The Lost History of Transaction-Specific Control

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Delaware corporate law has long recognized that stockholders are generally not fiduciaries and do not owe fiduciary duties to the corporation and its other stockholders. Controlling stockholders are the exception and owe fiduciary duties only in limited circumstances. Historically, stockholders are deemed controlling if they either own majority voting power or near-majority voting power and exercise control over the business affairs of the corporation. Over the years, however, decisions by Delaware courts deemphasized the importance of stock ownership and placed greater focus on other indicia of influence, thereby ascribing control to stockholders with increasingly smaller voting stakes.

This Article illuminates another twist in the de facto controlling stockholder doctrine from recent decades: the creation of "transaction-specific control" as an alternative pathway to pleading controller status. As we demonstrate, this doctrinal extension began with a series of brief statements in Delaware Court of Chancery decisions from the early 2000s, without discussion of its novelty or merits. These decisions cited the canonical opinion Kahn v. Lynch. *But* Lynch *did not in fact hold that a stockholder takes on fiduciary duties if it "controls" a specific transaction rather than the business affairs of the corporation. Subsequently, these Court of Chancery cases were cited in yet others, creating a chain of case law embedding the notion of transaction-specific control into doctrine. After tracing this evolution, we consider the unintended and negative consequences that result. We argue that Delaware corporate law should jettison the concept of transactional control as a distinct concept, which is one of the aims of the newly created statutory definition of controlling stockholder.*

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INTRODUCTION

Predictability is a hallmark of Delaware corporate law. It is often cited as the reason that companies choose to incorporate in Delaware.[1] Clear guidance on the rights and duties of corporate actors ensures stable governance. It encourages business firms to innovate and pursue new strategies without fear of being blindsided in litigation. And, by reducing risk, it promotes investment in Delaware-incorporated companies.

Delaware common law on the obligations of boards of directors and controlling stockholders has long provided a framework to advance the goals of stability and predictability. Boards of directors know that they owe duties of loyalty to the corporation and its stockholders and that heightened judicial scrutiny may apply if the board is conflicted.[2] Majority stockholders and those who exercise effective control through substantial voting power understand that they may take on duties of loyalty and trigger stringent judicial review.[3]

Over the past two decades, these two related, but distinct sets of fiduciary duties have at times become commingled in the case law. A director or officer with disabling influence over the board, which could prompt entire fairness review in any event, could be deemed a controlling stockholder though she had only a small stake.

The notion of transaction-specific control added a further wrinkle. Delaware courts begin their fiduciary duty analyses by determining the applicable standard of review. Traditionally, where a minority stockholder was alleged to be a controller, the court's first analytical step was to assess the stockholder's voting power and influence over corporate

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1. *See, e.g.*, William J. Moon, *Delaware's Global Competitiveness*, 106 IOWA L. REV. 1683, 1707–08 n.114 (2021) (noting the benefits of incorporating in Delaware include "a robust body of case law enhancing the predictability of the law"); Omari Scott Simmons, *Branding the Small Wonder: Delaware's Dominance and the Market for Corporate Law*, 42 U. RICH. L. REV. 1129, 1136, 1158 (2008) (observing that "Delaware's exceptional performance in the chartering market . . . results from multiple sources of competitive advantage" including its body of "precedents which provide greater predictability, allowing corporations to make planning decisions with greater confidence"); Myron T. Steele & J.W. Verret, *Delaware's Guidance: Ensuring Equity for the Modern Witenagemot*, 2 VA. L. & BUS. REV. 189, 190–92 (2007) (explaining that "one reason incorporators choose Delaware as the home for their charters" is the "[g]uidance [f]unction" provided by the Delaware judiciary which "seek[s] to minimize th[e] element of uncertainty" that "results from the resolution of economic disputes by a court of equity"); Roberta Romano, *The State Competition Debate in Corporate Law*, 8 CARDOZO L. REV. 709, 722–23 (1987) (highlighting that Delaware's corporate law "consist[s] of a store of legal precedents forming a comprehensive body of case law . . . providing a sound basis for corporate planning").

2. *See generally* William M. Lafferty, Lisa A. Schmidt & Donald J. Wolfe, Jr., *A Brief Introduction to the Fiduciary Duties of Directors Under Delaware Law*, 116 PENN. ST. L. REV. 837 (2012) (describing the fiduciary duties of directors and heightened judicial scrutiny that may apply if the board is conflicted).

3. *See generally* Weinberger v. UOP, Inc., 457 A.2d 701 (Del. 1983) (discussing the imposition of the duty of loyalty and entire fairness scrutiny on a majority stockholder that engaged in a cash-out merger with subsidiary). Delaware courts have generally referred to a controlling stockholder owing the duties of care and loyalty when fiduciary duties apply. *See, e.g.*, Cinerama, Inc., v. Technicolor, Inc., No. 8358, 1991 WL 111134, at *19 (Del. Ch. June 24, 1991) ("[W]hen a shareholder, who achieves power through the ownership of stock, exercises that power by directing the actions of the corporation, he assumes the duties of care and loyalty of a director of a corporation."), *aff'd in part, rev'd on other grounds sub nom*, 634 A.2d 345 (Del. 1993); Pfeffer v. Redstone, 965 A.2d 676, 691 n.52 (Del. 2009) (quoting *Cinerama*). For an argument that courts should reject a general duty of care for controlling stockholders, see Jens Dammann, *The Controlling Shareholder's General Duty of Care: A Dogma that Should Be Abandoned*, 2015 U. ILL. L. REV. 479, 482–83.

affairs generally.[4] If entire fairness applied as a result of that analysis, the court would scrutinize the stockholder's conduct during the challenged transaction.

A line of cases in the mid-2000s, however, began to turn the analysis backwards. These cases indicated that the court could infer control at the pleading stage if a stockholder wielded influence over a specific transaction.[5] In doing so, the court considered a significant stockholder's conduct in the initial step of setting the standard of review, rather than using the standard of review to analyze its conduct. This change in approach created a potentially circular dynamic in which a stockholder that might not ultimately be deemed a controller after trial was treated as such through critical phases of litigation, exposing them to increased litigation risk in the first instance and adding cost and uncertainty to a wide range of transactions.

This Article traces the emergence of the concept of transaction-specific control and reveals its uncertain foundation. Transaction-specific control has been notionally rooted in the Delaware Supreme Court's iconic *Kahn v. Lynch* decision.[6] But, as we highlight, *Lynch* provides no support for this approach.[7] Instead, *Lynch* reiterates the settled principle that control is found where a substantial stockholder exerts actual control over the corporation. And, as we demonstrate, it was only by later assertions and citations to *Lynch*, and then others following those in a chain of self-referential case law, that transaction-specific control came to be regarded as a means by which a party could be deemed a "controller" owing fiduciary duties in the first instance.[8] Notably, the line of cases cited as support for transaction-specific control did not directly address—or grapple with—the merits of this conceptual extension of Delaware law. And the contours of the test for determining controlling stockholder status shifted and became muddled.

