IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE CLOUDFLARE, INC. STOCKHOLDER LITIGATION	CONSOLIDATED C.A. No. 2026-0772-JTL

OPINION GRANTING PRELIMINARY INJUNCTION

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A founder-led company has been immensely successful. Its founders currently control a majority of its voting power through high-vote common stock carrying ten votes per share. The public owns low-vote common stock carrying one vote per share.

The founders' share of the voting power—and the extent of their control as a function of voting power—depends on two inputs: how many votes they control (the numerator) and how many total votes are outstanding (the denominator). The numerator has decreased as the founders divested shares to generate liquidity, to minimize taxes, and for estate planning. The denominator has increased as the company has issued low-vote shares for employee compensation and other corporate purposes. If both forms of erosion continued at historical rates, then the founders would lose majority control by the end of 2026.

The founders wanted to preserve their control, but they still wanted to achieve their liquidity, tax-related, and estate-planning goals. They also wanted the company to continue using equity for corporate purposes. For that to happen, something had to change.

The board of directors created a special committee to find a solution. Early on, the committee and the founders zeroed in on creating a new class of non-voting common stock. The founders, the committee, and the company eventually agreed on a multi-step recapitalization that would implement a version of that concept. Although the transaction is perhaps more aptly described as a reclassification, this decision uses the company's term.

In the first step, the founders would exchange each of their high-vote shares for one low-vote share plus a share of preferred stock carrying nine votes (but only nominal equity value). Through that step, the basis for the founders' voting control would shift from the high-vote common stock to the new preferred stock. In the second step, the company would distribute a new share of non-voting common stock for each outstanding share of low-vote stock, effectively splitting the equity value of the company between the two. Going forward, the founders could divest non-voting shares without affecting their control and low-vote shares without meaningfully eroding it. The corporation could issue non-voting shares for corporate purposes without affecting the founders' control and low-vote shares without meaningfully eroding it. Problem solved.

Stockholder plaintiffs have challenged the recapitalization. They contend that the founders breached their fiduciary duties as controlling stockholders by extracting an unfair deal and that the company's directors breached their fiduciary duties by approving it.

The plaintiffs seek a preliminary injunction. That form of relief preserves the status quo pending trial. The purpose of hearing a motion for a preliminary injunction is not to adjudicate the merits, but to determine whether to prevent a functionally irremediable event from happening before the court can hold a trial, judge credibility, weigh the evidence, and rule on the merits. The plaintiffs therefore must establish a threat of harm that will occur before trial *and* that the court cannot effectively remedy after trial. The plaintiffs also must show that issuing the preliminary injunction to

preserve the status quo would not do more harm than good. And it requires a sufficient showing on the merits to warrant holding a trial, i.e., a reasonable probability of success on the merits.

The plaintiffs have pointed to a threat of harm that could occur between now and trial that the court could not effectively remedy later. The recapitalization will fundamentally alter the company's capital structure and result in the issuance of new non-voting shares that will begin trading in the market. The court cannot effectively unwind it after the fact. It also seems unlikely that the court could identify a defensible method of measuring substantive unfairness and awarding damages.

The plaintiffs have also shown that the balancing of the equities, sometimes called the balancing of hardships, favors injunctive relief. A court must take care that a status-quo-preserving injunction does not do more harm than good. When a subset of stockholders sues on behalf of themselves and their fellows, there is always a risk that the putatively status-quo-preserving relief could threaten the status quo and do more harm than good to the stockholders as a whole. Thus, when a third party has proposed a premium transaction, and when a putatively status-quo-preserving injunction would jeopardize it, Delaware courts have often held that the balancing of hardships weighed against injunctive relief. That is not the situation here: The company can implement the recapitalization unilaterally. The defendants argue that the founders may leave if the court delays the recapitalization, but the record provides no credible support for that contention. The court will require the case to be tried promptly, as the parties have conducted much discovery and retained experts.

That leaves one question: whether the plaintiffs have shown a reasonable probability of success on the merits. The principal legal issues involve Section 144 of the Delaware General Corporation Law (the "DGCL"). In 2025, the General Assembly amended Section 144 to establish safe harbors (the "Safe Harbor Statute") that provide "powerful protection for conflicted transactions."[1]

The defendants prevail on every statutory issue. The plaintiffs invoke a statutory exception for injunctive relief to argue that the Safe Harbor Statute does not apply to this case. Although the provision is ambiguous, the jurisprudential backdrop and the Safe Harbor Statute's legislative history establish that the exception contemplates limited scenarios where enhanced scrutiny applies. The recapitalization is the type of conflicted controlling stockholder transaction where the General Assembly intended to provide protection against entire fairness review. That policy judgment deserves significant weight when resolving an ambiguous provision.

The parties also disagree about a provision addressing disinterested-director status. The Safe Harbor Statute states that when a board has determined that a director qualifies as a disinterested director, then a presumption exists that the director indeed qualifies. The Safe Harbor Statute further states that the presumption "shall be heightened" and can be rebutted only with "substantial and particularized facts." That provision is ambiguous because it uses a combination of evidentiary and pleading-stage concepts. The legislative history establishes that it

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[1] *Dodiya v. Franklin*, — A.3d —, —, 2026 WL 2517931, at *1 (Del. Ch. Aug. 26, 2026).

applies at the pleading stage and beyond. At trial, the heightened presumption will require that the plaintiffs prove by clear and convincing evidence that the committee members did not qualify as disinterested directors. At the injunction stage, the plaintiffs must show a reasonable probability of success on the merits of that point. The plaintiffs have not done so.

But the issues of statutory interpretation do not resolve the case. The Safe Harbor Statute requires that the committee act "in good faith and without gross negligence."[2] The statute thus recognizes that even disinterested directors can fail to clear the bar.[3]

Delaware law presumes that disinterested directors act in good faith, so a plaintiff has a high bar to clear to prove otherwise. But that bar is not insuperable, and when assessing how a case will unfold, the court must consider the specific facts presented and the procedural posture of the case. Here, that posture is an application for preliminary injunction, not trial.

Directors fail to act in good faith when they allow motives other than the best interests of the corporation to drive their decision-making. As Chancellor Allen explained, a failure to act in good faith can result from "any human emotion [that] may cause a director to [intentionally] place his own interests, preferences or appetites before the welfare of the corporation," including greed, "hatred, lust, envy,

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[2] 8 *Del. C.* § 144(b)(1).

[3] *See Dodiya*, 2026 WL 2517931, at *13 (noting that action by a qualified committee is "necessary[,] . . . [b]ut it is not sufficient").

revenge, . . . shame or pride."[4] Humans often display loyalty to other humans, as well as respect and deference for those in power. Those traits are highly beneficial for cooperation and goal achievement. But they can lead directors to favor proximate and powerful flesh-and-blood humans, when their fiduciary duties require that they pursue the best interests of a metaphysical entity and its distant and dispersed stockholders.

The evidence makes it reasonably probable that the plaintiffs can show that the committee failed to act in good faith. How? By acting to placate the founders and give them what they wanted, rather than striving to obtain a transaction that served the best interests of the company and its stockholders as a whole.

Contemporaneous meeting notes suggest that the committee's advisors knew from the start that the recapitalization would happen and set out to craft a narrative to support that result, including gives from the founders that would look like gets for the committee. There was also a critical point where one of the committee members had an unauthorized conversation with one of the founders in which he told the founder that he expected the committee to give the founder what he wanted. When the committee's next proposal differed from what the founder expected, he exploded. He berated the committee members in a text tirade, made threats, and appealed to

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[4] *In re RJR Nabisco, Inc. S'holders Litig.*, 1989 WL 7036, at *15 (Del. Ch. Jan. 31, 1989) (Allen, C.); *see Guttman v. Huang*, 823 A.2d 492, 506 n.34 (Del. Ch. 2003) ("The reason for the disloyalty (the faithlessness) is irrelevant, the underlying motive (be it venal, familial, collegial, or nihilistic) for conscious action not in the corporation's best interest does not make it faithful, as opposed to faithless.").

boardroom allies not on the committee. Two of his allies inserted themselves into the committee's process. The terms ended up where the founder wanted, and there is good reason to think that the founders' concessions were less significant than portrayed.

That is not the only possible reading of the evidence. The directors may have concluded in good faith that benefiting the proximate and powerful flesh-and-blood humans would serve the best interests of the corporation and its stockholders.[5] If they reached that conclusion in good faith, then the Safe Harbor Statute would apply.

At this stage, the court cannot reach that conclusion. Partly that is because of the evidence. Partly that is due to the plaintiffs' effective use of contemporaneous evidence to attack the defendants' testimony. And partly that is due to the destruction of evidence. The founders, the committee members, and the boardroom allies who intervened used Signal to discuss the recapitalization. Signal is an ephemeral messaging service, and at critical points, key participants created Signal chats and

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[5] *E.g.*, *United Food & Com. Workers Union v. Zuckerberg* (*Zuckerberg I*), 250 A.3d 862, 895–96 (Del. Ch. 2020) ("A director could believe in good faith that it is generally optimal for companies to be controlled by their founders and that this governance structure is value-maximizing for the corporation and its stockholders over the long-term. Others might differ. As long as an otherwise independent and disinterested director has a rational basis for her belief, that director is entitled (indeed obligated) to make decisions in good faith based on what she subjectively believes will maximize the long-term value of the corporation for the ultimate benefit of its residual claimants. If a director believes that it will be better for the corporation to have the founder remain in control, then the director may make decisions to achieve that goal." (citation omitted)), *aff'd sub nom. United Food & Com. Workers Union & Participating Food Indus. Empls. Tri-State Pension Fund v. Zuckerberg* (*Zuckerberg II*), 262 A.3d 1034, 1062 (Del. 2021) ("Hastings might have a good-faith belief that founder control maximizes a corporation's value over the long-haul. If so, that good-faith belief would play a valid role in Hasting's [sic] exercise of his impartial business judgment.").

set the messages to delete promptly, or changed the deletion settings to achieve that result. Everyone anticipated litigation; the parties' advisors had told them to anticipate it. Yet the key participants inferably destroyed evidence. The defendants tried to discount the significance of their Signal use by claiming that none of the messaging involved substantive communications, but the plaintiffs easily demonstrated otherwise. Those credibility issues mean the court must hear the defendants testify at trial.

The defendants exacerbated their credibility issues by reneging on a commitment not to proceed with the recapitalization until after the court ruled. The company broke that promise and said it planned to close the recapitalization in mid-September. After a status conference to discuss whether the plaintiffs needed to seek a temporary restraining order to preserve the court's ability to rule, the company changed position again. The defendants run the company. They caused it to renege on its commitment. That makes it more important to assess their credibility at trial before determining whether the Safe Harbor Statute applies.

Once the plaintiffs have a reasonable probability of showing that the Safe Harbor Statute does not apply, entire fairness becomes the operative standard of review. At trial, the defendants would have the burden of proving that the recapitalization is entirely fair, both as to process and price.

Under the entire fairness test, the plaintiffs have a reasonable probability of prevailing on a fiduciary challenge. They point to evidence that calls into question whether the defendants can prove that the recapitalization is procedurally fair,

including the evidence suggesting the committee's advisors worked to justify a pre-ordained result, one committee member's unauthorized communications with one of the founders, one of the founder's attacks on the committee, and the interventions by the founders' boardroom allies. The plaintiffs also point to evidence that calls into question whether the defendants can prove that the recapitalization is substantively fair. Viewed in its totality, the evidence supports a reasonable probability that if the Safe Harbor Statute does not apply, then the defendants will not be able to satisfy the unitary standard of entire fairness.

If that turns out to be the case, then the proper remedy would be a permanent injunction blocking the recapitalization. The court cannot award that remedy if the recapitalization has already closed. A status-quo-preserving injunction is warranted.

The question then becomes how to manage the litigation. The Safe Harbor Statute's powerful protections are intended to obviate the need for entire fairness review. Here, it would seem to impose a disproportionate burden on the defendants and run contrary to the statute's intent to conduct an entire fairness trial before determining whether the Safe Harbor Statute applies. But at the same time, the court does not want to impose two trials if one is preferable.

The defendants will suffer the burden of the preliminary injunction. Therefore, at the defendants' election, the court will bifurcate the proceedings and hold an initial trial limited to the question of whether the Safe Harbor Statute applies. If the defendants choose that option, the court will require trial to be held promptly, ideally in approximately ninety days.

That trial would center on the committee members' good faith. Because of that narrow focus, expert testimony should not be necessary. The number of fact witnesses should also be limited, because the issues will be what the committee members knew or believed, what they did, and what they sought to accomplish. Little (if any) additional discovery should be required. If the defendants do not opt for a separate safe harbor trial, the court will still require that the full trial be held promptly.

I. FACTUAL BACKGROUND

The facts are drawn from the record developed in connection with the motion for a preliminary injunction. The parties submitted more than 160 documentary exhibits plus deposition testimony from eight fact witnesses and three experts.[6] At this stage of the case, the court does not make findings of fact. The account instead reflects what the evidence at trial is reasonably likely to show, based on the record developed to date.

A. The Company

Matthew Prince and Michelle Zatlyn (the "Founders") met at Harvard Business School in 2007. Two years later, they and a third founder created

[6] Citations in the form "PX __ at __" refer to exhibits that the plaintiffs submitted with their opening brief or reply brief. Citations in the form "DX __ at __" refer to exhibits that the defendants submitted with their answering brief. Citations in the form "[Name] Dep." refer to witness testimony from a deposition transcript.

Cloudflare, Inc. (the "Company").[7] Prince serves as CEO. Zatlyn serves as the President. They co-chair the board of directors (the "Board").

The Company provides services that make web-based businesses more secure, improve the performance of their web-based applications, and eliminate the cost and complexity of managing individual network hardware. The Company's main service protects against targeted cyberattacks and surges in traffic that could knock a site offline. Today, more than twenty percent of the Internet uses the Company's products.

In 2009, the Company raised $2.05 million in a Series A round. Nearly half of that came from Pelion Venture Partners. Carl Ledbetter, Pelion's managing director, joined the Board. He remains a director today, seventeen years later. During that time, Ledbetter and the Founders understandably developed a close working relationship.

In 2010, the Company raised approximately $20 million in a Series B round led by New Enterprise Associates ("NEA"). Scott Sandell, then NEA's general partner and now its Executive Chairman and Chief Investment Officer, joined the Board. He remains a director today, sixteen years later. As with Ledbetter, Sandell and the Founders understandably developed a close working relationship over that time.

In 2012, the Company raised around $50 million in a Series C round. Both Pelion and NEA participated.

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[7] Lee Holloway was the third founder. He stepped away in 2016 due to health issues.

In September 2019, the Company sold stock to the public at $15 per share. Since then, its market performance has been exceptional. On August 10, 2026, its stock price closed at an all-time high of $310.59 per share. The Company's market capitalization stands at around $100 billion.

Accolades for the Company and its Founders have followed. The Company was named as a "Fortune Future 50 Company" in 2023 and 2024, and it ranked as a "Time100 Most Influential Company" in 2025. Prince has been recognized as an industry leader, including being named #1 on the Time100 AI Leaders list for 2025. Prince sees the Company as "uniquely positioned" to help individuals and companies navigate an "AI-first internet."[8]

B. The Dual-Class Structure

The Company went public using a dual-class structure. The Founders, early investors, and employees received Class B stock carrying ten votes per share. Public investors purchased Class A stock carrying one vote per share.[9] Except for their voting power and the mechanics for converting Class B shares into Class A shares, the common stock carries identical rights and votes together as a single class on all matters, unless otherwise required by law.[10]

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[8] DX 2 at 2–3. An AI-first Internet refers to a shift away from a search-driven interface where people consume original content to an AI-driven interface where people primarily use chatbots to analyze the original content.

[9] *See* PX 8 ("Charter"), art. V, § 4.1.

[10] *Id.* art. V, § 2 (providing that except as otherwise provided within, "shares of Common Stock shall have the same rights and powers, rank equally . . . , share

Each Class B share converts into a Class A share at the holder's election or automatically upon the occurrence of specified events.[11] Transferring a Class B share to a non-permitted holder is a triggering event.[12] So is a Founder's death or disability.[13] All outstanding Class B shares automatically convert when the Founders own less than twenty-five percent of the number of Class B shares they owned at the IPO (respectively, the "Ownership Sunset" and the "Minimum Ownership Condition").[14]

C. The Steady Erosion Of Founder Control

The Founders currently own substantially all of the Class B shares. Through their holdings, they control a majority of the Company's outstanding voting power.[15]

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ratably and be identical in all respects as to all matters"); *id.* art. V, § 4.2 (providing that except as otherwise provided within or required by law, "the holders of Class A Common Stock and Class B Common Stock will vote together as a single class and not as separate series or classes"). The Charter authorizes the Company to issue preferred stock as well. *See id.* art. IV. It appears at this stage that any outstanding preferred stock converted into common stock for purposes of the IPO.

[11] *Id.* art. V, § 6.2.

[12] *Id.* art. V, § 6.2(b); *id.* art. V, § 1.15 (defining "Permitted Transfer").

[13] *Id.* art. V, § 6.2(f).

[14] *Id.* art. V, § 6.1; *see id.* art. V, § 1.9 (defining "Final Conversion Date" to include the Ownership Sunset). The Final Conversion Date also covers other automatic conversion scenarios, such as the death or disability of both Founders and the election of the holders of a majority of outstanding Class B shares. *Id.* art. V, § 1.9. The other scenarios are not at issue.

[15] That was not true immediately after the IPO, because early investors, employees, and other insiders also received Class B shares. But those holders sold their Class B shares over time, resulting in their conversion into Class A shares. For

But after peaking at 60% in 2021,[16] their share of the outstanding voting power has steadily declined.

The Founders' share of the total voting power can be expressed as a fraction where the numerator reflects the voting power they hold and the denominator reflects the voting power outstanding. Decreasing the numerator or increasing the denominator reduces the output. Both have been happening.

The numerator decreased as the Founders sold Class B shares or made charitable contributions. From 2020 through the spring of 2026, Prince sold shares worth approximately $1.18 billion, and Zatlyn sold shares worth approximately $629 million. Meanwhile, the denominator increased as the Company issued Class A shares for corporate purposes, such as for employee compensation and as consideration for acquisitions. The Company's transactions have increased the total share count by approximately 17.8%.[17]

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example, Pelion and NEA had sold most of their Class B shares by 2021. *See* PX 10 at SC0000122.

[16] *Id.* At that point, the Founders held Class B shares reflecting approximately 93% of their post-IPO ownership. *Id.*

[17] PX 11.

On March 5, 2026, the Founders controlled approximately 51% of the voting power.[18] On June 5, they controlled 50.3%.[19] If they continued divesting shares at their historical rates, they would lose majority control by December 2026[20] and trigger the Ownership Sunset in 2034.[21]

Of course, neither outcome was assured. The Founders could slow or stop their sales and charitable contributions. The Company, however, would need to continue issuing Class A shares as employee compensation and for other corporate purposes. Under the latter scenario, the Founders would lose majority voting control by December 2028.[22] The Ownership Sunset would, in theory, never take place.[23]

The erosion of founder control under a dual-class structure is a well-known complication. For the Founders and their advisors, therefore, the erosion of the Founders' control was a known risk, and something that they would need to address.

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[18] PX 3 ("Proxy Statement") at 36. At that point, the Founders continued to hold Class B shares reflecting approximately 70% of their post-IPO ownership. *Id.*

[19] *Id.* at 62. At that point, the Founders continued to hold Class B shares reflecting approximately 63% of their post-IPO ownership. *See id.*

[20] PX 10 at SC0000123. That projection assumes "ongoing issuance of class A shares in-line with Street estimates." *Id.* (emphasis omitted).

[21] Proxy Statement at 49; DX 17.

[22] PX 10 at SC0000123. This projection likewise assumes "ongoing issuance of class A shares in-line with Street estimates." *Id.* (emphasis omitted).

[23] *See id.*

As with many problems, the optimal time for intervention is not when the problem is imminent, but when it remains somewhat distant.

D. Equity-Grant Planning Spotlights The Erosion Issue.

In mid-2025, compensation-related discussions brought the erosion issue to the forefront. At the time, the Board had nine members:

- The Founders;
- John Graham-Cumming, the Company's former Chief Technology Officer;
- Ledbetter, a managing director with Pelion;
- Sandell, NEA's Executive Chairman and Chief Investment Officer;
- Katrin Suder, a physicist and former State Secretary for the German Federal Ministry of Defense;
- Mark Hawkins, former President and Chief Financial Officer Emeritus of Salesforce, Inc.;
- Stacey Cunningham, former Operating Partner of global private equity company Advent International and former President of NYSE Group; and
- Karim Lakhani, a Harvard Business School professor.

In July 2025, the Board formed a special compensation committee charged with evaluating potential equity awards that would give the Founders "appropriate incentives to remain engaged."[24] Its members were Ledbetter, Hawkins, and Cunningham.

The lead concept involved a mega-grant of Class A shares with an estimated grant-date value of over $1.1 billion, divided into tranches that would vest based on

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[24] PX 19 at SC0005806.

stock price targets over a ten-year period. The Founders would have to remain in their executive roles for at least four years and afterward either as a full-time executive chair or in another approved C-suite position.

In September 2025, Ledbetter had an extensive discussion with the Founders about "tax planning, philanthropy planning, and voting control issues."[25] Prince wanted to engage in tax planning using his Class B shares, but the structures generally triggered a Class A conversion and further eroded his voting power.[26] Ledbetter promised that the compensation committee would look into solutions.[27] After Ledbetter reported on his discussion to the special compensation committee, they consulted with counsel.[28]

Around the same time, the Founders "[h]ad an 'aha moment'" that they would be getting Class A stock in the mega-grant, rather than Class B stock that would help preserve their voting control.[29] The Founders preferred the latter and decided that the Company needed to resolve the control-erosion issue before proceeding with a

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[25] PX 22 at CF_008371.

[26] *See id.*

[27] *Id.*

[28] *Id.* at CF_008370.

[29] PX 23 at CENTERVIEW_00026890.

mega-grant.[30] As a result of these discussions, the special compensation committee put its mega-grant work on hold later in September.

E. The Special Governance Committee

On October 15, 2025, the Board created a special governance committee to consider changes to the Company's capital structure (the "Committee").[31] Its members were Lakhani, Sandell, and Suder. When creating the Committee, the Board determined that Lakhani, Sandell, and Suder were independent from the Company and the Founders and were not interested in the potential governance alternatives for purposes of Delaware law and New York Stock Exchange ("NYSE") standards.[32]

The plaintiffs attack the sufficiency of the Board's determinations regarding Sandell. They acknowledge that the Board considered Sandell's "long-time service to the Company" and "his affiliation with [NEA] (a long-time investor in the Company),"[33] but they object that the Board did not specifically consider that NEA

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[30] *See* PX 24 at CF_008142 (compensation advisor later checking in with Ledbetter about the "founder grants" and being told that "everything is still on hold until a different committee determines whether or not a separate class of shares can be used for these grants").

[31] *See* PX 25 at CF_000019–20.

[32] DX 13 at CF_000148. The Committee discussed potential conflicts again several months later, after its work was already underway, and it did not raise any concerns to the full Board. *See* Dkt. 85, Ex. A (January 13, 2026 Committee meeting minutes).

[33] PX 25 at CF_000019.

turned a $50 million investment in the Company into over $3 billion in profit, or that Sandell personally holds approximately $40 to $50 million in Company stock, mostly through NEA distributions.[34] They also acknowledge that the Board considered that NEA and Prince invested in two early-stage companies together, but object that the Board did not ascribe a value to them.[35] And they object that the Board failed to consider explicitly that:

- NEA's business depends on investing in startup companies and is generally deferential to founders.
- Sandell uses the Founders as references when competing for deals and raising capital.[36]
- Sandell relied on Prince to advise an NEA portfolio company on navigating issues with the U.S. government.[37]
- Sandell and NEA co-invested with the Company and the Founders in the Company's venture fund.[38]

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[34] Sandell Dep. 131–32.

[35] PX 25 at CF_000019. Sandell did provide the Board with an explanation of "how those investments came about" and the "rough amounts" that "each of NEA and Mr. Prince had invested," and "it was noted that the amounts that Mr. Prince had invested in these companies were basically rounding errors to him given his overall net worth." Sandell Dep. 39–51.

[36] Sandell Dep. 126–27, 129.

[37] *Id.* at 117–18.

[38] Barb Darrow, *New $100 Million Fund Backs Cloudflare-Related Startups*, FORTUNE (June 27, 2017), https://fortune.com/2017/06/27/100-million-cloudflare-fund/.

- NEA and Atlassian, a software company where Zatlyn is a director, co-invested in two companies.[39]
- Sandell and his girlfriend were among the roughly 100 to 150 attendees at Prince's wedding.[40]
- Sandell attended Prince's mother-in-law's retirement party, visited Prince's homes (including overnight), and spent Thanksgiving with Prince and his in-laws.[41]
- Prince regards Sandell as a "trusted advisor."[42]

This decision addresses Sandell's status as a disinterested director as part of the legal analysis.

The plaintiffs similarly attack the sufficiency of the Board's determinations regarding Lakhani. They accept that the Board knew the Founders were his students at Harvard Business School in 2007 and kept in touch with him over the years.[43] They argue that the Board did not specifically discuss that:

- Prince offered to "put in a good word" with Portuguese officials to help Lakhani find alternative university space for Harvard after the Trump Administration sued the university, then raised the issue with an official during a dinner in June 2025.[44]

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[39] PX 6 at 4.

[40] Sandell Dep. 86–94.

[41] *Id.* at 71–74, 82–83.

[42] Cromwell Schubarth, *The Story of NEA and CloudFlare: From Sandwiches to $1B Valuation*, Silicon Valley Bus. J. (Sep. 13, 2019), https://www.bizjournals.com/sanjose/news/2014/01/16/the-story-of-nea-and-cloudflare-from.html.

[43] Lakhani Dep. 69–71.

[44] *Id.* at 80–85, 169–71.

- Prince provided a marketing blurb for the jacket of Lakhani's book, *Competing in the Age of AI*, published in January 2020.[45]
- Prince hosted Lakhani at his Lisbon home in July 2025,[46] and Prince invited Lakhani to stay on his boat in Croatia.[47]
- At Lakhani's invitation, the Founders gave talks to his students at Harvard Business School on several occasions.[48]

This decision addresses Lakhani's status as a disinterested director as part of the legal analysis.

F. The Committee Process

The Committee first met in December 2025. It held eighteen meetings during a six-month process that generated hundreds of pages of detailed minutes and presentation materials.

The Committee began by considering law firms and financial advisors. Each law firm touted its ability to represent special committee members facing litigation.[49] The financial advisors warned explicitly about the prospect of litigation and the need to mitigate litigation risk.[50]

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[45] *Id.* at 167–69.

[46] PX 97; *accord* Lakhani Dep. 176–82.

[47] Lakhani Dep. 182–83.

[48] *Id.* at 75–76.

[49] *See* PX 30 at SC0003640, SC0003648; PX 29 at SC0001093; PX 28 at SC0001049, SC0001052.

[50] PX 105 at SC0002906 ("Litigation has become a component of nearly every public market corporate action and more so where a controlling shareholder is involved"); *id.* at SC0002915 ("there are often lawsuits filed by shareholders opposing

The Committee hired Potter Anderson & Corroon as its counsel. Only Lakhani interviewed the bankers, and on his recommendation, the Committee hired Centerview Partners.[51] After being retained, Centerview reiterated its advice about litigation risk,[52] and the Committee understood its significance from the outset.[53]

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the recapitalization"); PX 32 at SC0002805, SC0002808 (positing that a "disciplined, well-documented process . . . is critical to mitigating fiduciary risk"; "Creating a clear contemporaneous record . . . will be central to addressing potential litigation and market perception"; "Having a shareholder vote may prevent potential future shareholder litigation"; suggesting that the Committee "hold back some concessions if there's a view that litigation risk is high"); PX 33 at SC0000133 ("Governance and litigation considerations are critical, particularly for post-IPO structural changes that may be perceived as entrenchment").

