This course is designed to introduce students with a basic understanding of corporation law to the fundamental and some advanced topics in the law of mergers and acquisitions. The principal focus of the course will be on the corporation law aspects, and to a lesser extent, on the securities regulation and deal documentation aspects of these transactions. The course will not cover the tax, antitrust, and accounting issues other than in passing.

All classes will be held on Friday, from 11:05 am to 12:55 pm, in Vanderbilt Hall 216, except for Friday(s) March 24 and March 31, 2006. I will be unavailable on those days, and have scheduled make-up classes on Monday(s), March 27 and April 3, 2006, in rooms to be announced as soon as I am informed of the location.

Course materials include *Mergers and Acquisitions* by William Carney (Foundation Press) (“Carney”) and the current Supplement to that text. Individual copies of other Supplemental Materials--Vols. 1 & 2 (“Supp.”) and the Statutory Supplement (“Stat. Supp”) will be available and can be picked up in Room 322 of Vanderbilt Hall beginning January 5, 2006. Other reference materials, including the Glossary (collectively “RM”) will be posted on the course Blackboard site. I will be available after class to answer questions, and can be reached via e-mail at jbj4@nyu.edu. Assigned readings are to be read in preparation for class.

**Class 1 – January 13, 2006--Introduction**

Historical Perspective and Overview……………………………. Carney 2-10, 55-61

Acquisition Techniques

Overview……………………………………………………………………..Carney 13-20

Direct Purchase of Shares……………………………………………………………..Carney 36-41

Asset Acquisitions--Delaware General Corporation Law (“DGCL”) 271 (Stat.Supp)

Mergers (including voting issues). DGCL §§ 251, 253 (Supp); and Carney 700-705

Triangular Mergers……………………………………………………………Carney  714-722

Tender Offers…………………………………………………………..…..Carney 10-12, 728

**Class 2 -- January 20, 2006 – Overview of Deal Mechanics**

Letters of Intent……………………………………………………………..Carney 567-588

Confidentiality and Standstill Agreements………………………………………..Carney 368-378

Due Diligence Process……………………………………………………………..Carney 977-982

Best Efforts Clauses (US Airways case)………………………………………..Carney 682-688

Acquisition Agreements……………………………………………………………..Carney 983-1038

Suggested Reading (Required for Third Class)

“Class on Agreements”……………………………………….. (RM-Course Documents)

**Class 3 – January 27, 2006 -- Negotiation and Overview of Deal Documents**

(Guest Lecturer: Victor I. Lewkow, Cleary, Gottlieb, Steen & Hamilton, NYC)

“IBP, Inc. v. Tyson Foods, Inc”……………………………………………..Carney Supp., 306-344

Kling and Nugent, § 11.04[9]……………………………………….. Supp., Vol. 1 (“Class 2”)

Lewkow, Allocating Market Risk (Insights 1995)……………………………..Supp., Vol. 2

Hughes and Bryan, Will the MAC Clause Become A Permanent Deal Stopper?........

Supp., Vol. 2
Class 4 – February 3, 2006 – Disclosure Obligations in M&A Transactions

Disclosure Obligations to Shareholders: Proxy Rules & Fiduciary Duties of Disclosure:

- Sec. 14(a), Securities Exchange Act of 1934
- SEC Proxy Rules
- Weinberger v. UOP, Inc., 457 A.2d 701 (Del. 1983)

Disclosure Obligations to the Market:

- Williams Act, Sec. 13(d) and Schedule 13(d)
- Starkman v. Marathon Oil Co., 772 F.2d 231 (6th Cir. 1985)
- Liberty National Insurance Holding Co. v. The Charter Co., 734 A.2d 545 (11th Cir. 1994)

Class 5 – February 10, 2006 – Fiduciary Duties & Standards Of Judicial Review

Overview --- Business Judgment, Entire Fairness, and “Intermediate” Standards

Standard In Arm’s Length Mergers (The Business Judgment Rule)

- Johnston v. Trueblood, 629 F.2d 287 (3rd Cir. 1980)
- Smith v. Van Gorkom, 488 A.2d 888 (Del. 1985)
- Note, “Loyalty Duties of Directors”

Standard in Parent-Subsidiary Mergers

- Weinberger v. UOP, Inc., 457 A.2d 701 (Del. 1983)
- Rosenblatt v. Getty Oil Co., 493 A.2d 929 (Del. 1985)

Class 6 – February 17, 2006 – Fiduciary & Judicial Review Standards (Continued)

