

## ARTICLES

# Controlling Stockholder or Member Status under Delaware Law—A Table of Key Decisions

A guide for corporate stockholders and LLC members seeking to minimize the risk of being deemed a controlling stockholder or member that owes fiduciary duties under Delaware law.

*By Christopher B. Chuff, Joanna J. Cline, Matthew M. Greenberg, and Taylor B. Bartholomew – July 8, 2021*

Whether a stockholder of a corporation or member of a limited liability company (LLC) is a controlling stockholder or member often has a significant impact on breach of fiduciary duty actions, including those arising out of merger and acquisition (M&A) transactions. Indeed, when a stockholder or member is a controller, there are two primary consequences.

First, the stockholder or member owes fiduciary duties and can be a target of a fiduciary duty claim. Second, unless certain procedural safeguards are put in place, if the controlling stockholder or member is conflicted, a court will closely scrutinize the challenged M&A transaction under the entire fairness standard of review, instead of deferring to the directors' or managers' decision-making under the business judgment rule. *See Kahn v. M & F Worldwide Corp.*, 88 A.3d 635 (Del. 2014).

Where entire fairness review is triggered, it is exceedingly difficult to secure dismissal of a fiduciary duty action at the pleading stage, which means that the action will likely proceed to discovery. Because discovery in such actions is costly, time-consuming, and distracting to management, it is advisable for stockholders and members to avoid controller status where possible and practical.

For these reasons, the authors have reviewed dozens of Delaware decisions determining whether a stockholder or member is a controller, summarized in the accompanying [table](#) the key factors involved in those opinions, and provided high-level guidelines for avoiding controller status based on our review of the case law.

The [table](#) and guidance are intended to serve as a guide for corporate stockholders and LLC members, including private equity and venture capital firms, seeking to minimize the risk of being deemed a controlling stockholder or member that owes fiduciary duties under Delaware law. It may be used together with our previously released [Flowchart of Delaware Standards of Review](#), which is designed to serve as a high-level tool to assess which standard of review might apply to a given M&A transaction.

## Overview

As depicted in the flowchart, a plaintiff can rebut the business judgment rule and trigger entire fairness review by showing that (i) a controlling stockholder stands on both sides of a transaction, receives consideration different than that received from other stockholders, or

receives a unique benefit from the transaction; or (ii) at least half of the directors who approved the transaction were not disinterested or independent. *Sciabacucchi v. Liberty Broadband Corp.*, 2017 WL 2352152, at \*16 (Del. Ch. May 31, 2017).

Thus, the first step in assessing the proper standard of review is often analyzing whether there is a conflicted controlling stockholder or member. Delaware law is clear that stockholders and members in manager-managed LLCs do not owe fiduciary duties, unless they are deemed to be controllers. *Voigt v. Metcalf*, 2020 WL 614999, at \*10 (Del. Ch. Feb. 10, 2020). A stockholder or member, such as a private equity or venture capital firm, will be deemed to be a controller (and therefore owe fiduciary duties) only when it owns more than 50 percent of the company's stock or membership interests, or if the member or stockholder owns less than 50 percent of the company's stock or membership interests but nevertheless exercises "actual control" over the company in general or the specific transaction at issue. *Kahn v. Lynch Commc'n Sys., Inc.* 638 A.2d 1110, 1113 (Del. 1994).

The "actual control" test requires the court to undertake an analysis of whether, "despite owning a minority of shares, the alleged controller wields 'such formidable voting and managerial power that, as a practical matter, it is no differently situated than if it had majority voting control.'" *Reith v. Lichtenstein*, 2019 WL 2714065, at \*7 (Del. Ch. June 28, 2019). "Making this showing is no easy task, as the minority blockholder's power must be so potent that it triggers . . . concern that independent directors' free exercise of judgment has been compromised." *Larkin v. Shah*, 2016 WL 4485447, at \*13 (Del. Ch. Aug. 25, 2016).

Determining whether a less-than-majority stockholder or member exercises actual control over the company is a fact-specific inquiry involving the analysis of multiple factors, including the following:

- ownership or control over a significant portion of the corporation's equity
- the right or ability to designate directors
- the existence of provisions in governance documents that enhance the power of the stockholder or member, such as negative voting power
- the degree of control the stockholder or member has over particular directors
- the degree of control the stockholder or member has over key managers or advisors that play a critical role in presenting information and making recommendations
- the ability to exercise contractual rights to channel the company into a particular outcome by blocking or restricting other paths
- other commercial relationships with the company that provide the stockholder or member with leverage over the corporation, such as lending relationships

- the ability to influence decisions through high-status roles, such as chief executive officer, chairman, or founder, or through coercive action, such as threats of retribution

*Basho Techs. Holdco B, LLC v. Georgetown Basho Inv'rs, LLC*, 2018 WL 3326693, at \*28 (Del. Ch. July 6, 2018), *aff'd sub nom. Davenport v. Basho Techs. Holdco B, LLC*, 221 A.3d 100 (Del. 2019).

Given the myriad of factors involved in determining whether a stockholder or member is a controlling one, there are no bright-line rules, and the analysis is often fact-specific. *In re GGP, Inc. S'holder Litig.*, 2021 WL 2102326, at \*12 (Del. Ch. May 25, 2021). That said, there are a number of takeaways that can be gleaned from the decisions to help guide a less-than-majority stockholder or member seeking to avoid controller status.

