Blogs
February 06, 2025
When Is a Minority Stockholder a Controller? The Delaware Supreme Court Reaffirms the Ground Rules in In Re Oracle Derivative Litigation

Controlling stockholders owe fiduciary duties to other stockholders that minority stockholders do not. A holder of over 50% of a corporation's voting power is clearly a controlling stockholder. As a consequence, transactions between the controller and the corporation, if challenged, will generally be reviewed under the stringent "entire fairness standard," which requires controllers to establish that both the process for approving the transaction and the price were fair.

But a minority stockholder may also be found to have control under limited circumstances. Identifying those circumstances has often been vexing for courts, as in *Tornetta v. Musk*, 310 A.3d 430 (Del. Ch. 2024), which deals with the Tesla board's approval of its CEO's compensation. In *In re Oracle Derivative Litig.*, C.A. No. 2017-0337 (Del. Jan. 21, 2025), the Delaware Supreme Court, acting *en banc*, clarified that plaintiffs face a high hurdle to show that a minority stockholder is a controller and the relevant inquiry is intensely fact-specific, making early dismissal of such claims difficult.

Background

The case arose from Oracle Corporation's 2016 acquisition of NetSuite, Inc. Lawrence Ellison, founder, former CEO, and then executive chairman/chief technology officer of Oracle, owned stock representing under 30% of Oracle's voting power and also owned NetSuite stock. Oracle management had internally discussed a possible acquisition of NetSuite in the mid-2000s but did not seriously broach the subject with Oracle's board until 2016. Ellison recused himself from those and all subsequent board discussions of a NetSuite acquisition.

Oracle formed a special committee consisting of three unconflicted board members to consider a potential transaction. The special committee retained its own legal and financial advisors and was "fully empowered to control the transaction." After diligence meetings and analyses with its advisors, the special committee authorized negotiations with NetSuite. Oracle officers, including Safra Catz, then a co-CEO, participated in board discussions and the negotiations with NetSuite, subject to recusal rules approved by the special committee. Ellison did not participate in the negotiations.

Oracle and NetSuite ultimately agreed to a price of $109 per share in a transaction structured as an Oracle tender offer for a majority of the NetSuite shares of holders not affiliated with Ellison or other Oracle officers or directors. The transaction closed after 53.2% of the unaffiliated shares were tendered.

Post-Closing Litigation and Trial

Plaintiffs filed a stockholder derivative suit on behalf of Oracle against Oracle, Ellison, Catz, and the special committee members. They argued that Ellison had caused Oracle to overpay for NetSuite for his personal benefit (Ellison received nearly $4 billion from the transaction—"a massive return on [his] initial $125 million investment in NetSuite"); that Ellison was a controlling stockholder of Oracle, which made the transaction subject to entire fairness review; that Catz had acted in Ellison's interest in the negotiations; and that Ellison and Catz had defrauded the board and the special committee by withholding material facts relating to NetSuite's valuation and interactions with NetSuite by Ellison and Catz. After the trial court denied motions to dismiss by Ellison and Catz, plaintiffs voluntarily dismissed their claims against the other defendants.

Oracle formed a fully empowered special litigation committee to review plaintiffs' claims. The Delaware Court of Chancery stayed the litigation for 13 months while the special litigation committee conducted an investigation and explored settlement via mediation. The special litigation committee ultimately decided to turn the derivative litigation over to plaintiffs, observing that the issue of whether the challenged transaction with NetSuite would be reviewed under the entire fairness standard would not be resolved until trial, thus posing risks to both plaintiffs and defendants. The parties then engaged in motion practice over plaintiffs' access to the special litigation committee's documents, among other issues.

After a 10-day trial, the Chancery Court found that Ellison was not a controller, that the business judgment rule applied to the transaction and the Oracle board had met that standard, and that the board was not defrauded or misled by Ellison and Catz because any omitted information was immaterial to their decision. On appeal, plaintiffs argued that the Chancery Court should have applied the entire fairness standard and its disclosure finding was erroneous. In affirming the Chancery Court and ruling against plaintiffs, the Delaware Supreme Court relied on the trial court's unchallenged factual findings to conclude that Ellison was not a controller.

Lessons for Significant, Non-Majority Stockholders and Boards of Directors

The Delaware Supreme Court outlined two critical inquiries for analyzing whether a minority stockholder is a controller whose transactions with the company are subject to entire fairness review: (1) whether the stockholder had *actual* control over the company's business; and (2) whether the stockholder had *actual* control over the transaction.

Actual Control Over the Business

To show that a minority stockholder had actual control over the company's business, the stockholder must have "a combination of potent voting power and management control" that effectively results in control of the board. Plaintiffs pointed to Ellison's ownership interest in Oracle, which ranged from 20% to 43% over time, and to his managerial authority to establish his control.

But the trial court found as facts that "Ellison held less than 30% of Oracle voting power" and thus lacked "hard control." He "did not control Oracle's day-to-day decisions nor the board's decisions over the company's operations." Furthermore, the board "was not afraid to stand opposed to Ellison."

To reach its conclusions, the trial court relied on the testimony of Oracle's officers and directors. To establish board and officer independence from a significant stockholder, it is helpful for the company to have minutes and other records that reflect both the company's officers and its board acting independently, in the usual and ordinary course, in making key business decisions for the company. Such records are also critical in demonstrating lack of transactional control by the significant stockholder.

Actual Control Over the Transaction

To show that a minority stockholder had actual control over a specific transaction, the stockholder must have "exercised actual control of the board of directors during the course of a particular transaction." The control question is "a judicial conclusion that is reached after a fact specific analysis." To rebut such a claim, establishing meticulous process is key.

- First, Ellison removed himself from the process. Though he was involved in early discussions about a possible NetSuite acquisition, the record demonstrated that these initial discussions involved other company officers and occurred within established corporate development processes at Oracle. Ellison recused himself from the board's consideration of the transaction and left the actual discussions and negotiations to Catz, other officers, and the board.
- Second, the Oracle board then formed a special committee of fully independent directors and empowered the special committee to control the transaction. The special committee acted independently, hiring its own advisors to evaluate NetSuite, assess management's business case for the transaction, and advise on the price. It set recusal rules for Ellison and other officers. It met frequently to receive input and direct negotiations. The Chancery Court concluded that Ellison "scrupulously avoided" discussing the transaction with the special committee and that the special committee "completed the transaction unmolested by [Ellison's] influence."
- Finally, Ellison's mere potential to control the transaction was not "so inherently coercive that it rendered him a controlling stockholder." Similarly, though a "visionary leader might have, in combination with other factors, the potential to exercise general control over the corporation," potential alone does not establish actual control. Instead, the question is "intensely factual." Here, the facts contradicted plaintiffs' assertion that Ellison actually controlled the transaction.

When a company contemplates a transaction in which a large stockholder has a significant interest, the board of directors must be cognizant of the conflict and scrupulously observe good process and compliance with fiduciary duties in considering whether to move forward on behalf of the corporation. In so doing, the board not only must act independently from the stockholder and its interests and on the advice of independent advisors but also must make a careful record of its processes to preserve the application of the business judgment rule to its decisions.

Authors

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