PERSPECTIVES

SPAC LITIGATION AND ECONOMIC DAMAGES THEORY IN THE DELAWARE COURTS

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Executive Summary

The rise of special purpose acquisition companies (SPACs) has led to a surge in shareholder litigation, particularly in the Delaware Court of Chancery. SPACs raise capital to take private companies public through a process known as a "de-SPAC" transaction. This article examines how fiduciary duty claims arising from de SPAC transactions are reshaping disclosure obligations, liability standards, and damages analysis.

The article also explains the SPAC lifecycle and focuses on the critical pre merger period, when shareholders rely on public disclosures to decide whether to redeem their shares or remain invested. Recent Delaware decisions—including MultiPlan, Hennessy, Mountain Crest, and InterPrivate—clarify that misleading or incomplete disclosures may impair shareholders' redemption rights, creating direct fiduciary duty claims subject to entire fairness review. Relying on J.S. Held's expertise in economic damages, the article identifies critical valuation, class certification, and forensic accounting challenges that will affect future SPAC litigation and settlement strategy in Delaware courts.

Introduction

In large part due to the significant increase in special purpose acquisition company ("SPAC") formation in the financial markets, there has been a similar increase in SPAC-related litigation – most notably in the Delaware Court of Chancery (the "Court"). While some of the suits filed are standard securities class action matters, the more interesting disputes (to the writers of this article, of course) allege breaches of fiduciary duties (i.e., direct action breach of fiduciary class action lawsuit). As of the writing of this article, none of these fiduciary duty suits have been tried to verdict.

The primary focus of the fiduciary litigation is the alleged inaccuracy and insufficiency of public disclosures during the SPAC merger process. SPACs (often referred to as "blank check" companies) raise capital as a vehicle to take private companies public (referred to as a "de-SPAC" transaction). Generally, the disagreements regarding the public disclosures involve the periods leading up to the de-SPAC transaction. Additionally, pre-merger SPAC shareholders have alleged that fiduciaries recommended unfair de-SPAC transactions along with self-dealing by SPAC insiders.

SPACs Explained

On January 24, 2024, the Securities and Exchange Commission ("SEC") published rule S7-13-22 with the stated purpose to "enhance investor protections in initial public offerings by special purpose acquisition companies … and in subsequent business combination transactions between SPACs and private operating companies."[1] In that rule, the SEC defined SPACs as follows: "special purpose acquisition companies … are shell companies organized and managed by a sponsor for the

[1] SEC Final Rule S7-13-22, page 1.

purpose of merging with or acquiring one or more unidentified private operating companies, commonly known as a de-SPAC transaction, within a certain time frame."[2]

SEC Final Rule S7-13-22 continues to state: "The de-SPAC transaction is a hybrid transaction that contains elements of both an initial public offering … and a merger and acquisition … transaction. While structured as an M&A transaction, the de-SPAC transaction also is the functional equivalent of the private target company's IPO, because it results in the target company becoming part of a combined company that is a reporting company and provides the private target company with access to cash proceeds that the SPAC had previously raised from the public. As part of this process, the shareholders of the SPAC go from owning shares in the shell company to owning shares in a combined company that conducts the business of the private target. As a result, the de-SPAC transaction implicates disclosure and liability concerns associated with both IPOs and M&A transactions."[3]

The SEC also sets forth the following regarding the structure and lifecycle of a SPAC:

