

April 6, 2018

Court Of Chancery Explains When A Minority Stockholder Has Control

by Morris James LLP

+ Follow

Contact

In re Tesla Motors Inc. Stockholder Litigation, C.A. No. 12711-VCS (Del. Ch. Mar. 28, 2018)

Under Delaware law, a controlling stockholder need not be a majority stockholder. Rather, a controlling stockholder might be a group of aligned stockholders who together hold a majority. Or, as in this case, it might be a minority but substantial stockholder who practically has and exercises board-level control with respect to the challenged transaction. The presence of a controller is an important factor in litigation, including because, as here, it might prevent defendants from achieving a prompt dismissal of a post-closing fiduciary duty action based on stockholder approval under the well-known *Corwin* decision. In this case, the factors relevant to finding control by the roughly 22% minority stockholder (*i.e.*, Elon Musk) at the motion to dismiss stage included: (1) the individual's history of eliminating opposition; (2) the board's lack of safeguards to prevent his control over the company's consideration and negotiation of the self-interested transaction; (3) a board packed with members interested in the transaction or beholden to him; and (4) public disclosures portraying him as in control.

Send

Print

Report

LATEST POSTS

- [Third Circuit Dismisses Employees' Class Action Suit and Finds Chemours' Severance Plan is not Subject to ERISA](#)
- [Chancery Court Nullifies Cancellation of Certificate of Formation of Delaware LLCs](#)
- [Court Sustains 'Bad Faith' Claim Challenging Compensation Paid to Allegedly Incapacitated Executive](#)
- [Court of Chancery Explains What Is A Proper Claim Reserve When Dissolving](#)
- [Court Of Chancery Explains Need To Prove Real Damages](#)

[See more »](#)

DISCLAIMER: Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.

© Morris James LLP 2018 | Attorney Advertising

WRITTEN BY:

 Morris James LLP

Morris James LLP

Contact

[+ Follow](#)



Albert Carroll

[+ Follow](#)



Edward McNally

[+ Follow](#)

PUBLISHED IN:

Acquisitions

[+ Follow](#)

Board of Directors

[+ Follow](#)

Breach of Duty

[+ Follow](#)

Controlling Stockholders

[+ Follow](#)

Elon Musk

[+ Follow](#)

Minority Shareholders

[+ Follow](#)

Shareholder Litigation

[+ Follow](#)

Shareholders

[+ Follow](#)

Tesla

[+ Follow](#)

Business Organization

[+ Follow](#)

Business Torts

[+ Follow](#)

MORRIS JAMES LLP ON:

