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Delaware Chancery Addresses Revlon's Application to Public Benefit Corporations and Reinforces the Power of Statutory Safe Harbors

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In a significant July 29, 2026, decision, the Delaware Court of Chancery issued what it described as an issue of "first impression" concerning the application of *Revlon* duties to Delaware public benefit corporations (PBCs). In *Drakes Landing Associates, L.P., et al. v. Tilden Park Capital Management, L.P.*, C.A. No. 2025-0898-NAC (Del. Ch. July 29, 2026), Vice Chancellor Cook dismissed fiduciary duty and aiding-and-abetting claims challenging a financing transaction that, when completed, would transfer control of MPower Financing, PBC to two lenders through a debt-for-equity conversion.

The opinion is noteworthy because it provides important guidance regarding (i) how traditional Delaware *Revlon* jurisprudence applies to transactions involving PBCs, and (ii) the application of DGCL Section 365's statutory safe harbor protections.

A Revlon Standard of Conduct Does Not Apply to PBC Transactions

The court confronted a tension at the heart of Delaware PBC legislation. Traditional *Revlon* jurisprudence often describes directors, in a sale-of-control context, as having a duty to maximize stockholder value and obtain the best price reasonably available. By contrast, DGCL Section 365(a) requires directors of a PBC to balance three interests: stockholders' pecuniary interests, the interests of stakeholders materially affected by the corporation's conduct, and the corporation's specified public benefit purpose.

The Court concluded that it would be inconsistent with the PBC statutory requirements to impose the *Revlon* standard of conduct on PBC directors because a singular obligation to maximize immediate stockholder value would conflict with the standard of conduct in Section 365(a). Directors of a PBC are not required to pursue stockholder wealth maximization to the exclusion of other interests, including the directors' obligation to consider those "materially affected by the corporation's conduct, and the specific public benefit or benefits identified in its certificate of incorporation."

That conclusion is a novel and important doctrinal development in Delaware PBC law.

A *Revlon* Standard of Review May Apply to PBC in a Modified Form

While the Court held that the traditional *Revlon* standard of conduct did not apply to PBCs, the *Revlon* standard of review, enhanced scrutiny, may apply in PBC change-of-control transactions. The court referred to the possible doctrine as "PBC enhanced scrutiny."

Applying a *Revlon* standard of review in the PBC context, a court would apply the "range of reasonableness test" to examine "whether the directors' actions in balancing the interests required under Section 365(a) fell outside the range of reasonableness." Although the court declined to adopt this modified standard because the case was resolved under Section 365(b)'s safe harbor.

The Section 365(b) Safe Harbor

The most practical lesson from the decision is the practical utility of Section 365(b). That provision deems directors of a PBC to have satisfied their fiduciary duties when a balancing decision under Section 365(a) is informed, disinterested, and not so irrational that no person of ordinary, sound judgment would approve it. It was plaintiffs' pleading burden to plead facts supporting a reasonable inference that the statutory safe harbor did not apply and plaintiffs failed to do so.

The special committee approving the transaction consisted of concededly independent and disinterested directors. On informing itself, the special committee retained an indisputably independent counsel and financial advisor, conducted a market check, opened a data room, and evaluated alternatives before approving the transaction. The Court held that applying either the business judgment rule or enhanced scrutiny to the informed requirement of Section 365(b), plaintiff failed to plead that the special committee failed to take steps to inform itself.

Finally, on the question of whether the special committee decision was not irrational as to sound in waste, the Court held that waste is a high standard that essentially requires that the company received no value for what it gave. Here, plaintiffs' complaints were with the process itself, not with the crucial short-term financing the company received. The court held plaintiffs had not pled a waste claim.

Practice Pointers for Corporations and Special Committees

This case offers several practical lessons for PBCs seeking to defend board decisions:

1. **Use genuinely independent special committees.** Independence and disinterestedness remain the strongest defenses to fiduciary litigation. Here, plaintiffs effectively conceded both points.

2. **Retain independent advisors.** The committee's selection of separate counsel and a financial advisor significantly strengthened the record supporting dismissal.

3. **Create evidence of balancing.** For PBCs in particular, boards should expressly document consideration of stockholder interests, stakeholder interests, and the corporation's public benefit mission. Meeting minutes should reflect the balancing exercise contemplated by Section 365(a).

4. **Develop and preserve a robust process record.** Market checks, outreach efforts, consideration of alternatives, and committee deliberations remain critical under any enhanced-scrutiny framework.

5. **Leverage statutory defenses early.** Defendants should evaluate Section 365(b) and whether it can be used to protect the directors' decision-making from challenge.

6. **Exploit pleading deficiencies.** The court repeatedly emphasized plaintiffs' failure to obtain books and records under Section 220 before filing suit. Defendants should continue highlighting the absence of particularized facts where stockholders bypass pre-suit investigation.

The opinion represents a meaningful development in Delaware PBC jurisprudence. While future cases will likely define the contours of "PBC enhanced scrutiny," the immediate takeaway is clear: when an independent, informed, and disinterested special committee follows a defensible process, Section 365(b) provides a potent basis for obtaining dismissal of stockholder challenges at the pleading stage.

> I conclude that Revlon does not impose a standard of conduct on public benefit corporation directors, but that its underlying standard of review—enhanced scrutiny, which I will call "PBC" enhanced scrutiny—may still apply.
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