Delaware Court of Chancery Issues First Significant Ruling on Amended Section 144

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On August 26, 2026 the Delaware Court of Chancery handed down the first decision analyzing whether a transaction qualified for protection under the new safe harbors of amended DGCL Section 144, and the win at the pleading stage went to the plaintiff.[1] In reaching the conclusion that the transaction did not qualify for a safe harbor, Vice Chancellor Will emphasized that the complaint describes an "extreme scenario" in which the board "acted with reckless indifference to its own safeguards against a known leak" by a fiduciary, "putting the integrity of the process at risk."

The case arose from the acquisition of Whole Earth Brands by affiliates of Sababa Holdings. According to the complaint, which was accepted as true for purposes of the court's decision on August 26, 2026, Whole Earth's CEO leaked material, nonpublic information to Sababa—not coincidentally, his father's company in which the CEO had a financial interest. Sababa then submitted a merger proposal. The board discovered the leak, and the audit committee investigated. The CEO refused to cooperate with the investigation. The board then demanded that he sign a confidentiality undertaking. The CEO refused and was placed on leave as CEO, and he ultimately resigned from that role. Following his resignation, he remained on the board, which restored his access to confidential information without any safeguards. The now-former CEO continued to leak MNPI to his father's company and the proxy said, incorrectly, that the CEO had been entirely walled off from the process.

When the inevitable lawsuit came, the defendants asserted that dismissal was required because the safe harbors of DGCL Sections 144(a)(1) and 144(a)(2) applied and because the plaintiff did not plead a non-exculpated claim. The Section 144(a)(1) safe harbor applies (in relevant summary) where the material facts as to the director/officer's conflict are disclosed or known to the board, and the board (or a specially designated committee), "in good faith and without gross negligence," authorizes the transaction by the affirmative vote of a majority of disinterested directors. The court concluded that the CEO's conflict was known to the board and that the transaction was approved by a disinterested majority but that the board's failure to take steps to protect confidential

[1] *Dodiya v. Franklin*, C.A. No. 2025-0932-LWW (Del. Ch. Aug. 26, 2026).

information from a leak to the buyer by a deeply conflicted fiduciary was "so extreme that it is reasonably conceivable the Board's authorization of the merger was grossly negligent."

The court further concluded that the Section 144(a)(2) safe harbor (stockholder vote) did not apply because the proxy stated that the CEO was walled off from the transaction after the initial proposal "and as a result did not receive from the Company any information with respect thereto." This was allegedly false because some months after his recusal, he received additional confidential materials, including Special Committee materials, and attended a board meeting where the Special Committee reported on the negotiations. The court found that a reasonable stockholder "would want to know whether the former CEO and son of the acquirer continued to receive confidential updates about the transaction process after his leak was uncovered."

Notably, apart from the former CEO and another director who secretly negotiated a $1.4 million consulting contract with the surviving company, the court dismissed the claims against the directors on the ground that the plaintiff failed to plead non-exculpated claims against them. The court concluded (among other things) that the board's efforts to exclude the then-CEO from discussions and to require a confidentiality undertaking "proved inadequate, but such inadequacy points to a breach of the duty of care—not bad faith."

A few other interesting aspects of the decision:

- Vice Chancellor Will analyzed disinterestedness under the heightened statutory standard and concluded, among other things, that a 10-year-old business relationship between one director and an interested person, in which the director was employed by the interested person and was paid over $12 million over the course of 10 or so years, was too insubstantial to impugn the director's independence at the time of the transaction. It is hard to know whether this conclusion signals that a change is afoot, but this is arguably a different outcome than some of the relevant pre-amendment precedent might suggest.

- The plaintiff also asserted a claim under Section 203 and argued that the favorable stockholder vote of 80+% did not cure the breach because it was not adequately informed for the same reasons that the amended Section 144 vote was not adequately informed. The court dismissed the claim, holding that the text of Section 203 "does not require that a stockholder vote be 'informed' or that stockholders receive any particular information before the vote".

- There was an interesting discussion of the intersection between *Revlon* and the amended Section 144 safe harbor in a change of control transaction. The court held

> that *Revlon* "is not entirely absent" from the safe harbor analysis: "To defeat the safe harbor in this context, the plaintiff must show that the directors were grossly negligent in discharging their fiduciary responsibilities to pursue the best price reasonably available or acted in bad faith by 'knowingly and completely fail[ing] to undertake their responsibilities.'"

As this case illustrates, while amended Section 144 provides important new protections for directors, it does not offer a safe harbor for all misbehavior. It is worth noting, however, that even on the egregious facts pled here, Delaware's director protections proved robust—most directors were dismissed from the case as having acted within the scope of the charter's exculpation provisions. While it is unfortunate that the first decision under the new statute found that the safe harbors did not apply, the court emphasized that "[t]hese are not the ordinary imperfections of a sale process," suggesting that the outcome in the "extreme scenario" set forth in the complaint is confined to its facts and not indicative of how the safe harbors will generally operate. We will continue to monitor and report on judicial interpretation of Delaware's new statutory regime.

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