

Case: Moran v. Household
Interview of Charles F. Richards, Jr.
Interviewed by:
John Mark Zeberkiewicz; Richards, Layton & Finger, P.A.
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1 MR. ZEBERKIEWICZ: Mr. Richards, thank you for
2 taking the time to speak with us about Moran vs. Household
3 International. It's difficult to speak about Household without
4 also mentioning Unocal. And you were involved in both of those
5 cases, both of which were argued within days of each other.
6 Before we get into Household and Unocal, just give us a little
7 bit of background about what the air was like, what your
8 position was in the firm at the time; kind of the general
9 sense of what was going on. #00:00:43#

10 MR. RICHARDS: Well, that was the middle of, I would
11 say, a very dynamic period where there were many, many cases.
12 At the time, I guess, I figured out, I was about 48-years-old;
13 so, in my career, that was in the middle of my career or the
14 height of my career. And I think the Unocal case was probably
15 the fifth or sixth case that I had handled for Boone Pickens
16 and Mesa; so, it was in the middle of that, in 1985. The
17 takeover wars, as we thought about them, started about 1980,
18 and it was a very, very busy time for our firm.

1 MR. ZEBERKIEWICZ: What was the firm like before in
2 the takeover era? #00:01:32#

3 MR. RICHARDS: Well, I guess when I joined the firm
4 in 1963, I was a fourteenth lawyer, and so, it was a small
5 firm, probably bigger than it would have been in some other
6 town because the Delaware corporate law had a presence, and we
7 had derivative suits and class action suits here. But it
8 wasn't at all as busy as it became.

9 MR. ZEBERKIEWICZ: Tell us a little bit about your
10 involvement in the overhaul of the general corporation law.
11 #00:02:05#

12 MR. RICHARDS: Oh, well, that was a very fortunate
13 thing for me, although at the time it didn't seem so great.
14 We're talking about the 1967 revision, and I was just a young
15 fella, I had been practicing three or four years, and I was
16 drafted to be a secretary along with Charlie Crompton, from
17 Potter Anderson & Corroon, and Walt Stapleton, who then became
18 Judge Stapleton from Morris Nichols. And we were the three
19 dogsbodies, if you will, for the senior partners in those
20 firms. But what it meant was, the group met on Saturday
21 mornings at one of the three firms, and so, every Saturday
22 morning instead of playing tennis or playing with my children,
23 I was down here revising the corporation law for about a year
24 and a half.

1 MR. ZEBERKIEWICZ: As I look back at the old
2 correspondence files, and the minutes of those meetings
3 overhauling the general corporation law, in 1967, there are a
4 series of letters from you and to you and addressed to Messrs.
5 Cravath, Swaine, and Moore - I mean how, did that experience
6 in and of itself kind of expand your own horizons into these
7 firms give you kind of an in with some of these other firms
8 throughout the country with whom you ended up working in all
9 these takeover cases? #00:03:32#

10 MR. RICHARDS: Oh, tremendously. In working with the
11 three most senior guys, Dick Corroon, Sam Arsht, and Henry
12 Canby of our firm, you know, I was sitting at the feet of the
13 guys who knew the most about it and had the most clients and
14 the most experience. And in getting involved with their
15 friends and associates in the national practice of corporation
16 law, and Delaware tried to coordinate, or at least be in touch
17 with what the rest of the corporate bar wanted to do, it was
18 invaluable to me and gave me more knowledge than you would
19 ever learn in a corporation law course at law school.

20 MR. ZEBERKIEWICZ: And it is interesting that you do
21 have that background because while, ultimately, we think of
22 Moran as kind of a case that turned on the equities, there
23 were a lot of technical arguments, including whether the
24 rights plan was valid under 157, including whether it was an

1 impermissible restriction on shares under Section 202. There
2 were a lot of different technical arguments, although,
3 ultimately, I think the case really didn't turn on that; it
4 really did turn on kind of the equities of it and in many
5 respects, Unocal, at the end of the day. And so, I want to now
6 turn to what it was like for you specifically as you were
7 marching toward your argument in Household and how you were
8 able to manage your schedule given that you were arguing
9 Unocal just a few days before and you were otherwise very
10 busy. What was that circumstance like? #00:05:09#

11 MR. RICHARDS: Well, for those particular cases, and
12 for that period of time, I usually operated as the captain of
13 a pretty good-sized team; and a very good size for our firm -
14 and we would have as many as 10 or even, in parts of Unocal,
15 15 people working on it because so much had to be done in 24
16 or 48 hours overnight. The briefs on appeal in Unocal, for
17 example, I think were written overnight, in 24 hours. So, that
18 was frantic. Also, there were other matters that came in and,
19 which I couldn't pay much attention to, so I had to recruit
20 other partners to work on them. But still, if I had the
21 relationship with the client, I had to spend a few minutes
22 during the day on that. An interesting aspect that we were
23 talking about a few minutes ago was the apparent conflict
24 between a Household position, representing the defendant if

1 you will, and the Unocal case, representing Mesa, the
2 acquirer.

