Clients&FriendsMemo

Blasius Is Alive and Well in Delaware: Delaware Supreme Court Chides Chancery for Turning Away Stockholder's Claims Without Considering Whether Board's Interference with Stockholder Vote Triggered *Blasius*'s Compelling Justification Test

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Despite being one of the more well-known doctrines in corporate law, the rule articulated in *Blasius*[1]—that directors who act with the primary purpose of interfering with a stockholder vote must have a compelling justification for their conduct—has received little attention from the Delaware Supreme Court. Delaware's highest court has not mentioned the *Blasius* test in over a decade[2] and has not held that a board's conduct triggered the *Blasius* test since 2003.[3]

During those intervening years, *Blasius* has been questioned, diluted, and declared all but subsumed by other doctrines. As one vice chancellor put it, a consensus has taken root that "*Blasius* ' main role, to the extent it has one, is as a specific iteration of the intermediate standard of review laid out in *Unocal*."[4]

That view of *Blasius* may change with the Delaware Supreme Court's recent decision in *Coster v. UIP Companies*,[5] which sent a case back to the Court of Chancery for giving *Blasius* short shrift. *Coster* arose out of a dispute between the two 50% owners of a real estate investment company. After the two stockholders deadlocked on a director election, one of the stockholders—who was already on the board—proposed a dilutive stock sale to one of his fellow incumbent directors, which the board ultimately approved. The stock sale diluted the outside stockholder's shares below 50%, breaking the deadlock.

The outside stockholder then sued to enjoin the stock sale. The Court of Chancery, deeming a majority of the board conflicted in the sale, subjected the transaction to rigorous entire fairness

1 *Blasius Indus. v. Atlas Corp.*, 564 A.2d 651 (Del. Ch. 1988).

2 *City of Westland Police & Fire Ret. Sys. v. Axcelis Techs., Inc.*, 1 A.3d 281 (Del. 2010).

3 *MM Cos. v. Liquid Audio, Inc.*, 813 A.2d 1118 (Del. 2003).

4 *Keyser v. Curtis*, 2012 WL 3115453, at *12 (Del. Ch. July 31, 2012), *aff'd*, 65 A.3d 617 (Del. 2013).

5 ___ A.3d ___, 2021 WL 2644094 (Del. June 28, 2021).

review. But while the court recognized that the sale was motivated by the board's desire to nix the outside stockholder's say over elections, the court, in a decision by then-Vice Chancellor McCormick, upheld the sale. The court found that both the sale price and the process the board followed to determine that price were entirely fair, so, in the court's view, the transaction was above board. While the outside stockholder argued that the board's motives called for the application of *Blasius*'s stringent compelling justification test, the court believed there was no need to consider *Blasius* because the stock sale had already survived entire fairness review, which is "Delaware's most onerous standard of review."[6]

The Delaware Supreme Court reversed. The court explained that entire fairness review does "not substitute for further equitable review" under *Blasius* because *Blasius* is a "different and necessary judicial review" that must be considered when a board appears to have been motivated primarily to interfere with the stockholder franchise.[7]

As the first decision from the Delaware Supreme Court to meaningfully examine *Blasius* in nearly two decades, *Coster* carries many lessons for practitioners and the boards they advise. Chief among them is that *Blasius* cannot be dismissed as a lesser form of review that slots in below entire fairness. As the board in *Coster* found out, the fact that a transaction used to interfere with a stockholder's franchise rights was structured at an entirely fair price will not save it. *Coster* also seems to put an end—for now—to the once-growing belief that *Blasius*'s compelling justification test had been subsumed under *Unocal*'s enhanced scrutiny review. But as we examine below, *Coster* leaves open a number of vexing questions about the proper role of *Blasius* in Delaware law—some of which have been simmering for decades.

Background

Coster stems from a dispute between stockholders of UIP Companies—a very closely held corporation formed to invest in real estate ventures. The company was owned by two principals, who each held 50% of the company's stock. When one of the principals was diagnosed with leukemia, the company began to plan for his succession. The tentative plan was for his 50% stake to be bought out by two high-level company employees, but he passed away before they reached a binding agreement, and his 50% stake passed to his wife, Marion Coster.

