



Rupert's Last Act?¹

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Despite being protected by what is perceived to be a lap dog board of directors, News Corp. will ultimately have to respond to the heat produced by the phone-hacking scandal by relieving Rupert Murdoch of his dual chairman of the board and CEO positions.

In July rumors surfaced that nine independent directors—out of 17 total—wanted to replace him in the CEO position with president and COO Chase Carey. Murdoch, who with his family controls a majority of voting shares of the company, blithely answered a question about his potential ousting on an earnings call: “I hope the job won’t be open in the near future.”

It is inevitable that Murdoch will be forced to offer a symbolic, in the least, resignation from both his chairman and CEO position. After all, holding both positions is poor corporate governance, affording few checks and balances on managerial behavior. Who does the dissident director or shareholder have the conversation with about the underperforming CEO? Lack of separation between church and state has never been a good idea, in any context.

If you look at the history of corporate boards, his stacking of the deck is not unusual. During the past two decades, however, boards have become more professional in their attitudes toward corporate governance. There’s still a significant amount of cronyism on boards but less so than before. Today you’re more likely to see a requirement in the corporate bylaws to have a certain number of directors who are independent.

The increased professionalism of boards has been driven in large part by the increased number of lawsuits against boards of directors. It used to be that companies would fail and there was no post-mortem analysis. Now, with public companies, there’s likely to be a legal or forensic accounting analysis of what went wrong, especially if creditor constituencies are faced with the prospect of little or no financial recovery.

Creditors and investors want to know why they lost money and where to go to recover value, either from directors and officer

liability insurance policies or the personal assets of management and directors.

Economic reality still challenges the idea of a truly independent director. Professional board sitting is a lucrative job for business people, and a director can make \$75,000 for attending four board meetings a year. If you were to call out bad behavior by management or other board members, you could be jeopardizing your director’s fee income. And if you become known as a perennially dissident board member with a track record of conflict with management, you may well become damaged goods as a professional board sitter.

Murdoch, 80, has said he has no plans to step down. Still, the pressure mounts. There are many investigations into reporters hacking their way into the phones of crime victims and celebrities, some of whom have filed their own lawsuits. Criminal investigations on both sides of the Atlantic have been reported.

And of course lawyers are lining up shareholders to sue News Corp. over mismanagement. *Adweek* reported that an older suit was recently amended to allege that widespread phone hacking by News of the World employees “should not have taken years to uncover and stop” and shows “a culture run amuck within News Corp. and a board that provides no effective review or oversight.”

Murdoch and his companies will continue to be hit by a massive number of lawsuits. He’ll also be brought into the arena of the criminal courts, although whether he personally is implicated is another matter. Besides the legal troubles, his personal fortune has taken a beating, as have the Murdoch family’s finances. From May to August, News Corp. shares shed more than \$1 billion in value due to the hacking scandal.

News Corp. will pay out monetary damages to settle lawsuits. Some underlings might go to jail, but the higher-ups will likely receive gentle slaps on the wrist as it becomes difficult to determine who knew what and when they knew it.

Through it all, Murdoch will remain involved. He will retain a board seat but will have to step down as chairman and CEO. However, it won’t be because of the authorities or lawyers. Ultimately, the financial pressure on the stock shares and restoring investor confidence will win the day, but the issues of cronyism and boards’ inherent economic conflicts of interest will not disappear. ■

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