Everything I Need to Know About the Business Judgment Rule I (Re)Learned from In re Bear Stearns

By Anthony Michael Sabino

It is an old litigator’s maxim that even in bad times, people sue. Well, the times are most certainly bad, and most assuredly people are suing. Exacerbating matters is the fact that much of our current economic woes can be directly attributed to various missteps by corporate managers. Their misjudgments have earned the ire of many, but, in particular, the unremitting enmity of the one constituency they are directly accountable to: the stockholders who put them in power in the first place. So, as times go from bad to worse, aggrieved shareholders are initiating suit with a fury never before seen.

Of course, suing is one thing; prevailing is another. And the primary bulwark against shareholder litigation is the business judgment rule. Axiomatic from the earliest days of corporate law, in sum it provides that a corporation’s directors and officers will not be second-guessed by courts of law for incorrect business decisions, provided said decisions were made in an atmosphere of loyalty, due care, and good faith toward stockholders. That protection can be undone if the angered shareholders can demonstrate the board and/or officers acted recklessly, in bad faith or otherwise with a selfishness geared toward serving only their individual wants.

Admittedly, the crucible for the purest promulgations of the business judgment rule emanate from the state courts of Delaware, the nation’s bastion of the law of corporate formation, operation, and dissolution. But that sister forum’s law has been ably interpreted and applied by our own New York courts (both state and federal), as is fitting: after all, and notwithstanding recent woes, New York remains the epicenter of American business, if not the worldwide economy itself.

We are reminded of this by the most recent and cogent exemplification of the business judgment rule in the case of In re Bear Stearns Litigation.1 There, Justice Herman Cahn took on a most difficult and notorious case, and in workmanlike fashion, cut to the quick of its essential legal principles and proclaimed the latest iteration of this all-important corporate law maxim. Certainly, while relying heavily upon borrowed Delaware law and precedents, this New York jurist also well served the local interests of the forum state, by espousing a view of the rule that solidly lands on all fours with New York’s own take on the business judgment rule.

Before turning specifically to Bear Stearns, let us examine that last statement, to wit, that New York and Delaware corporate law are more or less in synch on the matter of the contours of the business judgment rule.

Over the years, the courts of New York have been rather clear-cut in explaining the workings of the business judgment rule.

“[A]s times go from bad to worse, aggrieved shareholders are initiating suit with a fury never before seen.”

In Norlin Corp. v. Rooney, Pace Inc.,2 the Second Circuit recited that the fiduciary duties ordinarily owed by directors to the shareholders who elected them include, first and foremost, the duty of due care and the duty of loyalty.3 The former refers to the responsibility of directors to exercise, in the performance of their governance tasks, the care that a reasonably prudent person would use under similar circumstances. The latter implicates a duty of loyalty to the shareholders who elected the board (simple enough), but conjoined to that is a prohibition against self-dealing or similarly selfish behavior.4 Directors have the benefit of the business judgment rule’s presumption that they acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interest of the corporation and its owners.5 As former Chief Judge of the Southern District Michael Mukasey noted in Official Committee of Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated Resources),6 the business judgment rule shields corporate directors and officers from judicial second-guessing.7 These pillars of the business judgment rule have remained unchanged in New York law since the turn of the last century.8 Having attended to the synchronicity between the New York and Delaware courts on the issue before us, we are now free to turn to the details of the most recent holding that adds yet another level of solid brick to the legal infrastructure.

We can safely assume that the readers of this august journal were not marooned on that lonely Pacific island made famous in Lost, so familiarity with the sudden and epic demise of the once great investment bank known as Bear Stearns will be assumed. Rather, we will strictly limit ourselves to those details that became pivotal in Justice Cahn’s reasoning.

First, we note the procedural posture of the litigation was as follows: Justice Cahn was presiding over various consolidated class actions, brought by aggrieved shareholders against Bear Stearns’ board of directors and principal officers. The consolidated actions included litigation transferred from the Delaware chancery court, where they had been initiated because that is where the corporation...
was officially domiciled. The defendants had moved for summary judgment, after a period of extensive discovery, via document production, party depositions, and expert testimony.

Deciding the summary judgment motions before him, the veteran justice left no one in suspense. From nearly the introduction, he declared that he was dismissing in toto the actions wherein the shareholders sought damages from the defendant directors and officers for alleged violations of fiduciary duty in connection with the JPMorgan Chase rescue-cum-merger.

