CORPORATION

January 16, 2026 Section 2 Vol. XCVII No. 2

Delaware Court of Chancery and Delaware Supreme Court Top 10 Cases of 2025 © [¶2.1]

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This top ten list summarizes significant decisions of the Delaware Supreme Court and Court of Chancery over the past calendar year. Our criteria for selection are that a decision either meaningfully changed Delaware law or provided helpful clarity or guidance on issues relevant to corporate and commercial transactions or litigation under Delaware law. Our list does not include every significant decision but offers practitioners an array of decisions on varied issues. We present the decisions in no particular order.

One: *In re Tesla, Inc. Derivative Litigation*, 2025 WL 3689114 (Del. Dec. 19, 2025)

This decision resolved the newsworthy litigation over Elon Musk's equity compensation plan as Tesla's chief executive officer. The challenged plan involved stock options that would vest upon specified market capitalization and operational milestones. The plan represented a potential compensation opportunity unmatched in the public markets. Tesla performed extraordinarily well, resulting in extraordinarily large compensation flowing to Musk. The plaintiff stockholder sued Musk and the Tesla directors who approved his compensation plan, alleging

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This article was previously published in the January 23, 2026 edition of Securities Regulation Daily.

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that Musk was a controlling stockholder and forced the board to grant him excessive pay and seeking equitable rescission.

The Court of Chancery agreed that Musk was a controlling stockholder and exercised transaction-specific control, and therefore defendants had the burden to prove the plan was entirely fair considering process and price. According to the Court, the defendants failed to carry that burden and thus breached their fiduciary duties in adopting the plan. As a remedy, the Court rescinded the plan, which invalidated Musk's unexercised grant. The decision garnered significant press, as did Tesla's subsequent reincorporation in Texas. The Delaware legislature thereafter acted to amend the Delaware General Corporations Law (DGCL) to bring clarity concerning controlling stockholder designations and available safe harbors to avoid litigation.

On appeal, the Delaware Supreme Court reversed, disagreeing with the trial court's remedy. As the Supreme Court explained, rescission is designed to end legal relations and return parties to the "*status quo ante*,"[1] *i.e.*, the prior state of affairs. A party seeking equitable rescission must establish that "(1) equitable rescission is a viable remedy and (2) the court can restore all of the challenged transaction's parties to the *status quo ante*[.]"[2] Here, rescission was inappropriate because the trial court could not restore Musk to the *status quo ante*. First, total rescission left Musk uncompensated for his performance in meeting the relevant milestones, which represented six years of time and effort. Second, Musk's pre-existing equity stake, while a powerful incentive to perform, could not serve as consideration for his work because it was not compensation promised for his performance. Finally, the Supreme Court found that the trial court erred in placing the burden on defendants to offer a viable alternative to total rescission because that burden rested on the plaintiff. The Supreme Court accordingly reversed the trial court's remedy of rescission, reinstating the grant. With recission unavailable, and no other form of relief offered by plaintiff, the Supreme Court awarded $1 in nominal damages.

Tesla clarifies the standards governing the remedy of equitable rescission, particularly the *status quo ante* requirement.

Two: *Maffei v. Palkon*, 339 A.3d 705 (Del. 2025)

This decision clarifies the standard of review governing reincorporation decisions. Here, minority stockholders of two corporations, TripAdvisor and Liberty TripAdvisor, challenged as self-interested the fiduciaries' decisions to convert the companies' corporate domicile from Delaware to Nevada. Plaintiffs argued the move would bestow a unique benefit on the controlling stockholder, Gregory Maffei, and the directors by reducing potential fiduciary liability for future stockholder litigation under more permissive Nevada law, and therefore the transaction should be subject to entire fairness review. The Court of Chancery upheld the plaintiff's theory at the motion to dismiss stage. The trial court reasoned that a controller or other fiduciary obtains a non-ratable benefit when a transaction materially reduces or eliminates the fiduciary's risk of liability.