### Key Takeaways Regarding Controller Status

First, limiting the stockholder's or member's ownership stake to below 35 percent may help ward off a finding of control. It is recognized in Delaware case law that the "level of stock ownership is not the predominant factor" in a controller analysis (*id.* at \*21; *FrontFour Capital Grp. LLC v. Taube*, 2019 WL 1313408, at \*21 (Del. Ch. Mar. 11, 2019)) and that Delaware courts do not mechanically apply a "linear, sliding-scale approach whereby a larger share percentage makes it substantially more likely that the court will find the stockholder [or member] [to be] a controll[er]." *In re Crimson Expl. Inc. Stockholder Litig.*, 2014 WL 5449419, at \*10 (Del. Ch. Oct. 24, 2014). That is evidenced by the fact that stockholders or members owning as little as 15 percent, 17 percent, 22 percent, 26 percent, and 28 percent equity stakes have been deemed controllers *FrontFour Capital Group*, 2019 WL 1313408 (15 percent); *Williamson v. Cox Commc'ns, Inc.*, 2006 WL 1586375 (Del. Ch. June 5, 2006) (17 percent); *In re Tesla Motors, Inc. S'holder Litig.*, 2018 WL 1560293 (Del. Ch. Mar. 28, 2018) (22 percent); *In re Zhongpin Inc. Stockholders Litig.*, 2014 WL 6735457 (Del. Ch. Nov. 26, 2014) (26 percent); *Skye Mineral Inv'rs, LLC v. DXS Capital (U.S.) Ltd.*, 2020 WL 881544 (Del. Ch. Feb. 24, 2020) (28 percent). It is also evidenced by the fact that stockholders or members owning as much as 49 percent, 47 percent, 46 percent, and 44 percent have been held *not* to be controllers. *Citron v. Steego Corp.*, 1988 WL 94738 (Del. Ch. Sept. 9, 1988) (49 percent); *Odyssey Partners, L.P. v. Fleming Cos., Inc.*, 735 A.2d 386, 392 (Del. Ch. 1999) (47 percent); *In re W. Nat'l Corp. S'holders Litig.*, 2000 WL 710192 (Del. Ch. May 22, 2000) (46 percent); *Puma v. Marriott*, 283 A.2d 693 (Del. Ch. 1971) (46 percent); *Super. Vision Servs., Inc. v. ReliaStar Life Ins. Co.*, 2006 WL 2521426 (Del. Ch. Aug. 25, 2006) (44 percent). Indeed, as the Court of Chancery recently held, a person or entity may be deemed to be a controller *even if that person or entity does not own any stock at all.* *In re Pattern Energy Grp. Inc. S'holders Litig.*, 2021 WL 1812674, at \*40 (Del. Ch. May 6, 2021).

That said, it is undeniable that size matters in the controller context. For one, recent case law in particular has emphasized the significant influence that large voting blocks, particularly those 35 percent and greater, have on the outcome of stockholder votes. *Compare In re Cysive, Inc. S'holders Litig.*, 836 A.2d 531, 551 (Del. Ch. 2003) (deeming "about 40% of the voting equity"

significant), *Neil Ross v. Lineage Cell Therapeutics, Inc.*, C.A. No. 2019-0822-AGB (Del. Ch. Oct. 5, 2020) (transcript) (“38.9 percent block of shares takes on particular significance” where “voter turnout” is low), and *Voigt v. Metcalf*, 2020 WL 614999, at \*19 (Del. Ch. Feb. 10, 2020) (“[L]arge blocks at levels of 35% . . . carry significant influence.”), with *In re GGP, Inc. S’holder Litig.*, 2021 WL 2102326, at \*20 (Del. Ch. May 25, 2021) (“35.3% is ‘not impressive on its own.’”), *In re Rouse Props., Inc.*, 2018 WL 1226015, at \*18 (Del. Ch. Mar. 9, 2018) (“33.5% . . . is not impressive on its own.”), and *In re PNB Holding Co. S’holders Litig.*, 2006 WL 2403999, at \*10 (Del. Ch. Aug. 18, 2006) (describing 33.5 percent as “relatively low”).

Moreover, anecdotal data from the cases summarized in the accompanying [table](#) show that stockholders or members owning 35 percent or more of a company’s voting equity were deemed to be controllers at more than double the rate of stockholders or members with ownership stakes below that threshold. In 6 of 18 (about 33 percent) of the cases in which the stockholders or members owned less than 35 percent, they were deemed to be controllers. In two of six (about 33 percent) of the cases in which the stockholders or members owned between 25 percent and 35 percent, they were deemed to be controllers. In stark contrast, in 13 of 19 (about 68 percent) of the cases in which the stockholders or members owned 35 percent or more, they were deemed to be controllers.

Second, independence of the board, special committee, and key officers and advisors is often paramount in determining whether a stockholder or member is a controller. There is authority for the proposition that the mere fact that at least half of the directors lack independence from a stockholder or member does not necessarily make the stockholder or member a controller. *See In re Rouse Props., Inc.*, 2018 WL 1226015, at \*15 (Del. Ch. Mar. 9, 2018) (“[I]t does not necessarily follow that an interested party also controls directors, simply because they lack independence.”); *Sciabacucchi v. Liberty Broadband Corp.*, 2017 WL 2352152, at \*17–19 (Del. Ch. May 31, 2017) (same). It should come as no surprise, however, that stockholders or members were deemed controllers in *all* of the cases in the [table](#) in which there were well-pled allegations or proof that at least half of the board or special committee charged with considering or approving the challenged transaction lacked independence from the stockholders or members, either because of their close ties to the alleged controller or because of the alleged controller’s outsized influence in the boardroom. *See e.g., FrontFour Capital Grp. LLC v. Taube*, 2019 WL 1313408 (Del. Ch. Mar. 11, 2019); *In re Tesla Motors, Inc. S’holder Litig.*, 2018 WL 1560293 (Del. Ch. Mar. 28, 2018); *Voigt v. Metcalf*, 2020 WL 614999 (Del. Ch. Feb. 10, 2020); *Reith v. Lichtenstein*, 2019 WL 2714065 (Del. Ch. June 28, 2019); *In re Lorai Space & Commc’ns Inc.*, 2008 WL 4293781 (Del. Ch. Sept. 19, 2008); *In re Tri-Star Pictures, Inc., Litig.*, 634 A.2d 319 (Del. 1993); *Harbor Fin. Partners v. Sugarman*, 1997 WL 162175 (Del. Ch. Apr. 3, 1997); *Zimmerman v. Braddock*, 2005 WL 2266566 (Del. Ch. Sept. 8, 2005). That is so even where their ownership interest was relatively small. *FrontFour Capital Group*, 2019 WL 1313408 (15 percent); *In re Tesla Motors*, 2018 WL 1560293 (22.1 percent).

