



Episode 4 Transcript: “Delaware's Counter Offensive: Moelis, Musk and the Amended Section 220”

Scott: Welcome back to the Akin podcast series, The Business Court Benches: Delaware and Texas compared.

We're talking about the evolving corporate law battleground between Delaware and Texas. I'm Scott Barnard, a litigation partner in Akin's Dallas office.

Stephanie: And I'm Stephanie Lindemuth, a litigation partner in Akin's New York office. Today's episode is Delaware's Counter Offensive: Moelis, Musk and the Amended Section 220. This is a big one. It's a sequel to episodes one through three because since we wrapped those, Delaware courts have been busy.

We've seen some monumental updates in cases like Moelis, the Musk Tesla matter, and the very first case interpreting the amended section 220 statute.

Scott: Yeah, Stephanie, after people were talking about Dexit, Delaware now seems determined to show it's the heavyweight champion. There's three developments all in the last year that signal a recalibration.

Stephanie: Yes.

Scott: One: We see Delaware Supreme Court's reversal in Moelis, which we'll talk about today, two: Delaware Supreme Court's Remedy Focus reversal in the Musk Tesla derivative case, and then finally, a 220 decision in the Moran versus Unation case. That's giving us some indication on how the brand new statute actually works in practice.

Stephanie: So today we're going to walk through all three of those. How did Delaware respond to the critics? What do these decisions really mean for boards, stockholders and companies thinking about leaving Delaware? And does this stabilize or destabilize the corporate law landscape?

Scott: Let's start off with Moelis. If you'll remember back in episode one we talked about the Chancery Court's decision striking down Moelis & Co's stockholder agreement, finding that the governance rights granted to the founder violated DGCL 141 A and were void.

Stephanie: And that case was an accelerant for the Dexit buzz because it implied serious limits on a board's ability to negotiate agreements with stockholders. Fast forward in January 2026, the Delaware Supreme Court reversed the Chancery Court. The court held these provisions were not void. At worst, they were voidable. And because they were voidable, latches applied and the plaintiff waited nearly nine years too long to challenge them. And importantly, the court did not reach the merits of whether 141 A was violated.

Scott: That's right. The Supreme Court in Delaware shifted how the issue was framed instead of asking, did Moelis execute these rights using the wrong mechanism, the court asked could these rights have been achieved lawfully through other corporate machinery, like the charter? And the answer was yes. That means the agreement wasn't beyond the corporation's power. So it wasn't void, which means equitable defenses apply.

Stephanie: And that matters a lot. Delaware essentially said, we are not going to call something void unless it truly cannot be done under any circumstances. This tones down the alarm that a lot of founders and controlling stockholders were feeling after the chancery decision.

Scott: It aligns with the legislature's reaction last year, passing amendments to Section 12218, essentially authorizing these types of stockholder agreements. So now we have both the courts and the legislature sending the same message. Delaware continues to respect parties' ability to shape corporate governance through negotiated agreements rather than having everything dictated by rigid default rules.

Stephanie: Okay. That wraps our discussion of the Moelis matter. Now let's turn to the Tesla Musk matter, a narrow but significant reversal. Last year when the Chancery Court rescinded Musk's 2018 \$56 billion compensation package, it set off some shockwaves. Not only because of the size, but because the court used entire fairness based on transaction specific control.

Scott: And that case was a big part of the narrative, if not the impetus, that Delaware was becoming hostile to boards, executives and controlling stockholders, and started the discussion out of Texas about an alternative.

Stephanie: But the Delaware Supreme Court's decision in December, 2025 narrowed things a bit. The court didn't revisit the standard of review or the control analysis. Instead, it zeroed in on remedy. Holding that, rescission was not available because you can't unscramble the egg after six years of performance. Musk had already achieved the milestones. You cannot restore the parties to the status quo. And the burden was on the plaintiffs to justify the rescission at issue, not on the defendants to propose alternatives.

