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Oracle-NetSuite Deal Gets OK From Delaware Supreme Court

By Ellen Bardash
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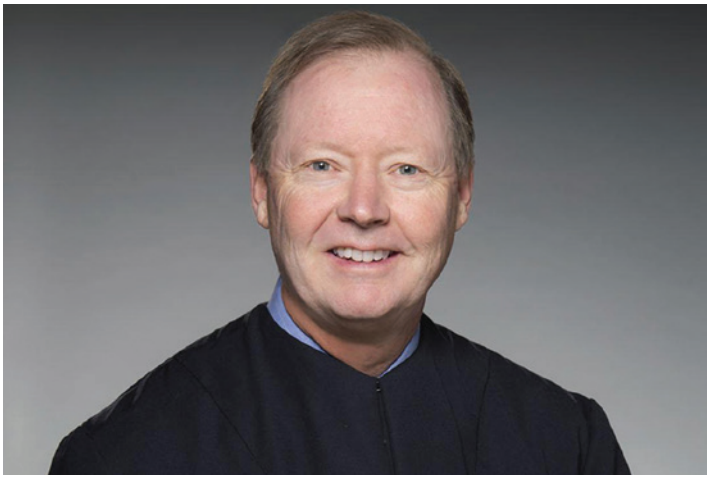
Oracle's 2016 acquisition of NetSuite has again gotten the approval with the Delaware court, with the Supreme Court deciding on Jan. 21 Oracle founder Larry Ellison hadn't been shown to have pushed through a self-serving transaction at shareholders' expense.

The opinion by Chief Justice Collins J. Seitz Jr. is a victory for the Young Conaway Stargatt & Taylor and **Latham & Watkins** team that defended Ellison and Oracle CEO Safra Catz, and it upholds the Court of Chancery's earlier decision addressing shareholder control, a topic that's front of mind for many corporate litigators.

"As the Supreme Court affirmed, Mr. Ellison and Ms. Catz properly conducted themselves in accordance with Delaware law throughout the transaction," said now-retired **Latham & Watkins partner Peter Wald**, who argued on behalf of Ellison and Catz. "NetSuite was one of the best acquisitions Oracle ever made. It has been an honor and a privilege representing Mr. Ellison and Ms. Catz throughout the last eight years of hard-fought litigation, and it is very gratifying to see them vindicated so fully."

Delaware law considers a party that holds more than 50% of a corporation's shares to be a controlling stockholder, but a minority shareholder can also be considered a controller if they exercise control over the board in the context of a specific transaction. In the Oracle case, shareholders alleged Ellison, as Oracle's "visionary leader," fell into that category, but the Supreme Court didn't conduct a full review of their evidence.



Courtesy photo

Delaware Supreme Court Chief Justice Collins J. C.J. Seitz Jr.

"On appeal, the plaintiffs cite facts and testimony favorable to their arguments. But we do not weigh evidence on appeal," Seitz wrote. "Equally important, the plaintiffs have not argued that the vice chancellor's contrary factual findings on general and transactional control are clearly wrong."

Oracle completed its acquisition of NetSuite in 2016, and shareholders sued in early 2017, alleging Ellison, w ho owned shares in each company, used his influence to get Oracle to overpay for NetSuite, personally netting $4 billion from the transaction. After Vice Chancellor Sam Glasscock III denied dismissal of claims against Ellison and Catz, Oracle formed a special litigation committee to investigate the claims. That committee decided in 2019 that the derivative case should proceed.

A trial was held in 2022. In May 2023, Glasscock ruled in favor of the defense, finding that although Ellison was conflicted by being a shareholder of both Oracle and NetSuite, the dealmaking process wasn't unfairly influenced because neither he nor Catz interfered with the board committee that evaluated the proposed merger. Glasscock also ruled Ellison didn't have either general control at Oracle or transactional control.

"Delaware has a well-established protocol for evaluating and consummating conflicted fiduciary transactions, and when that protocol is followed–as it was here–the best outcomes are achieved for stockholders," **Latham & Watkins partner Blair Connelly** said. "The decision underscores for clients and practitioners that adherence to these established principles will pay significant dividends in any subsequent litigation challenging the deal."

The case was argued in October. Attorneys with Friedlander & Gorris, Robbins Geller Rudman & Dowd and Robbins LLP represented the plaintiffs and did not immediately respond for comment on the decision.

The Supreme Court affirmed the Chancery decision to apply business judgment rather than entire fairness when evaluating the merger. Seitz wrote that the court would not overturn the trial court's conclusion that Ellison's failure to disclose his plans for NetSuite post-closing was not enough to sway the committee vetting the transaction, as the plaintiffs argued.

The court also found that Glasscock hadn't been wrong in not compelling Oracle's special litigation committee to meet the full discovery requests of the plaintiffs, in part because sharing privileged information "would deter mediating parties from engaging in frank exchanges to resolve a dispute."