3 MR. ZEBERKIEWICZ: And so, in your argument in
4 Household, there is a point at which you do reference Unocal,
5 and you mentioned to the court that you are not going reargue
6 that case. The courtroom kind of burst into laughter, and then
7 you mentioned, you know, but I will be happy to reargue it if
8 you would like; I see Mr. Sparks is in the courtroom. How did
9 you - I mean there is also a very famous, in my world, cartoon
10 of you in a newspaper where you are holding the scales of
11 justice, and Household is on one side, and Unocal is on the
12 other side. How did you, in your mind, distinguish those two
13 cases? Because exactly, in one, you were representing Boone
14 Pickens, who was perceived to be the raider and there was a
15 defensive mechanism in place. On Household, obviously, you
16 were representing the defendant who had imposed a defensive
17 mechanism. How did you, in your mind, kind of square those two
18 things? #00:07:22#

19 MR. RICHARDS: Well, to me, they were separate, and
20 it sort of came on the tradition that our firm, and other
21 firms, had, for a long time, been representing both acquirers
22 and acquirees, if you will, corporations that are targets. So,
23 in a way, that was a problem that our firm and other firms had
24 already faced because we felt we could represent acquirers and

1 could represent targets. And the devices, of course, were
2 different. I mean the rights plan was quite different than the
3 discriminatory self-tender in Unocal. But that question that
4 you asked me did trouble my clients in Household, or at least
5 the Wachtell Lipton firm. And in fact, they asked me about it
6 and I told them I didn't think it would be a problem. But they
7 said well, I think we're going to come down and watch the
8 Unocal argument, which went first. Unocal was argued on
9 Wednesday, and Household, the following Tuesday. So, Mike
10 Schwartz and I think, maybe, George Katz and about 10 of his
11 colleagues came down and sat in the front row when I argued
12 Unocal. And-

13 MR. ZEBERKIEWICZ: Not exactly cheering you on.

14 #00:08:47#

15 MR. RICHARDS: No, and it did create sort of a
16 pressure in the back of my mind as to whether or not if I had
17 something in defense of Mesa, in Unocal's case, it would
18 offend my clients in Household. But it turned out, it didn't,
19 that they agreed with me that there really wasn't a conflict
20 between the two positions.

21 MR. ZEBERKIEWICZ: Well, they were very different
22 devices-

23 MR. RICHARDS: Right.

1 MR. ZEBERKIEWICZ: -- I mean, as you mentioned, the
2 discriminatory tender offer actually did have an effect on the
3 company, its finances, et cetera, et cetera. Whereas the pill,
4 no tax implication, no dilution, and the like. I mean I think
5 they are kind of fundamentally different devices. Also, I
6 guess, one question, though, I mean in Mesa you have a real
7 case with Boone Pickens going after the company. In Household,
8 you really don't have a present threat. Did you think that the
9 plaintiffs really didn't have a ripe case? #00:09:48#

10 MR. RICHARDS: Well, we certainly argued that.
11 Nobody seemed to be really interested in the ripeness
12 argument, and it really turned on the fact that in a way, the
13 court said it wasn't ripe; not technically on a ripeness
14 argument because it said, look, we can revisit this. If
15 Household ever tries to utilize the pill against an acquirer,
16 then we will look and see what their board of directors did
17 and so forth. So, while ripeness as a legal concept it wasn't
18 effective, the underlying, philosophical concept, I think,
19 really won the day.

20 MR. ZEBERKIEWICZ: And so, now, the plaintiffs were
21 trying to attack the pill from a number of different angles.
22 Facial validity, equitable considerations, how did you prepare
23 your defense and your defense strategy? And how were you
24 working with the Wachtell Lipton firm in preparing that

1 defense? Did you have kind of different folks assigned to
2 different parts of the defense with you kind of coordinating
3 the effort? Or how did that all work out?