Excavating this history shines light on the evolution of the controlling stockholder doctrine, the common law mechanisms by which it developed, and its potential path forward. This year, while contributors to this 50th anniversary symposium of the *Journal of Corporation Law* reflected on important issues of the past half century, a significant development in corporate law occurred. In March 2025, the Delaware General Assembly enacted Senate Bill 21, codifying for the first time a definition of "controlling stockholder" and processes for sheltering a "controlling stockholder transaction" from equitable relief and damages.[9] We believe that the doctrinal history of transaction-specific control provides useful context for understanding one particular aspect of this development. Notably missing from the statutory definition of controlling stockholder is the notion that a minority stockholder can gain that status by wielding influence over a specific transaction. Although the history of transaction-specific control that we uncover in this Article is ending, lessons from the twists and turns in this saga have some enduring value.

This Article proceeds as follows. Part I explains the significance of deeming a party a controlling stockholder and imposing fiduciary duties in contexts beyond those ascribed to directors and officers. Part II examines Delaware's historic approach to determining whether a stockholder should be deemed a controller. Part III highlights the doctrinal

4. *See infra* Part II.
5. *See infra* Part IV.
6. Kahn v. Lynch Commc'n Sys., Inc., 638 A.2d 1110 (Del. 1994); *see infra* Part III.
7. *See infra* Part III.
8. *See infra* Part IV.
9. S.B. 21, 153d Gen. Assemb., 1st Reg. Sess. (Del. 2025); DEL. CODE ANN. tit. 8, § 144 (2025).

evolution in which courts recognized stockholders with increasingly smaller percentages of stock or voting power as minority controllers, placing less importance on the stockholder's ownership relative to influence over the board or management. Part IV traces the emergence of transaction-specific control. Part V documents how the Court of Chancery's aught-era decisions, which cite *Lynch* for a proposition it did not address, became routinely relied upon in more recent case law as supporting transaction-specific control. And it argues that transaction-specific control has both doctrinal and practical problems that merit excising the concept from controlling stockholder determinations.

I. THE IMPORTANCE OF CONTROL COHERENCE

Delaware law imposes fiduciary duties on persons with the power to control the property of another.[10] In the corporate context, the simplest application of this principle are the duties directors and officers owe to the corporation and its stockholders. Enforcement of these duties ensures that fiduciaries prioritize corporate welfare over personal interests, promoting accountability and value creation.

Controlling stockholders can likewise make decisions that affect the entity and rights of other investors. Their ability to do so is based not on officer or director status, but on the ability to direct or influence corporate acts through stock ownership.

This influence may be positive or negative for the corporation and its other stockholders, depending on the circumstances. A controlling stockholder, with a significant concentration of ownership and incentives to monitor directors and officers can help constrain agency costs that arise from the separation of ownership and control.[11] In this way, the presence of a controlling stockholder in a corporation's governance arrangements could be considered an alternative to other features that provide for monitoring such as independent directors and exposure to the market for takeovers.[12] Stockholders may seek control structures to protect the unique vision of founders, pursue a long-term strategy, or enjoy nonpecuniary private benefits of control.[13] These structures may be harmless to the corporation

10. *See, e.g.*, Sokol Holdings, Inc. v. Dorsey & Whitney, LLP, No. 3874, 2009 WL 2501542, at *3 (Del. Ch. Aug. 5, 2009) ("The hallmark of a fiduciary relationship is that one person has the power to exercise control over the property of another as if it were her own."); *In re* Pattern Energy Grp. Inc. S'holders Litig., No. 2020-0357, 2021 WL 1812674, at *40 (Del. Ch. May 6, 2021) ("The essential quality of a fiduciary is that she controls something she does not own."); *see also* D. Gordon Smith, *The Critical Resource Theory of Fiduciary Duty*, 55 VAND. L. REV. 1399, 1400–02 (2002) (observing that "[c]ourts routinely impose fiduciary duties in myriad relationships, including trustee-beneficiary, employee-employer, director-shareholder, attorney-client, and physician-patient" and that "fiduciary relationships form when one party (the 'fiduciary') acts on behalf of another party (the 'beneficiary') while exercising discretion with respect to a critical resource belonging to the beneficiary." (emphasis omitted)).

11. *See* Ronald J. Gilson & Jeffrey N. Gordon, *Controlling Controlling Shareholders*, 152 U. PA. L. REV. 785, 785 (2003) ("[T]he presence of a large shareholder may better police management than the standard panoply of market-oriented techniques.").

12. Ronald J. Gilson, *Controlling Shareholders and Corporate Governance: Complicating the Comparative Taxonomy*, 119 HARV. L. REV. 1641, 1652–53 (2006).

13. *See, e.g.*, Zohar Goshen & Assaf Hamdani, *Corporate Control and Idiosyncratic Vision*, 125 YALE L.J. 560, 565 (2016) (arguing that "control allows entrepreneurs to pursue business strategies that they believe will produce above-market returns by securing the ability to implement their vision in the manner they see fit"); Gilson, *supra* note 12, at 1661–65 (examining pecuniary and nonpecuniary private benefits of control); Albert H. Choi, *Concentrated Ownership and Long-Term Shareholder Value*, 8 HARV. BUS. L. REV. 53, 57–58 (2018)

and its minority stockholders—or even contribute to value creation.[14] Yet, by domineering the vote, a controlling stockholder could impose decisions on the corporation to its benefit and to the exclusion and detriment of minority stockholders.[15] A variety of situations could lead to such a result—for example, entering into conflicted transactions, appropriating corporate opportunities, and pursuing detrimental pet projects or conglomerate empires.[16] Controlling stockholders thus present a tradeoff between reducing the managerial agency problem and posing a private benefits problem.[17]

Stockholders generally owe no fiduciary duties.[18] A controlling stockholder is the exception. As we have seen, substantial voting power can yield great influence overboard-level actions, allowing a stockholder to guide the company's trajectory and bind the minority. Because of this power imbalance and ability to exploit it for personal gain, Delaware law charges controlling stockholders with fiduciary responsibilities.[19]

Assigning fiduciary duties to a stockholder is no small matter. A stockholder that might otherwise be free to pursue its own interests becomes obligated to act in the best interests of the company and its stockholders as a whole.[20] A lack of clarity in defining controlling stockholder status as a matter of law undermines corporate actors' ability to fairly balance these competing considerations.

If a minority investor genuinely does not view herself as a controlling stockholder as a matter of law for purposes of fiduciary responsibility, she cannot rationally be expected

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(exploring how the presence of a controlling stockholder can enable a firm to focus on long-term goals and commitments).

14. *See, e.g.*, Mariana Pargendler, *Controlling Shareholders in the Twenty-First Century: Complicating Corporate Governance Beyond Agency Costs*, 45 J. CORP. L. 953, 965 (2020) (discussing "the perception that a controlled firm's ability to act in an agile manner can be a significant competitive advantage").

15. *See* Sinclair Oil Corp. v. Levien, 280 A.2d 717, 720, 722–23 (Del. 1971); *see also* Gilson & Gordon, *supra* note 11, at 785 ("The presence of a controlling shareholder reduces the managerial agency problem, but at the cost of the private benefits agency problem.").

