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Delaware Chancery Court Addresses Implied Covenant Limitations and Fiduciary Duty Standards in *Guilbeau v. Footprint Int'l Holdco, Inc.*

In separate decisions issued on April 30 and May 11, 2026, Vice Chancellor Travis Laster of the Delaware Court of Chancery addressed 12 counts arising from a cram-down financing in *Guilbeau et al. v. Footprint International Holdco, Inc. et al*. The Court reaffirmed the narrow application of the implied covenant of good faith and fair dealing in dismissing all contractual claims and allowed certain director fiduciary duty claims to proceed following entire fairness review. Notably, Vice Chancellor Laster imputed the knowledge of the allegedly liable directors to their respective designating investor funds in allowing an aiding and abetting claim against such funds to survive the motion to dismiss.

Key Takeaways:

- The implied covenant serves only to fill contractual gaps that parties realistically could not have addressed. The implied covenant cannot rewrite a bargain and should only enforce what the parties would have clearly agreed to if they had anticipated the issue. Where a contract grants a party discretion, such discretion should be exercised consistent with the parties' reasonable expectations.

- Fiduciary duty obligations of director designees are owed to all stockholders (a well-established Delaware principle). Designee directors cannot favor their designating investor's interests over those of the corporation and the stockholders as a whole.

- A fiduciary's knowledge of and participation in misconduct can be imputed to their affiliates. Delaware courts may infer knowing participation by a fiduciary affiliate for purposes of an aiding and abetting claim when the affiliate can be viewed as acting through or in concert with their fiduciary.

- Procedural safeguards are critical in conflicted transactions. The Court cited the defendants' failure to fully disclose competing proposals as well as the formation of a special committee with only advisory authority as evidence of unfair dealing. While compliance with the Safe Harbor Amendments could shield designee directors, such protection would likely not extend to aiding and abetting claims.

Background

In connection with the acquisition of shares of Class A non-participating preferred stock of Footprint International Holdco, Inc., a Delaware corporation (the "**Company**"), the Company's Class A stockholders entered into a governance agreement (the "**Governance Agreement**") that provided them with certain protections, including a director designation right and favorable liquidation preferences. Approval by a majority of the Company's board (the "**Board**"), including the affirmative vote of the Class A designated director (the "**Class A Director**"), was required to alter any "rights, powers or preferences" of Class A stock. In November 2020, entities affiliated with three institutional investors (the "**Funds**") invested $150 million in Class A stock, becoming among the largest Class A stockholders. This prompted entry into the Third Governance Agreement, which reconstituted the Board to include representatives from each of the Funds and expanded Class A protective provisions.

Following the Board's approval of a merger term sheet with a third party in July 2021, the Company purportedly amended the Governance Agreement five more times. Later versions progressively narrowed such protections, culminating in the Ninth Agreement that eliminated all Class A protections and the Class A Director seat.

After the parties called off the contemplated merger, the Board approved three bridge loans totaling $71 million from the Funds. The following month, the Board formed a special committee (the "**Committee**") to consider financing proposals from related-party investors. The Committee could make recommendations to the Board but did not have authority to reject any proposals. Approximately three months after the bridge loans, the Board approved a Class F financing (the "**Financing**") where the Funds received new Class F stock and exchanged existing Class A stock for Class A-1 shares convertible into approximately 1.71x more common stock than regular Class A. Certain blocking-right holders also received redemption or enhanced conversion terms. The Financing term sheet attributed 50% equity to Class F at a $500 million pre-money valuation and included a cap table analysis projecting just a 4% recovery for Class A stockholders upon a $1.2 billion liquidity event, while all other classes would be made whole.

Certain Class A stockholders (the "**Plaintiffs**") brought contractual claims based on breach of the Governance Agreement (specifically the Fifth Governance Agreement) and direct and derivative breach of fiduciary duty claims against the alleged controlling stockholder and individual directors.

Court of Chancery's Analysis

Implied Covenant of Good Faith and Fair Dealing

Vice Chancellor Laster based his dismissal of the implied covenant claim on the well-established principle that the covenant inherent in all contracts serves only to fill gaps that neither party anticipated at contracting. To invoke it, a party must allege that its counterparty acted unreasonably so as to "frustrate the fruits of the bargain" reasonably expected. The covenant may operate to either: (1) "imply an omitted right or obligation," or (2) "constrain a counterparty's exercise of contractual discretion."

The Court did not find any contractual gaps warranting implied protective terms for Class A stockholders in the Governance Agreement as the Court emphasized that any such rights could have been, but were not, expressly negotiated by the parties. The Court also rejected the notion of any implied term that would effectively make the Class A Director a "constituency director" required to act in the best interests of the Class A stockholders rather than *all* stockholders as required by Delaware law.

The Court also rejected the Plaintiffs' argument that defendants had an implied obligation to exercise contractually-granted discretion in a manner that preserved Class A rights. Vice Chancellor Laster held that such discretion may not be exercised maliciously, but it does permit parties to act in their own interest if a legitimate contractual justification exists. Because the complaint alleged the Company needed financing to avoid insolvency, the Financing qualified as a legitimate, contractually grounded decision rather than one designed solely to harm Class A stockholders.

