# Court of Chancery Issues First Dismissal of a SPAC Disclosure Complaint

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In January 2022, Vice Chancellor Lori Will of the Delaware Court of Chancery issued a groundbreaking opinion in *In re MultiPlan Corp. Stockholders Litigation* that paved the way for SPAC stockholders to bring direct breach of fiduciary duty claims against SPAC boards and sponsors. In the ruling, the court clarified that "well-worn fiduciary principles" under Delaware law would apply to SPAC board decisions. The court went on to deny a motion to dismiss largely based on what it held were misleading disclosures that interfered with a common SPAC stockholder's redemption right — *i.e.*, the ability to decide whether to redeem their shares in connection with a de-SPAC merger. In January 2023, Vice Chancellor Will again declined to dismiss so-called "*MultiPlan* claims" on a similar basis in *Delman v. GigAcquisitions3, LLC*, but expanded on her earlier ruling. Among other things, the court held that (i) the SPAC sponsor, even though it controlled less than 25% of the SPAC's voting power, was a controlling stockholder; (ii) the SPAC's redemption feature is a "bespoke check on the sponsor's self-interest" and the "primary means protecting stockholders" from an ill-conceived forced investment; and (iii) *Corwin* cleansing did not apply to SPAC mergers because stockholders' voting interests were decoupled from their economic interests as a result of the redemption feature. Since the 2023 ruling, numerous other decisions from the chancellor and other vice chancellors have denied motions to dismiss *MultiPlan* claims.

In *In Re Hennessy Capital Acquisition Corp. IV Stockholder Litigation*,[1] Vice Chancellor Will again focused on a post-closing SPAC challenge that took issue with disclosures impacting SPAC stockholder redemption rights. Unlike all of the prior SPAC rulings, the court issued its first opinion dismissing a *MultiPlan* claim at the pleadings stage. Reflecting on the impact of the groundbreaking *MultiPlan* decision, Vice Chancellor Will observed that "[t]he success of a few cases begat a host of others. Though the SPAC market has contracted, SPAC lawsuits are ubiquitous in Delaware. Remarkably similar complaints accuse SPAC directors of breaching their fiduciary duties based on flaws in years-old proxy statements that became problematic only when the combined company underperformed." Here, however, the plaintiff went "all in" on allegedly false disclosures based on "post-closing developments, strained inferences, and documents that contradict his theories." The court concluded that "[i]rrespective of the standard of review, the plaintiff has failed to plead a reasonably conceivable breach of fiduciary duty claim against the SPAC's fiduciaries. It cannot fairly be inferred that the defendants withheld knowable information material to public stockholders deciding whether to redeem or invest in the combined company. To allow this faulty claim to proceed would fuel perverse incentives and invite strike suits."

A brief summary of the ruling follows.

## Background

Hennessy Capital Corp. IV was formed as a SPAC (the SPAC). In August 2020, the SPAC and Canoo Holdings Ltd. (the Target), an electric vehicle start-up company, executed a merger agreement. The SPAC and the Target jointly announced the

[1] *In re Hennessy Cap. Acquisition Corp. IV S'holder Litig.*, --- A.3d ---, 2024 WL 2799044 (Del. Ch. May 31, 2024).

merger agreement through a press release and conference call. An investor presentation attached to the press release described the company's three projected revenue streams: engineering services, business-to-consumer and business-to-business. Two months later, the SPAC and the Target announced that Tony Aquila, a prominent figure in the automotive technology sector, had become the Target's executive chairman. The Target also hired an outside consultant, McKinsey and Company, to review its business (though McKinsey would not present its findings until months after the merger closed). On December 4, 2020, the SPAC issued a proxy statement recommending that its investors approve the merger with the Target. Among other things, the proxy highlighted the company's anticipated revenues from the three aforementioned prongs of its business plan. In December 2020, the SPAC's stockholders voted to approve the business combination and the merger closed the same day, with Hennessy changing its name to Canoo Inc. (Canoo). The former members of the SPAC's board resigned except for the president/chief operating officer, who remained a member of the post-closing board.

Three months after closing, Canoo's board received a presentation on the company's business strategy, financial performance and investor relations where Mr. Aquila announced that Canoo was "re-casting" its "vision and strategy." Mr. Aquila also explained that Canoo's original approach was "complex" and "lacked diligence," and that with a "new leadership team in place" the company could move away from certain business segments and focus on others. This announcement coincided with McKinsey's presentation of the results of its "External Analysis," which "identified the most attractive segments to focus on." During an earnings call held three days after that board meeting, Mr. Aquila announced the decision to deemphasize Canoo's engineering services segment. After the announcement, the company's stock price dropped, recovered briefly and then continued to drop over time. The plaintiff, a SPAC stockholder at the time of the merger, sued the Canoo board on behalf of the stockholder class. The plaintiff's complaint was very similar to those in other SPAC lawsuits and asserted four counts: two counts of breach of fiduciary duty, unjust enrichment and aiding and abetting (against the entity that controlled the SPAC sponsor). In general, the plaintiff argued, much like other SPAC lawsuit plaintiffs before him, that the redemption right was undermined by faulty proxy disclosures. The defendants moved to dismiss all counts.