[51] Potter Anderson and Wilson Sonsini Goodrich & Rosati, the Board's counsel, attended the interviews. Proxy Statement at 35. The plaintiffs have not taken issue with Centerview's compensation structure, which was neither entirely fixed nor entirely contingent. Centerview could receive a total fee of up to $6 million, broken into four components: (i) a $1 million retainer fee, (ii) a $1 million fee for providing a recapitalization proposal, (iii) a $2 million milestone fee on April 15, 2026, unless the Committee dissolved before then and no recapitalization occurred, and (iv) a $2 million final fee, unless the Company did not file a definitive proxy statement about a proposed recapitalization or no recapitalization occurred by July 1. PX 36 at CENTERVIEW_00008825; *accord* Kim Dep. 45–48. That structure gave Centerview a moderate financial incentive to support a recapitalization, but for the task of providing advice to a special committee, the structure was far superior to a fully contingent or even predominantly contingent arrangement. Hat tip there.

[52] *See* Kim Dep. 125–26 (noting that the Committee was advised that "80 percent of the most comparable precedents to the recapitalization that Centerview identified and presented to the special committee resulted in litigation"); *see also* PX 39 at SC0000169, SC0000178–81 (in Committee meeting, Centerview presented on non-voting common stock precedent proposals, including detailed summaries of the "shareholder litigation and concessions" for each proposal, advising that "shareholder litigation was common" (capitalization altered)).

[53] *See, e.g.*, Suder Dep. 181 ("Q. [Y]ou understood that there was significant litigation around these transactions and that part of the committee's exercise was to, you know, manage that litigation risk? A. Yes, it was to be compliant."); *id.* at 183–

1. Signal Use

During the Committee's process, its members used Signal to discuss the recapitalization among themselves and with the Founders and other Board members. The auto-delete settings for many of the Signal chats resulted in irretrievable deletion in days or weeks. Despite having been advised about the prospect of stockholder litigation, no one disabled the auto-delete settings until after the first litigation hold on June 5, 2026.

Several Signal chats inferably contained messages about the recapitalization.[54] The names of some Signal chats, like "CF Special Committee" and "SC," indicate that they were created for that purpose.[55] The names of other chats,

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84 ("Q. Was one of the risks of a potential modification litigation risk? A. I don't recall whether we said this in this meeting, but definitely litigation risk is one of the risks. . . . It was always part of that. Q. And so, during the course of the process, did you generally understand that one of the risks of a potential modification was litigation risk? A. Yeah . . . ."); *id.* at 185 ("The topic of litigation risk was discussed. I don't recall in which detail in which meeting."); *id.* at 212 ("Q. You were aware, though, that there's litigation risk associated with these recapitalization transactions; they've generated significant litigation that has been resolved through additional concessions, right? A. Yes."). *But see* Lakhani Dep. 193 ("Q. [D]id the special committee discuss litigation risk associated with a recapitalization transaction? A. My sense is no. Again, it's a vague sense of no . . . ."); *id.* at 225–26 ("Q. Is it still your testimony that you don't remember there being any discussion of litigation risk when looking at these slide decks? A. I think this is like mother and apple pie, like litigation is what American society is known for globally. So these things being put in there is like, okay, a litigation risk.").

[54] *See* PX 6 at 10–18.

[55] *Id.* at 13; Lakhani Dep. 40–41 (testifying that "CF Special Committee" is a reference to the Cloudflare special committee related to the recapitalization). *But see* Lakhani Dep. 40–41 (testifying that he does not know whether "SC" stands for "special committee").

like "Progress Committee"[56] and a chat titled with a "bus" emoji,[57] the timing of their creation, and testimony about them suggest those chats related to the recapitalization as well.

In their depositions, defense witnesses denied using Signal chats for substantive communications about the recapitalization, and their counsel advanced that position during the litigation.[58] At this stage of the proceedings, the court cannot

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[56] PX 6 at 13; Lakhani Dep. 46 (testifying that Sandell created the chat with Lakhani and Zatlyn to coordinate the Committee's conversations with her about the recapitalization proposal); PX 60 (showing that Sandell created the chat on May 3, 2026, the same day as Prince's explosion); *see* Zatlyn Dep. 66–68 (testifying that "at points [negotiations] got heated or intense, I leaned in even more"); *id.* at 235–38 (testifying that Zatlyn had a call with Lakhani and Sandell on May 3, 2026).

[57] PX 6 at 12; PX 38 (showing that Prince created the chat with Zatlyn and the Committee on March 10, 2026, the day after Prince provided feedback to the Committee on its recapitalization ideas). *But see* Prince Dep. 180–81 ("I don't recall creating this group and I don't recall setting the emoji."); *id.* at 181–82 ("Q. And your understanding of the bus emoji . . . and its meaning, do you understand that to mean that you're all in the same vehicle? A. No. I have no . . . idea what that . . . means."); *id.* at 182–83 ("Q. [S]o you don't know, one way or another, whether you communicated with members of the Committee on this Signal channel? A. Yeah, I don't recall.").

[58] *See, e.g.*, Dkt. 82 ("AB") at 41, 45–46; Dkt. 93 ("Hearing Tr.") 108–10; Lakhani Dep. 31–32 ("social component" discussed over Signal but not "substantive negotiation"); *id.* at 51 ("[T]hese, for me, are coordination channels, not for substantive discussion."); *id.* at 44 ("The substantive conversations were always in person . . . in our meetings."); Suder Dep. 50–51 ("I don't recall that we had massive or substantive discussions on Signal. . . . [M]y memory is that there was not a – no big discussions on these terms."); Zatlyn Dep. 78, 241 ("It is really coordinating because we were in different time zones. . . . I don't recall anything of substance being discussed."); Sandell Dep. 233 ("I don't think we communicated a lot on Signal, to be honest with you. We communicated either, you know, on the phone or on iMessenger, Apple Messenger."); Prince Dep. 37 ("[T]here were a handful of . . . communications that happened there [Signal], . . . but the vast majority of the communications . . .

credit those denials because the factual record contains surviving Signal messages indicating otherwise.[59]

2. Centerview Identifies Options.

The Committee began by tasking Centerview with identifying options. Centerview "understood that the Committee was considering . . . mechanisms that would preserve [the Founders'] control over the Company."[60]

During a meeting on February 4, 2026, Potter Anderson told Centerview that the Committee had been told "to focus narrowly on the cap table."[61] The advisors discussed the "[n]eed to figure out the narrative and ensure there are 'gets' for Matthew/Michelle."[62] They also discussed that the Committee would have to "own the story" and that the justification could involve a conclusion that "maintaining a control block is critical (and any structure must ensure that)."[63]

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during the negotiation were via phone calls, text – text messages or e-mail."). *See also* Zatlyn Dep. 69 ("Q. Do you use Signal? A. Not for work purposes. Very rarely.").

[59] *E.g.*, PX 58; PX 59; PX 108; PX 111.

[60] PX 10 at SC0000107.

[61] PX 23 at CENTERVIEW_00026890.

[62] *Id.*

[63] *Id.* This language comes from meeting notes that junior members of the Centerview team prepared. The defense witnesses asserted vehemently and in lockstep that the notes were inaccurate and unreliable. AB at 23–24 (arguing that "every witness" confirmed the notes are "riddled with inaccuracies and do not accurately reflect the discussions they purport to memorialize," quoting testimony from the lead banker, Founders, and Committee members). To this reader, they appear consistent with the flow of the transaction as a whole. They broadly track

The day before, Lakhani created a Signal chat with Sandell and Suder called "CF Special Committee." The auto-delete setting provided for message deletion after one week.[64]

On March 5, 2026, Centerview presented the Committee with a "broad universe" of potential governance alternatives.[65] Centerview confirmed that the "key

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what appears in curated minutes and presentations while reflecting the more candid types of comments that transaction participants make during deal discussions. There is no reason why the junior team members would have mischaracterized the meetings. If anything, the junior team members had every incentive to create accurate accounts for their superiors.

Assuming someone did refer to a "narrative" and a "story" at the February 4 meeting, the parties disagree about what those words imply. *See id.*; *see, e.g.*, Suder Dep. 242–46 ("I think that the committee should not own a story. I'm irritated by that language. And I can't recall that we ever spoke about a story. I mean, this is important, substantive work. It's not a story."). At a minimum, the evidence suggests that the Committee and its advisors were mindful of the formal record and its implications for litigation. *See, e.g.*, PX 43 at CENTERVIEW_00026732 (discussing how, from a "[r]ecord and process standpoint," it "is a good fact pattern" if "we are leaning but not convinced and we engage an outside expert, and we have an expert that concludes that we should"). The plaintiffs argue for interpreting "narrative" and "story" to mean justifying a pre-ordained result. In the context of the injunction-stage record as a whole, that is one reasonably probable interpretation. Deciding among reasonably probable interpretations is a job for the post-trial phase, after the court has heard witness testimony and can weigh the evidence.

[64] PX 6 at 13; *see also* Lakhani Dep. 40–41 (testifying that "CF Special Committee" is a reference to the Cloudflare special committee related to the recapitalization).

[65] PX 33 at SC0000126.

criteria" for alternatives included "[p]reservation or enhancement of Founder voting power" and "Founder liquidity implications."[66] The options included:

- Exchanging each of the Founders' Class B shares for one share of a new series of nine-vote, no-economic-interest preferred stock (the "Preferred Stock") and one Class A share (the "Class B Exchange").
- Authorizing a new class of non-voting common stock "that can be utilized for future equity issuance" (the "Non-Voting Stock Authorization").[67]
- Issuing high-vote preferred stock to all stockholders with features that would incentivize public stockholders to convert the preferred stock into Class A shares, leaving the Founders with increased voting power.[68]
- Authorizing all stockholders to exchange their shares for a new class of non-voting common stock "at an exchange ratio greater than 1" so that public stockholders would have an incentive to swap shares with voting power for increased equity ownership.[69]
- Issuing a "new share class [to the Founders] with variable number of votes that keeps voting power above 50% floor."[70]

Centerview flagged "benefits" and "considerations" for each option.[71]

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[66] *Id.* at SC0000133; *accord id.* at SC0000149 (describing "key objectives" to include "preserv[ing] Founder control" and providing "Founder liquidity" (capitalization altered)).

[67] *Id.* at SC0000141.

[68] *Id.*

[69] *Id.*

[70] *Id.*

[71] *Id.* (capitalization altered).

The Committee met with the Founders a few days later to "get some more input from them."[72] Centerview walked through its calculations regarding how fast the Founders' control was eroding, and Prince agreed with Centerview's assessment.[73] Centerview then presented the Class B Exchange and the Non-Voting Stock Authorization. Prince "loved" them and suggested doing both.[74] The Committee never presented any of Centerview's other alternatives to the Founders.

The day after the meeting, Prince created a Signal chat with Zatlyn and the Committee members. He used a "bus" emoji as the title and set the auto-delete setting to one day.[75] Prince claimed to have no idea what the bus emoji meant, and none of the participants could recall any of the chat's contents.[76] For me, it recalls Jim Collins'

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[72] PX 37 at NEA_0000429.

[73] PX 23 at CENTERVIEW_00026893 (reporting that Prince said Centerview's math "matched the back-of-napkin math he had already done").

[74] *Id.* ("why not do both the issuing a new non-voting share class and the preferred split and the Class C"). About two weeks later, Centerview asked the Founders for more information about their estate planning and charitable giving. PX 40 at CF_004731. Prince reported that he had found a near-term workaround that avoided the automatic conversion issue by contributing Class B shares to an LLC that Zatlyn managed, then donating the member interests in the LLC to a donor-advised fund. That structure generated tax deductions without triggering conversion, but only until the proceeds from the donor-advised fund were distributed. At that point, the Class B shares would convert and he would lose votes. *Id.* Prince reiterated his preference that "the committee do what was discussed on the [March 9, 2026] call and split the economic interest of the shares plus one vote from the 9 other votes," which "would GREATLY simplify efficient tax planning." *Id.*

[75] PX 38; Prince Dep. 178–80; PX 6 at 12.

[76] *See* Prince Dep. 180–81 ("I don't recall creating this group and I don't recall setting the emoji."); *id.* at 181–82 ("Q. And your understanding of the bus emoji . . .

Good to Great, where he talks about the need to have the right people on the bus to get a project where it needs to go.

3. The Committee Picks Its Approach.

The Committee took Prince's suggestion and opted to proceed with both the Class B Exchange and the Non-Voting Stock Authorization.[77] The Committee sought three concessions from the Founders: (i) a capital-at-risk requirement to replace the Ownership Sunset, (ii) service commitments, and (iii) corporate governance enhancements.[78]

The Committee asked Centerview whether controlled companies performed better than widely held companies, suggesting they considered relying on that

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and its meaning, do you understand that to mean that you're all in the same vehicle? A. No. I have no . . . idea what that . . . means."); *id.* at 182–83 ("Q. [S]o you don't know, one way or another, whether you communicated with members of the Committee on this Signal channel? A. Yeah, I don't recall."); Lakhani Dep. 37–38 ("I have no recollection of that Bus Emoji chat. . . . I am befuddled as to what this chat was about."); *id.* at 39 ("Q. Anything else that occurs to you about what this Bus Emoji chat might have been, when was it created, who created it, any context? A. Again, I am befuddled by this one."); Suder Dep. 44, 46 ("Q. So this one, the name of the chat is an Emoji of a bus. What's this channel? A. I don't know. Q. Do you know what the significance of the bus Emoji is? A. No. Q. Do you know who created this chat or what it was for? A. No."); Zatlyn Dep. 201 ("Q. Do you know who made the bus Emoji? A. I think it's one of the options in the Emojis on your iPhone. . . . Q. But I'm asking if you know which participant in the chat chose the bus Emoji for this Signal chat? A. I have no idea. Q. And do you have any understanding of why the bus Emoji was chosen? A. I don't.").

[77] PX 39 at SC0000170.

[78] *Id.* at SC0000169–70.

proposition to justify a recapitalization. On April 2, 2026, Centerview advised the Committee that the evidence was inconclusive and that no clear consensus existed.[79]

During that discussion, the Committee acknowledged that litigation over a recapitalization was "very likely."[80] The Committee then discussed that it would be "a good fact pattern" if the Committee engaged an outside expert to advise that they could consider maintaining founder control as a benefit.[81]

Earlier in the day, Lakhani had prompted an AI research chatbot to "do a large-scale academic research project on the benefits of maintaining founder control of companies once they have gone public."[82] Lakhani is an AI expert who understands that AI platforms can have a bias toward sycophancy, yet none of his prompts asked about potential downsides of dual-class stock.[83]

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[79] PX 41 at SC0000224 (noting that "controlled companies exhibit mix[ed] performance outcomes, with no consistent relationship between control and value creation" and "no clear consensus on net shareholder impact"); *accord* Proxy Statement at 38.

[80] PX 43 at CENTERVIEW_00026731.

[81] *Id.* at CENTERVIEW_00026732 (observing that it would be beneficial from a "[r]ecord and process standpoint" if "we engage an outside expert, and we have an expert that concludes that we should [rely on the control benefit]"); *see* PX 41 at SC0000225 (noting that the Committee considered asking an academic expert to present on "whether the Company was more aligned with the high performing companies where the dual class stock structures had been meaningful for the Company's performance").

[82] PX 42 at SC0004321.

[83] Lakhani Dep. 293. At this phase of the case, it is reasonably probable that Lakhani used the AI chatbot to find confirmatory evidence about the benefits of a dual-class structure and identify experts who would agree with that conclusion. He

Based on his AI-assisted research, Lakhani suggested either Yale Professor Jeffrey Sonnenfeld or Harvard Professor Paul Gompers. He knew Sonnenfeld was an advocate for dual-class structures who had not published any peer-reviewed work on the subject.[84] He knew Gompers was a leading researcher who had published peer-reviewed work on dual-class structures, but had a more "nuanced" view that was less supportive of dual-class structures than Sonnenfeld's.[85]

The Committee ruled out Gompers because he was one of Lakhani's colleagues at Harvard Business School, Lakhani taught his daughter there, and the professors had a close relationship.[86] That left Sonnenfeld. No one suggested looking for alternatives.

Potter Anderson called Sonnenfeld and explained that the Committee was "considering whether to recommend some changes that would effectively extend the

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used the chatbot to identify academic experts who could speak to the "benefits" of founder control and the "value" of dual-class structures, and he never asked it to identify drawbacks. *See id.* at 274–98; PX 42 at SC0004321–24. The defendants dispute that interpretation. AB at 21–22 & n.115. Deciding among reasonably probable interpretations is a job for the court during the post-trial phase, after the court has heard witness testimony and can weigh all of the evidence.

[84] Lakhani initially asked the chatbot for peer-reviewed journals, which produced nothing by Sonnenfeld. He identified Sonnenfeld through self-guided research, then asked the chatbot "what Sonnenfeld will say about the value of dual class structure in tech firms." PX 42 at SC0004324. The chatbot generated supportive material. *Id.* at SC0004325.

[85] Lakhani Dep. 296–300.

[86] *Id.* at 302–05.

timing of the sunset of the dual-class structures."[87] Before learning the Company's name, Sonnenfeld's consulting partner responded, "We are likely to be sympathetic with your client's concern."[88]

Eighteen hours after learning the Company's name, Sonnenfeld presented to the Committee. He advised that "the right capital structure" was "situation dependent" and identified public companies with dual- and multi-class structures that had performed "exceptionally well."[89] He opined that the Company's exceptional market performance suggested that its dual-class structure was working.[90]

Sonnenfeld did not analyze the terms of a potential recapitalization or the Founders' personal incentives. During his deposition, he stressed that he was not a statistician or "an applied math person."[91] His analysis consisted predominantly of using a Bloomberg Terminal to compare historical annualized returns for single- and multi-class companies. He ran no controls, ignored survivor bias, and never tested his correlations for statistical significance. He relied almost exclusively on his "visual inspection" of the data.[92]

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[87] Sonnenfeld Dep. 193–94.

[88] *Id.* at 191–93.

[89] PX 104 at SC0000250–51.

[90] *Id.*

[91] Sonnenfeld Dep. 71.

[92] *Id.* at 265–77.

4. The Committee's Initial Proposal

Meanwhile, the Committee developed its initial proposal. They discussed the need "to have a negotiation with Matthew and Michelle on what they are willing to make and what they are willing to accept."[93] They also worried that "[i]f and when the company were to revisit the [mega-grant]," then some of the Committee's asks for the recapitalization would use up "gets" that the Committee could have used to justify the grants.[94]

On April 9, 2026, the Committee made its initial proposal consisting of the Class B Exchange and the Non-Voting Stock Authorization that Prince had loved. The Non-Voting Stock Authorization would result in the creation of new non-voting Class C shares. The Committee proposed that after those steps, the Company would split each Class A share into one Class A share and one Class C share (the "Class C Split").[95]

Those transactions would end the control-erosion problem. After the Class B Exchange, the Founders would be able to sell their Class A shares without meaningfully reducing their voting control, because they would continue to retain the Preferred Stock. After the Class C Split, the Founders would be able to divest their Class C shares without affecting the voting-power numerator, and the Company could

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[93] PX 23 at CENTERVIEW_00026896.

[94] *Id.* at CENTERVIEW_00026899 ("some of the service commitments are the same 'gets' that they would ask for so it would be less bullets in the chamber for that").

[95] PX 47 at SC0001438–39.

use Class C shares for corporate purposes without affecting the voting-power denominator. The Company could also use Class A shares without meaningfully affecting the voting-power denominator.

The Committee sought three concessions:

- The Company would automatically redeem the Preferred Stock for a nominal amount if the number of Class A shares the Founders held fell below 50% of their holdings immediately after the Class B Exchange (the "Capital-at-Risk Requirement").
- The Company would automatically redeem the Preferred Stock for a nominal amount if both Founders left their current roles on the Board and executive management team, and the Company could redeem the Founders' Preferred Stock if either Founder left (the "Service Requirement").
- The Founders would agree to (1) maintain a majority of independent directors, (2) eschew opting for the Company to operate as a controlled company under NYSE listing requirements, (3) require the approval of a majority of the independent directors for any Class C issuance with a fair market value of more than $100 million if used as consideration for an acquisition, and (4) accept transfer restrictions on the Preferred Stock (the "Governance Requirements").[96]

On April 22, 2026, the Founders' counsel spoke to the Committee's counsel about the proposal. According to a contemporaneous communication, the Committee's counsel "indicated" that the 50% figure for the Capital-at-Risk Requirement was "a placeholder and the committee is looking for [the Founders'] input on the appropriate percentage threshold."[97] The plaintiffs argue that this comment shows the Committee

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[96] *Id.* at SC0001438.

[97] PX 49 at CF_009048.

was trying to give the Founders what they wanted rather than conducting a meaningful negotiation.[98]

A few days after the lawyers talked, Lakhani told the Committee he would be in Lisbon the following week at a conference he co-sponsored. He reported that Prince was a guest speaker and had offered to host a group dinner. Lakhani promised "he would refrain from discussing anything related to the Committee's process."[99]

5. The Founders' Counter

On April 27, 2026, the Founders provided a counterproposal. They accepted the general structure, which was no surprise because Prince had said he loved it.

The Founders countered on each component:

- They cut the Capital-at-Risk Requirement to 10%.
- They weakened the Service Requirement, including by proposing that if one Founder left, then the remaining Founder could vote the departing Founder's Preferred Stock.
- They weakened the Governance Requirements, including by rejecting the request for transfer restrictions on the Preferred Stock and reserving the right to opt for controlled-company status under NYSE listing requirements.[100]

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[98] In the context of the injunction-stage record as a whole, that is a reasonably probable interpretation. I am inclined not to think that it reflects the most probable interpretation, but deciding among reasonably probable interpretations is a job for the court during the post-trial phase.

[99] PX 50 at SC0000298.

[100] PX 51 at SC0002726–28.

That same day, Sandell sent Prince texts attaching photos from Prince's wedding. He also sent a photo of Prince, Zatlyn, and Holloway from the Company's early days.[101]

On April 30, 2026, Prince hosted the Lisbon dinner. Lakhani broke his promise about not talking to Prince about the recapitalization. Instead, he told Prince that he expected that "the Committee was going to be able to get to where [the Founders'] proposal was."[102] He also said he was "positive that we're going to figure this out."[103] The Committee never authorized those communications.

6. The Committee's Second Proposal

On the same day as the Lisbon dinner, the Committee prepared its second proposal. It restored the Capital-at-Risk Requirement to 50% and framed it as optimal for securing NYSE support. The NYSE had warned the Company's counsel that extending the Ownership Sunset could require a stockholder vote under the NYSE's voting rights policies.[104] The restored figure would encompass both the Founders' Class A shares and their Class C shares, not just the Class A shares.

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[101] PX 106 ("This came up today courtesy of Apple. Fond memories all"); *see also* Sandell Dep. 86–94. The parties debate the significance of the texts. I am frankly not sure what, if anything, to make of them. At trial, Sandell can explain them, and the plaintiffs can cross-examine him.

[102] Prince Dep. 243; *see id.* ("He said that they would be able to meet us in a number of things that we requested. We wouldn't get everything we want, but they would move in our – in our direction.").

[103] Lakhani Dep. 356–60.

[104] PX 53 at SC0000305, SC0000307.

On the Service Requirement, the Committee agreed that if one Founder left, then the other could vote the departing Founder's Preferred Stock, but provided that the independent directors could cause the Company to redeem the Preferred Stock in that setting. On the Governance Requirements, the Committee agreed to drop the demand for transfer restrictions on the Preferred Stock, restored the commitment to not rely on the NYSE's controlled-company provisions, and added an equal treatment requirement.

7. Prince Explodes.

The Committee decided that one of its members should preview the proposal with Prince before sending it.[105] They chose Sandell. After hearing Sandell's description, Prince exploded. He thought Lakhani had conveyed that the Committee would accept most of the Founders' counterproposal, yet Sandell was now rejecting most of it.[106]

Prince was furious. From the evening of May 2 into the early hours of May 3, he buried Sandell in an avalanche of angry text messages.[107] "Local User" is Sandell.

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[105] *Id.* at SC0000307–08.

[106] Prince Dep. 245 (according to Prince, Lakhani told him that "we're going to be able to do a lot of this, and I think you're going to be happy," then Sandell told him, "I don't think we're going to be able to do much of it, and you're going to be unhappy").

[107] PX 54–55. During the preliminary injunction hearing, defendants' counsel argued that excerpts of Prince's text messages should not be shown in open court. Defense counsel had not sought to close the courtroom and did not cite any potential harm that could befall the Company. The court rejected the request. To avoid the suggestion that a partial presentation of the texts would be misleading, this decision reproduces them.

Matthew Prince 5/2/2026, 4:05 PM

I liked our proposal. We need to maintain 90% of Class B and at least 10% of economic interest. I think optically that seems like a give and preserves optionality.

Local User 5/2/2026, 9:07 PM

♦♦Our original proposal (the full committee has not been able to meet today) is being sent to Audrey and we have time set tomorrow to discuss with her (2:30 EST). Hope you can provide feedback to us through her. I have your thoughts from today.

Matthew Prince 5/2/2026, 9:13 PM

Please send to me when you send to Audrey.

Local User 5/2/2026, 9:15 PM

I have put in that request

Matthew Prince 5/2/2026, 9:15 PM

You understand how absurd that sentence is, right?

Local User 5/2/2026, 9:16 PM

The lawyers are sending the documents so I asked them - Mark Morton specifically, to send them to you at the same time they are being sent to Audrey. Hope that clarifies what I meant

Matthew Prince 5/2/2026, 10:17 PM

I'm insulted.

Matthew Prince 5/2/2026, 11:39 PM

Estate planning attorney's analysis:

Matthew Prince 5/2/2026, 11:39 PM

As proposed it solves none of the long term problems around selling and only has you and Michelle giving a ton. It's nonsensical that you would even consider it

Matthew Prince 5/2/2026, 11:39 PM

Again, I'm insulted.

Matthew Prince 5/2/2026, 11:41 PM

Silence is fun. Keep not replying. Builds trust.

Local User 5/2/2026, 11:50 PM

Hi Matthew, I have been putting kids to bed but am happy to talk if it's helpful. Also happy to talk tomorrow if you prefer

Matthew Prince 5/2/2026, 11:53 PM

It's hard to convey how disappointed I am. You retraded on your original proposal. Took no feedback from ours. Ensured that Michelle gets fucked. And conveyed to me that I am not valued in my role. If that wasn't your intention it's hard to imagine how you could have fucked up more.

Matthew Prince 5/2/2026, 11:54 PM

I'm happy to talk but am also so angry that I can't imagine it being useful. I'm convinced you and the committee are either clueless or cowed by bad advisors.

Matthew Prince 5/2/2026, 11:54 PM

So… moo,

Matthew Prince 5/2/2026, 11:54 PM

So… moo.

Matthew Prince 5/2/2026, 11:56 PM

My legal advisors have characterized your counter proposal as offensive. I'm consulting with counsel on what my and Michelle's rights are as majority owners in the company. Sad if this ends like this.

Local User 5/2/2026, 11:57 PM

That, of course, is not my intention and I very sorry you feel that way. I can insure you that everyone on the committee is working hard to create a recommendation that does address the issues we know about. And we look forward to understanding where it falls short so we can improve it. I do believe Michelle's concerns are easily solved within the famework of what we proposed.

Matthew Prince 5/3/2026, 12:13 AM
You countered with something that took into account nothing that we proposed she was actually worse than your original proposal. Either you think we're stupid or you are.

Matthew Prince 5/3/2026, 12:14 AM
And you did it after a representative of the committee indicated we'd see something very different.

Matthew Prince 5/3/2026, 12:15 AM
If you wanted to design a way to convey "FUCK YOU" then you did a great job. If that wasn't your intent, you need to be more coordinated or have better advisors.

Matthew Prince 5/3/2026, 12:16 AM
You've done real damage to long term trust.

Local User 5/3/2026, 12:16 AM
That is definitely not the intent,

Matthew Prince 5/3/2026, 12:16 AM
This is going to make a helluva case study.

