EFiled: Jul 18 2019 03:52PM EDT
Filing ID 63561180
Case Number 168,2019

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ARON ENGLISH and RICHARD PEPPE, Individually and on Behalf of All Similarly Situated Individuals, Appellants, Plaintiffs-Below, v. CHARLES K. NARANG, PAUL A. DILLAHAY, JAMES P. ALLEN, PAUL V. LOMBARDI, CINDY E. MORAN, AUSTIN J. YERKS, DANIEL R. YOUNG, CLOUD INTERMEDIATE HOLDINGS, LLC, CLOUND MERGER SUB, INC., and H.I.G. CAPITAL, LLC, Appellees, Defendants-Below.	No. 168, 2019 CASE BELOW: COURT OF CHANCERY OF THE STATE OF DELAWARE, C.A. No. 2018-0221-AGB

APPELLANTS' REPLY BRIEF

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Dated: July 18, 2019

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PRELIMINARY STATEMENT

Delaware law recognizes that controlling stockholders are prone to exert their authority to advance their own interests without regard to the interests of minority stockholders. Courts have addressed this omnipresent specter of controller overreach by applying the exacting entire fairness standard to situations where, as here, a controller has engaged in a conflicted transaction.

Defendant Charles Narang controlled NCI since its inception and sought a unique benefit from the Acquisition in the form of liquidity. Plaintiffs' Complaint includes numerous allegations of pure fact, which must be accepted as true and demonstrate that Narang abused his power to push a sale of NCI on substandard terms. As the Court of Chancery did, Defendants ignore very real circumstances that created Narang's liquidity need and rely almost exclusively on noting that Plaintiffs do not cast the Acquisition as a fire sale. The majority of other cases finding that liquidity needs could trigger a conflict of interest do not emphasize an extraordinary emergency. Accordingly, the court should apply entire fairness and deny the defendants motion to dismiss on *Corwin* grounds.

Alternatively, this court should reverse the Chancery Court's *Corwin* dismissal based on disclosure grounds. The importance of ensuring that shareholders approve a cash-out merger on a fully informed basis cannot be overstated. And here, the 14D-9 misrepresented or omitted material information about NCI's prospects.

Plaintiffs offered numerous allegations and support of their assertion based on both pre- and post-acquisition statements. The Court of Chancery and Defendants are wrong to disregard these allegations based on a separate and not a cumulative consideration. Accordingly, giving Plaintiffs' allegations the due deference they are entitled to on a motion to dismiss, it is reasonably conceivable that shareholders were uninformed, so *Corwin* should not apply.

ARGUMENT

I. ENTIRE FAIRNESS APPLIES BECAUSE IT IS UNDISPUTED THAT NARANG CONTROLLED NCI AND BECAUSE WAS CONFLICTED BASED ON A REASONABLY CONCEIVABLE LIQUIDITY NEED.

Entire fairness applies whenever a corporation's controller engages in a conflicted transaction. *See Jedwab v. MGM Grand Hotels, Inc.*, 509 A.2d 584, 594-95 (Del. Ch. 1986). Defendants do not seriously dispute that Narang controlled NCI, and the Chancery Court accepted as much, but they argue that (i) Plaintiffs failed to allege any facts supporting a reasonable inference that Narang needed or wanted liquidity or diversification and (ii) there is no basis in Delaware law for a pleading-stage finding that, absent a literal emergency, a controller could breach his fiduciary duties by choosing a course that creates a net benefit for him when that course is not in stockholders' best interest. Defendants are wrong on both points.

A. Defendants Misconstrue How the "Unique Benefit" in the Form of Liquidity Can Trigger a Conflict of Interest

Plaintiffs do not contend that Narang stood on both sides of the Acquisition or that he received disparate consideration from that of other NCI stockholders. Rather, as in the *infoGROUP* case, Plaintiffs allege that Narang led NCI into the Acquisition to derive a "unique benefit" in the form of liquidity. *Cf. N.J. Carpenters Pension Fund v. infoGROUP, Inc.*, 2011 Del. Ch. LEXIS 147, at *27 (Del. Ch. Oct. 6, 2011) (citation omitted) ("Liquidity has been recognized as a benefit that may lead directors to breach their fiduciary duties."); *In re Crimson Expl. Inc. Stockholder*

Litig., 2014 Del. Ch. LEXIS 213, at *44 (Del. Ch. Oct. 24, 2014) ("In these cases, the controller receives some sort of special benefit not shared with the other stockholders."); *In re Martha Stewart Living Omnimedia, Inc. Stockholder Litig.*, 2017 Del. Ch. LEXIS 151, at *48 n.75 (Del. Ch. Aug. 18, 2017) (citation omitted) ("[E]ntire fairness applies to allegedly conflicted transactions where the controller is on only one side of the transaction precisely to assuage the risk that a controller who stands to earn . . . some unique benefit will flex his control to secure that self-interested deal to the detriment of minority stockholders.").

