

Valuation/Damage Case Summaries from the Delaware Court of Chancery (July 2024 to June 2025)

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Introduction

The Court of Chancery for the State of Delaware (the Court) is one of the most followed courts for business leaders, corporate attorneys, litigators, and judges throughout the country. Known as the preeminent forum for corporate disputes in the United States, the Court issues many opinions covering valuation, fiduciary duty, and other damages related disputes.

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Below are 12 summaries of the Court's valuation and/or damages related decisions issued between July 2024 and June 2025. In addition, there were three Delaware Supreme Court decisions regarding damages and/or valuation issues. The 15 decisions include topics ranging from post-M&A disputes, trading of large blocks of stock, valuation issues, breaches of fiduciary duty, and other financial topics.

Chancery Court Decisions:

1) Hyde Park Venture Partners v.
FairXchange, LLC
Opinion Date: 7/30/2024
V.C. Laster

2) NuVasive, Inc. v. Patrick Miles, et al.
Opinion Date: 8/16/2024
V.C. Glasscock

3) L-5 Healthcare Partners, LLC v. Alphatec
Holdings, LLC
Opinion Date: 8/21/2024
V.C. Cook

4) Fortis Advisors LLC v. Johnson &
Johnson, et al.
Opinion Date: 9/04/2024
V.C. Will

5) Jacobs, et al. v. Akademos, Inc., et al.
Opinion Date: 10/20/2024
V.C. Laster

6) Richard J. Tornetta v. Elon Musk, et al.
Opinion Date: 12/02/2024
C. McCormick
Opinion Date: 6/11/2025
V.C. Zurn

Supreme Court Reversals:

1) In re Mindbody, Inc. Stockholder Litigation
Opinion Date: 12/2/2024

2) Palkon v. Maffei
Opinion Date: 2/4/2025

3) In re Columbia Pipeline Group, Inc, Merger
Litigation
Opinion Date: 6/17/2025

7) Enhabit, Inc., et al. v. Nautic Partners IX,
L.P. et al.
Opinion Date: 12/02/2024
V.C. Will

8) California Safe Soil, LLC v. KDC
Agribusiness, LLC, et al.
Opinion Date: 1/10/2025
V.C. Zurn

9) In Re Dura Medic Holdings, Inc
Consolidated Litigation
Opinion Date: 1/29/2025
V.C. Laster

10) Cornelius Walker v. FRP Investors GP,
LLC
Opinion Date: 4/15/2025
V.C. Zurn

11) Ban v. Manheim, et al.
Opinion Date: 5/19/2025
V.C. Laster

12) Shareholder Representative Services
LLC v. Alexion Pharmaceuticals, Inc

Chancery Court Decisions:

Hyde Park Venture Partners Fund III, L.P. v. FairXchange, LLC

C.A. No. 2022-0344-JTL

2024 Del. Ch. LEXIS 270 (Del. Ch. July 30, 2024)

Vice Chancellor Laster

In April 2022, Hyde Park Venture Partners Fund III, L.P. and its affiliates (collectively “Hyde Park”), initiated an appraisal proceeding against FairXchange, LLC (“FairX”) triggered by FairX’s merger with Coinbase Global, Inc. for \$330 million on February 1, 2022. Hyde Park owned approximately 15% of FairX’s equity and sought appraisal of its shares while claiming that the flawed transaction process resulted in a deflated value for the equity of the company.

Founded in 2019, FairX operated a nascent securities exchange platform for retail investors interested in futures contracts. The firm aimed to disrupt the futures market by charging brokers for order flow, a similar business model to that of Robinhood Markets, Inc.

The market had previously shown signs of interest for brokers in the futures markets. For example, ErisX, a competitor of FairX, was acquired by the Chicago Board Options Exchange for approximately \$550 million. After a falling out with the lead investor, but before the sale of the company, Neal Brady, a founder of FairX, liquidated his stake in ErisX.

Brady sought a similar exit for his FairX investment and reached out directly to Coinbase. Per the Court, this led to hasty negotiations where Brady made concessions that included not pursuing competitive bids. Ultimately FairX was sold in a \$330 million deal (\$265 million in Coinbase stock and \$65 million in cash).

Respondent’s expert offered opinions that used various market indicators, including (i) past financing rounds, (ii) a similar small exchange transaction, (iii) the petitioner’s own internal valuation, (iv) a 409A valuation, and (v), the reaction of sophisticated investors towards the merger. This offered an array of potential values for the firm, all of which were less than the deal price. The petitioner’s expert offered a value derived from the DCF method, landing at an enterprise value of \$573 million or 74% higher than the deal price.

While the petitioner argued a rushed process and lack of competition significantly reduced FairX’s sale price, the Court found that the speculative nature of FairX’s future prospects made the \$330 million deal price a reasonable estimation of its fair value, which the Court ruled as the fair value for the equity of FairX.

NuVasive, Inc. v. Patrick Miles

C.A. No. 2017-0720-SG

2024 Del. Ch. LEXIS 294 (Del.Ch. August 16, 2024)

Vice Chancellor Glasscock

NuVasive, Inc. (“NuVasive”), a medical device company, sued Patrick Miles, its former executive and board member, and Alphatec Holdings, Inc. (“Holdings”) in June 2018 for breach of fiduciary duty. The allegations surrounded a \$500,000 investment Miles made in Holdings, a direct competitor of NuVasive.

The investment was made while Miles was still employed by NuVasive and was not disclosed to his employer. NuVasive’s argument was that Miles’ investment created a conflict of interest, given Holdings planned to compete with NuVasive in the spinal technology market. Shortly following his investment, Miles resigned from NuVasive to become the executive chairman at Holdings and Alphatec Spine, Inc. NuVasive sought disgorgement of all Miles’ salary, equity awards, investment gains, and other compensation earned following his investment.

Although Miles’ investment was initially passive and did not provide him with decision-making authority at Holdings, NuVasive contended Miles’ failure to disclose the investment was a breach of his fiduciary duty. NuVasive argued that even if Miles’ investment did not provide operational control over Holdings, the investment posed a material conflict that required disclosure.

