

# THE ACTIVIST REPORT

## 13D Monitor

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## THE CORPORATE GOVERNANCE HALL OF SHAME

***\*NEW INDUCTEE\* - Biglari Holdings Entire Board of Directors***

Sardar Biglari is an activist investor who gained a board seat at Steak n Shake following a proxy fight in February of 2008. By June of 2008, he was Chairman and CEO. He and the rest of the Biglari Holdings Board (**Sardar Biglari, Philip Cooley, William Johnson, James Mastrian, Kenneth Cooper and Ruth Person**) are being inducted into the Corporate Governance Hall of Shame because of the abysmal self-dealing, related transactions and compensation arrangements that have significantly cost shareholders.

In 2013, Sardar Biglari entered into a Trademarking License Agreement pursuant to which he licensed his name to the Company for no royalty but the Company would be obligated to pay him 2.5% of its revenue for five years if there is a change of control at the company or if Biglari is fired or forced out (with minimal exceptions contained in the definition of Cause). How a board agrees to this with a straight face is incredible, especially since they did not provide the results of any type of study or analysis on this decision. This is not even a well disguised entrenchment device. Forget about the fact that the name "Biglari" has virtually no value as a brand and is known to very few while the Steak n Shake franchise has been around for 80 years. The lack of value in the name is further evidenced by the fact that it is allowed to be used with no royalty and is used as a smaller print after-

thought in the store name: "Steak n Shake by Biglari." To put it another way, how valuable can something be if it is free to use and you have to pay an exorbitant sum to get rid of it? This licensing agreement can add as much as \$100 million to Sardar Biglari's already expensive golden parachute. Moreover, unlike a poison pill, it is not subject to shareholder approval and never sunsets. This would be enough to make Biglari and his Board worthy nominees for the Corporate Governance Hall of Shame, but there is more. . .

Sardar Biglari's compensation package pays him a \$900,000 annual salary plus cash incentives equal to 25% of the Company's growth in adjusted book value over 6%, capped at \$10 million per year. The fact that \$10 million is more than 3.5 times the median of **total pay** of CEO peers according to ISS is not even the most troubling part of his compensation arrangement. Biglari is compensated much more from the Company due to the Board's approval of a related party transaction with his hedge fund, the Lion Fund. The Board approved the investment of the Company's capital in the Lion Fund for which Biglari receives 25% of the upside after a 6% hurdle, and this is not subject to the \$10 million cap or any cap. This has allowed Biglari to abuse this arrangement solely to his benefit and the detriment of shareholders. Biglari Holdings raises capital by

issuing equity, invests that capital in the Lion Fund and Sardar Biglari will use the capital to buy shares of Biglari Holdings, often at prices higher than the Company recently sold the shares in the offering. This leads to him increasing his voting control (to almost 20%) without having to use any of his own money. Moreover, he receives a 25% incentive fee on those shares (after a 6% hurdle). As a result, Biglari Holdings has a \$777 million investment in the Lion Fund which is locked up for five years, representing 95% of the Lion Fund's reported \$815 million of 13F holdings. This arrangement still exists despite the fact that only 42.1% and 34.7% (including Biglari's almost 20%) of shareholders supported executive compensation in 2013 and 2014, respectively, and the Board assured shareholders in 2010 that they would be able to opine on any arrangement that would increase Biglari's incentive compensation.

Sardar Biglari is an activist in name only. The corporate governance he practices at his Company is as egregious as we have ever seen and is the type of stuff that activists rail against. And he has been able to accomplish this with the unanimous backing of a culpable board. For that reason, we hereby induct **Sardar Biglari, Philip Cooley, William Johnson, James Mastrian, Kenneth Cooper and Ruth Person** into the Corporate Governance Hall of Shame.

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