4 MR. RICHARDS: Well, I think Wachtell Lipton ran
5 the overall defense. As I recall, Richards Layton and myself,
6 among others, maybe took the lead in defending their directors
7 in the depositions. But I think at the trial, as I recall,
8 Wachtell Lipton attorneys really handled most of the
9 witnesses. And we assisted in I think a major way in terms of
10 the briefing and the preparation for the argument.

11 MR. ZEBERKIEWICZ: And so, we were involved -
12 Richards, Layton & Finger was involved in giving the advice to
13 Household's Board. We had prepared an opinion; that opinion,
14 essentially, the punchline. It was a reasoned opinion, went
15 through the case law that existed at that time, which there
16 had been no case squarely addressing the validity of a pill.
17 We nonetheless said that the rights were valid under Section
18 157 of the general corporation law was our bottom punchline.
19 That opinion, I think, may have been interpreted more broadly
20 than its exact wording by some of the directors on the
21 Household Board. There are some references in the opinion and
22 some of the other material suggesting that maybe they thought
23 we had provided them an opinion to the effect that they would
24 be entitled to the presumption of the business judgement rule

1 in adopting this. Whereas our opinion was actually much
2 narrower. But I wanted to kind of address the issue of your
3 thoughts on how well prepared the directors had been and how
4 confident you were on the record going in - just on a due care
5 basis. #00:12:46#

6 MR. RICHARDS: Well, of course, we were not present
7 at the directors' meeting and were not involved in their
8 preparation. And we only became involved with the directors
9 when their depositions were taken. And now, the rights plans
10 are so familiar to lawyers and investment bankers and even,
11 maybe, businesspeople that it doesn't seem complicated. But I
12 can tell you when those depositions were taken, it seemed
13 very, very complicated and Rod Ward, among others, I think,
14 did a very good job of trying to tangle the directors up in
15 terms of their understanding. And I thought that the
16 plaintiffs could have done a more forceful job in the
17 litigation in trying to pound away at did the directors really
18 understand what they were doing.

19 MR. ZEBERKIEWICZ: And it seemed, and you know, a
20 rights plan, and this was an early stage rights plan with just
21 a flip-over provision, but nonetheless, a pretty complicated
22 document based on an indenture, anti-destruction clauses, and
23 the like. It, I would imagine, would be fairly easy,
24 particularly at the time. I mean we have to kind of take

1 ourselves back to you know, a lot of times you see these
2 opinions from the Supreme Court, and you think they were
3 always there. You know, that was always the holding; it always
4 had to be such. That wasn't the case. I mean you were in an
5 area where this was an absolutely novel device, and you've got
6 a lot of directors who are reading 30, 40 pages of a very
7 highly technical, highly-specialized document. I imagine there
8 had to be a little bit of concern on your part that they were
9 going to get tripped up in depositions and the plaintiffs
10 would be able to use that to demonstrate that, in fact, they
11 didn't know what they were doing. I mean, this is at a time
12 where we were in the Smith v. Van Gorkom era. A lot of
13 concerns on that front? #00:14:43#

14 MR. RICHARDS: Well, there were at the time. I mean
15 if you were there with the directors, and then talked to them
16 afterward, in between times, it was pretty clear that some of
17 them, their understanding was, to be charitable, only general
18 in terms of what it was doing. And, so, it seemed more
19 vulnerable - the case seemed more vulnerable when you were
20 there present with them. As the case turned out, as it was
21 argued, because it wasn't pushed so much by Skadden, that kind
22 of disappeared as to be a major concern in terms of it didn't
23 seem to us to be a risk of the case by the time we got to
24 court or got to the Supreme Court.

1 MR. ZEBERKIEWICZ: And certainly, the Chancery Court
2 was fairly charitable and understood that the directors didn't
3 need to understand all the hoary details of a rights plan and
4 they had a basic understanding that it was a defensive
5 mechanism and that it would deter takeover proposals. And the
6 Supreme Court, likewise, was fairly charitable on that front.
7 But I want to turn now to the boardroom dynamic and how you
8 dealt with it in the litigation because the company,
9 Household, was represented by Wachtell. Richards Layton
10 provided its opinion. They also had Goldman Sachs in as their
11 investment banker and advisor. And they had a representative
12 of - you know, John Whitehead was on the board, he was a
13 Goldman guy-

14 MR. RICHARDS: He was the Chairman of Goldman.

15 MR. ZEBERKIEWICZ: -- he was the Chairman. He didn't
16 vote in favor of the pill. How did that affect your defense?
17 Did you see that as a real weakness in your case? Or was it
18 just- #00:16:25#