The issue presented was whether the failure of a fiduciary to disclose a passive investment with a company that intends to compete with the entity to which a duty was owed was a breach of the fiduciary duty of loyalty. In responding to the allegations, the Court cited NuVasive’s code of conduct, which prohibited “significant investments” in competitors, including language surrounding decision-making power. While noting an employee’s interest in a competitor could potentially lead to a breach of duty, the Court failed to find evidence that Miles acted in bad faith or contrary to NuVasive’s interests. Emphasizing that Miles’ investment did not include decision-making authority at Holdings, the Court found no indication that Miles used his position to advance Holdings’ interests at the expense of NuVasive. Further, the Court ruled the investment failed to materially harm NuVasive or provide Holdings a competitive advantage over NuVasive. Therefore, the Court ruled that the failure to disclose such an investment was not a *per se* breach of the duty of loyalty.

L-5 Healthcare Partners, LLC v. Alphatec Holdings, Inc.

C.A. No. 2019-0412-NAC

2024 Del. Ch. LEXIS 301 (Del. Ch. August 21, 2024)

Vice Chancellor Cook

In June 2019, L-5 Healthcare Partners, LLC (“L-5”) filed a complaint against Alphatec Holdings, Inc. (“Alphatec”) claiming a breach of a Securities Purchase Agreement (“SPA”) executed in March 2018, in which L-5 invested \$25 million in exchange for preferred stock, certain warrants, and preemptive rights. The preemptive rights provision required Alphatec to first offer L-5 pro rata participation in any securities issuance on the same terms as those offered to third parties. However, Alphatec allegedly breached this provision by issuing warrants to a third-party lender, Squadron Medical Finance Solutions LLC (“Squadron”) in 2019 without offering L-5 the opportunity to participate.

The alleged breach occurred when Alphatec entered into a new financing agreement with Squadron in 2019 in response to a liquidity crunch. Under the agreement, Alphatec issued Squadron a warrant to purchase 4,838,710 shares of Alphatec common stock at \$2.17 per share. L-5 asserted its preemptive rights under Section 4.18(a) of the SPA, demanding the same opportunity to participate. However, Alphatec argued that the Squadron agreement was an amendment to a previous 2018 agreement and did not trigger L-5’s preemptive rights. The Court ultimately disagreed with the defendants, ruling that the 2019 Agreement triggered the preemptive rights, finding Alphatec liable for breach of contract.

As a remedy to the breach, L-5 initially proposed two scenarios: Scenario A, receiving a pro rata warrant to purchase 1,133,160 shares of Alphatec common stock at a strike price of \$2.17 for no consideration, and Scenario B, purchasing the warrant for \$2.2 million, representing the warrant’s value at the time of the 2019 Agreement. Alphatec argued that L-5 should pay a higher amount of approximately \$11 million, reflecting the appreciation in Alphatec’s stock since 2019. Alphatec’s argument was based on the theory that L-5 should have mitigated its damages by purchasing Alphatec stock at the time of the breach and thus should now pay for the appreciation. The Court, however, rejected the defendants’ theory, holding that L-5 was not obligated to mitigate its damages in such a manner and that the appreciation in Alphatec’s stock was irrelevant to the specific performance remedy. The Court ruled in favor of L-5, granting specific performance consistent with Scenario B. Alphatec was ordered to issue L-5 a warrant to purchase 1,133,160 shares of Alphatec common stock at a \$2.17 strike price, expiring on June 21, 2026. L-5 would then have the option of paying \$2.2 million for this warrant, based on Alphatec’s value at the time of the 2019 Agreement. This ruling aimed to place L-5 in the position it would have been in had Alphatec honored the preemptive rights under the SPA without creating a windfall for either party.

Fortis Advisors LLC v. Johnson & Johnson

C.A. No. 2020-0881-LWW

2024 Del. Ch. LEXIS 315 (Del. Ch. September 4, 2024)

Vice Chancellor Will

In October 2020, Fortis Advisors LLC, filed a verified complaint against Johnson & Johnson ("J&J"), its subsidiary Ethicon Inc., and certain executives on behalf of the former stockholders of Auris Health, Inc. ("Auris") related to J&J's acquisition of Auris for an initial payment of \$3.4 billion and an additional \$2.35 billion contingent upon Auris achieving of certain regulatory and commercial milestones. The regulatory milestones were tied to the approval of Auris's Monarch and iPlatform systems of surgical robots, while the commercial milestones were based on the combined net sales of these systems and other J&J robotic products.

Prior to the transaction, Auris was a leader in developing robotic surgical devices while J&J was struggling with delays in developing its own surgical robot, Verb. J&J recognized an opportunity in Auris, and in February 2019, J&J acquired Auris with an upfront payment of \$3.4 billion and an earnout of up to \$2.35 billion contingent on achieving the above milestones. Auris' potential for achieving earnout payments depended largely on the success of its Minimally Viable Product strategy, which focused on gaining regulatory approval for basic, lower-risk versions of its systems before expanding into more complex procedures.

Following the merger, J&J implemented what it called "Project Manhattan," which effectively pitted Auris' iPlatform against J&J's Verb system. Project Manhattan included a series of head-to-head evaluations designed to compare the performance of the two systems. The implementation of Project Manhattan disrupted iPlatform's development timeline, which caused delays that pushed the regulatory milestones out of reach. Then, while Project Manhattan was in full swing, J&J shifted its priorities away from investments in robotics, forcing J&J to make strategic trade-offs. J&J reallocated resources and merged aspects of the iPlatform and Verb systems, effectively sidelining the original milestones that Auris had previously been on track to achieve. The combined robotic systems could not generate the expected sales, ensuring the commercial milestones would not be met.