1. **SPAC Initial Public Offering ("IPO")**: Once formed, a SPAC will conduct its IPO in the form of a firm commitment underwritten IPO of $5 million or more in units consisting of redeemable shares and warrants.[4]
2. **IPO Proceeds Placed in Escrow**: Following its IPO, a SPAC places all or substantially all of the IPO proceeds into a trust or escrow account.[5]
3. **Trading Period**: Typically, the SPAC registers its shares and warrants under section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") and lists the units for trading on a national securities exchange.[6]
4. **Target Identification**: Next, the SPAC seeks to identify a target company for a de-SPAC transaction within the time frame specified in its governing documents. The governing documents often provide a time frame of 24 months, but it can be as long as 36 months. If the SPAC does not complete the de-SPAC transaction within that time frame, it may seek an extension or dissolve and liquidate.[7]
5. **Merger Announcement**: If the SPAC enters into a business combination agreement with a target company, the SPAC files a Form 8-K announcing the transaction that includes certain information on the material terms of the business combination agreement.[8]
6. **Shareholder Vote**: Prior to the closing of the de-SPAC transaction, the shareholders of the SPAC typically have the opportunity to either (a) require the SPAC to redeem their shares and receive a pro rata share of the amount in the IPO proceeds and related assets held in trust or escrow or (b) remain a shareholder of the surviving company after the business combination.[9]
7. **Private Investment in Public Equity ("PIPE") Financing**: In order to offset the aforementioned shareholder redemptions or to fund larger de-SPAC transactions, SPACs often conduct additional private capital-raising transactions, typically in the form of PIPE transactions.[10]
8. **Proxy Statement Filing**: Generally, shareholder approval is required for certain relevant items during the de-SPAC transaction (e.g., amendments to the governing documents of the SPAC or authorization of additional securities for issuance). In such instances, a SPAC provides its shareholders with a proxy statement on

[2] SEC Final Rule S7-13-22, page 8.
[3] SEC Final Rule S7-13-22, pages 8 and 9.
[4] SEC Final Rule S7-13-22, page 9.
[5] SEC Final Rule S7-13-22, page 10.
[6] SEC Final Rule S7-13-22, page 10.
[7] SEC Final Rule S7-13-22, page 10 and footnote 12.
[8] SEC Final Rule S7-13-22, pages 10 and 11.
[9] SEC Final Rule S7-13-22, page 11.
[10] SEC Final Rule S7-13-22, page 11.

Schedule 14A of an information statement on Schedule 14C.[11]

9. **Tender Offe**r: After issuances of required registration and proxy statements, the SPAC may disseminate a tender offer statement for the redemption offer to its security holders with information about the target company.[12]
10. **Merger Completion / de-SPAC Transaction**: After the completion of the de-SPAC transaction, the combined company must file a Form 8-K within four business days that includes information about the target company equivalent to the information that a new reporting company would be required to provide when filing a Form 10 under the Exchange Act.[13]

For the purposes of the fiduciary duty litigation, relevant actions occur between step #5 (i.e., Merger Announcement) and step #9 (Tender Offer) noted above. It is during this time period that SPAC shareholders evaluate the accuracy and sufficiency of public disclosures made by the SPAC sponsors. Specifically, at this time, the SPAC shareholders rely on the aforementioned disclosures to inform their decision whether to opt into the merger or redeem their shares at par value plus interest.

In Re MultiPlan Corp. Stockholders Litigation

In the first decision to test the Court's fiduciary principles in a de-SPAC context, Vice Chancellor Will denied a motion to dismiss and applied entire-fairness review to the MultiPlan merger, concluding that the sponsor's "founder shares" and the board's parallel incentives created a disabling conflict, and that materially incomplete disclosures deprived public stockholders of a fully informed choice whether to redeem at the $10-per-share trust value or remain invested. The court framed the harm as a direct injury to each investor's personal redemption right (and not, as in most M&A litigation, a derivative injury) and confirmed that SPAC fiduciaries owe the traditional duty of candor even though investors already possess the contractual right to exit. Although the merits never reached trial, the parties settled for $33.75 million, now an informal reference point for valuing "MultiPlan claims."

Summary of Hennessy Dismissal

In the *In Re Hennessy Capital Acquisition IV Canoo* decision, the Court delivered the first post-MultiPlan dismissal of a SPAC fiduciary-duty suit, underscoring that entire-fairness scrutiny does not relax Delaware's pleading standards. Vice Chancellor Will noted in that case that, after the Multiplan decision, "SPAC lawsuits are ubiquitous in Delaware." The Court held that sponsor conflicts and a steep post-merger price decline, standing alone, cannot sustain a claim; plaintiffs must allege specific, knowable omissions that actually distorted the redemption decision. Because the strategic overhaul of Canoo, the company that merged with Hennessy, took place only after the merger and there were no well-pled facts showing the SPAC fiduciaries knew of undisclosed problems pre-closing, the complaint failed.

