
Delaware Chancery Court Rules That Board Adoption of a "Super Vote Right" to Prevent the Election of an Insurgent Slate Breached Duty of Loyalty

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On September 23, 2011, the Delaware Court of Chancery (per Vice Chancellor Laster) issued its decision in *Johnston, et. al. v. Ken Pedersen, et. al.*, holding that directors had breached their duty of loyalty when they adopted and implemented a "super vote right" as part of the issuance of preferred stock for the purpose of preventing an insurgent slate of directors from being elected. Following a two-day trial, the Court issued an opinion in which it rendered the preferred stock super voting provision void and installed the plaintiffs' board slate. In reaching this conclusion the Court said of the defendants that "[a]lthough they honestly believed they were acting in the best interests of the company, they breached their duty of loyalty by structuring the [terms of the preferred stock] to prevent an insurgent group from waging a successful proxy contest."

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