19 MR. RICHARDS: Well, he made pretty clear that he
20 didn't vote in favor of the pill, not on policy grounds as to
21 whether it was legal or not legal, or whether it was a good
22 thing. But he thought it was going to draw too much attention
23 to Household and maybe would make Household really more of a
24 target. So that he didn't oppose it, I suppose that's kind of

1 on the merits of the opposition, but really, on the merits of
2 the legality of the thing or whether or not there was a threat
3 to Household. There was no tender offer for Household. But you
4 remember the testimony was - and it was quite believable and
5 true that Household was nevertheless suffering, or would
6 suffer, by the notion that it could be easily takeover, in
7 terms of trying to attract people to come to work. If your
8 company is on the cusp of being taken over, we had learned
9 through our experience in the previous five years, that you
10 can't attract executives. You can't attract people to come.
11 And so, you may not be able to retain the executives who don't
12 know for whom they will be working. So, there was a current
13 threat to Household in that sense.

14 MR. ZEBERKIEWICZ: And was that compounded by
15 Household's composition? I mean this was a company that had
16 financial services, rental cars, and grocery stores. And the
17 sort of synergies are natural, right? You can borrow money to
18 rent a car to go buy groceries. You know, did that composition
19 of the company, in your mind, make it more vulnerable to a
20 raider who would then try to break up the individual
21 components? #00:18:04#

22 MR. RICHARDS: I think so. Because as you have
23 described it, you could disaggregate those components, and
24 that was what raiders were doing at the time. They were

1 figuring out a way to make more money by dividing these
2 conglomerates up into separate parts and selling them off.

3 MR. ZEBERKIEWICZ: As we talk about kind of where
4 Household was, what it was like - they had a board that, you
5 know, 16 directors, 10 of whom were independent, non-
6 management. Was that, in your experience, fairly unique at the
7 time? Or were we starting to get into the era where boards
8 were composed mostly of outside, independent directors - at
9 least in the public company space, or? #00:18:45#

10 MR. RICHARDS: No, I think that was a favorable -
11 there were other companies, of course, that had a majority of
12 outside directors. But I don't think most companies did by
13 1985. And so, that was a new idea, and it was something that
14 the Delaware Supreme Court was pushing in its decisions by
15 talking about the benefit of having a number of outside
16 directors and outside direct- and in Unocal, you remember, the
17 Unocal Board had the outside directors meet separately in
18 order to try to get the maximum benefit out of that.

19 MR. ZEBERKIEWICZ: And you had all their decisions
20 talking about well, we'll give material enhancements, and-and,
21 was that something that you pressed in the defense in the
22 litigation that you know, we've got these folks who are not
23 just looking to keep their own seats. They're outsiders.
24 They're- #00:19:36#

1 MR. RICHARDS: Yeah, I don't recall stressing that
2 in that case - in Household.

3 MR. ZEBERKIEWICZ: Interesting. And so, as we think
4 through where you were and what we were looking at the time,
5 how did you manage just you know, as a general matter, to get
6 everything done? I mean this is before word processing. You
7 look at the briefs; they're you know, a hundred pages long?
8 #00:20:04#

9 MR. RICHARDS: Well, that was horrendous, really,
10 because we used to talk about the turnaround of the briefs. In
11 order to get the things done in a short period of time, and
12 this applies more to Unocal because of the time constraints
13 than Household, but you would have different people writing
14 different sections of the brief. Now, these were people who
15 had worked together a lot. So, we made the analogy among
16 ourselves; it's like a basketball team, you know, you can make
17 the blind pass to your right if you're pretty sure where the
18 guy is going to be. But, so, you had an organizational
19 meeting, and you divided up sections of the brief - maybe
20 there are going to be six or seven sections of the brief - and
21 then, you can't really see it all until they put it together
22 because you are not able to change it on a computer. So, then
23 you're waiting at 2 o'clock in the morning until you have a
24 run through of the brief, maybe not till 4 o'clock in the

1 morning, and then you can read it through from front to back.
2 Whereas up to then, you have just been reading John's section
3 and Charlie's section and Fred's section and so that required
4 a lot of late nights and early morning work. It was
5 burdensome.