16. Choi, *supra* note 13, at 56.

17. Gilson & Gordon, *supra* note 11, at 785; *see generally* Zohar Goshen & Richard Squire, *Principal Costs: A New Theory for Corporate Law and Governance*, 117 COLUM. L. REV. 767 (2017) (describing the principal-cost theory). For an exploration of the wide spectrum of control benefits, see James An, Benefits of Corporate Control (Nov. 3, 2024) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4924100; *see also* Gilson, *supra* note 11, at 1666–67 (providing a taxonomy of different types of controlling shareholders and distinguishing between pecuniary and non-pecuniary benefits).

18. *See* Citron v. Fairchild Camera & Instrument Corp., 569 A.2d 53, 70 (Del. 1989) ("[A] shareholder who owns less than 50% of a corporation's outstanding stocks does not, without more, become a controlling shareholder of that corporation, with a concomitant fiduciary status." (quoting Gilbert v. El Paso Co., 490 A.2d 1050, 1055 (Del. Ch. 1984) (brackets in original)); Bershad v. Curtiss-Wright Corp., 535 A.2d 840, 845 (Del. 1987) (explaining that "[s]tockholders in Delaware corporations have a right to control and vote their shares in their own interest. They are limited only by any fiduciary duty owed to other stockholders. It is not objectionable that their motives may be for personal profit, or determined by whim or caprice, so long as they violate no duty owed other shareholders.").

19. *See* Abraham v. Emerson Radio Corp., 901 A.2d 751, 759 (Del. Ch. 2006) ("[T]he premise for contending that the controlling stockholder owes fiduciary duties in its capacity as a stockholder is that the controller exerts its will over the enterprise in the manner of the board itself.").

20. *See, e.g.*, Pepper v. Litton, 308 U.S. 295, 306 (1939) ("A director is a fiduciary. So is a dominant or controlling stockholder or group of stockholders." (internal citations omitted)); *see also* STEPHEN M. BAINBRIDGE, CORPORATE LAW § 7.6 (4th ed. 2020) (providing an overview of the fiduciary duties of controlling stockholders).

to act other than in her self-interest.[21] But she may nevertheless face liability if a court determines ex post that she was a controlling stockholder and owed fiduciary duties ex ante. Thus, although the definition of "control" may not be fixed across all areas of law,[22] it is essential that corporate actors can readily determine whether they will be deemed to have such status. This clarity is imperative for stockholders to make decisions and act consistently with any fiduciary duties, thereby avoiding harm to the corporation and other stockholders, and potential litigation in a court of equity with broad remedial power.

Predictability in determining controlling stockholder status is also important for a secondary reason. A transaction involving a conflicted controlling stockholder may impose a heightened standard of review.[23] The precise contours of what courts have deemed a conflicted controlling stockholder transaction shifted over time in the case law,[24] and recently were the subject of statutory codification.[25] But the consequence of that designation is potentially the most rigorous equitable standard of review: entire fairness.[26] To avoid entire fairness review in a controlling stockholder transaction, one of two process protections of Section 144(b) must be fulfilled.[27] Further, going private transactions with controlling stockholders require dual protections under Section 144(c) in order to avoid potential scrutiny under entire fairness review.[28] If there is doubt over whether a stockholder is a

21. *See* Weinstein Enters., Inc. v. Orloff, 870 A.2d 499, 507 (Del. 2005) ("[A] stockholder that owns less than half of a corporation's shares will generally not be deemed to be a controlling stockholder, with concomitant fiduciary responsibilities.").

22. *See id.* at 506–07 (observing that the definition of "control" generally "varies according to the context in which it is being considered, *e.g.*, fiduciary responsibility, tort liability, filing consolidated tax returns, sale of control"); *see also* Deborah A. DeMott, *The Mechanisms of Control*, 13 CONN. J. INT'L L. 233, 234 (1999) ("What 'control' means, and what consequences it carries, vary greatly from context to context.").

23. *See, e.g.*, Ronald J. Gilson & Alan Schwartz, *Corporate Control and Credible Commitment*, 43 INT'L REV. L. & ECON. 119, 120 (2015) ("In the United States, [fiduciary] law does not prohibit controlled transactions but puts the burden on controllers to show that the terms of a challenged transaction are 'entirely fair' to the minority.").

24. *Compare* Sinclair Oil Corp. v. Levien, 280 A.2d 717, 720 (Del. 1971) ("The basic situation for the application of the rule is the one in which the parent has received a benefit to the exclusion and at the expense of the subsidiary."), *with In re* Match Grp., Inc. Derivative Litig., 315 A.3d 446, 460 (Del. 2024) ("[A] controlling stockholder is a fiduciary and must be fair to the corporation and its minority stockholders when it stands on both sides of a transaction and receives a non-ratable benefit."). For an argument that, by the turn of the 21st century, Delaware courts had shifted away from *Sinclair Oil*'s attempt to effectively identify at the threshold stage which controlling-shareholder transactions warrant entire fairness review, see Mary Siegel, *The Erosion of the Law of Controlling Shareholders*, 24 DEL. J. CORP. L. 27 (1999).

25. DEL. CODE ANN. tit. 8, § 144 (2025).

26. Historically, the line of cases standing for this proposition has included: Weinberger v. UOP, Inc., 457 A.2d 701, 710 (Del. 1983); Kahn v. Lynch Commc'n Sys., Inc., 638 A.2d 1110, 1116 (Del. 1994); *In re* MFW S'holders Litig., 67 A.3d 496 (Del. Ch. 2013), *aff'd sub nom. In re* Kahn v. M&F Worldwide Corp., 88 A.3d 635, 642 (Del. 2014) ("*MFW*"). *Weinberger* explained: "The concept of fairness has two basic aspects: fair dealing and fair price." 457 A.2d at 711. Entire fairness is a unitary test in which "[a]ll aspects of the issue must be examined as a whole . . . ." *Id.*

27. DEL. CODE ANN. tit. 8, § 144(b) (2025).

28. *Id.* § 144(c). Before Section 144(c) set out a statutory safe harbor for going private transactions with a controlling stockholder, *MFW* provided a pathway for such transactions to receive business judgment review if the controlling stockholder voluntarily conditioned the transaction *ab initio* on dual protections of an "independent, adequately-empowered Special Committee that fulfills its duty of care" and the "uncoerced, informed vote of a majority of the minority stockholders." *See MFW*, 88 A.3d at 644.

controller, or process protections were fulfilled, the prism through which a Delaware court will review the transaction remains unknowable absent a judicial decree.

II. WHO WAS A COMMON LAW CONTROLLING STOCKHOLDER?

Delaware courts conventionally applied a straightforward analysis to determine whether a stockholder should be deemed controlling. As the Delaware Supreme Court explained in the late twentieth century, a "shareholder owes a fiduciary duty only if it owns a majority interest in or exercises control over the business affairs of the corporation."[29] In either case, voting power was the key measure.

Under this historical common law approach, the first type of control is uncomplicated. A stockholder holding more than 50% of a corporation's voting power can use its position to advantage itself at the expense of other stockholders.[30] It can vote out the board.[31] It can even force through a transaction to take the company private.[32] Stockholders with majority voting power are entrenched by definition—or at least can be said to have "hard" control in terms of discretionary power—which constrains the market for corporate control.

