

Expert Opinion **Corporate Governance**

## Delaware Courts Interpret New Fiduciary Safe Harbors

Andrew Rossman, Charles Sangree and S. Ludwig Irvland examine how two recent Delaware Court of Chancery decisions clarify both the reach and limits of the state's revised fiduciary safe harbors.

October 19, 2026 at 09:52 AM By **Andrew J. Rossman, Charles Sangree and S. Ludwig Irvland**



The Delaware Legislature's 2025 amendments to Section 144 of the Delaware General Corporation Law provided corporate directors, officers, and controlling stockholders with new, statutory avenues to shield transactions from a challenge based on claims for breach of fiduciary duty.

A defendant in a breach of fiduciary duty action may invoke this safe harbor by showing that the transaction has been approved (1) by an informed vote by a majority of the disinterested directors who satisfied their duties of care and good faith or (2) by an informed and uncoerced vote of the disinterested stockholders.

Although the amendments were signed into law on March 25, 2025, Court of Chancery decisions analyzing the impact of these amendments have only recently begun to be released (Note: This is largely because the amendments did not govern actions commenced on or before Feb. 17, 2025.)

Two recent cases, *Ayers v. Foley*, 2026 WL 1723538 (Del. Ch. June 15, 2026) and *Dodiya v. Franklin*, 2026 WL 2517931 (Del. Ch. Aug. 26, 2026), provide useful guidance regarding how the Court will review transactions purporting to comply with those safe harbors.

The two decisions come as states like Texas and Nevada seek to lure companies away from Delaware and also to attract new incorporations—and as parties on both sides of major stockholder disputes look to the Court of Chancery to see how it will act in the wake of the amendments.

### **‘Ayers v. Foley’**

The amendments to Section 144(d)(2) introduced a new “heightened” presumption of director disinterest. Specifically, a director will be presumed to be disinterested with respect to an act or transaction if the director is not a party to the transaction and has been deemed to satisfy national stock exchange independence standards.

Rebutting this presumption requires a plaintiff to plead “substantial and particularized facts that such director has a material interest in such act or transaction or has a material relationship with a person with a material interest in such act or transaction.” DGCL §144(d)(2).

In *Ayers*, the Court applied this new standard outside the context of determining whether the safe harbor applies, and instead used it to determine demand futility.

Under Court of Chancery Rule 23.1, a stockholder who is seeking to bring a derivative claim on behalf of the corporation must adequately plead that the board wrongfully refused a demand to bring the action, or, more commonly, that such demand would have been futile. *United Food & Com. Workers Union & Participating Food Indus. Emps. Tri-State Pension Fund v. Zuckerberg*, 262 A.3d 1034, 1047 (Del. 2021).

To plead demand futility, a plaintiff must allege particularized facts sufficient to raise reasonable doubt that at least half the directors on the board could impartially consider the demand.

In *Ayers*, a stockholder seeking to challenge various compensation decisions by the board of Fidelity National Financial, Inc. brought derivative claims for breach of fiduciary duty and unjust enrichment. 2026 WL 1723538, at \*5.

The defendants argued the stockholder could not show a majority of the eleven directors were interested and moved to dismiss claims related to an equity grant to the founder-chairman. In doing so, they argued that Section 144’s heightened independence standards applied not just to the statutory safe harbor, but also to the Rule 23.1 demand futility analysis.

The Court, considering “‘well[-]settled’ principles of statutory interpretation,” held that “[t]he application of Section 144(d)(2) is not confined to the safe harbors in Sections 144(a), (b), and (c),”

and applies also when considering demand futility.

The Court went on to conclude that the complaint failed to allege substantial and particularized facts to overcome the statutory presumption applicable to three of the directors. It found that allegations of overlapping board service, director compensation, and indirect business ties (mainly “co-investments in sports teams”) between independent board members and an interested party were insufficient to rebut the presumption of independence, and thus failed to show demand would be futile. Accordingly, the Court dismissed the claims under Rule 23.1.

Though the defendants did not argue otherwise, the Court reached the opposite result on the plaintiff’s challenge to the decisions by the board setting their own compensation. Because the compensation committee members were setting their own pay, they were parties to those transactions and therefore not “disinterested director[s]” under Section 144(e)(4), foreclosing the safe harbor under Section 144(a)(1).

This left the defendants to argue that the plaintiff failed to allege the transaction was not entirely fair under Section 144(a)(3). Given the low pleading burden on a motion to dismiss, and despite explaining that the defendants raised “persuasive points” about the fairness of challenged compensation, the Court found that unfairness had been adequately alleged.