After her husband's death, Coster continued to discuss a buyout of her shares with Steven Schwat (the remaining principal) and Peter Bonnell (one of the two high-level employees who had signed the non-binding term sheet before Coster's husband's death). While negotiations were "very cordial," Coster's personal accountant—who previously had been the company's accountant—

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6 *Coster v. UIP Cos.*, 2020 WL 429906, at *14 (Del. Ch. Jan. 28, 2020), *rev'd*, 2021 WL 2644094.

7 *Coster*, 2021 WL 2644094, at *6, *9.

advised her that before she agreed to terms, she should "push for accounting records" and "exercise all rights as a shareholder" to obtain more information about the company's financial state.[8] But when one of Coster's representatives reached out to the company for more information, all Bonnell would say was that the company was operating "close to even" and not generating "much positive revenue."[9]

Eventually, Bonnell made Coster a new proposal: he would acquire her entire 50% stake. Bonnell pushed Coster to sell her shares at the same price as provided for in the two-year-old term sheet, but Coster told him that she would wait on a new valuation from her accountant. When Coster's accountant finished his valuation using the information he had available, Coster forwarded it to the company's board, accompanied by a demand to formally inspect the company's books and records.

At that time, only three of the company's five board seats were filled. One seat was held by Schwat (holder of the other 50% of the company's shares); Bonnell held another. The third was held by another high-ranking company employee.

Coster's books-and-records demand resulted in disputes over the sufficiency of her demand letter. After an attempt at settlement failed, Coster changed tack: she called for a special meeting to vote out the board. As the owner of 50% of the company's shares, facing off against an incumbent board that included the owner of the other 50%, the results were unsurprising. Schwat blocked each of Coster's proposals, and she blocked each of his.

Coster tried to break the impasse by filing suit under a provision of Delaware law that permits a court to appoint a custodian—who can act as a tie-breaker—when the stockholders are "so divided" that they are unable to elect directors.[10] While that suit was pending, the directors retained an investment bank to secure their own valuation of the company. Evidence at trial suggested that the board pushed for a low valuation, and the result was a valuation well below even that of the term sheet.

Armed with that valuation—and with Coster's custodian suit still pending—Schwat offered to sell Bonnell a block of the company's authorized-but-unissued shares at the price reflected in the bank's valuation. Bonnell agreed, and the resulting sale diluted Coster's stake below 50%. That same day, the board amended its answer to Coster's suit, declaring that the stock sale had broken the deadlock and mooted her suit.

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8 *Id.* at *3.

9 *Id.*

10 8 *Del. C.* § 226(a)(1).

Coster responded by filing a new suit, claiming that the stock sale was an attempt to interfere with her voting rights and block her from exercising her statutory right to seek the appointment of a custodian. After a bench trial, the Court of Chancery upheld the stock sale. The court recognized that the stock sale was an obvious attempt to break the vote deadlock and deny Coster the appointment of a custodian. The court also made another finding favorable to Coster: that both Schwat and Bonnell had an interest in the stock sale, which meant a majority of the three-person board was conflicted. That triggered Delaware's rigorous entire fairness standard of review, which put the burden on the board to prove that the stock sale was the product of both fair dealing and fair price. But while the court recognized that the valuation and stock sale had been rushed, the court found the banker's valuation process—and the valuation he produced—credible and concluded that Bonnell purchased the shares at a fair price.

Having concluded that the stock sale passed entire fairness review—which the court called "Delaware's most onerous standard of review"—the court saw no need to evaluate whether the stock sale satisfied *Blasius*.[11] The court characterized *Blasius* as part of *Unocal*'s[12] enhanced scrutiny standard, writing that, "[u]nder *Blasius*, . . . the *Unocal* analysis ratchets up to require defendants to demonstrate a 'compelling justification' for [their] action."[13] Because the court saw *Blasius* as a subset of *Unocal*—and deemed *Unocal*, which is sometimes called an "intermediate" standard of review, to lie "in between" the business judgment rule and entire fairness—the court concluded that if the stock sale passed entire fairness review, it necessarily satisfied *Blasius*.[14]

Takeaways

1. *The fact that board action may pass muster under other standards of review does not eliminate the need to consider* Blasius.

The Court of Chancery's approach rested on a standard-of-review syllogism: if *Blasius* is a subset of *Unocal*'s enhanced-scrutiny review, and if the *Unocal* standard is an "intermediate" standard of review, then a transaction that satisfies the entire fairness review must satisfy *Blasius*.