6 MR. ZEBERKIEWICZ: So, you're reading briefs,
7 preparing - how were you preparing for your oral argument at
8 the same time? #00:21:30#

9 MR. RICHARDS: Well, I guess you're doing that in
10 your mind; as you're reading the briefs, you're thinking about
11 the argument. And eventually, you, in effect, extract from
12 your briefs. I mean, in Household, we had some time. So, you
13 extract from your briefs the different arguments that you are
14 going to make, and then, you sort of line them all up. And as
15 we were discussing earlier, that really doesn't make for a
16 very smooth argument. The Wachtell Liptons, they wanted to
17 know how my argument was going to go, so, they came down the
18 day before, and we had a practice session in our conference
19 room. And I think there were about 15 of them there. And I
20 knew from previous experience with them that, as our firm,
21 there would have been a different - a different guy would have
22 been responsible for a different section. And they were all
23 sitting there. And so, when I made my oral argument, I knew,
24 from previous experience, that each one would want to make

1 sure that I had included his point. Well, that really wasn't
2 the best way to make an oral argument to the Delaware Supreme
3 Court. First of all, they would never permit you to drone
4 through your brief from front to back. And, secondly, maybe
5 two-thirds of the arguments really weren't important by the
6 time you got to the Supreme Court. So, as I think we discussed
7 it, the rehearsal didn't really go so well and the-

8 MR. ZEBERKIEWICZ: A lot of hurt feelings-

9 MR. RICHARDS: Well-

10 MR. ZEBERKIEWICZ: -- you didn't stress my part of
11 the argument as much as you should have. #00:23:09#

12 MR. RICHARDS: Well, yeah. And so, I am going to be
13 making the argument the next day, and they're coming - I am
14 realizing the rehearsal didn't go very well, and they're
15 telling me, nicely, they didn't think the rehearsal went very
16 well. I said, well, that's really not what's going to happen.
17 You know, I'm going to go down there, and I'm going to start,
18 and the Supreme Court is going to asking questions, and it
19 will be a free-flowing, and it will be based upon my knowledge
20 of the case, not what I have written down as a prepared
21 argument. And that's what happened.

22 MR. ZEBERKIEWICZ: And so now, I want to pick up on
23 that point. That's pretty interesting in terms of you're
24 talking to them about how the argument would proceed and how

1 the Supreme Court would react. So, when we go back to the
2 early eighties, mid-eighties, was that a time when you and
3 some of your colleagues here, and in other firms throughout
4 Wilmington, had somewhat of an advantage in terms of knowing
5 the judges a lot better? Knowing the procedures in the Court
6 of Chancery? Was that something that factored into your
7 practice and kind of gave you a leg up? #00:24:11#

8 MR. RICHARDS: I think so. Really, before the
9 takeover battles, and generally New York or L.A. counsel, and
10 so forth, would rely on Delaware counsel to make all the
11 arguments because to some extent, to them, the Delaware law,
12 at least from a litigating point of view, was an arcane
13 specialized subject. They knew the Delaware Bar was small;
14 they knew the Delaware Courts were small, and they perceived
15 that we would have an advantage knowing personally the judges.
16 Now, over time, that changed because more and more out of town
17 counsel began to make arguments, but I think what also changed
18 for them is prior to 1980, in legal education, Delaware judges
19 did not appear on panels. And they decided, for various
20 reasons we could go into, to appear on panels. And so, the
21 leading lights from New York and elsewhere would be on the
22 same panels and then, and they'd talk in preparation for their
23 panel and afterward, and there would be dinners at these
24 seminars and conferences, and they would get to know each

1 other. So, gradually, and the body of Delaware corporation law
2 grew tremendously. You know, we just had a few cases a year,
3 let's say prior to 1980; when the takeover battles came, we
4 had many cases. And so, these people became more knowledgeable
5 - and these people being the lawyers from other jurisdictions.
6 And so, they gradually became more comfortable, and they said,
7 well, I sat right next to Justice So-and-So at dinner last
8 night. You know, I think I know him, and there's an advantage
9 to me or my firm if I make the argument rather than Delaware
10 counsel. So, gradually, I think, what we Delawareans refer to
11 as foreigners, began to make more arguments.