The court declared that the decisions made by the board and the officers were fully protected by the business judgment rule, and furthermore shielded by the exculpatory provisions of the corporation’s certificate of incorporation. The steps taken by the directors to preserve some sort of shareholder value, and avoid the uncertainty of a bankruptcy filing—“an event with potentially cataclysmic consequences for the broader economy as well as for the shareholders,” opined Justice Cahn—would pass muster even if scrutinized under some enhanced standard of review under applicable Delaware law. That direction given, the detailed reasoning quickly followed.

As aforesaid, the events surrounding the near collapse and subsequent federally assisted takeover of Bear Stearns by JPMorgan Chase are well documented in the public record, so we need not regurgitate them here. Pertinent to a deeper appreciation of the court’s concerns motivating the eventual decision, we note these particularly revealing details. The renowned investment house of Lazard Freres, Bear’s financial advisors, made inquiry with over a dozen potential merger partners in less than a week on Bear’s behalf; only JPMorgan and the private equity firm of J.C. Flowers “had expressed meaningful interest.” The Flowers proposal, such as it was, was severely uncrit by its inability to fund its proposition.

In truth, with no other game in town and Bear in such extremis that it would almost certainly file for bankruptcy immediately (and thereby leave shareholders with absolutely nothing), the board signed off on an “Initial Merger Agreement” with JPMorgan, called for a $2 per share purchase of the target’s common stock, and the option for the companion purchase of the wounded Bear’s Madison Avenue headquarters building for $1.1 billion. This preliminary deal also featured a “no solicitation” clause that prohibited Bear from actively seeking competitive bids, but did permit its board to participate in discussions with a bona fide alternative, if such an interested third party came along, and (upon appropriate legal advice) consideration of such a counteroffer would be necessary in order for the board to fulfill its fiduciary obligations to the Bear stockholders.

The shifting sands of Bear’s liquidity and other factors caused the principals to renegotiate and amend the initial deal, and Justice Cahn is careful to point out that the Bear directors were ably assisted in that regard, not only by Lazard, but by no less than four of the most eminent corporate law firms in the United States. Key to the renegotiated terms—JPMorgan was to be permitted to purchase 95 million Bear shares for $10 per, effectively “locking up” 39.5% of its target’s shares in the bank’s hands. As is now well known, and as a direct result of this revisitation, JPMorgan eventually bought out the rest of Bear’s common stock for the same $10 per share price. The rest, as they say, is history.

Then, the inevitable litigation followed. As already posited, Justice Cahn had before him the defendants’ motions for summary judgment seeking dismissal of the shareholders’ complaints, which alleged, in the main, breach of fiduciary duty by the directors and officers in relation to the JPMorgan takeover. As proper, the court turned to the crux of this entire controversy: the proper application of the vaunted business judgment rule. Likewise as proper, the court would be guided by the principles espoused by the Delaware state courts, as both Bear and JPMorgan were incorporated in that jurisdiction.

Bear Stearns first notes the fundamentals of the business judgment rule. “The core duties are those of loyalty and care.” It is presumed that directors making a business decision are informed, act in good faith, and in an honest belief that they are doing what is best for the shareholders. The business judgment rule operates to preclude a court from unreasonably imposing itself upon the business affairs of a corporate citizen. Accordingly, a board’s decisions will be left undisturbed as long as they can be attributed to any rational business purpose.

Now addressing other linchpins of the business judgment rule, Bear Stearns continues to state that the axiom is both a substantive rule and a procedural guide. At the outset, the burden is on the complaining shareholders to rebut the rule’s presumptions favoring the directors. This can be achieved by demonstrating the board’s lack of due care, lack of independence or even gross negligence in the discharge of its obligations. Bad faith, for instance, can be demonstrated via a showing of conscious wrongdoing and intentional actions to advance an agenda other than the best interests of the corporation itself. Yet in fairness to the ostensible defendants, the directors can overcome the rebuttal of the business judgment rule by demonstrating that the questioned action was indeed entirely fair to the corporation and its shareholders.