Third, although the mere exercise of contractual rights, such as blocking rights, will not render a stockholder or member a controller, if such rights are used to channel the company into a particular outcome that is unfair to the company, then the stockholder or member may be deemed

to be a controller and be required to demonstrate the fairness of its actions. Indeed, although Delaware case law is clear that “a significant shareholder [or member], who exercises a duly-obtained contractual right that somehow limits or restricts the actions that a [company] otherwise would take, does not become, without more, a controll[er],” there “may be circumstances where the holding [or exercise] of contractual rights, coupled with a significant equity position and other factors, will support the finding” of controller-status. *Super. Vision Servs., Inc. v. ReliaStar Life Ins. Co.*, 2006 WL 2521426, at \*5 (Del. Ch. Aug. 25, 2006). As summarized in the accompanying [table](#), stockholders or members were deemed controllers in *all* of the cases we reviewed in which there were well-pled allegations or proof that those stockholders or members weaponized certain contractual rights to secure benefits for themselves at the expense of other stockholders or members. *Skye Mineral Inv’rs, LLC v. DXS Capital (U.S.) Ltd.*, 2020 WL 881544 (Del. Ch. Feb. 24, 2020); *Basho Techs. Holdco B, LLC v. Georgetown Basho Inv’rs, LLC*, 2018 WL 3326693 (Del. Ch. July 6, 2018); *Hamilton Partners, L.P. v. Highland Capital Mgmt., L.P.*, 2014 WL 1813340 (Del. Ch. May 7, 2014); *O’Reilly v. Transworld Healthcare, Inc.*, 745 A.2d 902 (Del. Ch. 1999); *Kahn v. Lynch Commc’n Sys., Inc.*, 638 A.2d 1110, 1113 (Del. 1994); *see also In re Pattern Energy Grp. Inc. S’holders Litig.*, 2021 WL 1812674, at \*45 (Del. Ch. May 6, 2021). Again, that is so even where their equity interest was relatively small. *See Skye Mineral Investors, LLC*, 2020 WL 881544 (weaponization of blocking rights resulted in 28.07 percent member being deemed a controller at motion to dismiss stage).

Fourth, in contrast to weaponizing contractual *rights*, agreeing to certain contractual *limitations* may guard against a finding of control. For instance, the Court of Chancery has held that a stockholder was not a controlling one, in part because a stockholders agreement prohibited the stockholder from accumulating more than 35 percent of the stockholder vote, designating more than 4 of 10 directors, and soliciting proxies or consents, and the corporation’s charter required the transaction in question to be approved by independent directors and unaffiliated stockholders. *Sciabacucchi v. Liberty Broadband Corp.*, 2017 WL 2352152, at \*117–19 (Del. Ch. May 31, 2017); *cf. Dell, Inc. v. Magnetar Glob. Event Driven Master Fund Ltd*, 177 A.3d 1, 20 (Del. 2017).

Fifth, while perhaps the least influential factor, statements in public disclosures often affect the court’s analysis as to whether the stockholder or member in question is a controller, particularly at the pleading stage. *See e.g., In re Tesla Motors, Inc. S’holder Litig.*, 2018 WL 1560293 (Del. Ch. Mar. 28, 2018); *In re Zhongpin Inc. Stockholders Litig.*, 2014 WL 6735457 (Del. Ch. Nov. 26, 2014), *rev’d on other grounds sub nom. In re Cornerstone Therapeutics Inc, S’holder Litig.*, 115 A.3d 1173 (Del. 2015); *In re Primedia Inc. Derivative Litig.*, 910 A.2d 248, 258 (Del. Ch. 2006).

## Ways to Minimize the Risk of Controller Status

Based on the above, a stockholder or member seeking to minimize the likelihood of being deemed a controller and owing fiduciary duties should consider the following:

### **1. Limit ownership stake.**

While not dispositive and perhaps obvious, maintaining a lower ownership stake will decrease the likelihood of being deemed a controller. As explained above, recent Delaware decisions have seemingly given greater weight to the influence that large voting blocks have on the outcome of stockholder votes than earlier decisions, which focused more heavily on board control. Moreover, there is at least an anecdotal basis to observe that Delaware courts have held that stockholders and members owning less than 35 percent of a company's equity are controllers at less than *half the rate* of stockholders or members owning equity at or above that threshold, which supports the notion that block size matters.

### **2. Ensure board and committee independence.**

Large stockholders or members should ensure that a majority of the board of directors/managers or special committee members are undeniably independent. That means that more than half of the board or committee should have no material financial or personal ties to the stockholder or member. It also means that substantial stockholders or members should give the members of the board or committee tasked with considering a transaction the freedom to exercise their business judgment free from interference, threats, and coercion from the stockholder or member.

### **3. Foster officer and advisor independence.**

Relatedly, the officers and advisors tasked with presenting information and making recommendations to the board with respect to a proposed transaction should also be independent. Thus, the officers and advisors tasked with those roles should not have material financial or personal ties to the significant stockholder or member. Moreover, stockholders, members, and their board designees should avoid interfering or appearing to interfere with or circumvent such officers' and advisors' information-sharing and decision-making processes. Independent and disinterested officers and advisors should be given the latitude to reach their own conclusions and make their own recommendations.

### **4. Avoid *weaponizing* contractual rights.**

Significant stockholders or members should feel free to exercise their bargained-for contractual rights, such as blocking or veto rights. That said, stockholders or members should avoid weaponizing those rights. That is, they should not use such rights to channel the company into a particular outcome that benefits that stockholder or member *to the detriment* of the company and the other stockholders or members, such as by forcing the company to accept the stockholder's or member's proposed transaction, even though that transaction has more onerous terms than other available alternatives.

**5. Consider agreeing to contractual limitations on control.**

Although it is not necessary to do so, a stockholder or member can reduce the risk of being deemed a controller by agreeing to certain contractual limitations on its ability to control the company, such as agreements not to accumulate more than a certain percentage of the company's equity; designate, nominate, or elect more than a minority of a company's directors; or solicit proxies or consents. The stockholder or member could also agree to contractual requirements that require approval of certain transactions by directors and stockholders unaffiliated with the large stockholder or member.

**6. Consider the necessity of public statements regarding control.**

As noted above, when analyzing whether a stockholder or member is a controller, Delaware courts often cite public statements made by the stockholder, the member, or the company regarding the stockholder's or member's ability to influence company decisions. While federal securities laws and other disclosure obligations must be considered, those requirements should be weighed against the possibility of such disclosures being used against the company's stockholders or members and directors or managers in breach of fiduciary duty actions. Even if some disclosure is required, the specific substance of such disclosures should be carefully crafted. For instance, disclosures that *conclude* that a stockholder or member is a controlling one may be neither required nor advisable; the facts underlying such a conclusion may suffice.