"Unique benefit" cases are the exception rather than the norm, yet Plaintiffs have cited several Delaware cases that support this basis for finding a potential conflict of interest. (A252-53) (citing *In re Answers Corp. S'holders Litig.*, 2012 Del. Ch. LEXIS 76, at *26 (Del. Ch. Apr. 11, 2012), *McMullin v. Beran*, 765 A.2d 910, 922-23 (Del. 2000); *In re Barnes & Noble S'holders Deriv. Litig.*, C.A. No. 4813-CS, at *7-8, 15 (Del. Ch. Oct. 21, 2010) (TRANSCRIPT)).

Defendants attempt to discount the viability of a "unique benefit" as engendering a conflict by arguing that *infoGROUP* involved a more pressing situation and that *Answers* and *McMullin* involved "breach of fiduciary claims against directors who were not controlling stockholders." Ans. Br. 32. Their attempts fall flat.

In *Answers*, which involved allegations that two directors serving at the behest of Redpoint Ventures, a venture capital firm that owned 30% of the company, the Court of Chancery observed that "the Complaint alleges that Beasley and Dyal sought a sale of the Company in order to achieve liquidity for Redpoint. . . . Moreover, the Complaint asserts that Beasley and Dyal's desire to gain liquidity for Redpoint caused them to manipulate the sales process. Thus, the Complaint alleges sufficient facts to suggest that Beasley and Dyal were interested in the Merger." 2012 Del. Ch. LEXIS 76, at *23. Thus, while Defendants here are technically correct in asserting that the court in *Answers* "did not analyze whether the controlling stockholder's desire for liquidity caused the *transaction* to be conflicted," Ans. Br. 33 (emphasis added), as the transaction itself was merely an event and could not be conflicted, the Court of Chancery unmistakably held that the two Redpoint directors were conflicted stemming from Redpoint's desire (*i.e.*, less than need) for liquidity.

McMullin, like here, involved a controller (an entity referred to as ARCO) that had an apparent need for cash. 765 A.2d at 921. Although its analysis focused on the board of directors, including those designated by or affiliated with the controller, the Court reversed the Chancery Court's dismissal and reinstated claims for breach of fiduciary against the controller, discussing how the controller's need for cash

"compromised [the board's] deliberative process" and also supported claims of disloyalty stemming from the "effects of the ARCO-related conflicts." *Id.* at 921-24.

As Defendants acknowledge, *In re Synthes, Inc. S'holder Litig.*, 50 A.3d 1022 (Del. Ch. 2012), also states that the need for liquidity could trigger a conflict in "very narrow circumstances . . . ." *Id.* at 1036 ("In those circumstances, I suppose it could be said that the controller forced a sale of the entity at below fair market value in order to meet its own idiosyncratic need for immediate cash, and therefore deprived the minority stockholders of the share of value they should have received had the corporation been properly marketed in order to generate a bona fide full value bid, which reflected its actual market value.").[1]

Irrespective of any factual differences, *infoGROUP*, *Synthes*, *Answers*, *McMullin*, and *Barnes & Noble*—which Defendants ignored entirely—emphasize the key principle that a desire or need for liquidity on the part of a controller or other influential stockholder may give rise to a conflict of interest. *Cf. Am. Express Co. v.*

[1] Plaintiffs in the opening brief already distinguished the *Synthes* case. Plaintiffs' Complaint involves far more allegations that Narang was conflicted as compared to allegations in the Synthes complaint. It is presumed the court in *Synthes* considered all of the allegations in deciding to motion to dismiss, even the allegations not expressly mentioned in the decision because Delaware courts "accept all well-pleaded factual allegations in the Complaint as true, accept even vague allegations in the Complaint as "well-pleaded" if they provide the defendant notice of the claim . . . ." *Cent. Mortg. Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 27 A.3d 531, 536 (Del. 2011).