The second type of control that existed historically at common law has been less precise. It involved a stockholder that, despite holding less than a majority of the voting shares, enjoyed "functional" control through significant stock ownership plus other indicia of influence over corporate conduct.[33] In *In re Cysive, Inc. Shareholders Litigation*, for example, the Court of Chancery concluded that a 35% stockholder—who was the company's Chairman and CEO, its "creator," and "involved in all aspects of the company's business"—was a controlling stockholder.[34] The stockholder's corporate clout was not the determinative factor in *Cysive*, but bolstered the primary consideration: ownership of "a large enough block of stock to be the dominant force in any contested [company] election."[35]

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29. Ivanhoe Partners v. Newmont Mining Corp., 535 A.2d 1334, 1344 (Del. 1987) (citing Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946, 958 (Del. 1985); and Aronson v. Lewis, 473 A.2d 805, 815 (Del. 1984)).

30. Courts had expressed *de jure* control in terms of majority ownership but have recognized that the critical metric is more precisely stated in terms of majority voting power. *Compare* Robbins & Co. v. A. C. Israel Enters., Inc., No. 7919, 1985 WL 149627, at *5 (Del. Ch. Oct. 2, 1985) (considering whether a "31% block" of stock was a "minority interest as opposed to controlling interest" for purposes of assessing "working control"), *with In re* PNB Holding Co. S'holders Litig., No. 28-N, 2006 WL 2403999, at *9 (Del. Ch. Aug. 18, 2006) ("Under our law, a controlling stockholder exists when a stockholder . . . owns more than 50% of the voting power of a corporation." (citation omitted)).

31. *See, e.g.*, Iman Anabtawi & Lynn Stout, *Fiduciary Duties for Activist Shareholders*, 60 STAN. L. REV. 1255, 1269 (2008) ("[B]ecause shareholders generally elect and remove directors by a majority vote, a shareholder who owns more than 50% of the company's outstanding shares has become the archetypal 'controlling' shareholder." (citation omitted)).

32. *See* Leo E. Strine, Jr., *The Inescapably Empirical Foundation of the Common Law of Corporations*, 27 DEL. J. CORP. L. 499, 509–11 (2002) (discussing the possibility of a controlling stockholder forcing a going private transaction and the related historic concern about inherent coercion in that context). Some commentators have expressed concerns that without a market for corporate control, controlling stockholders might have coercive power stemming from retaliatory measures they might take. Ann M. Lipton, *The Three Faces of Control*, 77 BUS. LAW. 801, 812 (2022).

33. *E.g.*, Citron v. Fairchild Camera & Instrument Corp., 569 A.2d 53, 70 (Del. 1989); *Aronson*, 473 A.2d at 815; Kahn v. Lynch Commc'n Sys., Inc., 638 A.2d 1110, 1114–15 (Del. 1994); *In re* Cysive, Inc. S'holders Litig., 836 A.2d 531, 550–51 (Del. Ch. 2003).

34. *Cysive*, 836 A.2d at 552.

35. *Id.* at 551–52.

A substantial minority stake was, by itself, insufficient to trigger the label of controlling stockholder and its attendant fiduciary duties.[36] But stock ownership great enough to sway the vote was a necessary factor.[37] The point was that a stockholder's stake could be sizeable enough to influence the company's direction and deter a change of control transaction. The minority stockholder's combination of "formidable voting and managerial power" could render it practically "no differently situated than if [it] had majority voting control."[38] Despite holding a minority stake, this combination of powers allows the stockholder to exert "actual control" over corporate conduct.[39]

III. CONTROL OF WHAT?

For a time, Delaware courts recognized *Cysive* as its "most aggressive finding" of a minority controlling stockholder.[40] These cases often involved stockholders with close to majority voting power, and the court's analysis centered on whether the stockholder had general control of the company or its board of directors. For example, four early cases concerning potential de facto control—*Marriott*,[41] *Aronson*,[42] *Sea-Land*,[43] and *Steego*[44]—

36. *E.g.*, *In re* W. Nat'l Corp. S'holders Litig., No. 15927, 2000 WL 710192, at *29 (Del. Ch. May 22, 2000) (holding that a 46% stockholder was not a controlling stockholder where it elected a minority of the board and lacked influence over corporate affairs); Kaplan v. Centex Corp., 284 A.2d 119, 122–23 (Del. Ch. 1971) ("Stock ownership alone, at least when it amounts to less than a majority, is not sufficient proof of domination or control."); *see also* Reith v. Lichtenstein, No. 2018-0277, 2019 WL 2714065, at *8 (Del. Ch. June 28, 2019) (observing that a "35.62% stake in the Company is not enough [to establish control] on its own, but it is 'a large enough block of stock to be the dominant force in any contested election'" (quoting *Cysive*, 836 A.2d at 551–52)); *In re* PNB Holding Co. S'holders Litig., No. 28-N, 2006 WL 2403999, at *10 (Del. Ch. Aug. 18, 2006) (describing a 33.5% ownership group as "an overall level of ownership that is relatively low" and would require "additional facts supplementing [its] clout"); Zlotnick v. Newell Cos., No. 7246, 1984 WL 8242, at *2 (Del. Ch. July 30, 1984) (stating that 33% stock ownership "means little" for analyzing control).

37. *See* Corwin v. KKR Fin. Holdings LLC, 125 A.3d 304, 307 (Del. 2015) ("[T]he Court of Chancery, consistent with the instructions of this Court, looked for a combination of potent voting power and management control such that the stockholder could be deemed to have effective control of the board without actually owning a majority of stock." (citation omitted)).

38. *PNB Holding*, 2006 WL 2403999, at *9.

39. Citron v. Fairchild Camera & Instrument Corp., 569 A.2d 53, 70 (Del. 1989) ("For a dominating relationship to exist in the absence of controlling stock ownership, a plaintiff must allege domination by a minority shareholder through actual control of corporate conduct."); *Kaplan*, 284 A.2d at 123 ("'Control' and 'domination' . . . may be exercised directly or through nominees. But, at minimum, the words imply (in actual exercise) a direction of corporate conduct in such a way as to comport with the wishes or interests of the corporation (or persons) doing the controlling."); *In re* Sea-Land Corp. S'holders Litig., No. 8453, 1987 WL 11283, at *4 (Del. Ch. May 22, 1987) ("A stockholder is not deemed controlling unless it owns a majority of the stock . . . or has exercised actual domination and control in directing the corporation's business affairs." (citation omitted)); Weinstein Enters., Inc. v. Orloff, 870 A.2d 499, 507 (Del. 2005) ("For a stockholder that owns less than a numerical majority of a corporation's voting shares to be deemed a controlling stockholder for purposes of imposing fiduciary obligations, the plaintiff must establish the *actual exercise* of control over the corporation's conduct by that otherwise minority stockholder.").

40. *In re* Morton's Rest. Grp., Inc. S'holders Litig., 74 A.3d 656, 665 (Del. Ch. 2013); *see Corwin*, 125 A.3d at 307, n.8.

41. Puma v. Marriott, 283 A.2d 693 (Del. Ch. 1971).

42. Aronson v. Lewis, 473 A.2d 805 (Del. 1984).

43. *In re* Sea-Land Corp. S'holders Litig., No. 8453, 1988 WL 49126 (Del. Ch. May 13, 1988).

