

## Chancery Allows SJ Motion on Director Independence Issue

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A recent Delaware Court of Chancery decision might carry more impact than its short length might otherwise suggest. In the matter styled *In Re Fox Corporation Derivative Litigation*, C.A. No. 2023-0419-BWD (Del. Ch. April 28, 2025), the court determined that the defendants could engage in limited discovery in order to file a motion for summary judgment on the issue of independence of one of the directors who was found in a prior decision in this case to be lacking in independence for purposes of denying a motion to dismiss for failure to establish pre-suit demand futility. That [prior decision was highlighted on these pages here](#).

This latest ruling in the case begins with the bedrock cardinal precept of Delaware corporate law that the directors manage the affairs of the company—and if they are independent and disinterested, they can control litigation involving the company. Letter op. at 1-2.

Leading corporate law professor Stephen Bainbridge wrote a scholarly article on this recent letter ruling comparing it to the U.S. Supreme Court’s famous “switch in time that saved nine”, in a ruling nearly a century ago that signaled a shift in that court’s approach to controversial decisions. That is, the good professor explains why this ruling may be viewed as suggesting that, by giving the defendants another chance to demonstrate that a majority of the board was independent—and thereby empowering the board to dispense of the case—some Delaware jurists may be exhibiting a more nuanced perspective on shareholder suits that could, possibly, signal additional hope for defendants separate from the recent hurdles imposed by SB 21.

Many more scholarly insights about Delaware corporate law and a potential new approach to cases are featured in the [article available at this link](#).

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