On appeal, the Delaware Supreme Court reversed. The Supreme Court held that, on the facts alleged, the decision to reincorporate did not involve a material, non-ratable benefit and was governed by the business judgment rule. Summarizing the relevant law, the Supreme Court

explained that a benefit giving rise to a conflict is found where a director "will receive a personal financial benefit from a transaction that is not equally shared by the stockholders"[3] and which is "of a sufficiently material importance, in the context of the director's economic circumstances, as to have made it improbable that the director could perform her fiduciary duties . . . without being influenced by her overriding personal interest."[4] For controllers, there must be "a personal financial benefit to the exclusion of, and detriment to, the minority stockholders."[5] The Supreme Court agreed with the Court of Chancery that any non-ratable benefit in this context must be material to trigger entire fairness. But it disagreed on the related issue of temporality. According to the Supreme Court, for actions in furtherance of extinguishing liability, Delaware law distinguishes between cases based on existing versus future potential liability. "[T]emporality is a key factor because it weighs heavily in determining materiality in this context."[6]

Considering temporality here, the Supreme Court found that "the absence of any allegations that any particular litigation claims will be impaired or that any particular transaction will be consummated post-conversion, weighs heavily against finding that the alleged reduction in liability exposure under Nevada's corporate law regime is material."[7] And examining materiality in light of these temporality considerations, the Supreme Court held that "[t]he hypothetical and contingent impact of Nevada law on unspecified corporate actions that may or may not occur in the future is too speculative to constitute a material, non-ratable benefit triggering entire fairness review."[8] The Supreme Court also noted that its conclusion was reinforced by comity concerns involving different state regimes and was consistent with Delaware policy favoring private ordering.

Under *Maffei*, speculation about general liability protection is insufficient to challenge reincorporation decisions.

<u>Three</u>: *In re Columbia Pipeline Grp., Inc. Merger Litig.*, 342 A.3d 324 (Del. 2025)

Liability for aiding and abetting a fiduciary breach under Delaware law requires four elements: (1) a fiduciary relationship, (2) a breach of the fiduciary's duty, (3) the defendant's knowing participation in that breach, and (4) proximately caused damages. This decision addresses the requirement of an acquiror's "knowing participation"[9] in a sell-side fiduciary breach.

The case arose from the acquisition of Columbia Pipeline Group by TC Energy Corporation. Columbia Pipeline stockholders brought post-closing claims against the company's officers and directors alleging breaches of fiduciary duty in connection with the transaction and change-in-control payments benefiting certain officers that negotiated the transaction. The plaintiffs argued that the officers initiated and timed the merger in a way favoring their own self-interest at an inopportune time, depriving the company's stockholders of a value-maximizing transaction, followed by a misleading proxy statement in breach of the duty of disclosure. The plaintiffs also contended that the buyer aided and abetted these fiduciary breaches. The sell-side claims settled, but the aiding and abetting claim went to trial. The Court of Chancery ultimately found the buyer liable and awarded almost $200 million in damages.

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On appeal, the Delaware Supreme Court reversed. Following the Court of Chancery's ruling below, the Supreme Court held in *In re Mindbody, Inc., Stockholder Litigation*, 332 A.3d 349 (Del. 2024) that, to be liable for aiding and abetting, an acquiror must have actual knowledge of both (1) the target's breach and (2) its own conduct's wrongfulness. Here, the Court of Chancery found constructive knowledge sufficient and did not make a finding of actual knowledge. After independently reviewing the record in detail, the Supreme Court concluded that the facts established at trial did not satisfy the actual knowledge requirement. Regarding the first prong, the Supreme Court focused on discerning the ''clarity''[10] of the various sell-side breaches. Regarding the second prong, the Supreme Court focused on discerning whether the buyer ''substantially assisted''[11] in each of the alleged breaches, noting that an aider and abettor's participation in a primary actor's breach ''must be of an active nature.''[12] While the record might have supported findings of constructive knowledge of fiduciary breaches, it did not support findings of actual knowledge with active participation. Thus, aiding and abetting liability could not attach. As the Supreme Court explained, and proved true here, a buyer's limited visibility into the seller's internal governance during negotiations, coupled with its fiduciary duty to its own stockholders to extract the best reasonably available price, together create ''a formidable obstacle to proving 'knowing participation.' ''[13]

Columbia Pipeline illustrates Delaware's high bar for stockholders seeking to hold acquirors liable for aiding and abetting sell-side breaches of fiduciary duty.

