DELAWARE CORPORATE LAW UPDATE — October 2024

YOUNG CONAWAY

FEATURED:

In re Transunion Derivative Shareholder Litigation

In re Match Grp., Inc. Derivative Litigation

Solak v. Mountain Crest Capital LLC

Jacobs v. Akademos, Inc.

***In re Transunion Derivative Shareholder Litigation,* 2024 WL 4355571 (Del. Ch. Oct. 1, 2024) (oversight claims dismissed because board took steps to comply with consent order and received frequent compliance updates, and ongoing federal litigation relating to disagreement between board and regulator over consent order's terms did not reflect bad faith).**

Pleading-stage dismissal of derivative oversight claims. A consumer credit company submitted to a regulatory consent order requiring it to change certain advertising and billing practices. The board oversaw corrections to those practices but had a disagreement with the regulator on the details of certain changes that are subject to ongoing federal litigation. The court held that the board's affirmative steps to comply with the consent order and receipt of frequent updates on the company's compliance issues undercut allegations that the board failed to comply with the consent order in good faith. Nevertheless, plaintiffs argued that the disagreement between the board and the regulator indicated purposeful lawbreaking for profit. The court disagreed, holding that, regardless of the outcome of the related federal litigation, the board's disagreement with the regulator boiled down to minor interpretative differences over the consent order's terms, such as disclaimer font size, phrasing, and check box placement in product promotions—hardly allegations suggesting that directors acted or failed to act in bad faith.

***In re Match Grp., Inc. Derivative Litigation,* 2024 WL 4372313 (Del. Ch. Oct. 2, 2024) (controller of parent does not necessarily control subsidiary; dual fiduciaries' abstention defense failed because defendants voted to approve challenged transaction).**

Granting in part and denying in part motion to dismiss claims challenging a reverse spinoff where a controlling entity stood on both sides. The court previously had dismissed the claims, but on appeal, the Delaware Supreme Court held that the transaction was not cleansed under *MFW* and remanded the case for further proceedings. On remand, the Court of Chancery considered alternative grounds for dismissal set forth by (i) the company's alleged "ultimate controller," who was chairman, senior-executive, and significant minority stockholder of the company's controlling

entity; and (ii) company directors who were dual fiduciaries of the company and the controlling entity.

The court dismissed the claims against the alleged ultimate controller. The court held that a parent's controller does not necessarily also control the subsidiary "always and as a matter of law." The court then held that plaintiffs failed to allege reasonably conceivable claims that the parent's minority controller exercised actual control over the subsidiary itself, and the parent's minority controller therefore owed no fiduciary duties.

The court denied dismissal of the dual-fiduciary directors because, while dual-fiduciaries can obtain dismissal by abstaining from participation in the challenged transaction, defendant directors here had voted to approve the transaction.

***Solak v. Mountain Crest Capital LLC,* 2024 WL 4524682 (Del. Ch. Oct. 18, 2024) (de-SPAC entire fairness claims "barely" survive pleading-stage dismissal).**

Denying motion to dismiss entire fairness claims arising from de-SPAC merger even though allegations were "close to the line between an adequate and an inadequate claim." Plaintiff argued that (i) entire fairness applied because the merger was a controlled transaction, (ii) director defendants were conflicted because they directly or indirectly held founders shares, which only had value if a transaction was effectuated, and (iii) common stockholders allegedly could not exercise their redemption right in an informed manner because the proxy misleadingly disclosed an investment value of $10 per share without disclosing that, after accounting for factors such as the dilutive effect of redemptions, founder shares, and transaction costs, the SPAC actually had less than $7.50 net cash per share to invest in a merger. The court discussed *In re Hennessy Cap. Acq. Corp. IV S'holder Litig*., 318 A.3d 306 (Del. Ch. 2024), where the Delaware Court of Chancery had recently dismissed de-SPAC related claims, despite application of the entire fairness standard, because of a lack of pled facts suggesting unfairness with respect to redemption rights. The Solak court held that plaintiffs' allegations, on the other hand, were "barely" enough to state a non-exculpated claim.

***Jacobs v. Akademos, Inc., 2*024 WL 4614682 (Del. Ch. Oct. 30, 2024) (post-trial entire fairness ruling for defendant relating to a cash-out merger by a controller because plaintiff's common stock was worth nothing).**

Post-trial entire fairness ruling for defendant arising from a controlled merger where the common stockholders received zero consideration. Defendant venture capital fund controlled the company through series A preferred shares. The court held that, after accounting for certain of the preferred shares' rights—specifically, a mandatory redemption right and the right to accrued dividends—the common stockholders' shares had a fair value of zero. The court ruled that defendant offered evidence of fair price strong enough to "carry the day without any inquiry into fair dealing." The court further opined that, because the common stock "was so far out of the money," defendant could have unilaterally effected the merger "without any process whatsoever"—zero consideration still would be entirely fair.