Recent SPAC Decisions

On October 18, 2024, the Court denied defendants' motion to dismiss in a failure-to-disclose matter even though the Court stated that the allegations were "not strong" as

[11] SEC Final Rule S7-13-22, pages 11 and 12.
[12] SEC Final Rule S7-13-22, page 12.
[13] SEC Final Rule S7-13-22, page 13.

compared with other SPAC cases that survived motions to dismiss. In this matter, *John Solak v. Mountain Crest Capital, LLC et al.*, the defendant raised $57.5 million through an IPO on January 8, 2021. On April 7, 2021, the defendant announced a merger agreement with Better Therapeutics.

The defendant filed with the SEC and issued proxy statements to shareholders to approve the merger on October 12, 2021. The shareholder vote meeting was scheduled for October 27, 2021, and the deadline to redeem shares was October 25, 2021. The proxy statement valued the shares at $10, but the dilution of the redemptions and founder shares, along with the costs of the merger, reduced the actual cash balance to less than $7.50 per share.

Defendant's share price trended as follows:

- April 7, 2021: $9.99 per share; Better Therapeutics, Inc., and Mountain Crest Acquisition Corp. II hold M&A call
- April 23, 2021: $9.89 per share; auditor raises "going concern" doubt
- August 25, 2021: $9.95 per share; $50 million debt financing from Hercules Capital
- October 28, 2021: $10.43 per share; de-SPAC transaction and six insiders acquired 12.2 million shares (not open market, so this is assumed to be the triggering of founders' shares)
- October 29, 2021: $9.30 per share; received $56 million in funding from Sectoral Asset Management, Inc.; Fara Ilon Capital Management, LLC; and Monashee Investment Management LLC
- November 1, 2021: $17.14 per share; highest share price
- November 2, 2021: $11.50 per share; 33% decrease in share price
- November 3, 2021: $12.25 per share; Form 8-K filed
- November 15, 2021: $8.73 per share; announcement of delayed 10-Q filing
- November 26, 2021: $7.21 per share; filed shelf registration in the amount of $156.7 million
- December 8, 2021: $7.08 per share; closed shelf registration in the amount of $139.4 million
- January 14, 2022: $4.60 per share; Marcum LLP dismissed as the independent registered public accounting firm
- March 28, 2022: $2.07 per share; auditor raises "going concern" doubt
- December 7, 2022: $1.42 per share; filed a follow-on equity offering
- March 30, 2023: $0.70 per share; auditor raises "going concern" doubt
- April 21, 2023: $1.32 per share; receipt of $6.5 million in private placement funding
- April 28, 2023: $1.28 per share; complaint filed.

The Court noted in its decision that "the Proxy misstates an investment value of $10 per share and fails to disclose that the actual amount of cash being placed into the merger was 25 [percent] less than disclosed. In light of the assertion of a $10 valuation in the Proxy, it is reasonably conceivable that a stockholder would find the cash per share figure material to the decision whether to redeem or invest in the de-SPACed company. At this pleading stage, I find these allegations – that the fiduciaries disclosed an investment value untethered to an undisclosed cash per share figure – sufficient to claim of breach…"

In Re InterPrivate

The shareholder complaint in the *InterPrivate* litigation[14] shows how those same principles play out when investors split into two economically divergent groups. In the 2024 complaint, plaintiffs say the sponsor and directors steered the merger with Aeva, masked problems, and thereby impaired a fair redemption decision. The complaint adds an allegation that the price was misleading, and that the value of what was purchased was not $10 per share but instead $8.50 per share after taking into account cash dilution as a result of the merger.

[14] See Aeva Technologies 10-Q available at https://www.sec.gov/Archives/edgar/data/1789029/000095017024056096/aeva-20240331.htm#ii_item1 at Note 14.