These were the basic tenets of the business judgment rule, as postulated by the Bear Stearns court. But there were additional permutations, which Justice Cahn found crucial to making his ultimate decision. These further elaborations range beyond the generalities of the business judgment rule, and impose heightened standards of review for business decisions under certain conditions. As carefully reasoned through by this New York court, these
besieged board of directors may take steps to protect its
additional tests eventually came together to form the
triad of the final decision.

The first leg of the corporate triad was the landmark
Unocal\textsuperscript{20} test, whereunder there is an enhanced level
of judicial scrutiny when the directors take defensive
measures in response to a perceived threat to corpo-
rate policy and effectiveness.\textsuperscript{21} Unocal imposes a higher
standard, noted Justice Cahn, because of the threat that a
besieged board of directors may take steps to protect its
own power and position, actions that might diverge from
the overall well-being of the shareholders.

Although conceived in the swashbuckling hostile
takeovers days of the 1980s, the Unocal standard has
evolved to include within its ambit increased scrutiny
for so-called “deal protection devices” that shield a
favored merger deal from unwanted competing bids.\textsuperscript{22}
Parenthetically, the Bear Stearns court added that the
board can successfully justify its actions by demonstrat-
ing it had reasonable grounds to defend the corporation
from intruders, and the defensive measures taken were
reasonable in proportion to the threat posed by the unsoli-
cited bids. In that regard, the inclusion of a majority of
independent, outside directors in the defensive strategy
decisions materially enhances the veracity of the board’s
actions.\textsuperscript{23}

Leg two of the triad is the Blasius test, so named for
Blasius Industries, Inc. v. Atlas Corp.,\textsuperscript{24} which espouses an
even stricter benchmark of a “compelling justification”
standard when incumbent directors prevent or impede
an independent majority of shareholders from expand-
or replacing the existing board. The Bear Stearns
court agreed that this test is particularly onerous, rarely
applied, and normally reserved for contested board
elections.\textsuperscript{25}

The third and final leg of the triad of enhanced
scrutiny beyond the nominal business judgment rule
was espoused in the seminal Revlon\textsuperscript{26} case. Pursuant to
this landmark, a board’s conduct is subject to enhanced
review when the transaction at issue involves a sale or
change in the control of the corporation. It is triggered by
mergers done for cash or in stock-for-stock swaps, where
the target is swallowed by an acquirer that, in turn, is
dominated by a small control group.\textsuperscript{27} As Justice Cahn
characterized it in Bear Stearns, there is “no tomorrow”
for existing shareholders of the target in such cases, as
they will be subjugated to the new masters of the surviv-
ing corporation. To be sure, the Revlon test, like its com-
ppanion Blasius, is not normally implicated in the case of a
stock-for-stock merger of widely held public companies,
because the shareholdings are diffused over a large and
fluid market.\textsuperscript{28}

Now turning to apply all the foregoing to the mat-
ter at hand, Justice Cahn first noted that the aggrieved
Bear shareholders plainly sought to bypass the normal
restrictures of the business judgment rule, and persuade
this court to apply one of the more involved tests as
above noted. Specifically, the shareholders complained of
three principal facets of the deal struck with JPMorgan:
(a) the “lock up” of Bear stock by issuing approximately
39.5% of Bear common shares to JPMorgan as part of the deal;
b) the “no solicitation” clause restricting the Bear directors
from shopping around the firm; and (c) the option for JPMorgan
to buy the Madison Avenue headquarters building for
$1.1 billion. The Bear shareholders conceded that such
deal-protection mechanisms normally pass muster under
Delaware law; but here, combined in this fashion, they
claimed that this unholy triumvirate “disenfranchised the
[Bear] shareholders and depressed the ultimate purchase
price.”\textsuperscript{29}

Once more, Justice Cahn did not mince words; “[p]laintiffs have failed to establish that a heightened stan-
dard of review should be applied, and, accordingly, the
business judgment rule is controlling.” And as was obvi-
ous from earlier in the opinion (and the instant analysis),
the Bear shareholders could not rebut the general pre-
sumptions of the business judgment rule.\textsuperscript{30}

The Bear Stearns court was clear as crystal in its find-
ings. “There is no evidence that the board,” comprised
of a majority of independent directors, and, significantly,
“assisted by teams of financial and legal advisers,” acted
out of self-interest or in bad faith. The interests of the
directors were without a doubt aligned with the interests
of the shareholders who elected them. No one had an affi-
ity with the aquirer, JPMorgan. The Bear Stearns board
was not seeking to entrench itself and maintain its indi-
vidual power in light of a hostile takeover bid. Indeed,
as to the last, Justice Cahn was deliberate in pointing out
that the merger required the entirety of the Bear board to
resign, thus eliminating entrenchment as a possible mo-
tive for any misguided actions.\textsuperscript{31}

