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Takeaways From 1st Del. Ruling Applying Moelis Amendments

By **Michael Blanchard, Jody Barillare and Laura McNally** (June 29, 2026, 3:28 PM EDT)


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In a significant decision of first impression, the Delaware Court of Chancery on April 21 applied the Delaware General Corporation Law's 2024 amendments to hold that a non-Delaware forum selection clause in a CEO's employment agreement overrode the corporation's Delaware forum selection bylaw regarding employment-related claims.

In Masimo Corp. v. Kiani,[1] the Court of Chancery dismissed the company's claims against its former CEO and controlling stockholder, holding that a California forum selection clause in the CEO's employment agreement must be honored, even though the litigation included claims concerning breaches of fiduciary duty by the CEO that, under the company's forum selection bylaw, could have only been litigated in Delaware.

This decision has important implications for Delaware corporations, their boards and stockholders negotiating employment agreements with officers or employees who are also stockholders.

Background

Delaware forum selection bylaws have been recognized as enforceable in Delaware since at least the Delaware Supreme Court's 2013 decision in Boilermakers Local 154 Retirement Fund v. Chevron Corp.[2]

Agreements between stockholders and a Delaware corporation that implicate governance of the corporation were widespread and presumed to be enforceable by practitioners for decades, until the Court of Chancery's decision invalidating one in 2024 in West Palm Beach Firefighters' Pension Fund v. Moelis & Co.[3]

In the wake of the Moelis decision, the Delaware General Assembly amended the DGCL to ensure that such agreements would be enforceable, with limited exceptions.

The Masimo case required the Court of Chancery to resolve a conflict between forum selection clauses in a stockholder employment agreement — a so-called Moelis agreement — and the company's bylaws.

Not-So-Ancient History: Court of Chancery Holds Stockholder Governance Agreements Violate DGCL in Moelis

In Moelis, the Delaware Court of Chancery invalidated parts of a stockholder agreement between Moelis & Co. and Ken Moelis, its chairman, CEO and founder.

The stockholder agreement granted Moelis (1) preapproval rights over certain corporate transactions, such as debt financing arrangements exceeding $20 million; (2) the right to determine the size of the company's board and appoint a majority of the board's directors; and (3) the right to have a proportionate number of designees serve on any board committee, including the compensation committee.

The Court of Chancery held that these provisions of the stockholder agreement ran afoul of Section 141(a) of the DGCL: "The business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation."[4]

Specifically, the Court of Chancery held that, taken together, the provisions of the stockholder agreement effectively removed the directors from their managerial duties because the preapproval rights required the board to obtain Moelis' consent for "virtually everything the Board can do," while Moelis' control over the compensation of the board and its committees improperly restricted the company's board from determining the size of the board or the composition of its own committees.

The Court of Chancery recognized that the stockholder agreement at issue in Moelis was commonplace, but nonetheless in violation of Section 141(a) of the DGCL : "What happens when the seemingly irresistible force of market practice meets the traditionally immovable object of statutory law? A court must uphold the law, so the statute prevails."

With that observation, the court invited a legislative response: "The expansive use of stockholder agreements suggests that greater statutory guidance may be beneficial."

Recent History: General Assembly Amends the DGCL in Response to Moelis

The Delaware General Assembly responded to the Chancery Court's invitation for a legislative response. In a series of amendments to the DGCL in 2024, the General Assembly **adopted** a new subsection to Section 122, the so-called Moelis amendments, that now explicitly authorizes stockholder agreements like the one struck down in Moelis, (subject to a few exceptions):

> Every corporation created under [the DGCL] shall have power, whether or not so provided in the certificate of incorporation, to: …
>
> > (18) Notwithstanding § 141(a) of this title, make contracts with 1 or more current or prospective stockholders (or 1 or more beneficial owners of stock), in its or their capacity as such, in exchange for such minimum consideration as determined by the board of directors (which may include inducing stockholders or beneficial owners of stock to take, or refrain from taking, 1 or more actions); provided that no provision of such contract shall be enforceable against the corporation to the extent such contract provision is contrary to the certificate of incorporation or would be contrary to the laws of this State (other than § 115 of this title).[5]

The amendment effectively restored the market's long-standing assumption that governance agreements between Delaware corporations and their stockholders are generally valid and enforceable, subject to the limits set forth in the statute.

The Present: Masimo v. Kiani

Masimo founder Joe Kiani, who served as its CEO and chairman until September 2024, allegedly exercised "virtually absolute control over every aspect of" the company.

In 2015, the board — allegedly hand-picked by the CEO — approved an employment agreement granting the CEO substantial severance and a "Special Payment" if terminated under certain conditions, including restricted stock units and cash. The agreement also included a forum selection clause requiring all disputes "arising out of or relating to" the agreement to be brought exclusively in the Superior Court of California, County of Orange.

After activist investor Politan Capital Management sought board representation, the CEO resigned, claiming "Good Reason" under the agreement, and initiated a California action seeking severance and the special payment. The company responded by filing suit in Delaware seeking to invalidate the agreement on the grounds that it was the product of a breach of fiduciary duty.

The CEO moved to dismiss, arguing that California was the exclusive forum for disputes arising out of the employment agreement, which included the company's claimed breach of fiduciary duty in connection with its approval.

The Court of Chancery, applying its own Rule 12(b)(3), analyzed the enforceability and scope of the forum selection clause of the employment agreement in relation to the company's forum selection bylaw.

While the company argued that its bylaws designated Delaware as the exclusive forum for its fiduciary duty claims against the CEO, the court noted that the bylaws expressly permitted the company to consent to an alternative forum, which, the court held, the company had done by entering into the employment agreement.