44. Citron v. Steego Corp., No. 10171, 1988 WL 94738 (Del. Ch. Sept. 9, 1988).

involved stockholders with more than 39% voting equity, none of which were found to be controllers.

More recent precedent, however, ascribed control to increasingly smaller percentages, placing less importance on the stockholder's ownership relative to influence over the board or management.[45] This shift created uncertainty over whether and when minority stockholders lacking formidable voting power would be deemed controlling stockholders.[46]

The limits of the controlling stockholder doctrine were further blurred by the injection of transaction-specific control into Delaware common law. This development went largely unnoticed at the time, but its effect became increasingly salient.

Historically, Delaware courts considered control over the challenged transaction as an indicium that a minority stockholder controlled corporate affairs generally.[47] The purpose was not to assign fiduciary duties only for a single transaction. It was to assess whether a minority stockholder could—through its voting power plus influence over the company and board—exercise control over corporate conduct. The outcome of that analysis determined whether the court would apply the entire fairness standard to review the stockholder's conduct.

In cases finding situational control, however, fiduciary duties have been ascribed ex post where a minority stockholder dominated a particular transaction or decision. These determinations have been made without first concluding that the stockholder had the ongoing ability to direct the company's strategic direction or daily operations. Instead,

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45. *See, e.g.*, *In re* Tesla Motors, Inc. S'holder Litig., No. 12711, 2018 WL 1560293, at *13–16 (Del. Ch. Mar. 28, 2018) (finding a reasonably conceivable inference of control where a 22% stockholder held substantial influence over the company and board); *but see In re* Tesla Motors, Inc. S'holder Litig., No. 12711, 2022 WL 1237185, at *29–30 n.374 (Del. Ch. Apr. 27, 2022) (observing that Delaware law on controlling stockholders was "in flux" and, because entire fairness applied regardless of whether a minority stockholder was deemed controlling, there was no reason to determine the matter), *aff'd*, 298 A.3d 667 (Del. 2023).

46. Scholars have observed this doctrinal shift and offered a variety of proposed solutions. *See* Lipton, *supra* note 32, at 804–05 (arguing that the doctrinal "malleability of the controlling shareholder label" has given rise to "a confusing body of caselaw that leaves the definition of control shifting and uncertain" and the "solution…is for courts to apply a more contextual approach" that does not impose "the full suite of legal consequences" when control is exercised from a minority position); Stephen M. Bainbridge, *A Course Correction for Controlling Shareholder Transactions*, 49 DEL. J. CORP. L. 525, 544, 551 (2025) (arguing that the "broadening definition of controller . . . exposes shareholders with small holdings to fiduciary liability without clear rules about when and how they are considered controllers" and proposing that the definition be based on "actual domination and control" and require "truly substantial stock ownership" and "not be so all encompassing as to capture those who wield power mainly by virtues of their position as an officer or director"); Jill E. Fisch & Steven Davidoff Solomon, *Control and Its Discontents* 173 U. PA. L. REV. 641, 650 (terming as "new control" the "extension of concepts of control beyond share ownership or mathematical voting power"); Jonathan R. Macey, *Delaware Law Mid-Century: Far From Perfect but Probably Not Leaving for Las Vegas*, 26 (Jan. 30, 2025) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5043887 (arguing that "the fight is less about the substance of the narrow legal doctrines in dispute then they are about concerns over judicial hostility toward the legitimacy of private ordering in general and the role of controlling shareholders in particular").

47. *See, e.g.*, O'Reilly v. Transworld Healthcare, Inc., 745 A.2d 902, 913 (Del. Ch. 1999) ("In this instance, O'Reilly alleges facts which support the inference that Transworld controlled HMI's conduct with respect to the Merger and which provide Transworld with sufficient notice of the basis for her contention that Transworld was a controlling stockholder with concomitant fiduciary status."); *In re* Sea-Land Corp. S'holders Litig., No. 8453, 1987 WL 11283, at *5 (Del. Ch. May 22, 1987) (considering, among other things, the absence of allegations that the purported controller "actually took any steps to exert leverage to pressure [the company] to accede to a transaction").

conduct during a specific event has been used as the impetus for ascribing fiduciary duties to a stockholder—irrespective of the stockholder's influence over corporate affairs generally.

Kahn v. Lynch Communication Systems, Inc. has been described as the first case to accept this formulation of control.[48] There, plaintiff Kahn alleged that Alcatel was a controlling stockholder of Lynch and breached its fiduciary duties to Lynch and its other stockholders by acquiring Lynch at an unfair price and dictating the terms of the cash-out merger.[49] Alcatel held a 43.3% stake and could (by contract) only elect a minority of the board.[50] Testimony at trial before the Court of Chancery showed that "Alcatel did exercise control over Lynch's business decisions" as a general matter.[51] Then-Vice Chancellor Berger examined evidence of Alcatel's domination over various business decisions unrelated to the challenged merger.[52] She observed that "when Alcatel made its position clear, and reminded the other directors of its significant stockholdings, Alcatel prevailed."[53]

On appeal, the Delaware Supreme Court reviewed the trial court's findings.[54] It began with a statement of the threshold test for determining controlling shareholder status, noting that "a shareholder owes a fiduciary duty only if it owns a majority interest in or *exercises control* over the business affairs of the corporation."[55] The court also wrote that, with regard to the exercise of control in the absence of controlling stock ownership, "a plaintiff must allege domination by a minority shareholder through actual control of corporation conduct."[56]

Applying this standard to the circumstances before it, the court noted that "[t]he record support[ed] the Court of Chancery's underlying factual finding that 'the non-Alcatel [independent] directors deferred to Alcatel because of its position as a significant stockholder and not because they decided in the exercise of their own business judgment that Alcatel's position was correct.'"[57] In so reasoning, the court considered Alcatel's command over different board-level decisions.[58] But, critically, the court did not recognize that Alcatel was a controlling stockholder solely for purposes of the cash-out merger. It emphasized instead that Alcatel's voting power plus influence over corporate affairs made it a controlling stockholder generally:

> The record also supports the subsequent factual finding that, notwithstanding its 43.3 percent minority shareholder interest, ***Alcatel did exercise actual control over Lynch by dominating its corporate affairs***. The Court of Chancery's legal conclusion that Alcatel owed the fiduciary duties of a controlling shareholder to

48. Kahn v. Lynch Commc'n Sys., 638 A.2d 1110 (Del. 1994).

49. *Id.* at 1111.

50. *Id.* at 1112.

51. Kahn v. Lynch Commc'n Sys., Inc., No. 8748, 1993 WL 290193, at *3 (Del. Ch. July 9, 1993), *rev'd*, 638 A.2d 1110 (Del. 1994).

52. *Lynch*, 1993 WL 290193, at *1–2.

53. *Id.* at *3.

54. *See generally Lynch*, 638 A.2d 1110.

55. *Id*. at 1113–14 (Del. 1994) (quoting Ivanhoe Partners v. Newmont Mining Corp., 535 A.2d 1334, 1344 (Del. 1987)).

56. *Id.* at 1114 (quoting Citron v. Fairchild Camera & Instrument Corp., 569 A.2d 53, 70 (Del. 1989)).

