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Delaware Court Determines *Corwin* Not Available to "Cleanse" Alleged Director Misconduct Due to "Structurally Coercive" Stockholder Vote

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Stockholder vote structured as a choice between accepting unrelated transactions benefiting a large stockholder or forgoing beneficial M&A transactions judged "structurally coercive"

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INTRODUCTION

The Delaware Supreme Court's landmark decision in *Corwin v. KKR Financial Holdings LLC*, 125 A.3d 304 (Del. 2015) ("*Corwin*") is one of the most important recent developments in Delaware corporate law. Under *Corwin*, business judgment review attaches to a post-closing damages action alleging directorial breach of fiduciary duties in connection with a transaction approved by a fully informed, uncoerced vote of a majority of disinterested stockholders.[1] This stockholder vote effectively "cleanses" the fiduciary breach such that, absent a sufficient pleading of waste, the action will be dismissed.[2] Delaware courts have applied this principle "even if the transaction might otherwise have been subject to entire fairness due to conflicts faced by individual directors."[3]

The rationale behind *Corwin* "amounts to a judicial recognition that . . . problems inherent in transactions made by directors involving the property of the stockholders are obviated by a vote of those stockholders in favor of the transaction, so that the will of the owners effectively supersedes that of the agents."[4] *Corwin* stands for the proposition that:

> there is little utility in a judicial examination of fiduciary actions ratified by stockholders. "For sound policy reasons, Delaware corporate law has long been reluctant to second-guess the judgment of a disinterested stockholder majority that determines that a transaction with a party other than a controlling stockholder is in their best interest."[5]

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1. *Corwin*, 125 A.3d at 309. *Corwin*'s stockholder approval requirement also can be met when stockholders surrender their shares in a tender offer in the first step of a two-step merger, so long as the disclosures surrounding the offer are adequate. *In re* Volcano Corp. Stockholder Litig., 143 A.3d 727 (Del. Ch. 2016), *aff'd,* 156 A.3d 697 (Del. 2017). For a discussion of the *Volcano* decision, see Robert S. Reder, *Delaware Chancery Court Extends "Cleansing Effect" of Stockholder Approval Under* KKR *Two-Step Acquisition Structure*, 69 VAND. L. REV. EN BANC 227 (2016).

2. Sciabacucchi v. Liberty Broadband Corp., No. 11418–VCG, 2017 WL 2352152, at *15 (Del. Ch. May 31, 2017).

3. *Id.* at *15. *In re Merge Healthcare Inc. Stockholders Litig.*, C.A. No. 11388-VCG, 2017 WL 395981, at *6 (Del. Ch. Jan. 30, 2017) demonstrates that *Corwin* is applicable to directorial breach of duty claims arising from transactions not involving "a controlling stockholder that extracted personal benefits." For a discussion of this and related decisions, see Robert S. Reder & Tiffany M. Burba, *Delaware Courts Confront Question Whether "Cleansing Effect" of* Corwin *Applies to Duty of Loyalty Claims*, 70 VAND. L. REV. EN BANC 187 (2017).

4. *Sciabacucchi*, 2017 WL 2352152, at *2.

5. *Id.* (quoting *Corwin*, 125 A.3d at 306).

In the two plus years since *Corwin*, the Delaware Court of Chancery (the "*Chancery Court*") has dismissed nearly all post-closing damages actions alleging directorial breaches of fiduciary duties in connection with transactions approved by target company stockholders. It has become abundantly clear that *Corwin* cleansing is a significant hurdle for plaintiffs to overcome. Nevertheless, for those commentators who believe that *Corwin* is a bridge too far, Delaware courts recently have warned that *Corwin* "was never intended to serve as a massive eraser, exonerating corporate fiduciaries for any and all of their actions or inactions."[6] In fact, there are two threshold standards that must be achieved before *Corwin* will be invoked: the stockholder vote must be (1) fully informed and (2) uncoerced:[7]

- In *In re Saba Software, Inc. Stockholder Litig.*, No. 10697–VCS, 2017 WL 1201108 (Del. Ch. Mar. 31, 2017),[8] Vice Chancellor Joseph R. Slights III explained that "[t]he so-called *Corwin* doctrine . . . only applies 'to fully informed, uncoerced stockholder votes, and if troubling facts regarding director behavior were not disclosed that would have been material to a voting stockholder, then the business judgment rule is not invoked.' "[9] The Vice Chancellor, after finding the disclosures to stockholders were not problematic, nonetheless refused to apply *Corwin* because "the situation in which the Board placed its stockholders as a consequence of its allegedly wrongful action and inaction . . . created a 'circumstance[] [that was] impermissibly coercive.' "[10]
- Soon thereafter, in *In re Massey Energy Company Derivative and Class Action Litig.*, Chancellor Andre G.