In determining damages, Plaintiff's expert performed a discounted cash flow analysis, which showed that, absent J&J's disruptive actions, the regulatory milestones would have been achievable, resulting in an earnout value that exceeded \$1 billion. In contrast, J&J's expert argued that the iPlatform system's failure to achieve the milestones was a result of "undisclosed risks," rather than any breach of contractual obligations.

The Court found that J&J breached its obligations under the merger agreement by failing to treat the iPlatform as a priority device and by making decisions that were influenced by the desire to avoid earnout payments. The Court then calculated damages to compensate Auris' former



stockholders for the earnout payments that they would have received had J&J adhered to its contractual obligations and did not act in bad faith. Ultimately, the Court awarded Fortis Advisors damages related to J&J's breaches of contract and the implied covenant of good faith and fair dealing totaling more than \$1 billion. The Court based its damages calculations on the value placed on each of the milestones in the purchase price allocation that was performed as a result of the transaction.

Jacobs v. Akademos

C.A. No. 2021-0346-JTL

326 A.3d 711 (Del. Ch. October 30, 2024)

Vice Chancellor Laster

In December 2020, Akademos, Inc. ("Akademos") was acquired by its long-time financier, the private equity fund Kolberg Ventures LLC ("KV Fund"). Due to the substantial liquidation preference, accrued dividends, and debt on Akademos' balance sheet, the common shareholders received no consideration from the transaction. Certain common shareholders sued to perfect their appraisal rights while simultaneously claiming KV Fund breached their fiduciary duties related to certain financing transactions funded by KV Fund. The Court found that Plaintiffs were unable to show that KV Fund breached their fiduciary duties with respect to the financing transactions and the common shareholders were not entitled to any consideration in KV Fund's acquisition of Akademos.

Akademos was founded in 1999 to "contract with educational institutions to operate their online bookstores." The profits from this endeavor failed to materialize as Akademos failed to generate a profit in any year of its operations.

Without the ability to fund its own operations, Akademos approached KV Fund in 2009, which made their first investment into Akademos in July of the same year. KV Fund continued to finance Akademos' operations for more than a decade, eventually garnering a controlling stake in the company. The later financings leading up to the acquisition by KV Fund were challenged by Plaintiffs and while the Court acknowledged that the terms of the financing appeared to be onerous and were subject to the entire fairness standard, given the lack of expert testimony to the contrary, the Court was persuaded by the Defendants' testimony that the terms were in line with the market given the significant risks posed by the company's inability to fund its operations.

Turning to the transaction, Plaintiffs argued that the liquidation preference of the preferred shares issued to KV Fund should be ignored by pointing to then-Chancellor Strine's opinion in *Orchard* where Strine observed that the liquidation preferences would only be triggered in the event of a third-party merger, dissolution, or liquidation, which is inconsistent with the definition of Fair Value requiring the Court to determine the value on a going-concern basis. Additionally, Strine noted that any effort to model the liquidation scenario would be speculative. The Court also pointed to *Shiftan v. Morgan Joseph Hldgs., Inc.*, where the Court came to similar conclusions related to the liquidation preference.

In spite of pointing out the above, the Court relied on the Defendants' expert, who utilized a contingent claims analysis (often referred to as the Option Pricing Method or OPM) to allocate the



value of Akademos’ total asset value among the various share classes while accounting for the liquidation preferences of the preferred shares. The Court reasoned that while “*Orchard and Shiftan* suggested that any effort to model [the] claims to liquidation preferences or other rights would be speculative, the contingent claims methodology can be used for that purpose and is generally accepted in the financial community, making it suitable for use in an appraisal proceeding.” Defendants’ expert allocated \$6.56 million in equity value based on the deal price, which resulted in a de minimis (effectively zero) value for the common shares. The Court also noted that it found the Defendants’ expert’s discounted cash flow valuation resulting in a \$2.4 million equity value to be more persuasive than the deal price stating that, “[I]t follows that the common stock has no value under a contingent claims analysis using a valuation of \$2.4 million.” No damages were awarded to the Plaintiffs.

Tornetta v. Musk

C.A. No. 2018-0408-KSJM

326 A.3d 1203 (Del. Ch. December 2, 2024)

Chancellor McCormick

In her Opinion Awarding Attorney’s Fees and Denying Motion to Revise the Post-Trial Opinion, Chancellor McCormick settled the remaining issues in the case originally filed in challenge of Elon Musk’s executive compensation package from Tesla, Inc (the “Grant”). Referencing her post-trial opinion in early 2024, Chancellor McCormick opined that the Grant was subject to review under the entire fairness standard given a conflicted controller, resulting in the burden of proof falling to the Defendants to prove the Grant was fair. Ultimately, the Defendants failed to meet this burden, entitling the Plaintiff to rescission damages.

After the post-trial opinion, the Plaintiff’s attorneys petitioned for fees and expenses, while the Defendants attempted to moot the post-trial opinion by holding a shareholder vote to approve the Grant. In response to Defendants’ attempt to moot the trial decision, the Court found that the shareholder vote holds no water and was “created after trial.” Moreover, the Court found that a common law ratification affirmative defense should have been raised before trial, not after. The Court also found multiple material misstatements in the proxy statement regarding the shareholder vote. The Chancellor wrote, “Each of these defects standing alone defeats the motion to revise.”

In assessing the level of compensation for Plaintiff’s attorneys, both Plaintiff and Defendant offer wildly divergent figures. At the outset, the Plaintiff’s attorneys asked for 11% of the vested Grant options, or about \$5.6 billion in freely tradeable Tesla shares, while the Defendants argued for a cash payment of no more than \$54.5 million.

Plaintiff supported their fee estimate under the Intrinsic Value theory in that the benefit is equal to the intrinsic value of the number of shares previously “freed up” by the rescinded Grant. Plaintiff also offered the Reverse-Dilution Theory which claimed that the Grant shares were inherently priced into Tesla’s stock price. Therefore, by rescinding the Grant, the value of Tesla’s shares are restored via the exclusion of the Grant from the stock price. Both of these frameworks amount to a benefit to Tesla of \$51 billion, of which some percentage would be awarded to the attorney.



