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Delaware Chancery Court Takes First Look at de-SPAC Deal Claims in Recent *MultiPlan* Decision

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Earlier this week, the Delaware Court of Chancery released a highly anticipated decision in *In re MultiPlan Corp. Stockholders Litigation*, C.A. No. 2021-0300-LWW, addressing the viability of fiduciary duty claims brought against special purpose acquisition company (SPAC) directors and organizers in connection with de-SPAC merger transactions. The decision from Vice Chancellor Lori Will marks the first time the Chancery Court has examined fiduciary duty claims in this context. In the 61-page opinion, Vice Chancellor Will held that claims being asserted by the SPAC's stockholders were direct, rather than derivative, in nature—preempting the defendants' demand futility arguments—and that the entire fairness standard of review governed the court's analysis of those claims. The court also weighed in on the plaintiffs' aiding and abetting claim against the SPAC's financial advisor, holding that the complaint adequately alleged knowing participation on behalf of the advisor. All claims except one—against the SPAC's CFO—were upheld. Although SPAC-related litigation was already expected to increase in 2022, the *MultiPlan* decision is likely to further embolden the plaintiffs' bar.

The *MultiPlan* lawsuit challenges SPAC Churchill Capital's October 2020 acquisition of MultiPlan Inc., a health care data analytics and cost management company. Shortly after the transaction closed, news of a competing data analytics/cost management offering from one of MultiPlan's largest customers caused the company's stock price to decline by nearly 50 percent. Claims for breach of fiduciary duty against the SPAC's directors and organizers were brought shortly thereafter.

The lawsuit alleges that Churchill's financial structure—which purportedly allowed the SPAC's organizers to "profit immensely" upon completion of a business combination through super-equity "founder" shares, even if the deal resulted in a loss for the SPAC's public stockholders—incentivized the organizers to withhold material information from Churchill's stockholders and push forward with the "unfair" MultiPlan deal. According to the plaintiffs, this not only impaired the stockholders' ability to vote against the deal and redeem their shares but also led to economic damages stemming from MultiPlan's subsequent stock price drop. The plaintiffs also claim that Churchill's financial advisor aided and abetted these fiduciary breaches through its preparation of MultiPlan valuation analyses and its knowledge of various alleged conflicts of interest.

In their motion to dismiss, the defendants pushed two primary arguments: (1) that the plaintiffs were asserting improper derivative claims that were preempted due to a failure to allege demand futility; and (2) that the claims were barred by Delaware's business judgment rule. The court examined both issues extensively:

- On the first issue, the court found that the plaintiffs' fiduciary claims were properly pleaded as direct, rather than derivative, claims. The court reasoned that while "overpayment" claims such as those asserted here typically would be viewed as "exclusively derivative," the plaintiffs' disclosure-based claims would, if proven, result in a "personal" injury to the SPAC's stockholders and were therefore direct in nature. Consistent with this, the court also noted that any recovery from the claims would go directly to the stockholders themselves, rather than to the company.
- On the second issue, the court found that the plaintiffs had successfully rebutted the presumption that business judgment review should apply. The court confirmed that entire fairness instead applied for two independent reasons: (1) Churchill's purported financial structure allowed the SPAC's organizers to receive unique benefits from the transaction not shared by the SPAC's public stockholders; and (2) Churchill's directors were self-interested due to the material benefits they stood to receive from the transaction.

Having concluded that the plaintiffs' claims were direct in nature and subject to entire fairness review, the court next turned to the viability of the claims themselves, confirming in short order that the plaintiffs had adequately alleged—through purported conflicts of interest and disclosure violations—reasonably conceivable, non-exculpated claims against all but one of the defendants. Finally, on the aiding and abetting claim, the court found that allegations of a close alignment between Churchill and its financial advisor supported a finding that the advisor knowingly participated in the fiduciary breach.

While the standard imposed by the Chancery Court in *MultiPlan* is certainly an onerous one, it is too soon to tell how this might impact de-SPAC deals challenged in the future—i.e., whether, absent modifications in typical SPAC governance and/or structure, this will result in virtually all de-SPAC transactions being subject to entire fairness review—since the legal analysis in *MultiPlan* is highly fact-specific and based heavily on Churchill's alleged disclosure violations. Vice Chancellor Will confirmed this early on in the ruling, emphasizing that many of her conclusions "stem[med] from the fact that a reasonably conceivable impairment of public stockholders' redemption rights—in the form of materially misleading disclosures—ha[d] been pleaded."

Nevertheless, the decision creates a potential roadmap for plaintiffs moving forward, particularly for those targeting SPACs with financial structures similar to Churchill's, which are not uncommon. As the court cautioned: "That this structure has been utilized by other SPACs does not cure it of conflicts." Future lawsuits are likely to target SPACs with these types of purported structural conflicts and focus on "material" disclosure violations, which, with 20/20 hindsight, are relatively easy to manufacture in the wake of a stock price drop.

Although the *MultiPlan* decision may have come too late for SPACs that have already completed a de-SPAC transaction, SPACs looking to avoid entire fairness review in the future should, if feasible and not offset by negative variables such as increased deal uncertainty, consider adopting procedural deal process safeguards that have long been used in the traditional merger context, including independent special committees, independent financial and legal advisors, and majority-of-the-minority votes. Beyond that, SPACs and their sponsors should take extra care to avoid any disclosure slipups. Though difficult to adjust to on the fly, well-advised SPACs might be able to adopt sufficient processes and safety measures to reduce exposure and stave off entire fairness review for de-SPAC deals going forward.

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