Introduction to the 2025-2026 Edition

Among the most noteworthy legal developments covered herein are the following:

- The U.S. Supreme Court in *Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, 601 U.S. 257 (2024), held that failure to make a disclosure required by Item 303 of Regulation S-K does not *per se* constitute fraud upon which a Rule 10(b)-5 private right of action could be predicated. The Court's unanimous opinion overturned Second Circuit precedent and resolved a circuit split in favor of the Ninth Circuit's approach.

- The Second Circuit in *Packer v. Raging Capital Mgt.*, 105 F. 4th 46 (2d Cir. 2024), affirmed its holding in *Donoghue v. Bulldog Investors General Partnership*, 696 F. 3d 170 (2d Cir. 2012), regarding shareholder standing to bring suit under Section 16 of the Securities Exchange Act of 1934 (governing short-swing trading). The district court in *Packer* ruled that *Donoghue* had been abrogated by the U.S. Supreme Court's 2021 decision in *TransUnion LLC v. Ramirez*, 594 U.C. 413 (2021), which arguably tightened standing requirements generally.

- The test in *Morrison v. National Australia Bank Ltd*, 561 U.S. 247 (2010), regarding the extraterritorial reach of the U.S. securities laws, was applied to the thorny issue of blockchain transactions by the Second Circuit in *Williams v. Binance*, 96 F. 4th 129 (2d Cir. 2024). Since no physical exchange was involved, the court looked instead to the location of the servers that hosted the trading platform. Finding that the plaintiffs "plausibly alleged facts allowing the inference that the transactions at issue were matched on U.S.-based servers," the Second Circuit held that application of U.S. securities laws to the dispute was proper.

- The Ninth Circuit's decision in *In re Silver Lake Group, LLC Securities Litigation*, 108 F. 4th 1178 (9th Cir. 2024), demonstrates the difficulty of proving materiality on the basis of nonverbal cues. The plaintiffs alleged that an FCC official's reticence and "body language" provided clues as to upcoming FCC's action; the court deemed these allegations inadequate to plead materiality.

- In *In re Sorrento Therapeutics, Inc. Sec. Reg.*, 97 F. 4th 634 (9th Cir. 2024), a COVID-19-era case, a pharmaceutical

company's expressions of "corporate optimism" about an antibody under development was deemed nonactionable puffery by the district court and affirmed as such by the Ninth Circuit on appeal.

- In *In re Match Group, Inc. Derivative Litig.*, 315 A.3d 446 (Del. 2024), the Delaware Supreme Court held that availment of the business judgment rule via the process outlined in *Kahn v. M&F Worldwide Corp.*, 88 A.3d 635 (Del. 2014), was possible in any controlling shareholder transaction (not only freeze-out mergers) – only to be overruled by amendment to D.G.C.L. § 144 (see below).

- In another case implicating *Kahn*, the Delaware Supreme Court found the shareholder vote orchestrated by the defendant was not fully informed. *See City of Sarasota Firefighters' Pension Fund v. Inovalon Holdings, Inc.*, 319 A.3d 271 (Del. 2024). The proxy statements distributed to shareholders in connection with that vote failed to adequately describe the conflicts of interest of J.P. Morgan (the company's financial advisor), employing only boilerplate language.

- In *Maffei v. Palkron*, — A.3d —, 2025 WL 384054 (Del. Feb 4, 2025), the Delaware Supreme Court rejected the argument that reincorporation in a jurisdiction affording directors reduced liability exposure necessarily constitutes a non-ratable benefit. On the facts before it, the court determined that the business judgment rule, and not the entire fairness test, was the appropriate standard of review.

- The Delaware Court of Chancery's twin opinions in *Tornetta v. Musk*, 310 A.3d 430 and 326 A.3d 1203 (Del. Ch. 2024), controversially struck down Elon Musk's compensation package as chairman of Tesla and refused to credit a subsequent shareholder vote in favor of ratifying the same.

- Newly adopted D.G.C.L. § 122(18) overturns *West Palm Beach Firefighters' Pension Fund v. Moelis & Company*, 311 A.3d 809 (Del. Ch. 2024), by clarifying the enforceability of stockholder agreements.

- Revised D.G.C.L. § 144 concerns transactions involving interested directors, officers, or controlling stockholders. The new version of D.G.C.L. § 144 significantly clarifies and strengthens the protections afforded to directors, officers, and control persons who comply with its procedures. The revisions also cut back on the expansion of *Kahn v. M&F Worldwide Corp.*, 88 A.3d 635 (Del. 2014), beyond its initial squeeze-out merger context.

- Revised D.G.C.L. § 220 curbs the rights of shareholders to inspect corporate books and records.

As in previous editions, this volume has continued the practice of deleting or paring back material that with the passage of time is less relevant than when it was originally included, and of reorganizing material as appropriate.

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