Characterizing *Blasius* as a part of *Unocal* was the latest missive in a nearly three-decades-old debate among Delaware jurists over whether *Blasius* should be folded into

[11] *Coster*, 2020 WL 429906, at *14.

[12] *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (Del. 1985).

[13] *Coster*, 2020 WL 429906, at *14.

[14] *Id.*

Unocal's reasonableness-and-proportionality test. Even the Delaware Supreme Court has sometimes described *Blasius* as a standard to be applied "within the *Unocal* standard."[15]

Whatever the relationship between *Blasius* and *Unocal* (a question that, as discussed below, *Coster* left open), *Coster* makes one thing clear: *Blasius* is not a standard that lies "in between" the business judgment rule and entire fairness review, a misunderstanding that stems from the fact that *Blasius* (and *Unocal*) are sometimes referred to as "intermediate" standards of review. But as some prominent Delaware jurists have warned, attempts "to link the 'intermediate' and 'entire fairness' standards of review—as if "part of a continuum"—"creates dysfunctions that confuse, rather than aid, the resolution of fiduciary duty cases."[16]

Coster rights that wrong by explaining that *Blasius* is not just entire fairness-lite, but a "different and necessary [form] of judicial review" that must be done when a board interferes with the franchise.[17] Even if a board's course of conduct seems to pass entire fairness review, that does "not substitute for further equitable review" under *Blasius*.[18]

2. *Modern Delaware law contains a maze of doctrines and standards of review, but boards and their counsel must not lose sight of first principles: Boards must act equitably toward the company and its stockholders.*

Blasius, entire fairness, *Unocal* enhanced scrutiny, *Revlon* duties, *Corwin* cleansing, the *MFW* ab initio rule—given Delaware's "proliferation of standards of review,"[19] lawyers (and lower-court judges) can be forgiven for devoting much of their attention to determining which standards to apply. But *Coster* is a reminder that focusing too much on these standards can obscure, rather than illuminate, whether a board will be deemed to have acted appropriately.

Before invoking the *Blasius* standard, *Coster* went back to first principles. The court quoted the familiar *Schnell* principle that "inequitable action does not become permissible simply because it is legally possible"[20] and stressed that boards have an overarching "duty

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[15] *Liquid Audio*, 813 A.2d at 1130–31.

[16] William T. Allen, Jack B. Jacobs, & Leo E. Strine, Jr., *Function over Form: A Reassessment of Standards of Review in Delaware Corporation Law*, 56 Bus. Law. 1287, 1298, 1310 (2001) (urging that *Unocal* (and, within *Unocal*, *Blasius*) "should stand on its own, 'decoupled' from 'second step' review under those other two review standards").

[17] *Coster*, 2021 WL 2644094, at *6.

[18] *Id.* at *9.

[19] *Mercier v. Inter-Tel (Del.), Inc.*, 929 A.2d 786, 810 (Del. Ch. 2007).

[20] *Coster*, 2021 WL 2644094, at *6 (quoting *Schnell v. Chris-Craft Indus.*, 285 A.2d 437, 439 (Del. 1971)).

to act equitably toward stockholders."[21] While Delaware's many standards of review can be helpful tools to root out violations of these core fiduciary duties (and protect boards that faithfully adhere to them), the Court of Chancery's focus on the pecking order among the various standards distracted the court from what seemed to be ready evidence that the board may have acted inequitably. Among other things, the lower court found that the board was "obviously" motivated to "eliminate" Coster's voice in director elections—a finding that should have set off equity alarm bells. But the court dismissed the board's motivations as "somewhat beside the point in light of the legal framework" the court chose to apply.[22] Concerns about the board's motives, the court said, would have been relevant to a *Unocal* or *Blasius* review, but because the court had chosen to "appl[y] the entire fairness standard," debates over the board's motives were "largely moot."[23]

As some Delaware jurists have warned, focusing too much on the many standards of review can "create a false sense of doctrinal safety, encouraging boards to act in ways that, although enabling their actions to fall into the right categorical box," are not necessarily consistent with their core fiduciary duties.[24] *Coster* is a reminder that when boards and their advisers evaluate a proposal, they must evaluate it holistically against the board's overarching "duty to act equitably toward stockholders."[25]

3. *Even directors acting in good faith can find themselves in trouble under* Blasius *if they interfere with the stockholder vote.*

Because the purpose of *Blasius* is to protect the stockholder franchise, the *Blasius* test often conjures up images of an entrenched board waging a bad-faith campaign to stave off defeat at the ballot box. But *Blasius* arose out of a case where a board all but admitted to interfering with a stockholder vote on a dissident slate, but claimed—credibly—to have been acting on the good-faith belief that they were protecting the company from perceived harm. While a board's good faith will often insulate it from attack,[26] *Blasius* is one of the rare circumstances where a board acting in subjective good faith can still breach its duties.