Matthew Prince 5/3/2026, 12:17 AM
You move nothing on the only thing we care about. Go. To. Hell.

Local User 5/3/2026, 12:17 AM
Remember this proposal does not reflect the conversation we had earlier because the committee could not meet until tomorrow

Matthew Prince 5/3/2026, 12:18 AM
I don't think it's possible to convey how offended I am.

Matthew Prince 5/3/2026, 12:18 AM
Fuck you.

Local User 5/3/2026, 12:18 AM
If you want me to go to hell I going to bed and hope you will feel better in the morning

Matthew Prince 5/3/2026, 12:18 AM
Figure it out. 12 hours or I tender my resignation:

Matthew Prince 5/3/2026, 12:18 AM
Figure it out. 12 hours or I tender my resignation.

Matthew Prince 5/3/2026, 12:20 AM
◆◆I'm sick of the incompetence of the Board compensating or responding to the reasonable asks of a team that has 4x performed the market and is setup to continue to. You're destroying value:

Matthew Prince 5/3/2026, 12:20 AM
◆◆I'm sick of the incompetence of the Board compensating or responding to the reasonable asks of a team that has 4x performed the market and is setup to continue to. You're destroying value.

Matthew Prince 5/3/2026, 12:22 AM
Set an alarm,

After Sandell went to bed, Prince began sending similar messages to Ledbetter. He was not on the Committee, but he was Prince's longest-serving director and

chaired the compensation committee that had been evaluating mega-grants before the Board set the Committee process in motion. Prince told Ledbetter, "I'm tendering my resignation in 12 hours if this BS isn't resolved. The committee is playing games with Michelle and I am tired."[108] Prince sent another message, then deleted it.[109] He later added, "Think people think I'm kidding, I'm not."[110]

Ledbetter immediately offered to help. He replied, "Let me figure it out. It sounds like things have gone badly wrong . . . . Let me fix it. I know it has been an ordeal."[111] Prince later told Ledbetter, "The lawyers are playing games. I'm not. I'm dead serious with everything I've said. . . . [I] feel very little support from the Board. In fact they seem two-faced. . . . Maybe it's just time to move on."[112]

In a separate message chain with Lakhani, Prince called him a "liar."[113] The original message in that chain and related messages are lost because they were on

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[108] DX 26 at CF_007044.

[109] PX 82 (Prince's phone screen displaying Signal chat with Ledbetter, indicating "You deleted this message" next to message dated May 3, 2026, at 12:47 a.m.).

[110] DX 26 at CF_007044. The parties disagree about whether Prince had established a pattern of making empty threats to resign. The defendants argue that the directors who were the targets of his ire knew not to take Prince seriously and discounted his threats. At this stage of the case, the plaintiffs have a basis to argue that the threats affected the Committee. Assessing the competing characterizations will require credibility assessments at trial.

[111] *Id.*

[112] PX 13 at SC0001817.

[113] Lakhani Dep. 381.

Signal chats with auto-delete settings enabled.[114] Prince also posted a public message on X.[115]

Ledbetter sent Prince's message to Sandell but not Lakhani "to avoid enflaming things further."[116] Sandell explained the backstory to Ledbetter: "Matthew is more than very upset by the most recent proposal the committee presented today. He had again threatened to resign, etc."[117] Sandell also reported to Ledbetter that "Matthew says he is deeply insulted, has called Karim [Lakhani] a liar, called me other things, etc."[118]

After getting the report from Sandell, Ledbetter messaged Lakhani to say "how dreadfully sorry I am at how you have been treated personally. . . . I do not know why Mathew [sic] does this."[119] Lakhani responded, "I do think we need to draw a bit of a

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[114] *Id.* at 53–54, 376–77.

[115] PX 56.

[116] PX 13 at SC0001817.

[117] PX 59 at SC0001819.

[118] *Id.*

[119] PX 58 at CF_005995–96.

red line with Matthew on his behavior like this. . . . I think it's really the personal attacks that are not good. . . . [I]t's not good for the Board to have such behavior take place on our [sic] recurrent basis."[120] Lakhani contemplated resigning.[121]

After these events, Sandell set up a new Signal chat for the Committee members called "Progress Committee" and set it for one-month deletion.[122] Lakhani also changed the auto-delete setting for a Signal chat with Sandell to delete messages after one week.[123] Lakhani admitted that the directors might have used Signal chats to share their reactions to the "contentious" negotiations.[124] If there were any places where the directors would have spoken most candidly about the process, it would have been in those chats.

In the context of the record as a whole, the plaintiffs have a reasonable probability of demonstrating at trial that Prince's threats undermined the process by

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[120] *Id.* at CF_005997.

[121] Ledbetter Dep. 186. The parties disagree about whether Prince threatened or intimidated the Committee over the course of his explosion. The plaintiffs argue that Prince implicitly threatened to remove directors or take other extreme action. Dkt. 77 ("OB") at 31–33, 56–57. The defendants argue that Prince never threatened the Committee, which was "unmoved" by Prince's behavior and continued to "bargain hard." AB at 60–62. These are important factual issues that require credibility determinations the court will make after trial.

[122] PX 60; *see* PX 6 at 13.

[123] PX 6 at 17; Lakhani Dep. 54–56. Lakhani created that chat in October 2025, the same month the Board formed the Committee. Lakhani Dep. 54–55; *see* PX 6 at 17. Lakhani claimed not to recall why he enabled disappearing messages on May 3, 2026. Lakhani Dep. 55.

[124] Lakhani Dep. 45.

intimidating Lakhani, shifting Sandell into a conciliatory mindset, and bringing an outside ally—Ledbetter—into the Committee's process. The defendants have offered other reasonably probable explanations.

8. The Committee Ends Up Where Prince Expected.

While Prince was berating the directors, the Founders' counsel sent the Committee a second counterproposal. It mostly reverted to the terms of their first counterproposal.[125]

Prince separately messaged Ledbetter, his ally who was not on the Committee, and argued for measuring the Capital-at-Risk Requirement using only the Founders' Class A shares. He explained that "[t]hat way we could sell the Class C shares we got post[-]split and not impact the economic interest in the Class A."[126] As he saw it, the practical implication would be to "effectively take the economic ownership threshold down from 50% to 25%, which is close to the 20% that I figured we'd settle at."[127] Prince set his Signal chat with Ledbetter to one-day deletion.

Ledbetter backchanneled with Sandell and passed along Prince's message. Ledbetter added that he "told [Prince] we got everyone off 50% and to see what the proposal is."[128] The Committee never authorized Ledbetter to say that.

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[125] Proxy Statement at 41.

[126] DX 28 at SC0001820.

[127] *Id.*

[128] *Id.*

The Committee met later that day. Ledbetter and Cunningham, another director from the compensation committee, joined the Committee meeting to provide their perspectives. Two non-Committee directors had now inserted themselves into the Committee's process.

The Committee sent the Founders a third proposal. It included a 35% Capital-at-Risk Requirement based on the Founders' Class A and Class C shares.[129]

The Founders countered later on May 3. They proposed a 35% Capital-at-Risk Requirement based on their Class A shares only. As a practical matter, that would reduce the economic ownership threshold to 17.5%.[130]

On May 7, 2026, Potter Anderson explained to the Founders' counsel that "any proposal extending, or providing more favorable terms than, the existing capital-at-risk sunset framework creates significant NYSE approval risk."[131] Potter Anderson described the Founders' proposal for a 35% threshold as a level that "essentially maintains the status quo of the existing capital-at-risk requirements set forth in the charter (25% of the Class B at the time of the IPO)."[132] If the Committee accepted that figure, it would mean the Committee would not have secured any incremental concession from the Founders on that issue.

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[129] Proxy Statement at 42; *see* PX 61; PX 62.

[130] *See* Suder Dep. 401–02.

[131] PX 63 at CF_008897.

[132] *Id.*

The Committee met a few days later, on May 10, 2026. Lakhani said his "sense" was that the Founders were "dug in" and that "us trying to negotiate with them over and over again is not a great place."[133] The Committee toyed with possible variations on the Capital-at-Risk Requirement.[134]

That day, Prince created a Signal chat with Lakhani, Sandell, and Zatlyn titled "SC." He set it for one-day deletion.[135]

G. The Agreed-Upon Terms

Later on May 10, 2026, the Committee made its final proposal. It called for a 40% Capital-at-Risk Requirement based on the Founders' Class A shares only.[136] That was where Prince had said he expected the negotiations to land.

The Service Requirement contemplated different scenarios:

- If both Founders were to die or become disabled, then the Company would redeem the Preferred Stock after eighteen months.
- During the first five years after the recapitalization, a majority of the Board's independent directors could decide to redeem the Preferred Stock if (i) Prince died or became disabled and Zatlyn voluntarily ceased to serve as an officer, (ii) Zatlyn died or became disabled and Prince voluntarily ceased to serve as CEO, (iii) Prince voluntarily ceased to serve as CEO and as a director, (iv) Zatlyn voluntarily ceased to serve as an officer and as a director, or (v) both Founders voluntarily ceased to serve as executives (the "Separation Triggers").

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[133] PX 23 at CENTERVIEW_00026906.

[134] *Id.* (discussing a 35% requirement for the Founders' Class A and Class C shares "coupled with an ask to agree with 2 directors for 10ys," 35% of their Class A shares "coupled with 2 directors and a 15 yr sunset decided by the board," and 40% of their Class A shares "and 2 directors and no sunsets").

[135] PX 65.

[136] Proxy Statement at 44.

The redemption would occur eighteen months after the independent directors' determination.

- After five years following the recapitalization, a majority of the Board's independent directors could decide to redeem the Preferred Stock if a Separation Trigger occurred and one or both Founders voluntarily ceased to serve as a director. The redemption again would occur eighteen months after the independent directors' determination.

In short, after five years, the Company could only redeem the Preferred Stock based on the Service Requirement if neither Prince nor Zatlyn remained on the Board. No one expected Prince or Zatlyn to leave in the near term.[137]

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[137] *See, e.g.*, PX 23 at CENTERVIEW_00026905 (Committee noting that "[M]ichelle has stated that she doesn't see herself staying for another 10+ years, whereas Matthew has stated he intends too [sic]"); PX 51 at SC0002726 (Founders' counsel noting that the Founders "intend to continue serving in their current management roles and on the Board"); Lakhani Dep. 345–46 (testifying that his impression when he joined the Board at the end of 2024 was that the Founders were "committed to the shared mission," particularly when "we were potentially entering the most exciting phase of the company"); Kim Dep. 191–92 (testifying that he was unaware of any immediate risk of Prince leaving the Company); DX 54 at SC0001913 (Prince texting Sandell that "it's in the company's interest to preserve control in management probably beyond my lifetime" and "if I die and economic interest transfers then you have one less chit to offer future CEO"). *But see* Ledbetter Dep. 136–38 (testifying to "[m]ore than five, fewer than 20" times Prince threatened to resign); *id.* at 135 ("Matthew has on a number of occasions talked about the stresses of his job and . . . asked whether or not it's worth it."); Sandell Dep. 137 ("it was Michelle, and to a lesser degree Matthew, who had made it clear to the company that they might not always be there"); *id.* at 139 ("I think Matthew had a longer time horizon for how long he wanted to serve in the company. But . . . he had also said a number of times that he might leave sooner than that to both Carl and to me."); *id.* ("we were all terrified if Michelle left").

The defendants argue that the Founders are free to step down at any time, and they have the financial freedom to leave without giving up voting control. *See, e.g.*, AB at 1; *see also* Suder Dep. 223–24 ("Our focus was on the service commitment, which was of huge value. . . . There were no service commitments in place."); Sandell Dep. 205–06 ("[W]e were very focused on finding a way to convince these two founders to give us a commitment to serve the company rather than allowing them the

There were three Governance Requirements:

- The Board must have a majority of directors who qualify as "independent" under NYSE listing rules, do not have any material relationship with the Founders, and do not have any other relationship that would interfere with their exercise of independent judgment. That had been the Company's historical practice, and nothing suggests that the Company intended to depart from it.[138]

- A majority of the independent directors would have to approve any Class C issuance with a fair market value of more than $100 million if used as consideration for an acquisition. As long as the Board had a majority of independent directors, that requirement added little.

- The Class A and Class C shares would be entitled to receive the same amount and form of consideration on a per-share basis in connection with any merger, combination, consolidation, or reorganization.

The Founders accepted those terms. The Company then submitted the proposal to the NYSE, which confirmed that the transaction would not require a stockholder vote.

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flexibility to come and go as they like and potentially maintain control of the company forever without anything to do with it . . . ."); Lakhani Dep. 120–21 ("[W]e need the cofounders . . . to continue to be engaged in the company, especially in the next five years."). True, but if the Founders left, they would give up control over the Company they founded at a time when it seemed poised to be one of the leaders of the AI revolution. They would also give up control over the value of their equity. The record as a whole suggests there is no meaningful risk of the Founders leaving.

[138] *See, e.g.*, PX 23 at CENTERVIEW_00026898 (notes from April 2, 2026 Committee meeting: "Karim on controlled-company governance accommodations: company has always had a majority independent board. This codifies they would never pivot away from that even if the exemption is technically available"); PX 43 at CENTERVIEW_00026731 (notes from April 2, 2026 Committee meeting: "The company has always had majority independent Board"; "We would never pivot to non-majority independent Board").

On May 28, 2026, the Committee unanimously recommended that the Board approve and adopt the recapitalization in its agreed-upon form (the "Recapitalization"). The Board approved it the next day.

The Recapitalization dramatically expanded the Founders' ability to divest equity without losing voting control. Before the Recapitalization, the principal constraint on the Founders' sales was the threat of losing voting control. The Safe Harbor Statute treats one-third of a corporation's voting power as a floor for non-majority control, so the following high-level analysis uses that metric.

Without the Recapitalization, the Founders could sell 17,518,686 of their 34,710,032 Class B shares plus all of their 145,145 Class A shares before falling below the one-third floor. Using the closing price of $209.22 per Class A share on May 27, 2026, the Founders could generate approximately $3,695,626,722 in proceeds by engaging in those sales.[139]

After the Recapitalization, control rests in the Preferred Stock, so loss of voting control is no longer a meaningful risk. The real constraint is an ownership sunset resulting from the Founders falling below the Capital-at-Risk Requirement. Before hitting that requirement, the Founders can sell 20,913,106 of their 34,855,177 Class A shares plus all 34,855,177 of their Class C shares. Using an estimated post-

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[139] These calculations differ slightly from what the plaintiffs presented because they based their calculations on 33.0% ownership instead of the one-third floor in the Safe Harbor Statute. *See* OB at 40 (Scenario D).

Recapitalization trading price of $104.61 per share, the Founders could generate approximately $5,833,920,085 by engaging in those sales.

The plaintiffs used the delta between those figures to reflect the benefit that the Recapitalization affords the Founders. In their view, the Recapitalization's real-world effect is to enable the Founders to generate an additional $2,138,293,363 without losing control.

The Committee never sought a fairness opinion or otherwise analyzed the economic value of the Recapitalization. The Committee also never valued the tax or estate planning benefits that the Founders received or considered the valuation implications of widening the "wedge" between the Founders' voting power and their cash-flow rights.

H. The Stockholder Vote

At its 2026 annual meeting, the Company sought stockholder approval for several components of the Recapitalization, including the Non-Voting Stock Authorization and the Class C Split.[140] On June 9, 2026, the Company filed its definitive proxy statement (the "Proxy Statement"). The Proxy Statement explained

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[140] Beyond the Non-Voting Stock Authorization and the Class C Split, the Company sought stockholder approval to amend the Charter to (i) increase the number of authorized Class A shares, (ii) increase the number of authorized shares of Preferred Stock, (iii) require the equal treatment of Class A, B, and C shares, and (iv) provide that the majority of the independent directors would have to approve any Class C issuance with a fair market value of more than $100 million if used as consideration for an acquisition. The stockholders voted on each of the six parts individually, but the implementation of each proposal was cross-conditioned on the approval of the others. The Company did not seek stockholder approval for the authorization of a new series of preferred stock or the Class B Exchange.

that the Recapitalization "address[es] immediate Co-Founder voting power dilution and future Co-Founder voting power dilution that would otherwise come through Co-Founder sales of Class A common stock."[141]

On June 15 and 18, 2026, Glass Lewis and ISS recommended that stockholders vote against the Recapitalization. They reasoned that "[i]t is unclear how providing the means for the company's co-founders to monetize their substantial equity interests in the company without having to give up voting power would be beneficial for unaffiliated or disinterested shareholders."[142] ISS stated that "it is quite concerning that the company did not condition approval of such a drastic change in capital structure on a 'majority-of-the-minority' vote, especially when these actions will have outsized benefits to only two insiders."[143]

The Company held its annual meeting on June 30, 2026. Depending on the component, shares representing approximately 58% to 59% of the Company's outstanding voting power voted in favor.[144] The Founders held 50.3% of the outstanding voting power.[145] Excluding their shares reveals widespread non-support

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[141] Proxy Statement at 48.

[142] PX 72 at 1; *see also* PX 73 at 19–20.

[143] PX 72 at 26.

[144] *See* PX 74; Proxy Statement at 3.

[145] Proxy Statement at 62; *see also id.* at 33 (disclosing that because the Founders hold "more than a majority of our total outstanding voting power as of the Record Date, the Co-Founders . . . have the power to approve and adopt [Proposal 4] without the affirmative vote of any other stockholder" (emphasis omitted)).

from other stockholders. Depending on the proposal, only 15.6% to 17.7% of the voting power carried by the remaining shares voted in favor.[146]

I. This Litigation

Stockholders filed suit challenging the Recapitalization. The operative complaint contains two counts. Count I asserts that the Founders breached their fiduciary duties as controlling stockholders by extracting the Recapitalization. Count II asserts that the nine directors breached their fiduciary duties by approving the Recapitalization.

The plaintiffs moved for a preliminary injunction. The parties conducted discovery, briefed the motion, and presented argument.

In related litigation, a different stockholder plaintiff challenged the validity of the Recapitalization, claiming it violated the Company's certificate of incorporation. The Company committed not to close the Recapitalization until the court had ruled.

On August 21, 2026, defendants' counsel reported that the Company intended to close the Recapitalization in mid-September. The court convened a teleconference, and the Company confirmed its intent. The court advised the plaintiffs that if they wanted to preserve the court's ability to rule on their application, they would need to

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[146] *See* PX 74; Proxy Statement at 62. These figures assume that the Founders voted all of their shares in favor. *See* Proxy Statement at 63 ("The Co-Founders have indicated that they intend to vote all of the shares of Class A common stock and Class B common stock that they beneficially own 'FOR' the approval and adoption of the New Certificate pursuant to this Proposal Four." (emphasis omitted)).

move for a temporary restraining order. The Company then backed off its plan to close.[147]

II. THE STANDARD FOR A PRELIMINARY INJUNCTION

The plaintiffs seek a preliminary injunction enjoining the Company from effectuating the Recapitalization pending a post-trial decision. "Delaware cases often describe the issuance of a preliminary injunction as 'extraordinary relief,' but not in the colloquial sense of amazing, astonishing, miraculous, or incredible."[148] The remedy is extraordinary in the sense of out of the ordinary, because a court usually does not grant relief until after a final adjudication. "A preliminary injunction departs from the ordinary course of a case because the court grants relief at a preliminary stage, based on a preliminary record."[149]

The standard for a preliminary injunction has three elements:

> When seeking a preliminary injunction, a plaintiff must demonstrate [(1)] a reasonable probability of success on the merits and [(2)] that some irreparable harm will occur in the absence of the injunction. Furthermore, in evaluating the need for a preliminary injunction, the Court must [(3)] balance the [moving party's] need for protection against any harm that can reasonably be expected to befall the [non-moving party] if the injunction is granted.[150]

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[147] Dkt. 92.

[148] *In re COVID-Related Restrictions on Religious Servs.*, 285 A.3d 1205, 1227 (Del. Ch. 2022).

[149] *Id.*

[150] *Mills Acq. Co. v. Macmillan, Inc.*, 559 A.2d 1261, 1278–79 (Del. 1989) (enumeration added) (citation omitted).

The court need not weigh the elements equally, and a strong showing on one element can compensate for a weaker showing on another.[151]

III. A THREAT OF IRREPARABLE HARM

The "*sine qua non* of preliminary injunctive relief" is threatened irreparable harm "that will befall [the plaintiffs] between now and trial unless an injunction issues."[152] The irreparable harm element is the most important of the three requirements for preliminary injunctive relief, because "the purpose of a preliminary injunction is to preserve the status quo so that the court can hold a trial, make findings of fact, render conclusions of law, and issue a remedy."[153] If there is no threat of imminent irreparable harm, "then the matter can be addressed through the final remedy."[154]

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[151] *Cantor Fitzgerald, L.P. v. Cantor*, 724 A.2d 571, 579 (Del. Ch. 1998), *abrogated in part on other grounds by State v. Monsanto Co.*, 299 A.3d 372 (Del. 2023); *see also In re Est. of Wolhar*, 2018 WL 721417, at *3 (Del. Ch. Feb. 6, 2018) (explaining that "[s]ome showing is required for each element").

[152] *Kingsbridge Cap. Gp. v. Dunkin' Donuts Inc.*, 1989 WL 89449, at *4 (Del. Ch. Aug. 7, 1989); *accord Nebeker v. Berg*, 115 A. 310, 311 (Del. Ch. 1921) ("Such [preliminary] injunction generally is employed to prevent mischief to come, and ought to do no more than preserve the status quo pending the decision of the cause at the final hearing on proofs taken." (internal quotation marks omitted)).

[153] *COVID-Related Restrictions*, 285 A.3d at 1228.

[154] *Id.*; *see* Samuel L. Bray, *The Purpose of the Preliminary Injunction*, 78 Vand. L. Rev. 809, 845 (2025) ("The preliminary injunction is preserving the status quo *as a means of safeguarding the efficacy of the court's remedial options*. . . . The parties should not be allowed to impair the court's remedial options with actions they take during the pendency of the litigation.").

A court's inability to rescind a closed transaction after trial can threaten irreparable harm.[155] When a commercial transaction like a merger or recapitalization closes, the very complexity of the transaction "makes it impracticable to unwind."[156] Obstacles to rescission include the need to restore the consideration exchanged, effects on third parties and how to account for them in the remedy, and the challenge of addressing follow-on actions that parties may have taken in reliance on the closed transaction, as well as potential tax ramifications and accounting issues.[157]

The plaintiffs seek an injunction against the Recapitalization, which the defendants otherwise intend to implement as soon as possible. The Recapitalization

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[155] *See Police & Fire Ret. Sys. of City of Det. v. Bernal*, 2009 WL 1873144, at *2 (Del. Ch. June 26, 2009) (explaining that a movant seeking a preliminary injunction may "establish[] a sufficient likelihood of irreparable injury" where "it would be impossible to unscramble the eggs by attempting to unwind the [transaction] once it has been completed" (internal quotation marks omitted)).

[156] *In re Tesla, Inc. Deriv. Litig.*, 351 A.3d 1005, 2025 WL 3689114, at *12 (Del. 2025) (TABLE) (internal quotation marks omitted); *see also In re Lukens Inc. S'holders Litig.*, 757 A.2d 720, 728 (Del. Ch. 1999) (observing that rescission is "plainly futile" after transaction closed because at that point "it is impossible to unscramble the eggs"), *aff'd sub nom. Walker v. Lukens, Inc.*, 757 A.2d 1278 (Del. 2000); *Gimbel v. Signal Cos., Inc.*, 316 A.2d 599, 603 (Del. Ch.) ("[T]he imminent threat of the closing of the [transaction] does present a situation where it may be impossible to unscramble the eggs." (internal quotation marks omitted)), *aff'd*, 316 A.2d 619 (Del. 1974) (per curiam).

[157] *See Tesla, Inc. Deriv. Litig.*, 2025 WL 3689114, at *12 (identifying potential impediments to rescission); *see also Level 4 Yoga, LLC v. CorePower Yoga, LLC*, 2022 WL 964112, at *1 (Del. Ch. Mar. 31, 2022) (granting relief in part due to difficulty CorePower would face "unwind[ing]" its assumption of thirty-four yoga studios and accompanying "assets and liabilities" after a successful appeal); *T. Rowe Price Recovery Fund, L.P. v. Rubin*, 770 A.2d 536, 557–58 (Del. Ch. 2000) ("[I]t will be considerably more difficult, if not impossible, to fashion a full and adequate equitable remedy after trial on the merits.").

will transform the Company's traditional dual-class structure into a multi-class structure that adds a new issuance of preferred stock and a new class of non-voting stock. The Recapitalization contemplates a mandatory exchange of Class B stock for preferred stock and Class A stock, and the division of the Class A stock into a combination of Class A and non-voting Class C stock. If the Recapitalization closes, then the Company will issue millions of new shares of non-voting stock to public stockholders. Attempting to unwind the Recapitalization after its implementation would be effectively impossible.[158]

That leaves the question of whether damages might be sufficient. This court has suggested means of crafting damages awards for transactions lacking a price term, primarily by using market indicators that imply a value for control or for changes in stockholder rights.[159] The Delaware Supreme Court has questioned one

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[158] *See, e.g.*, PX 93 at 4 (Committee counsel observing that it would be hard for a court to "unscramble the eggs").

[159] *See Palkon v. Maffei*, 311 A.3d 255, 286 (Del. Ch. 2024) ("[T]he change in the Company's trading price should help quantify the harm, if any, caused by the conversion. As long as the market for the Company's common stock is semi-strong-form efficient, then the price reaction should be indicative. Note that the stock price need not fairly approximate a pro rata share of the Company's intrinsic value for the price reaction to matter. As long as any pricing disconnects remain[] consistent across variables other than the governing law, the price impact should provide insight. Not only that, but the announcement of the conversion should have a relatively clean price impact. The Company's conversion was not conditioned on a majority-of-the-minority vote, so nothing could prevent Holdings from implementing it. There is, of course, always some uncertainty about whether a transaction will close, but here, the likelihood of closure would have been high. The price reactions to other events, such as the announcement of the vote or the filing of this litigation, may provide additional datapoints."), *rev'd*, 339 A.3d 705 (Del. 2025); *Dollens v. Goosehead Ins., Inc.*, — A.3d —, —, 2026 WL 1894296, at *44 (Del. Ch. June 30, 2026) (deriving implied benefit

approach that the parties' experts have deployed in this case.[160] Distinguished scholars have asserted that a court cannot judge the substantive fairness of a transaction like the Recapitalization, cannot determine the margin by which it is substantively unfair, and therefore cannot craft a damages remedy.[161] It seems unlikely that the court could develop a sufficiently reliable damages award.

Irreparable harm exists.

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from settlement by using methods scholars have used to value control, including comparing the trading prices of high-vote and low-vote shares, comparing the pricing of large block trades with the market trading prices, and comparing the market price of a share of common stock with the implied market price of a synthetic share of non-voting stock constructed using matching put and call options); *In re Columbia Pipeline Gp., Inc. Merger Litig.*, 299 A.3d 393, 498–99 (Del. Ch. 2023) (deriving damages award for breach of duty of disclosure by taking into account methods scholars have used to value control), *rev'd on other grounds*, 342 A.3d 324 (Del. 2025).

[160] *Maffei*, 339 A.3d at 744 n.265 ("We note that the Vice Chancellor proposed an analysis based upon changes in stock prices before and after the announcement of such a redomestication. Even with a focus on litigation rights alone, such an approach would still be highly uncertain and speculative given the difficulty of isolating the effect of the differing statutory schemes alone, given the presence of other important factors that weigh in the analysis and other variables that could affect the stock price." (citations omitted)).

[161] Zohar Goshen, Assaf Hamdani & Dorothy Lund, *Fixing* MFW*: Fairness and Vision in Controller Self-Dealing*, 15 Harv. Bus. L. Rev. 577 (2025) (arguing that there is no reliable way for courts to value transactions that implicate the value of a controlling stockholder who provides a vision for the company); Zohar Goshen & Assaf Hamdani, *Corporate Control, Dual Class, and the Limits of Judicial Review*, 120 Colum. L. Rev. 941 (2020) (same); *see also* David J. Berger, Jill Fisch & Steven Davidoff Solomon, *Extending Dual-Class Stock: A Proposal*, 25 Theoretical Inquiries L. 23 (2024) (proposing a non-fiduciary, contractarian framework for evaluating the extension of a dual-class structure based on their belief that the effects of the transaction are non-quantifiable and courts therefore cannot evaluate their financial fairness or determine a fair price).