Four: *Desktop Metal, Inc. v. Nano Dimension Ltd.*, 2025 WL 904521 (Del. Ch. Mar. 24, 2025)

This decision demonstrates the willingness of the Delaware courts to enforce closing obligations in broken deal litigation. The case concerned Nano Dimension's acquisition of Desktop Metal. The parties conditioned the purchase on government agency approval, specifically the Committee on Foreign Investment in the United States (CFIUS). The merger agreement contained strong covenants designed to ensure deal certainty and speed, specifically a ''hell or high water''[14] obligation requiring Nano to take all action necessary to obtain CFIUS approval, and a ''reasonable best efforts''[15] commitment for Nano to close the deal as soon as reasonably possible. After the merger agreement's execution, an activist investor of Nano, who opposed the merger, waged a proxy contest and took control of Nano's board. At that time, CFIUS approval was the sole closing condition left. Nano thereafter delayed obtaining CFIUS approval. Desktop Metal was in a difficult financial position and sued in the Court of Chancery, seeking specific performance. Nano advanced counterclaims seeking to excuse its nonperformance. The Court ordered expedition and, after ''herculean discovery efforts'' by the parties, held a two-day trial.

The Court of Chancery ruled in favor of Desktop Metal on all claims. Central to Desktop Metal's success was the merger agreement's ''hell or high water''[16] provision. According to the Court, such provisions ''are the strongest possible commitment a party can make in a merger agreement with [respect] to regulatory approval.''[17] And the evidence at trial established that Nano did not satisfy its

obligations. Rather, Nano worked to scuttle the deal while preferring a cheaper acquisition of Desktop Metal assets in potential bankruptcy proceedings. The activist investor at Nano had planned to use CFIUS approval to stop the deal and stark facts proved that he put his plan into action after gaining control of Nano's board, delaying and obstructing the CFIUS process.

Nano also failed to prove its counterclaims, in particular, its contention that Desktop Metal violated the merger agreement's "no-bankruptcy"[18] covenant, which excused Nano if Desktop Metal admitted in writing that it could not pay debts as they mature. While the evidence presented a close call, the Court found it insufficient and further held that Desktop Metal's failure of that condition, if proven, would have been excused based on Nano's nonperformance contributing materially to the failure. Accordingly, the Court ordered specific performance, requiring Nano to complete the CFIUS approval process and to close the merger.

Desktop Metal, in the Court's words, "[c]halk[s] up yet another victory for deal certainty."[19]

Five: *Roberta Ann K.W. Wong Leung Revocable Tr. U/A Dated 03/09/2018 v. Amazon.com, Inc.*, 345 A.3d 965 (Del. 2025)

This decision clarifies the standards governing books-and-records inspections pursuant to Section 220 of the DGCL. Here, an Amazon stockholder's stated purpose for its books-and-records demand was to investigate potential wrongdoing or mismanagement regarding the company's alleged anticompetitive activities. The stockholder cited regulatory scrutiny, lawsuits, and fines from various sources in recent years, with a focus on a recent Federal Trade Commission (FTC) action alleging anticompetitive activity. Reviewing findings by a Court of Chancery Magistrate, the trial court concluded that the scope of the stockholder's stated purpose was so overbroad that it was facially improper. The Court therefore rejected the demand without reaching whether the stockholder met the usual credible basis standard.

On appeal, the Delaware Supreme Court reversed. The Supreme Court faulted the trial court for beginning and ending its analysis with the demand's scope, and for incorrectly reading the stockholder's demand as concerning any possible anticompetitive conduct by the global conglomerate, anytime, anywhere. According to the Supreme Court, the applicable framework for evaluating a demand does not include facially evaluating the demand's scope without considering its supporting evidence. The trial court, instead, must ask whether the stockholder presented "some evidence to establish a credible basis of mismanagement or wrongdoing warranting further investigation."[20] The Supreme Court reiterated that the credible basis standard is low and does not require evidence of actual wrongdoing, only enough evidence to infer possible mismanagement.

