



## Client Alert

*This is an important update on a recent court decision that was the subject of a previous client alert.*

### **Delaware Supreme Court Overturns Lower Court Decision in Airgas, Inc. Takeover Matter**

In an earlier [client alert](#), on November 18, 2010, we reported on a ruling by the Delaware Chancery Court in the contested hostile takeover bid by Air Products & Chemicals, Inc. for Airgas, Inc.

As we reported, in its October 8, 2010 decision, the Chancery Court upheld the adoption of an amendment to the Airgas bylaws to accelerate the Airgas 2011 annual stockholders meeting to January 2011, only four months after the 2010 annual meeting held in September 2010. In ruling for Air Products, the Chancery Court determined that the term "annual" as used in the Airgas staggered board provisions was open to interpretation, but in the absence of explicit language to the contrary, means once per year as opposed to once every twelve months. As a result, the full term of the members of a class of directors on the Airgas staggered board did not extend for a full three years from the time of their election, but only until the third annual stockholders meeting following their election.

In an appeal by Airgas of the Chancery Court's decision, on November 23, 2010, the Delaware Supreme Court reversed the lower court's ruling. In doing so, Delaware's highest court found that, while the language of the Airgas bylaw provision regarding the term of the Airgas directors was indeed ambiguous, extrinsic evidence indicated that it was intended to mean that the Airgas directors serve a term of three years. The Supreme Court also ruled



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that the bylaw proposed by Air Products and approved by Airgas stockholders that would have accelerated the 2010 Airgas annual meeting was contrary to the staggered board provisions of the Airgas certificate of incorporation, because it amounted to a removal of directors without "cause" and without the requisite stockholder vote under the certificate of incorporation.

In order to prevent possible similar challenges by insurgent stockholders or potential acquirers, companies should review their charters and bylaws for possible ambiguities regarding the term of office of their directors or their staggered board provisions.

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If you would like to know more about the Delaware Supreme Court's ruling, please contact [Dale Short](#), chairman of the firm's Corporate Department, or the TroyGould attorney with whom you regularly work.

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