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| <u>Case Name</u>                        | <u>Case Stage</u> <sup>1</sup> | <u>Own %</u> <sup>2</sup> | <u>Board/Committee Control</u> <sup>3</sup>  | <u>Contractual Rights/Other Commercial Leverage</u> <sup>4</sup>   | <u>Other Indicia/Factors</u> <sup>5</sup>  | <u>Y/N</u> <sup>6</sup> |
|---|--------------------------------|---------------------------|--|--|--|-------------------------|
| <i>KKR</i> <sup>7</sup>                 | MTD                            | ~1%                       | 4/12 (2/12 were insiders of alleged controller; another 2/12 conceivably lacked independence from controller).   | N/A  | <ul style="list-style-type: none"> <li>Alleged controller was founder of company.</li> <li>Company was “completely reliant” upon affiliate of alleged controller.</li> <li>All of company’s officers were employees of the alleged controller at the time.</li> <li>Affiliate of alleged controller managed day-to-day business pursuant to a Management Agreement.</li> </ul>   | No                      |
| <i>Tri-Star I</i> <sup>8</sup>          | MTD                            | 9%                        | 3/10 of board lacked independence.   | N/A  | <ul style="list-style-type: none"> <li>Alleged controller purportedly participated in negotiation on behalf of the seller in the transaction.</li> </ul>   | No                      |
| <i>Shoe-Town</i> <sup>9</sup>           | MTD                            | 10%                       | 0/10.  | N/A  | <ul style="list-style-type: none"> <li>None</li> </ul>   | No                      |
| <i>Pattern</i> <sup>10</sup>            | MTD                            | ~10%                      | 2/7 of board; 0/4 of special committee.  | <p>Alleged controllers threatened using consent right to channel company toward particular bidder. This affected the special committee’s decision-making process in connection with the sale.</p> <p>Company controlled by alleged controllers was an “essential part of the Company's upstream supply chain.”</p> <p>“With these two sources of soft power, [the alleged controllers] pervaded the Company's C-suite, boardroom, and supply chain.”</p> | <ul style="list-style-type: none"> <li>Alleged controllers had a long history with the company’s high ranking officers, which gave the alleged controllers “the ability to exercise outsized influence in the board room or on committees.”</li> </ul>   | Yes <sup>11</sup>       |
| <i>Essendant</i> <sup>12</sup>          | MTD                            | ~12%                      | 0/8 of board.  | N/A  | <ul style="list-style-type: none"> <li>Board allegedly caved to the will of alleged controller.</li> <li>Two stockholders with slightly larger holdings.</li> </ul>  | No                      |
| <i>Front Four Capital</i> <sup>13</sup> | Post-Trial                     | 15%                       | <p>5/7 (2 of 7 were alleged controllers; 1 of 7 was close friend of controllers; 2 of 7 demonstrated a lack of independence from alleged controllers).</p> <p>2/4 of special committee tasked with evaluating challenged mergers lacked independence from alleged controllers.</p> | N/A  | <ul style="list-style-type: none"> <li>Alleged controllers were founders, directors, and officers of company.</li> <li>Alleged controllers owned majority of the registered investment advisor firms that managed day-to-day operations of the company.</li> <li>Alleged controllers were to be directors and/or high-ranking officers of the combined company after the mergers.</li> <li>Alleged controllers were directors, and/or high-ranking officers of each of the company’s transaction counter-parties in the challenged mergers.</li> </ul> | Yes                     |
| <i>Petty</i> <sup>14</sup>              | MTD                            | 17%                       | 1/5 of board were appointed by and beholden to alleged controller.   | N/A  | <ul style="list-style-type: none"> <li>Largest single stockholder of the company.</li> <li>Directors were afforded role in the post-merger company.</li> </ul>   | No                      |

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| <i>Cox</i> <sup>15</sup>          | MTD | 17.1% | 2/5 of board were appointed by and lacked independence from alleged controllers.   | <ul style="list-style-type: none"> <li>Charter provisions gave the alleged controllers veto power over all decisions of the board of directors.</li> </ul> | <ul style="list-style-type: none"> <li>The alleged controllers were the company's <i>only</i> significant customers and the company depended on their cooperation as customers if it was going to operate profitably.</li> <li>One larger stockholder. Larger stockholder appointed 3 of 5 board members.</li> </ul>   | Yes |
| <i>Wasserman</i> <sup>16</sup>    | MTD | 20%   | 1/3 of board.  | N/A  | <ul style="list-style-type: none"> <li>One larger stockholder. Larger stockholder appointed 2 of 3 board members.</li> </ul>   | No  |
| <i>Sanchez</i> <sup>17</sup>      | MTD | 21.5% | 2/5 of board were members of alleged control group.  | N/A  | <ul style="list-style-type: none"> <li>Both members of alleged control group were part of founding family.</li> <li>One of the alleged members of control group was CEO.</li> <li>One director was long-time friends with member of control group (not beholden).</li> <li>One director was alleged to have had existing business relationships with members of control group (not beholden).</li> </ul> | No  |
| <i>Wheelabrator</i> <sup>18</sup> | MSJ | 22%   | 4/11 of board were beholden to alleged controller.   | N/A  | <ul style="list-style-type: none"> <li>No other indicia of control.</li> </ul>   | No  |
| <i>Tesla</i> <sup>19</sup>        | MTD | 22.1% | 5/7 of board members lacked independence from controller.<br><br>3/5 of board members that voted on the transaction lacked independence from controller. | N/A  | <ul style="list-style-type: none"> <li>Alleged controller was the company's visionary, CEO, founder, Chairman, and largest stockholder.</li> <li>Public filings disclosed alleged controllers outsized influence with the Company and in the boardroom.</li> <li>Alleged controller responsible for engaging advisors.</li> </ul>  | Yes |