12 MR. ZEBERKIEWICZ: More inroads and more arguments
13 as they became more comfortable with the Chancellor, Vice
14 Chancellor-

15 MR. RICHARDS: Yes.

16 MR. ZEBERKIEWICZ: Back to Household specifically,
17 knowing who was on the panel, did you tailor your argument in
18 any specific way to cater to their particular predispositions
19 or predilections? I know this was many, many years ago, but-
20 #00:26:39#

21 MR. RICHARDS: No, no. You know, I think the general
22 feeling among the Delaware Bar, you know, outside of us,
23 before the argument was that it was a 50/50 shot. You know,
24 you'd had Joe Flom had written an article in the *Harvard Law*

1 Review saying that this was absolutely illegal. And, of
2 course, Marty Lipton put down his stake that this was you
3 know, absolutely necessary or else Delaware corporations would
4 be swept away by acquirers. I thought that one thing we had,
5 and our advantage was, I think, in general, the Supreme Court
6 was more sympathetic to defendant corporations than it was to
7 acquirers. So, if they had a - I wouldn't want to accuse them
8 of bias, but if they had a bias, that was the way they were
9 leaning. And there was no doubt in my mind that that was true
10 of one of the justices that we were going to hear, and that
11 was Justice Moore. And there wasn't much doubt, I think, in
12 the bar's minds that Justice Moore saw himself to be, and the
13 members of the court probably saw him to be as the most
14 knowledgeable about corporation law. So, that he would be
15 probably the person who would be most influential among the
16 panel. So, I thought that was an advantage that Household had.
17 And then, of course, it became a few days later, very much of
18 a disadvantage for my client, Mesa, because and aside from the
19 bias I've got with Justice Moore, I had a particular animus
20 against Boone Pickens. So, you have that problem. I thought
21 what Skadden did was also actually helpful for us. They had
22 Irving Shapiro make the argument for them. And, of course, he
23 was the Chairman of the DuPont Company, and what more
24 important company in Delaware than the DuPont Company? And he

1 had been Chairman of the Business Roundtable. So, and he had
2 been a trained litigator, but many years before; 20, 30 years
3 before. And so, they were bringing him in to argue, and I
4 sensed, but I can't point to anything in - I sensed that this
5 would happen, and I sensed during the argument that it would
6 happen that - so, while he was very careful not to talk down
7 to the Supreme Court and to tell him, really, what the law
8 ought to be from my point of view as Chairman of the Business
9 Roundtable; nevertheless, the whole implication of bringing
10 Irving Shapiro in rather than one of the senior, skilled
11 litigators from Skadden Arps, or Rod Ward in, was, I think,
12 attempting to bully the Supreme Court. And I don't think the
13 Supreme Court, in general, bullies easily and Drew Moore, in
14 particular, would not. So, I thought that - I don't think it
15 had anything to do with the outcome of the case, but I thought
16 that was something that maybe wasn't successful for them.

17 MR. ZEBERKIEWICZ: They may not have been as adept
18 at the ins and outs of the pill and all the particular
19 technical challenges or - any sense on that, or? #00:30:00#

20 MR. RICHARDS: Well, I thought that was another
21 thing. I mean, some people said it was sort of David against
22 Goliath, you know. And, of course, I was David, the youngster,
23 and Goliath was Irving Shapiro. But I don't think it turned
24 out that way because in addition to what I have said of the

1 court being suspicious that he might be trying to talk down to
2 them, and he was careful not to. I also think he wasn't as
3 familiar with the case. I had defended most of the
4 depositions, so I had the integral knowledge of what went on
5 there. And, of course, I had sat throughout the trial, and
6 it's one thing to sit throughout a trial, and it's another
7 thing just to read transcripts. So, I felt, I don't know if it
8 shows up in the oral argument, but I felt very confident that
9 I knew the record. And so, when the argument turned out the
10 way I thought it would with just questions, I didn't have to
11 look down at my notes or struggle for references to the
12 appendix. I mean, I knew what was in the record. And so, I
13 thought that gave me an advantage, actually, not a
14 disadvantage.

15 MR. ZEBERKIEWICZ: It clearly did and the record,
16 for the record, does show that you did have an incredible
17 mastery of the case. And particularly, given everything you
18 had going on, I've got to imagine that having lived through
19 all of the depositions was tremendously helpful. Was that
20 pretty common in your experience, at that time, to kind of
21 have that level of involvement in a particular case? Were you,
22 mostly, when you were involved in cases during this era, was
23 it mostly from that angle that you were involved kind of every
24 step of the way? #00:31:44#