Italian Colors Rest., 570 U.S. 228, 248 (2013) (Kagan, J., dissenting) ("Those decisions establish what in some quarters is known as a principle . . . .").

Defendants also home in on the supposed requirement that the liquidity need be "exigen[t]" or "urgent," Ans. Br. 28, 29, 31-33, relying exclusively on language from in *Synthes*, wherein Chief Justice Strine, writing then as Chancellor, stated that a controller's need for liquidity:

> would have to involve a crisis, fire sale where the controller, in order to satisfy an exigent need (such as a margin call or default in a larger investment) agreed to a sale of the corporation without any effort to make logical buyers aware of the chance to sell, give them a chance to do due diligence, and to raise the financing necessary to make a bid that would reflect the genuine fair market value of the corporation. In those circumstances, I suppose it could be said that the controller forced a sale of the entity at below fair market value in order to meet its own idiosyncratic need for immediate cash, and therefore deprived the minority stockholders of the share of value they should have received had the corporation been properly marketed in order to generate a bona fide full value bid, which reflected its actual market value. The world is diverse enough that it is conceivable that a mogul who needed to address an urgent debt situation at one of his coolest companies (say a sports team or entertainment or fashion business), would sell a smaller, less sexy, but fully solvent and healthy company in a finger snap (say two months) at 75% of what could be achieved if the company sought out a wider variety of possible buyers, gave them time to digest non-public information, and put together financing. In that circumstance, the controller's personal need for immediate cash to salvage control over the financial tool that allows him to hang with stud athletes, supermodels, hip hop gods, and other pop culture icons, would have been allowed to drive corporate policy at the healthy, boring company and to have it be sold at a price less than fair market value, subjecting the minority to unfairness.

50 A.3d at 1036.

Although a complete lack of temporal awareness on the part of a controller could suggest that there is no such liquidity need or desire, Plaintiffs respectfully submit that Delaware law does not and should not require any extreme sense of urgency. Indeed, the emphasis should be on whether the controller is motivated by a need or desire for cash even to pursue a course of action that is not in stockholders' best interests. Even if it takes some time to initiate and complete the process.

infoGROUP, *Answers*, and *McMullin* all support this approach to time-based concerns. In *infoGROUP*, the process began in late 2008 when the alleged controller emailed his personal bankers "to facilitate either his purchase of *infoGROUP* or the sale of his stock." 2011 Del. Ch. LEXIS 147, at *9. Shortly thereafter, the controller issued a press release "recommending that the Company explore its strategic alternatives, including a possible sale of the company." *Id.* at *11. The next year, the company's financial advisor contacted potential financial and strategic buyers, with multiple parties expressing interest and engaging in due diligence. *Id.* at *14-15. The board agreed to the merger on March 7, 2010, roughly a year and a half after the process began. *Id.* at *17. Nothing about the process undertaken in *infoGROUP* suggests any emergency or fire sale.

In *Answers* the apparent liquidity interest arose "[b]y early 2010," 2012 Del. Ch. LEXIS 76, at *4, followed by "[m]onths of discussions," *id.* at *5, and the board agreed to a deal on February 2, 2011, *id.* at *8. During this approximately year-long

period, the company's financial advisor conducted a brief market check that included outreach to ten companies. *Id.* at *7-8. There was no urgency, yet the Court still found that Redpoint's need for cash triggered a conflict of interest.

McMullin also involved no apparent urgency, with the process spanning more than four months and involving outreach to "a number of entities to gauge their interest in participating in a bidding process." 765 A.2d at 915-16.

There was no exigency in *infoGROUP*, *Answers*, or *McMullin*, which suggests that the overwhelming emphasis should be on the divergent interests between controlling stockholders and minority stockholders, which exists here as between Narang and NCI's minority stockholders.

B. Plaintiffs Alleged Extensive Facts Explaining the Importance and Implications of Narang's Need or Want for Liquidity and Diversification.