IV. BALANCING THE EQUITIES

The next element involves balancing the equities:

> [A] court must be cautious that its injunctive order does not threaten more harm than good. That is, a court in exercising its discretion to issue or deny such a preliminary remedy must consider all of the foreseeable consequences of its order and balance them. It cannot, in equity, risk greater harm to defendants, the public or other identified interests, in granting the injunction, than it seeks to prevent.[162]

Here, the equities weigh in favor of granting the injunction.

The plaintiffs seek a preliminary injunction that would prevent the Recapitalization from closing until after trial.

The consequences of not issuing the injunction are significant. The plaintiffs will suffer irreparable harm, and the court's ability to grant relief will be severely limited.

By contrast, the issuance of a preliminary injunction will only delay the defendants' transaction. The Recapitalization does not require any third party's involvement and is something the Company can implement unilaterally. If the court enjoins the Recapitalization, the deal will not be lost. The prospect that an injunction would jeopardize a third-party opportunity has often been the basis for denying injunctive relief based on the balancing of hardships,[163] but that concern does not

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[162] *Lennane v. ASK Comput. Sys., Inc.*, 1990 WL 154150, at *6 (Del. Ch. Oct. 11, 1990) (Allen, C.).

[163] *E.g.*, *Solash v. Telex Corp.*, 1988 WL 3587, at *13 (Del. Ch. Jan. 19, 1988) (Allen, C.) ("[T]he balance of harm in this situation in which there is no alternative transaction and issuance of the injunction inescapably involves a risk that the shareholders will lose the opportunity to cash in their investment at a substantial

exist here. The defendants attempt to shoehorn the case into the lost-transaction bucket by contending that without the Recapitalization, one or both Founders "will be free to leave the Company at any time" while maintaining voting control.[164] The record does not support a likelihood that either Founder would leave before the case can be tried.

The balancing of the equities favors injunctive relief. As long as the plaintiffs can show a reasonable probability of success on the merits, an injunction to preserve the status quo is warranted.

V. A REASONABLE PROBABILITY OF SUCCESS ON THE MERITS

The pivotal element for the injunction is whether the plaintiffs can establish a reasonable probability of success on the merits.[165] To prevail at trial, the plaintiffs must prove their claims by a preponderance of the evidence, which "means proof that something is more likely than not."[166] By definition, that level of proof does not

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premium requires not only a special conviction about the strength of the legal claim asserted, but also a strong sense that the risks in granting the preliminary relief of a[n] untoward financial result from the stockholders' point of view [are] small. . . . At least on facts such as these, a due respect for the interests of the class on whose behalf these exhortations are made, requires, in my judgment, that this invitation be declined."); *see In re Netsmart Techs., Inc. S'holders Litig.*, 924 A.2d 171, 207–08 (Del. Ch. 2007) (describing how the balancing of the hardships operates under different transactional scenarios).

[164] AB at 71–72.

[165] *See Gimbel*, 316 A.2d at 602.

[166] *Agilent Techs., Inc. v. Kirkland*, 2010 WL 610725, at *13 (Del. Ch. Feb. 18, 2010) (internal quotation marks omitted).

require certainty. It means a quantum of evidence that, "when compared to the evidence opposed to it, has the more convincing force and makes you believe that something is more likely true than not."[167]

At the preliminary injunction stage, a party does not have to prevail by a preponderance of the evidence. The movant must demonstrate "a reasonable probability" that it can prove its claims by a preponderance of the evidence.[168] Linking the standards together demonstrates that the test for a preliminary injunction "falls well short of that which would be required to secure final relief following trial, since it explicitly requires only that the record establish a reasonable probability that this greater showing will ultimately be made."[169] That said, the burden is not a light one, and a preliminary injunction will never be granted unless earned.[170]

For purposes of this case, evaluating whether the plaintiffs have established a reasonable probability of success involves a two-step inquiry. Initially, the court must determine whether the Recapitalization enjoys the protection of the Safe Harbor Statute. If a safe harbor applies, then the Recapitalization "may not be the subject of

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[167] *Id.*

[168] *C & J Energy Servs., Inc. v. City of Mia. Gen. Empls.' & Sanitation Empls.' Ret. Tr.*, 107 A.3d 1049, 1067 (Del. 2014) (internal quotation marks omitted).

[169] *Cantor Fitzgerald, L.P.*, 724 A.2d at 579 (internal quotation marks omitted).

[170] *Buckeye P'rs, L.P. v. GT USA Wilm., LLC*, 2020 WL 2551916, at *5 (Del. Ch. May 20, 2020).

equitable relief, or give rise to an award of damages."[171] If a safe harbor does not apply, then the analysis proceeds to the second step. At that point, the court must assess whether the plaintiffs have established a reasonable probability of success on the merits of their claim.

On the current record, the plaintiffs have shown a reasonable probability of demonstrating at trial that the Safe Harbor Statute does not apply. At trial, the defendants may still prevail under the Safe Harbor Statute, but they will have to testify live so that the court can judge their credibility and determine that they properly complied with the statute's requirements.

If the Safe Harbor Statute does not apply, then entire fairness governs. Under that test, the plaintiffs have a reasonable probability of succeeding on the merits. The defendants will have the burden of showing that the Recapitalization is entirely fair. The current record suggests that the defendants can muster some evidence of fairness, but there are questions about whether they can carry their burden. At present, the plaintiffs have shown a reasonable probability of success on their claim for breach of fiduciary duty.

A. The Safe Harbor Statute

Enacted in 2025, the Safe Harbor Statute provides greater certainty, predictability, and protection against litigation than the common law had provided. The safe harbors achieve that goal by taking the common-law doctrines that existed

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[171] 8 *Del. C.* § 144(b).

before the Safe Harbor Statute, tweaking them to make the requirements easier to meet, and then providing remedial immunity when those requirements are met.[172]

The Safe Harbor Statute establishes three safe harbors. One addresses transactions involving conflicted directors and officers (the "D&O Safe Harbor"). Another addresses going-private transactions with conflicted controlling stockholders (the "Freeze-Out Safe Harbor"). A third addresses all other transactions involving conflicted controlling stockholders (the "General Controller Safe Harbor").

The defendants invoke the General Controller Safe Harbor, which states:

> A controlling stockholder transaction (other than any going private transaction) may not be the subject of equitable relief, or give rise to an award of damages, against a director or officer of the corporation or any controlling stockholder or member of a control group, by reason of a claim based on a breach of fiduciary duty by a director, officer, controlling stockholder, or member of a control group, if:
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> (1) The material facts as to such controlling stockholder transaction (including the controlling stockholder's or control group's interest therein) are disclosed or are known to all members of a committee of the board of directors to which the board of directors has expressly delegated the authority to negotiate (or oversee the negotiation of) and to reject such controlling stockholder transaction, and such controlling stockholder transaction is approved (or recommended for approval) in good faith and without gross negligence by a majority of the disinterested directors then serving on the committee; provided that the

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[172] *See* Eric S. Klinger-Wilensky, John P. DiTomo & Kyle A. Pinder, *Thirty Years Later – Why Corporations Continue to Choose Delaware: General Perspectives and Thoughts on 2025 DGCL Amendments*, Corp. Governance Advisor, July/Aug. 2025, at 1, 13, https://www.morrisnichols.com/media/publication/15513_CorporateGovernanceAdvisor-July-2025-ThirtyYearsLater.pdf [https://perma.cc/93F9-RKDA] (comparing common-law mechanism with the Safe Harbor Statute and identifying key differences, explaining that the amendments "certainly changed some of the requirements for utilizing a cleansing mechanism and will likely require stronger pleadings to survive a motion to dismiss").

> committee consists of 2 or more directors, each of whom the board of directors has determined to be a disinterested director with respect to the controlling stockholder transaction; or
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> (2) Such controlling stockholder transaction is conditioned, by its terms, as in effect at the time it is submitted to stockholders for their approval or ratification, on the approval of or ratification by disinterested stockholders, and such controlling stockholder transaction is approved or ratified by an informed, uncoerced, affirmative vote of a majority of the votes cast by the disinterested stockholders; or
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> (3) Such controlling stockholder transaction is fair as to the corporation and the corporation's stockholders.[173]

The General Controller Safe Harbor thus establishes three alternative paths to remedial immunity. One involves disinterested committee approval (the "Committee-Approval Path"). Another involves disinterested stockholder approval (the "Stockholder-Approval Path"). The third involves proving fairness (the "Fairness Path"). The Fairness Path, however, overlaps with the substantive content of a claim for breach of fiduciary duty under the entire fairness test. It functions to preserve Section 144's statutory role in overriding the common-law rule that interested transactions could be challenged as statutorily invalid.[174]

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[173] 8 *Del. C.* § 144(b).

[174] *See* Blake Rohrbacher, John Mark Zeberkiewicz & Thomas A. Uebler, *Finding Safe Harbor: Clarifying the Limited Application of Section 144*, 33 Del. J. Corp. L. 719, 719–20 (2008) (explaining the limited role of the 1967 version of Section 144; "By its own terms, section 144 deals with a specific sliver of transactions in which directors and officers of a corporation have an interest. Its stated purpose is to rescue those transactions from per se voidability if they qualify for safe-harbor protection under the statute. That is, section 144 does not validate those transactions; it merely prevents them from being invalidated due solely to any director's or officer's interest."); S. Samuel Arsht & Walter K. Stapleton, *Delaware's New General Corporation Law: Substantive Changes*, 23 Bus. Law. 75, 82 (1967) [hereinafter

The defendants argue that the Recapitalization complied with the Committee-Approval Path of the General Controller Safe Harbor. They claim remedial immunity for themselves and the Recapitalization.

The plaintiffs disagree. They contend that an express exclusion to the Safe Harbor Statute preserves their challenge to the Recapitalization. They also assert that the defendants failed to satisfy all of the requirements of the Committee-Approval Path.

To address these contentions, the court must explore the meaning of the Safe Harbor Statute. That task involves statutory interpretation and construction. Both are purely legal issues suitable for resolution at this stage of the case.[175] The act of construing a statute to determine whether its meaning is plain or ambiguous presents a question of law.[176] So does the act of construing an ambiguous statute.[177]

Substantive Changes] (explaining that the 1967 version of Section 144 was designed to remove the specter of invalidity of an interested transaction and that "the effect of the statute is not necessarily to validate the transaction but simply to put it on the same footing as any other corporate transaction").

[175] *See Richardson v. State*, 673 A.2d 144, 145–46 (Del. 1996) ("Statutory interpretation involves a purely legal determination.").

[176] *See Progressive N. Ins. Co. v. Mohr*, 47 A.3d 492, 496 (Del. 2012) (treating as a question of law whether a statute "is plain on its face and susceptible only to the meaning [one party] ascribes to it" or "whether the statute is also reasonably susceptible to the opposite interpretation advocated by [the other party]"); *see generally Colonial Ins. Co. of Wis. v. Ayers*, 772 A.2d 177, 179 (Del. 2001) ("Judicial construction of a statute is a determination of law.").

[177] *See Progressive*, 47 A.3d at 500 (treating construction of an ambiguous statute as a question of law).

The goal of statutory construction "is to give effect to the policy intended by the General Assembly."[178] As a starting point, the court "must seek to ascertain and give effect to the intention of the Legislature as expressed in the Statute itself."[179] "Words and phrases shall be read with their context and shall be construed according to the common and approved usage of the English language."[180] Consistent with that command, the Delaware Supreme Court has instructed courts to "give the statutory words their commonly understood meanings."[181]

"[I]f a statute is unambiguous, there is no need for judicial interpretation, and the plain meaning of the statutory language controls."[182] That is, "where the language

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[178] *Arnold v. State*, 49 A.3d 1180, 1184 (Del. 2012) (internal quotation marks omitted); *accord Eliason v. Englehart*, 733 A.2d 944, 946 (Del. 1999); *see also Giuricich v. Emtrol Corp.*, 449 A.2d 232, 238 (Del. 1982) ("It is fundamental that the Courts ascertain and give effect to the intent of the General Assembly as clearly expressed in the language of a statute.").

[179] *Keys v. State*, 337 A.2d 18, 22 (Del. 1975); *accord Stoltz v. Wilm. Tr. Co.*, 1992 WL 127516, at *5 (Del. Ch. June 9, 1992) (Allen, C.) ("[T]he words of the statute themselves are the first and most authoritative source of the meaning of its command." (citation omitted)).

[180] 1 *Del. C.* § 303.

[181] *Kofron v. Amoco Chems. Corp.*, 441 A.2d 226, 230 (Del. 1982).

[182] *Eliason*, 733 A.2d at 946; *accord Hudson Farms, Inc. v. McGrellis*, 620 A.2d 215, 217 (Del. 1993) ("[I]f there is no reasonable doubt as to the meaning of the words used, the court's role is limited to an application of the literal meaning of the words.").

is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion."[183]

Only when the words of a statute "do not convey with clarity a single meaning when applied to a particular case . . . [is] a court . . . bound to interpret them."[184] A statute is ambiguous "if it is susceptible of two reasonable interpretations."[185] A statute is not ambiguous simply because the parties disagree about its meaning.[186] "[A] provision may be ambiguous when applied to one set of facts but not another."[187]

When a statute is "'reasonably susceptible' of different conclusions or interpretations, [courts] normally consider extrinsic evidence, such as legislative history and any historical applications of the text at issue."[188] "A court may also

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[183] *Friends of H. Fletcher Brown Mansion v. City of Wilmington*, 34 A.3d 1055, 1059 (Del. 2011) (cleaned up).

[184] *Stoltz*, 1992 WL 127516, at *5.

[185] *Taylor v. Diamond State Port Corp.*, 14 A.3d 536, 538 (Del. 2011).

[186] *Ross v. State*, 990 A.2d 424, 429 (Del. 2010).

[187] *Activision Blizzard, Inc. v. Hayes*, 106 A.3d 1029, 1034 (Del. 2013) (internal quotation marks omitted); *accord EEOC v. Curtiss-Wright Corp.*, 1982 WL 602, at *2 (D.N.J. Apr. 12, 1982) ("Statutory language is sometimes unambiguous in one context and ambiguous in another."); *Sullins v. Allstate Ins. Co.*, 667 A.2d 617, 619 (Md. 1995) ("A term which is clear in one context may be ambiguous in another.").

[188] *Jack Lingo Asset Mgmt., LLC v. Bd. of Adjustment of Rehoboth Beach*, 282 A.3d 29, 33 (Del. 2022).

consider how a statute evolved."[189] When the legislative history is not definitive, a court may apply canons of statutory construction to resolve ambiguities.[190] A court may also consider "the statute's apparent purpose, including relevant considerations of public policy."[191]

"In Delaware, the available legislative history is sparse and consists largely of the legislative synopsis."[192] Delaware courts also consider contemporaneous commentary from lawyers who participate in the drafting process.[193] Amendments to Delaware's entity statutes emerge from a process overseen by the Council of the

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[189] *Salama v. Simon*, 328 A.3d 356, 389 (Del. Ch. 2024), *aff'd*, 342 A.3d 373 (Del. 2025); *see VonFeldt v. Stifel Fin. Corp.*, 714 A.2d 79, 84 (Del. 1998) (tracing development of ambiguous statute).

[190] *See Dir. of Revenue v. Verisign, Inc.*, 267 A.3d 371, 377 (Del. 2021) ("If there is a legitimate ambiguity, we consult the canons of statutory construction and may consider legislative history.").

[191] *Salama*, 328 A.3d at 388.

[192] *Id.*; *see Bd. of Adjustment of Sussex Cty. v. Verleysen*, 36 A.3d 326, 332 (Del. 2012) ("A synopsis is a proper source for ascertaining legislative intent.").

[193] *See, e.g.*, *In re Fox Corp./Snap Inc.*, 312 A.3d 636, 644 (Del. 2024) (giving weight to "[c]ontemporaneous commentary from two members of the Delaware Corporation Law Revision Committee, Samuel Arsht and Walter Stapleton"); *Cede & Co. v. Technicolor, Inc.*, 758 A.2d 485, 495 n.59 (Del. 2000) (citing practitioner commentary on 1976 amendments to appraisal statute); *Klotz v. Warner Commc'ns, Inc.*, 674 A.2d 878, 881–82 (Del. 1995) (considering "commentaries written at the time the market exception and § 228 were added to Title 8 in 1967"); *Garfield v. Boxed, Inc.*, 2022 WL 17959766, at *5 n.41 (Del. Ch. Dec. 27, 2022) (considering "[c]ontemporaneous legal commentary on Section 242's language").

Corporation Law Section of the Delaware State Bar Association (the "Council").[194] The lawyers who serve as members of the Council and their firms issue client memoranda and other forms of commentary about statutory amendments.[195] Those materials "provide insight into the Council's purpose and the public policy considerations its members found persuasive."[196]

The Safe Harbor Statute followed a modified path.[197] Former Chief Justice Leo E. Strine, Jr., former Chancellor William B. Chandler, III, and professor emeritus Lawrence A. Hamermesh led an initial process in conjunction with attorneys from Richards, Layton & Finger, P.A. ("RLF").[198] They then worked with the Council to

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[194] *See* Marcel Kahan & Edward Rock, *The New Political Economy of Delaware Corporate Lawmaking*, 51 J. Corp. L. 865, 870–86 (2026) (describing the Council's traditional role); *accord Salama*, 328 A.3d at 388 ("The Council is principally (if not exclusively) responsible for drafting synopses for entity-related legislation.").

[195] That tradition emerged after the 1967 revision. *See Substantive Changes*, *supra*; S. Samuel Arsht & Walter K. Stapleton, *Analysis of the New Delaware Corporation Law* 321–45 (Prentice-Hall, Inc. 1967). It has only gained strength over the years.

[196] *See Salama*, 328 A.3d at 388 (noting that "[l]aw firms whose partners serve on the Council issued memoranda discussing the 2023 Amendments").

[197] *See* Klinger-Wilensky et al., *supra*, at 3 n.5 (noting that the Safe Harbor Statute "did not follow [Delaware's] typical process").

[198] *See* Jacob Owens & Karl Baker, *A Deep Dive into Landmark Changes in Corporate Law*, Del. Bus. Now (Feb. 19, 2025), https://www.delawarebusinessnow.com/news/spotlight_delaware/a-deep-dive-into-landmark-changes-in-corporate-law/article_211743a2-ef24-11ef-aa4c-bb1dc8e970d1.html#google_vignette [https://perma.cc/9CLH-P6TW] (discussing Strine, Chandler, and Hamermesh's leadership role); *accord* Lawrence Hamermesh & William Chandler III, *Delaware's Corporate Law, Proposed Amendments Play Fair*, Del. Bus. Times (Mar. 6, 2025), https://delawarebusinesstimes.com/news/viewpoint-

prepare the final bill.[199] The General Assembly passed the bill, and the Governor signed the Safe Harbor Statute into law.[200]

An article that Chief Justice Strine and Professor Hamermesh co-authored with former Justice Jack B. Jacobs[201] supplied foundational concepts for the

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sb21-chandler-hamermesh/ [https://perma.cc/K5HF-P4NV] (same); *see* Lisa A. Schmidt, *A Message from RLF President Lisa Schmidt* (Feb. 25, 2025), https://www.rlf.com/a-message-from-rlf-president-lisa-schmidt/ [https://perma.cc/YWF3-9TN9] ("Early this year, one of our attorneys was invited to assist a group of respected former members of Delaware's judiciary and prominent academics to help draft reforms to Delaware's corporate laws.").

[199] *See* Klinger-Wilensky et al., *supra*, at 3 n.5 (describing the Council's involvement).

[200] *See* 85 Del. Laws ch. 6 (2025).

[201] Lawrence A. Hamermesh, Jack B. Jacobs & Leo E. Strine, Jr., *Optimizing the World's Leading Corporate Law: A Twenty-Year Retrospective and Look Ahead*, 77 Bus. Law. 321 (2022) [hereinafter *Optimizing*].

statute.[202] RLF[203] and Wilson Sonsini[204] issued significant contemporaneous commentary, as did other law firms with Council representatives.[205] Those materials provide probative indications of legislative intent.

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[202] *See* Owens & Baker, *supra* ("Delaware leaders turned toward a scholarly paper written by former Chancellor Leo Strine Jr., Vice Chancellor Jack Jacobs and Delaware Law School professor Lawrence Hamermesh that largely laid out many of the proposed changes that ultimately ended up in Townsend's bill."); Hamermesh & Chandler, *supra* (citing the *Optimizing* article as the source of "the principles underlying the current legislation"); *see also* Schmidt, *supra* (submission to Delaware General Assembly stating that S.B. 21 sought to address issues identified in the *Optimizing* article). In some respects, such as the possibility of single-cleansing for controller transactions, the *Optimizing* article synthesized concepts that had been prominent for years. The *Optimizing* article served a valuable function for the statutory amendments by collecting and arguing for a combination of initiatives.

[203] *See* Richards, Layton & Finger, P.A., *Proposed Legislation to Amend the Delaware Corporation Law* (Feb. 18, 2025) [hereinafter RLF, *Proposed Legislation*], https://www.rlf.com/proposed-legislation-to-the-delaware-corporation-law/ [https://perma.cc/S23R-5TAG]; Richards, Layton & Finger, P.A., *Delaware Enacts Landmark Amendments to the General Corporation Law* (Mar. 26, 2025) [hereinafter RLF, *Delaware Enacts Amendments*], https://www.rlf.com/delaware-enacts-landmark-amendments-to-the-general-corporation-law/ [https://perma.cc/32M2-RDU8]; Richards, Layton & Finger, P.A., *Overview of the DGCL's Newly-Enacted Safe Harbor Procedures and Books and Records Regime* (Apr. 2, 2025) [hereinafter RLF, *Overview of Safe Harbors*], https://www.rlf.com/overview-of-the-dgcls-newly-enacted-safe-harbor-procedures-and-books-and-records-regime/ [https://perma.cc/P9YU-DNH8]; Robert L. Burns, Mark A. Kurtz & Sara T. Wagner, *Delaware Strengthens Its Corporate Law Advantage*, Del. Banker, Spring 2025, https://www.rlf.com/wp-content/uploads/2025/05/DB-Spring-25-RLF-Article.pdf [https://perma.cc/9Q6R-RG52].

[204] *See* Wilson Sonsini Goodrich & Rosati, *Delaware Legislators and Governor Propose Landmark Legislation* (Feb. 18, 2025) [hereinafter Wilson Sonsini, *Landmark Legislation*], https://www.wsgr.com/en/insights/delaware-legislators-and-governor-propose-landmark-legislation.html [https://perma.cc/JM7P-BA76]; Wilson Sonsini Goodrich & Rosati, *Delaware Enacts Landmark Corporate Law Amendments* (Mar. 26, 2025) [hereinafter Wilson Sonsini, *Delaware Enacts Amendments*],

1. The Injunction Exclusion

The plaintiffs raise a threshold impediment to the defendants' ability to invoke the Safe Harbor Statute. They say an exclusion for actions seeking certain types of injunctive relief renders the Safe Harbor Statute inapplicable.

The Safe Harbor Statute states that none of its three safe harbors:

> a. Limit or eliminate the right of any person to seek equitable relief on the grounds that an act or transaction, including a controlling stockholder transaction, was not authorized or approved in compliance with the procedures set forth in this chapter, was not authorized or approved in compliance with the certificate of incorporation or bylaws of the corporation, or is in violation of any plan, agreement, or order of any governmental authority to which the corporation is a party or subject; or
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> b. Limit judicial review for purposes of injunctive relief of provisions or devices designed or intended to deter, delay, or preclude a change of

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https://www.wsgr.com/en/insights/delaware-enacts-landmark-corporate-law-amendments.html [https://perma.cc/CJE6-P8V6].

[205] *See, e.g.*, Morris, Nichols, Arsht & Tunnell LLP, *Thirty Years Later—Why Companies Continue to Choose Delaware* (Feb. 18, 2025), https://www.morrisnichols.com/insights-thirty-years-later-why-companies-continue-to-choose-delaware-general-perspectives-and-thoughts-on-proposed-amendments [https://perma.cc/35LC-HX4S]; Morris, Nichols, Arsht & Tunnell LLP, *Delaware Adopts Safe Harbor Protections for Directors and Controlling Stockholders* (May 13, 2025), https://www.morrisnichols.com/insights-delaware-adopts-safe-harbor-protections-for-directors-and-controlling-stockholders [https://perma.cc/99TH-YGTQ]; Edward B. Micheletti & Jenness E. Parker of Skadden, Arps, Slate, Meagher & Flom LLP, *Delaware Tells Companies: 'Let's Stay Together'*, Harv. L. Sch. F. on Corp. Gov. (May 23, 2025), https://www.skadden.com/-/media/files/publications/2025/05/delaware_tells_companies_lets_stay_together.pdf?rev=ce1babcacfad47e9af8f4af29322c2e1 [https://perma.cc/DB6X-WJBH]; *see also* Am. Bar Ass'n Bus. L. Section, *A Sea Change for Transactions Involving Controlling Stockholders: New Delaware Law Section 144* at 22 (Sep. 19, 2025) [hereinafter *Sea Change*], https://www.youngconaway.com/content/uploads/2023/09/ABA-CLE-Controlling-SH_-DGCL-144-Changes-Fall-2025-BLS.pdf [https://perma.cc/5VAM-W83Z].

> control or other transaction involving the corporation or a change in the composition of the board of directors; or
>
> c. Limit or eliminate the right of any person to seek relief on the grounds that a stockholder or other person knowingly aided and abetted a breach of fiduciary duty by 1 or more of the directors of the corporation.[206]

The first exclusion addresses applications for equitable relief based on alleged failures of authorization or approval. The second exclusion addresses specified applications for injunctive relief (the "Injunction Exclusion"). The third exclusion addresses any type of relief based on a claim for aiding and abetting.

The plaintiffs invoke the Injunction Exclusion. Each side has offered a reasonable reading, rendering the exclusion ambiguous. Extrinsic evidence resolves the ambiguity and shows that the Injunction Exclusion does not apply to the Recapitalization.

a. The Plaintiffs' Reading

The plaintiffs advance a straightforward argument: The Founders currently exercise voting control over the Company through their Class B stock. The Founders faced the erosion and eventual loss of their voting control. The Founders' loss of voting control would mean that the Company would no longer have a controlling stockholder, and control instead would rest with all of the holders of the Class A shares. The Recapitalization self-evidently and admittedly has both the purpose and

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[206] 8 *Del. C.* § 144(d)(6).

effect of preserving the Founders' voting control.[207] This action seeks an injunction blocking the Recapitalization. Therefore, they conclude, this lawsuit falls within the exclusion providing that the Safe Harbor Statute does not "limit judicial review for purposes of injunctive relief of provisions or devices designed or intended to deter, delay, or preclude a change of control or other transaction involving the corporation."[208]

The plaintiffs start with "change of control." They cite a dictionary definition of the noun "change" where the first meaning is "the act, process, or result of changing" in the sense of "alteration."[209] They also cite a dictionary definition of the noun "control" where the first meaning includes the "power or authority to guide or manage," as in "[h]e took *control* of the family business."[210] They also cite historical

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[207] *See* Proxy Statement at 45 (advising stockholders that the Recapitalization was intended to address voting dilution); PX 71 at SC0000341 (Committee acknowledging that the Recapitalization would enable the Founders "to maintain voting control"); PX 95 at CENTERVIEW_00040139–41 (Centerview analyzing implications of Founders selling shares at their historic pace for Founders' voting control); Zatlyn Dep. 113 (explaining goal was to free up wealth "without losing voting control"); PX 23 at CENTERVIEW_00026894 (recapping call with Founders; takeaways include "[b]elow 40% is a psychological barrier" but that "[b]etween 40-50% control is workable"); PX 55 at SC0001913–14 (discussing scenarios allowing Founders to retain voting control if they fall below 50% economic interest).