|  |     |        |   |  |  |     |
|--|-----|--------|---|--|--|-----|
| <i>Larkin</i> <sup>20</sup>                | MTD | 23.1%  | 3/9 of board were controlled by alleged controllers.  | N/A  | <ul style="list-style-type: none"> <li>• 2 other members of the board did not lack independence, but were granted tax reimbursements by a committee that included directors who lacked independence from the alleged controllers.</li> <li>• 2 others members of the board did not lack independence, but were alleged to have been “handpicked by [the] conflicted directors” and given generous stock options.</li> </ul>  | No  |
| <i>Zhongpin</i> <sup>21</sup>              | MTD | 26%    | 2/5 of board were alleged controller or beholden to alleged controller.   | N/A  | <ul style="list-style-type: none"> <li>• Alleged controller was founder, CEO, director, and largest stockholder of company.</li> <li>• Company “substantially” relied upon alleged controller to manage operations.</li> <li>• Losing alleged controller would constitute a material adverse effect.</li> <li>• <i>Notably</i>, alleged controller used significant leverage to force company to accept his proposal. He would not cooperate with any third-party bidder and caused the special committee to reject a superior third party offer because he refused to remain CEO or roll over his shares if third party bid was accepted.</li> <li>• Initial financial advisor refused to render fairness opinion and terminated its engagement.</li> </ul> | Yes |
| <i>Jensen</i> <sup>22</sup>                | PI  | 26%    | 1/5 of board was general partner of alleged controller.   | N/A  | <ul style="list-style-type: none"> <li>• There was one larger stockholder than alleged controller.</li> </ul>  | No  |
| <i>Morton’s</i> <sup>23</sup>              | MTD | 27.7%  | 2/10 of board were insiders of alleged controller.  | N/A  | <ul style="list-style-type: none"> <li>• Alleged controller owned 100% of company before it went public.</li> <li>• Alleged controller was alleged to be involved in the sale process, including the retention of the company’s financial advisor.</li> </ul>  | No  |
| <i>Skye Mineral Partners</i> <sup>24</sup> | MTD | 28.07% | 1/3 of board was an insider of alleged controller.  | <ul style="list-style-type: none"> <li>• Alleged controller allegedly weaponized contractual blocking rights to starve the company of capital, drive it into bankruptcy, and take control of the company through a bankruptcy sale at a discount.</li> </ul> | <ul style="list-style-type: none"> <li>• Company financially distressed.</li> <li>• Additional observer rights.</li> </ul>   | Yes |
| <i>Rouse</i> <sup>25</sup>                 | MTD | 33.5%  | 3/10 of board members were beholden to alleged controller.<br><br>2/5 of special committee charged with considering the merger—and 2/10 of the board—had ties to alleged controller, but not enough to lack independence. | N/A  | <ul style="list-style-type: none"> <li>• Alleged controller proposed the challenged transaction.</li> <li>• Special Committee was comprised of members who were placed on the board by an affiliate of the alleged controller.</li> <li>• Company disclosed in its Form 10-K that the alleged controller was a “substantial stockholder” that “may exert influence over” the company.</li> </ul>   | No  |
| <i>Crimson</i> <sup>26</sup>               | MTD | 33.7%  | 3/7 of board were insiders of alleged controller.   | <ul style="list-style-type: none"> <li>• Affiliate of alleged controller was a significant creditor.</li> </ul>  | <ul style="list-style-type: none"> <li>• One other director, who was also the company’s CEO, had prior business relationship with alleged controller, but did not lack independence.</li> </ul>  | No  |

|                             |            |       |   |   |   |     |
|-----------------------------|------------|-------|---|---|---|-----|
|                             |            |       |   |   | <ul style="list-style-type: none"> <li>• Remaining directors were elected to the board after the alleged controller invested, but did not lack independence.</li> <li>• CFO was alleged to be handpicked by alleged controller.</li> <li>• Other executive officers joined after alleged controller invested.</li> <li>• Alleged controller neither proposed transactions nor led board discussions of transaction.</li> </ul>  |     |
| <i>Voigt</i> <sup>27</sup>  | MTD        | 35%   | 8/12 (4 of 12 were insiders of alleged controller; another 4 of 12 conceivably lacked independence from alleged controller).                    | <ul style="list-style-type: none"> <li>• Alleged controller had contractual veto rights over actions that boards of directors could normally take unilaterally.</li> <li>• Alleged controller had contractual right to representation on key board committees proportionate to ownership percentage.</li> </ul>   | <ul style="list-style-type: none"> <li>• Alleged controller had relationships with banker and law firm hired by special committee to evaluate deal.</li> </ul>  | Yes |
| <i>Cysive</i> <sup>28</sup> | Post-Trial | 35%   | 2/5 (1 was alleged controller; 1 was beholden to alleged controller).<br><br>1 other affiliated with alleged controller ( <i>not</i> beholden). | <ul style="list-style-type: none"> <li>• Options to purchase another 0.5% to 1% of additional company stock.</li> </ul>   | <ul style="list-style-type: none"> <li>• Financially distressed company.</li> <li>• Controller was the Chairman, director, CEO, largest stockholder, and founder.</li> <li>• Controller was company's "inspirational force."</li> <li>• CFO was beholden to controller.</li> <li>• Company employed two of controller's family members.</li> <li>• Management buy-out transaction was proposed by controller, after sale process failed.</li> <li>• Special committee negotiated more favorable terms and conducted pre- and post-signing market check.</li> <li>• Controller did not have any relationship with special committee financial advisor, but did confer with financial advisor during sale process and directly reached out to potential bidders.</li> </ul> | Yes |
| <i>GGP</i> <sup>29</sup>    | MTD        | 35.3% | 3/9 of board.<br><br>1/3 of nominating and governance committee.<br><br>0/5 of special committee negotiating the transaction.                   | <ul style="list-style-type: none"> <li>• Standstill agreement prevented alleged controller from acquiring more than 45% ownership.</li> <li>• Alleged controller had the right to nominate three members to the company's board.</li> <li>• Contractual provisions in investment agreement required: company to have majority of independent directors under the NYSE Rules; a majority of the Nominating and Governance Committee to be "disinterested directors" unaffiliated with the alleged controller; for the</li> </ul> | <ul style="list-style-type: none"> <li>• Transaction was between company and alleged controller. Conditioned upon majority of unaffiliated stockholder vote. Special committee formed to negotiate transaction.</li> <li>• Stockholder vote was sufficient to approve transaction even without counting alleged controller's vote. No concern with low voter turnout.</li> <li>• Seven of nine board members were originally nominated or recruited by alleged controller. Not beholden.</li> <li>• Directors associated with alleged controller did not participate in the special committee's decision-making process.</li> </ul>   | No  |