Before the Court of Chancery and in their Opening Brief, Plaintiffs identified numerous factual statements which, if accepted as true and accompanied by the reasonable inferences Plaintiffs are entitled to at this stage, amply support the conclusion that Narang was self-interest vis-à-vis the receipt a unique benefit. The Complaint's numerous factual allegations include the following:

- When Narang decided to retire in 2015, he was 73 years-old and NCI stock constituted the "vast majority of [Narang's] net worth" (A014 ¶ 7)
- Narang needed liquidity for a "stable retirement" and "prudent estate planning (*Id.*)

- "Narang simply could not simply sell his stock on the open market without accepting a huge blockage discount" (A014 ¶ 8)

- Narang tried to sell his shares, "but the market reacted negatively every time Narang publicized any sale of his NCI shares" (*Id.*)

- "Narang hatched a plan to secure maximum liquidity for himself to the detriment of Plaintiffs and all of the NCI's public stockholders." (*Id.*)

- "Prior to the Acquisition, nearly all of Narang's wealth derived from his interest in NCI. He had no discernible significant business interests, and Plaintiff's counsel's public records searches did not reveal any extensive real estate holdings. In short, Narang's net worth was extremely concentrated in NCI stock." (A032 ¶ 64)

- "Narang's holdings were largely illiquid" because of "Narang's control over a substantial portion of the Company's stock, as well as NCI's status as a small-cap company . . . ." (A032 ¶ 65)

- "In accordance with a prudent approach to retirement, Narang needed to secure and diversify his assets." (A033 ¶ 66)

- Regarding reasonable financial planning approaches, "even the most aggressive strategies vehemently discourage allocating virtually all of one's wealth into a small-cap company that even described its own stock as 'volatile.'" (A033 ¶ 67)

- NCI itself acknowledged in public filings that its stock is likely to be "highly volatile." (A033 ¶ 68)

- Based on NCI's inconsistent historical stock performance, "it would have been unsuitable for Narang to have left the bulk of his net worth tied up in NCI stock." (A033 ¶ 69)

- "Narang was acutely aware of the long-term behavior of the Company's stock price" (A033 ¶ 70)

- "In addition to wealth management considerations . . . numerous tax and estate planning considerations also required Narang to seek to liquidity for his shares . . . ." (A033-34 ¶ 71)

- "Had Narang attempted to sell all of his shares on the open market at once, or even over a period of months, he would have incurred a massive blockage discount—perhaps as high as 45%--and would have sacrificed tens of millions of dollars off even the pre-Acquisition stock price" (A034 ¶ 72)

- "NCI and Narang recognized through the years that his stake was effectively illiquid" and that NCI's stock price "could drop significantly if Mr. Narang sells his interests in the Company or is perceived by the market as intending to sell them." (A034 ¶ 73)

- "Narang did, in fact, attempt to sell some of his shares on the open market beginning in late 2015," despite having not previously sold any shares since 2009. (A034 ¶ 74)

- "[T]he market generally reacted negatively to Narang's stock sales, as well as to news that Narang was selling Company shares . . . ." (A035 ¶ 75)

- "Realizing that selling his interest in NCI in the open market would mean that he had to sell at a steep discount, Narang's only viable path to liquidity was to seek a cash acquisition of NCI. . . ." (A035 ¶ 76)

- "Narang faced a liquidity issue as most of his assets were tied up as equity interest in NCI. Narang, knowing that selling his equity interest for his need of cash in the open market means that he will sell at a discount, wielded his control over NCI and the Board to sell NCI." (A050 ¶ 135)

These allegations establish that, upon his retirement at 73 years old, Narang fully knew that he had a liquidity problem that could be resolved only through a sale of the NCI for cash.

Like the Court of Chancery below, however, Defendants broadly state, "Plaintiffs allege no facts about Narang needing liquidity," such as for one of the possible bases suggested in *Synthes*. Ans. Br. 24 (citing *Synthes*, 50 A.3d at 1036). Defendants then admit that Narang's "stake in NCI was illiquid" but then claim there

was no "urgent need" for liquidity. Ans. Br. 25. Defendants also state, "Plaintiffs do not allege Narang wanted to diversify his assets," and that Plaintiffs' allegations concerning "generally prudent or normal" financial and estate planning strategies are irrelevant to "how Narang thought about, or acted concerning, his own portfolio." *Id.*