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6. *In re* Massey Energy Co. Deriv. and Class Action Litig., 160 A.3d 484, 507 (Del. Ch. 2017).

7. *Sciabacucchi*, 2017 WL 2352152, at *2.

8. For a discussion of *Saba Software*, see Robert S. Reder, *Delaware Court Refuses to Invoke* Corwin *to "Cleanse" Alleged Director Misconduct Despite Stockholder Vote Approving Merger*, 70 VAND. L. REV. EN BANC 199 (2017).

9. *Saba Software*, 2017 WL 1201108, at * 7.

10. *Id.* at *16. The Vice Chancellor found that the Saba stockholders faced a "Hobson's choice" of either voting in favor of the transactions in question or retaining their stock "in the midst of . . . regulatory chaos," leaving them "with no practical alternative but to vote in favor of the Merger." *Id.* at *15. But compare *In re Paramount Gold and Silver Corp. Stockholders Litig.*, C.A. No. 10499-CB, 2017 WL 1372659, at *14 (Del. Ch. Apr. 13, 2017), in which Chancellor Bouchard found none of the disclosure issues raised by plaintiffs to be material and therefore dismissed the related complaint "under the Corwin doctrine." For a discussion of *Paramount Gold*, see Robert S. Reder, *Delaware Chancellor Again Invokes* Corwin *in Granting Directors' Motion to Dismiss Breach of Fiduciary Duty Claim*, 70 VAND. L. REV. EN BANC 209 (2017).

> Bouchard refused to apply *Corwin* cleansing to alleged director misconduct "and the harm it caused to the Company well before the Merger and the sale process that led to the Merger" that ultimately was approved by stockholders.[11] According to Chancellor Bouchard,
>
> > in order to invoke the cleansing effect of a stockholder vote under *Corwin*, there logically must be a far more proximate relationship than exists here between the transaction or issue for which stockholder approval is sought and the nature of the claims to be 'cleansed' as a result of a fully-informed vote.[12]

Sciabacucchi v. Liberty Broadband Corporation ("*Sciabacucchi*") is the latest in the line of cases demonstrating the limits on *Corwin*. In *Sciabacucchi*, Vice Chancellor Sam Glasscock III ruled that *Corwin* cleansing will not attach in the presence of "structural coercion": "a situation where a vote may be said to be in avoidance of a detriment created by the structure of the transaction the fiduciaries have created, rather than a free choice to accept or reject the proposition voted on."[13]

I. FACTUAL BACKGROUND

A. Liberty's Interest in Charter

Charter Communications, Inc. ("*Charter*" or the "*Company*") is "one of the largest cable providers in the United States."[14] Liberty Broadband Corporation ("*Liberty Broadband*"), Charter's largest stockholder owning approximately 26% of the Company's stock, has the right to appoint four of the ten members of Charter's board of directors.[15] John Malone ("*Malone*" and, together with Liberty Broadband, the "*Stockholders*") owns approximately 47% of the voting power and serves as chairman of the board of both Liberty Broadband and its former parent corporation, Liberty Media Corporation ("*Liberty Media*").[16]

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11. 160 A.3d at 507.

12. *Id.* at 508.

13. *Sciabacucchi*, 2017 WL 2352152, at *2. It is interesting to note that whereas most cases applying *Corwin* involved a vote of *target* company stockholders, *Sciabacucchi* was concerned with the potential cleansing effect of a vote of *acquiring* company stockholders.

14. *Id.* at *6.

15. *Id.* at *4, *7.

16. *Id.* at *4. Liberty Media was the parent corporation of Liberty Broadband until a 2014 spin-off of Liberty Broadband stock to Liberty Media stockholders. *Id.* In connection with the spin-off, Liberty Broadband assumed all duties and rights of Liberty Media relating to Charter. *Id.* at *7.