In attempting to balance the “investment decision” of a lawyer to take on such a case on a contingency basis as well as avoiding a windfall, the Court found the Grant Date Fair Value method to be the most reliable in this case. In relation to the Grant offered by Tesla to Musk in 2018, the company recognized a \$2.3 billion accounting charge, lowering the firm’s net income by that amount. Under this framework, the benefit to Tesla from this lawsuit would be the cost it originally undertook to offer the compensation plan. The Court found that, consistent with the precedent set by *Americas Mining*, an appropriate figure to apply to this benefit would be 15%, resulting in an award of attorney’s fees of \$345 million, payable in cash or Tesla shares. The Court also pointed to secondary *Sugarland* factors to further justify this figure.

Enhabit, Inc. v. Nautic Partners IX, L.P.

C.A. No. 2022-0837-LWW

2024 Del. Ch. LEXIS 371 (Del. Ch. December 2, 2024)

Vice Chancellor Will

In September 2022, Encompass Health Corporation (“Encompass”) filed a complaint against two private equity firms, and three of its former officers (“Officer Defendants”). Encompass alleged that the Officer Defendants orchestrated a scheme to create a competing home healthcare business, VitalCaring Group (“VitalCaring”), while still employed at Encompass.

The Officer Defendants were alleged to have engaged with private equity firms Nautic Partners, LLC and Vistria Group, LP (“PE Defendants”), sharing confidential company information, leveraging their positions to benefit their new venture at Encompass’ expense, and usurping corporate opportunities, by targeting acquisition opportunities that aligned with Encompass’ business strategy and diverting these opportunities to the newly formed VitalCaring. The Court found the Officer Defendants liable for breaches of duty of loyalty and the PE Defendants liable for aiding and abetting these breaches.

Encompass sought rescissory damages or disgorgement of \$462 million based on an analysis provided by their expert who relied upon projections created by both private equity firms around the time of breach. Plaintiff’s expert conducted an expected gains analysis, discounting the firms’ modelled gains on their investment to estimate a range of \$291 million to \$462 million in damages. The Court found the projections used in this analysis to be “outdated and unreliable” stating, “[t]he defendants cannot disgorge profits that never materialized”, referring to the lack of profits generated by VitalCaring. Using an alternative, yet similar approach, the Plaintiff’s expert also attempted to calculate compensatory damages from lost profits utilizing the same set of projections, rendering the alternative analysis unreliable as well. The glaring issue with Plaintiff’s expert’s analysis related to industry headwinds, which resulted in the Defendant’s new venture, VitalCaring, materially underperforming its projections.

The Court found the most reliable remedy to be to implement a constructive trust over VitalCaring’s future proceeds. To balance the headwinds currently facing the home healthcare and hospice industry, the prospects of a turnaround, and the PE firms’ stance of remaining bullish on its VitalCaring investment, the Court deemed that “43% of VitalCaring proceeds will flow to Encompass due the willful misconduct that produced VitalCaring.”



In determining the appropriate remedy, the Court first discussed the capital contributions made by each respective party. The Court rejected a framework that would allow the PE Defendants to recover their initial contributions, before all remaining profit would fall to Encompass, citing to the agency problem it would create. The Court pointed out that the incentives in this framework would not motivate the Defendants to generate any excess profits beyond their initial contributions.

The Court next examined ways to mitigate this agency problem by distributing every dollar of profit by some distribution allocation. To calculate the appropriate allocation, the Court relied on adjusted projections that better reflected the state of the industry, prepared in June of 2023 by Nautic. The Court adopted these projections with two changes proposed by the Plaintiff's expert, an increased exit multiple and a reduced rate of acquisitions, arriving at an expected equity value at exit of approximately \$220 million.

Finally, to arrive at the 43% distribution rate, the Court compared the PE Defendant's capital contributions to VitalCaring's total projected equity value at exit. The Court determined that this framework would incentivize growth and profitability in that the PE Defendants would receive 57 cents to every dollar of profit at exit, and Encompass would receive the remaining 43 cents. In addition to this, the court finds, "Encompass is entitled to the fair value of the restricted stock awards and increased management compensation as damages, totaling \$1,400,353.92 in restricted stock awards and \$221,092.49 in increased compensation", plus pre- and post-judgement interest, which would be in addition to the proceeds payable to Encompass. Finally, the Court found that the actions by the Defendants warrant fee shifting under the bad faith exception to the American Rule.

Cal. Safe Soil, LLC v. KDC Agribusiness, LLC,
C.A. No. 2021-0498-MTZ
2025 Del. Ch. LEXIS 11 (Del. Ch. January 10, 2025)
Vice Chancellor Zurn

In October 2022, California Safe Soil, LLC ("CSS") alleged that former partners misappropriated its proprietary food recycling process. CSS is a California-based company that developed a method for converting unsold grocery food waste into nutrient-rich slurry used in fertilizer and animal feed. Founder Dan Morash acquired and advanced the technology over several years, and in 2012, Hal Kamine and his sons, Matthew and Justin, invested in the company during its early stages. In 2015, the Kamines founded KDC Agribusiness, LLC with the express purpose of scaling CSS's technology outside California. At the same time, KDC entered into a licensing agreement with CSS, granting it exclusive rights to use the CSS Process in most of the U.S. in exchange for milestone payments and escalating annual royalties. KDC used that license as a foundation to plan a large commercial facility in Fairless Hills, Pennsylvania.

The Plaintiffs alleged that after years of access to CSS's proprietary technology under the license agreement, the Kamine Defendants, along with KDC executive Barry Starkman, continued using that trade secret after unilaterally terminating the agreement in May 2020. CSS claimed that the Defendants used its process to secure \$126 million in bond financing and launch a scaled-up operation at Fairless Hills, all while avoiding further royalty obligations. CSS argued that its entire



process, comprising biological inputs, specialized handling techniques, and operational configurations, constituted a protected combination trade secret.