[208] 8 *Del. C.* § 144(d)(6)(b).

[209] *See Change*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/change [https://perma.cc/M292-YN45], *cited in* Dkt. 86 ("RB") at 6.

[210] *See Control*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/control [https://perma.cc/ER67-C26T], *cited in* RB at 6.

usage, noting that as early as 1905, the *Wall Street Journal* referred to a "change of ownership of stock holdings from one man to several men" as an example of "a possible change of control in the case of the stock corporation itself."[211] And they cite market practice in the form of contracts that define "Change of Control" to include falling below "50% or more of the combined voting power."[212] As a matter of plain meaning, they conclude that for the Founders to fall below 50% of the voting power would constitute a "change of control" as traditionally understood.

The plaintiffs next turn to Delaware caselaw. They cite *QVC Network*,[213] which recognized that a change of control would occur, at a minimum, "[w]hen a majority of a corporation's voting shares are acquired by a single person or entity, or by a cohesive group acting together."[214] As part of its analysis, the Delaware Supreme Court observed that before the challenged merger, "the public stockholders (in the aggregate) currently own a majority of Paramount's voting stock" such that "[c]ontrol of the corporation is not vested in a single person, entity, or group, but vested in the

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[211] *See Mutuality in Life Insurance*, 30 Nat'l Corp. Rep. 37, 53 (Mar. 2, 1905) (describing a "change of ownership of stock holdings from one man to several men" as an example of "a possible change of control in the case of the stock corporation itself" (quoting *The Wall Street Journal*)), *cited in* RB at 6.

[212] Amscan Hldgs., Inc., Annual Report (Form 10-K, Ex. 4.6) at 6 (Apr. 13, 2011) ("Change of Control" included loss of control of "50% or more of the combined voting power"), *cited in* RB at 6.

[213] *Paramount Commc'ns Inc. v. QVC Network Inc.*, 637 A.2d 34, 42 (Del. 1994), *cited in* RB at 6.

[214] *QVC*, 637 A.2d at 43.

fluid aggregation of unaffiliated stockholders."[215] If the challenged merger was consummated, the post-transaction entity would have a single stockholder that would control a majority of the voting power.[216] The plaintiffs argue that if a change of control occurs when the voting power distribution shifts from widely held to majority control, it likewise occurs when going in the other direction. A phase change takes place not only when water becomes ice, but when ice becomes water. The plaintiffs conclude, therefore, that the Founders' loss of majority voting power would constitute a "change of control."

The plaintiffs next turn to "provisions or devices." They again start with the dictionary, this time citing definitions for the noun "device" that include "plan, procedure, [or] technique."[217] They again turn to caselaw, citing decisions that have referred to recapitalizations as "devices."[218]

The plaintiffs do not expound on the meaning of "deter, delay, or preclude." They regard it as self-evident that the Recapitalization was designed to delay and

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[215] *Id.*

[216] *Id.*

[217] *Device*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/device [https://perma.cc/G6BC-GZFN], *cited in* RB at 7.

[218] *See* RB at 7 (citing *Lacos Land Co. v. Arden Gp., Inc.*, 517 A.2d 271, 272–74, 278 (Del. Ch. 1986) (using "device" and "technique" interchangeably to refer to a recapitalization); *Southdown, Inc. v. Moore McCormack Res., Inc.*, 686 F. Supp. 595, 597–98 (S.D. Tex. 1988) ("This manipulation, Southdown alleges, also constitutes a breach of fiduciary duty because the only usefulness of the recapitalization plan is as an entrenchment device.")).

effectively preclude the change of control that would result if the Founders continued divesting their Class B shares at their historical pace. They also cite the Proxy Statement, which describes the Recapitalization as including "provisions" that could "delay or prevent changes in control."[219]

The defendants respond that the plaintiffs' reading cannot be right, because it would mean that "any transaction that could, at some point in the future, have an impact on voting power falls outside the bounds of [the Safe Harbor Statute], so long as the plaintiff seeks only injunctive relief."[220]

That is a slippery slope argument, and the plaintiffs point to footholds on the hill. The Injunction Exclusion requires that the measure be "designed or intended to deter, delay, or preclude a change of control," so the need to prove *scienter* limits the scope of the exclusion.[221] Delaware courts have drawn a similar line when distinguishing between inequitable stock issuances accomplished for the improper purpose of entrenchment and legitimate stock issuances effectuated to raise capital.[222] The plaintiffs have thus advanced a reasonable reading of the Injunction Exclusion.

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[219] Proxy Statement at 56, *cited in* RB at 7.

[220] AB at 54.

[221] RB at 8.

[222] *Compare WNH Invs., LLC v. Batzel*, 1995 WL 262248, at *8 (Del. Ch. Apr. 28, 1995) ("I have found that defendants' purported purpose for the dilutive issuance is a pretext and their true purpose was to defeat plaintiff's challenge to their control. Since the board acted for an improper purpose, plaintiff is entitled to the relief

b. The Defendants' Reading

The defendants respond with a reasonable reading of their own. In one part of their argument, the defendants ascribe a narrow meaning to "provisions or devices." They do not define those terms independently but contrast that phrase with other passages in the Safe Harbor Statute. One refers to any "act or transaction,"[223] and another refers to "an act or transaction, *including a controlling stockholder transaction*."[224] The defendants infer from this distinction that the Injunction Exclusion cannot encompass a *transaction* like the Recapitalization. The plaintiffs

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requested."), *Packer v. Yampol*, 1986 WL 4748, at *16 (Del. Ch. Apr. 18, 1986) (invalidating dilutive issuance designed to entrench directors' control and defeat proxy contest), *and Can. S. Oils v. Manabi Expl. Co.*, 96 A.2d 810, 813–14 (Del. Ch. 1953) (invalidating a board's issuance of stock where the primary purpose was entrenchment), *with Benihana of Tokyo, Inc. v. Benihana, Inc.*, 891 A.2d 150, 188–91 (Del. Ch. 2005) (rejecting challenge to dilutive issuance where directors acted for legitimate business purpose), *aff'd*, 906 A.2d 114 (Del. 2006), *Glazer v. Zapata Corp.*, 658 A.2d 176, 183–84 (Del. Ch. 1993) (rejecting challenge to dilutive stock issuance that was "an important step in realizing the business plan that the board had developed" and where the court did not believe that the issuance was "motivated solely, primarily, or even substantially as a defensive transaction"), *and Greenwald v. Batterson*, 1999 WL 596276, at *6 (Del. Ch. July 26, 1999) (dismissing claim for breach of fiduciary duty where "the dilution resulting from the issuance of large numbers of shares of ISCO common stock and the related decline in the market value of that stock [did not] support an inference that the directors approved the Financing Agreement solely or primarily to entrench themselves in office"); *see generally Freedman v. Rest. Assocs. Indus., Inc.*, 1987 WL 14323, at *9 (Del. Ch. Oct. 16, 1987) ("I take it to be established in our law that it would ordinarily be found to constitute an abuse of power for a board of directors to issue stock, not for the principal purpose of raising necessary or desirable capital, but . . . to preserve the existing board in office." (citations omitted)).

[223] *See, e.g.*, 8 *Del. C.* § 144(a); *id.* § 144(d)(1)–(d)(3); *id.* § 144(d)(7).

[224] *Id.* § 144(d)(6)(a) (emphasis added).

answer that the defendants' arguments assume that the term "device" cannot encompass either a "transaction" or a "controlling stockholder transaction."[225] The plaintiffs argue that when a transaction is used to deter, delay, or defeat an outcome, it can be called a "device."

The defendants likewise offer a narrow reading of "change of control or other transaction." They argue that a "change of control" can only refer to a transaction that shifts control *from* undifferentiated stockholders *to* a controlling stockholder and not any change going in the other direction.[226] They similarly contend that when read in context, the reference to "other transaction" means a stock-for-stock merger (or its equivalent) that does not involve a change of control, as in *Time-Warner*.[227] They conclude that those concepts cannot encompass a transaction like the Recapitalization. The plaintiffs respond that nothing about the phrase "change of control" limits its directionality, particularly in the context of devices that "delay[] or preclude a change of control." They also contend that the phrase "other transaction" is broad; nothing self-evidently limits it to stock-for-stock mergers or similar transactions.

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[225] RB at 7–8.

[226] Hearing Tr. 117 (describing this as the commonly understood meaning of "change of control" under Delaware law).

[227] *See Paramount Commc'ns Inc. v. Time Inc.*, 1989 WL 79880, at *23 (Del. Ch. July 14, 1989) ("But where, as here, the shares of both constituent corporations are widely held, corporate control can be expected to remain unaffected by a stock for stock merger. . . . Control of both remained in a large, fluid, changeable and changing market."), *aff'd*, 565 A.2d 280 (Del. 1989).

The defendants next expand the interpretive aperture to the phrase "provisions or devices designed or intended to deter, delay, or preclude a change of control or other transaction involving the corporation or a change in the composition of the board of directors," and they argue explicitly that this language encompasses only defensive measures that would trigger enhanced scrutiny in its principal forms.[228] Thus, it covers (1) stand-alone defensive devices like a stockholder rights plan (*Unocal*), (2) the deal-protection measures built into a merger agreement (*Revlon*), and (3) interference with director-election contests (*Blasius*). The absence of terms like "enhanced scrutiny" or "intermediate scrutiny" or "defensive measures" or "deal-protection devices" weakens that reading. So does the fact that the exclusion is not limited to the D&O Safe Harbor. There is also pre-Safe-Harbor-Statute caselaw recognizing that transactions (including restructurings, recapitalizations, and mergers) can function as defensive devices or deal protection measures for purposes

[228] *See* Hearing Tr. 116–17; AB at 54–55.

of *Unocal* and *Revlon* analyses.[229] Similarly, cases have considered stock issuances and restructurings as *Blasius* challenges.[230]

Lurking behind the defendants' arguments is the sense that some things are known. Within particular communities, concepts or phrases may have established meanings that outsiders would not recognize. To take a pedestrian example, if a lawyer reports that the judge dismissed the case "without prejudice," a non-lawyer may think the judge was unbiased. Lawyers know it means the plaintiff can refile.

Under the general rules of statutory interpretation, "technical words and phrases . . . [must] be construed and understood according to [their] peculiar and appropriate meaning."[231] The defendants' interpretation rests on concepts used in the

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[229] *See, e.g.*, *In re Santa Fe Pac. Corp. S'holder Litig.*, 669 A.2d 59, 72 (Del. 1995) (amendments to merger agreement); *Gilbert v. El Paso Co.*, 575 A.2d 1131, 1144 (Del. 1990) (defensive merger agreement); *Ivanhoe P'rs v. Newmont Min. Corp.*, 535 A.2d 1334, 1343 (Del. 1987) (restructuring); *Tomczak v. Morton Thiokol, Inc.*, 1990 WL 42607, at *9 (Del. Ch. Apr. 5, 1990) (sale of a division); *Henley Gp., Inc. v. Santa Fe S. Pac. Corp.*, 1988 WL 23945, at *13 (Del. Ch. Mar. 11, 1988) (restructuring); *Robert M. Bass Gp., Inc. v. Evans*, 552 A.2d 1227, 1235, 1239 (Del. Ch. 1988) (restructuring of one company as two companies).

[230] *See*, *e.g.*, *Coster v. UIP Cos., Inc.*, 300 A.3d 656, 674–75 (Del. 2023) (dilutive stock issuance); *MM Cos., Inc. v. Liquid Audio, Inc.*, 813 A.2d 1118, 1132 (Del. 2003) (board restructuring); *In re AMC Ent. Hldgs., Inc. S'holder Litig.*, 2023 WL 5165606, at *24 (Del. Ch. Aug. 11, 2023) (stock issuance, entrance into deposit agreement, and PIPE transaction), *aff'd sub nom. In re AMC Ent. Hldgs., Inc.*, 319 A.3d 310 (Del. 2024); *WNH Invs., LLC*, 1995 WL 262248, at *8 (dilutive issuance); *see also Martin Marietta Corp. v. Bendix Corp.*, 1982 WL 525140, at *1 (Del. Ch. Sep. 19, 1982) (Pac-Man defense), *aff'd*, 454 A.2d 764 (Del. 1982).

[231] 1 *Del. C.* § 303. The same principle applies when discerning the plain meaning of contracts. *See In re P3 Health Gp. Hldgs.*, 282 A.3d 1054, 1067 (Del. Ch. 2022) ("Put another way, 'unless a different intention is manifested' in the contract, . . . 'technical terms and words of art are given their technical meaning . . . .'" (quoting

backdrop of Delaware caselaw that pre-dated the Safe Harbor Statute. It provides another reasonable reading.

c. Resolving The Ambiguity

Because both sides have offered reasonable readings, the Injunction Exclusion is ambiguous. Resolving the ambiguity requires using extrinsic evidence to discern legislative intent.

The lead-up to the Safe Harbor Statute provides an important source of extrinsic evidence. The statute followed years of debate about the sufficiency of cleansing mechanisms for controlling stockholder transactions. After *Match* held that dual-cleansing was required as a matter of Delaware common law,[232] the General Assembly enacted the Safe Harbor Statute to displace *Match* and establish a different rule: dual-cleansing for going-private transactions and single-cleansing for all other conflicted controlling stockholder transactions.[233] The Recapitalization is a type of

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Restatement (Second) of Contracts § 202(3) (Am. L. Inst. 1981))); *Viking Pump, Inc. v. Liberty Mut. Ins. Co.*, 2007 WL 1207107, at *13 (Del. Ch. Apr. 2, 2007) (Strine, V.C.) ("[W]here a word has attained the status of a term of art and is used in a technical context, the technical meaning is preferred over the common or ordinary meaning."); *see also Penton Bus. Media Hldgs., LLC v. Informa PLC*, 252 A.3d 445, 461 (Del. Ch. 2018) ("When established legal terminology is used in a legal instrument, a court will presume that the parties intended to use the established legal meaning of the terms.").

[232] *In re Match Gp., Inc. Deriv. Litig.*, 315 A.3d 446, 471 (Del. 2024).

[233] *Rutledge v. Clearway Energy Gp. LLC*, 360 A.3d 1271, 1281–82 (Del. 2026) ("By enacting subsection (b) of § 144, the General Assembly displaced our ruling in *Match*. Subsection (c) retained the *MFW* framework—the requirement that both cleansing mechanisms be observed—but only for going-private transactions. In

conflicted controlling stockholder transaction that the Safe Harbor Statute sought to address. As the defendants explained when advancing their reading of the statute, the Injunction Exclusion draws on other lineaments of law involving enhanced scrutiny and uses associated concepts.

Other sources of legislative intent confirm this interpretation. Although the synopsis for the Safe Harbor Statute does not address the Injunction Exclusion, the *Optimizing* article provides insight. That article argued that single-cleansing should restore the business judgment rule for conflicted controlling stockholder transactions other than freeze-outs, regardless of the procedural context or the remedy sought.[234]

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essence, SB 21, and specifically subsections (b) and (c) of new § 144, codified the result that the defendants advocated, and we rejected, in *Match*." (footnotes omitted)).

[234] *Optimizing*, *supra*, at 379 (recommending that Delaware law "[r]estrict the *Lynch* inherent coercion doctrine and the bespoke *MFW* solution to it to the domain of going private mergers and tender offers with controlling stockholders or mergers with another company that the controller also controls"); *id.* at 344 ("Accordingly, Delaware law should embrace the direction of *MFW* and *Function Over Form*, by reaffirming that most conflict transactions, even with a controlling stockholder, receive the protection of the business judgment rule if one of the three [sic] traditional cleansing procedures is credibly employed."); *accord id.* at 339 ("We . . . would not apply *MFW* to all transactions with controlling stockholders: the *MFW* solution was tailored specifically to the problem created by the *Lynch* line of cases, namely that those cases created poor incentives in the going private merger context for transactional planners and encouraged wasteful litigation yielding no benefit for investors or society."); *see id.* at 337 (arguing that *MFW* was not envisioned "as imposing that solution on all controlling stockholder conflict transactions"); *id.* at 339 ("The *MFW* solution was never designed to apply to all transactions between controlling stockholders and companies. *MFW* repeatedly emphasized that it was addressing only the context of going private mergers . . . ."); *id.* at 340 ("[C]ontrolling stockholder representatives often serve and are compensated as executives, and compensation committees comprised of independent directors were developed in part to address the potential for such conflicts. We never understood that entire fairness review would be universally required in these common situations . . . .").

When the *Optimizing* article advanced that argument, the Court of Chancery had required double-cleansing to restore the business judgment rule for a reclassification that prevented the erosion of a dual-class structure.[235] The *Optimizing* article cited that case and called for single-cleansing, stating that dual-cleansing should not be required for "a certificate amendment that would create a class of high vote stock to be owned by the controller to enable it to maintain control while the company issues more equity to workers or other investors."[236] The *Optimizing* article nowhere suggests a carveout that would permit an action for injunctive relief to circumvent that policy proposal.

The *Optimizing* article also argued that enhanced scrutiny should not apply outside the context of pre-closing injunctive relief.[237] And it reflected Chief Justice Strine's view that the *Blasius* version of enhanced scrutiny should apply only to

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[235] *See IRA Tr. FBO Bobbie Ahmed v. Crane*, 2017 WL 7053964, at *11 (Del. Ch. Dec. 11, 2017) (stating that there is "no principled basis on which to conclude that the dual protections in the *MFW* framework should apply to squeeze-out mergers but not to other forms of controller transactions" and applying entire fairness).

[236] *Optimizing*, *supra*, at 343 n.105.

[237] *See id.* at 325 (arguing that although *Unocal* or *Revlon* could apply in the injunction setting, "[i]n a post-closing damages case, the review standard should require the plaintiff to prove a breach of the duty of loyalty and resulting damages"); *id.* at 329 n.35 ("Accordingly, the cases now recognize that neither *Unocal* nor *Revlon* provides a framework for analyzing claims for monetary damages."); *id.* (citing then-Chief Justice Strine's decision in *Corwin v. KKR Financial Holdings, LLC*, 125 A.3d 304, 312 (Del. 2015) ("*Unocal* and *Revlon* are primarily designed to give stockholders and the Court of Chancery the tool of injunctive relief to address important M&A decisions in real time, before closing. They were not tools designed with post-closing money damages claims in mind . . . .")).

director elections and elections touching on corporate control,[238] and not more broadly as some authorities suggested.[239] The Injunction Exclusion tracks those views.

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[238] *See Mercier v. Inter-Tel (Del.), Inc.*, 929 A.2d 786, 788 (Del. Ch. 2007) (arguing for applying *Blasius* within *Unocal* to "conduct that affects a corporate election"); *id.* at 808–09 ("An additional problem has existed. In dictum, *Blasius* seemed to suggest that its reasoning applied to all stockholder votes, not just those involving the election of directors. But the reasoning of *Blasius* is far less powerful when the matter up for consideration has little or no bearing on whether the directors will continue in office." (footnotes omitted)); *id.* at 811 ("Frankly, I do not believe that [a *Blasius*-imbued *Unocal* test] should be used as to director conduct not affecting either an election of directors or a vote touching on matters of corporate control."); *see also Kallick v. SandRidge Energy, Inc.*, 68 A.3d 242, 258 (Del. Ch. 2013) ("For reasons I have explained elsewhere, and will not repeat in detail, *Blasius*' importance rests more in its emphatic and enduring critical role in underscoring the serious scrutiny that Delaware law gives to director action that threatens to undermine the integrity of the electoral process, than in its articulation of a useful standard of review to decide actual cases. Precisely because our law embraces a republican model giving directors substantial authority to use their own judgment while in office, it is vital that the stockholders have a genuinely fair opportunity to elect new directors." (emphasis added)); *Optimizing*, *supra*, at 330 (arguing *Blasius* should be applauded "as an iconic reaffirmation of the principle that stockholders have a right to elect directors without electoral manipulation by management"); *cf.* Leo E. Strine, Jr. et al., *Loyalty's Core Demand: The Defining Role of Good Faith in Corporation Law*, 98 Geo. L.J. 629, 676 n.174 (2010) (implying *Blasius* should only apply to director election contests on the theory that *Blasius* involves "a specialized form of the entire fairness doctrine, whereby even if directors are acting in subjective good faith, they cannot act to prevent their own unseating without demonstrating a very powerful justification for their self-serving conduct"); Leo E. Strine, Jr., *The Story of* Blasius Industries v. Atlas Corp.*: Keeping the Electoral Path to Takeovers Clear*, *in Corporate Law Stories* 234, 290 n.137 (J. Mark Ramseyer ed., 2009) ("What is important for present purposes is that *Blasius*'s call for strong judicial policing of director conduct impairing the ability of stockholders to elect a new board has been heeded.").

[239] *See AMC Ent. Hldgs.*, 2023 WL 5165606, at *26 ("Every stockholder vote presents the opportunity for directors to seize power from stockholders. . . . Delaware law reveres all stockholder voting rights as sacrosanct. Directorial usurpation of stockholders' power to speak for themselves on issues other than corporate control still presents the conflict identified in *Blasius*." (footnotes omitted)); *State of Wis. Inv. Bd. v. Peerless Sys. Corp.*, 2000 WL 1805376, at *10–15 (Del. Ch. Dec. 4, 2000) (using *Blasius* to review alleged interference with vote on increase in number of shares in

Other commentary universally interprets the Safe Harbor Statute as implementing single-cleansing for non-freeze-out transactions, without any injunction-based exception.[240] The commentary also envisions limiting the Injunction

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stock option plan); *see also Coster*, 300 A.3d at 672–73 (treating *Blasius* as a form of enhanced scrutiny and applying it outside of a stockholder vote on directors or a change of control).

[240] *See, e.g.*, RLF, *Overview of Safe Harbors*, *supra* (explaining that the enacted version of Section 144 "provide[s] a safe harbor for transactions in which a director or officer, or a controlling stockholder or control group, may have a conflict of interest" and "set[s] forth clear procedures for corporations and transaction planners to follow to obtain the protection of the safe harbor for transactions that might otherwise be subject to judicial review under the entire fairness standard"); RLF, *Delaware Enacts Amendments*, *supra* ("This landmark legislation, widely endorsed by business groups and leading national law firms, is designed to reduce excessive stockholder litigation and reaffirm a foundational public policy of Delaware corporate law: deference to the decisions of independent directors and disinterested stockholders. Among other changes, the legislation amends Section 144 of the DGCL to provide transaction planners with procedural safe harbors for acts or transactions involving corporations and their directors, officers, and controlling stockholders."); Wilson Sonsini, *Landmark Legislation*, *supra* (stating that the Safe Harbor Statute would "permit[] controlling stockholder conflicts to be cleansed through either procedural mechanism—deferring to the decision of *either* independent directors or disinterested stockholders" and that "[t]he narrow exception would be in the context of a squeeze-out transaction in which the controller acquires the remaining shares, in which case both protections must be used to get business judgment rule protection"); Micheletti & Parker, *supra* ("If the statutory safe harbors are met, the deal 'may not be the subject of equitable relief' (e.g., cannot be enjoined) and will not give rise to a damages award. The clear statutory procedures also will help make the outcome of transactions more predictable for corporations and their boards, and make it less likely that stockholders will routinely file litigation over nearly every transaction that involves a controlling stockholder or control group."); *id.* ("The expectation is that the safe harbors and the additional clarity on crucial standards and procedures will reduce the number of suits against companies, controllers and directors that have engaged in a corporate transaction or act. The safe harbors are also designed to provide greater certainty for transaction planners, and the expectation is that, if the statutory requirements are met, more cases will be dismissed at an early stage.").

Exclusion to traditional enhanced scrutiny settings, not challenges to transactions where (but for a safe harbor) entire fairness would apply.[241]

Viewed against this backdrop, the plaintiffs' reading is unreasonable. It would undermine the safe harbor mechanic, and particularly the General Controller Safe Harbor, by creating an exception for actions seeking injunctive relief that fell within its parameters. Stockholders would be able to sidestep the single-cleansing regime by seeking injunctive relief, and transaction planners trying to benefit from the safe harbors would be back in an unpredictable world. The plaintiffs' reading also would broaden the Injunction Exclusion beyond the narrow categories of enhanced scrutiny where it was intended to apply. The defendants' reading, by contrast, accurately

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[241] *See* RLF, *Proposed Legislation*, *supra* ("New Section 144(d)(6) clarifies that revised Section 144 is not intended to limit the right of any person to seek equitable relief on the grounds that an act or a transaction, including a controlling stockholder transaction, was not validly authorized or approved in compliance with Delaware law. Thus, the safe harbor procedures do not displace any existing authorization requirements under the corporation's certificate of incorporation or bylaws or the default provisions of the DGCL. Section 144(d)(6) also clarifies that revised Section 144 is not intended to limit judicial review for purposes of injunctive relief of provisions or devices designed to deter, delay or preclude a change of control or other transaction (such as stockholder rights plans) or a change in the composition of the board of directors."); Klinger-Wilensky et al., *supra*, at 12 ("The [Injunction Exclusion] provides that the statute will not limit judicial review for purposes of injunctive relief with respect to defensive actions intended to deter, delay, or preclude a change in control or other transaction involving the company or a change in the composition of the board. Thus, challenges to, for example, poison pills or provisions such as recommendation change provisions and forward termination fees will continue to be subject to enhanced scrutiny review by default."); *Sea Change*, *supra*, at 22 ("The statute does not limit judicial review for purposes of injunctive relief of protective devices, such as deal protection measures (such as provisions limiting a target board's right to change its recommendation or providing for a termination fee upon accepting a topping bid) and devices intended to preclude a change in control (such as poison pills).").

reflects the jurisprudential backdrop of the Safe Harbor Statute and other evidence of legislative intent.

The Injunction Exclusion does not apply to this case.

2. The General Controller Safe Harbor

Because the Injunction Exclusion does not apply, the court must interpret the General Controller Safe Harbor. Framed for purposes of the preliminary injunction application, the court must determine whether the plaintiffs have established a reasonable probability of success on their contention that they can show at trial that the requirements of the General Controller Safe Harbor were not met.

The Committee-Approval Path of the General Controller Safe Harbor provides remedial immunity if:

> The material facts as to such controlling stockholder transaction (including the controlling stockholder's or control group's interest therein) are disclosed or are known to all members of a committee of the board of directors to which the board of directors has expressly delegated the authority to negotiate (or oversee the negotiation of) and to reject such controlling stockholder transaction, and such controlling stockholder transaction is approved (or recommended for approval) in good faith and without gross negligence by a majority of the disinterested directors then serving on the committee; provided that the committee consists of 2 or more directors, each of whom the board of directors has determined to be a disinterested director with respect to the controlling stockholder transaction . . . .[242]

That prose contains a series of requirements, not all of which are relevant to this case.

One of the requirements calls for the board to determine that each of the members of the safe harbor committee is "a disinterested director with respect to the

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[242] 8 *Del. C.* § 144(b)(1).

controlling stockholder transaction" (the "Disinterest Determination").[243] The Safe Harbor Statute elsewhere defines a "disinterested director" as "a director who is not a party to the act or transaction and does not have a material interest in the act or transaction or a material relationship with a person that has a material interest in the act or transaction."[244] The statute defines "material interest" as "actual or potential benefit, including the avoidance of a detriment, other than 1 which would devolve on the corporation or the stockholders generally, that (i) in the case of a director, would reasonably be expected to impair the objectivity of the director's judgment when participating in the negotiation, authorization, or approval of the act or transaction at issue and (ii) in the case of a stockholder or any other person (other than a director), would be material to such stockholder or such other person."[245] The statute defines "material relationship" as "a familial, financial, professional, employment, or other relationship that (i) in the case of a director, would reasonably be expected to impair the objectivity of the director's judgment when participating in the negotiation, authorization, or approval of the act or transaction at issue and (ii) in the case of a stockholder, would be material to such stockholder."[246]

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[243] *Id.*

[244] *Id.* § 144(e)(4).

[245] *Id.* § 144(e)(7).

[246] *Id.* § 144(e)(8).