Although Charter's largest stockholder, Liberty Broadband's ability to take actions related to the Company are restricted by limitations imposed in both the Company's organizational documents and in contractual arrangements (collectively, the "*Governance Provisions*"). Specifically, Charter's amended and restated certificate of incorporation requires both director and unaffiliated stockholder approval[17] for "Business Combinations"[18] between the Company and an "Interested Shareholder."[19] Further, Liberty Broadband is party to a stockholders agreement with Charter pursuant to which:

- Liberty Broadband has the right to designate four persons "as nominees for election to the [b]oard" for so long as Liberty Broadband continues to own at least 20% of the Company's outstanding stock;[20]
- Liberty Broadband is restricted "from acquiring 'more than 35% of Charter's voting stock before January 2016 or more than 39.99% of Charter's voting stock thereafter' ";[21]
- Liberty Broadband is prohibited "from . . . engaging in any solicitation of proxies or consents" relating to Charter;[22]

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17. To be effective, a Business Combination (as defined in note 18 *infra*) requires

> (1) "a majority of the Continuing Directors" determining, "after consultation with their outside legal and financial advisors," that the Business Combination "is fair to the Corporation and its stockholders"; and (2) "holders of not less than a majority of the votes entitled to be cast by the holders of all of the then outstanding shares of Voting Stock . . . voting together as a single class, excluding Voting Stock Beneficially Owned . . . by any Interested Stockholder or any Affiliate or Associate of such Interested Stockholder" approving the transaction.

Id. at *6.

18. Business Combination is defined as "among other things, 'any merger or consolidation' with an Interested Stockholder; 'any . . . transfer or other disposition or hypothecation of assets of the Corporation . . . to or for the benefit of' an Interested Stockholder; any 'issuance by the Corporation . . . of securities to' an Interested Stockholder; and any 'transaction . . . that . . . has the effect, directly or indirectly, of increasing the proportionate share of any class or series of capital stock . . . of the Corporation . . . Beneficially Owned by any Interested Stockholder.' " *Id.* at *6.

19. Interested Stockholder is defined as "any person . . . who is, or has announced or publicly disclosed a plan or intention to become, the Beneficial Owner of Voting Stock representing ten percent (10%) or more of the votes entitled to be cast by the holders of all then outstanding shares of Voting Stock." *Id.* at *6. For this purpose, Liberty Broadband qualifies as an Interested Stockholder.

20. *Id.* at *7. However, Charter retained the right to elect to terminate this obligation by providing notice to Liberty Broadband in January 2016. *Id.* at *7.

21. *Id.*

22. *Id.*

- Charter cannot adopt "any takeover device that would prohibit Liberty [Broadband] from accumulating up to 39.99% of Charter's outstanding stock";[23] and
- Both Charter and Liberty Broadband possess "an annual right to terminate the [b]oard nomination and standstill obligations" upon notice provided to the other.[24]

To avoid the operating restrictions imposed on a "passive investor" under the Investment Company Act of 1940, as amended, Liberty Broadband sought to demonstrate to the Securities and Exchange Commission ("*SEC*") that it was "primarily engaged in business or businesses other than that of investing, reinvesting owning, holding, or trading in securities."[25] To that end, Liberty Broadband wrote a public letter to the SEC asserting that:

- "Charter is primarily controlled by Broadband";[26]
- "By virtue of the size of its ownership stake in Charter, Broadband will be presumed to control Charter";[27] and
- "Broadband will devote substantial time and resources to overseeing Charter's communications businesses, and will actively participate in the governance of Charter."[28]

Further, according to a separate SEC filing by Liberty Broadband, its "investment in Charter enables [it] to exercise significant influence over Charter" and it has "substantial involvement in the management and affairs of Charter, including through . . . board nominees."[29]

B. The Acquisitions

In May 2015, Charter and Time Warner Cable ("*TWC*") began to discuss a potential combination of their businesses (the "*TWC Merger*").[30] In this transaction, Charter "valued TWC at approximately $78.7 billion," with a little more than half payable in shares of Charter stock and the remainder payable in cash.[31] With the stated purpose of partially financing the TWC Merger, Liberty Broadband agreed to

23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.* at *8.
27. *Id.*
28. *Id.* Charter also expressed the belief that it would continue to "maintain 'primary control' of Charter" after the pending transactions discussed below. *Id.*
29. *Id.*
30. *Id.* at *12.
31. *Id.*

purchase an additional $4.3 billion of newly issued Company shares and to accept Company stock in exchange for its TWC shares in the TWC Merger.[32]

