Back to Basics: Delaware's Genius of Simplicity

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Good afternoon, everyone. I am so glad to be here, with a group of people who care about corporate law as much as I do. And I am honored to be able to share some of my thoughts with you today.

After hearing the fascinating discussions from this morning, I am afraid that what I have to offer you is going to be quite basic. But that is going to be my point.

In our field, there is often a temptation—a sort of intellectual gravity—that pulls us toward complexity. We see it in scholarship, in advocacy, and even in judicial opinions—my own included. There is a perception that developing dense doctrine reflects nuance, and that complexity equals rigor.

I want to push back against that idea today and make the case for simplicity, which I believe is the genius of Delaware law. It is a simplicity built on a predictable foundation and fortified by the disciplined application of equity. This foundation of our law is one on which enterprise and innovation have been built for decades. And when our jurisprudence has strayed from simplicity at times, it has been at our collective peril.

When these inevitable shifts in the law happen, Delaware always finds a way to recenter. We find ourselves in one of those moments now, when some of the expectations that we've placed on corporate law have proven too great. To move forward with integrity, we must rediscover and rededicate ourselves to the principles that have always been the source of our strength: stability, predictability, and equity.

I would like to take us on a journey through what those concepts mean at their cores, with the hope that it will serve as a reminder about why they are vital for corporate law to function in the first place.

I would like to start by reflecting on the foundation of our law, which we all know but often lose sight of when we are grappling with complex fact patterns and claims. It begins with a concept as old as equity itself: the fiduciary relationship. This is not just a legal term of art. It is also a description of a simple act.

When stockholders invest their capital in a corporation, they are engaging in a profound act of trust. They are committing their property to the stewardship of others—the directors and officers of that company. This trust creates a solemn responsibility for those fiduciaries.

In exchange for that trust, fiduciaries make a simple, yet powerful, promise. That promise is twofold: to be loyal, and to be careful.

The duty of loyalty is a cornerstone of our corporate law. It is not just about avoiding blatant self-dealing or putting a hand in the corporate till. It is a state of mind. It demands an undivided allegiance to the corporation and its stockholders, who the fiduciary puts first. It addresses not only overt conflicts but also what our law calls the "omnipresent specter"

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* Vice Chancellor, Delaware Court of Chancery. These remarks were delivered as a keynote address at the *Journal of Corporation Law*'s 51st annual symposium on September 19, 2025. They have been lightly edited for clarity.

that a board might be acting in its own interests.[1] Quite simply, it asks whether the fiduciary was faithful to the trust placed in her.

Then there is the duty of care. That duty is not about results; it is about process. It is the promise to be a diligent and engaged steward.

We do not ask directors to be business visionaries or to guarantee success. We want directors to engage with the issues, ask hard questions, and bring a critical eye to the job. We are not patrolling minor missteps or honest mistakes, but serious and absolute failures in the decision-making process.

Be faithful. Be informed. Together, these two duties point toward a purpose that is just as clear: to generate long-term, sustainable value for the corporation's owners—the stockholders—who invested in exchange for those promises.

I think you're with me so far . . . but this is the point in the conversation where viewpoints start to diverge. I often hear: "What about the other stakeholders? What about employees, customers, the community, the environment?" These are important questions, and they deserve a serious answer.

Delaware's answer is not to muddy the waters of the fiduciary duties I just described. Our law's focus on stockholders is not a callous rejection of these other interests. They can be a means, but not an end.[2] That approach recognizes a structural truth: for accountability to be real and enforceable, it must be focused.

A board that can justify any decision by invoking competing stakeholder interests becomes accountable to no one. If a board could justify an action that knowingly harmed stockholder value by citing benefits to the environment, or say that a decision problematic for employees was made to benefit customers, there would be no way to meaningfully regulate fiduciary misconduct.

In Delaware, we do not ask the corporation to be a quasi-legislature. We want it to be a business. And we are not imposing our views on environmental laws, labor laws, or consumer protection laws through the guise of corporate law. For my purposes, those laws set the boundaries within which the corporation must operate, and corporate fiduciaries are charged with creating value for stockholders *within* the law. To ask them to do more, and be all things to all constituents, is to dilute the very accountability that gives the corporate form its power and legitimacy in the first place.

This clarity of purpose is a feature, not a bug. It is what makes our law predictable, what makes corporate performance measurable, and what ultimately makes the fiduciary promise enforceable in our courts.