|                                   |            |       |  |   |   |     |
|-----------------------------------|------------|-------|--|---|---|-----|
|                                   |            |       |  | election of directors other than the alleged controller nominees, the alleged controller must vote any shares it held in excess of 10% of company outstanding stock in proportion to the votes cast by stockholders unaffiliated with alleged controller; transactions under which the alleged controller would receive disparate consideration needed to be approved by a majority of the disinterested directors and stockholders unaffiliated with the alleged controller. | <ul style="list-style-type: none"> <li>Alleged controller co-authored, co-filed, and co-signed the Proxy statement soliciting approval of the transaction. Deemed not to be an important factor.</li> <li>Alleged controller issued press releases on company's behalf in connection with transaction. Deemed not to be an important factor.</li> <li>SEC filings noted the alleged controller's influence.</li> </ul>  |     |
| <i>Lichtenstein</i> <sup>30</sup> | MTD        | 35.6% | 3/6 of board leading up to transaction were affiliated with and beholden to the alleged controller; 2 of 5 lacked independence at the time the transaction was approved.<br><u>Note:</u> after the transaction was in motion, but before transaction was approved and closed, one director that lacked independence passed away. | N/A   | <ul style="list-style-type: none"> <li>Alleged controller strongly influenced management. An executive of the alleged controller served as interim CEO of the company and was replaced by an individual with significant connections to alleged controller. CFO was long-standing executive of alleged controller's affiliate.</li> <li>One of the alleged controller's affiliates provided the company services through a Management Services Agreement.</li> <li>Officers of the alleged controller acted as "de facto investment bankers" for the Company during period leading up to the challenged transaction.</li> </ul> | Yes |
| <i>Loral Space</i> <sup>31</sup>  | Post-Trial | 35.9% | 5/8 of board beholden to controller, including chairman.<br><br>1/2 of special committee beholden to controller.   | <ul style="list-style-type: none"> <li>Contractual rights to block strategic initiatives.</li> <li>Controller was a significant creditor, with unilateral ability to force redemption of notes.</li> </ul>  | <ul style="list-style-type: none"> <li>Financially distressed company.</li> <li>Alleged controller publicly maintained that it controlled the board.</li> <li>Company 10Ks identified alleged controller as the controlling stockholder.</li> <li>CEO beholden to controller.</li> </ul>  | Yes |
| <i>Tri-Star II</i> <sup>32</sup>  | MTD        | 36.8% | 8/10 (3 of 10 were insiders of alleged controller; another 2 of 10 were insiders of company with significant financial ties to alleged controller; another 3 of 10 were significant stockholders of controllers, 2 of which were appointed by controller).   | N/A   | <ul style="list-style-type: none"> <li>Alleged controller had stockholder agreement with other large stockholders, which together owned 56.6% of company.</li> <li>Alleged controller had stockholder agreement with a 9% stockholder, under which each party agreed to nominate 4 members to the company's board (for a total of 8 directors) and vote for each other's nominees.</li> </ul>   | Yes |
| <i>Sea-Land</i> <sup>33</sup>     | MTD        | 39.5% | None   | N/A   | <ul style="list-style-type: none"> <li>Other shares were widely-held.</li> <li>Alleged controller blocked third-party merger bid until third party agreed to pay alleged controller a premium.</li> <li>The board rejected alleged controller's bid, which was \$2 per share less than third party bidders.</li> <li>In response to alleged controller's bid, the board contacted other potential acquirers.</li> </ul>   | No  |

|                                       |            |        |  |  |  |     |
|---------------------------------------|------------|--------|--|--|--|-----|
| <i>Basho</i> <sup>34</sup>            | Post-Trial | ~40%   | 2/7 of board lacked independence from alleged controller.  | <ul style="list-style-type: none"> <li>• Controller was a significant creditor. Failed to comply with financing obligations to starve company of funding.</li> <li>• Controller used contractual blocking rights to cut off company's access to other sources of funding such that the company had no option other than to accept the controller's unfair financing proposal.</li> </ul>                         | <ul style="list-style-type: none"> <li>• Company was financially distressed.</li> <li>• Controller's board appointees interfered with financing process.</li> <li>• Alleged controller controlled management by subverting them, threatening them, or getting rid of them.</li> <li>• Controller used its relationship with the financial advisor to control the company.</li> </ul>   | Yes |
| <i>Primedia</i>                       | MTD        | 40.34% | Majority of board lacked independence from the alleged controller.   | N/A  | <ul style="list-style-type: none"> <li>• Public disclosures stated that alleged controller was the "influential force" behind the challenged transactions.</li> </ul>  | Yes |
| <i>Lynch</i> <sup>35</sup>            | Post-Trial | 43.3%  | <p>5/11 of board were designated by and beholden to controller.</p> <p>2/3 of executive committee were beholden.</p> <p>2/9 of compensation committee were beholden.</p>   | <ul style="list-style-type: none"> <li>• Controller had contractual rights to block any business combination.</li> <li>• Controller blocked deal with third party and funneled the company to deal with an affiliate of the controller.</li> <li>• When that was rejected, the controller pursued a cash-out merger of the majority.</li> </ul>  | <ul style="list-style-type: none"> <li>• The factual record was replete with instances of the controller making its will known to the board and then prevailing in its wishes.</li> <li>• The controller ultimately threatened to proceed with a less favorable tender offer if special committee did not accept the controller's cash-out merger offer.</li> </ul>  | Yes |
| <i>Superior Vision</i> <sup>36</sup>  | MTD        | 44%    | 2/5 of board arguably lacked independence from alleged controller.   | <ul style="list-style-type: none"> <li>• Alleged controller exercised contractual right to block dividend.</li> <li>• Alleged controller had the right to appoint 2 members of 5 person board.</li> </ul>  | N/A  | No  |
| <i>Marriott</i> <sup>37</sup>         | Post-Trial | 46%    | 4/9 of board were members of alleged control group.  | N/A  | <ul style="list-style-type: none"> <li>• Alleged controllers were the founders of the company.</li> <li>• Alleged controllers owned 100% of the company before it went public.</li> </ul>  | No  |
| <i>Western National</i> <sup>38</sup> | MSJ        | 46%    | <p>0/8 of board; 0 of 3 of special committee.</p> <p>1/8 (Chairman and CEO) was a former employee of alleged controller for over two decades (not beholden).</p> <p>Another 2/8 entered into employment agreements with alleged controller in midst of merger negotiations (not beholden).</p> | <ul style="list-style-type: none"> <li>• Ability to purchase additional 20% of common stock; standstill agreement prohibited alleged controller from acquiring more than 79% of company's stock.</li> <li>• Ability to nominate two directors.</li> <li>• Two joint ventures between alleged controller and company, in which company was dependent upon alleged controller to sell certain products.</li> </ul> | <ul style="list-style-type: none"> <li>• Two years prior to events in question, alleged controller vetoed a potential acquisition between the company and a third party and then proceed to acquire that third party on its own.</li> <li>• Pitch book prepared by banker set forth a plan for alleged controller to buy out remaining stockholders "at a less than premium price."</li> <li>• Six of the eight directors of the company were on the board before the alleged controller acquired its stake in the company.</li> <li>• Special committee tasked with considering strategic alternatives, including merger with alleged controller was fully independent.</li> <li>• Special committee's financial advisor was one of twelve banks that participated in an underwriting process with alleged controller in the past.</li> </ul> | No  |

