

## Message to Disney board: Eisner goes

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by Howard Brod Brownstein

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Philadelphia, birthplace of Democracy, cradle of the Revolution, played host to a different kind of revolution Wednesday: the shareholders meeting of Walt Disney Co. Forty-three percent of voted shares withheld support for the reelection of CEO and chairman Michael Eisner. The results had no direct effect on his job status, but the ultimatum to the board of directors was unmistakable: Eisner has to go.

As a result of this rare grassroots expression of shareholder rights, Disney directors and management were humbled before their constituents. Shareholders took this radical action to get the board to split the positions of CEO and chairman, an action the embattled board finally took late Wednesday night. Whether it will ask him to leave remains to be seen; as of this writing, the board is reiterating its support for him.

A prominent Philadelphia banker once said, "Show me an arrogant company, and I will predict its failure." While Disney is in no danger of failure in the sense of an Enron or a WorldCom, the company has clearly failed its shareholders. For quite some time, the signs had been unmistakable: the disappointing performance of Disney and in particular its ABC network; the aborted attempt to name a successor to the autocratic Eisner; the call for Eisner's replacement by Calpers, a U.S. pension fund that is the largest shareholder, and by shareholder advocacy groups; the resignation of key board members, including a descendant of Walt Disney; and most recently, Eisner's thumbing his nose at Comcast's offer to buy the company. How ironic that Eisner may have met his Waterloo in Philadelphia, Comcast's headquarters!

Corporations are *persona ficta* - fictitious "persons" created by state law with many of the rights of natural persons, such as to own property, conduct business,

sue and be sued, and pay taxes. Corporations are governed by a board of directors elected by shareholders according to a company's bylaws. The board then elects officers and hires management. Most meetings of shareholders, especially at huge corporations like Disney, are well-scripted affairs that avoid conflict - but this meeting should remind boards of directors and senior management of publicly owned companies who ultimately holds the power. Boards everywhere, take heed: Listen to your constituents, and fulfill your fiduciary duties!

Especially in Disney's case, where the company was in turnaround mode. While it was not in danger of financial failure, its performance had been disappointing. Its odd penchant for controversy is dangerous for a company dependent on its public image to lure customers to its family-friendly movies and theme parks. Much of Disney's real net worth doesn't appear on its balance sheet, but is embodied in the kinship and close identification so many feel toward it and its characters. More than from any deterioration in stock price, that net worth may have been squandered through the arrogance shown by Eisner and the board.

What next? It's up to the shareholders. Shall Disney remain an independent company, or should it continue "in play," as instigated by the Comcast offer? If it has failed to listen to the shareholders in the past, let's hope the board learns from Wednesday's experience and doesn't repeat its mistakes.

Eisner's status as a modern-day Scrooge McDuck isn't in danger. If he leaves Disney, a golden parachute reportedly worth more than \$100 million will cushion his fall. But in the age of Enron, if Scrooge McDuck isn't careful, he can quickly find himself recast - as Goofy.