Whether the forum selection clause in the employment agreement would control over a fiduciary claim concerning the company's entering into the employment agreement turned in large part upon the applicability of the independent-source principle articulated in the Delaware Supreme Court's 2002 ruling in Parfi Holding AB v. Mirror Image Internet Inc. The independent source principle holds that contractual forum selection clauses do not cover fiduciary duty claims arising independently of the contract.

Resolving that issue, the court held that the Moelis amendments abrogated the independent source principle in agreements with "current or prospective stockholders" when exercised by the stockholder "in its or their capacity as such." Importantly, the court found that, while styled as an employment contract, the agreement with the CEO functioned as a governance agreement in his capacity as a controlling and prospective stockholder, falling squarely within Section 122(18). In reaching this decision, the court relied on Moelis to conclude that the CEO's employment agreement fell within the scope of Section 122(18).

Although the court observed that Section 122(18) was adopted as a legislative response to Moelis, the court nonetheless found that a seven-factor test employed in Moelis to identify a previously impermissible governance agreement was a useful guide in determining whether the employment agreement was actually an agreement "between a corporation and a stockholder in his or her capacity

as such."[6]

The Moelis factors consider whether the agreement:

- Has a "statutory grounding in a section of the DGCL";
- Has "intra-corporate actors as counterparties";
- Contains "provisions [that] seek to specify the terms on which intra-corporate actors can authorize the corporation's exercise of its corporate power";
- Does "not readily reveal an underlying commercial exchange";
- Has "governance rights a[s] the[ir] point;"
- Involves "control rights, so the presumptive remedy will be equitable relief enforcing the right;" and
- Is enduring with the corporation, lacks an indefinite term and/or limits the corporation's ability to terminate.

The court held that application of the Moelis factors to the employment agreement demonstrated that it was a governance agreement subject to Section 122(18) because (1) the CEO was an intracorporate actor as a large stockholder; (2) the agreement had an indefinite term that constrained the company's ability to terminate it; and (3) the employment agreement was "not tied to a specific, one-off, commercial exchange; instead it is a lasting agreement whose 'purpose is to allocate control rights' over the long term."

Furthermore, the court rejected the argument that the agreement's forum selection clause needed a "clear expression" to cover fiduciary duty claims, holding that Section 122(18) eliminates any such requirement. The clause's language — covering any suit "arising out of or relating to" the agreement — was deemed "paradigmatically broad" and sufficient to encompass all of the company's fiduciary duty claims, which were inextricably linked to the agreement.

As a result, the court granted the CEO's motion to dismiss, compelling the company to litigate its fiduciary duty claims in California pursuant to the employment agreement.

Implications

This decision has broad implications for Delaware corporations, particularly those with controlling stockholders or executives who are also current or prospective stockholders and Delaware forum selection clauses in the bylaws as opposed to the charter.

The court's application of Section 122(18) signals that corporations may, by agreement, select non-Delaware forums that will apply to what would otherwise be viewed as an internal affairs dispute, even where the corporation has a Delaware forum selection clause in its bylaws. Notably, the Moelis amendments generally apply retroactively, meaning the implications from this decision could apply to both preexisting and prospective agreements with current or future stockholders.

Corporations with Delaware forum selection bylaws should review their agreements — including

employment agreements — with controlling stockholders, directors or officers to identify any non-Delaware forum provisions. Boards may want to ensure that any such agreements do not inadvertently override Delaware-only forum selection bylaws and the protections or predictability that the Delaware forum can provide. Consideration should be given when drafting or amending such agreements to include internal affairs carveouts in any non-Delaware forum selection clause.

It may also be prudent to review forum selection clauses in nonexecutive employment agreements, to the extent such agreements confer prospective equity ownership upon the employee. Although the court in Masimo specifically focused on a governance agreement with a large stockholder and controller, it observed that Section 122(18) applied to any agreement with "current or prospective stockholders … in its or their capacity as such."

Creative plaintiffs lawyers may seek to expand the reach of the Masimo decision by arguing that any agreement with an employee that receives equity compensation could potentially fall within the scope of Section 122(18).

Conclusion

The Delaware Court of Chancery's enforcement of a non-Delaware forum selection clause in Masimo v. Kiani establishes under Section 122(18) that such clauses in stockholder agreements are enforceable as to internal affairs claims, overriding a Delaware forum selection bylaw.

Delaware corporations with forum selection clauses in their bylaws — as opposed to the charter — should carefully review their contractual arrangements and governance documents to ensure alignment and to understand the forum in which key disputes may be adjudicated.

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[1] Masimo Corp. v. Kiani, 2026 WL 1080396 (Del. Ch. Apr. 21, 2026).

[2] Boilermakers Local 154 Retirement Fund v. Chevron Corp., 73 A.3d 934 (Del. Ch. 2013).

[3] West Palm Beach Firefighters' Pension fund v. Moelis & Co., 311 A.3d 809 (Del. Ch. 2024).

[4] 8 Del. C. § 141(a).

[5] 8 Del. C. § 122.

[6] The court observed that Moel is only concerned itself with "governance agreements" while § 122(18) now authorizes corporations to enter into agreements with stockholders "in their capacity as such." The court commented that "agreements between a corporation and a stockholder in his or her capacity as

such" may be "broader" than "governance agreements" at issue in Moelis, but observed that the court "need not determine the full scope of agreements covered by § 122(18)" because it was "sufficient to determine that a governance agreement between a corporation and its controller qualifies as a § 122(18) agreement."