57. *Id.* at 1115 (quoting *Lynch*, 1993 WL 290193, at *3).

58. *Id.* at 1114–15 (discussing how Alcatel's views prevailed on matters including the renewal of compensation contracts for Lynch's managers and veto of Lynch's acquisition of a target company).

> the other Lynch shareholders followed syllogistically as the logical result of its cogent analysis of the record.[59]

Further, later in its analysis applying the entire fairness standard of review, the court evaluated "whether Alcatel's demonstrated *pattern of domination* was effectively neutralized" by Lynch's independent committee.[60] In doing so, it dispelled any notion that the determination of controlling stockholder status was based on a transaction-specific exercise of control.

IV. ENTER TRANSACTION-SPECIFIC CONTROL

Lynch did not recognize the concept of a minority controlling stockholder solely for purposes of a single transaction. Yet, it has been cited as the precedential foundation for transaction-specific control.

In re Western National Corp. Shareholders Litigation[61] is the earliest instance of this phenomenon. There, the court considered on a summary judgment record whether a 46% stockholder was a controlling stockholder owing fiduciary duties.[62] It held that there was no genuine issue of material fact suggesting that the stockholder exercised domination or control over corporate affairs and applied the business judgment rule as a result.[63]

Consistent with longstanding precedent, the court confirmed that a large stockholder's conduct during a transaction is "not particularly probative of whether the large shareholder exercises actual control over the business and affairs of the corporation."[64] The court emphasized that "the standard for determining whether a large, though non-majority shareholder, exercises control over the corporation requires a judicial finding of actual control over the *business and affairs* of the corporation."[65] But in considering whether a special committee formed to negotiate with the stockholder was independent and well-functioning, it credited the plaintiffs' argument that control could exist as a transaction-specific matter:

> [P]laintiffs properly observe that a significant stockholder that does not, as a general matter, exercise actual control over the investee's business and affairs or over the investee's board of directors but does, in fact, exercise actual control over the board of directors during the course of a particular transaction, can assume fiduciary duties for purposes of that transaction.[66]

The court cited *Lynch* for this contention, without elaboration.[67]

After *Western National*, the idea of transaction-specific control became further embedded in three 2006 Court of Chancery opinions. Each case discussed the concept of transaction-specific control at the pleadings stage—and each relied on one another, *Lynch*, and/or *Western National* as support for this theory.

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59. *Lynch*, 638 A.2d at 1115 (emphasis added).
60. *Id.* at 1118 (emphasis added).
61. *In re* W. Nat'l Corp. S'holder Litig., No. 15927, 2000 WL 710192 (Del. Ch. May 22, 2000).
62. *Id.* at *1.
63. *Id.* at *29.
64. *Id.* at *8.
65. *Id.*
66. *W. Nat'l Corp.*, 2000 WL 710192, at *20.
67. *Id.* at *20 n.62 (citing Kahn v. Lynch Commc'n Sys., Inc., 638 A.2d 1110, 1114–15 (Del. 1994)).

The trio began with *Williamson v. Cox Communications, Inc.*—a motion to dismiss decision from June 2006.[68] The Court of Chancery first set out the threshold test for determining controlling stockholder status in line with longstanding precedent: "[t]o survive defendants' motions to dismiss, plaintiff must allege domination and control . . . through *actual* control of corporate conduct."[69] But it went on to add that it is not necessary to plead actual control "over the day-to-day operations."[70] It noted that the plaintiff could "survive the motion to dismiss by alleging actual control with regard to the particular transaction that is being challenged."[71] The court cited *Western National*, relying on *Lynch*.[72]

Two months later, in August 2006, the Court of Chancery granted a motion to dismiss in *Superior Vision Services, Inc. v. ReliaStar Life Insurance Co.*[73] Citing the recent *Williamson* decision, it noted that "pervasive control over the corporation's actions is not required; indeed, a plaintiff 'can survive the motion to dismiss by alleging actual control with regard to the particular transaction that is being challenged."[74] It invoked *Lynch* as an example of finding a minority stockholder to be a controller "because of its influence over the . . . board."[75] And it described *Western National* as having "inquired as to whether the significant stockholder 'in fact, exercise[d] actual control over the board of directors during the course of a particular transaction."[76] Ultimately, the court held that there were insufficient allegations to infer that the minority stockholder, which possessed a contractual right to withhold consent and veto dividend payments, was a controlling stockholder.[77] Even so, the case became cited for its incantation of the possibility of finding transaction-specific control.[78]

Finally, in November 2006, the Court of Chancery denied a motion to dismiss in *In re Primedia Inc. Derivative Litigation.*[79] The court considered allegations that six limited partners of Kohlberg Kravis Roberts & Co. L.P. (KKR) collectively owning 40.34% of Primedia common stock were sufficient to deem KKR a controlling stockholder.[80] The court cited *Lynch* for the rule that a minority stockholder may be a controller with fiduciary

68. Williamson v. Cox Commc'n, Inc., No. 1663, 2006 WL 1586375 (Del. Ch. June 5, 2006).

69. *Id.* at *4 (citing O'Reilly v. Transworld Healthcare, Inc., 745 A.2d 902, 912 (Del. Ch. 1999)).

70. *Id.*

71. *Id.* (citing *W. Nat'l*, 2000 WL 710192, at *20).

72. *Id.* at 4 n.46.

73. Superior Vision Servs., Inc. v. ReliaStar Life Ins. Co., No. 1668, 2006 WL 2521426 (Del. Ch. Aug. 25, 2006).

74. *Id.* at *4 (citing Williamson v. Cox Commc'n, Inc., No. 1663, 2006 WL 1586375, at *4 (Del. Ch. June 5, 2006)).

75. *Id.* (Kahn v. Lynch Commc'n Sys., Inc., 638 A.2d 1110, 1114 (Del. 1994)).

76. *Id.* (citing *W. Nat'l*, 2000 WL 710192, at *20). In a footnote, the court explored *Western National*'s discussion that the court must find "actual control over the business and affairs of the corporation." *Id.* at *4 n.38 (emphasis omitted). It observed this language "may be pertinent for two reasons": it "suggests something broader than one corporate act, such as the payment of a dividend" and it "suggests that questions of control by a significant shareholder should be assessed at the board level in terms of whether the board's capacity to exercise its judgment independently has been impaired." *Id.*

77. *Id.* at *5.

78. *See, e.g.*, Voigt v. Metcalf, No. 2018-0828, 2020 WL 614999, at *12 (Del. Ch. Feb. 10, 2020); Basho Techs. Holdco B, LLC v. Georgetown Basho Investors, LLC, No. 11802, 2018 WL 3326693, at *26, nn. 310–11 (Del. Ch. July 6, 2018), *aff'd sub nom.* Davenport v. Basho Techs. Holdco B, LLC, 221 A.3d 1000 (Del. 2019); *In re* Tesla Motors, Inc. S'holder Litig., No. 12711, 2018 WL 1560293, at *13 (Del. Ch. Mar. 28, 2018).

79. *In re* Primedia Inc. Derivative Litig., 910 A.2d 248, 250 (Del. Ch. 2006).