Scott: That's right Stephanie. Delaware emphasized that equitable remedies must be workable. If you're unwinding a transaction that isn't practical or fair, the remedy can't stand, period. So the Delaware Supreme Court reinstated the 2018 grant, awarded nominal damages of a dollar and sent the attorney's fees issued back for recalibration under quantum meruit.

Stephanie: So if Moelis was Delaware saying we are not anti negotiated agreements, then Tesla is Delaware saying we're not out on a limb in executive compensation cases either.

Scott: That's right. Both decisions push back on the idea that Delaware has turned into an activist court targeting boards and founders. Let's now turn to Section 220, and this new case, Moran versus Unation. It's interesting because it's not just a court decision it's the first judicial



application of Delaware's significant changes to the Section 220 requirements through Senate Bill 21.

Stephanie: Yes. SB 21 was Delaware's answer to the increase of invasive books and records litigation. Emails, texts, slack messages, years of materials and the perception that Section two 20 had become scorched earth pre-suit discovery.

Scott: but then came the first real test, this Moran versus Unation case I just mentioned, that was in December of last year. That case starts to show the limits in this brand new 220,

Stephanie: Yes. But in this case, it's important to note that the defendant corporation completely defaulted. No counsel, no answer, no participation.

Scott: So that's fairly unusual you would say right?

Stephanie: I agree. Usually you respond, right? And the court of Chancery said essentially, default has consequences. Which I think makes sense. Because Unation didn't show up, all while pleaded allegations by the plaintiffs were deemed admitted. And under the new section 220 B, F, and G, the court ordered production of all formal books and records in Section 220 A 1. Functional equivalence of missing core records and even non-core records like cap tables, tax returns, valuation materials and a fourth year of audited financials.

Scott: That's right, because under Senate Bill 21, getting non-core records requires a compelling need, clear and convincing evidence, and a strict tie in to the stockholder's purpose.

Stephanie: Yes. And the court found all of that met because Unation's refusal to participate left the plaintiff in what Vice Chancellor Wright called an informational vacuum.

Scott: Yeah, I think that's the takeaway. Senate bill was meant to narrow 220, that's right. But it also penalizes corporations that try to game the system. But at the same time, I think you have to take this with a little bit of a grain of salt because this case involves a party that didn't respond.

Stephanie: Exactly. I think the message here is if you participate in good faith, Section 220 is narrower than it was before, but if you default or stonewall, the court will not reward that behavior. This is Delaware showing it intends Section 220 to be disciplined but still meaningful.

Scott: So what do these three developments tell us about Delaware's trajectory? If you view these three decisions together, Stephanie, do they form a pattern?

Stephanie: I do think they form a pattern: Moelis, Musk, Moran. They say one: Delaware is moderating, not radicalizing. It's steering the ship back towards predictability. Two: the



legislature and courts are aligned. The amendments to Section 122 and section 220 were not symbolic, they matter in practice. And three: corporate governance stability remains the priority. Delaware wants to preserve its brand as the most reliable venue for corporate law.

Scott: And for companies evaluating moves to Texas or Nevada, the big question has been, is Delaware losing its center? But the last 12 months say otherwise. These decisions show a tightening, a clarifying, and arguably even a re-anchoring, not a drift.

Stephanie: That's right. And so the question is, what should companies expect next? And we're watching three fronts. How aggressively the courts apply the compelling needs standard under Section 220 G, whether more stockholder agreements get tested post Moelis, and whether plaintiffs recalibrate remedies in executive compensation cases after the Tesla Musk case.

Scott: I agree, Stephanie. And of course it's also gonna be interesting to see how Texas responds because the competition hasn't ended. It's just continuing to evolve.

Stephanie: That wraps up episode four, Delaware's Counter Offensive: Moelis, Musk, and the Amended Section 220. Thank you for joining us as we track the most important developments in modern corporate governance. This is Stephanie Lindemuth, a litigation partner in Akin's New York office.

Scott: And this is Scott Barnard, a partner in litigation in the Dallas office. Thanks for joining The Business Court Benches: Delaware and Texas Compared. We'll keep following the cases, the legislation and the corporate law tug of war. Thanks for listening, and we'll see you next time.