

Confidential

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE TESLA, INC. SECURITIES
LITIGATION

Case No. 18-cv-04865-EMC

Expert Report of

Professor Guhan Subramanian

November 8, 2021

CONFIDENTIAL

UNITED STATES DISTRICT COURT	
NORTHERN DISTRICT OF CALIFORNIA	
Case Number:	3:18-cv-04865-EMC
PLTF / DEFT	
Exhibit No.	360
Date Admitted:	
By:	
Angella Meuleman, Deputy Clerk	

EXHIBIT
360
Subramanian 3/1/2022 J.W.

TE 360-1

Appendix A: Subramanian CV

Guhan Subramanian

Hauser 314
Harvard Law School
Cambridge, MA 02138

Baker Library 473
Harvard Business School
Boston, MA 02163

Academic Positions Held

H. Douglas Weaver Professor of Business Law, Harvard Business School, 2007-Present

Joseph Flom Professor of Law and Business, Harvard Law School, 2004-Present

Faculty Chair, JD/MBA Program, Harvard University, 2004-Present

Faculty Chair, Program on Negotiation, Harvard Law School, 2018-Present

H. Douglas Weaver Visiting Professor of Business Law, Harvard Business School, 2006-07

Joseph Flom Assistant Professor of Law and Business, Harvard Law School, 2002-2004

Assistant Professor of Business Administration, Harvard Business School, 2001-2002

Lecturer in Business Administration, Harvard Business School, 1999-2001

Education

J.D., *magna cum laude*, Harvard Law School, 1998. Moot court competition winner. Editor, Harvard Law Review.

M.B.A., Harvard Business School, 1998.

A.B., *magna cum laude* (Economics), Harvard University, 1992. Phi Beta Kappa. Elected undergraduate student government president.

Books

Dealmaking: The New Strategy of Negotiauctions (2nd ed. 2020)

Corporate Law (2017) (with Holger Spamann)

Commentaries and Cases on the Law of Business Organization (4th ed. 2012) (with William T. Allen & Reinier Kraakman)

Dealmaking: The New Strategy of Negotiauctions (2011)

Commentaries and Cases on the Law of Business Organization (3rd ed. 2009) (with William T. Allen & Reinier Kraakman)

Commentaries and Cases on the Law of Business Organization (2nd ed. 2007) (with William T. Allen & Reinier Kraakman)

Academic Articles

Deals in the Time of Pandemic, 121 *Columbia Law Review* 1405 (June 2021) (with Caley Petrucci).

Sources of Power in Public Negotiations: A Framework Applied to Public-Public and Public-Private Negotiations, *Negotiation Journal*, (2020) (with Brian Mandell and Stephen Petraeus).

Go-Shops Revisited, 133 *Harvard Law Review* 1215 (2020) (with Annie Zhao). Selected by academics as one of the “top ten” articles in corporate/securities law for 2020, out of 323 articles published in that year.

Appraisal After Dell, in *The Corporate Contract in Changing Times: Is the Law Keeping Up?* (University of Chicago Press 2019).

The Effect of Prohibiting Deal Protection on M&A Activity: Evidence from the United Kingdom, 60 *Journal of Law & Economics* 1 (2017) (with Fernan Restrepo).

The New Look of Deal Protection, 69 *Stanford Law Review* 1013 (2017) (with Fernan Restrepo).

Deal Process Design in Management Buyouts, 130 *Harvard Law Review* 590 (2016). Selected by academics as one of the “top ten” articles in corporate/securities law for 2017, out of more than 565 articles published in that year.

Freezeouts: Doctrine & Perspectives, M&A HANDBOOK (Claire Hill & Steven Davidoff Solomon, eds.) (2016) (with Fernan Restrepo).

The Effect of Delaware Doctrine on Freezeout Structure and Outcomes: Evidence on the Unified Approach, 5 *Harvard Business Law Review* 205 (2015) (with Fernan Restrepo).

Corporate Governance 2.0, *Harvard Business Review* (March 2015).

Delaware’s Choice, *Delaware Journal of Corporate Law* 39, no.1 (Nov. 2014). Delivered as the 29th Annual Francis G. Pileggi Distinguished Lecture in Law in Wilmington, Delaware in November 2013. Selected by academics as one of the “top ten” articles in corporate/securities law for 2014, out of more than 525 articles published in that year

Delaware’s Choice: A Brief Reply to Symposium Commentators, *Delaware Journal of Corporate Law* 39, no.1 (Nov. 2014).

Does Shareholder Proxy Access Improve Firm Value? Evidence from the Business Roundtable Challenge, *Journal of Law & Economics* 56 no.1 (Feb. 2013) (with Bo Becker and Dan Bergstresser).

Improving Director Elections, *Harvard Business Law Review* (Fall 2012) (with Bo Becker).

A New Era for Raiders, *Harvard Business Review* (Nov. 2010).