When a board interferes with a stockholder vote based on nothing more than entrenchment motives, it isn't necessary to reach for *Blasius*. Long before *Blasius*, the

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[21] *Id.*

[22] *Coster*, 2020 WL 429906, at *11-13.

[23] *Id.* at *13.

[24] Allen et al., *supra*, at 1297.

[25] *Coster*, 2021 WL 2644094, at *6.

[26] *See Blasius*, 564 A.2d at 659 (pointing out that, under *Unocal*, "the reasonable exercise of good faith and due care generally validates, in equity, the exercise of legal authority even if the act has an entrenchment effect").

Delaware Supreme Court held, in *Schnell*, that a board breaches its duty when it manipulates "the corporate machinery" to "perpetuat[e] itself in office."[27] *Coster* thus serves as a reminder that when a board engages in "entrenchment for selfish reasons,"[28] a "court need not go any further" than *Schnell* "to find a breach of duty."[29]

Blasius comes into play when a board credibly claims to have had good-faith reasons for interfering with a stockholder vote. These are circumstances where boards must tread with great care because even their good-faith motives to do what they believe is best for the company may not spare them from liability. *Blasius* subjects even good-faith interference with the stockholder franchise to "careful judicial scrutiny," because the franchise is the very "underpinning upon which the legitimacy of directorial power rests."[30]

As the first Delaware Supreme Court decision in a decade to address *Blasius*—and the first to discuss it in any detail in almost twenty years—*Coster* is an important reminder that if a board acts with the "primary purpose of impeding stockholders' franchise rights," even if in good faith, only a "compelling justification" will sustain the board's action.[31]

4. Blasius*'s compelling justification test might be possible to satisfy.*

A longstanding criticism of *Blasius*'s compelling justification test is that it is more of an "after-the-fact label placed on a result" than a "genuine standard of review that is useful for the determination of cases."[32] Because only a "compelling justification" will survive *Blasius* review, some jurists have concluded that the "invocation of the *Blasius* standard of review usually signals" the end of the inquiry, not the beginning.[33] In that sense, the board's burden to present a compelling justification echoes "the almost impossible to satisfy standards" of constitutional strict scrutiny.[34] Even former Chancellor Allen, the author of *Blasius*, recognized that the test "is often outcome-determinative," which calls into question whether *Blasius* is capable of functioning as a genuine standard of review.[35]

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[27] *Schnell v. Chris-Craft Indus.*, 285 A.2d 437, 439 (Del. 1971).

[28] *Blasius*, 564 A.2d at 658.

[29] *Coster*, 2021 WL 2644094, at *9.

[30] *Blasius*, 564 A.2 at 659.

[31] *Coster*, 2021 WL 2644094, at *8.

[32] *Mercier*, 929 A.2d at 788 (Strine, V.C.).

[33] *Chesapeake Corp. v. Shore*, 771 A.2d 293, 323 (Del. Ch. 2000) (Strine, V.C.).

[34] *Mercier*, 929 A.2d at 806, 809.

[35] Allen et al., *supra*, at 1313.

Coster seems more upbeat about a board's chances of surviving *Blasius* review. If the *Blasius* test were so strict that no board could satisfy it, the Delaware Supreme Court could have entered judgment in Coster's favor without requiring further review by the Court of Chancery. But instead, the court sent the case back for the lower court to weigh whether the board may have had a compelling justification for intentionally interfering with Coster's voting rights. And the court suggested that there may be evidence in the record to support that finding, such as the fact that, had the board not prevented Coster from installing a custodian, the appointment of the custodian would have constituted a default under some of the company's key contracts and "threatened to cut off a substantial amount of [the company's] revenue streams."[36]

The Delaware courts pride themselves on moving "at the speed of business,"[37] so the Delaware Supreme Court typically avoids sending a case back to the Court of Chancery unless necessary. The fact that the Supreme Court is permitting the Court of Chancery to consider whether the board may have had a compelling justification for the stock sale suggests that the court does not view the outcome of the *Blasius* test as a foregone conclusion—and may signal that the court is open to a more lenient version of the compelling justification test.

