



## MICHAEL W. MCCUTCHEON

### ASSOCIATE

D 267.948.2618

F 610.667.7056

[mmccutcheon@ktmc.com](mailto:mmccutcheon@ktmc.com)

#### FOCUS AREAS

Corporate Governance & M+A

#### EDUCATION

University of Delaware

B.S. Economics & Finance, 2017

Rutgers University School of Law  
J.D., 2021 *cum laude*

Cert. in Corporate and Business Law

#### ADMISSIONS

Pennsylvania

New Jersey

Mike McCutcheon, an associate of the Firm, concentrates his practice in the areas of corporate governance and mergers & acquisitions litigation.

Mike graduated *cum laude* from Rutgers Law School in 2021, earning a certificate in corporate and business law for completing a specialized curriculum in those subjects. He earned his bachelor of science degree from the University of Delaware in 2017, majoring in economics and finance. While in law school, Mike served as an Executive Board member for the moot court program, and was a Staff Editor for the Rutgers Journal of Law and Public Policy. He also interned for the Honorable Donald J. Stein in New Jersey Superior Court, General Civil Division.

Prior to joining Kessler Topaz, Mike clerked for a corporate litigation firm in Wilmington, Delaware.

#### Current Cases

- Match Group, Inc.

On April 4, 2024, the Delaware Supreme Court issued its opinion reversing the Delaware Court of Chancery's dismissal of a 2021 stockholder suit challenging the fairness of the 2020 reverse spin-off separation (the "Separation") of Match Group, Inc. ("Match" or the "Company") from its controlling stockholder, IAC/InterActiveCorp ("IAC," or the "Controller"). Media mogul Barry Diller chairs IAC and controls 43% of its voting power. The Supreme

Court's opinion is a substantial victory not just for the plaintiff in this case, but for *all* stockholders of Delaware corporations.

Plaintiff alleged that IAC used the Separation to extract \$680 million from Match through a special dividend, and simultaneously to offload \$1.7 billion worth of Controller-owned debt to the post-Separation company ("New Match"). The Delaware Court of Chancery had dismissed the case after determining that the Controller structured the Separation to comply with *Kahn v. M&F Worldwide Corp.*, 88 A.3d 635 (Del. 2014) ("*MFW*").

*MFW* allows controlling stockholders to get deferential "business judgment" review of conflicted transactions if they condition the transaction on the approvals of both (i) an independent committee of directors, and (ii) a majority of the company's minority stockholders. The Court of Chancery had dismissed plaintiff's case despite acknowledging that plaintiff alleged that at least one of the three directors appointed to the Match special committee was not independent from IAC due to his lucrative employment history, including as the Controller's chief financial officer, and due to his prior board service with several of IAC's affiliates. On appeal, plaintiff argued that this finding was inconsistent with *MFW* and should be reversed.

The Delaware Supreme Court agreed with plaintiff, holding that to comply with *MFW*, it is not sufficient for a majority of the directors on a special committee to be independent. Rather, all directors appointed to negotiate with a controlling stockholder must be independent for a controlling stockholder-led transaction to receive business judgment review.

Defendants had also broadened the scope of the appeal by arguing that *MFW* should not have applied to the Separation in the first place. Defendants argued that *MFW* only applied to "freeze-out" mergers, i.e., mergers in which a controller buys out the minority shares it does not already own. Because the Separation was not a "freeze-out" merger, Defendants argued to the Delaware Supreme Court that *MFW* should not have applied to it, and instead, the Separation should have received lenient business judgment review, rather than the more onerous entire fairness review, which requires the controller to prove that the transaction was fair to minority stockholders, both in terms of price and process.

Whether *MFW* and entire fairness review applied to controller-led transactions other than "freeze-out" mergers had profound implications for stockholders of *all* Delaware corporations. Luckily, the Delaware Supreme Court agreed with plaintiff that decades of Delaware law supported the notion that all controller-led transactions, including the Separation, require entire fairness review. Regardless of whether the transaction was a "freeze-out" merger or a transaction like the Separation, the Supreme Court held that courts should have a "heightened concern for self-dealing when a controlling stockholder stands on both sides of a

transaction and receives a non-ratable benefit.”

The Supreme Court’s opinion sends the case back to the Court of Chancery for further proceedings, including discovery and trial.

[Read April 4, 2024 Supreme Court of the State of Delaware Opinion Here](#)

[Read September 1, 2022 Court of Chancery of the State of Delaware Memorandum Opinion Here](#)

[Read November 2, 2021 Amended and Supplemented Verified Consolidated Stockholder Read Class Action and Derivative Complaint \[Public Version\] Here](#)