Later, the Safe Harbor Statute provides that if a corporation "has a class of stock listed on a national securities exchange" and if the board determines that the director

> satisfies the applicable criteria for determining director independence from the corporation and, if applicable with respect to the act or transaction, the controlling stockholder or control group, under the rules (and interpretations thereof) promulgated by such exchange (treating the applicable controlling stockholder and control group as if the controlling stockholder and control group were the corporation for purposes of applying such criteria to determine independence from a controlling stockholder or control group),[247]

then the director "shall be presumed to be a disinterested director with respect to an act or transaction to which such director is not a party."[248] In the statute's language, that presumption "shall be heightened and may only be rebutted by substantial and particularized facts that such director has a material interest in such act or transaction or has a material relationship with a person with a material interest in such act or transaction" (respectively, the "Heightened Presumption" and the "Presumption Provision").[249]

The Committee-Approval Path also provides that "a majority of the disinterested directors then serving on the committee" must approve the transaction

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[247] *Id.* § 144(d)(2).

[248] *Id.*

[249] *Id.*

or recommend that the board approve it (the "Approval Requirement"). Those directors must make their decision "in good faith and without gross negligence."[250]

The plaintiffs challenge the Board's Disinterest Determinations, and they contend that the Recapitalization failed to satisfy the Approval Requirement. They also challenge whether the Committee members made their decision "in good faith and without gross negligence."

a. The Disinterest Determinations

The General Controller Safe Harbor requires a Disinterest Determination for each member of a safe harbor committee. The plaintiffs argue that the Board failed to make proper Disinterest Determinations for Lakhani and Sandell, rendering the Committee-Approval Path unavailable. That argument fails, but only after working through some steps.

Even when required by statute, a board determination is a fiduciary act. A stockholder plaintiff can therefore challenge a statutorily required determination under either dimension of Professor Berle's famous twice-tested inquiry.[251] The first dimension—Berle I—looks to whether corporate action complied with "the

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[250] *Id.* § 144(b)(1).

[251] Adolf A. Berle, Jr., *Corporate Powers as Powers in Trust*, 44 Harv. L. Rev. 1049, 1049 (1931) ("[I]n every case, corporate action must be twice tested: first, by the technical rules having to do with the existence and proper exercise of the power; second, by equitable rules somewhat analogous to those which apply in favor of a *cestui que trust* to the trustee's exercise of wide powers granted to him in the instrument making him a fiduciary."). Delaware follows the twice-testing formula. *E.g.*, *Coster v. UIP Cos., Inc.*, 255 A.3d 952, 960 (Del. 2021).

hierarchical components of the entity-specific corporate contract, comprising (i) the Delaware General Corporation Law, (ii) the corporation's charter, (iii) its bylaws, and (iv) other entity-specific contractual agreements."[252] For the Disinterest Determination, that Berle I inquiry requires only that the board make the determination.

"The second test—Berle II—involves equitable review and generally contends that fiduciaries breached their duties."[253] The Safe Harbor Statute's legislative history confirms that the statute does not displace fiduciary duties, which continue to operate when directors take the actions that the statute calls for. The synopsis states, for example, that "Revised § 144 provides that any approval or recommendation, as applicable, of disinterested directors or a disinterested director committee must be made in good faith and without gross negligence, making clear that the statute does not displace the common law requirements regarding core fiduciary conduct."[254] This court has explained that the fiduciary requirements extend beyond the ultimate cleansing vote to include "the fiduciary conduct through

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[252] *Quadrant Structured Prods. Co., Ltd. v. Vertin* (*Quadrant II*), 2014 WL 5465535, at *3 (Del. Ch. Oct. 28, 2014).

[253] *W. Palm Beach Firefighters' Pension Fund v. Moelis & Co.*, 310 A.3d 985, 1004 (Del. Ch. 2024), *rev'd on other grounds*, 360 A.3d 215 (Del. 2026).

[254] Del. S.B. 21 syn., 153d Gen. Assem. (2025); *see Dodiya*, 2026 WL 2517931, at *14 ("The legislative synopsis confirms the General Assembly's intent that Section 144 not displace common law fiduciary requirements.").

which the board or committee informed itself, deliberated, negotiated, and reached its decision."[255]

A court analyzes whether directors have breached their fiduciary duties for purposes of a Berle II inquiry by applying one of Delaware's standards of review, such as the business judgment rule, enhanced scrutiny standard, or entire fairness test.[256] But introducing a Berle II analysis into the Safe Harbor Statute risks circularity. If the involvement of a conflicted controlling stockholder elevated the standard of review for a Disinterest Determination to entire fairness, the statute would collapse inward upon itself. That outcome would negate the statute's benefits and short-circuit the intent to provide a safe harbor from entire fairness review. Along similar lines, this court declined to apply enhanced scrutiny under *Revlon* to evaluate a board's determination under the D&O Safe Harbor, even though the common law would have called for deploying that standard of review.[257]

This approach comports with how Delaware law analyzes exculpation under *Cornerstone*.[258] Under that framework,

> plaintiffs must plead a non-exculpated claim for breach of fiduciary duty against an independent director protected by an exculpatory charter

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[255] *Dodiya*, 2026 WL 2517931, at *13.

[256] *Ontario Provincial Council of Carpenters' Pension Tr. Fund v. Walton*, 294 A.3d 65, 88 (Del. Ch. 2023); *Reis v. Hazelett Strip-Casting Corp.*, 28 A.3d 442, 457 (Del. Ch. 2011).

[257] *Dodiya*, 2026 WL 2517931, at *13–14.

[258] *See In re Cornerstone Therapeutics, Inc., S'holder Litig.*, 115 A.3d 1173 (Del. 2015).

> provision, or that director will be entitled to be dismissed from the suit. That rule applies regardless of the underlying standard of review for the transaction. When a director is protected by an exculpatory charter provision, a plaintiff can survive a motion to dismiss by that director defendant by pleading facts supporting a rational inference that the director harbored self-interest adverse to the stockholders' interests, acted to advance the self-interest of an interested party from whom they could not be presumed to act independently, or acted in bad faith. But the mere fact that a plaintiff is able to plead facts supporting the application of the entire fairness standard to the transaction, and can thus state a duty of loyalty claim against the interested fiduciaries, does not relieve the plaintiff of the responsibility to plead a non-exculpated claim against each director who moves for dismissal.[259]

It seems logical that the Safe Harbor Statute would take a similar approach.

Under the resulting framework, a plaintiff could successfully challenge a Disinterest Determination by pleading that the board making the determination lacked a majority of disinterested directors, but with the analysis of disinterestedness and independence focused on material relationships with the directors being placed on the safe harbor committee. Perhaps in an egregious case, a plaintiff might be able to plead bad faith, such as if the board purported to determine that an obviously non-independent director (an immediate family member of the conflicted controlling stockholder?) was a disinterested director who could serve on a safe harbor committee.

Here, the plaintiffs do not allege that a majority of the Board lacks disinterestedness or independence from any member of the Committee. Instead, they argue that the Board failed to consider material information about Lakhani and

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[259] *Id.* at 1179–80 (footnote omitted).

Sandell when making its Disinterest Determinations. The Delaware Supreme Court has instructed that directors' duty of care requires that "the directors' decisionmaking process, *measured by concepts of gross negligence*, included consideration of all material information reasonably available."[260] "[T]he standard for judging the informational component of the directors' decisionmaking does not mean that the Board must be informed of *every* fact. The Board is responsible for considering only *material* facts that are *reasonably available*, not those that are immaterial or out of the Board's reasonable reach."[261]

Applying that standard, a plaintiff can succeed in challenging a Disinterest Determination by showing that the directors were grossly negligent because they did not possess all material information reasonably available. "Material" in that context connotes information that a reasonable director would find significant to the Disinterest Determination. The information need not be so significant as to change the outcome of the decision, but it must be information that is non-duplicative, non-cumulative, and contextually meaningful.

If the plaintiff successfully attacks a Disinterest Determination, that does not mean that the General Controller Safe Harbor is not available. It only means that the Heightened Presumption cannot apply.[262]

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[260] *Brehm v. Eisner*, 746 A.2d 244, 259 (Del. 2000).

[261] *Id.*

[262] *Cf.* Klinger-Wilensky et al., *supra*, at 10 ("Although not expressly stated by the statute, by only requiring that the board *determine* that all members of the

Here, the plaintiffs argue that the Board failed to consider material information about Lakhani and Sandell when making its Disinterest Determinations. Those arguments fail.

As to Lakhani, the plaintiffs argue that the Board failed to consider that Prince provided a marketing blurb for one of Lakhani's books and that the Founders visited Lakhani's classes and gave talks to his students. They also argue that the Board failed to consider that Prince offered to help Lakhani find satellite space for Harvard abroad, then raised the issue with a Portuguese official. And the plaintiffs argue that the Board failed to consider that after Lakhani became a director, Lakhani stayed at one of Prince's homes and Prince invited him to stay on his boat.

Those omissions are not sufficiently material to jeopardize the Board's Disinterest Determination for Lakhani. The directors were aware the Founders were Lakhani's students at Harvard Business School in 2007 and kept in touch over the years. The talks to Lakhani's students would not have added meaningful information, nor was the help Prince offered sufficiently material to require express consideration. The same goes for Lakhani's stay and Prince's other invitation, the latter of which Lakhani declined.[263] Lakhani secured eight blurbs for his book, including one from

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committee are disinterested directors, and not that such members of the committee actually be disinterested directors, the statute appears to allow for the safe harbor to apply (assuming all other conditions are satisfied) if, in hindsight, a court disagrees with certain of the board's determinations regarding the 'disinterested' status of members of the committee.").

[263] Lakhani Dep. 182–83.

Microsoft's CEO.[264] Prince was also one of several alumni who offered to help Harvard find satellite space abroad.[265]

As to Sandell, the plaintiffs argue that the Board failed to consider that NEA turned a $50 million investment in the Company into over $3 billion, and Sandell personally holds approximately $40 to $50 million in Company stock, mostly through NEA distributions. The plaintiffs also argue that although the Board knew that NEA and Prince invested in two early-stage companies together, the directors did not put a value on those investments. They say that the Board failed to consider that NEA and Atlassian, a company where Zatlyn is a director, co-invested in two companies, and that Sandell and NEA co-invested with the Company and the Founders in the Company's venture fund. They also say the directors failed to consider that Sandell uses the Founders as references and has relied on Prince to advise an NEA portfolio company about navigating the U.S. government.

Those omissions are not sufficiently material to jeopardize the Board's Disinterest Determination for Sandell. The directors knew that NEA is a venture capital firm whose business depends on investing in startups, that Sandell and NEA were early investors in the Company, and that Sandell and the Founders have a close relationship. Sandell provided the Board with rough amounts for NEA's and Prince's

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[264] *Id.* at 167–68.

[265] *Id.* at 85.

investments, which were rounding errors for Prince.[266] NEA never ended up investing in the Company's venture fund, nor does the record show that Sandell invested personally.[267] Finally, NEA and Atlassian's co-investments were not sufficiently material to require express consideration. The directors had a sufficient informational base to evaluate Sandell's business relationship with the Founders.

The plaintiffs also argue that Sandell and the Founders have socialized together. Sandell and his girlfriend attended Prince's wedding, and Sandell attended a retirement party for Prince's mother-in-law. Sandell has also visited Prince's homes (including staying overnight) and spent Thanksgiving with Prince and his in-laws.

Those are the types of social-circle friendships that might put additional color on more significant connections. They are not sufficient by themselves to call into question the Board's Disinterest Determination for Sandell.

The plaintiffs have identified no basis for calling the Board's Disinterest Determinations into question. The Heightened Presumption applies to Lakhani and Sandell.

b. The Approval Requirement

The next issue is the Approval Requirement. The Committee-Approval Path mandates that (1) a safe harbor committee have at least two disinterested directors and (2) a majority of the disinterested directors then serving on the safe harbor

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[266] Sandell Dep. 39–51.

[267] *Id.* at 100–01.

committee approve the transaction. The plaintiffs contend that the defendants cannot satisfy the Approval Requirement because Lakhani and Sandell do not qualify as disinterested directors. Although it takes a lot of ink to get there, the plaintiffs failed to establish a reasonable probability of success on the merits of that claim.[268]

The debate over the Approval Requirement turns on the effect of the Presumption Provision. The plaintiffs argue either that the Heightened Presumption does not apply after the pleading stage or that they have overcome its effect. The defendants argue that the Heightened Presumption applies after the pleading stage and that the plaintiffs lack a reasonable probability of succeeding on their challenges to Lakhani and Sandell's status as disinterested directors. The defendants are ultimately correct.

i. When Does The Presumption Provision Apply?

The first question is a basic one: When does the Presumption Provision apply? The plaintiffs cast the Presumption Provision as a pleading-stage limitation. But as the defendants correctly argue, the Presumption Provision continues to have force later in the case.

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[268] The defendants sought to preempt any analysis of Lakhani and Sandell by arguing that their approval is not required. The Approval Requirement contemplates that "a majority of the disinterested directors then serving on the committee" approve the transaction or recommend that the board approve it. 8 *Del. C.* § 144(b)(1). The defendants posit that if the court *assumes* that Lakhani and Sandell are not disinterested, then the only disinterested director then serving on the committee would be Suder. She approved the Recapitalization, and the defendants say that is sufficient. Because this decision rejects the challenges to Lakhani and Sandell's status as disinterested directors, this decision need not consider that theory.

The uncertainty results from the Presumption Provision's reliance on the concept of a "presumption." Delaware law technically treats a presumption as an evidentiary concept, but the Presumption Provision couples the evidentiary concept with language implying pleading-stage application. The Presumption Provision complicates matters by calling for the presumption to be "heightened," as if it were an evidentiary concept.

To start working through these matters, return to the language of the Presumption Provision. It states that if a corporation "has a class of stock listed on a national securities exchange," then

> [a]ny director . . . shall be presumed to be a disinterested director with respect to an act or transaction to which such director is not a party if the board of directors shall have determined that such director satisfies the applicable criteria for determining director independence from the corporation and, if applicable with respect to the act or transaction, the controlling stockholder or control group, under the rules (and interpretations thereof) promulgated by such exchange (treating the applicable controlling stockholder and control group as if the controlling stockholder and control group were the corporation for purposes of applying such criteria to determine independence from a controlling stockholder or control group) . . . .[269]

In a concluding clause, the statute appends the phrase "which presumption shall be heightened and may only be rebutted by substantial and particularized facts that such director has a material interest in such act or transaction or has a material relationship with a person with a material interest in such act or transaction."[270]

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[269] *Id.* § 144(d)(2).

[270] *Id.*

The "presumption" is one of the law's more slippery concepts.[271] Some presumptions are shorthand statements about who bears the burden of proof: The presumption of innocence captures the principle that the state bears the burden of proving guilt using only evidence properly introduced at trial.[272] Other presumptions

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[271] 2 McCormick on Evidence § 342 (9th ed.), Westlaw (database updated Feb. 2025) (identifying eight ways in which the term can be used).

[272] *See Bell v. Wolfish*, 441 U.S. 520, 533 (1979) ("The presumption of innocence is a doctrine that allocates the burden of proof in criminal trials; it also may serve as an admonishment to the jury to judge an accused's guilt or innocence solely on the evidence adduced at trial and not on the basis of suspicions that may arise from the fact of his arrest, indictment, or custody, or from other matters not introduced as proof at trial."). It is thus "an inaccurate, shorthand description of the right of the accused to 'remain inactive and secure, until the prosecution has taken up its burden and produced evidence and effected persuasion; . . .' an 'assumption' that is indulged in the absence of contrary evidence." *Taylor v. Kentucky*, 436 U.S. 478, 484 n.12 (1978) (citations omitted).

are really assumptions,[273] canons of construction,[274] standards of review,[275] or statements of substantive law.[276]

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[273] For example, the presumption of sanity assumes that adults are sane and competent, so anyone seeking to challenge that assumed state of the world bears the burden of showing otherwise. *See Clark v. Arizona*, 548 U.S. 735, 767 (2006) (summarizing law); *Leland v. Oregon*, 343 U.S. 790, 797 (1952) (describing common-law rule).

[274] For example, the presumption that legislation is constitutional calls on courts to construe statutes to protect their validity, rather than adopting an unconstitutional reading. It does not generally contemplate that the party challenging the statute must come forward with evidence of legislative impropriety during the enactment process. *See Larson v. Gibson*, 341 A.3d 1005, 2025 WL 1554872, at *7 (Del. 2025) (TABLE) (stating that "[a] legislative enactment is presumed to be constitutional, and the party challenging a statute's constitutionality has the burden of rebutting that presumption" when analyzing challenger's interpretation of the statute); *McDade v. State*, 693 A.2d 1062, 1065 (Del. 1997) (same).

[275] For example, the presumption that the jury's verdict was correct establishes a highly deferential standard of review for jury verdicts. *Compare Stroot v. New Haverford P'ship*, 793 A.2d 411, 413 (Del. Super. 1999) ("The presumption in Delaware is that a jury verdict is correct and just." (internal quotation marks omitted)), *aff'd*, 772 A.2d 792 (Del. 2001), *with LCT Cap., LLC v. NGL Energy P'rs LP*, 249 A.3d 77, 90 (Del. 2021) ("When considering a motion for a new trial, the Superior Court must give enormous deference to the jury's verdict, and should not set aside the jury's verdict unless a reasonable jury could not have reached the result." (cleaned up)), *and Storey v. Camper*, 401 A.2d 458, 465 (Del. 1979) ("[O]n weight of the evidence motions, we hold that a trial judge is only permitted to set aside a jury verdict when in his judgment it is at least against the great weight of the evidence. In other words, barring exceptional circumstances, a trial judge should not set aside a jury verdict on such ground unless, on a review of all the evidence, the evidence preponderates so heavily against the jury verdict that a reasonable jury could not have reached the result." (citation omitted)).

[276] For example, so-called conclusive, mandatory, and irrebuttable presumptions are really rules of substantive law under which proving one fact generates a legally unavoidable consequence. *See United States v. Chase*, 18 F.3d 1166, 1172 n.7 (4th Cir. 1994) ("A conclusive or irrebuttable presumption is considered a rule of substantive law."); *Helman v. State*, 784 A.2d 1058, 1074 (Del.

A true presumption contemplates that if a party establishes one fact, then the factfinder must find a second, presumed fact unless the opposing party responds with evidence on that point.[277] Under Professor Thayer's "bursting bubble" theory, which the federal courts follow,[278] a presumption shifts only the burden of production: Once the opponent introduces evidence sufficient to support a contrary finding, the presumption disappears, and the factfinder simply decides based on the evidence.[279]

2001) (explaining that "[w]here a mandatory presumption is implicated, the trier of fact is required to presume the existence of one fact from the proof of another"); *see generally* 1 Jack B. Weinstein & Margaret A. Berger, *Weinstein's Federal Evidence* § 301.02, Lexis+ (database updated 2026) ("A so-called 'irrebuttable presumption' is a rule of substantive law."); David L. Faigman, *Madisonian Balancing: A Theory of Constitutional Adjudication*, 88 Nw. U. L. Rev. 641, 659 n.79 (1994) (explaining that a conclusive presumption "is a substantive rule of law whereby proof of one fact compels acceptance of a second fact; no amount of proof will suffice to rebut the presumed fact").

[277] *See* 29 Am. Jur. 2d Evidence § 195, Westlaw (database updated Aug. 2026) ("[A] presumption is a legal device that either permits or requires the trier of fact to assume the existence of an ultimate fact, after establishing certain predicate facts."); *Presumption*, Black's Law Dictionary (12th ed. 2024) ("A legal inference or assumption that a fact exists because of the known or proven existence of some other fact or group of facts.").

[278] *See* Fed. R. Evid. 301 ("In a civil case, unless a federal statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. But this rule does not shift the burden of persuasion, which remains on the party who had it originally."). The leading example is the *McDonnell Douglas* framework for employment discrimination cases. The plaintiff can establish a presumption of discrimination by pleading and later proving a prima facie case, but once the employer articulates a legitimate, nondiscriminatory reason, the presumption drops out of the case. *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 515–16 (1993).

[279] *See* James B. Thayer, *Presumptions and the Law of Evidence*, 3 Harv. L. Rev. 141 (1889).

Under Professor Morgan's competing approach, which Delaware follows,[280] the presumption shifts the burden of persuasion, so that the opponent must persuade the factfinder that the presumed fact does not exist.[281]

The Presumption Provision seems at first to establish an evidentiary presumption. It states that if the record establishes one fact (the board's Disinterest Determination), then the court must presume the existence of a second fact (the director qualifies as a disinterested director). Under Delaware Rule of Evidence 301, the burden then would be on the party challenging the second fact (disinterested-director status) to persuade the court otherwise. Normally, a party would carry its burden of persuasion by a preponderance of the evidence, but the Presumption Provision states that the "presumption shall be heightened." That suggests a burden higher than a preponderance.

Because these aspects of the Presumption Provision speak to an evidentiary burden, the provision seems like a provision that applies at trial, not at the pleading stage. Other aspects of the provision, however, point powerfully to pleading-stage

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[280] *See* D.R.E. 301(a) ("In a civil case, unless a statute or these Rules provide otherwise, the party against whom a presumption is directed has the burden of proving that the nonexistence of the presumed fact is more probable than the existence of the presumed fact."); *id.* cmt. ("The Committee rejected F.R.E. 301. F.R.E. 301 was adopted by Congress as a substitute for the proposal of the United States Supreme Court Advisory Committee. The Federal Rule as adopted by Congress embraces the 'bursting bubble' rule."); *accord Alaska Elec. Pension Fund v. Brown*, 988 A.2d 412, 418 n.19 (Del. 2010) ("Delaware law does not embrace the 'bursting bubble' rule adopted by the Federal Rules of Evidence.").

[281] *See* Edmund M. Morgan, *Some Observations Concerning Presumptions*, 44 Harv. L. Rev. 906, 931–32 (1931).

application. The Presumption Provision states, for example, that the heightened presumption "may only be rebutted by substantial and particularized facts." Parties do not rebut presumptions with facts, much less "substantial and particularized facts." Instead, "[p]resumptions are a staple of fact-finding."[282] Parties rebut presumptions with evidence.[283] Courts use presumptions to find facts.[284]

The Presumption Provision is therefore ambiguous. It could be a pleading-stage provision, an evidentiary provision, or both. The legislative history does not shed light on this issue. The contemporaneous commentary that touches on the issue expresses uncertainty about its post-pleading-stage application.[285]

This court has applied the Presumption Provision at the pleading stage.[286] Pre-Safe-Harbor-Statute caselaw indicates that the Presumption Provision also applies

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[282] 29 Am. Jur. 2d Evidence § 195, *supra*.

[283] *Id.* (factfinder presumes fact "unless sufficient evidence is introduced tending to rebut the presumed fact").

[284] *Id.* ("The purpose of a statutory presumption is . . . to allow a particular fact to be established by inferential proof.").

[285] *See* Klinger-Wilensky et al., *supra*, at 8 ("That presumption is 'heightened' and may be rebutted as to a director only by 'substantial and particularized facts' (presumably alleged at the pleading stage, or proven at trial) . . . .").

[286] *See Dodiya*, 2026 WL 2517931, at *10–11 (applying Presumption Provision to motion to dismiss under Rule 12(b)(6)); *Ayers v. Foley*, 362 A.3d 355, 373–79 (Del. Ch. 2026) (applying Presumption Provision to motion to dismiss under Rule 23.1); *see also Young Women's Christian Ass'n of Rochester & Monroe Cty. v. Hatteras Funds, LP*, 2026 WL 874818, at *21 n.91 (Del. Ch. Mar. 31, 2026) (positing that the Presumption Provision "applies to all actions, not just derivative actions" and that "to plead that a director is interested or not independent for purposes of a claim for breach of fiduciary duty that can escape the safe harbors and support a remedy, a

after the pleading stage. Delaware decisions historically referred to the business judgment rule as establishing "a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company."[287] Pleading-stage decisions included statements like "the plaintiffs have the burden to plead facts sufficient to rebut that presumption."[288] Post-pleading-stage decisions described the business judgment rule as an "evidentiary presumption,"[289] explaining that if the

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plaintiff must now plead particularized facts"), *appeal refused sub nom. Perkins v. Young Women's Christian Ass'n of Rochester & Monroe Cty.*, — A.3d —, 2026 WL 1960725 (Del. July 7, 2026) (ORDER).

[287] *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984) (subsequent history omitted); *accord In re McDonald's Corp. S'holder Deriv. Litig.*, 291 A.3d 652, 679 (Del. Ch. 2023) (explaining that directors and officers "are presumed to act loyally, in good faith, and with due care (i.e., on an informed basis)").

[288] *Gantler v. Stephens*, 965 A.2d 695, 706 (Del. 2009) (citing *Cinerama, Inc. v. Technicolor, Inc.* (*Technicolor Plenary IV*), 663 A.2d 1156, 1162 (Del. 1995)); *accord McMullin v. Beran*, 765 A.2d 910, 920 (Del. 2000) ("The Amended Complaint would withstand a motion to dismiss if it successfully alleged facts that, if true, would rebut the procedural presumption of the business judgment rule."); *Quadrant Structured Prods. Co., Ltd. v. Vertin*, 102 A.3d 155, 194 (Del. Ch. 2014) ("The Complaint does not plead facts that would be sufficient to rebut the business judgment rule as to [the independent directors]. In a transaction governed by the business judgment rule, the plaintiff has the burden at the pleadings stage to allege facts sufficient to rebut the presumptions of loyalty and good faith that protect the directors.").

[289] *Technicolor Plenary IV*, 663 A.2d at 1168 ("The Court of Chancery then framed and answered the loyalty issues with respect to the procedural question of whether the evidentiary presumption of the business judgment rule had been rebutted and, therefore, the entire fairness standard applied."); *id.* at 1162 ("The business judgment rule 'operates as both a procedural guide for litigants and a substantive rule of law.' As a procedural guide the business judgment presumption is a rule of evidence that places the initial burden of proof on the plaintiff." (citations omitted)).

plaintiff proved by a preponderance of the evidence that the board lacked a disinterested and independent majority who acted in good faith and without gross negligence, then "the burden shifts to the defendant directors, the proponents of the challenged transaction, to prove to the trier of fact the 'entire fairness' of the transaction to the shareholder plaintiff."[290] In fact, both usages are misnomers; neither describes a true presumption.[291] That settled language, however, is now too well established to be corrected.

The Presumption Provision echoes the language of those cases. It therefore applies after the pleading stage. That in turn means that the court must account for it when ruling on the plaintiffs' preliminary injunction application because it affects whether the plaintiffs have established a reasonable probability of prevailing at trial.

ii. What Does The Presumption Provision Mean After The Pleading Stage?

Recognizing that the Presumption Provision applies to the plaintiffs' motion means the court must wrestle with its content.

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[290] *Cede & Co. v. Technicolor, Inc.* (*Technicolor Plenary II*), 634 A.2d 345, 361 (Del. 1993) (citations omitted), *modified on other grounds on reargument*, 636 A.2d 956 (Del. 1994). A plaintiff could also plead and later prove other bases for changing the standard of review, such as one of the factual situations warranting the application of enhanced scrutiny. *See MacLaughlan v. Einheiber*, 354 A.3d 864, 897–98 (Del. Ch. 2026) (explaining that "[e]nhanced scrutiny applies to specific, recurring, and readily identifiable situations" and that a plaintiff can invoke that standard of review by pleading facts identifying one of those scenarios).

[291] *See* R. Franklin Balotti & James J. Hanks, Jr., *Rejudging the Business Judgment Rule*, 48 Bus. Law. 1337 (1993) (explaining at length that the business judgment rule is not truly a presumption and why that usage is confusing).

Defense counsel argued that the court should look to pleading-stage decisions for guidance. At the pleading stage, the Presumption Provision contemplates that a plaintiff must plead substantial and particularized facts to overcome a board determination that one of its members qualifies as a disinterested director, and the thoughtful decisions in *Dodiya* and *Ayers* have explored those concepts.[292] After the pleading stage, however, decisions turn on evidence, and a court uses burdens of proof and presumptions to find facts. The Presumption Provision's reference to "substantial and particularized facts" offers no help with its post-pleading application.