5. *Debates about the proper relationship between* Blasius *and* Unocal *seem to be unresolved.*

While *Coster* reaffirmed the vitality of *Blasius*'s compelling justification test, the court conspicuously observed that the parties had "not asked us to revisit how *Schnell/Blasius* and *Unocal* should fit together in future cases."[38] The fact that at least some members of the court may be open to "revisit" the relationship between *Blasius* and *Unocal* is cause for optimism among those who have long called for the two standards to be merged.

From nearly the moment *Blasius* was decided, Delaware jurists have debated whether *Blasius* should be folded into *Unocal*'s enhanced-scrutiny standard. In an early post-*Blasius* case, the Delaware Supreme Court characterized *Blasius* as a test that judges must apply "*within Unocal*"[39] and quoted with approval a Chancery decision that described *Blasius* as a "specific expression" of the *Unocal* test.[40] In 2001, a group of influential Delaware jurists, including then-Vice Chancellor Strine and former Chancellor Allen—the

[36] *Coster*, 2021 WL 2644094, at *10 n.73.

[37] James H.S. Levine, *Roundtable: Views from the Bench*, 38 Del. Law. 12, 14 (2020) (quoting Vice Chancellor Zurn).

[38] *Coster*, 2021 WL 2644094, at *9 n.66.

[39] *Stroud v. Grace*, 606 A.2d 75, 91 n.3 (Del. 1992).

[40] *Id.* (quoting *Shamrock Holdings, Inc. v. Polaroid Corp.*, 559 A.2d 278, 285–86 (Del. Ch. 1989)).

author of *Blasius*—went further, advocating for the Delaware Supreme Court to "square the circle and complete the doctrinal unification of *Blasius* and *Unocal*."[41] The Delaware Supreme Court had that opportunity in 2003 with *Liquid Audio*, but the court refused to do away with *Blasius*'s compelling justification test.[42]

Liquid Audio did not stop the debate, and a few years later, then-Vice Chancellor Strine pressed from the bench for *Blasius* to be "reformulated in a manner consistent with using it as a genuine standard of review that is useful for the determination of cases."[43] By 2013, some at the Court of Chancery had concluded that "*Blasius*' main role, to the extent it has one, is as a specific iteration of the intermediate standard of review laid out in *Unocal*."[44]

Advocates for collapsing *Blasius* into *Unocal* contend that *Blasius*'s compelling justification test is, as mentioned above, so strict that triggering the test is often outcome-determinative. As a result, when a party invokes *Blasius*, the real debate tends to center on whether the test has been triggered, rather than on how the test plays out. And because the trigger for applying the *Blasius* test—a finding that the board had the primary purpose of interfering with the franchise—looks much like the inquiry, under *Unocal*, into whether a board imposed defensive measures that were preclusive or coercive, "the structure of the *Blasius* analysis came to resemble very closely the structure of the *Unocal* analysis."[45]

Advocates for merging the two standards say that the *Unocal* framework "is fully adequate to capture the voting franchise concerns that animated *Blasius*"—at least "so long as the court applies *Unocal* 'with a gimlet eye out for inequitably motivated electoral manipulations or for subjectively well-intentioned board action that has preclusive or coercive effects.'"[46] With *Coster*, *Blasius*'s compelling justification test lives for now, but the door seems open for a future reckoning of these two standards.

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[41] Allen et al., *supra*, at 1316.

[42] 813 A.2d at 1130.

[43] *Mercier*, 929 A.2d at 788, 810.

[44] *Keyser v. Curtis*, 2012 WL 3115453, at *12 (Del. Ch. July 31, 2012) (citing Vice Chancellor Strine's opinion in *Mercier* and the 2001 article co-authored by former Chancellor Allen), *aff'd*, 65 A.3d 617 (Del. 2013).

[45] Allen et al., *supra*, at 1315.

[46] *Id.* at 1316 (quoting *Chesapeake*, 771 A.2d at 323).

