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Case Number 127,2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CLEVELAND BAKERS AND TEAMSTERS PENSION FUND, *Plaintiff-Below/Appellant*, v. JEFFREY P. BEZOS, ANDREW JASSY, KEITH B. ALEXANDER, EDITH W. COOPER, JAMIE S. GORELICK, DANIEL P. HUTTENLOCHER, JUDITH A. MCGRATH, INDRA K. NOOYI, JONATHAN J. RUBINSTEIN, PATRICIA Q. STONESIFER, and WENDELL P. WEEKS, *Defendants-Below/Appellees*, -and- AMAZON.COM, INC. *Nominal Defendant-Below, Appellee*.	Case No. 127, 2025 Court Below: Court of Chancery of the State of Delaware C.A. No. 2023-0868-NAC **PUBLIC VERSION FILED MAY 28, 2025**

[CORRECTED] APPELLANT'S OPENING BRIEF

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NATURE OF PROCEEDINGS

This appeal presents a single question to this Court. Is the board of a Delaware corporation entitled to business judgment deference when it chooses to do virtually nothing before approving a conflicted transaction that (i) will direct $[redacted] to the company's founder and executive chairman, (ii) carries great cost and strategic significance, and (iii) faces considerable timing and competitive pressure? Appellant respectfully submits that the answer must be no.

First, the conflict. This litigation involves two contracts—known as launch services agreements, or LSAs—between Amazon and Blue Origin. Both of these companies were founded by Jeff Bezos, and both of these companies were led by Jeff Bezos. These two LSAs will together direct $[redacted] from Amazon to Blue Origin. There is no dispute that this represents a conflicted transaction, and a highly material one at that. But when Amazon's Board learned that negotiations between Amazon and Blue Origin were underway, it did nothing. Amazon's directors did not inquire about Bezos's role in negotiations, and imposed no guardrails to ensure that Bezos's conflict of interest would not influence negotiations. Instead, Amazon's directors let negotiations proceed unsupervised and unchecked for eighteen months.

After these negotiations culminated in contracts between Amazon and Blue Origin for the Board's approval, the Board again exhibited no interest in Bezos's

conflict. It did not ask whether Bezos was involved in negotiations. It did not ask whether Bezos recused himself. It did not ask if Amazon management took any steps at all to ensure that Bezos's undeniable conflict of interest did not taint Amazon's procurement process. And despite having done nothing about and knowing nothing about Bezos's involvement, the Board quickly approved two contracts that will funnel $[redacted] from one company that Bezos founded and led (Amazon) to another company that Bezos founded and led (Blue Origin). Appellees here cannot identify one step—not one—that they took to manage a $[redacted] conflict of interest.

Second, the significance. The contracts at issue in this litigation relate to Amazon's Project Kuiper—an ambitious initiative to launch thousands of satellites into space to form a globe-spanning, internet-providing constellation. Amazon describes Project Kuiper as the "fourth pillar" of its future growth, justifying the initiative's immense cost. But Project Kuiper depends entirely on getting its thousands of satellites into space successfully and on time. To meet this critical objective, Amazon negotiated contracts that are collectively worth $[redacted] including the $[redacted] flowing to Bezos's Blue Origin. Project Kuiper's very existence hinges on these hugely expensive contracts.

But the Board's conduct betrays no hint of this significance. The Board retained no financial, legal, or industry advisors. The Board held no meetings to discuss these contracts before it approved them. The Board received no updates on these contracts before they were finalized. The Board did not even receive a presentation about these critical multi-billion-dollar contracts. Instead, the Board quickly approved these contracts on the basis of a brief summary of terms and minimal discussion.

Third, the timing pressure. Courtesy of the FCC, Amazon's Project Kuiper faced strict deadlines: it had to launch half of its 3,236 satellites by July 2026, and the other half by July 2029. It also faced competitive pressure from SpaceX's Starlink, which was a direct rival and was years ahead. This meant that it was critical for Amazon to choose the right launch providers to launch its satellites—delays could imperil Project Kuiper itself.