|                                      |            |       |  |   |   |     |
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| <i>Odyssey</i> <sup>39</sup>         | Post-Trial | 46.8% | 1/6 of board lacked independence from alleged controller.  | <ul style="list-style-type: none"> <li>Alleged controller was one of two primary creditors of the company.</li> <li>Alleged controller had the contractual right to appoint two directors to the board.</li> </ul>  | <ul style="list-style-type: none"> <li>Company was financially distressed.</li> <li>Alleged controller owned warrants that, if exercised, would give the alleged controller majority ownership of the company (50.1%).</li> <li>Alleged controller was company's largest supplier.</li> <li>Record reflected that alleged controller did not dictate challenged corporate action.</li> </ul>  | No  |
| <i>Sugarman</i> <sup>40</sup>        | MTD        | 47.5% | 5/8 (2 of 8 were alleged controller's CEO and wife; another 1 of 8 is director of alleged controller; 2 of 8 were partners at law firms providing legal services to alleged controller). | <ul style="list-style-type: none"> <li>Alleged controller was significant debtholder of the company.</li> </ul>   | N/A   | Yes |
| <i>Highland</i> <sup>41</sup>        | MTD        | 48%   | 1/5 of board allegedly beholden to alleged controller.   | <ul style="list-style-type: none"> <li>Owned 82% of the company's debt, which was in default.</li> <li>Alleged controller exercised its contractual rights as a debtholder to prevent the company from refinancing its defaulted debt or considering other third party acquisitions in order to force the company to agree to a transaction with it at a price that was below the stock's trading price.</li> </ul> | <ul style="list-style-type: none"> <li>Company was financially distressed.</li> <li>Alleged controller was an affiliate of one of the company's other stockholders.</li> </ul>  | Yes |
| <i>Priceline</i> <sup>42</sup>       | MTD        | 48%   | 6/11 (3 of 11 were members of control group; another 3 of 11 conceivably lacked independence from control group).  | N/A   | <ul style="list-style-type: none"> <li>Largest member of control group (32% owner) was founder and former CEO.</li> <li>Another member of control group was chairman of company's board at the time of the transaction.</li> </ul>  | Yes |
| <i>Alon USA Energy</i> <sup>43</sup> | MTD        | 48%   | 6/11 (5 of 11 members were executives of the alleged controller; 1 of 11 was beholden due to financial ties).  | <ul style="list-style-type: none"> <li>The alleged controller failed to comply with contractual provisions that prevented it from acquiring more than 49.99% of the company's equity or entering into any material contract with the company unless the alleged controller first obtained approval from an independent committee of directors.</li> </ul>   | <ul style="list-style-type: none"> <li>Company was financially distressed.</li> <li>Alleged controller was on record that it wanted to obtain 100% ownership and proposed the challenged transaction.</li> <li>Alleged controller exercised its influence to remove and replace two directors of the board in order to work the same change upon the composition of the special committee charged with considering the transaction.</li> <li>Committee allowed member that was beholden to alleged controller to lead negotiations on behalf of the committee/minority.</li> <li>Allegations suggest that the alleged controller dictated the timing, structure, and price of the merger.</li> <li>Alleged controller effectively muzzled the special committee's public statements to reduce share price for the benefit of the alleged controller.</li> </ul> | Yes |

|                                 |     |       |   |  |   |     |
|---------------------------------|-----|-------|---|--|---|-----|
| <i>Steego</i> <sup>44</sup>     | PI  | 48.8% | 2/9 of board lacked independence from alleged controller. | N/A  | <ul style="list-style-type: none"> <li>Alleged controller consulted with the board on various business matters.</li> <li>Board was agreeable to IEP designating two members of the board after consummation of share offer.</li> </ul>  | No  |
| <i>Transworld</i> <sup>45</sup> | MTD | 49%   | 0/4   | <ul style="list-style-type: none"> <li>Alleged controller held substantially all company debt.</li> <li>Alleged controller had option to acquire an additional 2% of company stock.</li> </ul> | <ul style="list-style-type: none"> <li>Company was financially distressed.</li> <li>Alleged controller allegedly blocked alternative asset sale with third party in favor of its proposed cash-out merger.</li> <li>After cash-out merger closed, alleged controller caused company to enter into the third party asset sale that it previously blocked.</li> </ul> | Yes |



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<sup>1</sup> The “Case Stage” column shows at what stage the court’s opinion was rendered. “MTD” means the court’s decision resolved a motion to dismiss. “PI” means that the court’s decision was rendered in connection with a motion for preliminary injunction. “MSJ” means that the court’s decision resolved a motion for summary judgment. “Post-Trial” means the court’s decision was made after a trial on the merits.

<sup>2</sup> The “Own %” column shows what percentage of stock or membership units the alleged controlling stockholder or member owned at the time of the challenged transaction. It does not include the percentage of stock or membership units that the alleged controlling stockholder or member could have owned if it exercised any options, warrants, or conversion rights it may have had. Such rights would be shown in the “Other Indicia of Control” column.

<sup>3</sup> The “Board/Committee Control” column shows how many directors, managers, or committee members lacked independence from the alleged controlling stockholder or member.

<sup>4</sup> The “Contractual Rights/Other Commercial Leverage” column shows the contractual rights, such as blocking rights or debt instruments, that the alleged controller possessed or exercised.

<sup>5</sup> The “Other Indicia of Control” column summarizes the other factors that the court analyzed in determining whether the applicable stockholder or member was a controller.

<sup>6</sup> The “Y/N” column addresses whether the court concluded that the alleged controller was or was not a controller, at that stage of the litigation.

<sup>7</sup> *In re KKR Fin. Holdings LLC S'holder Litig.*, 101 A.3d 980 (Del. Ch. 2014), *aff'd sub nom., Corwin v. KKR Fin. Holdings LLC*, 125 A.3d 304 (Del. 2015).

<sup>8</sup> *Siegman v. Tri-Star Pictures, Inc.*, 1989 WL 48746 (Del. Ch. May 5, 1989).

<sup>9</sup> *In re Shoe-Town, Inc. S'holders Litig.*, 1990 WL 13475 (Del. Ch. Feb. 12, 1990).

<sup>10</sup> *In re Pattern Energy Grp. Inc. S'holders Litig.*, 2021 WL 1812674 (Del. Ch. May 6, 2021).