This brings me to the lynchpin that holds our corporate governance system together: the business judgment rule. If the fiduciary promise is the foundation, the business judgment rule is the load-bearing wall that allows the structure to stand. And like the foundation, its strength lies in its simplicity.

Everyone in this room knows what the business judgment rule is. But its point is often misunderstood. It is not a license for directors to be sloppy or self-interested. It is the opposite: a doctrine that makes the fiduciary promise possible in the real world.

Why? Because business is, by its very nature, about taking risks. Every significant business decision—to enter a new market, to acquire a competitor, to invest in a new

1. Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946, 954 (Del. 1985).

2. *See* Revlon Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173, 182 (Del. 1986); eBay Domestic Holdings, Inc. v. Newmark, 16 A.3d 1, 34 (Del. Ch. 2010).

technology—is a bet on an uncertain future. Some of these bets will pay off. Many will not.

Now, imagine a world without a potent business judgment rule. Each time a board made a bold decision that turned out to be wrong, it would face a lawsuit. A plaintiff, armed with the knowledge of how things played out, would stand before the court and argue that the decision caused compensable harm. And judges, who are merely legal experts, would be pressured to second-guess that decision.

The result would be corporate paralysis. Rational directors, facing the prospect of liability for any bet that goes awry, would be incentivized to avoid risk. They would manage not for growth and innovation, but choose the safe, even stagnant, approach to avoid litigation. In doing so, they would be impeded from reaching the business's true potential, limiting the optimal long-term value for stockholders we want them to prioritize.

The business judgment rule is our law's answer to this problem. It sets a presumption that a board has met its fiduciary promise so that the court can defer—not substitute the court's own judgment on the merits of a decision. It does not matter if the decision turned out to be a bad one. It does not matter if the plaintiff or if I would have made a different choice. The only question is whether the directors were faithful and informed.[3] If I have no reason to doubt that, then the inquiry ends.

I also want to be clear about what the business judgment rule is and what it is not from my perspective as a Delaware judge. It is, first and foremost, an expression of judicial humility. Judges are not businesspeople. We are not market experts. We do not have the training, the experience, or the daily immersion in an industry to say whether a business decision was the "right" one. The business judgment rule is also an acknowledgment of managerial competence. It affirms that the boardroom, not the courtroom, is the proper forum for these decisions.

That judicial restraint is not an abdication of my job, but the very core of it. I am not supposed to manage corporations from the bench. My goal is simply to maintain defined rules and ensure that the managers of corporations—particularly the directors—are playing by them.

This is a profoundly important concept. It means that our focus is disciplined. We are not engaged in a free-ranging inquiry into what might have been a "better" deal or a "wiser" strategy. We are setting the rules of the game up front so that, if people break them, we can hold them to account. We do not move the ball after the fact.

That restraint yields knowable standards. Corporate actors and their advisors know that if directors deliberate carefully, remain independent, and act in good faith, their decisions will be respected. It also incentivizes good corporate governance. Directors are challenged toward a robust, deliberative process, which empowers them to manage for the enterprise's enduring prosperity—not short-term market pressures driven by immediate returns.

This brings us back to the virtue of simplicity. The business judgment rule's presumption streamlines the entire judicial enterprise. Instead of asking a court to unravel a web of factors that went into a decision, we ask it to focus on a much narrower and more manageable set of questions: Was the board conflicted? And was its decision-making informed, fueled by good faith?

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3. *See* Paramount Commc'ns Inc. v. QVC Network Inc., 637 A.2d 34, 45 (Del. 1994).

This is a task for which our courts are perfectly suited. It is an inquiry into process and good faith, guided by decades of precedent. It is this limited focus that generates useable law and sets an effective platform for both corporate governance and capital formation.

Think, for a moment, about the leaps forward in our economic history. They resulted from bold investments of capital and human ingenuity. They required boards of directors to make decisions with imperfect information, knowing full well that they could fail. The business judgment rule gave these companies the confidence to take risks. It is the very thing that allows a board to approve a "bet-the-company" acquisition, to pour billions of dollars into developing a product that may never come to market, or to divest a key legacy business.

An economy without this basic presumption would be populated by timid managers and stagnant businesses. And so, Delaware makes a policy choice. We support innovation and growth over a risk-averse status quo. We empower directors to lead, mindful of their duties to stockholders.

Despite these principles, though, we find ourselves today in situations where the simplicity of our law is lost. This creeping complexity comes from several sources. I would like to highlight a few.