But again, none of this pressure is apparent from the Board's conduct. The Board chose to delegate the selection of launch providers entirely to Amazon's conflicted management team, exercising no supervision and receiving no updates during eighteen months of negotiations. This approach effectively neutered the Board's ability to vet the providers that management selected. By the time the Board was asked for its approval in early 2022, only [redacted] remained until Amazon

planned to launch its first prototype satellite, and four years to deploy all 3,326 satellites into orbit. The Board had left itself with practically no choice but to say yes, as the alternative would force management to spend months negotiating new contracts—months that Amazon simply did not have.

Delaware law recognizes that the path that directors' fiduciary obligations require them to follow is reflexive and context-dependent. Delaware law also recognizes that directors can act in bad faith when they make material decisions without adequate information or deliberation, agnostic to the consequence of their decision. Appellant submits that here, Appellees operated in the context of corporate transactions that were indisputably conflicted and highly material. And in this fraught context, Appellees' conduct fell egregiously short of what their fiduciary obligations required of them—short enough to generate a substantial likelihood of liability for acting in bad faith. The Court should reverse the decision of the court below and find that demand is excused as futile.

SUMMARY OF ARGUMENT

1. The Court of Chancery erred in finding that Appellant did not adequately plead that demand upon Amazon's board was excused as futile. On *de novo* review, this Court should find that demand was excused as futile because Appellant's well-pled allegations establish a substantial likelihood of liability against Appellees for acting in bad faith by approving a $[redacted] conflicted transaction with Amazon's founder, executive chairman, and leader after conducting minimal diligence and exercising zero oversight.

STATEMENT OF FACTS

A. CHASING A CHILDHOOD DREAM, BEZOS FOUNDS BLUE ORIGIN

During his valedictory address, eighteen-year-old Jeff Bezos told the audience at his high school graduation that he dreamed of humankind colonizing space. A047 ¶54. Bezos did not wait long to begin chasing this dream. In 2000, only a few years after Bezos founded and began to succeed with Amazon, Bezos founded Blue Origin. *Id*.

But Blue Origin exhibited nothing of Amazon's stratospheric success. Blue Origin designed its first rocket, named the New Shepard, to take a small handful of humans to sub-orbital space for a few minutes at a time. A048 ¶56. Even this relatively modest project fell years behind schedule. Blue Origin conducted an inaugural test of the engine that would power the New Shepard in 2006. A048 ¶57. By 2016, Blue Origin had built only three New Shepard rockets; this rocket failed to successfully complete a crewed mission until 2021. *Id*.

While developing the New Shepard, Blue Origin announced in 2015 that it would develop another rocket—called the New Glenn—to carry payloads into orbit around Earth. A049 ¶58. Because of its focus on heavy payloads, the New Glenn had to be vastly more powerful than its sub-orbital predecessor rocket. Blue Origin therefore began to develop an entirely new engine (designated the BE-4); each New

Glenn would be powered by seven of these engines. A049 ¶59. Blue Origin proudly declared that this new rocket would fly as soon as 2020. A050 ¶61.

But Blue Origin could not develop such a fearsomely complex new engine on its own. Blue Origin therefore entered into a partnership with United Launch Alliance (another spaceflight company) in 2014 to jointly develop the BE-4 engine. A050 ¶60. Blue Origin and ULA spent the next several years working on this engine to meet the New Glenn's targeted 2020 launch date.