After a seven-day bench trial, the Court ruled in CSS' favor on the statutory trade secret claims. The Court found that the CSS Process was indeed a valid combination trade secret and that the individual Defendants misappropriated it following the license termination. While KDC had introduced some modifications to the process during its development of Fairless Hills, such as equipment adjustments and operational tweaks, both documentary evidence and testimony from KDC's own engineers confirmed that the core process remained materially derived from CSS's original model. The Fairless Hills facility, according to multiple internal and third-party assessments, was built using the knowledge KDC gained from CSS under the original license. KDC engineers described the new facility as a "scale-up" of CSS' process. The Court also entered default judgment against the corporate Defendants, who had filed for bankruptcy and ceased defending the case.

Initially, CSS pursued damages based on a lost profits model tied to the license agreement's terms. The license specified escalating annual minimum royalty payments, which were contractually owed in exchange for access to CSS' intellectual property. CSS argued that once KDC stopped paying those royalties in 2019 but continued to use the process, it suffered losses equivalent to the unpaid royalty stream through the license period. This model presented a relatively conservative approach, rooted in the contractual framework the parties had originally agreed upon, and yielded a final estimate of \$1.6 million in damages.

Closer to trial, CSS attempted to pivot to a "reasonable royalty" damages model, which would have estimated the market value of the misappropriated trade secret based on a hypothetical negotiation at the time of breach. CSS' expert claimed that the Defendants would have paid a lump sum ranging from \$41 to \$138 million at the time of the breach, representing at least a 24x increase from the damages calculation derived from the licensing agreement. However, the court rejected this late-stage change, finding it improperly inconsistent with the trial record. As a result, damages were calculated strictly according to the original license terms. The court also issued an injunction prohibiting further use of the CSS Process and requiring the return or destruction of proprietary materials but declined to award exemplary damages or attorneys' fees.

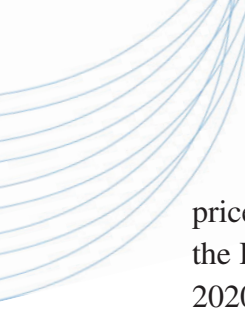
In Re Dura Medic Holdings, Inc Consolidated Litigation

C.A. No. 2019-0474-JTL

331 A.3d 796 (Del. Ch. January 29, 2025)

Vice Chancellor Laster

On June 6, 2018, private equity firm Comvest Partners ("Comvest"), through its acquisition vehicle Dura Medic Merger Sub, Inc. and holding company Dura Medic Holdings, Inc. completed the acquisition of Dura Medic, Inc. ("Dura Medic") in a reverse triangular merger for a purchase



price of \$30 million. Approximately two years later, on October 1, 2020, Comvest agreed to sell the Dura Medic assets to AdaptHealth LLC for, among other things, \$2 million in cash. In March 2020, Dura Medic's then Chief Marketing Officer, Mark Newton, asserted claims against Comvest and several individuals of Comvest for breach of fiduciary duty by (i) engaging in self-interested financing transactions, (ii) paying excessive compensation and management fees, and (iii) sabotaging the Company's short-term revenues to maximize their indemnification claims and avoid paying the Seller Note. Later in February 2021, the Seller Representative comprised of then CEO and CFO of Dura Medic, Grant Eckberg and Deborah Fedorak, filed a suit against Defendants and AdaptHealth alleging the sale to AdaptHealth was a fraudulent transfer. In January 2023, the court dismissed Newton's claim that Comvest paid itself illicit management fees and overpaid its own employees. The opinion addresses Newton's remaining claims and Seller Representative's claims.

Dura Medic, founded in 2004 by Mark Newton, supplied durable medical equipment to hospitals. In late 2013, Grant Eckberg and Deborah Fedorak took over the operations of Dura Medic, becoming the CEO and CFO, respectively, and Newton obtained the title of Chief Marketing Officer. The company operated on a stock-and-bill model in which Dura Medic bills third-party payors after a physician prescribed a Dura Medic product to a patient.

In September 2017, Comvest expressed its initial interest in Dura Medic and sent an initial letter of intent containing a \$60 million purchase price shortly thereafter. In the following months leading up to and upon completion of the merger on June 6, 2018, Dura Medic's performance declined. From October 2017 to February 2018, Dura Medic's monthly cash collections decreased by approximately 40 percent and Dura Medic became the subject of several regulatory reviews that revealed significant errors in its claims submission process. In April 2018, Comvest sent a letter of intent containing a purchase price of \$30 million, including a \$18 million cash payment and a \$12 million unsecured promissory note to be paid over six years. The transaction was completed, and in the days and months following, Comvest learned a) Dura Medic was the subject of additional ongoing and future audits that Sellers had failed to disclose, and b) that two of Dura Medic's significant customers intended to terminate or limit their relationship with Dura Medic.

After attempts to improve Dura Medic's performance by revising its claims submission process and reducing employee headcount, Comvest was forced to seek additional financing. On October 2, 2020, AdaptHealth purchased the Dura Medic assets for, among other things, \$2 million.

First, Newton alleged that post-merger management, led by Comvest and the company's directors, intentionally depressed short-term revenues by (i) withholding Medicare claims, (ii) firing key employees, and (iii) diverting resources to litigation to enhance indemnification claims and avoid paying the Seller Note. The court applied the business judgment rule, finding Newton failed to



prove Defendants faced any conflict when determining how to manage Dura Medic, and entered judgment for Defendants on these fiduciary duty claims.

Second, Newton alleged that Comvest's post-merger financings were self-interested and breached fiduciary duties. The court held that the entire fairness standard applied because Comvest controlled the company and the board lacked disinterested members. It found that in some instances, Comvest breached an LLC Agreement or did not demonstrate procedural or substantive fairness in the financings. As a remedy, the court equitably subordinated those financings to the Seller Note, giving the note priority in repayment.

