

Delaware Corporate Law Update

Friday, February 27, 2026

Delaware Supreme Court Upholds Constitutionality of Section 144’s Statutory Safe Harbor Procedures for Conflict of Interest Transactions

In *Rutledge v. Clearway Energy Group LLC*, No. 248, 2025 (Del. Feb. 27, 2026), the Delaware Supreme Court declared that the safe harbor provisions for conflict of interest transactions implemented through recent amendments to Section 144 of the Delaware General Corporation Law do not violate the Delaware Constitution. Following the adoption of Senate Substitute 1 to Senate Bill 21 (“SB 21”), a stockholder plaintiff challenging an alleged conflict of interest transaction that fell within the scope of Section 144, as amended, claimed that the amended statute was unconstitutional. To address the constitutional claims, the Delaware Court of Chancery certified two questions to the Supreme Court: (i) whether SB 21’s amendments to Section 144 unconstitutionally divested the Court of Chancery of its equity jurisdiction by eliminating the court’s ability to grant equitable relief or damages where the safe harbor procedures were satisfied, and (ii) whether SB 21’s provisions, which had retroactive effect on transactions not then subject to pending litigation at the time of SB 21’s introduction to the Delaware General Assembly, unconstitutionally eliminated accrued or vested causes of action.

In a 37-page opinion, the Supreme Court, sitting *en banc* and ruling unanimously, answered both certified questions in the negative and upheld the constitutionality of Section 144. The Supreme Court proceeded from the premise that legislative enactments are presumed constitutional and will not be disturbed unless the statute’s invalidity is beyond doubt. The Supreme Court held that SB 21 does not conflict with Article IV, § 10 of the Delaware Constitution because it does not divest the Court of Chancery of its power to adjudicate fiduciary claims. Instead, it supplies a framework that can foreclose equitable relief or damages if compliance with the safe harbor procedures is met. The Supreme Court noted that the existence of other statutory provisions that effectively foreclose equitable relief—including Section 102(b)(7) of the DGCL, which exculpates directors from damages for breach of the duty of care, and Section 253 of the DGCL, which permits a 90% stockholder to accomplish a “short-form” merger and limits the minority stockholders’ remedy to statutory appraisal rights—supported its conclusion that the General Assembly had acted within its constitutional authority when adopting SB 21.

With respect to retroactivity, the Supreme Court noted that Delaware’s presumption against the retroactive application of legislation can be overcome where the General Assembly has made its intent “plain and unambiguous.” The Supreme Court found that standard had been met because SB 21 expressed a clear intent to apply to all acts or transactions other than those that were pending or completed at the time the statute was introduced to the General Assembly. The Supreme Court observed that the statute bears a reasonable relation to a permissible legislative objective within the General Assembly’s corporate law authority, satisfying due process. The Supreme Court distinguished cases cited by the plaintiff on the basis that those other cases involved new



substantive rights and that the legislation considered in those cases lacked a clear statement as to retroactivity.

The *Clearway Energy* decision confirms that the legal framework of amended Section 144 will govern conflict of interest transactions going forward. The decision provides welcome clarity and demonstrates Delaware's commitment to providing predictable corporate governance rules for directors, officers, and stockholders of Delaware corporations.