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SUBJECT: The corporate governance war! (Part 1)

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Dace Blaskovitz:

Good morning. Welcome to Money in Politics in down low where. I am your host, I am Dace Blaskovitz. Compliance asked me to share with you the audience, I am Dace Blaskovitz. I am the president and majority owner of Wealth Advisors in Wilmington, Delaware. As a financial advisor, I offer full brokerage services.

Dace Blaskovitz:

Today, all star program in the first half. Charles House and one of my dear, dear, dear buds if you will, Charles Elson, the guru of corporate governance, the significance to the world, the corporate world and Delaware. Incredible. We'll talk about that in just a second.

Dace Blaskovitz:

Second half, it's the first of the month. Robert Fry, former DuPont economist, went to DuPont. Robert and DuPont team were the only three time, the most right economist in the world. So that's the second half.

Dace Blaskovitz:

Welcome back, Charles Elson.

Charles Elson:

Great to be back with Dace.

Dace Blaskovitz:

On your side we get our regular listeners know you, you're here every couple of months, but we do get first time listeners, so for a first time listener, 30 seconds about you and 30 seconds about what you do.

Charles Elson:

Well, first of all, I want to welcome a first time listener and I really hope they'll become a second and third and fourth time listener because your program is always entertaining, particularly on a Saturday morning. I'm the Edgar S. Willard Chair in Corporate Governance at the University of Delaware and I run the John L. Weinberg Center for Corporate Governance, also at University of Delaware in the college of arts and sciences.

Dace Blaskovitz:

You ready to go with my friend?

Charles Elson:
Absolutely.

Dace Blaskovitz:

Very good. Let me go back to the audience just a minute and I've introduced Charles as the guru of corporate governance. We're going to talk about that on a global stage. But here in Delaware, I think we both like to remind everybody we have a golden goose that corporations, franchise, if you will, somewhere between a half and two thirds of the Fortune 500 companies are in fact incorporated in Delaware. Those companies, along with lots and lots of corporations, had their legal nexus in Delaware. And while those companies are in Delaware, they pay a fee to be here and-or to rent Delaware law and-or to have access to the Delaware courts.

Dace Blaskovitz:

That incorporation franchise therefore generates between gosh, quarter or a third of the state of Delaware's annual revenues. And if you do all in, all the related items, people like Bob Byrd and Charles Elson's, say the annual revenues of the state of Delaware, could approach 50-60% because of that incorporation franchise. Charles Ellison, your turn. Did I get it mostly right?

Charles Elson:

Yeah. That's a very fair point. I mean, I suppose if you think about it, the franchise tax itself, the anything we get from a sheet, certainly the personal and corporate income taxes from the companies regulating this business, I'll bet it's somewhere north of 60 some odd percent of the state's tax revenue.

Charles Elson:

It's very important to us. It's really honestly our primary business as a state or primary revenue generating business for the state. And if we ever did anything to negatively affect it we would be in a serious fiscal trouble very, very quickly.

Charles Elson:

In fact, I did a conference at the University of Maryland Law School sponsored by the Maryland Law Review just this past week, which the subject was Delaware and competition to Delaware, threats to Delaware. It was an excellent conference. Our counselor to the governor spoke who did a terrific job of speaking why this was important and Vice Chancellor McCormick spoke and also talked about the distinctiveness of Delaware.

Charles Elson:

I think that was important that those two were out there in this audience of law professors from around the country who are interested in corporate law explaining why Delaware and why it was so important. They both did a superb job and I think that's quite important. I tried too, but they're a bunch of more articulate than me.

Dace Blaskovitz:

All right, you ready to go my friend?

Charles Elson:

I'm all set Dace. Let's do it.