As to the allegations made by the complaining share-
holders, as largely dependent in this summary context on
the testimonials of their expert witnesses, the court was
unmoved by what is plainly categorized as “speculat[ion]
about Bear Stearn’s alleged true value and the claimed
superiority of various bankruptcy options. These opin-
ions, however, do not take into sufficient consideration
the very real emergency which the company faced, and
the real time pressure under which the Bear Stearns’ office-
ners and directors were operating.”\textsuperscript{32} Justice Cahn was
the consummate realist in this regard, bluntly stating
the company could not have stayed open for business
had it not agreed to the deal proferred by JPMorgan and
facilitated by the federal government. Implicitly, the court
found implausible the notions held by the sharehold-
ers’ experts that there were other, viable options that
the board could have pursued or at least considered in those
dark, few days.\textsuperscript{33}
Almost in a nod to the director defendants, the Bear Stearns opinion commended the expeditious manner in which the board acted on limited options, attempted to salvage some $1.5 billion in shareholder value, and avoid a calamitous bankruptcy that might have wiped out all the shareholders’ equity “while wreaking havoc on the financial markets.” Justice Cahn’s ultimate conclusion at this juncture: “The Court should not, and will not, second guess their decision.”

But Justice Cahn was nothing if not circumspect, for he was not done. Now the court turned to state that, even if it heeded the shareholders’ cry for enhanced scrutiny, the plaintiffs’ claims would still fall short. First, if one were to view the board’s actions as defensive under the Unocal standard, the shareholders had still failed to demonstrate that the directors were wrong in perceiving a bona fide threat to the corporation. “The liquidity crisis genuinely threatened Bear Stearns with extinction,” the corporation was “on the verge of filing for bankruptcy,” and the threat so severe that the federal government had intervened to “avoid a broader destabilization of the markets.”

Again, the Bear Stearns court emphasized the board’s reliance upon top-notch help from the outside. The directors had “promptly retained competent, independent financial and legal advisers to explore its options.” The board’s response was proportionate to the threat. The merger terms agreed to were essential to keep JPMorgan at the table, given that “over a dozen other potential corporate parties” had rejected Bear’s overtures. In sum, the directors acted reasonably to a very real threat of corporate Armageddon, and thus the enhanced scrutiny under Unocal would be misplaced.

All the foregoing likewise negated any need for enhanced scrutiny pursuant to Blasius. Justice Cahn found the directors’ actions were compelled by the desire to retain the sole offer of value. “Despite the exigent circumstances,” the Bear Stearns board was still able to negotiate down some of the bank’s initial demands, for instance, knocking down the percentage of stock to be issued to JPM from 60% to the final 39.5%, and, of great importance, forcing the acquirer to raise the payout from $2 to $10 a share, a fivefold increase. Finally, not only were both the Unocal and Blasius standards met, for reason that the target board was composed of a majority of independent directors, “the record of the diligence of Bear Stearns’ board in confronting and resolving the crisis leaves little room for judicial review of its conduct.”

As an additional matter, the Bear Stearns court found the Revlon obligation to maximize shareholder value well met. Simultaneously cataloging both what the law requires of corporate directors and what the Bear board actually did here, Justice Cahn recited the following: the directors were sophisticated and well informed of their options; were fully engaged in negotiations and drove as hard a bargain as the stressful climate would allow; and had available, and in fact, relied upon the advice of undisputed legal and financial experts.

Lastly, the Revlon standard was satisfied because the board, acting in an extremely truncated time frame, found only one real offer, notwithstanding its best efforts to engage multiple bidders. And with that one offer and essentially zero leverage to improve it, the directors did the best they could to not let it get away (and actually succeeded in obtaining a much better price). In simple words, opined Justice Cahn, the business judgment rule protects directors that make reasonable decisions at the time, not perfect ones nor ones immune from second-guessing.