Simultaneous with the announcement of the TWC Merger, Charter announced the acquisition of "the sixth-largest owner and operator of cable systems in the United States," Bright House Networks, LLC ("*Bright House*"), a wholly-owned subsidiary of Advance/Newhouse Partnership ("*Advance/Newhouse*").[33] In connection with this acquisition (the "*Bright House Transaction*" and, together with the TWC Merger, the "*Acquisitions*"), Charter agreed to pay Advance/Newhouse $10.4 billion in cash and partnership units.[34] In connection with the Bright House Transaction, Charter, Liberty Broadband, and Advance/Newhouse agreed that, effective upon closing:

- Advance/Newhouse would "grant Liberty Broadband a voting proxy on up to 6% of its shares, giving Liberty Broadband voting power of at least 25.01% at closing" (the "*Voting Proxy Agreement*")[35]; and
- Liberty Broadband would purchase an additional $700 million of newly issued Charter shares (together with its $4.3 billion share purchase related to the TWC Merger, the "*Liberty Share Issuances*" and, together with the Voting Proxy Agreement, the "*Liberty Transactions*").[36]

A special meeting of Charter stockholders was held on September 21, 2015 to approve the TWC Merger (the "*Special Meeting*").[37] Importantly, stockholders were told that the Acquisitions "were conditioned on the Charter stockholders approving the Liberty Share Issuances and the Voting Proxy Agreement" in "a single vote" at the Special Meeting.[38] At the Special Meeting, holders of 90% of the outstanding Charter shares voted in favor of the TWC Merger and, excluding the shares owned by Liberty Broadband and its affiliates, holders of 86% of the remaining outstanding Charter shares voted in favor of the Liberty Transactions.[39]

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32. *Id.* at *12. All other TWC stockholders received a combination of cash and Charter stock. *Id.*

33. *Id.* at *6.

34. *Id.* at *10.

35. *Id.*

36. *Id.*

37. *Id.* at *13.

38. *Id.* at *13, *16.

39. *Id.* at *13.

Following completion of the Acquisitions, Charter's ownership structure was as follows: "TWC shareholders owned between approximately 40% and 44%, Advance/Newhouse owned between approximately 13% and 14%, and Liberty Broadband owned between approximately 19% and 20%."[40] But giving effect to the Voting Proxy Agreement, Liberty Broadband actually maintained the 25% voting power it held immediately before the Acquisitions.[41]

C. Litigation Ensues

Post-closing, a Charter stockholder brought suit in the Chancery Court alleging:

- In *Count I*, that the Charter directors "violated their duties of care and loyalty by agreeing to the Liberty Share Issuances and the Voting Proxy Agreement and failing to disclose all material facts necessary for shareholders to cast an informed vote."[42] According to plaintiff, the "Liberty Share Issuances and the Voting Proxy Agreement 'will unfairly expropriate and transfer voting and economic power from Charter's public shareholders to' Malone and Liberty Broadband."[43]
- In *Count II*, that the Stockholders "are de facto controlling shareholders of Charter" who "violated their fiduciary duties by 'causing the Board to agree to the Liberty Share Issuances and [the] Voting Proxy [Agreement]' " and thereby misappropriated wealth and power to Liberty Broadband, an insider.[44]

The directors and the Stockholders (collectively, the "*Defendants*") moved to dismiss, arguing that (i) the Stockholders did not, in fact, have *actual control* of Charter by virtue of the Governance Provisions,[45] and (ii) the directors "were independent and disinterested"[46] and, in any case, any allegation of director misconduct regarding the Liberty Transactions was cleansed by the ratifying vote cast by the majority of disinterested stockholders under *Corwin*.[47]

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40. *Id.*
41. *Id.*
42. *Id.* at *14.
43. *Id.*
44. *Id.*
45. *Id.*
46. *Id.* at *2.
47. *Id.* at *15.

II. VICE CHANCELLOR GLASSCOCK'S ANALYSIS

Vice Chancellor Glasscock's analysis focused on the determination whether, for purposes of *Corwin* cleansing, the Charter stockholder vote represented an uncoerced approval of the transactions associated with the alleged director wrongdoing in approving the Liberty Transactions.[48] In this context, the Vice Chancellor explained that "[c]oercion is a context-driven term," making the definition of the "term itself . . . 'not very meaningful.' "[49]

According to the Vice Chancellor, when a controlling stockholder stands on both sides of a challenged transaction, minority stockholders face "inherent coercion" and the concomitant "fear of controller retribution" renders the vote "insufficient to ratify the transaction."[50] He then explained that even if there is no controller present, a "structurally coercive" vote also will not receive the benefit of *Corwin* cleansing.[51] "Structural coercion" occurs when the vote is "structured in such a way that the vote may reasonably be seen as driven by matters extraneous to the merits of the transaction."[52]

