Del. Ruling Clarifies Public Benefit Corp. Fiduciary Duties

By **Robert Greco and Wilson Guarnera** (August 27, 2026)

Robert Greco

Wilson Guarnera

In Drakes Landing Associates LP v. Tilden Park Capital Management LP, the Delaware Court of Chancery provided landmark guidance for practitioners and directors of Delaware public benefit corporations on the fiduciary duties owed by PBC directors and the statutory protections applicable to their decisions.

The July 29 decision squarely addressed, for the first time in a written decision, the fiduciary duties and standards of review applicable to PBC directors in a change-of-control transaction, holding that they are not subject to traditional Revlon duties — derived from the Delaware Supreme Court's 1986 ruling in Revlon Inc. v. MacAndrews & Forbes Holdings Inc. — and are instead obligated to consider a broader set of constituencies beyond the stockholder value.[1]

The decision also provided guidance on the scope of protections offered by Delaware's new statutory safe harbor in amended Section 144 of the Delaware General Corporation Law, or DGCL, in change-of-control transactions, with relevance expanding beyond the PBC context.

Background

In early 2025, MPower Financing, a Delaware PBC, faced a cash shortfall that threatened its ability to comply with the minimum cash requirements under existing debt covenants. Faced with the prospect of an impending breach, the company received a term sheet with a financing proposal from two of its existing lenders.

After retaining independent legal and financial advisers and conducting a market check, a special committee of independent and disinterested directors approved the financing with the existing lenders, which would allow the lenders to increase their collective ownership of the company's outstanding common stock from approximately 25% to nearly 85%.

A collection of stockholders subsequently challenged the financing in the Court of Chancery, alleging that it constituted a breach of the special committee members' fiduciary duties subject to enhanced scrutiny under Revlon. The stockholder-plaintiffs also claimed that the lenders aided and abetted the committee members' alleged breaches of fiduciary duty.

The parties did not dispute that the financing constituted a change-of-control transaction that would implicate enhanced scrutiny under Revlon but for the company's status as a PBC.

PBC Fiduciary Duties and Protections

In assessing the claims, the Court of Chancery first discussed the standard of conduct applicable to PBC directors, distinguishing it from the standard of conduct applicable to directors of traditional corporations.

Under long-standing Delaware law, according to the decision, directors of traditional corporations are required "to seek to maximize the value of the corporation over the long-term for the benefit of the stockholders as residual claimants,"[2] with "[o]ther constituencies ... considered only instrumentally to advance that end."[3] In the context of a change-of-control transaction implicating Revlon, this has been held to obligate directors of traditional corporations to singularly focus on pursuing the highest value reasonably available for stockholders.

But as the court explained, the "standard of conduct for directors of public benefit corporations is slightly different."[4]

Unlike directors of traditional corporations, PBC directors are subject to the balancing requirements of Section 365(a) of the DGCL. Section 365(a)'s balancing requirement obligates PBC directors to balance stockholders' pecuniary interests, the interests of persons materially affected by the PBC's conduct and the public benefits stated in the PBC's certificate of incorporation.[5]

Finding Revlon's price maximization mandate inconsistent with Section 365(a)'s express balancing requirement, the Court of Chancery held that PBC directors are not subject to Revlon duties to pursue the highest value reasonably available for stockholders to the exclusion of the corporation's public benefit purpose and affected stakeholders.

The court then addressed the standard of review applicable to decisions of PBC directors. Under Delaware law, change-of-control transactions generally invoke enhanced scrutiny under Revlon, under which the court assesses the reasonableness of the directors' decision-making process.

In this regard, the court left open whether a modified form of enhanced scrutiny — which it referred to as "'PBC' enhanced scrutiny" — could apply to a change-of-control transaction involving a PBC as a standard of review, under which the court would examine whether the directors' balancing of these interests fell outside the range of reasonableness.

The court held that it was unnecessary to resolve this question because it found that the special committee process invoked the statutory protections applicable to PBC directors' decisions under Section 365(b) of the DGCL.

Section 365(b) provides, in relevant part, that with respect to director decisions implicating Section 365(a)'s balancing requirement, a director "will be deemed to satisfy such director's fiduciary duties to stockholders and the corporation if such director's decision is both informed and disinterested and not such that no person of ordinary, sound judgment would approve."[6]

Although the court described Section 365(b) as a statutory safe harbor, the statute functionally operates as a statutory business judgment rule and protects informed decisions of disinterested PBC directors, absent waste.[7]

Because the plaintiffs conceded the disinterestedness and independence of the special committee members, and only challenged the adequacy of the committee's market check as it related to stockholders' pecuniary interests without challenging the committee's balancing of the other interests required to be considered under Section 365(a)'s statutory balancing test, the court dismissed the plaintiffs' fiduciary duty and related aiding and abetting claims under Section 365(b).

