DELAWARE CORPORATE LAW UPDATE — JAN 2025

YOUNG CONAWAY

FEATURED:
Manti Holdings, LLC v. Carlyle Group Inc.
In re Oracle Corp. Deriv. Litig.
Alcon Rsch., LLC v. Aurion Biotech, Inc.
Turnbull v. Klein

***Manti Holdings, LLC v. Carlyle Group Inc.,* 2025 WL 39810 (Del. Ch. Jan. 7, 2025) (post-trial opinion holding that private equity investor was not subject to entire fairness review because it did not receive a liquidity/fund-lifecycle based unique benefit from the allegedly premature sale of a portfolio company)**

In this post-trial decision, the Delaware Court of Chancery held that private equity firm Carlyle Group and its affiliates did not breach their fiduciary duties as controlling stockholders of Authentix in connection with Authentix's 2017 sale to Blue Water Energy. Carlyle operated a fund that in turn controlled the majority of Authentix's voting power. The Court found that Carlyle did not gain a unique benefit not shared with Authentix's common stockholders. As a result, the Court held that the entire fairness standard did not apply and ruled in favor of Carlyle, its affiliates, and Authentix directors under the business judgment rule. Plaintiffs had argued that Carlyle's exercise of control over the sale to Blue Water Energy was tainted by conflicts of interest arising from time and liquidity-based pressures from the end of the fund lifecycle. The Court rejected Plaintiffs' arguments and held that, while Carlyle investors had expectations of monetizing their investments around the ten-year mark, there was no pressure for a quick exit beyond that inherent in Authentix's business model. The Court found that the transaction itself was arms-length, and that Caryle did not need Authentix sold in 2017 and did not force a fire sale.

***In re Oracle Corp. Deriv. Litig.,* 2025 WL 249066 (Del. Jan. 21, 2025) (affirming post-trial ruling under the business judgment rule in favor of defendants, and holding that Larry Ellison, Oracle's founder, Executive Chairman, and 28.4% stockholder, did not control Oracle with respect to Oracle's 2016 acquisition of NetSuite)**

The Delaware Supreme Court affirmed a Court of Chancery post-trial ruling in favor of defendants in a suit arising from Oracle's 2016 acquisition of NetSuite. Oracle stockholders alleged that Lawrence Ellison, a co-founder of and significant equity holder in both companies, forced Oracle to overpay for NetSuite. Ellison owned 28.4% of Oracle, served as Oracle's Executive Chairman and Chief Technology

Officer, and was formerly Oracle's CEO. The Court of Chancery had held that Ellison did not control Oracle. Plaintiff appealed, arguing that the Court of Chancery's finding that Ellison had the potential to influence the transaction was enough for a finding of control regardless of the Court of Chancery's conclusion that Ellison did not attempt to actually exercise any such influence.

On appeal, the Supreme Court confirmed that the controlling stockholder analysis requires actual control, that a stockholder who controls less than 50% of an entity's voting power is "not presumed" to have actual control, and that the "test for actual control by a minority stockholder 'is not an easy one to satisfy.'" The Supreme Court also stated that, "[a]lthough the controlling stockholder question is not a license to sue on every transaction involving a corporation with a founder/visionary leader, '[i]n cases when the determination of whether control exists turns on disputed facts, it is impossible to determine whether a large block holder is a controlling stockholder until an evidentiary hearing is held.'" Because

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***Alcon Rsch., LLC v. Aurion Biotech, Inc.,* 2025 WL 312371 (Del. Ch. Jan. 27, 2025) (post-trial opinion holding proxy contained in voting agreement revocable under "presumption against disenfranchisement," despite agreement provision requiring counterparty's written assent to "waiver" of "any term" of the voting agreement)**

In this post-trial decision, the Delaware Court of Chancery held that Aurion's 40% stockholder, Alcon, was permitted to revoke a voting proxy that prevented it from voting its full Aurion stake against Aurion's planned IPO. During a prior fundraising, Alcon had realized that it might have a potential accounting issue if it held stock equaling more than 20% of Aurion's voting power, and so entered into a voting agreement that granted Aurion's CEO or CFO a proxy to vote any shares Alcon owned in Aurion beyond 19% in the same proportion as the other outstanding shares of the same class.

Two years later, Alcon attempted to revoke the proxy so that it could oppose Aurion's IPO. Aurion refused to recognize the revocation. To resolve the dispute, the Court applied Delaware's "presumption against disenfranchisement," which requires "clear and convincing evidence" that a contract was intended to restrict voting. The Court held that proxies are revocable unless expressly made irrevocable by the principal. As a result of the presumption and certain principles of contractual interpretation, the Court held that a provision of the voting agreement stating that it may be "amended, modified or terminated" and "the observance of any term hereof may be waived" only with Aurion's written permission did not apply to the proxy. The Court noted that the provision did not govern "revocation," and the subparts of the provision reflect careful consideration of each voting agreement provision other than the proxy.

***Turnbull v. Klein,* 2025 WL 353877 (Del. Ch. Jan. 31, 2025) (dismissing merger suit under business judgment rule because 25.7% stockholder's potential to acquire up to 40.2% voting power is "not equivalent to the actual *exercise* of that ability," and even if that were the right metric, 40.2% is not enough on its own to infer control)**

On a motion to dismiss, the Court of Chancery rejected plaintiffs' allegations that Crestview Advisors controlled U.S. Well Services in connection with the latter's 2022 merger with ProFrac Holding, and that the transaction therefore should be reviewed under the entire fairness standard. Crestview owned 25.7% of USWS's common stock, as well as certain other instruments that, if converted or exercised, could have increased Crestview's voting power to 40.2%. Crestview also had a contractual right to designate two of nine USWS directors and "conceivably wielded influence" over one of those directors. The Court reasoned that 25.7% voting power is "not impressive on its own," and held that Crestview's "*potential* ability to exercise control" by increasing its voting power to 40.2% "is not equivalent to the actual *exercise* of that ability." The Court also held that, even if Crestview's as-converted 40.2% stake were the right metric, that is not enough on its own to give rise to a reasonable inference of control. The Court also rejected plaintiffs' attacks on the independence of the Board, allegations that Crestview was part of a control group, and alternative allegations that the business judgment rule was rebutted due to defendants' alleged bad faith.