When referring to burdens of proof, the concept of a heightened burden typically means increasing the required showing beyond a preponderance of the evidence, such as requiring proof by clear and convincing evidence[293] or proof beyond a reasonable doubt.[294] The same is true for a presumption. Ordinarily under Delaware law, an evidentiary presumption shifts the burden of persuasion on a presumed fact such that the party seeking to disprove it carries its burden by a

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[292] *See Dodiya*, 2026 WL 2517931, at *10–11; *Ayers*, 362 A.3d at 373–76.

[293] *E.g.*, *Hughes v. Frank*, 1995 WL 632018, at *2 (Del. Ch. Oct. 20, 1995) (linking the "heightened burden of proof" required to prove the existence of an oral agreement to make a will with the standard of "clear and convincing evidence").

[294] *E.g.*, *Meyers v. Intel Corp.*, 2015 WL 227824, at *4 (Del. Super. Jan. 15, 2015) (applying Colorado's heightened burden of proof for exemplary damages which requires proof "beyond a reasonable doubt").

preponderance of the evidence.[295] The Presumption Provision states that its presumption "shall be heightened," but without explaining what that means.

The principal Delaware Supreme Court authority on presumptions is *Hudak*,[296] but that case is something of a puzzle. The decision discussed what it called "a legal presumption"[297] and stated that the standard for rebutting a "legal presumption" is clear and convincing evidence.[298] Unfortunately, "legal presumption" is not a term of art,[299] and *Hudak* did not elaborate on how the justices were using

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[295] D.R.E. 301; *cf. Solash*, 1988 WL 3587, at *8 ("In an interested transaction, plaintiffs may . . . [rebut the presumption of the business judgment rule] by overcoming the defendants' evidence of good faith or of the reasonableness of the process . . . by proving by a preponderance of the admissible evidence that there was no good faith" or the lack of a reasonable investigation).

[296] *Hudak v. Procek*, 806 A.2d 140 (Del. 2002).

[297] *Id.* at 147.

[298] *See id.*

[299] The weight of authority treats "legal presumptions" as the equivalent of mandatory or irrebuttable presumptions, meaning that they operate as rules of law, not evidentiary presumptions. *See, e.g.*, C. P. Ilbert, *On Presumption and Burden of Proof*, *in Presumptions and Burdens of Proof: An Anthology of Argumentation and the Law* 83, 83 (Hans V. Hansen et al. eds., 2019) ("A presumption in the ordinary sense is an inference. It is an argument, based on observation, that what has happened in some cases will probably happen in others of the like nature. . . . But a legal presumption, or, as it is sometimes called, a presumption of law, as distinguished from a presumption of fact, is something more."); *accord Stumpf v. Montgomery*, 226 P. 65, 69 (Okla. 1924) ("The distinction between presumptions 'of law' and presumptions 'of fact' is in truth the difference between things that are in reality presumptions and things that are not presumptions at all." (quoting 5 Wigmore on Evidence § 2491)); *see Legille v. Dann*, 544 F.2d 1, 5 n.24 (D.C. Cir. 1976) ("We distinguish the presumption 'of law' the procedural rule dictating a factual conclusion in the absence of contrary evidence from the presumption 'of fact,' which in reality is not a presumption at all, and from the 'conclusive' presumption, which is actually a

substantive rule of law." (citation omitted)). *Compare Presumption*, Black's Law Dictionary (12th ed. 2024) ("A legal inference or assumption that a fact exists because of the known or proven existence of some other fact or group of facts. Most presumptions are rules of evidence calling for a certain result in a given case unless the adversely affected party overcomes it with other evidence. A presumption shifts the burden of production or persuasion to the opposing party, who can then attempt to overcome the presumption."), *with Presumption of Law*, Black's Law Dictionary (12th ed. 2024) ("A legal assumption that a court is required to make if certain facts are established and no contradictory evidence is produced . . . . Also termed *legal presumption; artificial presumption; praesumptio juris; pseudopresumption of law*.").

the term or how it differed (if at all) from an evidentiary presumption.[300] That said, there are cases that seem to equate legal presumptions with evidentiary presumptions.[301] *Hudak* seems to be one of them.[302]

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[300] The authorities *Hudak* cited do not clarify matters. The authorities *Hudak* cited initially to support a clear-and-convincing standard for legal presumptions do not involve presumptions. They explain that a clear-and-convincing-evidence standard is higher than a preponderance-of-the-evidence standard and lower than a beyond-a-reasonable-doubt standard. *See* 2 John W. Strong, McCormick on Evidence § 340 (5th ed. 2001); Black's Law Dictionary 577 (7th ed. 1999); *In re Tavel*, 661 A.2d 1061, 1070 n.5 (Del. 1995). *Hudak* also cited 29 Am. Jur. 2d Evidence § 157 (1994), which I have been unable to track down. The 1998 version did not address presumptions. *See* 29 Am. Jur. 2d Evidence § 157 (1998). The current version of the treatise describes presumptions in customary terms. *See* 29 Am. Jur. 2d Evidence § 196. Only one authority addresses a presumption—the presumption that unexplained transfers between parents and children constitute gifts—and states "that this legal presumption prevails until the contrary is clearly and unequivocally established." Charles C. Marvel, Annotation, *Unexplained Gratuitous Transfer of Property from One Relative to Another as Raising Presumption of Gift*, 94 A.L.R.3d 608, 611 (1979).

Hudak also collected a list of Delaware cases involving presumptions, then asserted that "Delaware courts, in many different contexts, have expressed the burden of proof that the adversely affected party must satisfy in order to rebut a legal presumption to be 'clear and convincing evidence.'" *Hudak*, 806 A.2d at 147 & n.12. Those cases are a mixed bag involving disparate issues that do not provide insight into how *Hudak* viewed the concept of a legal presumption. *See Melson v. Allman*, 244 A.2d 85, 87 (Del. 1968) ("New Jersey presumes that the operator of a motor vehicle, which is involved in an accident, is the agent of the owner, and is acting within the scope of his employment. The presumption is, of course, rebuttable, but 'to overcome this presumption the evidence must be clear, convincing, and uncontradicted.'" (quoting *Conway v. Pickering*, 166 A. 76, 77 (N.J. 1933))); *Justice v. Gatchell*, 325 A.2d 97, 102 (Del. 1974) ("Legislative acts should not be disturbed except in clear cases, and then only upon weighty considerations; a legislative enactment is cloaked with a presumption of constitutionality and should not be declared invalid unless its invalidity is beyond doubt." (citation omitted)); *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997) ("[A] defendant's statements to the Superior Court during the guilty plea colloquy are presumed to be truthful."); *see also In re Melson*, 711 A.2d 783, 788 (Del. 1998) (presumption that testator had capacity to make will at time it was made is "intended to protect the expressed intentions of the

Hudak is therefore a bit of a mystery. The best interpretation seems to be that when a presumption serves a particularly significant policy goal, then the strength of the presumption is heightened such that rebutting its greater force requires clear and convincing evidence. *Hudak* does not provide guidance on how to determine what presumptions are sufficiently weighty, but the Presumption Provision seems to be about as clear a case as one could have. The General Assembly made a point of

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testator"); *Blake v. Div. of Child Support Enf't*, 525 A.2d 154, 159 (Del. 1987) (statute creates presumption that man is father of child where he and mother are married and child is born during that marriage); *Robert O. v. Ecmel A.*, 460 A.2d 1321, 1323 (Del. 1983) (presumption against validity of a separation agreement where a "superior obtains a possible benefit at the expense of the inferior" is "triggered by the marital relationship, which Delaware law views as being a confidential one involving trust concepts" (citations omitted)).

[301] *E.g.*, *In re Regions Morgan Keegan ERISA Litig.*, 692 F. Supp. 2d 944, 953 (W.D. Tenn. 2010) (seeming to equate the two without offering an explanation or support for the characterization).

[302] A recent Court of Chancery decision cited *Hudak* in passing for the concept that a "legal presumption" requires clear and convincing evidence to rebut it, but did not explore the concept of a "legal presumption" or its implications. *See Thomas v. Am. Midstream GP, LLC*, 2026 WL 2676678, at *10 n.158 (Del. Ch. Sep. 11, 2026). The case involved a contractual presumption in an alternative entity agreement, and the court observed that "[r]ather than dive into whether a contractual presumption amounts to a 'legal presumption' born of common law, I have held Plaintiff to the lower preponderance of the evidence standard *El Paso* used for identical contractual provisions, which he still fails to clear." *Id.* (citing *In re El Paso Pipeline P'rs, L.P. Deriv. Litig.*, 2015 WL 1815846, at *15 (Del. Ch. Apr. 20, 2015)). An older Superior Court decision includes a similarly brief citation to *Hudak* in the course of holding that rebutting the "legal presumption" of motor vehicle ownership requires clear and convincing evidence, but also without exploring the concept of a "legal presumption" or its implications. *W. Am. Ins. Co. v. Bogush*, 2006 WL 1064069, at *3 & n.12 (Del. Super. Apr. 12, 2006).

enacting a statutory presumption,[303] then stating that the presumption "shall be heightened."[304] The meaning of "heightened" is "[i]ncreased, intensified, or magnified,"[305] so rebutting a "heightened" presumption would seem to require more than a preponderance of the evidence.

Consistent with *Hudak*, this decision holds that after the pleading stage, a party must overcome the Safe Harbor Statute's heightened presumption of director disinterestedness through clear and convincing evidence. That standard "requires evidence that 'produces in the mind of the trier of fact an abiding conviction that the truth of [the] factual contentions [is] highly probable.'"[306] "'To establish proof by clear

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[303] *See Statutory Presumption*, Black's Law Dictionary (12th ed. 2024) ("A rebuttable or conclusive presumption that is created by statute.").

[304] 8 *Del. C.* § 144(d)(2).

[305] *Heightened*, Black's Law Dictionary (12th ed. 2024); *accord Heighten*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/heighten [https://perma.cc/4WY4-DCCX] ("to increase the amount or degree of"); *Heighten*, Oxford Advanced Learner's Dictionary, https://www.oxfordlearnersdictionaries.com/definition/english/heighten?q=heighten [https://perma.cc/8RPH-QD9Q] ("if a feeling or an effect heightens, or something heightens it, it becomes stronger or increases"); *Heighten*, Am. Heritage Dictionary of the English Language, https://ahdictionary.com/word/search.html?q=heighten [https://perma.cc/WLN2-QXVH] ("To raise or increase the quantity or degree of; intensify."). *See also Heightened*, Merriam-Webster Thesaurus, https://www.merriam-webster.com/thesaurus/heightened [https://perma.cc/47HW-LWY4] ("being at a higher level than average").

[306] *Hudak*, 806 A.2d at 147 (quoting *Cerberus Int'l v. Apollo Mgmt.*, 794 A.2d 1141, 1151 (Del. 2002)).

and convincing evidence means to prove something that is highly probable, reasonably certain, and free from serious doubt.'"[307]

But how, in practice, does the rebutting work? In a standard presumption, proving one fact results in the court presuming another fact. The evidence used to rebut the presumption and disprove the second fact is likely to be different than what was used to establish the first fact. Under the Presumption Provision, proof that the board determined that one of its members was a disinterested director generates a heightened presumption that the member is in fact a disinterested director. The evidence that the board considered when making its determination likely overlaps significantly with the evidence that a plaintiff would use to rebut the presumption. Does the court revisit the determination the board made? Must a plaintiff point to new evidence that the board did not consider? Is the identification of new evidence fatal, or merely part of a holistic inquiry?

For purposes of this case, the court has evaluated whether the Board failed to consider any sources of material information. The court rejected the plaintiffs' challenge to the Lakhani and Sandell Disinterest Determinations because the plaintiffs failed to point to material information that the Board failed to consider. If

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[307] *Id.* (quoting Del. Super. P.J.I. Civ. § 4.3 (2000)); *accord* McCormick on Evidence § 340 ("It has been persuasively suggested that [the clear and convincing standard] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is 'highly probable.'").

the plaintiffs' challenge had succeeded, then the Heightened Presumption would not have applied.

At this stage, two conclusions seem inescapable: First, the court must revisit the board's determination to some degree. If the court could not, then the presumption would be conclusive, not heightened. Second, the court must afford deference to the fact that the board has made its determination. If the court did not, then it would be conducting a de novo assessment rather than determining whether a challenger had rebutted a heightened presumption.

Those two considerations point to a test for applying the Heightened Presumption. The court asks whether a reasonable board presented with the information that the board possessed could have made the Disinterest Determination. The court does not ask whether the directors made what the court might regard as the correct decision. The court asks only whether the determination was a reasonable one that directors weighing the evidence could have reached.

Under this standard, a court can only reject the board's determination if the plaintiff proves by clear and convincing evidence that treating the director as disinterested was unreasonable. That means the evidence must make it highly probable, reasonably certain, and free from serious doubt that the director was not disinterested to the point where no board could have reasonably concluded otherwise.

iii. Applying The Presumption Provision At The Injunction Stage

At the injunction stage, the court must assess whether the plaintiffs have shown a reasonable probability that they could successfully muster clear and

convincing evidence at trial. The injunction-phase test therefore requires less than a clear and convincing evidentiary showing. Yet the plaintiffs fall short.

The plaintiffs challenge Lakhani's status as a disinterested director by pointing to his ties with the Founders. A reasonable board could readily determine that Lakhani was a disinterested director. It is not reasonably probable that the plaintiffs could successfully prove by clear and convincing evidence at trial that treating Lakhani as disinterested was unreasonable.

The plaintiffs do better with Sandell, but cannot clear the hurdle. The Board had an adequate informational basis to weigh Sandell's financial and professional ties with the Company and the Founders. Reasonable people could raise good-faith arguments about Sandell and whether he should have served on the Committee, but the court cannot conclude that no board could have reasonably determined that he was a disinterested director.

Adding in Sandell's social connections with the Founders ups the stakes a bit, but not enough. Sandell attended a retirement party for Prince's mother-in-law. Sandell and his girlfriend attended Prince's wedding, but so did the rest of the Board as then constituted.[308] Sandell has visited Prince's homes on multiple occasions, including staying overnight, but many of those visits were for Board functions.[309] Sandell has also spent time on Thanksgiving with Prince and his in-laws, but that

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[308] *See* PX 6 at 10; Zatlyn Dep. 321; Hearing Tr. 75.

[309] Sandell Dep. 82–87.

happened when the families realized they were only a few miles away from each other.[310] Those ties straddle the line between the type of thin social-circle friendships that Delaware courts have discounted and more significant levels of friendship that could be compromising. Reasonable minds could debate the point, but that means the Heightened Presumption applies. A reasonable board could conclude that Sandell was a disinterested director, entitling him to that status under the Heightened Presumption.

The plaintiffs have failed to establish a reasonable probability of success in showing at trial that the Approval Requirement was not met. The Committee comprised three disinterested directors, clearing the two-member minimum, and a majority of those disinterested directors (in fact, all of them) voted for the Recapitalization.

c. In Good Faith And Without Gross Negligence

Having beaten back the plaintiffs' statutory arguments, the defendants face one last hurdle. The statute requires that the committee act "in good faith and without gross negligence."[311] It thus leaves room for a stockholder challenge if the approval "was not provided 'in good faith and without gross negligence.'"[312]

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[310] *Id.* at 73–74; Hearing Tr. 75.

[311] 8 *Del. C.* § 144(b)(1).

[312] Klinger-Wilensky et al., *supra*, at 10 ("The statute does leave room for review of any disinterested director or committee approval if adequate facts are alleged that the approval was not provided 'in good faith and without gross negligence.'"); *id.* at 13 ("Regardless of the category of conflict, generally: (i) any board

The Safe Harbor Statute does not redefine good faith or gross negligence. Pre-Safe-Harbor-Statute caselaw continues to govern.[313] The plaintiffs also need not prove either by clear and convincing evidence. The Presumption Provision only applies to disinterested-director status.

i. Acting In Good Faith

The plaintiffs have amassed sufficient evidence to establish a reasonable probability of success on the question of action in good faith. "To act in good faith, a director must subjectively believe that the chosen course of action serves the best interests of the corporation and its stockholders."[314] Stated conversely, a director fails to act in good faith when "the fiduciary intentionally acts with a purpose other than

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or committee approval intended to function as a cleansing mechanism must be provided 'in good faith and without gross negligence' . . . ."); *id.* ("If a stockholder can adequately allege that any of these requirements is not satisfied, entire fairness will be the default standard of review, and a stockholder still will be entitled to discovery and, in most cases, the case will proceed to a trial regarding the fairness of the transaction.").

[313] *See Dodiya*, 2026 WL 2517931, at *14 ("Although the terms 'good faith' and 'gross negligence' are not defined in Section 144(a)(1), a substantial body of Delaware law gives meaning to these concepts for purposes of fiduciary conduct. The legislative synopsis confirms the General Assembly's intent that Section 144 not displace common law fiduciary requirements." (footnote omitted)); Del. S.B. 21 syn., 153d Gen. Assem. (2025) ("Revised § 144 provides that any approval or recommendation, as applicable, of disinterested directors or a disinterested director committee must be made in good faith and without gross negligence, making clear that the statute does not displace the common law requirements regarding core fiduciary conduct.").

[314] *DSM HoldCo, Inc. v. Demoulas*, 361 A.3d 70, 110–11 (Del. Ch. 2026); *accord Zuckerberg I*, 250 A.3d at 895.

that of advancing the best interests of the corporation."[315] "It makes no difference the reason why the director intentionally fails to pursue the best interests of the corporation."[316]

A person's motivation for acting is a state of mind, and "[t]he state of a man's mind is as much a fact as the state of his digestion."[317] "Without the ability to read minds, a trial judge only can infer a party's subjective intent from external indications."[318] "Lawyers routinely object to a witness speculating about another person's state of mind, but there is nothing special about it."[319] It simply requires using

> the very pedestrian capacity we all have for figuring out what another human being is thinking. . . . Other people's minds are opaque to us, so we cannot observe them directly. And yet, when someone walks toward the water fountain on a hot day, we know she wants a drink. When someone yelps after stubbing her toe, we know she feels pain. When someone aims an arrow at a target, we know she intends to hit it. . . .

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[315] *In re Walt Disney Co. Deriv. Litig.* (*Disney II*), 906 A.2d 27, 67 (Del. 2006).

[316] *In re Walt Disney Co. Deriv. Litig.* (*Disney I*), 907 A.2d 693, 754 (Del. Ch. 2005), *aff'd*, *Disney II*, 906 A.2d 27; *see Guttman*, 823 A.2d at 506 n.34 ("The reason for the disloyalty (the faithlessness) is irrelevant, the underlying motive (be it venal, familial, collegial, or nihilistic) for conscious action not in the corporation's best interest does not make it faithful, as opposed to faithless."); *RJR Nabisco, Inc.*, 1989 WL 7036, at *15 (explaining that a lack of good faith can result from "any human emotion [that] may cause a director to [intentionally] place his own interests, preferences or appetites before the welfare of the corporation," including greed, "hatred, lust, envy, revenge, . . . shame or pride").

[317] *Edgington v. Fitzmaurice* (1885) 29 Ch D 459 at 483 (Eng.).

[318] *Allen v. El Paso Pipeline GP Co., L.L.C.*, 113 A.3d 167, 178 (Del. Ch. 2014), *aff'd*, 2015 WL 803053 (Del. Feb. 26, 2015) (ORDER).

[319] *DSM HoldCo, Inc.*, 361 A.3d at 112.

> We gather two types of observable information—what a person did and the circumstances in which he did it—and triangulate to the person's unobservable mental states.[320]

"To get at a person's unobservable mental state, we look at what the person did and the circumstances in which they did it."[321]

Here, the plaintiffs argue that the Committee members failed to act in good faith because they deferred to the Founders' needs and placated their desires rather than negotiating at arm's length and in the best interests of the Company and all of its stockholders. The plaintiffs rely on a mix of cases, but the heart of their theory is that the Committee operated under a controlled mindset.

While serving on this court, Chief Justice Strine applied the controlled mindset theory in *Southern Peru*.[322] There, a mining company's controlling stockholder proposed that the company (the "Buyer") acquire another mining company that the controlling stockholder owned (the "Target") for $3.1 billion in publicly listed stock. The board formed a special committee to evaluate the proposal. The committee's financial advisor determined that the Target was worth far less than $3.1 billion. But rather than rejecting the transaction, the committee engaged in "strenuous efforts to

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[320] Mihailis E. Diamantis, *How to Read a Corporation's Mind*, *in The Culpable Corporate Mind* 209, 222–23 (Elise Bant ed., 2023).

[321] *Firefighters' Pension Sys. of City of Kan. City v. Found. Bldg. Mat'ls, Inc.*, 318 A.3d 1105, 1164 (Del. Ch. 2024).

[322] *In re S. Peru Copper Corp. S'holder Deriv. Litig.*, 52 A.3d 761 (Del. Ch. 2011), *aff'd sub nom. Ams. Mining Corp. v. Theriault*, 51 A.3d 1213 (Del. 2012).

justify a transaction at the level originally demanded by the controller" and ultimately caved to the controller's demands.[323]

In a post-trial opinion, then-Chancellor Strine held that the transaction was unfair. He observed that the committee members were "competent, well-qualified individuals with business experience" and had sufficient resources and "top tier" advisors.[324] They met frequently and had their "hands . . . on the oars," but "their boat [went], if anywhere, backward."[325] As the court found, the committee "was trapped in the controlled mindset, where the only options to be considered are those proposed by the controlling stockholder."[326] The resulting "strange deal dynamic" manifested in an unfair process and produced an unfair price.[327] For purposes of this case, the plaintiffs argue that the Committee members failed to act in good faith because they operated under a controlled mindset, deferred to the Founders' needs, and sought to placate their desires rather than pursuing what was in the best interests of the Company.

Despite the Committee's seemingly sound process, the plaintiffs have amassed considerable contemporaneous evidence suggesting a controlled mindset.

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[323] *Id.* at 764.

[324] *Id.* at 797.

[325] *Id.*

[326] *Id.* at 800.

[327] *Id.* at 813.

There is evidence suggesting that at the outset, the Committee and its advisors intended to do what the Founders wanted and were focused instead on the "[n]eed to figure out the narrative and ensure there are 'gets' for Matthew/Michelle."[328] Consistent with this interpretation, the Committee met with the Founders and asked them to identify a capital structure that would meet their needs. The Committee and Centerview had identified a range of possible alternatives to pursue, but after Prince told them that he loved a combination of the Class B Exchange with the Non-Voting Stock Authorization, the Committee fixated on that path. The day after Prince met with the Committee, he created a Signal chat titled with a "bus" emoji with Zatlyn and the Committee members. The inferable purpose of the Signal chat was to get everyone "on the bus" for purposes of achieving what the Founders wanted. Prince set the messages to delete after one day.

There is also evidence indicating that from the outset, the Committee and its advisors planned to justify the Recapitalization by arguing that founder-controlled companies perform better.[329] When Centerview could not substantiate that claim, the Committee discussed how, from a "[r]ecord and process standpoint," it would be a "good fact pattern" to "engage an outside expert" and have the expert advise the

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[328] PX 23 at CENTERVIEW_00026890.

[329] *Id.* (Committee's advisors discussing that "[a]t some point, the committee has to own the story" and that a viable theory could be to "conclude founders maintaining a control block is critical (and any structure must ensure that)").

Committee that maintaining founder control would be good for the Company.[330] Lakhani used an AI chatbot to identify academic experts who could speak to the "benefits" of founder control and the "value" of dual-class structures. The Committee members consulted with Sonnenfeld, knowing he would support their desired outcome.

There is also evidence of backchannel communications and outsider involvement. Despite committing not to discuss the Recapitalization with Prince, Lakhani had an unauthorized conversation in which he told Prince that he thought the Committee would give him what he wanted. When the Committee's next proposal did not mesh with Lakhani's promise, Prince sought to bully the Committee with late-night expletives and threats. He also backchanneled with Ledbetter, a director who was not a member of the Committee, about tying the Capital-at-Risk Requirement to the Class A shares alone.[331] Ledbetter assured Prince that he would "fix it"[332] and proceeded to intervene in the Committee process.[333] Cunningham also involved herself in the Committee's process.

And there is evidence showing that during the negotiations, the Committee regularly deferred to the Founders. The negotiations over the Capital-at-Risk

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[330] PX 43 at CENTERVIEW_00026732.

[331] DX 28 at SC0001820.

[332] DX 26 at CF_007044.

[333] *E.g.*, DX 28 at SC0001817.

Requirement illustrate the pattern. Prince described the Capital-at-Risk Requirement as the "only thing we care about."[334] Rather than making a demand, the Committee's counsel told the Founders' counsel that the Committee's proposal was "a placeholder and [that] the committee [was] looking for [the Founders'] input on the appropriate percentage threshold."[335] The parties went back and forth, but after Prince made threats and brought his director allies into the Committee's process, Prince got his way. The Committee also secured the Service Requirement, but no one expected the Founders to leave the Company in the near term, and their service obligations seem easy to meet. Finally, the Committee secured a commitment that the Board would be majority independent, but no one expected the Company to divert from its past practice of having a majority-independent Board.

The defendants rely heavily on deposition testimony and lawyer-drafted minutes, but the plaintiffs challenged their testimony with contemporaneous evidence. The defendants' extensive Signal use damaged their credibility further. They created some chats at the beginning of the Committee process.[336] They created others after Prince became irate over the negotiations, exploded on Lakhani and Sandell, and injected boardroom allies into the Committee's process.[337] Prince created

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[334] PX 55 at SC0001919.

[335] PX 49 at CF_009048.

[336] *See* PX 6 at 13; Lakhani Dep. 40–41; PX 38; Prince Dep. 178–80; PX 6 at 12.

[337] *E.g.*, PX 60 (Sandell creating a Signal chat called "Progress Committee" with Lakhani and Zatlyn and setting its retention settings to one month); *see also* PX

yet another with Lakhani, Sandell, and Zatlyn during the last days of the negotiations, titled it "SC," and set it for one-day deletion.[338] The defendants could provide no explanation for shortening the auto-delete settings,[339] and their Signal-related testimony on other issues was notably strained.[340] The defendants' credibility problems grew worse when they reneged on their commitment not to close the Recapitalization until after the court ruled.

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6 at 17 (Lakhani changing his settings for a Signal chat with Sandell to delete messages after one week); *id.* at 14 (Prince changing his settings for a Signal chat with Ledbetter to delete messages after one day).

[338] PX 65.

[339] *E.g.*, Lakhani Dep. 55 (testifying that he does not recall why he enabled disappearing messages on his Signal chat with Sandell on the day that Prince exploded).

[340] *E.g.*, *id.* at 40–41 (failing to recall whether a Signal chat Prince created during the final days of the negotiations and titled "SC" referred to the "special committee"); Prince Dep. 180–81 ("I don't recall creating this group and I don't recall setting the emoji."); *id.* at 181–82 ("Q. And your understanding of the bus emoji . . . and its meaning, do you understand that to mean that you're all in the same vehicle? A. No. I have no . . . idea what that . . . means."); *id.* at 182–83 ("Q. [S]o you don't know, one way or another, whether you communicated with members of the Committee on this Signal channel? A. Yeah, I don't recall."); Lakhani Dep. 37–38 ("I have no recollection of that Bus Emoji chat. . . . I am befuddled as to what this chat was about."); *id.* at 39 ("Q. Anything else that occurs to you about what this Bus Emoji chat might have been, when was it created, who created it, any context? A. Again, I am befuddled by this one."); Suder Dep. 44, 46 ("Q. So this one, the name of the chat is an Emoji of a bus. What's this channel? A. I don't know. Q. Do you know what the significance of the bus Emoji is? A. No. Q. Do you know who created this chat or what it was for? A. No."); Zatlyn Dep. 201 ("Q. Do you know who made the bus Emoji? A. I think it's one of the options in the Emojis on your iPhone. . . . Q. But I'm asking if you know which participant in the chat chose the bus Emoji for this Signal chat? A. I have no idea. Q. And do you have any understanding of why the bus Emoji was chosen? A. I don't.").