## Analysis

Regarding the breach of fiduciary duty claims, the court began its analysis with an overview of "*MultiPlan* claims." Accordingly, the court distinguished the "narrow" *MultiPlan* claim — which is only directed at disclosure or other actions impacting the exercise of the SPAC stockholders' redemption rights — from complaints about overpayment or the substantive fairness of the merger, stating that "[t]he linchpin of *MultiPlan* was ensuring that a public stockholder's decision to redeem shares or participate in the merger be freely exercisable and fully informed. Although the fiduciaries' misaligned interests implicated the duty of loyalty, a claim premised solely on these conflicts would seemingly be non-viable if public stockholders had a fair opportunity to exercise their redemption rights. The alleged unfairness of the de-SPAC transaction itself also could not support a direct claim, since corporate overpayment claims are classically derivative."

In *In re Hennessy*, the plaintiff cited "a single impairment of the redemption right: allegedly false disclosures" related to the Target's revenue streams. Though all parties agreed that entire fairness was the appropriate standard of review, the

court rejected the plaintiff's insistence on a "relaxed" pleading standard in the context of SPAC claims, stating "[e]ntire fairness … is not a free pass to trial" and noting that "[p]oor performance is not, [] indicative of a breach of fiduciary duty. Conflicts are not a cause of action. And pleading requirements exist even where entire fairness applies."

The court found a "critical distinction" between the alleged disclosure deficiencies at issue and the disclosures in *MultiPlan*. The *Hennessy* plaintiff failed to allege that the information purportedly omitted from, or misleadingly disclosed in, the proxy statement was "known or knowable" by directors and officers of the SPAC prior to the closing of the merger. Rather, the complaint "address[ed] actions by Canoo's post-closing board — a body made up of directors who were (with one exception) not on the SPAC's board." In sum, the court found that "no well pleaded facts support[ed] a reasonable inference that changes to [the Target's] business model were known or knowable by [the SPAC's] board before the merger closed. That is, no unfair dealing vis-à-vis, the redemption right is pleaded. [Plaintiff] therefore failed to state a breach of fiduciary duty claim." Since the plaintiff's unjust enrichment claim was entirely premised on his breach of fiduciary duty claim, that claim failed as well. In addition, the court summarily dismissed the plaintiff's aiding and abetting claim for lack of a predicate fiduciary breach.

## Key Points

- Since *MultiPlan*, the Court of Chancery has taken a negative view of de-SPAC transactions, and — until *Hennessy* — has unanimously denied motions to dismiss in every de-SPAC case on the grounds that the redemption right was diminished because of faulty disclosures. At a minimum, the court's ruling in *Hennessy* provides a possibility that future challenges to a de-SPAC transaction may not always survive a motion to dismiss.
- The court's ruling was, in part, informed by the flood of de-SPAC challenges that have occurred over the past few years, to the point where lawsuits have become ubiquitous at the same time the SPAC market itself has contracted. The court recognized that plaintiffs have been filing "[r]emarkably similar complaints" that are "based on flaws in years-old proxy statements that became problematic only when the combined company underperformed." However, the court was quick to caution that "[p]oor performance is not, however, indicative of a breach of fiduciary duty."
- The court also directly confirmed that purported conflicts by the pre-SPAC fiduciaries, and any alleged "unfairness of the de-SPAC transaction itself," fail to support a direct class action claim. This is because the SPAC is actually the buyer in a de-SPAC transaction and "corporate overpayment claims are classically derivative." In order to state a *MultiPlan* claim, which is "narrow," there needs to be some level of interference with the stockholders' redemption right, which usually takes the form of disclosure claims.
- Given that the court has previously determined that SPAC founders are controllers with unique interests due to their "founder shares," the court has held that entire fairness review applies to the transaction. Many interested parties believed that this would effectively give stockholder plaintiffs a pass when alleging disclosure claims in this context. In *Hennessy*, the court rejected this notion, concluding it was the result of the plaintiff's "misperception" of the pleading standard, which requires pleading "some facts indicating unfairness," and that "[e]ntire fairness … is not a free pass to trial." Accordingly, conclusory assertions that disclosure is inadequate cannot sustain a breach of fiduciary duty under any standard of review.
- *Hennessy* also makes clear that disclosure claims based on hindsight, where material facts were not known or knowable by the defendants at the time the de-SPAC proxy was issued, are inadequate. Plaintiffs also cannot simply "overlook the flaws" in their complaint "by characterizing them as 'fact-based' matters that cannot be resolved on a motion to dismiss."

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