Finally, Newton challenged the asset sale to AdaptHealth, asserting that the Defendants breached their duties during the search for financing, the negotiation, and approval of the sale. Because the sale was a final-stage transaction, the court applied the enhanced scrutiny standard under which the Defendants must show the reasonableness of both their decision-making process and the substantive outcome. Defendants' expert employed a net asset approach and estimated the value of the assets acquired by AdaptHealth at approximately \$1.14 million, which supported the fairness of the \$5 million sale price. By contrast, Newton's expert employed a discounted cash-flow model that produced a much higher valuation range of \$44 million to \$73 million. The court found Newton's expert analysis unreliable because the model applied stale projections, and, at the time of the sale, Dura Medic was unable to continue as a going concern.

The court concluded that the sale fell within a range of reasonableness, rejecting Newton's argument for applying the more stringent entire fairness standard.

In Re Dura Medic Holdings, Inc Consolidated Litigation

C.A. No2019-0474-JTL

333 A.3d 227 (Del. Ch. February 20, 2025)

Vice Chancellor Laster

A description of the parties and background of the matter *In Re Dura Media Holdings, Inc. Consolidated Litigation* can be found in the summary of the opinion issued January 29, 2025. In the same matter, on June 21, 2019, Comvest caused Dura Medic Holdings and Dura Medic (together, the "Buyers") to file a verified complaint against the seller representative entity of Dura Medic (the "Seller Representative") and the individual sellers of Dura Medic (collectively with the Seller Representative, the "Sellers"). Dura Medic Holdings and Dura Medic asserted that the Sellers breached three representations in its merger agreement: i) Financial Statements Representation, ii) Counterparty Representation, and iii) Law Compliance Representation.

The Court rejected Plaintiffs' first claim that Dura Medic breached its Financial Statements Representation in the merger agreement by providing financial statements that were not "true, complete and accurate in all material respects." The Court concluded that the Sellers' financial

statements represented good faith estimates of Dura Medic's collection rates (referred to as its Gross-to-Net Ratio) and had not guaranteed any future performance. Dura Medic's financials were based on a forward-looking estimate of collections, and Plaintiffs were unable to establish that those estimations were not represented in good faith. The Court also noted that the Plaintiffs could have but failed to bargain for a warranty of the actual level of collections in its merger agreement with Sellers.

The Court did, however, find that the Sellers breached the Counterparty Representation in their failure to disclose that two of their significant customers had given notice that they intended to terminate or limit their business relationship with Dura Medic. This obligation by Sellers was clearly stated in a section of the merger agreement titled "Significant Third Party Payors, Significant Customers, and Significant Suppliers." Sellers argued that the Buyers' inappropriately calculated damages by using EBITDA over a period greater than one year. However, Sellers mischaracterized the Buyer's expert analysis, which correctly derived a multiple based on LTM April 2018 EBITDA. The court concluded that Sellers' failure to disclose constituted a material breach equal to \$0.4 million in lost earnings multiplied by the Buyers' calculated LTM EBITDA multiple of 6.8x less \$0.1 million in post-closing collections, or \$2.8 million in damages to Plaintiffs.

Additionally, the court held that the Sellers breached the Law Compliance Representation by failing to disclose Dura Medic was subject to multiple ongoing audits. Despite Sellers' contention that certain audits had been disclosed or that certain audits lacked materiality, the court determined that to the extent disclosures had been made by the Sellers, they lacked supporting evidence including an explicit disclosure within the merger agreement. This omission resulted in an additional \$100,000 in damages.

Walker v. FRP Invs. GP, LLC

C.A. No. 2022-0816-MTZ

336 A.3d 542 (Del. Ch. April 15, 2025)

Vice Chancellor Zurn

Plaintiff Cornelius Walker, a former employee of FRP Investors GP, LLC ("GP"), filed suit against GP related to a February 2022 issuance of B Units in FRP Investors, L.P. (the "Partnership"). Functionally speaking and on a simplified basis, the B Units acted as a form of carried interest whereby those unitholders are allocated value based on the increase in value of Partnership's assets.

The Partnership held Foundation Risk Partners Corp. ("FRP") which was created to operate a commercial insurance brokerage business and to grow via acquisitions. Walker was the former CFO and was awarded B Units for his efforts. After he was removed as CFO, the GP allowed Walker to retain his B Units. In August 2022, there was a liquidity event which caused the B Units to be allocated \$223 million, of which Walker received \$30.3 million. Walker asserts that the

February 2022 issuance of B Units was unfair due to a deflated price of the value of the company's assets, which lowered the threshold value.

The price used in the February 2022 transaction was based on the prior quarter's valuation based on fair market value standard defined under the terms of the limited partnership agreement (the "LPA"). Under the terms of the LPA, GP was required to make a "reasonable determination" of the amount that would be distributed to the B Unit holders if immediately prior to the issuance the Partnership's assets were sold for their fair market values. Per the LPA, fair market value means "a determination reasonably made" of the amount "that would be obtained in a negotiated, arm's length transaction between an informed and willing buyer and an informed and willing seller."

Walker's valuation expert developed his opinion of the fair market value as of February 2022, while the GP's expert testified it was reasonable to use the December 31, 2021 valuation. The Court disagreed with both experts and developed its own threshold value in an attempt to determine what the GP would have determined had it updated its valuation in February 2022. The Court used internal normalization adjustments to EBITDA developed in the course of the sales process for the Partnership. Using the "moderate adjustments" and a 16x EBITDA multiple, the Court calculated a new threshold value of \$126.3 million, an approx. \$16 million increase. The net result entitled damages to Walker of approximately \$0.4 million before consideration of pre and post judgment interest.

Ban v. Manheim

C.A. No. 2022-0768-JTL

339 A.3d 41 (Del.Ch. May 19, 2025)

Vice Chancellor Laster

Plaintiff Young Min Ban ("Ban") owned a 15% equity interest in Defendant West 36th, Inc. ("WestCo") and a one-third interest in Penfold, L.P. ("Penfold"), which owned a 90% limited partner interest in Delaware Valley Regional Center, LLC ("DVRC"). Defendant Joseph Manheim ("Manheim") owned a controlling 70% equity interest in WestCo, which held the remaining 10% controlling member interest in DVRC. In other words, through his 70% controlling interest in WestCo, Manheim was able to control DVRC.

