

Delaware Court of Chancery Finally Dismisses a de-SPAC Complaint

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Since Vice Chancellor Lori Will's seminal decision in [In re MultiPlan Corp. Stockholders Litigation](#) in January 2022, the Delaware Court of Chancery has seen a wave of lawsuits accusing special purpose acquisition companies (SPACs) of breaching their fiduciary duties through material misstatements or omissions in their de-SPAC proxy statements. Time and again, the court has denied motions to dismiss *MultiPlan* claims, consistently applying entire fairness review and holding that alleged misstatements or omissions interfered with SPAC stockholders' redemption decisions. Until now. In [In re Hennessy Capital Acquisition Corp. IV Stockholder Litigation](#), the court – and Vice Chancellor Will herself – finally granted a motion to dismiss a *MultiPlan* claim, confirming what many had long believed: Even under entire fairness, a disclosure-based *MultiPlan* claim really does require a well-pleaded disclosure violation.

The de-SPAC transaction

Hennessy arose from a de-SPAC transaction between Hennessy Capital Acquisition Corp. IV (the SPAC) and Canoo Holdings Ltd. (an electric vehicle company).

After announcing the deal in August 2020, Hennessy issued a proxy statement in December 2020 asking its stockholders to approve the merger. The proxy favorably discussed Canoo's business model, including its contract engineering services segment and business-to-consumer model. In the end, Hennessy stockholders overwhelmingly approved the merger, and it closed on December 21, 2020.

Three months later, in late March 2021, the board of directors of the combined company (New Canoo) held a meeting. Based on presentations and discussions at that meeting, New Canoo announced that it would "deemphasize" both the engineering services business line and the business-to-consumer model. New Canoo's stock price then fell over 21% on the news.

Court dismisses stockholder suit challenging proxy disclosures

A stockholder filed a class action lawsuit against Hennessy's sponsor and board in June 2022, leveraging materials obtained through a books and records request under 8 *Del. C.* § 220. It was a classic *MultiPlan* claim: According to the plaintiff, the defendants made material misstatements or omissions in Hennessy's proxy statement, breaching their fiduciary duties by interfering with stockholders' redemption decisions. Specifically, the plaintiff alleged that the defendants knew or should have known that New Canoo would change its business model, making the proxy's discussion of the old business model misleading.

The defendants moved to dismiss, and – for the first time on a *MultiPlan* claim – the court granted it. The court applied the entire fairness standard of review, as it did in *MultiPlan* and its progeny. But the court emphasized that entire fairness is not "a free pass to trial." And, based on the plaintiff's allegations and the documents incorporated into his complaint, the court held that the defendants neither knew nor should have known **pre-close** that New Canoo would eventually change its business model **post-close**. Therefore, regardless of the standard of review, the plaintiff failed to allege a reasonably conceivable disclosure violation and resulting *MultiPlan* claim.

Key takeaways

First, and most importantly, *Hennessy* confirms that, even under entire fairness, a disclosure-based *MultiPlan* claim requires a well-pleaded disclosure violation. This was the subject of some debate (i.e., pushback from the plaintiffs' bar), notwithstanding the court's earlier signals. But now there can be no doubt.

Second, *Hennessy* refuses to infer a pre-closing disclosure violation from post-closing developments. This is especially significant in the SPAC space, given many companies' struggles following their deSPAC transactions. As the court put it, "oor performance is not ... indicative of a breach of fiduciary duty."

Third, *Hennessy* highlights that alleging a disclosure violation (under *MultiPlan* or otherwise) requires that the omitted information was “known or knowable” by the defendants at the time the disclosure was made. Although this element can sometimes be overlooked in Delaware (if not in federal securities cases), *Hennessy* is a welcome reminder that disclosure claims are not strict liability causes of action.

See *Delman v. GigAcquisitions3, LLC*, 288 A.3d 692, 722 n.207 (Del. Ch. 2023) (full disclosure means stockholders were “given a fair opportunity to redeem and there would not be a reasonably conceivable *MultiPlan* claim”).

Contributors



Brian French
[Bio](#)



Nicholas Orr
[Bio](#)

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