The claims against the directors on the compensation committee who approved the new compensation awards were thus permitted to proceed past the pleading stage, though the fiduciary duty claims against the directors who only received the compensation grants were dismissed.

The court nevertheless permitted the unjust enrichment claims to go forward against all directors.

### **‘Dodiya v. Franklin’**

The increased protections that revised Section 144 provide to corporate fiduciaries are not unlimited. *Dodiya* involved alleged facts the Court described as an “extreme scenario.” 2026 WL 2517931, at \*1. The CEO of Whole Earth Brands allegedly leaked material non-public information to a company controlled by his father, who then submitted a proposal to acquire Whole Earth.

The allegedly leaked materials included a non-public valuation report not shared with other potential buyers, a draft Form 10-K, and confidential credit agreement negotiations.

The board discovered the CEO’s alleged misconduct, but while disclosing to stockholders that the CEO had not participated in the merger process, failed to actually restrict his access to sensitive information.

Indeed, even after the company uncovered the leaks, the CEO allegedly “received a packet of Board materials that contained non-public Special Committee materials and, one week later, he attended a

Board meeting where a Special Committee report on [the buyer's] proposal was relayed.”

A stockholder who was cashed out in the merger brought breach of fiduciary duty claims against the CEO and the board. The defendants moved to dismiss under the Section 144 safe harbor because the board had approved the Merger in good faith despite its awareness of the CEO's alleged conflict.

The Court rejected this argument. Though the Court noted that the CEO's alleged conflicts were known to the board and that at least a majority of the directors were “disinterested director[s]” under Section 144(e)(4), the Court nonetheless found the complaint raised a reasonable inference that the board acted in bad faith or was grossly negligent in approving the transaction.

The allegations concerning the CEO's leak and the failure to protect confidential information were “so extreme” as to amount to reckless indifference, which in turn “compromised the integrity of the sale process.” It was thus reasonably conceivable that the board was grossly negligent in approving the transaction, which rendered Section 144(a)(1) inapplicable.

The defendants also argued that a fully informed stockholder vote required dismissal. In addressing that argument, the Court found that, since the stockholders had allegedly been misled regarding the CEO's participation in the sale process, it was reasonably conceivable that the proxy was materially misleading. This precluded application of the safe harbor under Section 144(a)(2).

Nevertheless, the Court still dismissed the plaintiff's claims against most of the defendants. As the sale was an “end stage” transaction, the Court applied *Revlon* to determine whether the board acted reasonably in securing the best price reasonably available for stockholders. In undertaking this review, the Court found that (1) the allegedly conflicted CEO; and (2) the executive chairman who allegedly secretly negotiated a lucrative consulting agreement in connection with the transaction had conceivably breached their fiduciary duties.

But the plaintiff had not stated claims against any other director. Interestingly, following its approach in *Ayers*, the Court applied the heightened presumption of disinterestedness from the revised Section 144 in determining whether one of the disinterested directors could be liable as having acted to benefit the executive chairman at the expense of stockholders.

While the Court found that the director was conceivably not independent of the executive chairman, because the allegedly disloyal motive (the secretly negotiated consulting agreement) had remained unknown to the director, “it [was] inconceivable that she breached her duty of loyalty to advantage” him.

## **Takeaways**

Both *Ayers* and *Dodiya* confirm the potential insulating effects of the revised Section 144. Perhaps most consequentially, both decisions applied Section 144(d)(2)'s heightened presumption of director disinterestedness outside the formal confines of the safe harbors themselves. *Ayers* held that the presumption governs demand futility under Rule 23.1.

*Dodiya* applied it to the question of whether a plaintiff that has shown the safe harbor does not apply nonetheless has pleaded a non-exculpated claim. Thus, the disinterestedness-criteria set forth in Section 144 seems to apply to all aspects of a fiduciary duty claim where director impartiality is at issue.

*Dodiya* also highlights the importance of a board ensuring they comply with their duty of care. While standalone duty of care claims are rarely pled given the prevalence of exculpation under DGCL §102(b)(7), a pleading-stage finding that a board breached their duty of care is sufficient to strip a transaction of statutory protection and carry a complaint past a motion to dismiss.

Indeed, the transaction in *Dodiya* was approved by a disinterested majority of the board with requisite knowledge of the material facts; only their alleged failure to comply with their duty of care defeated dismissal.

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