Asking that question here, the Supreme Court found sufficient evidence. In reaching its conclusion, the Supreme Court disagreed with the view that, when governmental inquiries or litigation are involved, Delaware courts look for "additional evidence"[21] beyond that ongoing activity. Meeting the credible basis burden in this circumstance "does not require that the underlying litigation result in a full victory on the merits against the company."[22] Rather, "where a stockholder presents evidence of ongoing

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investigations and lawsuits, and those investigations and lawsuits have advanced beyond untested allegations, then the evidence can be sufficient to meet the credible basis standard, especially when liability or fines could result in a corporate trauma."[23] Here, the FTC action and other actions against Amazon, which followed investigations, had survived motions to dismiss. Amazon also entered a consent decree and paid a fine in other jurisdictions. Taken together, these occurrences established "a credible basis from which a court can infer that Amazon has engaged in possible wrongdoing through its purported anticompetitive activities."[24]

Amazon clarifies the framework for assessing books-and-records inspections relating to mismanagement and reinforces the potential for evidence of government or regulatory actions to support a credible basis.

Six: *Brola v. Lundgren*, 2025 WL 3439671 (Del. Ch. Dec. 1, 2025)

This decision draws a line between interpersonal misconduct and potential fiduciary liability under Delaware law. Here, a director and officer was found guilty of sexually harassing employees, causing the company to incur liability under state law. The plaintiff argued that the sexual harassment was a *per se* breach of the duty of loyalty because the fiduciary was furthering his own personal motivations instead of the company's best interests. The core question presented on the defendant's motion to dismiss was whether Delaware corporate law encompasses interpersonal workplace disputes like those at issue.

The Court of Chancery found that it does not. According to the Court, Delaware law governs a company's internal affairs and it does not necessarily extend to matters like relationships between managers and employees, which are governed by other laws and statutes. Serious personal misconduct by a corporate director or officer, like sexual harassment, while reprehensible, does not automatically constitute a breach of the duty of loyalty. Rather, in the Court's view, for potential fiduciary liability, the relevant misconduct must relate to the individual's corporate office.

The Court distinguished its decision from *In re McDonald's Corporation Stockholder Derivative Litigation*, 289 A.3d 343 (Del. Ch. 2023), where the Court of Chancery sustained a duty of loyalty claim against a corporate officer accused of sexually harassing employees. There, the defendant was a senior officer specifically charged with maintaining a safe and respectful workplace at the enterprise level. Here, the defendant was not alleged "to have abused the specific delegated authority of his corporate office."[25] His misconduct was a personal malfeasance and "[a]ny midlevel manager could commit the same wrongs using the same means."[26] Finally, the Court cautioned that extending Delaware law in the manner plaintiff promoted would give rise to preemption, comity, and public policy concerns relating to the interests of the victims.

Under *Brola*, fiduciary liability does not attach to every wrong committed in the workplace whenever the perpetrator holds a corporate title.

Seven: *Manti Holdings, LLC v. The Carlyle Group Inc.,* 2025 WL 39810 (Del. Ch. Jan. 7, 2025) *aff'd*, — A.3d —, 2025 WL 3095219 (Del. Nov. 5, 2025)

A reoccurring theme in M&A litigation is the contention that a controller on the

sell-side pushed a deal to satisfy liquidity motives. That plotline, advanced here, failed. The case arose out of the 2017 arms-length sale of Authentix, of which the global investment firm, The Carlyle Group, was the company's largest equity holder through affiliates. Minority stockholders sued post-closing, alleging Carlyle was the company's controller, its private-equity business model required a prompt sale, and it caused the company's board to run an unfair sale process to extract for itself the unique benefit of a timely exit. Earlier in the case, the Court of Chancery declined to dismiss the complaint's core theory, leading to years of litigation and a trial.

Post-trial, however, the Court of Chancery ruled in Carlyle's favor. As the Court explained, "transactions where the controller competes with the common stockholders for consideration"[27] trigger entire fairness review, which imposes the burden on defendants to prove fair process and price. A controller so competes when it: "(i) receives greater monetary consideration for its shares than the minority stockholders, (ii) takes a different form of consideration than the minority stockholders, or (iii) extracts something uniquely valuable to the controller, even if the controller nominally receives the same consideration as all other stockholders."[28] Plaintiffs here relied on the third prong.