In 2022, Manheim was determined to remove Ban from both investments, causing WestCo to exercise the DVRC redemption right to redeem Penfold's interest in DVRC for fair market value and unilaterally adopting a new bylaw at WestCo to allow WestCo to call Ban's interest in WestCo for fair value.

Plaintiff's expert calculated the fair value of Ban's interest in DVRC to be \$9.6 million via a discounted cash flow analysis that relied on contemporaneous management projections that projected an effective winding down of DVRC. The Court noted that this necessarily undervalued DVRC as it was expected to continue as a going concern; however, these projections were relied upon by Plaintiff's expert and adopted by the Court.



Manheim did not hire an expert to provide a valuation, instead opting to bring an expert in for rebuttal of the Plaintiff's expert. The Court agreed with many of the adjustments made by the Defendant's expert, reducing the value to \$6.9 million.

One specific criticism made by the Defendant's expert related to the application of a size premium to the discount rate, which Plaintiff's expert excluded from their analysis. While Defendant's expert criticized the exclusion of the size premium, the Court determined that the Defendant expert's criticism was not timely as it was provided after the expert's initial rebuttal report in a supplemental rebuttal report and the Court noted that the application of a size premium is still disputed among valuation professionals.

S'holder Representative Servs. LLC v. Alexion Pharma., Inc.

C.A. No. 2020-1069-MTZ

2025 Del. Ch. LEXIS 148 (Del.Ch. June 11, 2025)

Vice Chancellor Zurn

This opinion addressed the damages arising from a post transaction dispute related to Alexion Pharmaceuticals, Inc.'s ("Alexion") purchase of Sintimmune, Inc., which Alexion purchased "to develop a drug to treat rare diseases." The transaction consideration included discrete lump sum milestone payments that were to be paid to the sellers, obligating Alexion to use commercially reasonable efforts to achieve the development milestones.

Subsequent to the transaction, Alexion terminated the drug development program and Plaintiffs sued for breach of the efforts obligation (i.e., commercially reasonable efforts). The Court found Alexion liable for the breach and applied an expected value approach to determine the damages.

In determining the damages, the Court applied a probability of success to each milestone payment and discounted the probability adjusted values to the present value as of the date of the breach, resulting in damages of nearly \$181 million plus pre and post judgment interest to the Plaintiffs.

This opinion provides a crash course primer on probabilities, including visual aids and explanations of how to quantify the probability of success of each milestone given its independence from and dependency on certain events and milestones.

Supreme Court Reversals:

In re Mindbody, Inc. S'holder Litig.

C.A. No. 2019-0442

332 A.3d 349 (Del. December 2, 2024)

The original stockholder class action arose from the 2019 acquisition of Mindbody, Inc. by Vista Equity Partners Management, LLC ("Vista") for \$36.50 per share. The Court's 2023 Post-Trial Opinion "found the Non-Settling Defendants jointly and severally liable to the Class for \$1 per share," holding Stollmeyer, the CEO of Mindbody, Inc., liable for sale-process breaches and Stollmeyer and Vista liable for disclosure-based breaches, while making clear the class was "not entitled to a double recovery" because "all that the class can recover is \$1 per share."



The Delaware Supreme Court resolved the Mindbody appeal by affirming in part and reversing in part, opining:

First, we affirm the trial court’s holding that Stollmeyer breached his fiduciary duty of loyalty under *Revlon*... Second, we affirm... [the breach of] his fiduciary duty of disclosure... Third, we reverse the trial court’s holding that Vista aided and abetted Stollmeyer’s disclosure breach. Fourth, we affirm the trial court’s award of damages for Stollmeyer’s *Revlon* breach. Finally, we affirm the trial court’s holding that Appellees waived their right to seek a settlement credit under DUCATA... Because we reverse the aiding and abetting determination, we do not reach the issue of the trial court’s award of disclosure damages.

The Court grounded its legal analysis in the trial court’s factual record, claiming, “Because the parties do not challenge any of the trial court’s factual findings, we also accept them as the foundation for our legal analysis.” The Court agreed that under enhanced scrutiny, Stollmeyer’s conduct fell outside the range of reasonableness,” and affirmed its holding that Stollmeyer breached his duty of loyalty under *Revlon*. For remedy, “we affirm the trial court’s award of \$1 per share in damages for Stollmeyer’s duty of loyalty breach,” and, given one recovery, “we need not reach” a separate disclosure-damages award.

On aiding and abetting, the Court rejected liability based on Vista’s contractual proxy-review and notice provision, emphasizing that aiding-and-abetting “requires more than the passive awareness of a fiduciary’s disclosure breach that would come from simply reviewing draft Proxy Materials,” and that “[t]he parties have cited no case law...that a failure to act, without some kind of active role, constitutes ‘substantial assistance’ for aiding and abetting a fiduciary breach. We have never held that it does. On these facts... we decline to do so now.” The Court contrasted *RBC*, which was “...perhaps the most directly relevant precedent...”, where a banker “created an informational vacuum,” explaining that here “Vista did not create an informational vacuum, or purposely mislead Stollmeyer, or proximately cause his disclosure breach... [Vista] took no action... but rather passively stood by.”

Finally, the Court affirmed waiver of a settlement credit, endorsing the trial court’s fairness rationale, noting, “The Non-Settling Defendants waived their ability to seek a settlement credit because they did not raise this issue until the last footnote (footnote 493) on the very last page (page 121) of their very last post-trial brief,” which failed to “place the plaintiffs on notice” and would conflict with “fundamental fairness” and the notion that an adverse party “deserves sufficient notice... in the first instance”. This opinion lays the groundwork for the later reversed matter, *In re Columbia Pipeline Group, Inc, Merger Litigation*.