Is Delaware's Antitakeover Statute Unconstitutional? Evidence from 1988-2008, *The Business Lawyer* 65, no. 1 (May 2010). Selected by academics as one of the "top ten" articles in corporate/securities law for 2010, out of 447 articles published in that year.

Is Delaware's Antitakeover Statute Unconstitutional? Further Evidence and a Reply to Symposium Commentators, *Business Lawyer* 65, no. 1 (May 2010).

Auction? Negotiate? A Dealmaker's Guide, *Harvard Business Review* (Dec. 2009)

Go-Shops vs. No-Shops in Private Equity Deals: Evidence and Implications, *The Business Lawyer* 63, no. 1 (2008). Selected by academics as one of the "top ten" articles in corporate/securities law for 2008, out of 480 articles published in that year.

The Emerging Problem of Embedded Defenses: Lessons from Air Line Pilots Ass'n Intl. v. UAL Corp., *Harvard Law Review* 120, no. 5 (March 2007).

Post-Siliconix Freeze-Outs: Theory & Evidence, *Journal of Legal Studies* 36 (Jan. 2007). Selected by academics as one of the "top ten" articles in corporate/securities law for 2007, out of 484 articles published in that year.

Oracle vs. PeopleSoft: A Case Study, *Harvard Negotiation Law Review* 12 (Winter 2007) (with D. Millstone).

Bargaining in the Shadow of PeopleSoft's (Defective) Poison Pill, *Harvard Negotiation Law Review* 12 (Winter 2007).

Fixing Freezeouts, *Yale Law Journal* 115, no.1 (Oct. 2005). Selected by academics as one of the "top ten" articles in corporate/securities law for 2005, out of 410 articles published in that year.

Takeover Defenses and Bargaining Power, *Journal of Applied Corporate Finance* 17, no.4 (Fall 2005).

The Disappearing Delaware Effect, *Journal of Law, Economics & Organization* 20, no.1 (April 2004). Selected by academics as one of the "top ten" articles in corporate/securities law for 2004, out of 439 articles published in that year.

Bargaining in the Shadow of Takeover Defenses, *Yale Law Journal* 113, no.3 (Dec. 2003). Selected by academics as one of the "top ten" articles in corporate/securities law for 2004, out of 439 articles published in that year.

Confidential

The Drivers of Market Efficiency in Revlon Transactions, *Journal of Corporation Law* 28, no.4 (Summer 2003).

The Trouble With Staggered Boards: A Reply to Georgeson's John Wilcox, *Corporate Governance Advisor* 10, no.6 (Nov./Dec. 2002) (with L. Bebchuk & J. Coates).

The Influence of Antitakeover Statutes on Incorporation Choice: Evidence on the "Race" Debate and Antitakeover Overreaching, *University of Pennsylvania Law Review* 150, no.6 (June 2002).

The Powerful Antitakeover Force of Staggered Boards: Further Findings and a Reply to Symposium Commentators, *Stanford Law Review* 55, no.3 (Dec. 2002) (with L. Bebchuk & J. Coates). Selected by academics as one of the "top ten" articles in corporate/securities law for 2003, out of 450 articles published in that year.

The Powerful Antitakeover Force of Staggered Boards: Theory, Evidence & Policy, *Stanford Law Review* 54, no.9 (June 2002) (with L. Bebchuk & J. Coates). Selected by academics as one of the "top ten" articles in corporate/securities law for 2002, out of 350 articles published in that year.

A Buy-Side Model of M&A Lockups: Theory and Evidence, *Stanford Law Review* 53, no.2 (Nov. 2000) (with J. Coates). Selected by academics as one of the "top ten" articles in corporate/securities law for 2001, out of 300 articles published in that year.

A New Takeover Defense Mechanism: Using an Equal Treatment Agreement as an Alternative to the Poison Pill, *Delaware Journal of Corporate Law* 23, no.2 (1998).

Note, Using Capital Cash Flows to Value Dissenters' Shares in Appraisal Proceedings, *Harvard Law Review* 111, no.7 (May 1998).

Working Papers

Using the Deal Price for Determining "Fair Value" in Appraisal Proceedings (working paper 2017).

The Effect of Takeover Defenses, Discussion Paper, Harvard Law School Olin Center for Law, Economics & Business (November 2007) (with L. Bebchuk & J. Coates).

Placing Election Bylaws on the Corporate Ballot, *Harvard PON Working Paper No. 915403* (August 2005) (with L. Bebchuk, A. Ferrell, R. Kraakman, and M. Roe).