While Carlyle qualified as a controlling stockholder and Authentix directors lacked independence from Carlyle, the Court found that the interests of Carlyle and the minority stockholders were aligned in maximizing value through the transaction. Contrary to plaintiffs' theory, the facts did not establish that Carlyle forced a "fire sale"[29] or otherwise extracted a non-ratable liquidity benefit. Although Carlyle investors expected monetization around the ten-year mark in 2017, the fund was a commonplace equity fund vehicle and had no special obligation to sell at that time such that Carlyle would force a premature and ill-timed sale. Deferential business judgment review, instead of entire fairness review, thus applied and the Court deferred to the board's business judgment. The Delaware Supreme Court subsequently affirmed for the reasons set forth in the trial court's decision.

Manti serves as a reminder that a plaintiff must both adequately plead and eventually prove conflicts in a controlling stockholder transaction to trigger rigorous entire fairness review and hope to win a judgment.

Eight: *Solak v. Daniels*, 2025 WL 1913190 (Del. Ch. July 11, 2025)

As this decision explains, Delaware law detests strike suits, which are lawsuits "intended to provoke a settlement payment to the plaintiff and her counsel rather than to redress a meaningful governance problem."[30] This case involved a defense based on this policy.

Here, a stockholder brought a derivative action challenging the company's issuance of restricted stock units that allegedly exceeded the limit in the operative stockholder approved compensation plan. The representative plaintiff was a frequent plaintiff, who quickly settled or dismissed numerous suits, and who purchased shares in the company after the disclosures related to the restricted stock units but before the relevant issuance.

Addressing cross-motions for judgment on the pleadings, the Court of Chancery found the defendants' allegations of a strike suit concerning and agreed that the allegations implicated the

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doctrine of unclean hands as a potential defense. As the Court explained, "[a] plaintiff who buys company stock to bring a derivative suit, then purports to speak on the company's behalf to extract benefits for herself or her counsel that exceed on a relative basis the suit's net benefit to the company, risks converting a derivative action from an equitable tool for corporate benefit into a conflicted and inequitable strike suit."[31] The Court found the allegations here significant enough to warrant attention as a gating issue before considering the merits of plaintiff's suit. Because the strike suit allegations were outside the pleadings, the Court converted the defendants' motion into one for summary judgment and permitted limited discovery relating to the unclean hands defense while staying the other pleading-stage issues.

Solak reinforces Delaware's commitment to deterring strike suits and indicates the Court of Chancery's willingness to address allegations of a strike suit as a threshold issue at an early stage of the case.

Nine: *Khan v. Warburg Pincus, LLC*, 2025 WL 1251237 (Del. Ch. Apr. 30, 2025)

This decision illustrates Delaware law's flexibility when it comes to private ordering in the limited liability company context. Plaintiffs were minority unitholders in a Delaware LLC alongside other members and a private equity firm majority unitholder. The LLC's operating agreement granted tag-along rights to plaintiffs to participate in certain transactions on the same terms as private equity-affiliated members. It also included a fiduciary duty waiver for all actions done in compliance with the LLC agreement. And it permitted amendment of its terms with the approval of the affected member class. The company negotiated a merger under which the majority holders would receive all-cash consideration, while the minority holders would receive a mix of cash and equity. The parties amended the LLC agreement and waived the minority owners' tag-along rights to accomplish the transaction. After the equity consideration lost value, plaintiffs sued, alleging they were unfairly treated and coerced into the amendment.

The Court of Chancery dismissed the case. Of particular interest, the Court rejected the plaintiffs' implied covenant claim. While members of an LLC may waive default fiduciary duties under Delaware law, they cannot waive the implied covenant of good faith and fair dealing which generally attaches to contracts. As a result, Delaware LLC disputes often give rise to implied covenant claims. But, as the Court explained, the implied covenant "is a limited and extraordinary legal remedy."[32] "It does not apply when the contract addresses the conduct at issue, but only when the contract is truly silent concerning the matter at hand."[33]

Here, plaintiffs failed to allege a specific implied contractual term that was breached. The Court found no implied term regarding eliminating the minority holders' tag-along right. The LLC's operating agreement set forth specific requirements to amend its terms, including amendments that disproportionately and adversely affect a particular class of units. The parties followed the contractual process and the agreement's terms left no gap for the implied covenant to fill. The Court also found no implied term barring negotiating for differential consideration, citing the operating agreement's waiver of fiduciary duties and allowance for self-interested actions. Finally, the Court

found no implied term requiring full and material disclosure prior to a vote, again citing the operating agreement's waiver of fiduciary duties and a provision obligating only reasonable and sufficient notice for member meetings.

