

Board Authority Prevails Over Performance in CEO Removal



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On April 20, 2026, the Delaware Court of Chancery, following a post-trial decision, upheld a board decision to suspend and terminate a long-tenured and highly successful CEO, applying the business judgment rule and rejecting claims that the directors acted in bad faith or under improper stockholder influence. The court in *DSM HoldCo, Inc. v. Demoulas* emphasized that directors retain broad authority over executive leadership—even in the face of strong financial performance—and may act on governance concerns and credible risks without waiting for harm to materialize.

Background

As described in the court's [opinion](#), the dispute arose from a governance conflict at Market Basket, a family-owned New England supermarket chain. It unfolded against a backdrop of unusually public and contentious dynamics, including prior episodes of employee unrest and intra-family conflict, that heightened the stakes of the board's oversight efforts and informed its assessment of risk.

Over time, tensions developed between the CEO and the board, escalating as the board sought greater visibility into, and participation in, corporate decision-making. This period was marked by a series of governance concerns, including the CEO's resistance to board oversight and access to pertinent information, rejection of the board's authority to manage executive succession and decision to grant approximately \$15 million in bonuses to employees without board knowledge or approval. The directors also received information indicating that senior management personnel linked to the CEO were organizing a potential repeat of a weeks-long employee walkout and customer boycott in 2014 that significantly harmed the company's operations.

The board suspended the CEO, after which he responded through intermediaries with a social media campaign critical of the outside directors and stockholders, including his sisters. In light of the deteriorating relations, documented governance concerns and perceived risks of operational disruption, the board ultimately terminated the CEO.

The former CEO challenged those actions, alleging that the directors breached their fiduciary duties and acted inequitably, including by acting in bad faith and at the behest of stockholders rather than as independent fiduciaries. He further contended that his strong financial performance undermined any legitimate basis for removal, that the board's process was inadequate and that the asserted risks did not justify preemptive action.

The Court's Decision

Business Judgment Rule Applies

The court held that the board's actions were subject to the business judgment rule, finding that the relevant directors were independent and disinterested. Under that standard, the plaintiff bore the burden of demonstrating bad faith or a breach of the duty of care—neither of which the court found were supported by the record. In doing so, the court reiterated a foundational principle of Delaware law: that ultimate authority over the business and affairs of the corporation is vested in the board of directors.

Financial Performance Not a Shield

The court rejected the argument that the CEO's strong track record insulated him from removal. Directors are entitled to consider a range of factors beyond financial results, including a CEO's willingness to engage with the board, respect governance structures and maintain effective working relationships with key constituencies. According to the court, a breakdown in corporate governance can, on its own, justify termination.

Board Process Supported a Finding of Good Faith

The court emphasized the board's process in reaching its decision, noting that the directors engaged with the CEO over an extended period, documented their concerns and ultimately acted following deliberation and consultation. That record supported a finding that the board acted in good faith and with due care.

Independent Judgment Not Displaced by Stockholder Engagement

The court rejected claims that the directors acted as agents of stockholders. Directors may consult with and consider the views of significant stockholders, but must ultimately exercise their own independent judgment in the best interests of the corporation. The record demonstrated that the board satisfied that obligation.

Preemptive Action Permitted in the Face of Credible Risk

The court confirmed that directors are not required to wait for harm to occur before acting. Where the board identifies a credible risk to the company—whether operational, reputational or governance-related—it may act preemptively. The scope and timing of the investigation remain matters of business judgment.

Scope of “No-Trickery” Doctrine Clarified

The “no-trickery” doctrine is an equitable principle in Delaware law that prohibits corporate directors from using affirmative deception, material omissions or misleading conduct to deprive fellow directors of their ability to exercise their fiduciary duties or manipulate board processes to achieve a corporate objective—such as removing a member of management. Such conduct is considered voidable under equitable principles, allowing a court to rescind the board's decision.

In this case, the CEO contended that the board engaged in inequitable trickery and deception. The court clarified the limits of the doctrine, rejecting precedent suggesting a special notice right for CEO-directors and explaining that its application does not turn on whether the director was given advance warning of a particular agenda item. Rather, the relevant inquiry is whether the director was affirmatively misled

On the facts presented—including that the meetings were regular board meetings and neither Delaware law nor the company's governing documents required advance notice of agenda items for such meetings—the court found no inequitable conduct.

Key Takeaways

- **Boards retain broad authority over executive leadership.** Even high-performing CEOs may be removed where governance concerns warrant action.
- **Process remains critical.** A deliberate and well-documented record supports application of the business judgment rule.
- **Independence drives deference.** Decisions by independent, disinterested directors will generally be upheld.
- **Stockholder engagement does not, by itself, undermine director independence.** Directors may consider stockholder views, provided they exercise independent judgment.

- **Boards may act preemptively.** Credible risks justify action without waiting for harm to materialize.
- **The “No-trickery” doctrine is not an advance-notice requirement.** The inquiry is whether directors engaged in affirmative deception—not whether management had an opportunity to preempt board action.

Conclusion

The Court of Chancery’s decision reinforces a foundational principle of Delaware law: ultimate authority over corporate affairs rests with the board of directors. While the facts of the case are unusually charged, the court’s reasoning is straightforward and broadly applicable. Where independent directors act through a considered process and in good faith, Delaware courts will defer to board decisions regarding executive leadership—even in circumstances involving a successful and entrenched CEO.