Delaware Court Addresses Contractual Control Under Section 144

November 2, 2026

On October 28, 2026, the Delaware Court of Chancery held in *In re R1 RCM Inc. Merger Litigation* that a stockholder with 29.4% of R1's voting power had been adequately alleged to be a controlling stockholder under amended Section 144 of the Delaware General Corporation Law (the "DGCL"). The stockholder's right to nominate a board majority, together with R1's obligation to use commercially reasonable efforts to elect those nominees, satisfied the statute's separate test for contractual control.[1]

The decision connects the 2025 amendments to Section 144 with the 2024 legislative response to the *Moelis* decision, which authorized stockholder governance agreements while preserving fiduciary duties. Following the Court of Chancery's decisions in *Dodiya* on gross negligence and *Cloudflare* on good faith, *R1* addresses another element of the new statutory framework: who qualifies as a controller. In each of these decisions, defendants did not obtain the statutory protection they sought at the pleading stage. Although the amendments provide more defined standards and a clear pathway in appropriate cases, these decisions illustrate the continuing importance of judicial interpretation and the particular facts in determining the availability of statutory protection.[2]

BACKGROUND

An investment vehicle referred to as "TA" held 29.4% of R1's outstanding common stock and warrants that brought its fully diluted ownership to approximately 35.7%. An investor rights agreement counted those warrants on an as-exercised basis. As long as that contractual ownership percentage exceeded 33%, TA could nominate a board majority, and R1 agreed to use all commercially reasonable efforts to secure the

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1 *In re R1 RCM Inc. Merger Litigation*, C.A. No. 2025-1067-JTL, slip op. at 1–5, 33–41 (Del. Ch. Oct. 28, 2026) (opinion).

2 See the S.B. 313 synopsis, § 1, paragraph 4 (2024); our September 1, 2026 Update on Dodiya; and our October 20, 2026 In Depth on Cloudflare.

nominees' election. The nominees had to be reasonably acceptable to the nominating committee, and the board had to satisfy applicable independence requirements.[3]

R1's take-private closed in November 2024 without a condition requiring approval by disinterested stockholders. The defendants sought dismissal of the fiduciary-duty claim against TA and its owners solely on the ground that TA was not a controller. The opinion addresses that threshold question, rather than the transaction's fairness or eligibility for a transactional safe harbor.[4]

THE COURT'S DECISION

Voting Power and Contractual Rights Are Separate Tests

Section 144 provides three alternative routes to controller status: majority voting power; a right to cause the election of a board majority, or directors holding a majority of board voting power, selected at the holder's discretion; or at least one-third of the relevant voting power together with functionally equivalent majority control and managerial authority. The one-third minimum applies only to the third route.[5]

The court agreed with the defendants that TA's unexercised warrants did not count toward that minimum. The agreement's ownership calculation activated contractual rights but did not confer additional votes. TA's exercise of its warrants immediately before closing also did not establish controller status during the earlier period when the merger was negotiated and its terms fixed.[6]

Nomination Rights and the Efforts Covenant Established Contractual Control

The central interpretive question was whether TA's nomination right and R1's efforts covenant amounted to a right to cause election. The defendants argued that the statute required the ability to secure the electoral result; the plaintiffs argued that it required only the practical ability to elect a majority. Finding both readings reasonable, the court considered the provision's legislative history.[7]

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3 *R1*, slip op. at 5–10. The agreement's 33% ownership threshold differs from the statute's one-third voting-power threshold.

4 *Id.* at 4 n.3, 11–16. The merger preceded the 2025 amendments; both sides accepted that the statutory controller definition governed.

5 8 Del. C. § 144(e)(2). Each test takes account of the person's affiliates and associates.

6 *R1*, slip op. at 23–33. The court left open whether parties could expressly agree to treat particular securities as ownership or control of voting power. *Id.* at 30–31.

7 *Id.* at 33–34.

The original version of the 2025 bill had not included a separate board-election test. The court understood its addition against the background of *Moelis* and Section 122(18), the 2024 provision authorizing governance agreements without displacing fiduciary duties. It concluded that a package resembling the majority-nomination and corporate-support provisions considered in *Moelis* fell within the new controller definition. The court left open whether nomination rights alone would suffice.[8]

The reasonable-acceptability and independence requirements did not deprive TA of discretion to select its nominees. Nor did TA need to be able to replace the board immediately before the merger vote. Once the statutory board-election test was satisfied, no additional showing of common-law domination or transaction-specific control was required. The court therefore denied the motion to dismiss the claim against TA and its owners.[9]

PRACTICAL IMPLICATIONS

R1 underscores the need to review governance agreements alongside the capitalization table. Ownership below one-third of voting power does not resolve the controller question if the holder has a separate right to cause the election of a board majority. Nomination rights, election-support covenants and the contractual thresholds that activate them should be considered together. Statutory authorization of a governance arrangement and its consequences for controller status remain distinct questions.

The decision also informs transaction planning. Where parties seek Section 144's procedural safe harbor for a controller going-private transaction, both the specified committee approval or recommendation and disinterested-stockholder approval are required.[10]

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Please do not hesitate to contact us with any questions.

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[8] *Id.* at 35–41 & nn.106, 108. The *Moelis* trial court had upheld the nomination and reasonable-actions provisions themselves; the 2024 legislation addressed the broader authorization of governance agreements.

[9] *Id.* at 42–58. The court preserved the operation of different control definitions in other statutes. *Id.* at 58 n.143.

[10] 8 Del. C. § 144(b), (c). The committee and stockholder approvals must satisfy the substantive, disclosure and other requirements specified in those provisions.



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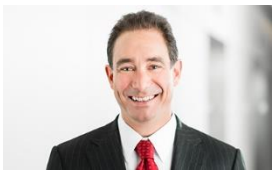
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