

Securities Litigation

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Delaware Supreme Court Upholds Heightened Protection for Controlling Stockholder Transactions

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On Feb. 27, the Delaware Supreme Court in *Rutledge v. Clearway Energy Group LLC*, No. 248, 2025 (Del. Feb. 27, 2026), upheld the constitutionality of recent amendments to Section 144 of the Delaware General Corporation Law that expanded legal protection for certain controlling stockholder transactions.

Pre-Amendment Law

Under Delaware's traditional corporate law jurisprudence, transactions between a corporation and its controlling shareholders are subject to intense court scrutiny under the "entire fairness standard," an exacting inquiry that requires a defendant to prove that both the price and the process of the challenged transaction were entirely fair to the corporation and its stockholders. This is the most stringent (plaintiff-friendly) standard of review in Delaware corporate law for determining whether corporate fiduciaries violated their fiduciary duties. Because the entire fairness standard of review is extremely fact-intensive, lawsuits challenging transactions that are subject to review under this standard are rarely dismissed at the pleading stage.

Prior to the recent amendments, Delaware case law allowed controlling shareholders engaging in interested transactions to avoid the entire fairness standard, but only if they employed two mechanisms designed to protect against abuses of corporate control: obtaining approval both from an independent committee of disinterested directors *and* from an informed majority of the minority, disinterested stockholders.

The Amendments

The amendments – passed in March 2025 – upended that framework by providing a more relaxed standard under which controlling shareholders may be shielded from liability. For controlling shareholder transactions other than going-private transactions, a safe harbor now exists if just one of the cleansing mechanisms is utilized as specified in the statute. By effectively insulating a transaction from judicial review if approval from *either* disinterested directors *or* disinterested shareholders is obtained, the amendments significantly restrict the ability of minority shareholders to challenge the transaction in court as a breach of fiduciary duty subject to entire fairness review.

In enacting the amendments, the Delaware Legislature struck a balance among the competing values and policies underlying Delaware's corporate law in the context of controlling stockholder transactions – respecting freedom of contract, facilitating capital formation, providing certainty to corporate stakeholders through clear legal rules, and imposing strict fiduciary obligations to ensure fair treatment of stockholders – that differed from the one reflected in decisions handed down by the Delaware judiciary over several decades. From one perspective, this change better protects the freedom of controlling stockholders to implement value-enhancing transactions that improve the allocation of capital to its highest and best use without incurring the risk and expense of opportunistic lawsuits by shareholders. From a different point of view, the amendments weaken critical minority protections and enable controlling shareholders to engage in self-dealing transactions at the minority's expense, potentially inhibiting efficient capital formation by disincentivizing public investments in controlled companies.

The amendments also introduce an explicit, intricately structured statutory definition of “controlling stockholder,” which may bring clarity to a body of law concerning who counts as a controlling stockholder – an issue that has generated some uncertainty and proven difficult to apply in practice.

The Court's Decision

The plaintiff in *Rutledge* – a shareholder of Clearway Energy Inc. – brought a derivative action challenging the fairness of a \$107 million transaction with the company’s controlling stockholder. The transaction was approved by a committee of independent directors, thereby triggering the safe harbor under the amendments despite the lack of approval from a majority of the minority shareholders. In an effort to retain entire fairness review of the transaction, the plaintiff argued that the recent amendments violated the Delaware Constitution by improperly stripping jurisdiction from the Court of Chancery and by retroactively extinguishing vested causes of action.

The Delaware Supreme Court rejected both arguments, upholding the constitutionality of the amendments as a proper exercise of legislative power in conformity with due process. For now, the Court’s decision provides companies with greater flexibility in structuring deals with controlling stockholders and makes challenges to qualifying transactions more readily dismissible at the pleading stage. But while the constitutionality of the amendments is now settled, lawsuits challenging self-dealing by controlling stockholders in Delaware are unlikely to suffer the fate of the dinosaurs. The focus of such litigation will likely shift to disputing whether particular deals satisfy the amendments’ substantive requirements, including challenges to the disinterestedness of the directors who approved the transaction or, in the (probably unlikely) event the deal is subject to a majority vote of disinterested stockholders, the accuracy and completeness of information provided to minority shareholders.

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