Fiduciary Duty Breaches

Controlling Stockholder Fiduciary Duties

Applying pre-Safe Harbor Amendments[1] Delaware common law control standards, the Court declined to find that one of the Funds exercised transaction-specific control over the Financing (and therefore owed controlling stockholder fiduciary duties) despite holding a significant 26.4% block of the Company's voting power. While the Court discussed traditional indicia of control (e.g., influence over other Board members, industry leverage over the Company through commercial relationships, and a lending history with the Company), it found those factors insufficient in the aggregate to infer transaction-specific control. The Court noted by comparison that establishing controlling stockholder status under recently amended DGCL Section 144 would require at least one-third of the voting power *plus* power functionally equivalent to majority voting control and managerial authority over the corporation's business and affairs.

Director Fiduciary Duties

The Court applied the entire fairness review standard to the Financing after finding that the 10-member Board lacked a disinterested and independent majority. Four directors were interested because their affiliated entities received material, non-ratable benefits from the transaction, and a fifth director was inferably not independent as an officer-director (discussed below). The Board had received three competing financing proposals that neither the Committee nor the full Board meaningfully pursued. The Court treated the Board's disregard of and failure to disclose those proposals along with the large gap in Company valuation between the Financing and the other proposals as significant evidence of both unfair price and unfair dealing.

The Court also clarified that a preferred stock financing can be "inferably coercive" even if it is offered to all stockholders on ostensibly equal terms. Here, Class A stockholders had no ability to maintain the status quo as non-participation meant losing contractual protections regardless of whether they subscribed. Structural features including a "pay-to-play" arrangement requiring execution of a subscription agreement and funding before data room access reinforced the coercive and inferably unfair nature of the transaction.

In a matter of first impression, the Court held that a Company officer-director was "inferably not independent" when approving the Financing. The Court extended the precedent holding that officer-directors cannot act independently when a controlling stockholder is present or when the board has an interested majority given the potential impact on the officer's continued employment and the fiduciary duty of obedience owed to the board majority in that capacity. It also drew on public-company listing standards that categorically disqualify employees as independent directors.

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[1] The Court noted that the March 2025 Delaware General Corporate Law ("**DGCL**") amendments to Section 144 providing certain safe harbors for controlling stockholders, directors and officers in connection with conflicted transactions (the "**Safe Harbor Amendments**") do not apply here given such action was already pending on February 17, 2025, which is the cut-off date as set out in the amendments.

The Court dismissed fiduciary duty claims against four directors and found that the remaining directors were inferably interested and non-independent, supporting a pleading-stage inference of disloyalty that allowed the fiduciary duty claims against them to proceed.

Aiding and Abetting Liability of the Funds

The Court set out the four elements of an aiding and abetting claim as made against the Funds: (1) a fiduciary relationship, (2) a breach of that duty, (3) knowing participation in the breach, and (4) proximately caused damages. The analysis turned entirely on knowing participation.[2]

Knowing Participation

Knowing participation comprises two distinct concepts: knowledge and participation. The knowledge requirement has two dimensions: the secondary actor must know (1) that the primary wrongdoer's conduct constituted a fiduciary breach, and (2) that its own participation was legally improper. Following the Delaware Supreme Court's narrowing of the standard in *Columbia Pipeline* (2025) and *Mindbody* (2024), actual knowledge is required as constructive knowledge or reckless indifference no longer suffice. Those decisions also confined the participation element to affirmative conduct (at least for a third-party acquirer) in holding that a conscious failure to act in the face of a known duty is inadequate.

Affiliates of Culpable Fiduciaries Distinguished from Third-Party Acquirers

Vice Chancellor Laster drew a key doctrinal distinction as the Funds were affiliates of the fiduciaries and not arm's length third-party acquirers expected to bargain in their own interest. In the third-party acquirer context, a plaintiff must plead meaningful facts showing the acquirer attempted to create or exploit board conflicts. Where the defendant is an affiliate of an allegedly culpable fiduciary, the Court focused on the agreement between the actors, not solely on the wrongful act of assistance. The complaint's theory was that each Fund carried out its scheme in its own interest both with and through its Board designee. The Court imputed each Fund Director's knowledge of the breach to the respective designating Fund and found that the complaint supported a reasonable inference of the Funds' active participation, denying the motion to dismiss the aiding and abetting claim.

Our Take

Vice Chancellor Laster's opinion is a reminder that the implied covenant will not supply protections that experienced parties could have negotiated expressly, and it will not limit the exercise of discretion absent evidence of malice or conduct disconnected from any legitimate contractual purpose. Investor protections must be clear and precisely drafted, and implied terms will not rescue negotiation gaps.

The companion opinion reinforces the value of maintaining a meaningful process (including a fully authorized, independent committee), allowing for full consideration of alternative transactions and complete disclosures. Such procedures can serve to demonstrate the necessary separation between the decision making of institutional investors and that of their director designees and provide the basis for arm's length negotiations.

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[2] Had the 2025 Safe Harbor Amendments applied, the fiduciary claims against the directors would likely have been dismissed if the Committee had been fully authorized (i.e., was authorized to reject any proposal, not just to make recommendations). However, the Amendments would still likely not have shielded the Funds from aiding and abetting liability as, based on the Delaware legislature's synopsis, the Amendments do not limit liability for aiding and abetting fiduciary breaches.

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