As *Khan* demonstrates, the implied covenant in the LLC context cannot be wielded to rewrite an operating agreement or secure new rights.

Ten: *Leo Invs. Hong Kong Ltd. v. Tomales Bay Cap. Anduril III, L.P.*, — A.3d —, 2025 WL 2643328 (Del. Ch. Sept. 15, 2025)

This decision explores confidentiality and public access to trial records, which is a common concern in Delaware litigation implicating confidential and sensitive business information. The underlying case concerned alleged breaches of contract and fiduciary duty involving a party's forced withdrawal from a fund that invested in SpaceX. A news organization sought access to several categories of materials relating to the trial, including deposition transcripts for which copies were provided to ("lodged with"[34]) the court for potential use, video deposition clips played at trial, and documents referenced on the joint exhibit list.

The Court of Chancery granted access in part. The dispute turned on two inquiries: first, whether the at-issue material was part of the public record such that the public's right of access attached, and; second, whether, the movant was entitled to obtain material in the public record. An opponent can defeat a presumptive right of access to trial material by showing that the material contains confidential information and that giving access would cause particularized harm that is sufficiently serious to overcome the access right. Here, material cited in briefing, used in open court, or admitted into evidence under the parties' pre-trial stipulation qualified as public record for access purposes. Most notably, the Court observed that litigants have flexibility as to what they designate as part of the trial record, through the pre-trial stipulation process or by using a schedule of evidence procedure. Through this process, parties can prevent unused trial materials from becoming part of the public record.

Leo Investments is a worthwhile read for practitioners and provides helpful guidance for addressing potential confidentiality concerns regarding trial exhibits and deposition testimony.

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1. *In re Tesla, Inc. Derivative Litigation*, 2025 WL 3689114, at *4 (Del. Dec. 19, 2025).

2. *Id.* at *11. (citations omitted).

3. *Maffei v. Palkon*, 339 A.3d 705, 731 (Del. 2025) (citation and quotation omitted).

4. *Id.* (quotation and internal citation omitted).

5. *Id.* (citation and quotation omitted).

6. *Id.* at 733.

7. *Id.*

8. *Id.* at 739.

9. *In re Columbia Pipeline Grp., Inc. Merger Litig.*, 342 A.3d 324, 354-58 (Del. 2025)

10. *Id.* at 358.

11. *Id.* at 361.

12. *Id.*

13. *Id.* at 356.

14. *Desktop Metal, Inc. v. Nano Dimension Ltd.*, 2025 WL 904521, at *1 (Del. Ch. Mar. 24, 2025)

15. *Id.*

16. *Id.*

17. *Id.* at *24 (citation omitted).

18. *Id.* at *33.

19. *Id.* at *1.

20. *Roberta Ann K.W. Wong Leung Revocable Tr. U/A Dated 03/09/2018 v. Amazon.com, Inc.*, 345 A.3d 965, 975 (Del. 2025) (citation omitted).

21. *Id.* at 978.

22. *Id.*

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23. *Id.* at 980.

24. *Id.* at 981.

25. *Brola v. Lundgren*, 2025 WL 3439671, at *5 (Del. Ch. Dec. 1, 2025) (citation omitted).

26. *Id.* at *5.

27. *Manti Holdings, LLC v. The Carlyle Group Inc.,* 2025 WL 39810, at *15 (Del. Ch. Jan. 7, 2025) (citation omitted), *aff'd*, — A.3d —, 2025 WL 3095219 (Del. Nov. 5, 2025).

28. *Id.* at *15 (citation and quotation omitted).

29. *Id.* at *1.

30. *Solak v. Daniels*, 2025 WL 1913190, at *1 (Del. Ch. July 11, 2025).

31. *Id.* at *2 (citations omitted).

32. *Khan v. Warburg Pincus, LLC*, 2025 WL 1251237, at *5 (Del. Ch. Apr. 30, 2025).

33. *Id.* (citations omitted).

34. *Leo Invs. Hong Kong Ltd. v. Tomales Bay Cap. Anduril III, L.P.*, — A.3d —, 2025 WL 2643328, at *9 (Del. Ch. Sept. 15, 2025).

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