Defendants' arguments, however superficially appealing, ignore several key points. *First*, this case has advanced only to the motion to dismiss stage, so Plaintiffs should not be held to a standard as would be appropriate at summary judgment or trial after the parties have had an opportunity to conduct fulsome discovery, including a deposition of Narang to specifically inquire as to his mental state. *Second*, discounting Plaintiffs' allegations concerning Narang's interest and reasonable planning scenarios is inappropriate at this stage, as all allegations must be accepted as true. *Third*, Defendants' ignore that fact that, in a departure from past practice, Narang did attempt to sell shares for a short period of time beginning in late 2015 until NCI's stock price dipped below $15 per share. *Fourth*, arguing that Narang would have acted imprudently in managing his assets—especially when NCI stock constituted the bulk of his net worth—requires the Court to presume that Narang acted irrationally. Delaware law, however, presumes that businessmen act rationally. *In re Pennaco Energy, Inc. S'holders Litig.*, 787 A.2d 691, 713 (Del. Ch. 2001)

Defendants also argue that Plaintiffs' view of prudent investing would have dictated that Narang would have faced this liquidity concern all along, Ans. Br. 25-26, but this ignores the momentous event of his retirement, which Plaintiffs explicitly pled as triggering Narang's desire to sell. (A014 ¶ 7)

C. Plaintiffs' Sales Process Allegations Buttress Their Allegations That Narang Was Determined to Sell the Company to Satisfy His Liquidity Need

In addition to the numerous specific allegations in Plaintiffs' Complaint concerning Narang's need or desire for liquidity, Plaintiffs' Opening Brief highlights that the deficient process sanctioned by the Narang-led Board emphasizes Narang's determination to sell NCI. Defendants counter, however, by asserting that this is a new argument. To the contrary, the Court of Chancery pointed to the length of the process leading up to the Acquisition, the steps taken to interact with potential parties, and other aspects of the process to counter Plaintiffs' assertions that the Acquisition flowed from Narang's desire to sell NCI for liquidity purposes. Opinion at 21-22. Accordingly, Plaintiffs are fully within their rights to rely on sales process allegations to bolster their claims that Narang was conflicted based on his quest for a "unique benefit" in the form of liquidity.

Accordingly, Plaintiffs' process-related allegations are fairly before the Court, and they fully support an inference that the Narang-led Board acted unreasonable in furtherance of his singular goal to sell the Company. Throughout the negotiations,

the Narang-led Board countered H.I.G.'s earlier offers without ever consulting with either of two financial advisors regarding price. (A039 ¶ 93, A040 ¶ 96, A043 ¶ 106) *See In re Sauer-Danfoss S'holder Litig.*, 65 A.3d 1116, 1132 (Del. Ch. 2011) ("If a disclosure document does not say that the board or its advisors did something, then the reader can infer that it did not happen.").[2] Over other potential acquirors, H.I.G. was given preferential and extraordinary access to NCI's customers (A045 ¶ 115, A046 ¶ 119), the Board granted H.I.G. formal and then *de facto* exclusivity despite never being briefed on the adequacy of H.I.G.'s offers (A046 ¶¶ 116-18) Further, the Board members and management unilaterally decided to enrich themselves by awarding bonuses simply for adhering to their fiduciary duties (A048 ¶ 126). Plaintiff's allegations in the pleading stage, taken together, establish that it is reasonably conceivable that Narang suffered a conflict and that entire fairness applies. *See In re Hansen Med., Inc. Stockholders Litig.*, 2018 Del. Ch. LEXIS 197, at *19 (Del. Ch. June 18, 2018).

[2] Defendants, in fact, relied on this exact same language in their motion to dismiss papers.

II. RATIFICATION UNDER *CORWIN* DOES NOT APPLY BECAUSE NCI STOCKHOLDERS WERE NOT FULLY INFORMED REGARDING NCI'S FINANCIAL PROJECTIONS.

Corwin affords Defendants the cleansing relief they seek only if NCI stockholders were fully informed in approving the Acquisition. *Id.*, 125 A.3d 304. Here, NCI's 14D-9 misrepresented and omitted material information regarding NCI's financial projections. Specifically, NCI's public statements just prior to the announcement of the Acquisition suggested an upward trajectory that significantly exceeded what was disclosed in the 14D-9, and statements made shortly after the Acquisition closed demonstrate that the financial projections disclosed in the 14D-9 drastically understated NCI's true potential. Based on the pleading-stage inference Appellants are entitled to, the various statements surrounding NCI's prospects render the 14D-9 materially misleading and incomplete with respect to the company's financial projections.