Palkon v. Maffei

C.A. No. 2023-0449-JTL

339 A.3d 705 (Del. February 4, 2025)

On April 21, 2023, Dennis Palkon and Herbert Williamson, minority shareholders of TripAdvisor, Inc. (“Tripadvisor”) and Liberty TripAdvisor Holdings, Inc. (“Liberty TripAdvisor”), filed a verified complaint alleging that the companies’ directors, including controlling stockholder



Gregory B. Maffei (collectively, “Defendants”), breached their fiduciary duties by approving a series of transactions that would effectuate a transfer of the companies’ corporate domiciles from Delaware to Nevada. Defendants subsequently filed a motion to dismiss Plaintiffs’ claims, which was denied by the Court of Chancery. On February 4, 2025, the Delaware Supreme Court reversed a decision by the Court of Chancery, stating the Plaintiffs did not meet the burden of demonstrating that the conversions conferred non-ratable benefits on the fiduciaries or that the transactions were subject to entire fairness review.

TripAdvisor operates the world’s largest travel guidance platform, and Liberty TripAdvisor holds an approximately 21 percent economic interest and a 56 percent voting interest in TripAdvisor. In and around April of 2023, the boards of TripAdvisor and Liberty TripAdvisor approved a series of transactions that effectuated the transfer of the companies’ corporate domiciles from Delaware to Nevada (the “Conversions”) and released proxy statements that identified several rationales for the transfer. Plaintiffs contended that the conversions conferred non-ratable benefits on controlling stockholder Gregory Maffei and other fiduciaries by reducing their potential liability exposure, thus necessitating entire fairness review. The Court of Chancery agreed with the Plaintiffs, denying the Defendants’ motion to dismiss and holding that the Plaintiffs had sufficiently alleged that the conversions provided material benefits to the fiduciaries.

Upon interlocutory appeal, the Delaware Supreme Court reversed the Court of Chancery’s decision. The Supreme Court found that the mere potential for reduced liability exposure is speculative, and Plaintiffs failed to allege any specific, concrete benefits that would constitute a non-ratable benefit and warrant an entire fairness review. The Supreme Court distinguished this case from prior decisions where fiduciaries have shielded themselves from past conduct, or have received tangible, material benefits from transactions that trigger an entire fairness review.

In its opinion, the Supreme Court further noted that the decision to reincorporate in another jurisdiction by itself does not inherently implicate fiduciary self-interest. It also highlighted that the Conversions were approved in accordance with statutory requirements and that the Plaintiffs’ allegations did not demonstrate that the fiduciaries acted with disloyal motives or engaged in unfair dealing.

Ultimately, the Delaware Supreme Court concluded that the Plaintiffs did not meet the burden of demonstrating that the conversions conferred non-ratable benefits on the fiduciaries or that the transactions were subject to entire fairness review. On February 4, 2025, the Court reversed the Court of Chancery’s denial of the motion to dismiss, holding that the business judgment rule applied.

In re Columbia Pipeline Grp., Inc, Merger Litig.

C.A. No. 2018-0484

2025 Del. LEXIS 226 (Del. June 17, 2025)

The Delaware Supreme Court reversed an earlier ruling by the Court of Chancery who determined that the acquirer aided and abetted certain breaches of Columbia Pipeline Group, Inc.’s (“Columbia”) fiduciary duties related to TransCanada Corporation’s (“TransCanada”) acquisition of Columbia. Prior to the trial in the Court of Chancery, Columbia’s fiduciaries settled the claims



against them for \$79 million. On the remaining aiding and abetting claim, the Court of Chancery ruled that but for the fiduciary breaches, the transaction would have closed at \$26.50 per share vs. the actual transaction price of \$25.50 per share and TransCanada was on the hook for the remainder of the claim net of the settlement with Columbia's fiduciary defendants.

The Supreme Court noted that it is rare to find an acquiror aided and abetted the breach of the fiduciary duties of a sell-side fiduciary in a transaction as they are the adverse party to the sell-side group in a transaction. Here, the Supreme Court found that TransCanada was not liable for aiding and abetting the sell-side fiduciaries, reversing the findings by the lower court.

The reversal focused on two claims related to the aiding and abetting, the sale-process claims and TransCanada's culpability in Columbia's fiduciary Defendants' breaches. On the sale-process claims, the Supreme Court determined that since TransCanada lacked "actual knowledge of the sell-side breaches, TransCanada could not have knowingly participated in them."

Next, the Supreme Court turned to TransCanada's culpability in Columbia's fiduciary defendants' breaches, relying heavily on its own opinions reached in the *Mindbody* appeal and reversal of the lower court's findings on the aiding and abetting claims. The Delaware Supreme Court focused on four factors to determine liability in an aiding and abetting claim.

- "The first factor ...concerns 'the nature of the tortious act, as well as its severity, the clarity of the violation, the extent of the consequences, and the secondary actors' knowledge of these aspects.'" On this factor, the Supreme Court determined that TransCanada was aware of certain deficiencies in the proxy statement and "at least some of the breaches of the duty of disclosure by Columbia's management and board were known to TransCanada such that this factor weighs in favor of a finding of liability."
- The second factor is whether or not TransCanada "culpably participated in the disclosure breaches." Here the Supreme Court did not find that TransCanada culpably participated in the disclosure breaches and determined that this factor weighed against finding liability on the aiding and abetting claim.
- The third factor relates to "the nature of the relationship" between TransCanada and Columbia and the Supreme Court pointed to its findings related to the sale process claim in finding that this factor weighed against finding liability on the aiding and abetting claim.
- The fourth factor relates to "TransCanada's state of mind." Here the Supreme Court points to a finding by the Court of Chancery that it "did not find that TransCanada had knowledge that, by declining to abide by its contractual duty to correct the Proxy, it was wrongfully contributing to a breach of duty by Columbia's fiduciaries." Therefore, this factor also weighed against finding liability on the aiding and abetting claim.

Based on its analysis, the Supreme Court reversed the Court of Chancery's judgment that TransCanada was liable for the aiding and abetting claim.