In an effort to negate the implications of their Signal use, the defendants fault the plaintiffs for not moving to obtain an adverse inference based on spoliation. They argue that without a formal motion and spoliation-related ruling, the court cannot draw any inferences from the missing Signal messages. But the court can review the record to assess what inferences the Signal use, together with the associated gaps in the record, supports. That is not drawing an adverse inference based on spoliation; it draws an inference based on what the record contains and omits. A party's failure to produce strong evidence that should have been available can support an inference that the absent evidence would have been adverse.[341] Here, the strong evidence would have been the contemporaneous Signal messages.

That record gives the plaintiffs a reasonable probability of succeeding in showing that the Committee failed to act in good faith. On that view, the Committee

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[341] *Smith v. Van Gorkom*, 488 A.2d 858, 878 (Del. 1985) (subsequent history omitted) ("It is a well established principle that the production of weak evidence when strong is, or should have been, available can lead only to the conclusion that the strong would have been adverse." (citing *Interstate Circuit v. United States*, 306 U.S. 208, 226 (1939); *Deberry v. State*, 457 A.2d 744, 754 (Del. 1983))); *accord Kahn v. Lynch Commc'n Sys., Inc.*, 638 A.2d 1110, 1118 n.7 (Del. 1994) ("As we have previously noted, the production of weak evidence when strong is, or should have been, available can lead only to the conclusion that the strong would have been adverse."); *see Barbey v. Cerego, Inc.*, 2023 WL 6366055, at *8 (Del. Ch. Sep. 29, 2023) ("Intervenor produced weak evidence – the Screenshots – when strong evidence – the Emails in native format – was, or should have been, available. . . . [F]ailure to produce the Emails in their native format 'can only lead to the conclusion' that they would have been adverse to Intervenor's case."), *aff'd sub nom. Barbey v. Young*, 319 A.3d 908 (Del. 2024) (TABLE); *Chesapeake Corp. v. Shore*, 771 A.2d 293, 300–01 & n.7 (Del. Ch. 2000) (relying on principle from *Van Gorkom* and *Kahn* where "defendants chose not to have any of the key insiders at Shorewood testify at trial," so the court "never got to hear the 'Shorewood board's story' from its leader, Marc Shore, or one of its top managers").

members acted to serve the Founders' interests rather than the best interests of the Company. The court therefore cannot bless the Recapitalization at the injunction stage. During trial, the court will have "the unique opportunity [as] the fact-finder . . . to evaluate the live witnesses, to evaluate their demeanor and credibility and to resolve conflicts in the testimony."[342] The Committee members may well testify credibly. At this stage, however, the record accommodates a reasonable probability that the General Controller Safe Harbor does not apply.

ii. Gross Negligence

The plaintiffs last contend that the Committee was grossly negligent. If that were the only challenge to the Recapitalization, an injunction would not be warranted.

"For purposes of Delaware entity law, a showing of gross negligence requires conduct akin to recklessness."[343] In civil cases not involving business entities, the Delaware Supreme Court has defined gross negligence as "a higher level of negligence representing 'an extreme departure from the ordinary standard of care.'"[344] In

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[342] *Hudak*, 806 A.2d at 150.

[343] *In re McDonald's Corp. S'holder Deriv. Litig.*, 289 A.3d 343, 371–72 (Del. Ch. 2023); *accord PJT Hldgs., LLC v. Costanzo*, 339 A.3d 1231, 1249–50 (Del. Ch. 2025), *aff'd*, 362 A.3d 286 (Del. 2026) (TABLE); *Firefighters' Pension Sys. of City of Kan. City, Mo. Tr. v. Presidio, Inc.*, 251 A.3d 212, 287 (Del. Ch. 2021).

[344] *Browne v. Robb*, 583 A.2d 949, 953 (Del. 1990) (quoting W. Prosser, *Handbook of the Law of Torts* 150 (2d ed. 1955)), *cert. denied*, 499 U.S. 952 (1991). This test "is the functional equivalent" of the test for "[c]riminal negligence." *Jardel Co., Inc. v. Hughes*, 523 A.2d 518, 530 (Del. 1987); *see* 11 *Del. C.* § 231(a) (defining "criminal negligence").

Delaware entity law, by contrast, "gross negligence means reckless indifference to or a deliberate disregard of the whole body of stockholders or actions which are without the bounds of reason."[345] It requires "a devil-may-care attitude or indifference to duty amounting to recklessness."[346]

The plaintiffs do not advance a gross negligence theory as a separate argument; they point to the same evidence that they say supports the Committee's lack of good faith. During the injunction hearing, their counsel acknowledged that they view this case as involving disinterested directors falling prey to a controlled mindset and acting to benefit a controlling stockholder.[347]

The Committee's process has all the outward signs of diligent and careful effort. The Committee hired competent advisors, held eighteen meetings over six months, and generated hundreds of pages of detailed minutes and presentation materials.

The plaintiffs do argue that the Committee members lacked important information, most notably because they failed to secure a fairness opinion. After *Van Gorkom*, it seemed like every Delaware-law transaction required a fairness opinion, leading commentators to label the decision the "Investment Bankers' Full

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[345] *Tomczak*, 1990 WL 42607, at *12 (internal quotation marks omitted).

[346] *Albert v. Alex. Brown Mgmt. Servs., Inc.*, 2005 WL 2130607, at *4 (Del. Ch. Aug. 26, 2005) (internal quotation marks omitted).

[347] *See* Hearing Tr. 32–34.

Employment Act."[348] Moreover, in *Reader's Digest*, the Delaware Supreme Court reversed the denial of a preliminary injunction and blocked a controlling-stockholder recapitalization from closing.[349] The justices observed that the committee that approved the transaction "never sought, nor did its financial advisor . . . ever tender, an opinion as to whether the transaction was fair to the [low vote] shareholders."[350] Since then, however, Delaware decisions have shown greater deference to a decision not to secure a fairness opinion, even for purposes of a controller recapitalization.[351]

Here, the Committee did not obtain a fairness opinion, yet it seems unlikely that the plaintiffs could establish that the Committee acted in a grossly negligent manner. The due care claim does not support injunctive relief.

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[348] Dierdre A. Burgman & Paul N. Cox, *Corporate Directors, Corporate Realities and Deliberative Process: An Analysis of the* Trans Union *Case*, 11 J. Corp. L. 311, 333 n.146 (1986) ("[T]he opinion was hailed in New York City as the 'Investment Bankers' Full Employment Act.'"); *see* William J. Carney, *Fairness Opinions: How Fair Are They and Why We Should Do Nothing About It*, 70 Wash. U. L.Q. 523, 527 (1992) (calling *Van Gorkom* "the Investment Bankers' Civil Relief Act of 1985"); *see also* Daniel R. Fischel, *The Business Judgment Rule and the* Trans Union *Case*, 40 Bus. Law. 1437, 1453 (1985) (calling investment bankers who provide fairness opinions "the biggest winners after *Trans Union*").

[349] *Levco Alt. Fund Ltd. v. Reader's Dig. Ass'n, Inc.*, 803 A.2d 428, 2002 WL 1859064, at *3 (Del. 2002) (TABLE).

[350] *Id.* at *2.

[351] *See Crane*, 2017 WL 7053964, at *12 (rejecting challenge to recapitalization to extend dual-class structure; "Plaintiff's assertion that *MFW* should not apply because Moelis did not provide a fairness opinion is equally unconvincing. As plaintiff concedes, fairness opinions are not required for any form of transaction, including mergers."); *see generally Delman v. GigAcquisitions3, LLC*, 288 A.3d 692, 727 n.254 (Del. Ch. 2023) ("Delaware courts have stated that there is no duty to obtain a fairness opinion.").

B. Entire Fairness

Because the plaintiffs have shown a reasonable likelihood of success on their argument that the General Controller Safe Harbor does not protect the Recapitalization, the plaintiffs can invoke common-law principles to challenge that transaction. Under those principles, the plaintiffs have a reasonable likelihood of success.

The analysis starts with the standard of review. The parties agree that if the Safe Harbor Statute does not apply, then the entire fairness test governs the fiduciary analysis. "[W]here a controlling stockholder transacts with the controlled corporation and receives a non-ratable benefit, the presumptive standard of review is entire fairness."[352] That standard applies to reclassifications in which controllers seek to extend their control.[353]

The entire fairness standard of review is a singular test with interwoven substantive and procedural dimensions. The substantive dimension of the fairness inquiry examines the transactional result. The cases that developed the entire fairness test historically involved freeze-outs or squeeze-outs, so the substantive fairness of the transactions largely turned on the price that the minority stockholders

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[352] *Match*, 315 A.3d at 460.

[353] *See Crane*, 2017 WL 7053964, at *9; *see also Fishel v. Liberty Media Corp.*, C.A. No. 2021-0820-KSJM, at 23–24 (Del. Ch. Nov. 1, 2022) (TRANSCRIPT) (explaining that "[t]his court has deemed a variety of unique benefits sufficient to trigger entire fairness review," including "perpetuating control" and "consolidating control"); *In re Viacom Inc. S'holders Litig.*, 2020 WL 7711128, at *16 (Del. Ch. Dec. 29, 2020) (describing *Crane*).

received. As a result, "fair price" became the dominant nomenclature for the substantive dimension. In that setting, the fair price inquiry generally involved comparing what the stockholders received with their proportionate share of the corporation's value as a going concern. Thus, in the canonical framing, fair price "relates to the economic and financial considerations of the proposed merger, including all relevant factors: assets, market value, earnings, future prospects, and any other elements that affect the intrinsic or inherent value of a company's stock."[354] But the substantive dimension of the entire fairness inquiry has never been narrowly focused on price. The true "test of fairness" is whether the minority stockholder receives at least "the substantial equivalent in value of what he had before."[355]

The procedural dimension of the entire fairness inquiry examines the process that generated the result. Known as "fair dealing," it "focuses upon the conduct of the corporate fiduciaries in effectuating the transaction."[356] The procedural dimension addresses how the transaction came about and "embraces questions of when the transaction was timed, how it was initiated, structured, negotiated, disclosed to the

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[354] *Weinberger v. UOP, Inc.*, 457 A.2d 701, 711 (Del. 1983).

[355] *Sterling v. Mayflower Hotel Corp.*, 93 A.2d 107, 114 (Del. 1952); *accord Rosenblatt v. Getty Oil Co.*, 493 A.2d 929, 940 (Del. 1985) ("[T]he correct test of fairness is 'that upon a merger the minority stockholder shall receive the substantial equivalent in value of what he had before.'" (quoting *Sterling*, 93 A.2d at 114)); *see* Lawrence A. Hamermesh & Michael L. Wachter, *The Fair Value of Cornfields in Delaware Appraisal Law*, 31 J. Corp. L. 119, 139 (2005) (arguing for a remedial standard that "provides the minority shareholders with the value of what was taken from them").

[356] *Kahn v. Tremont Corp.* (*Tremont II*), 694 A.2d 422, 430 (Del. 1997).

directors, and how the approvals of the directors and the stockholders were obtained."[357]

The procedural dimension matters because the substantive dimension is often contestable. "The concept of fairness is of course not a technical concept. No litmus paper can be found or [G]eiger-counter invented that will make determinations of fairness objective."[358] Instead, a judgment concerning fairness "will inevitably constitute a judicial judgment that in some respects is reflective of subjective reactions to the facts of a case."[359] Thus, if fiduciaries successfully replicate arm's-length bargaining, then that evidence of fair dealing can validate a debatable outcome. But the opposite is also true: a dubious process can call into question a low but nominally fair price.[360] "Factors such as coercion, the misuse of confidential

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[357] *Weinberger*, 457 A.2d at 711.

[358] *Kahn v. Tremont Corp.* (*Tremont I*), 1996 WL 145452, at *8 (Del. Ch. Mar. 21, 1996) (Allen, C.), *rev'd on other grounds*, *Tremont II*, 694 A.2d 422; *id.* at *1 ("A fair price is a price that is within a range that reasonable men and women with access to relevant information might accept.").

[359] *Cinerama, Inc. v. Technicolor, Inc.* (*Technicolor Plenary III*), 663 A.2d 1134, 1140 (Del. Ch. 1994) (Allen, C.), *aff'd*, *Technicolor Plenary IV*, 663 A.2d 1156.

[360] *See Tremont II*, 694 A.2d at 432 ("[H]ere, the process is so intertwined with price that under *Weinberger*'s unitary standard a finding that the price negotiated by the Special Committee might have been fair does not save the result."); *Basho Techs. Holdco B, LLC v. Georgetown Basho Invs., LLC*, 2018 WL 3326693, at *37 (Del. Ch. July 6, 2018) ("Just as a fair process can support the price, an unfair process can taint the price."), *aff'd sub nom. Davenport v. Basho Techs. Holdco B, LLC*, 221 A.3d 100 (Del. 2019) (TABLE); *Bomarko, Inc. v. Int'l Telecharge, Inc.*, 794 A.2d 1161, 1183 (Del. Ch. 1999) ("[T]he unfairness of the process also infects the fairness of the price."), *aff'd*, 766 A.2d 437 (Del. 2000) (per curiam).

information, secret conflicts, or fraud could lead a court to hold that a transaction that fell within the range of fairness was nevertheless unfair compared to what faithful fiduciaries could have achieved."[361] When those factors are present, a court may conclude that the transaction is not entirely fair.

Ultimately, when entire fairness governs, the defendants must establish "to the *court's* satisfaction that the transaction was the product of both fair dealing *and* fair price."[362] "Not even an honest belief that the transaction was entirely fair will be sufficient to establish entire fairness."[363] "Rather, the transaction itself must be objectively fair, independent of the board's beliefs."[364]

When a plaintiff seeks a preliminary injunction against a transaction that will be subject to the entire fairness test at trial, the plaintiff must point to evidence of unfairness that is sufficient "to establish a reasonable likelihood that the defendants will be unable to meet their burden of proving fairness at trial."[365] The plaintiffs have met that standard here.

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[361] *ACP Master, Ltd. v. Sprint Corp.*, 2017 WL 3421142, at *19 (Del. Ch. July 21, 2017), *aff'd*, 184 A.3d 1291 (Del. 2018) (TABLE).

[362] *Technicolor Plenary IV*, 663 A.2d at 1163 (internal quotation marks omitted).

[363] *Gesoff v. IIC Indus., Inc.*, 902 A.2d 1130, 1145 (Del. Ch. 2006).

[364] *Id.*

[365] *T. Rowe Price Recovery Fund*, 770 A.2d at 553; *accord Kohls v. Duthie*, 765 A.2d 1274, 1283 (Del. Ch. 2000).

1. Procedural Fairness

The plaintiffs have amassed evidence that could prevent the defendants from showing procedural fairness. That outcome depends largely on credibility determinations and is by no means assured, but the plaintiffs have shown a reasonable probability of success.

Procedural fairness encompasses how the transaction was initiated, including whether the fiduciary-beneficiaries started the process.[366] The Founders expressed concern about their ability to maintain control while also divesting their shares to generate liquidity and for estate and tax planning.[367] After hearing those concerns, the Board formed the Committee. The plaintiffs point to evidence showing that the Committee prioritized the optics of creating a record for litigation, rather than securing a transaction that was in the Company's best interests.[368]

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[366] *In re Trados Inc. S'holder Litig.*, 73 A.3d 17, 56 (Del. Ch. 2013) ("Fair dealing encompasses an evaluation of how the transaction was initiated.").

[367] *See* PX 22 at CF_008371 (noting that the Founders asked for help "with several issues that involve their stock holdings," including "tax planning, philanthropy planning, and voting control issues"); PX 23 at CENTERVIEW_00026890 (citing the Founders' "'aha moment' around what type of stock they were granting," which "led to [the] realization they need to right-size the cap table first" before moving forward with a mega-grant).

[368] PX 23 at CENTERVIEW_00026890 (noting that the Committee discussed the "[n]eed to figure out the narrative and ensure there are 'gets' for Matthew/Michelle"; reflecting discussion that "[a]t some point, the committee has to own the story — could conclude founders maintaining a control block is critical (and any structure must ensure that)").

Fair dealing also encompasses questions of how the transaction was negotiated and structured.[369] Before negotiations began, the Committee asked the Founders for direction on a capital structure that would meet their needs.[370] After Prince told them that he "loved" the combination of the Class B Exchange and the Non-Voting Stock Authorization,[371] the Committee focused on that path without meaningfully considering or proposing alternatives. The day after the meeting, Prince created a Signal chat titled with a "bus" emoji, included Zatlyn and the Committee members, and set the messages to delete after one day.

On their side, the Committee and its advisors discussed what might provide "a good fact pattern" for litigation.[372] They decided it would help to engage an outside expert and have the expert tell them that they could emphasize the need to maintain founder control. When the Committee's financial advisor found "no consistent relationship between control and value creation," the Committee turned to the expert.[373]

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[369] *Trados*, 73 A.3d at 58 ("Fair dealing encompasses questions of how the transaction was negotiated and structured.").

[370] PX 37 at NEA_0000429 (Lakhani and Sandell meeting with the Founders to "get some more input from them and a better understanding of where things currently stand to better direct the committee and its process forward from here").

[371] *See* PX 23 at CENTERVIEW_00026893.

[372] PX 43 at CENTERVIEW_00026732.

[373] *See* PX 41 at SC0000224; PX 55 at SC0001919.

Once underway, the Committee's negotiations with the Founders were desultory. The Committee was particularly accommodating on the Capital-at-Risk Requirement, which Prince described as the "only thing we care about."[374] Rather than make a demand, the Committee's counsel told the Founders' lawyers that the Committee's proposal for 50% of the Founders' equity value was "a placeholder" and that the Committee was "looking for [the Founders'] input on the appropriate percentage threshold."[375] Lakhani undercut any leverage the Committee might have had by signaling to Prince in an unauthorized conversation that the Committee would get to the outcome he wanted. When the Committee's next proposal did not match Prince's expectations, Prince exploded and made threats. He also brought his director allies into the Committee's process. After those directors injected themselves into the Committee's deliberations, the Committee met Prince's demands.

Fair dealing also encompasses questions of how director approval was obtained.[376] The Committee did not obtain a fairness opinion on the Recapitalization. The Committee did not otherwise attempt to quantify the relative value of the

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[374] PX 55 at SC0001919.

[375] PX 49 at CF_009048. As discussed, the parties disagree about the meaning of "placeholder," but the record suggests that the Committee and its advisors largely wanted to defer to the Founders' asks for the Capital-at-Risk Requirement. *See supra* Section I.F.4.

[376] *Trados*, 73 A.3d at 62 ("Fair dealing encompasses questions of how director approval was obtained.").

benefits that the Founders received compared to the benefits to the Company and its other investors.

"Finally, fair dealing encompasses questions of how stockholder approval was obtained."[377] The Founders provided the requisite stockholder approval. The unaffiliated stockholders voted against the components of the Recapitalization that the Company put to a vote.

The foregoing factors do not reflect the whole story, and the defendants sponsor a different account. At this stage of the case, however, the plaintiffs have shown a reasonable likelihood of success on a claim that the Committee and its advisors prioritized and satisfied the Founders' goals at the expense of the Company.

2. Substantive Fairness

The plaintiffs have also assembled sufficient evidence to establish a reasonable probability that the defendants will fall short on the substantive fairness dimension of the entire fairness test. The Recapitalization lacks an ascertainable "fair price," but the court can assess its economic and financial considerations to make a qualitative judgment regarding fairness.

The true "test of fairness" is whether the minority stockholder receives at least "the substantial equivalent in value of what he had before."[378] Before the

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[377] *Id.* at 65.

[378] *Sterling*, 93 A.2d at 114; *accord Rosenblatt*, 493 A.2d at 940 ("[T]he correct test of fairness is 'that upon a merger the minority stockholder shall receive the substantial equivalent in value of what he had before.'" (quoting *Sterling*, 93 A.2d at

Recapitalization, the Company's stockholders held shares in a corporation with two classes of stock, where the Founders' sales and other divestitures would eventually cause them to lose control. After the Recapitalization, the Company's stockholders will hold shares in a corporation with three classes of common stock, plus preferred stock, where the Founders' sales and other divestitures will never cause them to lose control.

The Recapitalization deprives the Company's unaffiliated stockholders of benefits conferred by the current capital structure. The defendants respond that the benefits of having the Founders control the Company indefinitely will generate greater economic value for everyone. But the Committee did not obtain a fairness opinion or otherwise analyze the economic value of the Recapitalization.

The parties have submitted competing expert reports. The plaintiffs' expert opines that the Recapitalization "confer[s] significant non-ratable benefits on the Co-Founders while imposing considerable costs on Public Class A Stockholders" and the Recapitalization's "'positive factors' . . . are largely cosmetic and cannot be expected to deliver significant value to public investors."[379] The plaintiffs' expert observes that control has value, and the public stockholders lose "a valuable asset" through the Recapitalization in what he regards as "a deviation from the bargain str[uck] at the

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114)); *see* Hamermesh & Wachter, *supra*, at 139 (arguing for a remedial standard that "provides the minority shareholders with the value of what was taken from them").

[379] Kastiel Rep. 6.

IPO stage."[380] The plaintiffs' expert also points to the Founders' increased ability to sell shares without losing control. He estimates that before the Recapitalization, the Founders could generate approximately $450 million in proceeds before losing majority control.[381] After the Recapitalization, the Founders can liquidate $4.7 billion before jeopardizing their majority control.[382] The Recapitalization therefore confers a direct benefit on the Founders of over $4 billion, while the public stockholders bear the cost in the form of a "substantially enlarge[d] . . . 'wedge' between the Co-Founders' voting power and their cash-flow rights," which "exacerbat[es] agency problems and distortions in corporate decision-making."[383]

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[380] Kastiel Dep. 71, 74, 108 (citing studies showing the value of control). *See also* Kastiel Rep. 26–33.

[381] Kastiel Rep. 14.

[382] Kastiel initially uses the closing price of $209.22 per Class A share on May 27, 2026 to assert that after the Recapitalization, the Founders can liquidate $9.4 billion before jeopardizing their majority control. *Id.* at 16 & n.16. At his deposition, Kastiel acknowledges that the estimated post-Recapitalization trading price should be lower than $209.22 per share given the Class C Split. Kastiel Dep. 160–62. He observes that if you cut the number by half, the Founders can liquidate $4.7 billion. *Id.* at 162. *See* Proxy Statement at 58 ("If the Class C Split occurs, we believe that the market price for the shares of Class A common stock will generally reflect the effect of a two-for-one stock split and . . . the market price of the Class A common stock will decrease by approximately one-half. . . . [W]e expect the market price of shares of Class C common stock to be approximately equal to the market price of shares of Class A common stock . . . ."). The plaintiffs therefore argue that after the Recapitalization, the Founders can liquidate $4.7 billion before jeopardizing their majority control. OB at 3, 39, 60.

[383] Kastiel Rep. 7, 26–32; *see also* Kastiel Dep. 42–45 (criticizing Smith's use of control premium literature "and not the academic research demonstrating the value destruction to companies in the long run from an increasing wedge size"; "[H]e's using a 4 percent discount which is the inverse of a control premium"; "It's also, I think,

The defendants' expert counters by pointing to an absence of evidence that the Recapitalization imposes near-term economic harm on the unaffiliated stockholders,[384] relying on an illustrative valuation model and on his finding that there was no negative market or analyst reaction to the Recapitalization.[385] He acknowledges that the cost of extending the Founders' control could amount to $3.2 billion,[386] but argues that the Founders can more than offset that amount by generating incremental stock-price appreciation of between 0.5% and 1.0% annually.[387]

The competing expert opinions advance starkly different views. At the present stage, the plaintiffs' expert and the record as a whole give the plaintiffs a reasonable probability of success at trial under the entire fairness test.

VI. NEXT STEPS

The last question is how the case should proceed. Precisely because the Safe

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inconsistent that he's holding that discount constant even though the size of the wedge could be increasing over time and the academic research shows that could drive a further reduction in company value").

[384] Smith Dep. 40–43.

[385] Smith Decl. ¶¶ 38–51. *See* AB at 69 n.378 (describing expert's illustrative model as supplying "a quantitative method" for crediting the Committee's "qualitative analysis" (emphasis omitted)).

[386] Smith Dep. 224–27. Smith uses research measuring control premiums to approximate the minority discount. *Id.* at 225. He did not perform any Company-specific analysis, drawing only from academic literature. *Id.* at 217; Smith Decl. ¶¶ 4, 67.

[387] Smith Decl. ¶¶ 51, 75–76.

Harbor Statute provides "powerful protection for conflicted transactions,"[388] there is good reason to think that the defendants should not be put through the burden of trying an entire fairness case before knowing whether the General Controller Safe Harbor applies. Whether that is true in other cases will depend on their facts and the issues involved. In this case, it seems logical to adjudicate that issue first.

"Delaware trial courts have inherent power to control their dockets."[389] That authority includes determining how to proceed for the "orderly adjudication of claims."[390] Court of Chancery Rule 16(a) contemplates that a court may take steps to "formulat[e] and simplif[y] . . . the issues" and to address "[s]uch other matters as may aid in the disposition of the action."[391]

Holding a trial limited to compliance with the General Controller Safe Harbor would seem to promote the orderly adjudication of the plaintiffs' claims and aid in the disposition of this action. If the court finds that the Committee-Approval Path was satisfied, then the General Controller Safe Harbor will apply, and there will be no need to assess entire fairness.

In light of the rulings made in this decision, a trial on whether the Committee-Approval Path was met should center on the question of whether the Committee acted

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[388] *Dodiya*, 2026 WL 2517931, at *1.

[389] *Solow v. Aspect Res., LLC*, 46 A.3d 1074, 1075 (Del. 2012).

[390] *Unbound P'rs Ltd. P'ship v. Invoy Hldgs. Inc.*, 251 A.3d 1016, 1030 (Del. Super. 2021) (internal quotation marks omitted).

[391] Ct. Ch. R. 16(a)(1), (5).

in good faith. Because the trial would focus on that factual issue, expert testimony should not be necessary. The number of fact witnesses should be limited, because the key questions will involve what the Committee members knew, did, believed, and sought to achieve. The court can evaluate the witnesses' credibility, weigh the evidence, and rule on the pivotal issue of good faith. The plaintiffs have already received significant discovery about the Committee process, so little (if any) additional discovery should be required.

That said, the court does not want to impose two trials if one is preferable. Because the defendants must bear the burden of the preliminary injunction, they can make an election. At their request, the court will bifurcate the proceedings and hold an initial trial limited to the question of whether the Committee-Approval Path was met. If the defendants choose that option, the court will require trial to be held promptly, ideally in approximately ninety days. If the defendants prefer not to have a separate trial on whether the Committee-Approval Path was met, the court will still require the full trial to be held promptly.

The defendants must make their election within ten days. Once the election is made, the court will convene a case management conference. In advance of that conference, the parties must confer and submit a joint letter setting forth their positions. The word limit in Rule 7(d)(3) does not apply.

VII. CONCLUSION

The plaintiffs have satisfied the elements for a preliminary injunction. They have shown that the closing of the Recapitalization threatens irreparable harm and that the balance of the equities favors a preliminary injunction to preserve the court's

ability to grant a meaningful remedy. They have also shown a reasonable probability that they can defeat the application of the General Controller Safe Harbor because of the possibility that the Committee did not act in good faith. With the General Controller Safe Harbor negated, the plaintiffs have shown a reasonable probability of success under the entire fairness test.

The issuance of the status-quo-maintaining injunction rests on the unique facts of the case. Without the defendants' credibility problems, the court could have concluded that the General Controller Safe Harbor was so likely to apply as to negate the need for injunctive relief. With the defendants' credibility problems, the court cannot make that determination.

A trial is therefore necessary, but this case does not inherently warrant a combined trial on both the General Controller Safe Harbor and questions of fairness. In light of the importance of the Safe Harbor Statute's protections, the defendants may elect to have an initial trial limited to the issue of compliance with the Committee-Approval Path.

An injunction will issue preventing the Recapitalization from closing pending the post-trial disposition of the case.