80. *Id.* at 250–51.

duties if it "exercises control over the business and affairs of the corporation."[81] It cited *Williamson* for the notion that allegations of domination by KKR through "actual control of Primedia's corporate conduct" were required for the plaintiffs to survive dismissal.[82] The court also noted, however, that "[a]llegations of control over the particular transaction at issue are enough[,]"[83] citing *Williamson* and noting that it, in turn, cited *Western National*.[84]

These Court of Chancery aught-era decisions have become embedded in Delaware law as supporting transaction-specific control.[85] Courts have since examined an array of circumstances potentially giving rise to transaction-specific control.[86] And courts have broadly explained that where the plaintiff seeks to establish transaction-specific control, they may plead "that the minority blockholder actually dominated and controlled the corporation, its board, or the deciding committee with respect to the challenged transaction . . . ."[87] As one summary observed, relevant facts could include that "the defendant

81. *Id.* at 257 (citing Kahn v. Lynch Commc'n Sys., Inc., 638 A.2d 1110, 1113–14 (Del. 1994)).

82. *Id.* (citing Williamson v. Cox Commc'n, Inc., C.A. No. 1663, 2006 WL 1586375, at *4 (Del. Ch. June 5, 2006)).

83 *Id.*

84. *Primedia*, 910 A.2d at 257–58 n. 25, n. 28 (citing W. Nat'l Corp. S'holder Litig.,. 15927, 2000 WL 710192, at *20 (Del. Ch. May 22, 2000) and also *Williamson*, 2006 WL 1586375, at *4).

85. *E.g.*, *In re* Crimson Expl., Inc. S'holder Litig., No. 8541, 2014 WL 5449419, at *10–12 (Del. Ch. Oct. 24, 2014) (discussing *Western National* and *Superior Vision*, among others, and observing that "a large blockholder will not be considered a controlling stockholder unless they actually control the board's decisions about the challenged transaction"); Carsanaro v. Bloodhound Techs., Inc., 65 A.3d 618, 659 (Del. Ch. 2013) ("The requisite degree of control can be shown to exist generally or 'with regard to the particular transaction that is being challenged.'" (quoting *Williamson*, 2006 WL 1586375, at *4)); *In re* WeWork Litig., No. 2020-0258, 2020 WL 7343021, at *12 (Del. Ch. Dec. 14, 2020) (same); Voigt v. Metcalf, No. 2018-0828, 2020 WL 614999, at *11 (Del. Ch. Feb. 10, 2020) ("A plaintiff can plead that a defendant had the ability to exercise actual control by alleging facts that support a reasonable inference of either (i) control over the corporation's business and affairs in general or (ii) control over the corporation specifically for purposes of the challenged transaction." (first citing Basho Techs. Holdco B, LLC v. Georgetown Basho Investors, LLC, No. 11802, 2018 WL 3326693, at *25 (Del. Ch. July 6, 2018); then citing *Primedia*, 910 A.2d at 257; and then citing *Williamson*, 2006 WL 1586375, at *4)); *see also* Am. L. Inst., Principles of Corporate Governance: Analysis and Recommendations § 1.10(a) (1994) (describing a controlling stockholder as one with majority voting power or who "[o]therwise exercises a controlling influence over the management or policies of the corporation or the transaction or conduct in question"); STEPHEN A. RADIN, THE BUSINESS JUDGMENT RULE: FIDUCIARY DUTIES OF CORPORATE DIRECTORS 1129 (6th ed.) (observing that a stockholder who "'does not, as a general matter, exercise actual control' over a corporation's business and affairs or [its] board of directors, 'but does, in fact, exercise actual control over the board of directors during the course of a particular transaction, can assume fiduciary duties for purposes of that transaction'" (citing *W. Nat'l*, 2000 WL 710192, at *20)).

86. *In re* Tesla Motors, Inc. S'holder Litig., No. 12711, 2018 WL 1560293, at *13–16 (Del. Ch. Mar. 28, 2018) (addressing allegations of insistence that the purported controller pressured the board to pursue an acquisition); *see, e.g.*, *Basho*, 2018 WL 3326693, at *29–31 (considering whether a stockholder exercised transaction-specific control where it leveraged contractual blocking rights to prevent access to financing); Skye Min. Invs., LLC v. DXS Cap. (U.S.) Ltd., No. 2018-0059, 2020 WL 881544, at *26–27 (Del. Ch. Feb. 24, 2020) (considering whether an alleged controller forced bankruptcy); *Crimson Expl.*, 2014 WL 5449419, at *16 (considering whether a significant stockholder "actually controlled the board's decision" to undertake a stock-for-stock merger); *see also In re* Oracle Corp. Derivative Litig., No. 2017-0337, 2023 WL 3408772, at *21–22 (Del. Ch. May 12, 2023) (concluding that the alleged controller did not wield his "potential control in regard to" the challenged acquisition), *aff'd*, No. 139,2024, 2025 WL 249066, at *1 (Del. Jan. 21, 2025).

87. *Tesla Motors*, 2018 WL 1560293, at *13.

engaged in pressure tactics that went beyond ordinary advocacy to encompass aggressive, threatening, disruptive, or punitive behavior."[88]

Kahn v. Lynch continues to notionally serve as the lynchpin for this doctrinal development.[89] Still, no opinion has established that *Lynch* supports the expansion of the controlling stockholder doctrine to transaction-specific control or explored the merits of whether such a notion rests on solid ground.

V. OFFSHOOTS AND IMPLICATIONS

Although transaction-specific control has been increasingly recognized by Delaware courts in recent years under common law, we maintain that the logic and potential shortfalls of this expansion warrant careful consideration.

From a doctrinal standpoint, transaction-specific control risks frailty and instability. One's "control" over a process in the colloquial sense has been treated as equivalent to having controlling stockholder status as a matter of law. This conflation turns on its head Delaware's traditional approach to setting the equitable standard of review. Rather than treating the standard of review as a lens through which conduct is scrutinized, the very conduct at issue becomes determinative of the standard.

Foundational principles of Delaware law provide no support for the application of fiduciary duties to minority stockholders (who are not otherwise officers or directors) for purposes of a single transaction. Minority stockholders that cannot exercise effective control over the company through substantial voting power are free to pursue their self-interests. It is only when a stockholder has a significant voting stake plus corporate influence that renders the votes of others "mere formalities" that Delaware case law has traditionally obligated the stockholder to consider interests beyond its own.[90] This makes sense, given that the most momentous corporate decisions—mergers, dissolutions, and director elections, to name a few—require stockholder approval.

These doctrinal flaws worsen as the importance of voting power in the control analysis is diminished. A stockholder with a relatively small stake who takes an outsize role in a transaction could prompt entire fairness review, despite lacking any meaningful effect on the stockholder vote or corporate strategy more broadly. The result is an unnecessary overapplication of entire fairness review, which erodes business judgment rule abstention.

The common law notion of transaction-specific control has also caused practical problems. Because the analysis of transaction-specific control is necessarily backward-looking, minority stockholders with relatively small stakes have been left to guess whether a Delaware court might later ascribe fiduciary duties to them. Relatedly, transaction planners have lacked visibility into whether a minority stockholder might be viewed as a controlling one, making it equally unclear when rigorous cleansing mechanisms were required.