Defendants do not dispute the materiality of financial projections. Rather, Defendants contend only that the allegations contained in ¶¶ 161 to 182 of the Complaint do not establish that the financial projections disclosed across the original 14D-9 and amendment thereto were "false." Ans. Br. 36. But falsity is not the alpha and omega of the inquiry. Nor does it accurately frame Plaintiffs' allegations, which are that "the 14D-9 materially misrepresents NCI's financial outlook disclosing projections that understated the Company's upside and overstated certain risk

factors." (A059 ¶ 161) In other words, the 14D-9 portrayed a gloomier picture of NCI's prospects than was actually the case as of when Defendants solicited NCI stockholder approval for the Acquisition.

As Plaintiffs explained in their Opening Brief, Op. Br. 39-40, materiality is the ultimate issue, and a misrepresented or omitted fact is material when it "would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." *Rosenblatt v. Getty Oil Co*., 493 A.2d 929, 944 (Del. 1985) (citation omitted). The materiality inquiry "is a mixed question of law and fact, requiring an assessment of the inferences a reasonable shareholder would draw and significance of those inferences to the individual shareholder." *RBC Capital Mkts., LLC v. Jervis*, 129 A.3d 816, 858-59 (Del. 2015). At the motion to dismiss stage, the materiality standard through the lens of the "reasonably conceivable" standard for stating a claim. *In re Saba Software, Inc.*, 2017 Del. Ch. LEXIS 52, at *3-4 (Del. Ch. Mar. 31, 2017) (holding that "the Board may not invoke the business judgment rule under the so-called *Corwin* doctrine because the Complaint pleads facts that allow a reasonable inference that the stockholder vote approving the transaction was neither fully informed nor uncoerced").

Plaintiffs alleged that the 14D-9 was misleading based on the strength of NCI's customer relationships, NCI's strong positioning, the drastically improving market for NCI's products or services, NCI's confidence in its strategic plan, the

timing of expected increases in revenue, NCI's longstanding success in earning repeat business, progress reports given during the second quarter of 2016, and the growing size in the Company's pipeline." (A061 ¶ 168 – A064 ¶ 178.) Post-close statements buttress Appellants' allegations, with Dillahay boasting about tripling EBITDA to levels that were double that which was contained in the Company Projections conveyed to NCI stockholders. (A064 ¶ 180 – A065 ¶ 181.)

In their Opening Brief, Plaintiffs argued that these allegations should be considered together to support the reasonably conceivable inference that the 14D-9's presentation of NCI's projections was materially misleading or inadequate. Op. Br. 42. Defendants ignore this argument, however, and simply treat Plaintiffs' support for their disclosure allegations separately. Ans. Br. 37-40.

Plaintiffs also highlighted in their Opening Brief that Chancellor Bouchard opined that Plaintiffs disclosure allegations premised on pre-Acquisition statements "do not reflect an inconsistency with the Company Projections ***sufficient*** to support a reasonable inference that they were materially false or misleading." Op. Br. 42 (quoting Opinion at 26). In other words, the Chancery Court acknowledged that Plaintiffs' allegations reflected some inconsistency in NCI's financial projections, but simply not enough in the court's view to infer that NCI stockholders were uninformed. At the pleading stage, an inconsistency premised on Plaintiffs'

numerous specific allegations should suffice to defeat *Corwin*. Defendants ignored Chancellor Bouchard's tacit acknowledgment.

Regarding Plaintiffs' allegations regarding post-Acquisition statements showing substantially greater growth than the 14D-9 indicated, the Chancery Court observed that they portrayed a "rosier financial picture," Op. Br. 43 (quoting Opinion at 28), a fact which Defendants ignore altogether. The Defendants also ignore Plaintiffs' arguments about the Chancery Court's error in assuming that "key aspects of the Company had changed from what they were before the [Acquisition] closed." (*Id.*)

By disregarding more optimistic projections that were discussed very soon after the Acquisition was completed, and by individually parsing Plaintiffs' allegations regarding pre-Acquisition statements concerning NCI's prospects, the Chancery Court erred in concluding that the 14D-9 adequately informed NCI's stockholders regarding the Company's prospects for the purpose of a pleading-stage application of ratification under *Corwin*.

Dated: July 18, 2019

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