Dace Blaskovitz:

All right. I want to talk about the, even perhaps the headline bigger than the virus, if there is such a thing, and to the audience you're going to have to bear with me. We don't go right to inside baseball. We don't go right into the weeds. There is as many as four or five things for you the audience I need Charles to define before we all tie it together. So a little bit of patience if you're listening and I will guarantee you, gosh, I don't like that word as a stockbroker, but I'll guarantee you that we'll make it worthwhile. But you got to hang in here just a minute with us. All right, Charles Ellison, in 90 seconds, what is ESG?

Charles Elson:

It stands for environment, social and governance. And what it is, is a way of looking at investments and practices in various public corporations. Does a public corporation have an environmentally responsible policy? Does a public corporation have a progressive, if you will, quote unquote social policies? And finally from a governance standpoint is a company governed effectively?

Charles Elson:

Traditionally it's been GES that governance is quite important because a lot of people believe that the E and the S are taken care of through good governance, and governance basically means an appropriately elected compensated, incentivize board and a proper relationship between the shareholders of the company. It's a board of the company and the managers whom the board supervises.

Charles Elson:

That's the 10 cent explanation.

Dace Blaskovitz:

Well give us 10 cents more, the business round table, what is it and back in late summer, the business round table threw you and your industry, your world, a curve ball and moved from shareholder primacy to a world revolving around stakeholders. What am I trying to say?

Charles Elson:

Well, for a long time in Delaware law is shareholder promise be based. Under Delaware law the primary obligation of the corporation ultimately is to return profits to the investors, long-term profits, long-term profitability. The fiduciary obligation of the corporate board is to ensure that their obligation primarily is to the shareholders, period. Shareholders come last in bankruptcy, shareholders elect directors and their obligations to them.

Charles Elson:

Stakeholder's theory says that the boards and the corporate creations obligation is not to shareholders simply but to equally to a number of groups, employees, customers, suppliers, the community, and that the board's role and management's role is to make decisions that basically make all tend to with all of those groups in mind, if not to make all of them happy.

Charles Elson:

The Pollstar, in other words, switches from a single Pollstar shareholder value to a multiple Pollstar. That was the corporate view in the United States for a long time, starting really in the late 1930s really through the early '90s. And it was illegally the view was always shareholder value.

Charles Elson:

Now a lot of people are, you and me being one of them, strenuously that to get to long-term shareholder value, the other stakes have to be taken care of, have to be respected, but to make them the Pollstar creates a real accountability problem because we are accountable to too many people. You're accountable to no one. So any decision you make, no matter how badly it turns out, you can argue that someone was happy with it. The old joke is Dace, if your watch stops, it's still gets the time right twice a day. And I think that's been the debate here.

Charles Elson:

The business round table historically had a stakeholder view and that view, a lot of people believe including me, led to very poor, poor core performance because you could basically manage something terribly and still say someone was happy with what you were doing.

Charles Elson:

It led to the creation of the whole corporate governance movement, the investors being socked by bad performance, bad management, bad results, unable to return to their investors, their retirement funds, the funds that people expect to retire on, revolted and said, "No, legally it's shareholder primacy and practically it should be too."

Charles Elson:

Ultimately the business round table changed its approach and said, "Yes, that shareholder primacy was the key to the corporation." Then about, I don't know, a couple months ago they switched tax and went back to the old position, which shocked a lot of people because it was the old position that and the poor performance of that created the whole corporate governance movement and that's where we are today.

Dace Blaskovitz:

There, the business round table and or this movement, their opinion of investors, I found that the most insulting. What was that? They are investors are simply providers of capital. Did I remember that correctly?

Charles Elson:

That's correct. They had a list of the stakes and the investors, number one, were the very, they had a list of the stakes that they were and the investors were last on the list, number one. And number two, they were simply subscribed as suppliers of capital. Kind of like calling your parents your genetic suppliers. It's kind of insulting and listing them last.

Dace Blaskovitz:

His name is Charles Elson. He's a professor at the University of Delaware. He oversees the corporate governance unit, I argue he's the face and the voice of corporate governance around the world. He does two segments with us. We will be right back.