A. Did Stockholders Control Charter?

There are two ways in which plaintiffs can shift the standard of review to entire fairness: by establishing either (1) "the presence of a controlling stockholder on both sides of a transaction" or (2) "that at least half of the directors who approved the transaction were not disinterested or independent."[53] Stockholders owning less than 50% of the voting power of a corporation (such as Liberty Broadband *viz.* a *viz.* Charter) may still be considered a controller if they "have such formidable voting and managerial power that they, as a practical matter, are no differently situated than if they had majority voting control."[54] To meet this high bar, a complaint must recite "well-plead

48. *Id.* at *4. As the Vice Chancellor notes,

> this 'coercion' need not imply any wrongdoing on the fiduciaries in the way they have structured the vote; it simply means that the Court cannot assume that the vote of the stockholders with respect to the challenged transaction was an informed ratification of that transaction, because of the way the question upon which they voted is constructed.

Id. at *15.

49. *Id.* at *20.

50. *Id.* at *2, *15.

51. *Id.* at *15.

52. *Id.* at *2.

53. *Id.* at *16.

54. *Id.* (quoting In re *PNB Holding Co. Shareholders Litig.*, 2006 WL2403999, at *9 (Del. Ch. Aug. 18, 2006)).

facts" establishing the stockholder has *actual control* over the business matters of the corporation.[55] If a plaintiff can show actual control, the controller is therefore a corporate fiduciary that is prohibited from considering his or her own interests when exercising corporate power.[56]

Despite Liberty Broadband's 26% equity stake, its letter to the SEC claiming control over Charter, and the alleged power that the Stockholders wielded over the Charter board, Vice Chancellor Glasscock determined that Liberty Broadband did not control Charter.[57] The Vice Chancellor viewed the limitations imposed by the Governance Provisions on Liberty Broadband's corporate activity relative to Charter "sufficient to overcome any inference that Liberty Broadband was able to exercise *actual control* over Charter in relation to the Liberty Share Issuances and Voting Proxy Agreement."[58] Not even Liberty Broadband's own assertions to the SEC that it possessed control over Charter were sufficient to overcome these contractual limitations.[59]

Vice Chancellor Glasscock also found that the complaint insufficiently pled facts to lead to an inference that the Stockholders possessed actual control over a majority of the members of the Charter board.[60] Plaintiff argued that a majority of the directors lacked independence from the Stockholders based on various professional connections and shared connections between the directors and Malone.[61] As the Vice Chancellor pointed out, however, "it does not necessarily follow that an interested party also controls directors, simply because they lack independence."[62]

B. Was the Vote "Structurally Coerced"?

While all litigants agreed that the Acquisitions "contributed value" to Charter,[63] plaintiff alleged that "the directors separately, and for reasons unrelated to the business interest of Charter, chose to

55. *Id.* at *14, *16.
56. *Id.* at *16.
57. *Id.* at *16, *17.
58. *Id.* at *17.
59. Vice Chancellor Glasscock did state in dicta that, absent such limiting contractual restrictions, Liberty Broadband's public statements "would likely be sufficient to establish, at the pleading stage, that the Stockholder Defendants were controllers." *Id.* at *20.
60. *Id.* at *17, *18.
61. *Id.* at *18.
62. *Id.* at *17, *18.
63. *Id.* at *1.

issue equity to an insider, then coerced acceptance of the inequitable issuance by tying it to approval of the underlying transaction."[64] This pleading was sufficient for Vice Chancellor Glasscock to reach that inference.

The Vice Chancellor focused on the manner in which the stockholder vote was structured: the lucrative Acquisitions both were expressly conditioned on stockholder approval of the Liberty Transactions.[65] As such, Charter stockholders were required to approve potentially inequitable transactions if they wanted to receive the benefits of the beneficial Acquisitions.[66] If the stockholders did not believe the Liberty Transactions were in their best interest, voting consistent with that belief would cost them the gains associated with the Acquisitions. The stockholders therefore were effectively given the choice to do one of two things: either forgo two lucrative deals or accept transfer of wealth and power to an insider.[67]