Bear Stearns now turned to additional grounds as to why the inclusion of the already discussed deal protection devices did not mandate enhanced scrutiny under the circumstances of the instant case. To be sure, opined the court, heightened judicial inquiry is mandated when it appears the board employed such mechanisms to entrench its position at the expense of shareholders, particularly in a hostile takeover context or a struggle for board control. But “[d]eal protection provisions are not reviewed in a vacuum.” In formulating this merger, the Bear board acted in response to a very real outside threat to the corporation’s very existence, as distinguished from a selfish desire to maintain its own continuity in light of a hostile takeover bid. Thus, the Unocal objective of thwarting deal provisions intended to act defensively and entrench incumbent management was not at issue. Similarly, Revlon did not support the allegations of the Bear shareholders because, notwithstanding the proviso for the distribution of over a third of Bear’s stock to JP to “lock up” the deal, the diffused and public nature of the shareholder base assured that the unaffiliated shareholders were not ousted from control.

Considering all this, Justice Cahn held that the deal protection provisions were reviewable only under the rubric of the general business judgment rule. And since the complaining shareholders failed to show any indicia of self-dealing, disloyalty or deception by the board, the Bear Stearns court was well satisfied that their allegations had to be dismissed. Yet the court’s final words on this issue might have been the most dramatic and conclusive: “The financial catastrophe confronting Bear Stearns, and the economy generally, justified the inclusion of the various merger protection provisions intended to increase the certainty of the consummation of the transaction.”

A frank appraisal of Bear Stearns reveals that not only is this opinion a worthy landmark of New York jurisprudence, its timeliness in the current economic climate cannot be exaggerated. Subsequent to the events that gave rise to this controversy, we were staggered with
the demise of many of Bear Stearns’ brethren, including the calamitous bankruptcy of Lehman Brothers and the expedited sale of Merrill Lynch to Bank of America. At the time of this writing, we await, among others, the outcome of the pending restructuring of Citigroup, and the absorption of Wachovia by Wells Fargo. Of far greater concern, one cannot possibly forecast what lies ahead for holders whom the board serves. Anger leads to litigation, and litigation leads to judicial inquiry. To date, the exercise of judicial oversight in a place and time far removed from the crisis is properly tempered by the prudent exercise of the business judgment rule.

We first note that much assurance can be taken from the court’s great emphasis that the Bear directors surrounded themselves with professionals of impeccable credentials, who no doubt provided tremendous expertise, and in a pressure cooker environment. In this regard, the lesson that has been reinforced is that a board making serious (not to mention “life or death”) decisions must surround itself with the best advisers possible (and assumedly take heed of them). No amount of legal or financial advice renders a board bulletproof, but Bear Stearns amply demonstrates that a board gives itself durable insulation when it does not skimp on competent advice.

In its second aspect, Bear Stearns tells us that the established maxims of the business judgment rule live on. Specifically, the maxim does not give license to a court to liberally second guess business decisions and view board action through the comfortable prism of hindsight. Directors will continue to be judged as they have always been, under the rigorous but still reasonable demands that they acted with loyalty, due care, and made informed decisions with the benefit of the advice of competent experts.

While the presumptions of the business judgment rule shall first inure to the benefit of directors and officers, that body will still be kept on the straight and narrow path by the right of complaining shareholders to rebut such favorable assumptions by demonstrating bad faith or self-dealing by miscreant boards. In sum, the time-tested axioms of the business judgment rule remain unchanged, even in these difficult times.

Yet Bear Stearns serves a higher purpose. It does indeed recognize that so-called enhanced review of board decisions is appropriate and desirable, in the right circumstances. It follows accepted norms by delimiting those conditions to the proven scenarios where the board enacts defensive measures solely to entrench itself, to fend off challenges to its elected status, and where a change of control will oust the present directors from their lofty position. Bear Stearns did not arbitrarily declare that enhanced review should now be expanded to crisis situations such as this board found itself facing.

“At the end of the day, we are reminded of what well might prove to be the credo of the Bear Stearns case: Directors are required to make the best decision, not a perfect one.”

That is where Bear Stearns demonstrates its greatest value. It has been generations since this nation has faced an economic crisis of these epic proportions. It would have been easy for this court to be overzealous in its review of what the Bear directors did, and either impose the existing enhanced review standards as the shareholders asked it to, or even promulgate some new variation for when more intensive scrutiny is required.