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88. *Voigt*, 2020 WL 614999, at *13.

89. *See Oracle*, 2025 WL 249066, at *12 ("[A] minority stockholder can be a controlling stockholder by exercising actual control over the corporation's business and affairs or by exercising control over a specific transaction." (citing Kahn v. Lynch Commc'n Sys., Inc., 638 A.2d 1110, 1113–14 (Del. 1994)).

90. Paramount Commc'ns Inc. v. QVC Network Inc., 637 A.2d 34, 42 (Del. 1994).

These complex dynamics naturally emerge from time to time in a system of common law development that charges courts with doing equity.[91] Delaware's courts and legislature are particularly well suited to correct and recalibrate the law as it progresses and results in unintended consequences. Numerous doctrinal and statutory adjustments have reshaped important areas of corporate law over the years, from clarifying the nature and scope of derivative claims to allowing corporations to adopt provisions limiting or eliminating the liability of directors and officers for breaches of the duty of care.[92] The definition of controlling stockholder is no exception as a prime area for such clarification and reshaping.[93]

The recent amendments to Section 144 delineate three ways to be deemed a controlling stockholder. None include the concept of transaction-specific control. For example, to obtain controlling stockholder status under subsection (c), a minority stockholder must control at least one-third of the corporation's voting power and "exercise managerial authority over the business and affairs of the corporation."[94]

The statute thus excises the transaction-specific control offshoot to Delaware's controlling stockholder jurisprudence traced in this Article. In doing so, it restores an approach to control that is rooted in significant stock ownership plus general corporate influence that gives a minority stockholder the functionally-equivalent clout of a majority stockholder. Lessons gleaned from the history of transaction-specific control underscore the importance of the guidance that this statutory definition provides. Directors and officers have fiduciary obligations by virtue of those roles, which are self-evident. Minority stockholders are not similarly situated. They take on fiduciary obligations only in limited circumstances. It is

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91. *See* Lawrence A. Hamermesh, Jack B. Jacobs & Leo E. Strine, Jr., *Optimizing the World's Leading Corporate Law: A Twenty-Year Retrospective and Look Ahead*, 77 BUS. LAW. 321, 322 (2022) (recognizing that "when courts charged with doing equity, often under considerable time pressure, confront novel situations involving corporate action arguably tainted by a conflict of interest to the detriment of the corporation and its stockholders, they may be tempted to develop litigation-intensive standards of review specifically tailored to each emerging situation").

92. *See, e.g.*, Brookfield Asset Mgmt., Inc. v. Rosson, 261 A.3d 1251, 1265–76, 1278–80 (Del. 2021) (overruling longstanding precedent to eliminate the confusing concept of "dual-natured" claims); *In re* Trulia, Inc. S'holder Litig., 129 A.3d 884, 887 (Del. Ch. 2016) (declaring that disclosure-based settlement would be rejected absent material disclosures and a circumscribed release); Corwin v. KKR Fin. Holdings LLC, 125 A.3d 304, 305–06 (Del. 2015) (confirming the application of business judgment review in an arms'-length merger where a fully informed, uncoerced stockholder vote was secured); *see also* DEL. CODE ANN. tit. 6, § 102(b)(7) (2022) (codifying the concept of director exculpation in 1986 after *Smith v. Van Gorkom*, 488 A.2d 858 (Del. 1985), and expanding to allow for officer exculpation by 2022 amendment).

93. Scholars have made proposals to rein in the over-application of entire fairness review in cases involving alleged controllers. *See, e.g.*, Hamermesh, Jacobs & Strine, *supra* note 91, at 325 (proposing "limiting the concept of 'controlling stockholder' to the situation where a stockholder's voting power gives it at least negative power over the company's future, in the sense of acting as a practical impediment to any change of control" and "limiting the reach of *MFW* to transactions in which a controlling stockholder seeks to acquire the minority's shares, or a statute requires the approval of both the board and the stockholders"); Lipton, *supra* note 32, at 817 (arguing that it "make[s] little sense to require *MFW* cleansing procedures" on "transactional controllers [who] may only have a transitory influence over the board" and "instead, if their lack of entrenchment renders the prospect of retaliation unlikely, shareholder approval may suffice"); Zohar Goshen, Assaf Hamdani & Dorothy S. Lund, *Fixing* MFW: *Fairness and Vision in Controller Self-Dealing* 45–48 (Eur. Corp. Governance Inst. Working Paper, Paper No. 818/2025, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5061341 (arguing that "courts cannot reliably engage in valuation when the transaction involves an entrepreneur's idiosyncratic vision for the company" and proposing a "modified entire fairness framework" that would "give independent weight to each cleansing mechanism" and disentangle the special committee disclosure from the majority of minority vote).

94. DEL. CODE ANN. tit 8, § 144(e)(2)(c) (2025).

particularly important that the likely application of these fiduciary obligations can be readily understood at the outset for planning conduct and processes and not created for purposes of a single transaction. Although it will take time for the full ramifications of this statutory development to unfold and be understood,[95] the crucial determination of control can likely be made in real time with greater precision, rather than after the fact in a Delaware courtroom. With greater up-front clarity, corporations can employ appropriate protective procedures.

Conflicted transactions are not without powerful checks. If a corporation fails to operate with fidelity within the applicable statutory safe harbor, the court will scrutinize a transaction under the entire fairness review standard. But the harsh doctrinal consequences for a conflicted transaction involving a controlling stockholder are appropriately limited to situations that merit them.

CONCLUSION

The common law on de facto control shifted in recent years, with courts ascribing control to stockholders with increasingly smaller percentages and placing more focus on other indicia of influence. Yet another important development went unquestioned. With the creation of transaction-specific control as an alternative pathway to pleading controlling stockholder status, courts charged minority stockholders with fiduciary duties based on their conduct in a particular transaction, even where they lacked broader corporate influence.

As this Article demonstrates, this doctrinal extension began with a series of brief statements in Delaware Court of Chancery decisions from the early 2000s, without discussion of its novelty or merits. Instead, these decisions cited the renowned *Kahn v. Lynch* opinion. But *Lynch* did not hold that control could be established only for a specific transaction rather than over the business affairs of the corporation. These Court of Chancery cases, in turn, became cited in yet others, creating a chain of case law without a foundation.

Understanding this doctrinal history illuminates the need for tightening threshold determinations of control and the attendant imposition of fiduciary duties. The lack of such clarity complicated the ability of stockholders to predict when fiduciary duties may arise and undermined proper transaction planning. Minority stockholders without substantial voting power or corporate influence faced a post-hoc application of the most rigorous standard of review. The recent amendments to Section 144 remedy the problems of transaction-specific control by returning to a more traditional framework—one focused on significant stock ownership and broad managerial authority. The statutory definition of controlling stockholder restores core tenets of Delaware law and reduces the unwarranted legal consequences discussed in this Article.

95. While this article was being finalized, several constitutional challenges to the statutory amendments were filed in the Court of Chancery. One set of challenges was certified to the Delaware Supreme Court, which the court accepted. Rutledge v. Clearway Energy Grp. LLC, et al., No. 2025-0499 (ORDER) (Del. June 11, 2025). The certified questions of law remain pending.