But roughly 50 percent of the float in fact redeemed at $10.20 per share. Others kept (or later sold) shares that soon traded below $3 per share after trading at $16.16 per share the first day of trading. The case appears headed toward settlement as of the time of this writing, but presents interesting issues for consideration for damages estimation in this new twist on the MultiPlan line of cases.

Why InterPrivate Complicates Damages and Class Structure

- **Two economic cohorts**.
  - *Redeemers* claim they were tricked out of the secure $10 trust value and therefore seek *rescissory* damages measured against that floor.
  - *Non-redeemers / aftermarket sellers* allege classic stock-drop harm, typically quantified with an event-study anchored in the price at the time of post-merger corrective disclosures.
- **Typicality & predominance questions.** Because the Redemption Class and the Market-Loss Class rely on different valuation baselines, defendants argued that Rule 23 requires separate subclasses with distinct experts and damage models; otherwise, the predominance of common issues breaks down, and the named plaintiff may not be typical of both groups.

SPAC Damages Accounting Takeaways and Open Questions

Forensic Accounting takeaways

- **Redemption-floor model.** Lost-redemption damages equal Present Value of [(lost redemption - value of SPAC merger at time of transaction adjusted for misinformation, or the pro rata true appraisal of what was actually received) x number of shares].
- **Market-loss model.** Apply an event-study to isolate price inflation attributable to the undisclosed facts at closing, then measure decline when the truth emerges (often the first post-merger corrective disclosure) using a similar formula to securities class action modeling.
- **Class-splitting sensitivity.** If subclasses are required, experts may need to run both models and provide the court with parallel damages schedules. If a single class survives, experts should still show how aggregate damages decompose by cohort to aid plan-of-allocation negotiations and fairness-hearing scrutiny.
- **Open questions**. (i) Whether Delaware will approve an all-in settlement when cohorts' economic interests diverge; (ii) how to net judgment offsets when some investors already recovered $10 through redemption; and (iii) whether future SPAC litigants will plead around *InterPrivate* by appointing separate subclass representatives at the outset.

Together, *MultiPlan* sets the fiduciary-duty and entire-fairness framework, while *InterPrivate* spotlights the **practical valuation and certification hurdles** that arise once redeeming and non-redeeming investors pursue the same direct claim.

Case Status Cheat Sheet

While many Delaware SPAC cases are pending, the chart below provides a representative sample of some of the more significant open SPAC matters in Delaware and summarizes the questions at issue and case status.

Case	Stage	Key remedy / issue	Latest move
In re MultiPlan Corp. Shareholders Litigation.	Settled (October 2024)	$33.75 M cash; direct claim for impairment of redemption right.	Settlement approved; sets headline valuation for future risk. The D&O Diary
In re Hennessy Cap. Acq. IV	Dismissed at pleadings (May 2024); first full defense win post-*MultiPlan*.	Court found no well-pled disclosure violation => no redemption-right impairment.	Plaintiffs filed notice of appeal (pending). www.hoganlovells.com
In re Skillsoft Shareholders Litigation.	Dismissed pre-discovery (February 2025) under entire-fairness.	VC Laster found no non-ratable benefit to sponsor.	Motion for reargument denied April 1, 2025. Enhanced Scrutiny
Smith v. Fattouh *(InterPrivate/Aeva)*	Putative class action: term-sheet for $14 M global settlement signed July 2, 2024 (court approval pending).	Claims mirror *MultiPlan* but raise **two-track damages** problem: (i) redeemers capped at trust ~$10; (ii) market purchasers allege drop-based damages.	Removal to D. Del. created extra class-certification hurdles; parties agreed to stay cert briefing during settlement talks. SECQ4
Mountain Crest v. Better Therapeutics	Motion-to-dismiss denied (October 2024).	New theory: nondisclosure of net cash per share; Court allowed claim to proceed.	Fact discovery underway; no settlement talks disclosed. Reuters
Trident / *(Lottery.com)*	$2.6 M settlement preliminarily approved November 2024.	Complaint highlights difficulty of a single class when some holders redeemed at $10 per share while others later sold into a collapse.	Settlement hearing scheduled June 2025. Law360The D&O Diary

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