First, we see a diffusion of duties. The modern board is expected to navigate a host of interests while facing intense scrutiny from investors, new technological and geopolitical risks, and profound shifts in societal expectations—from ESG and DEI to the backlash.

These elaborate pressures trigger an impulse to expand the law in response. But there are unintended consequences. More complex corporate laws would make the board's job even harder to navigate. Directors would face misguided and even contradictory expectations.

Second, we see a rise of subjective standards, which adds another layer of complexity to our law.

The settled inquiry into director independence, for example, has slowly shifted toward ambiguous, fact-intensive interrogations into friendships, charitable service, and other tenuous ties. Even if none of these ties are disabling, the court is asked to consider whether actions reflected independence.

We see a similar phenomenon in concepts of control. Predictable, ex ante rules have been replaced, at times, with ill-defined ex post standards.[4] Corporate actors cannot know whether they owe fiduciary duties—much less adjust their conduct to comport with a particular equitable standard of review.

Third, we have expanded liabilities theories. Oversight liability, for example, was originally described as the "most difficult theory in corporation law on which a plaintiff might hope to win . . . ."[5] But it has evolved from a clear expectation that a director will do her job outside of extreme and unusual events into a multi-pronged attack. Inconsistent theories merge to hold directors liable whenever bad things happen to the company, even when they are caused externally.

4. *See* Elizabeth Pollman & Lori W. Will, *The Lost History of Transaction-Specific Control*, 50 J. CORP. L. 1096 (2025).

5. *In re* Caremark Int'l Inc. Derivative Litig., 698 A.2d 959, 967 (Del. Ch. 1996).

These complicated doctrinal outgrowths result in uncertainty that cascades through our system. They encourage litigation by creating ambiguity. And, perhaps most dangerously, they invite judicial overreach.

The inevitable result is a sort of litigation friction. When the rules are no longer knowable, and standards are subjective, more cases survive the pleading stage. The costs and burdens of litigation explode. Settlement becomes a rational economic decision, a cost of doing business to avoid the greater cost of protracted litigation—even if the claims are baseless. The result is a system not aimed at vindicating true fiduciary wrongdoing, which is where it ought to focus. It is one that rewards rent-seeking instead.

Of course, it is not just companies and their directors and officers who are taxed. Our courts become bogged down in disputes over vague allegations and muddled claims. Finite judicial resources are diverted from the cases that need them most—the cases of actual fraud, self-dealing, and bad faith. The pace of justice slows, and the efficiency that is a hallmark of our court becomes strained.

The ultimate cost of this friction is the erosion of predictability. Directors and their advisors can no longer plan with confidence, since every decision becomes a litigation risk calculation. That is the very opposite of the regime that Delaware has worked for decades to provide.

So, we stand at a crossroads. The modern complexities I have just described—a diffusion of duties, unrealistic expectations for fiduciaries, and rising litigation friction—represent a departure from our foundational principles. They prompt a more complicated and less predictable body of law.

It would be fair, at this point in the conversation, to ask whether this is a bad thing. The creation of intricate tests can feel like a more rigorous and sophisticated way to approach a problem. But, so often, that perception reveals itself to be flawed in application. What we might gain in superficial nuance we lose in practicality. When the law becomes a collection of vague standards rather than clear principles, each case becomes an opportunity to bend the rules in a new direction.

If chasing complexity is the wrong path, then I implore us to consider the right one.

Delaware's answer has always been to recognize that the optimal legal rule is usually the simplest one. We choose the rules that provide guidance, foster predictability, and channel behavior in a productive direction without inviting endless litigation. It is a return to our foundational doctrines, bolstered by the essential role of equity.

This is a unique and vital feature of our law. It is anchored in the framework of the DGCL, but it derives its vitality from a rich body of common law. Equity is what ensures that our rules do not become a shield for the unprincipled. It allows us to maintain a durable business judgment rule without opening the door to fiduciary abuse.

I want to be precise about what equity means in how I approach my job. Equity is not a synonym for a judge's personal moral code.[6] It is not an invitation for a judge to impose her own notions of fairness on disinterested business decisions. It means that we are not blind to true wrongdoing, and that the Court of Chancery has the power—and duty—to look beyond mere technical compliance.

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6. *See* Leo E. Strine, Jr., *Regular (Judicial) Order as Equity: The Enduring Value of the Distinct Judicial Role*, 87 TEMP. L. REV. 91, 92 (2014) (arguing that the "equitable impulse is not . . . a license for judges to apply personal, idiosyncratic views of the 'right' in cases").