Courses Taught

Corporations, Harvard Law School (2002-present)

Advanced Negotiation: Deals, Harvard Law School/Harvard Business School (2004-present)

Confidential

Law & Business Seminar, Harvard Law School/Harvard Business School (2002-present)

Negotiation Workshop, Harvard Law School (2002-2004)

Analytic Methods for Lawyers (Accounting & Finance module), Harvard Law School (2002-2005)

First-Year Negotiations, Harvard Business School (1999-2002)

Law and the Global Manager, Harvard Business School (2001-2002)

Harvard Business School Executive Education: Making Corporate Boards More Effective, Changing the Game, Strategic Negotiations, Advanced Management Program, Mergers & Acquisitions

Harvard Law School Executive Education: Program on Negotiation for Senior Executives, Negotiation Master Class.

Kennedy School of Government Executive Education: Senior Leaders in Government (Negotiations module), Leadership & Decision-Making.

Other Activities

Lead Independent Director, Nominating/Governance Committee Chair, Audit Committee Member, LKQ Corp (NASDAQ: LKQ)

Graduate Commons Faculty Director, Western Area, Harvard University

Faculty Chair, Advisory Committee on Shareholder Responsibility, Harvard University

Member, New York State Bar Association

Expert Testimony (Past 5 Years)

In re Comverge Inc. Shareholder Litigation, C.A. No. 7368-VCMR (Del. Ch. 2016) (reports & deposition)

Quinn v. Apple Hospitality REIT et al., Case No. 3:16-CV-00610-JAG (D. Va. 2016) (report & deposition)

Stender et al. v. Archstone-Smith Operating Trust et al., Case No. 07-CV-02503-WJM-MJW (D. Colo. 2016) (report & deposition)

Blueblade Capital Opportunities LLC et al. v. Norcraft Companies, Inc., C.A. No. 11184-VCS (Del. Ch. 2017) (reports, deposition, and trial testimony)

In re Facebook, Inc. Class C Reclassification Litigation, C.A. No. 12286-VCL (Del. Ch. 2017) (report & deposition)

In re ExamWorks Group, Inc. Stockholder Appraisal Litigation, C.A. No. 12688-VCL (Del. Ch. 2018) (report & deposition).

Onyx Pharmaceuticals, Inc. vs. Old Republic Insurance Co., et al., Case No. CIV 538248 (Cal. 2018) (report, deposition & trial testimony).

Blueblade Capital Opportunities LLC v. SciQuest, Inc., C.A. No. 12831-VCL (Del. Ch. 2018) (reports & deposition).

Darwin Deason v. FujiFilm Holdings Corp., Xerox Corp., et al., C.A. No. No. 650675/2018 (N.Y.) (reports).

In re Starz Stockholder Litigation, C.A. No. 12584-VCG (Del. Ch. 2018) (reports & deposition).

Akorn, Inc. v. Fresenius Kabi AG, Quercus Acquisition, Inc. and Fresenius SE & Co. KGaA, C.A. No. 2018-0300-JTL (Del. Ch. 2018) (report & deposition)

Verde Ventures LLC v. GTI Core, LLC et al., Case No. A-18-775978-B (Nev. 2018) (report & deposition)

Vintage Rodeo Parent, LLC et al. v. Rent-A-Center, Inc., C.A. No. 2018-0927-SG (Del. Ch. 2019) (report & deposition)

Wilmington Trust Co. v. Hellas Telecommunications et al., Index No. 653357/2011 (NY 2019) (report & deposition)

Glencore Canada Corp. v. H.M.Q., Court File No. 2014-887(IT) G (Tax Court of Canada 2019) (report & trial testimony)

Parallax Energy LLC v. Cherniere Energy, Inc., NO. 14-17-00982-CV 08-13-2019 (Tx. 2019) (deposition)

In re Versum Materials Inc. Stockholder Litig., C.A. No. 2019-0206-JTL (Del. Ch. 2020) (reports).

Dillon Trust Co. LLC, et al. v. U.S., Nos. 17-1898T, 17-2022T, 17-2023T (reports & deposition) (U.S. Court of Federal Claims 2020)

Align Technology, Inc. v. SDC Financial, LLC et al. (Case No. 01-19-0002-0945) (Arbitration 2020) (deposition)

The Williams Companies Stockholder Litig., C.A. No.2020-0707-KSJM (Del. Ch. 2020) (reports & deposition)

Roofers' Pension Fund v. Joseph C. Papa, et al., Case No. 2:16-cv-02805-MCA-LDW (2021) (reports & deposition)

Confidential

In re WeWork Litigation, C.A. No. 2020-0258-AGB (2021) (report & deposition)

Matthew Sciabacucchi et al. v. Charter Communications et al., C.A. No. 11418-VCG (Del. Ch. 2021) (reports & deposition)

Bergeron Environmental & Recycling, LLC vs. LGL Recycling, LLC et al., Case No. 16-000158 (07) (Fla. 2021) (report & deposition)

In re Straight Path Communications Inc. Consol. Stockholder Litig., C.A. No. 2017-0486-SG (Del. Ch. 2021)

Current thru November 5, 2021