In dismissing the claims under Section 365(b) of the DGCL, the court found it unnecessary to rule on the application of Section 144, Delaware's statutory safe harbor, which was amended in 2025 via S.B. 21. Nevertheless, the court stated that, even if "Section 365(b)'s safe harbor did not compel dismissal, I would nonetheless almost certainly conclude that Plaintiffs' claim for breach of fiduciary duty against the Special Committee members must be dismissed under ... Section 144(a)(1)['s]" safe harbor.[8]

Takeaways

The Court of Chancery's decision in Drakes Landing confirms that directors of PBCs are not subject to a singular obligation to maximize stockholder value, whether in the sale-of-control context or otherwise, and must instead balance that interest with the PBC's identified public benefits and the interests of persons materially affected by the PBC's conduct.

Practitioners advising PBC boards and special committees should therefore ensure that strategic review processes are structured and conducted with a view toward the specified considerations that PBC directors must balance under Section 365(a). In order to evidence the satisfaction of Section 365(a)'s balancing requirement, practitioners would be well served to reflect the consideration of each of these interests in formal meeting minutes and board materials.

The decision further recognizes the significant protections afforded to PBC directors under Section 365(b) of the DGCL, which serves as a statutory business judgment rule to protect PBC director decisions balancing the interests identified in Section 365(a), so long as the decision is informed and disinterested and does not constitute waste.

Accordingly, at the outset of a strategic review process, a PBC board should consider whether the board has sufficient disinterested directors to evaluate the decision on its own, or whether the board should form a committee of disinterested directors to run the process.

Practitioners should also ensure that the directors then take reasonable steps to fully inform themselves regarding each of the three interests identified in Section 365(a) throughout the process, which again can be evidenced in minutes and board materials.

Finally, the decision confirms that, even outside the PBC context, change-of-control transactions that may otherwise implicate enhanced scrutiny under Revlon may now be protected from challenge under Delaware's new statutory safe harbor codified in Section 144 of the DGCL.

Section 144 generally protects transactions approved in good faith and without gross negligence by either a disinterested board majority or a committee of disinterested directors, or approved by a disinterested stockholder vote, and applies to both PBCs and traditional corporations alike.[9] Thus, even outside the PBC context, transactional planners seeking to take advantage of Delaware's new safe harbor should assess the board's disinterestedness and consider the formation of a special committee at the outset of a strategic review process.

Throughout the review process, practitioners should also strive to document the information flow to and decision-making process of the disinterested directors overseeing the process, which can serve as evidence that the directors' decisions were made in good faith and on a fully informed basis in accordance with Section 144.

Robert B. Greco is a director and Wilson J.V. Guarnera is an associate at Richards Layton & Finger PA.

[1] Drakes Landing Associates LP v. Tilden Park Capital Management LP, C.A. No. 2025-0898-NAC, 2026 WL 2185439 (Del. Ch. July 29, 2026).

[2] Id. at *4 (quoting McRitchie v. Zuckerberg, 315 A.3d 518, 564 (Del. Ch. 2024)).

[3] Id. (quoting In re: Trados Inc. S'holder Litig., 73 A.3d 17, 37 (Del. Ch. 2013)).

[4] Id. at *5.

[5] 8 Del. C. § 365(a).

[6] Id. § 365(b).

[7] See Leo E. Strine, Jr., Making It Easier for Directors to "Do the Right Thing"?, 4 Harv. Bus. L. Rev. 235, 243 (2014) ("The board's good faith balancing of the interests of all constituencies would be entitled to the protection of the business judgment rule and would thus operate as a safe harbor against liability, as Section 365 of the Delaware statute makes explicit." (citing 8 Del. C. § 365(b)).

[8] Drakes Landing, 2026 WL 2185439, at *13.

[9] For a "controlling stockholder transaction" to implicate the safe harbor, Section 144 generally requires that the transaction be approved in good faith and without gross negligence by a committee of disinterested directors or be approved by a vote of disinterested stockholders (or, in the case of a "controlling stockholder transaction" that constitutes a "going private transaction," that the transaction receive both such approvals).