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A New Strain of COVID-19 Shareholder Suit

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While we are growing accustomed to pandemic-based shareholder actions relating to improper health and safety disclosures or misrepresentations relating to COVID-19 treatments and tests, this month brings a novel variant of the COVID-19 lawsuit. A Universal Health Services Inc. investor has filed a derivative suit against company officers and directors, claiming they took advantage of a pandemic-related drop in the company's stock price to grant and receive certain stock options that were unfair to the company and its stockholders. The plaintiff investor claims that "company insiders took advantage of the temporary drop in the company's stock price to grant and receive options to buy the company's stock at rock bottom prices, thereby showering themselves in excessive compensation." The complaint alleges that the drop in stock price was "not caused by any changes in the company's fundamentals or business prospects," but instead was entirely attributable to the effect of the pandemic on the markets writ large.

No matter the reason for the deflated stock price, the complaint alleges the amounts at issue are significant. According to the redacted complaint, "[t]he day after the options were granted, the company's stock price jumped by 25% and within a week it had soared by 47% . . . In just twelve days, defendants reaped over $30 million in gains on the granted options." The complaint asserts that in taking these actions, Universal Health's officers of breached their fiduciary duties to the company and unjustly enriched themselves, while also claiming the three directors who are on the company's compensation committee wasted corporate assets. The plaintiff investor did not make a demand on the Board on the basis of demand futility. The complaint asserts that "[s]uch a demand would be a futile and useless act because the Board is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action." Namely, the complaint emphasizes that each of the Board members received improper awards and affirmatively engaged in the misconduct alleged.

If successful, this case—*Knight v. Miller et al.*, 2021-0581, in the Court of Chancery of the State of Delaware—could provide another avenue for shareholder litigation in the wake of the COVID-19 pandemic. We will be following it closely.

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