<sup>11</sup> The Court of Chancery did not definitively rule that the alleged controllers were in fact a control group. Instead, it deferred ruling on that aspect of the motion to dismiss until a later stage in the proceedings. *Id.* at \*46 (“Thus, having determined that the Controller Defendants are connected in a legally significant way, it may be that their aggregate sources of power are sufficient to establish a control group, as they allowed the Controller Defendants to drive the outcome of the sales process and favor Buyer. But because this inquiry is highly fact intensive, I decline to make a definitive determination that the Controller Defendants operated as a control group owing fiduciary duties with respect to the transaction and that entire fairness therefore applies. The Controller Defendants’ duties and resultant standard of review can only be known after the record is developed through discovery. I also decline to rule on the Motions to dismiss Count VI until a later stage in these proceedings.”).

<sup>12</sup> *Genuine Parts Co. v. Essendant Inc.*, 2019 WL 4257160 (Del. Ch. Sept. 9, 2019).

<sup>13</sup> *FrontFour Cap. Grp. LLC v. Taube*, 2019 WL 1313408 (Del. Ch. Mar. 11, 2019).

<sup>14</sup> *Hokanson v. Petty*, 2008 WL 5169633 (Del. Ch. Dec. 10, 2008).

<sup>15</sup> *Williamson v. Cox Commc'ns, Inc.*, 2006 WL 1586375 (Del. Ch. June 5, 2006).

<sup>16</sup> *Klein v. Wasserman*, 2019 WL 2296027 (Del. Ch. May 29, 2019).

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- <sup>17</sup> *In re Sanchez Energy Derivative Litig.*, 2014 WL 6673895 (Del. Ch. Nov. 25, 2014), *rev'd sub nom. on other grounds, Delaware Cty. Emps. Ret. Fund v. Sanchez*, 124 A.3d 1017 (Del. 2015).
- <sup>18</sup> *In re Wheelabrator Techs., Inc. S'holders Litig.*, 663 A.2d 1194 (Del. Ch. 1995).
- <sup>19</sup> *In re Tesla Motors, Inc. S'holder Litig.*, 2018 WL 1560293 (Del. Ch. Mar. 28, 2018).
- <sup>20</sup> *Larkin v. Shah*, 2016 WL 4485447 (Del. Ch. Aug. 25, 2016).
- <sup>21</sup> *In re Zhongpin Inc. Stockholders Litig.*, 2014 WL 6735457 (Del. Ch. Nov. 26, 2014), *rev'd sub nom. on other grounds, In re Cornerstone Therapeutics Inc, S'holder Litig.*, 115 A.3d 1173 (Del. 2015).
- <sup>22</sup> *Emerson Radio Corp. v. Int'l Jensen Inc.*, 1996 WL 483086 (Del. Ch. Aug. 20, 1996).
- <sup>23</sup> *In re Morton's Rest. Grp., Inc. S'holders Litig.*, 74 A.3d 656, 658 (Del. Ch. 2013).
- <sup>24</sup> *Skye Min. Invs., LLC v. DXS Cap. (U.S.) Ltd.*, 2020 WL 881544 (Del. Ch. Feb. 24, 2020).
- <sup>25</sup> *In re Rouse Properties, Inc.*, 2018 WL 1226015 (Del. Ch. Mar. 9, 2018).
- <sup>26</sup> *In re Crimson Expl. Inc. Stockholder Litig.*, 2014 WL 5449419 (Del. Ch. Oct. 24, 2014).
- <sup>27</sup> *Voigt v. Metcalf*, 2020 WL 614999 (Del. Ch. Feb. 10, 2020).
- <sup>28</sup> *In re Cysive, Inc. S'holders Litig.*, 836 A.2d 531 (Del. Ch. 2003).
- <sup>29</sup> *In re GGP, Inc. S'holder Litig.*, 2021 WL 2102326 (Del. Ch. May 25, 2021).
- <sup>30</sup> *Reith v. Lichtenstein*, 2019 WL 2714065 (Del. Ch. June 28, 2019).
- <sup>31</sup> *In re Loral Space & Commc'ns Inc.*, 2008 WL 4293781 (Del. Ch. Sept. 19, 2008).
- <sup>32</sup> *In re Tri-Star Pictures, Inc., Litig.*, 634 A.2d 319 (Del. 1993).
- <sup>33</sup> *In re Sea-Land Corp. S'holders Litig.*, 1988 WL 49126 (Del. Ch. May 13, 1988).
- <sup>34</sup> *Basho Techs. Holdco B, LLC v. Georgetown Basho Invs., LLC*, 2018 WL 3326693 (Del. Ch. July 6, 2018), *aff'd sub nom., Davenport v. Basho Techs. Holdco B, LLC*, 221 A.3d 100 (Del. 2019).
- <sup>35</sup> *Kahn v. Lynch Commc'n Sys., Inc.*, 638 A.2d 1110 (Del. 1994).
- <sup>36</sup> *Superior Vision Servs., Inc. v. ReliaStar Life Ins. Co.*, 2006 WL 2521426 (Del. Ch. Aug. 25, 2006).
- <sup>37</sup> *Puma v. Marriott*, 283 A.2d 693 (Del. Ch. 1971).
- <sup>38</sup> *In re W. Nat. Corp. S'holders Litig.*, 2000 WL 710192 (Del. Ch. May 22, 2000).
- <sup>39</sup> *Odyssey Partners, L.P. v. Fleming Companies, Inc.*, 735 A.2d 386 (Del. Ch. 1999).
- <sup>40</sup> *Harbor Fin. Partners v. Sugarman*, 1997 WL 162175 (Del. Ch. Apr. 3, 1997).
- <sup>41</sup> *Hamilton Partners, L.P. v. Highland Cap. Mgmt., L.P.*, 2014 WL 1813340 (Del. Ch. May 7, 2014).
- <sup>42</sup> *Zimmerman v. Braddock*, 2005 WL 2266566 (Del. Ch. Sept. 8, 2005), *rev'd on other grounds*, 906 A.2d 776 (Del. 2006).

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<sup>43</sup> *Arkansas Tchr. Ret. Sys. v. Alon USA Energy, Inc.*, 2019 WL 2714331 (Del. Ch. June 28, 2019).

<sup>44</sup> *Citron v. Steego Corp.*, 1988 WL 94738 (Del. Ch. Sept. 9, 1988).

<sup>45</sup> *O'Reilly v. Transworld Healthcare, Inc.*, 745 A.2d 902 (Del. Ch. 1999).