1 MR. RICHARDS: Yes, and indeed, really, in most
2 cases, I think in every case that I can think of - and I am
3 sure there are some exceptions if I just kept searching my
4 recollection, but in every case, really, I had also tried the
5 case - been the principal trial attorney. In Household, I
6 wasn't the principal trial attorney. So, yes, we - I think
7 when Richards Layton & Finger, and I was hired, we discovered
8 the depositions. I mean we covered the depositions, we took
9 the depositions, we wrote the briefs, generally, pretty much
10 by ourselves, and somebody else would read them in the
11 forwarding firm. And then, we argued the cases. And so, that
12 gave us a big advantage. And in many cases, we were in the
13 boardroom because we also had a corporate advisory practice.
14 In many cases, and in Delaware, as you know, we didn't have
15 the sharp distinction between corporate lawyers who went into
16 boardrooms and litigators, like they do in New York or L.A.
17 And, so, in most cases, I mean like in all the Mesa cases, I
18 was there at the Mesa Board meetings, or if it was Time
19 Warner, I was there in the Time Warner Board meetings, or
20 Pennzoil, or whatever. So, that, of course, gave you a much
21 deeper understanding than just hearing what the record said.
22 You had your own recollection of what occurred at that
23 meeting. And in most cases, we had structured the meeting. So,
24 our recollection would be sharper than the directors' because

1 we really understood the structure because we had put it
2 together.

3 MR. ZEBERKIEWICZ: Involved in engineering it ...
4 and I guess, at least my follow-up question, which is, in
5 cases like that, and in Household, as I mentioned earlier, our
6 firm gave an opinion that was limited to the rights and the
7 validity of the rights, was ultimately understood, perhaps, by
8 some directors to be a blessing of the entire pill. But when
9 you were in these circumstances, when you are in the
10 boardroom, and you are structuring the process, and then, you
11 are on the other side defending it - any additional pressure
12 in that situation? #00:33:47#

13 MR. RICHARDS: Oh, yeah. Yeah, because now you're
14 telling them what to do, more or less, by giving them advice.
15 So, you know, if it doesn't work out well, you are the guy
16 that led them down the path that didn't work out well, so-

17 MR. ZEBERKIEWICZ: Did you feel in Household, given
18 that we had rendered a legal opinion that we had exposed
19 ourselves reputationally, if this didn't turn out correct, or
20 was it- #00:34:19#

21 MR. RICHARDS: Not so much as some cases, really,
22 because Marty Lipton had thought up the pill, and he had
23 designed the pill, and he was the one at the board meeting,
24 and remember, Richards, Layton & Finger was not at the board

1 meeting. So, in this case, we didn't have that I'm talking to
2 you personally, Mr. Director, this is what you ought to do.
3 And his prestige, it was certainly greater than mine. And so,
4 I think it was seen to be you know, a battle between Lipton
5 and Flom, as opposed to you know, some particular role that
6 Richards, Layton & Finger had taken.

7 MR. ZEBERKIEWICZ: And so, kind of on that point,
8 you know, after Household, a tremendous victory, I imagine
9 your friends at Wachtell Lipton were very pleased. Did you
10 continue working with them on other cases? #00:35:08#

11 MR. RICHARDS: Yes, we did. In fact, I was very
12 pleased that Marty Lipton was quoted in the *Wall Street*
13 *Journal* the next day as saying I'm never going into court
14 again without Charlie Richards. And I thought, wow—

15 MR. ZEBERKIEWICZ: The highest praise you can get.

16 MR. RICHARDS: -- yeah. That's going to be great.
17 And so, for a number of years, that was true. And then,
18 gradually, inevitably, Wachtell Lipton is quite a big firm,
19 and so, other partners would seek other Delaware counsel, and
20 so, I can't say that from that point forward we always
21 represented Wachtell Lipton. But we always had a close
22 relationship with them after that.

23 MR. ZEBERKIEWICZ: That's great. And so, we were
24 talking earlier about your relationship with T. Boone Pickens.

1 Any fallout as a result of your involvement in Household?

2 After your victory in Household was Boone Pickens not so

3 pleased with you? Or did you continue working with him?

4 #00:35:59#

5 MR. RICHARDS: No, no. Boone Pickens is - that's

6 another story for another thing. But he's a great guy. And he

7 understood perfectly our role in these cases, and he

8 understood that lawyers can take different positions and he

9 was just interested in getting the most skillful

10 representation he could get. He didn't think that we were

11 taking a moral position on one side or the other of these

12 disputes.

