that he had been targeted for replacement by Carl Icahn, Xerox's largest shareholder, and continued to feel the pressure from Icahn throughout the year (pg 37, 41)
- o In July 2017, the **Xerox Board unanimously determined that Jacobson was not the right leader** for Xerox and initiated a search for his replacement (pg 42-43)
- o Desperate to save his job, Jacobson abandoned the pursuit of the all cash transaction with Fuji and threw a "hail mary", resulting in this 50.1% transaction that does not require Fuji to spend any cash to acquire control of Xerox (pg 43)
- o By the fall of 2017, the **Xerox Board identified a replacement CEO** and **unanimously decided** that **Jacobson** should **discontinue all meetings with Fuji** since he was in the process of being replaced (pg 52-53, 55-57)

Specific Allegations – Jacobson Switches Sides; Rushes Parties into Irregular Transaction with No Market Check and Cheap Price

- Despite the Board's decision to have Jacobson stop meeting with Fuji, Jacobson proceeded to meet with Fuji executives in November 2017, and used the threat of a proxy fight by Icahn to rush Fuji into a transaction (pg 57-62)
- o The Xerox Board recklessly allowed Jacobson who they had already decided to replace to lead the transaction negotiations, and race ahead to sign the one-sided deal with Fuji in hopes of defeating activism by Jacobson's and Fuji's "mutual enemy"—Icahn (pg 62-86)
- o During the negotiation process, **Jacobson "switched sides"** and was **lobbying for his job**, even boasting that "there is no deal without me" (pg 5, 66-67, 74-75. 83)
- Jacobson takes it upon himself to stifle a potential bidder in January 2018, after receiving a call from the bidder's president expressing interest, by telling him he needs to move "quickly" and essentially discouraging him from making an offer (pg 77-78)
- o Right before the announcement of the transaction, when discussing the deal with Xerox management, Xerox's financial advisor states that "[Xerox is] **not talking about premium** publicly. That is a **made up number**"; however, after the transaction is announced Xerox issued a public letter to shareholders saying that the transaction "implies an over 15 percent premium" (pg 85)
- The transaction that resulted from this conflicted process was a "strange and irregular transaction that is simply not comparable to any other transaction" (pg 5)
- o As Professor John C. Coffee opined: "A **CEO** of the target, **facing likely ouster**, serves as the **loyal agent of the acquirer**, designing a deal that is too good to be true: a **cheap price**, **little governance protections**, **no market check**, and a process that **ignores other bidders**" (pg 5)

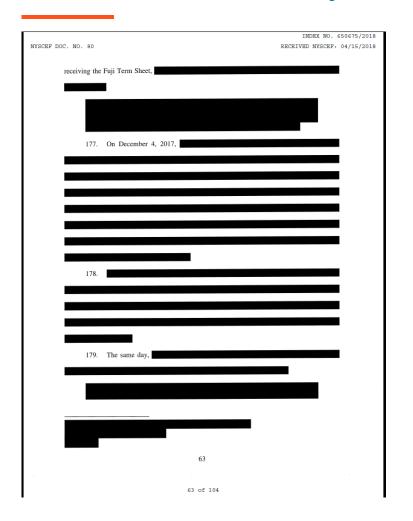
Specific Allegations – Xerox and Director Admit "Crown Jewel" Lock-Up; Materially and Intentionally Misleading Proxy

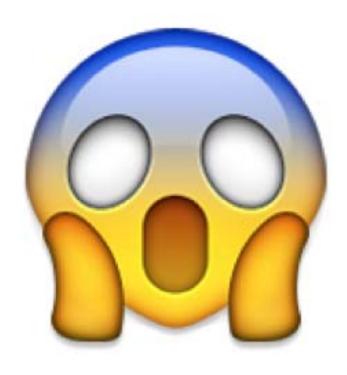
 Right after the transaction, Xerox director Charles Prince gave his understanding of the "crown jewel" lock-up and its effect on Xerox:

"In some ways, sad: a (formerly iconic) US company selling control to a Japanese company...But there is a Joint Venture agreement, entered into 55 years ago (!). which made it practically impossible for Xerox to sell to anyone else. It's pretty amazing: when the JV was entered into, no one ever imagined that Xerox would ever need to sell itself and no one ever imagined that Asia (which Xerox is locked out of by the JV) would be the fastest growing region. A really amazing problem" (pg 91)

- o Even **Xerox ends up admitting** the "crown jewel" lock-up "[l]imit[s] **Xerox's** [s]trategic [f]lexability", after years of concealing that very fact (pg 92)
- Xerox further tries to claim that it ran a "comprehensive review" of all strategic and financial alternatives, when
 in reality it did not. Among other things, Xerox (i) never reached out to any other competitors, (ii) never reached
 out to any Asian counterparties and (iii) barely reached out to financial sponsors (pg 93)
- o Xerox denies a rightfully requested bylaw waiver by Mr. Deason. John C. Coffee opines that "it is hard to imagine a clearer case for a waiver of a bylaw's time period" than Mr. Deason's case (pg 4 of Deason II Complaint)
- o To top it all off, just last week, Xerox released a **proxy statement** with **numerous material omissions**, including:
 - o In March 2017, that Board only authorized Jacobson to propose 100% all-cash acquisition
 - o Icahn told Jacobson in May 2017 that if Xerox was not sold, Icahn would push for Jacobson to be replaced
 - o Jacobson initially proposed the alternative, 50.1% transaction (without Board authorization)
 - o Board search committee, in November 2017, had zeroed in on a replacement candidate
 - o Jacobson had repeated meetings and communications with Fuji in which he lobbied for his position as CEO

What Else are Xerox, Fuji and Jeff Jacobson Hiding?





Stay Tuned!