Crucially, this equitable inquiry does not empower us to second guess the merits of the business decision itself. Equity polices the actor, not the act. It is our check on the fiduciary who uses the letter of the law to defeat its spirit.

Equity plays a role that statutory law, with its generality, cannot do alone. Our corporate law can remain simple and predictable because equity prevents opportunism. But equity is more than a backstop; it is the conscience of our corporate law, ensuring that the letter of the law remains tethered to its underlying purpose. Equity, coupled with clear expectations, is a solution the modern complexities I identified earlier. It can address instances of true wrongdoing and bad faith, so that the rules remain straightforward and efficient for good-faith decisions.

Take the intense debate over stakeholder capitalism I described before. A purely doctrinal approach risks getting lost in competing metrics and balancing tests. Equity lets us sidestep the whole debate. It asks a much simpler and, I would argue, far more potent question: Was the board's action taken in good faith to promote the long-term value of the corporation, or was it a cloak for self-interest, a breach of loyalty, or an abdication of duty? Equity cuts through the noise and zeroes in on the integrity of the process.

Or consider the increase in litigation over labels, like that of an independent director. The simple rule is that we presume independence, outside of a true conflict—one bias producing. Equity permits the court to disregard the presumption when warranted. Yet we must maintain the baseline expectations on the front end, if we want boards and committees to be appropriately populated. We do not want directors to learn for the first time from a Delaware judge that they lack independence or are a controlling stockholder.

This brings us to the most critical relationship in our law: the relationship between the business judgment rule and equity. One cannot exist without the other. The business judgment rule embodies judicial humility, expressed in deference to informed and loyal decision-making. We can only afford that deference because we retain the equitable power to remedy true breaches of those duties. We can grant such broad deference to the *judgment* of fiduciaries precisely because we retain the full power of equity to enforce their *loyalty*.

That equitable overlay is what makes the business judgment rule, and the innovation it fosters, possible.

As we look to the future, we must prioritize these long-standing and basic principles. The solution to our modern corporate governance challenges is not to reinvent Delaware law. It is not to chase complexity into uncertainty. Our task is to rededicate ourselves to the careful balance that has long been the hallmark of our law: a clear fiduciary promise, a strong business judgment rule, and a cautious use of equity.[7]

That brings me to my final point. A Delaware judge is not a manager, a strategist, or a social engineer—but a guardian of the integrity of the corporate enterprise. In practice, this means that my primary role is to protect the process, ensuring that the duties of loyalty and care are not just hollow words but enforceable obligations. We guard the business judgment rule, ensuring that its protections are lost only for those who flout it. And we guard the market's trust in our system by providing a forum that is expert, efficient, and apolitical.

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7. *See* William B. Chandler III, *The Delaware Court of Chancery: An Insider's View of Change and Continuity*, 2012 COLUM. BUS. L. REV. 411, 412 ("Every day, Chancery faces new and challenging issues. At its best, the Court resolves those issues in ways that feel predictable and familiar, resulting in an evolution of the law that is incremental, cautious, and hardly noticeable.").

This role requires a principled judicial philosophy.[8] It requires recognizing our limits and deferring to those closer to the action. It also requires the courage to intervene when we see a process tainted by conflicts or a failure of good faith.

The stability of our law depends on the neutrality of our courts. We cannot have a preferred business strategy or seek to impose social policy or political agendas. Our allegiance is to the law and to the faithful application of these simple concepts, which are the proud tradition of our courts.

That is Delaware's promise to the boards, the stockholders, and the capital markets that look to us for guidance. And it is a promise whose resilience depends not only on our judiciary, but also on the intellectual honesty of the scholarship you write and the arguments you make.

And so, as we turn the page on a difficult chapter and look toward the next, I believe that we need to remember why we do what we do, and why it matters. We must all be guardians of our law, preserving a steadfast belief in the enduring power of stability, predictability, and equity.

I hope that you will join me in a commitment to these first principles as we navigate an increasingly complex future.

8. *See* William T. Allen, *The Pride and the Hope of Delaware Corporate Law*, 25 DEL. J. CORP. L. 70, 77 (2000) (arguing that "it is ultimately not precedent, but the quality of judicial reasoning, the integrity of the judicial process, and the candor and modesty of the judicial voice that justifies the public respect for judicial decisions").