

## Stockholders vs. Stakeholders

Article

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Why did Bill Gates start Microsoft? While corporations can be formed for any number of reasons, it seems safe to assume, in the ordinary case, that a for-profit corporation is formed to found a new business or expand an existing one and that such a corporation, having been set up and funded by the initial stockholders, is operated and managed for the purpose of carrying on that business, presumably with the objective of enhancing its value over time. This would inure ordinarily to the benefit of the stockholders, as indirect owners of the business.

Since the mid-1980s, questions have come up as to whether the directors of a for-profit corporation, in exercising their managerial discretion, may or should consider the interests of stakeholders other than stockholders — that is, “other constituencies”, such as employees, customers, creditors, suppliers, communities and the environment. In the current socio/political environment, further questions arise as to whether or not the directors should be required to consider the interests of such other constituencies or, indeed, especially in the case of public companies, to manage the corporation, at least in part, for the benefit of these other constituencies.

Two eminent legal scholars have written outstanding essays thoroughly discussing all aspects of these questions.

- “For Whom is the Corporation Managed in 2020? The Debate over Corporate Purpose”, by Edward B. Rock, Martin Lipton Professor of Law, New York University School of Law, and
- “Restoration: The Role Stakeholder Governance Must Play in Recreating a Fair and Sustainable American Economy – A Reply to Professor Rock”, by Leo E. Strine, Jr., Ira M. Millstein Distinguished Senior Fellow at the Ira M. Millstein Center for Global Markets at Columbia Law School; and, among

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other things, Of Counsel to Wachtell, Lipton, Rosen & Katz and former Chief Justice and Chancellor of the State of Delaware.

Both of these articles, which appear in the Spring 2021 issue of *The Business Lawyer*, published by the Section of Business Law of the American Bar Association, confirm that under current Delaware corporation law:

- in the absence of special circumstances such as the sale of a corporation for cash,
  - the primary objective of the directors is to enhance the long-term value of the corporation for the benefit of the stockholders; and
  - in the pursuit of such primary objective, the directors may exercise managerial discretion to consider the interests of other stakeholders, “provided there are rationally related benefits accruing to the stockholders.” *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 183 (Del. 1986); and
- in such special circumstances, *Revlon* requires the directors to seek to maximize short- term value and obtain the highest price reasonably available for the benefit of the stockholders, without considering the interests of any other stakeholders.

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