13 MR. ZEBERKIEWICZ: And now, so, we talked about kind

14 of your involvement in the boardroom, your preparation, and

15 they're just exogenous factors that have some impact on a

16 case. And in the middle, you know, you have in Household where

17 the plaintiffs are talking about you know, this is an

18 absolute. It's not just a deterrent; it's completely

19 preclusive. And yet, at the time, you've got Sir James

20 Goldsmith buying through the pill at Crown Zellerbach. And I

21 know some folks on the other side of the V thought that was

22 devastating to their case. How did you view that development

23 in terms of your defense? #00:37:04#

1 MR. RICHARDS: Well, it was positive, and we
2 certainly talked about it, but I didn't really think it was
3 critical because our defense, or at least in my mind, our
4 defense was based on how it is that it turned out. Namely,
5 that this is a device which gives the board of directors time
6 and it's not an absolute defeat of anything, which is what
7 Skadden Arps tried to say. And, of course, if the pill was not
8 taken, it was not withdrawn, then it was an absolute defeat.
9 But they tried to obfuscate or obscure, or not talk about,
10 hey, but the board reserves the right to-

11 MR. ZEBERKIEWICZ: It's redeemable until somebody
12 acquires 20-percent, and you know, no issue there,
13 particularly no prevention of a proxy contest. #00:37:57#

14 MR. RICHARDS: Right, and so, that's-

15 MR. ZEBERKIEWICZ: Vote to the ballot box. If you
16 don't like your board, vote them out.

17 MR. RICHARDS: So, that's where we hung our hat, and
18 that's where the Supreme Court came out. And so, I didn't
19 think the case was dependent upon, which I thought was a one-
20 off of Sir James Goldsmith going forward and proving that the
21 pill wasn't effective. I think we pretty much conceded at the
22 oral argument that if the pill - was pretty effective-

23 MR. ZEBERKIEWICZ: It's very potent.

1 MR. RICHARDS: -- you know, we talked about Sir
2 James Goldsmith, but I think that--

3 MR. ZEBERKIEWICZ: It's a great deterrent. It's just
4 about five minutes of a talk. So, now I have to ask you, you
5 know, like I said, when we read these cases now, it seems like
6 it had always been the case, and everybody should have known
7 that it would come out this way. How did you feel at the time?
8 Did you think you were going to win? #00:38:50#

9 MR. RICHARDS: Well, I wish I could remember exactly
10 what my feeling is because, in preparation for this interview,
11 I have given some thought to that. I think I was, you know,
12 optimistic and hopeful, but the whole world was sort of saying
13 it was 50/50. And so, you know, I certainly wasn't sure that
14 we were going to win. And I was certainly delighted and
15 pleased when we did.

16 MR. ZEBERKIEWICZ: Did the court get it right?
17 #00:39:21#

18 MR. RICHARDS: Oh, yes. Oh, I think so. I mean there
19 was a terrible mess going on. Indeed, the mess is very well
20 illustrated by the defense that Unocal came up with. I mean,
21 people were coming up with really desperate measures as to how
22 to defend their companies. And the genius of Lipton's pill was
23 this was a defense that made people stop. It was an absolute
24 defense, but it didn't inflict any harm on the company. It

1 didn't inflict any permanent change. And the company could be
2 put in a position where the directors would be compelled to
3 redeem the pill.

4 MR. ZEBERKIEWICZ: Whereas the discriminatory tender
5 offer in Unocal-

6 MR. RICHARDS: Yeah ... or the white knight or the
7 dismemberment of the company or the issuance of diluting stock
8 to everybody. All those other things, it did a lot of damage
9 to companies.

10 MR. ZEBERKIEWICZ: And now, as a result of kind of
11 your successful defense of Household, did you see an increase
12 in the number of instances in which we were advising on poison
13 pills, and you, particularly? #00:40:29#

14 MR. RICHARDS: Yes. I mean I think the history is
15 that about 300 major companies adopted poison pills within the
16 year. And certainly, we gave a lot of advice on that, and a
17 lot of that was sought through our friends at Wachtell Lipton.
18 I mean, they might have the client, but now, they had
19 somebody, Richards, Layton, & Finger who was most experienced
20 and could give the Delaware opinion. So, the firm, as a whole,
21 did that. I didn't do too many of those because I was sort of
22 busy litigating some other defense. And my partner, Don
23 Bussard, you know, took the leading role and there was a group

1 of people here, in our pharmaceutical department who adopted
2 pills for people.

3 MR. ZEBERKIEWICZ: That's a good way to put it.
4 Well, Mr. Richards, I really enjoyed the discussion. I thought
5 - reading your argument in the transcript that your argument
6 was a delight. And I really enjoyed talking to you.

7 MR. RICHARDS: Well, thank you. It was fun for me to
8 come back to this - what, 33 years later.

9 #00:41:48#

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