Generally speaking, directors are free to act within their business judgment to structure transactions, as well as to issue equity and approve voting proxy agreements, as they see fit.[68] Delaware courts defer to these decisions unless the structure "strong-arms" stockholders into voting to approve a transaction for reasons unrelated to its underlying economic merits.[69] In other words, "potential breaches of duty inherent in the transaction" receive the benefit of *Corwin* cleansing after a ratifying vote, but "extrinsic strong-arming" does not.[70] In the presence of "structural coercion," the vote is no longer a decision to maintain the status quo or opt into the new status afforded by the transaction; rather it is biased by external factors.[71]

Thus, a key query in Vice Chancellor Glasscock's analysis was whether the Liberty Transactions were an integral part of the Acquisitions or simply extraneous transactions "tacked to the Acquisitions to strong-arm a favorable vote."[72] With respect to this determination, "the contents and omissions of the definitive proxy statement [were] telling."[73] In this connection, the Vice Chancellor

64. *Id.* at *3.
65. *Id.* at *2.
66. *Id.* at *2, 22.
67. *Id.* at *22.
68. *Id.* at *3.
69. *Id.* at *21.
70. *Id.*
71. *Id.*
72. *Id.* at *22.
73. *Id.* at *3.

found the following aspects of Charter's proxy disclosures to be persuasive:

- The board made no determination whether the Liberty Share Issuances either were necessary or the only form of financing available.[74]
- The board did not inform stockholders that the Liberty Transactions were, independent of the Acquisitions, in the best interest of the Company. In fact, the board did not obtain a financial advisor opinion that the Liberty Transactions, standing alone, were fair to the Company or the stockholders.[75]
- There was no indication that alternate sources of financing other than Liberty Broadband were even considered for that portion of the overall consideration.[76]
- Liberty Broadband initially proposed taking an additional equity investment, and all negotiations then proceeded as if the issuance of equity to Liberty Broadband was a "done deal."[77]
- There was no explanation why the Acquisitions were explicitly conditioned on approval of the Liberty Share Issuances, although they were a relatively insignificant part of the overall deal financing ($4.3 billion of the $78.7 billion TWC deal valuation). [78]

As Vice Chancellor Glasscock noted: "to get the benefit of the acquisitions of Bright House and TWC, the stockholders had to *swallow the pill* of the Liberty Share Issuances and Voting Proxy Agreement."[79] Simply put, the Charter directors created value for stockholders by entering into the Acquisitions, but then structured the approval process so as to force stockholders to vote in favor of extraneous transactions if they wanted to reap the benefits.[80]

On this basis, the Vice Chancellor determined it was "reasonably conceivable that the vote of the disinterested stockholders . . . was structurally coerced."[81] Instead of determining that the Liberty Transactions were in their best interest, stockholders merely

74. *Id.*
75. *Id.*
76. *Id.* at *23.
77. *Id.*
78. *Id.* at *24.
79. *Id.* at *2.
80. *Id.* at *23.
81. *Id.* at *20.

determined that all the transactions were "on net, beneficial"[82] In short, to invoke *Corwin* in this instance would be "not a cleanse, but a white-wash."[83]

C. Was the Complaint Sufficient?

Vice Chancellor Glasscock's determination that the Charter stockholder vote was structurally coerced did not automatically result in director liability.[84] Instead, it merely meant that the directors did not receive the benefit of the business judgment rule under *Corwin*.[85] To determine the applicable standard of review, the Vice Chancellor next had to determine whether plaintiff's claims were derivative or direct.[86] Due to inadequate briefing by both parties on this issue, the Vice Chancellor "reserve[d] on the balance of the Motions to Dismiss so that the parties can address th[e] issue with supplemental briefing."[87]

CONCLUSION

The cleansing effect of a disinterested stockholder vote under *Corwin* is indeed a powerful antidote to directorial misconduct. However, as Vice Chancellor Glasscock signaled in *Sciabacucchi*, when it comes time to structure a vote with a view to one day receiving the benefits of *Corwin* cleansing, "fiduciaries cannot interlard such a vote with extraneous acts of self-dealing, and thereby use a vote driven by the net benefit of the transactions to cleanse their breach of duty."[88] *Sciabacucchi* represents a warning to directors: you cannot merely "attach self-dealing riders to any transaction under consideration and avoid being held to account by a favorable stockholder vote."[89]

82. *Id.* at *4.
83. *Id.*
84. *Id.* at *20.
85. *Id.*
86. *Id.* at *24.
87. *Id.* at *4.
88. *Id.* at *3.
89. *Id.* at *4.