

# **I Want You to Want Me. But I Don't Need You to Need Me: Manti Holdings v. The Carlyle Group and the Meaning of Non-Ratable Benefit in Controller Transactions in Delaware**

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Delaware's rigorous fairness standards for transactions involving controlling shareholders have recently come to the forefront of the Chancery Court's docket.<sup>1</sup>

Delaware rigorously scrutinizes controller transactions, and its law provides that entire fairness review is required where a transaction involves a controlling shareholder and that controller receives a "non-ratable benefit;" *i.e.* the controller achieves something through the transaction that has no benefit to the entities' other shareholders, even if both sets of shareholders nominally receive the same consideration.

Entire fairness is a demanding standard, and any controller transaction where it is likely to be applied is red meat to the plaintiffs' bar. Indeed, once Chancery Court has determined, at the motion to dismiss stage,<sup>2</sup> that entire fairness will apply to a transaction, the prospect of massive damages calculations exponentially increases pressure on defendants to settle, whatever the merits of their defenses.

But what if defendants are confident that, at trial, they can show there was no such non-ratable benefit? Or, to go a step further, what if they can show that the non-ratable benefit simply did not matter very much? Vice Chancellor Glasscock's recent post-trial [opinion](#) in *Manti Holdings v. The Carlyle Group* provides defendants with a ray of hope.

## **The Transaction**

Authentix Acquisition Company, Inc. ("Authentix") is a company that prevents fraud with its

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authentication technology products. In 2016, Authentix's Board of Directors began a wide-ranging sales process, which ultimately led to the sale of Authentix in 2017 to a private equity firm, Blue Water Energy LLP. Around the time of the sale, Authentix was facing several challenges, allegedly suppressing the price achieved.

The Plaintiffs, minority stockholders of Authentix, alleged that the Carlyle Group Inc. and its affiliates ("Carlyle"), as a controlling stockholder, convinced the Authentix's Board of Directors to approve the "fire sale" of Authentix in order for Carlyle to meet its own liquidity needs, and to ensure the transaction occurred before the expiration of the private equity funds Carlyle had used to acquire its interests in Authentix. If the fund expired, Carlyle would no longer be able to obtain additional capital from investors to invest in Authentix. Holding the investment beyond the fund's lifespan, therefore, was unappetizing to Carlyle.

## **The Benefit**

In denying defendants' motion to dismiss, VC Glasscock credited Plaintiffs theory that Carlyle was under intense pressure to sell in 2017 to meet investors' expectations. Plaintiffs' theory was that Carlyle faced a liquidity-based conflict driven by the need to make a "needle-moving deal" before the end of the fund's life, which created enormous pressure from investors and effectively mandated that Carlyle sell Authentix in 2017. Moreover, Plaintiff's alleged, the fund's Limited Partnership Agreement included a "clawback" provision that would have required Carlyle to return excess distributions so long as it deployed capital on the Authentix investment.

Plaintiffs alleged that defendants sacrificed an astonishing \$100,000,000 of value on the table (over half of which would have flowed to Carlyle) in order to push the transaction through on time. Carlyle, in Plaintiffs' telling, had to sell, "consequences (and price) be damned."

## **Have to vs. Want to**

At trial, rather than focusing solely on the transaction's fairness, Carlyle returned to the question of whether Plaintiffs had established a non-ratable benefit. Interestingly, Carlyle does not appear to have contested that it wanted to exit Authentix in 2017, or that it had reason to do so. Rather, Carlyle argued, Carlyle did not "need to" exit Authentix, at least to a degree that impacted the sales process.

The Court found that the sale of Authentix was not a "fire sale" driven by Carlyle acting under time pressure or liquidity pressure from the end of Carlyle's fund life, in conflict to the minority stockholders' interests. In support of this finding, the Court reasoned that Carlyle, as the largest stockholder, had an inherent economic incentive to negotiate a favorable transaction for the shareholders. Additionally, although Carlyle wanted to sell off its assets prior to the term expiration, the Court reasoned that the limited partnership agreement did not require Carlyle to do so. Moreover, the Court reasoned that Authentix was not the only remaining asset in Carlyle, indicating that regardless of whether the Authentix sale occurred prior to the end of Carlyle's term, the fund may have needed an extension for other investments. Therefore, the Court held that Carlyle was "not under compelling pressure to sell Authentix prior to the end of Carlyle's term, such that its self-interest, shared with the minority, to maximize value was overborne."

In the Court's reasoning, the absence of an imperative was sufficient, even though Carlyle conceded that it wanted the sale to go forward in 2017. Carlyle's interest in moving forward, the court reasoned, was not tantamount to a disabling conflict of interest. For the non-ratable benefit to trigger entire fairness review, it must be sufficient to drive the controller to act against the interests of the

minority. Only where there is a “crisis” sufficient to drive the controller to sell before exploring better offers does strict scrutiny apply.<sup>3</sup>

## Don't Surrender

This decision opens doors, if only a crack, for future defendants. First, it is a reminder that a finding of a well-plead non-ratable benefit is not a death sentence and can be successfully litigated at trial. Second, defendants may contest not just the existence of a non-ratable benefit, but its import. An appropriate, arms-length sales process is strong evidence that a transaction was not improperly tainted, and normal industry pressures, absent specific evidence of a fire-sale, will not be enough to implicate entire fairness.

Plaintiffs who plead a non-ratable benefit that was not sufficiently strong, in the court's eyes, to motivate malfeasance may find their victories at the motion to dismiss stage merely a cheap trick.

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<sup>1</sup> See e.g., *Thomas v. American Midstream GP, LLC*, 2024 WL 5135828 (Del. Ch. Dec. 17, 2024); *Tornetta v. Musk*, 310 A.3d 430 (Del. Ch. 2024); *Palkon v. Maffer* C.A. No. 2023-0449-JTL (Feb. 20, 2024) (“Palkon I”); *In re Match Group, Inc. Derivative Litigation* No. 368,2022 (Del. Apr. 4, 2024); *In re Viacom Inc. Stockholders Litigation*, 2020 WL 7711128 (Del. Ch. Dec. 29, 2020).

<sup>2</sup> In Delaware Chancery, summary judgment is not available by right, and the court will often dispense with that step where it feels the summary judgment process and trial would be redundant.

<sup>3</sup> See, *In re Morton's Rest. Gr. Inc. Shareholders Litig.*, 74 A.3d 656, 662 (Del. Ch. 2013) (citing *In re Synthes*, 50 A.3d 1022, 1036 (Del. Ch. 2012)).