Justice Cahn resisted that temptation. He kept a cool head, and recognized that the directors in question had done the same, assembling a powerful cadre of legal and financial advisers, carefully contemplating what options they actually had in the limited time they were allowed, and then doing what they could to save something of worth for the beleaguered shareholders.

At the end of the day, we are reminded of what well might prove to be the credo of the Bear Stearns case: Directors are required to make the best decision, not a perfect one. This is the cornerstone of the business judgment rule, and we can be assured of its solidity for this financial crisis and those yet to come.

Endnotes

2. 744 F.2d 255 (2d Cir. 1984) (Kaufman, J.).
3. Id. at 264.
7. See also CRTF Corp. v. Federated Dept Stores, Inc., 683 F. Supp. 422, 440-42 (S.D.N.Y. 1988) (courts will uphold a board’s decision as long as it can be attributed to any rational business purpose).
While a state matter, the case had been assigned to the County of New York’s Commercial Division, a forum specifically designed to partition off solely business litigation from more general controversies, and then efficaciously adjudicate the former. The Commercial Division’s individual rules are more reflective of the streamlined Federal Rules of Civil Procedure than New York’s own CPLR, and that contributed to the matter being heard akin to a “fast track” matter.

The shareholders had also sued JPMorgan Chase, the eventual rescuer of Bear Stearns, for allegedly tortuous conduct in effecting its government-sanctioned merger with the beleaguered investment house, and the entirety of those companion claims were dismissed as well.

Although they have no need of additional publicity from this humble writer, the firms were Skadden, Arps; Sullivan & Cromwell, and Cadwalader, Wickersham & Taft, all of New York, and Richards, Layton & Finger of Delaware. Id. at 16-17.

In a point crucial to the instant case, director liability may be further proscribed by an exculpatory provision in the certificate of incorporation (which the Delaware Code does allow). Id. at 33. Bear’s incorporation documents did in fact contain such an exculpatory clause, thereby making the shareholders’ position herein even more problematric. Id. at 33-34.

See also 28 Corp. v. Mesa Petroleum Co., 493 A.2d 946, 954 (Del. 1985).

Bear Stearns, supra, __ Misc. 2d. at ___, LEXIS at 34 (citations omitted).

Id. at 34-35. See also Paramount Communications, Inc. v. Time Inc., 571 A.2d 1140, 1152 (Del. 1989).


Id. at 35-36.


Id. at 34-35. Compare Revlon, supra, 506 A.2d at 179-80.

Id. at 35.

Id. at 37.

Id. at 37-38.

Id. at 38-39.

Id. at 38-39.

Id. at 38-39.

Id. at 39-40.

Id. at 40-41.

Id. at 41-42.

Id. at 42-43.

Id. at 42-43.

Id. at 43-44 (citations omitted).

Id. at 45-46.

Id. at 46-47.

Id. at 49-50.

Id. at 52. Parenthetically, we note that the opinion thoughtfully disposes of certain additional issues. Justice Cahn candidly called “irrelevant” the contentions of the shareholders’ experts that the board should have considered more fully the options of bankruptcy, a spin-off or asset sales. The court disregarded such notions as “hindsight evidence.” Id. at 52-53. Similarly, the court ousted the shareholders’ assertion that the board breached its fiduciary duty for allegedly failing to disclose numerous material facts in soliciting shareholder approval for the JPMorgan deal. Justice Cahn held that the aggrieved shareholders failed to demonstrate that the board omitted material facts from its disclosures. Quite to the contrary, the court found the board provided a great deal of detailed information to the shareholders about the evolution of the merger process, and thereafter rationally drew the line where additional disclosure would be superfluous. Id. at 61-64.

For a pithy analysis of key shareholder litigation arising from some of these distressed situations, as well as the instant case, see Tariq Mundiya, Directors’ Fiduciary Duty During the Credit Crunch, 241 N.Y.L.J., p. 4, cl. 4 (Jan. 6, 2009).

Anthony Michael Sabino, Sabino & Sabino, P.C., Mineola, New York, practices complex business litigation and is a Professor of Law, teaching corporate law and other subjects at a major New York City university. The opinions expressed herein are his own. Michael A. Sabino (law school admission pending) assisted in researching of this article.

This article is, as always, dedicated to the memory of Mary Jane C. Sabino, attorney, professor of law, beloved spouse, and beloved mother of Michael and James.