The Effect of Independent Negotiating Committees

- Kahn v. Lynch Communications, Inc., 638 A.2d 1110 (Del. 1994)
- Allen, Jacobs & Strine, Function Over Form

Standard in Tender Offers

- Federal Law Obligations
  - Note following Hanson Trust
  - SEC Rules 14d-9 and 14e-2; Schedule 14D-9
  - Epstein v. MCA, Inc., 50 F.3d 644 (9th Cir. 1995)
  - Lerro v. Quaker Oats, 84 F.3d 239 (7th Cir. 1996)

State Law Fiduciary Obligations

- Eisenberg v. Chicago Milwaukeee Corp., 537 A.2d 1051 (Dcl. Ch. 1987)

Class 7 – February 24, 2006

Issues in “Two Step” Going Private Transactions

Federal Disclosure Issues

- Flynn v. Bass Brothers Enterprises, Inc., 744 F.2d 978 (3rd Cir. 1984)
- Howling Co. v. Nationwide Corp, 826 F.2d 1470 (6th Cir. 1987)
- SEC Rule 13e-3

Recent State Law Doctrinal Issues

- Note on Glassman v. Unocal Exploration Corp., 777 A.2d 242 (Del. 2001)
- In re Siliconix Inc. Shareholders Litig., 2001 WL 716787 (Del. Ch. 2001)
- In re Pure Resources, Inc Shareholders Litig., 808 A.2d 421 (Del.Ch. 2002)
Class 8 – March 3, 2006 – Antitakeover Defenses and Review Standard Where Board Response to Hostile Takeover Bid is to Engage in Defensive Measures

State Takeover Laws

CTS Corp. v. Dynamics Corp of America, 481 U.S. 69 (1987)………………… . Carney 508-520
Note on Business Combination Statutes……………………………………Carney 530-536

Review Standard for Defensive Measures

Unocal Corporation v. Mesa Petroleum Co., 493 A.2d 946 (Del. 1985)……………Carney 73-84
Unitrin, Inc. v. American General Corp., 651 A.2d 1361 (Del. 1995)……………Carney 338-344

Class 9 – March 10, 2006 – “Poison Pills” and Their Evolution

What are Poison Pills?…………………………………………………………Carney 263-266
Summary of Stock Rights Plan……………………………………………Supp., Vol. 2 (“Class 17”)
Note on Application of Unocal to Redemption of Rights……………………….Carney 292-297
“Dead Hand” and “Slow Hand” Poison Pills: Carmody v. Toll Brothers, Inc.,
723 A.2d 1180 (Del. Ch.1998) and Quickturn Design Systems v. Shapiro……Carney 306-328

Class 10 – March 27, 2006 – Review Standard Where Board Response to Hostile Takeover [Make-Up] Bid is to Sell or Commit the Company to a Change of Control Transaction

In re Fort Howard Corp. S/H Litigation, 1988 WL 83147 (Del. Ch. 1988)……..Carney 174-184
Mills Acquisition Co. v. MacMillan, Inc., 559 A.2d 1261 (Del. 1989)………..Carney 84-102
Paramount Communications, Inc. v. Time, Inc, 571 A.2d 1140 (Del. 1989)…..Carney 203-213
Paramount Communications, Inc. v. QVC Network, 637 A.2d 34 (Del. 1994)…Carney 215, 615-16

Class 11 – April 3, 2006 – Review Standard Where Board Response to Hostile Takeover Bid [Make-Up] Is To Interfere With or Impede A Proxy Contest

Blasius Indus., Inc. v. Atlas Corp., 564 A.2d 651 (Del. Ch. 1988)……………..Carney 242-251

Class 12 -- April 7, 2006 – Protecting The Friendly Deal (Termination Fees, “Lock-Ups,” “No-Shops” and “No Talks”)

Ace Limited v. Capital Re Corporation, 747 A.2d 95 (Del. Ch. 1999)………..Carney Supp. 20-36
Morphy, “Where Has Time Gone?”……………………………………Supp., Vol. 2 (“Class 19”)
Omnicare Inc. v. NCS HealthCare, Inc., 818 A.2d 914 (Del. 2003)………..Carney Supp. 82-106

Class 13 – April 14, 2006 – Guest Lecturers (to be announced)— Litigation of M&A Cases

Class 14 -- April 21, 2006 – Compensation Issues in M&A Transactions
(Guest Lecturer: Jeremy Goldstein, Esq., Wachtell, Lipton, Rosen & Katz, NYC.)