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Risk #10: Fiduciary Duties Revisited: Delaware Law and the Fund Manager's Evolving Obligations

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A significant shift in Delaware law is reshaping how courts evaluate conflicted transactions involving controlling stockholders, including private fund managers that control portfolio companies. The changes make applying procedural safeguards all the more important. Fund managers who ensure the proper process is followed may significantly reduce their litigation exposure from minority shareholders.

In February 2026, the Delaware Supreme Court upheld amendments to the Delaware General Corporation Law (DGCL), enacted through Senate Bill 21 (SB 21). While the decision arose in the context of a specific dispute, its implications are systemic: it recalibrates fiduciary duty exposure and litigation risk for sponsors engaging in transactions with controlled companies.

The Risk Landscape Is Changing

Historically, conflicted transactions involving a company and its controlling shareholder(s) were subject to Delaware's most stringent standard of review: entire fairness. That standard places the burden on defendants to prove both fair dealing and fair price, and it frequently results in prolonged litigation, including costly discovery. Although prior case law (often referred to as *MFW*) provided a pathway to more deferential review under the business judgment rule, that framework required approval by both:

1. A properly constituted independent special committee, AND
2. A majority of disinterested stockholders.

In practice, satisfying both conditions required careful structuring and added execution risk.

SB 21: A Lower Procedural Bar

SB 21 materially lowers that burden for most transactions. Under the amended framework, a transaction can obtain liability protection if it is approved by either:

1. A properly constituted independent committee, OR
2. A majority of disinterested stockholders.

If either one of these procedural safeguards is satisfied, courts are generally precluded from awarding damages or equitable relief for fiduciary duty claims, rather than merely applying a more deferential standard of review. One exception: going-private transactions still require both protections.

Six weeks after SB 21 was signed into law in March 2025, in *Rutledge v. Clearway Energy Group LLC*, a stockholder of Clearway Energy, Inc. filed a derivative suit challenging a $117 million asset purchase between the company and its controlling stockholder, Clearway Energy Group LLC. The plaintiff alleged that the controlling stockholder and the company's former CEO breached their fiduciary duties by causing the company to overpay for the asset. The Delaware Supreme Court rejected that argument and upheld SB 21, making clear that the legislature has wide latitude to shape Delaware corporate law. The Court confirmed that SB 21 does not eliminate fiduciary duty claims or the Court of Chancery's role, but instead recalibrates how those claims are reviewed and what remedies are available.

Why This Is a Top Risk (and Opportunity) for Fund Managers

If your fund controls a Delaware corporation, this decision directly affects you. It means:

- Conflicted transactions are now easier to defend if proper procedures are followed.
- A well-run special committee alone may now be enough protection in many cases.
- Litigation risk may be reduced, especially at the motion to dismiss stage.

But process still matters: If the committee is not truly independent, if disclosures are incomplete, or if the stockholder vote is not fully informed and uncoerced, the safe harbor may not apply.

The Bottom Line

SB 21 gives fund managers more certainty and flexibility when structuring transactions with controlled portfolio companies. The Delaware Supreme Court has confirmed that this framework is valid.

The practical takeaway is simple: Good process is now more valuable than ever. If you follow the statutory protections carefully, you are in a much stronger position to manage litigation risk.

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