6. *While* Blasius *is usually synonymous with interference with stockholders' voting rights, similar principles may apply when boards interfere with stockholders' statutory rights.*

The board's decision to sell shares to Bonnell and dilute Coster's stake did not just interfere with her ability to elect directors—it also mooted her attempt to invoke her right, under Delaware law, to seek a custodian to break the deadlock. Relying on a Chancery decision from the 1980s, the *Coster* court explained that Delaware courts not only closely scrutinize interference with stockholder votes, but "also closely scrutinize transactions that impede a stockholder's exercise of a statutory right relating to the election of directors."[47]

Whether interference with statutory rights must also be judged under *Blasius*'s compelling justification standard is less clear. If *Coster* is taken at its word, the answer seems to be yes. Summing up its instructions to the Court of Chancery on remand, the court said that if the lower court finds that the board "approved the sale for the primary purpose of interfering with Coster's *statutory or voting rights*, the Stock Sale will survive judicial scrutiny only if the board can demonstrate a compelling justification for the sale."[48] Taken on its face, that would put interference with statutory rights on par with interference with the stockholder franchise.

But the Chancery case from the eighties that *Coster* cited did not seem to go that far. That case—decided eleven months before *Blasius* by Chancellor Allen, who went on to write *Blasius*—held that when "a corporation act[s] solely or primarily for the express purpose of depriving a shareholder of effective enjoyment of a right conferred by law," the board must "demonstrate that the action taken was fair or justified given the particular business purpose sought to be achieved and the circumstances of the firm."[49] That sounds more like *Unocal*, which requires a board to demonstrate that its actions were reasonable in relation to the threat the board perceived.[50] Whether *Coster* intended to ratchet up scrutiny of interference with statutory rights to a *Blasius*-like level will be a question for the Court of Chancery and practitioners to grapple with in future cases.

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[47] *Coster*, 2021 WL 2644094, at *9 (citing *Philips v. Insituform of N. Am., Inc.*, 1987 WL 16285 (Del. Ch. Aug. 27, 1987)).

[48] *Id.* (emphasis added).

[49] *Philips*, 1987 WL 16285, at *6.

[50] *Liquid Audio*, 813 A.2d at 1130 (quoting *Stroud*, 606 A.2d at 92 n.3).

7. ***A key question about* Blasius *remains: to what extent does it apply when a board interferes with a stockholder vote that does not touch on board control?***

Practitioners and lower-court judges have long wrestled with certain *dicta* in *Blasius* suggesting that the compelling justification test applies to interference not just with stockholder votes that touch on directorial control, but with any stockholder vote on any topic.[51] Over the years, the Court of Chancery has largely marginalized that part of *Blasius* by refusing to apply the *Blasius* test "when the matter to be voted on does not touch on issues of directorial control," except in extreme circumstances, where "self-interested or faithless fiduciaries act to deprive stockholders of a full and fair opportunity to participate in the matter and . . . thwart what appears to be the will of a majority of the stockholders."[52]

Because *Coster* dealt with a contest for control between Coster and the board, the court had no occasion to address how, or whether, the *Blasius* test should be applied to stockholder votes on other matters. But the court repeated a line from its 2003 decision in *Liquid Audio* that arguably preserves some role for *Blasius* outside of directorial elections: "Delaware courts 'have remained assiduous in carefully reviewing any board actions designed to interfere with or impede the effective exercise of corporate democracy by shareholders, especially in an election of directors.'"[53] While there is no doubt that interference with a vote on directors will draw the closest scrutiny, *Coster* leaves the door open for practitioners to argue that *Blasius*-level scrutiny applies to other types of stockholder votes.

Please click here for the full opinion.

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If you have any questions, please feel free to contact any of the following Cadwalader attorneys.

Jason Halper	+1 212 504 6300	jason.halper@cwt.com
Jared Stanisci	+1 212 504 6075	jared.stanisci@cwt.com

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[51] *Blasius*, 564 A.2d at 660 (suggesting that the compelling justification standard applies not just in cases "which deal[] with the question who should constitute the board of directors," but "in every instance in which an incumbent board seeks to thwart a shareholder majority").

[52] *In re MONY Grp. S'holder Litig.*, 853 A.2d 661, 674 (Del. Ch. 2004); *see Mercier*, 929 A.2d at 809 ("Post-*Blasius* cases . . . display understandable discomfort about using such a stringent standard of review in circumstances when a stockholder vote has no bearing on issues of corporate control.").

[53] *Coster*, 2021 WL 2644094, at *7 (quoting *Liquid Audio*, 813 A.2d at 1127).

Victor Bieger	+1 212 504 6088	victor.bieger@cwt.com
Annika Conrad	+1 212 504 6188	annika.conrad@cwt.com