B. ELON MUSK'S SPACEX RACES AHEAD OF BLUE ORIGIN, FUELING A BITTER PUBLIC RIVALRY BETWEEN MUSK AND BEZOS

In 2002, only two years after Bezos founded Blue Origin, Elon Musk founded SpaceX. A051 ¶64. The two space companies' trajectories diverged wildly. In 2008, SpaceX became the first private company to successfully complete an orbital launch, and quickly followed up on this milestone by launching the larger, more powerful, and—critically—reusable Falcon 9 rocket in 2010. A052 ¶¶65-66. In 2012, SpaceX became the first private company to carry cargo to the ISS; by 2020, SpaceX had completed 23 cargo missions to the ISS.[1] A052 ¶66. By 2017, SpaceX commanded 45% of the market for commercial launches. A052-53 ¶67. By 2022 (the year the Board approved the LSAs at issue here), SpaceX accounted for 66% of

[1] Capitalized terms have the same meaning as set forth in the Verified Amended Shareholder Derivative Complaint (the "Complaint").

flights from American launch sites. A104-05 ¶154. In 2020, SpaceX also became the first private company to take crew into space by safely transporting two NASA astronauts to the ISS. A052-53 ¶67. By contrast, by 2021, Blue Origin had managed only to conduct a single crewed flight—which lasted mere minutes. *Id*.

During this time, SpaceX and Blue Origin competed fiercely for the billions of dollars' worth of rocket launch services that were on offer each year. SpaceX's unrivaled track record allowed it to beat out Blue Origin time and time again, with each victory escalating what rapidly became a public feud between Musk and Bezos.

In 2019 and 2020, Blue Origin, SpaceX, and other companies bid for a $3.4 billion Air Force contract. A053 ¶68. Despite filing a pre-award protest, Blue Origin lost; the Air Force selected SpaceX and ULA instead. A053 ¶69. The Blue Origin executive then responsible for the New Glenn project admitted that this loss "was a big hit for us" and that, because it meant $3 billion in lost revenue, Blue Origin "had to consider the economics" for its business. A054 ¶70.

In 2020, the Air Force terminated a contract it had previously entered into with Blue Origin, costing Blue Origin $244.5 million in expected revenue. A054 ¶71. The next year, NASA awarded SpaceX a $2.9 billion contract meant to return humans to the moon, passing over Blue Origin. A055-56 ¶¶74-75. Musk crowed in juvenile fashion:

A056 ¶75.

Bezos—as would become routine—responded with fury and litigation. Blue Origin quickly filed a protest with the Government Accountability Office ("GAO"), challenging the process that led to NASA's award of the $2.9 billion contract to SpaceX. A056-57 ¶76. The GAO rejected Blue Origin's protest, noting that "SpaceX submitted the lowest-priced proposal with the highest rating." A058-59 ¶80. Blue Origin's bid had been *double* SpaceX's. A056-57 ¶76.

While the GAO challenge was pending, Bezos attempted to use his personal wealth to paper over Blue Origin's cracks. Bezos wrote a public letter to NASA's administrator in July 2021. A057 ¶77. After complaining that NASA had given SpaceX a "multi-year, multi-billion-dollar head start," Bezos offered to "waiv[e] all payments in the current and next two government fiscal years up to $2B" if NASA would give Blue Origin the contract. A057-58 ¶78. Bezos's attempt to bribe NASA did not work. NASA responded: "NASA can't just 'take offers' because funding is offered. There's absolutely nothing to stop Blue [Origin] from moving forward with

their own money to get in a better position to win something in the next round." A058 ¶79.

Bezos's efforts to undo Blue Origin's loss did not stop there. Blue Origin launched a public relations campaign that sought to paint SpaceX's rocket as complicated and expensive. A060-62 ¶¶83-84. Blue Origin also appealed the GAO's decision after "months of potshots, ridicule, and criticism" and specifically complained that NASA "inexplicably disregarded key flight safety requirements for only SpaceX." A059-60 ¶82. Musk responded with mockery:

A059 ¶81. Blue Origin and Bezos lost the appeal, and Musk gleefully took to Twitter again:


Elon Musk
@elonmusk
Subscribe
YOU HAVE BEEN
JUDGED!
11:02 AM · Nov 4, 2021

A062-63 ¶85.

C. BEZOS CONTINUES TO CHASE HIS SPACE DREAMS THROUGH AMAZON'S PROJECT KUIPER

In 2018, Amazon announced Project Kuiper, a plan to create an orbital constellation of thousands of satellites that would together provide fast interest to the entire globe. A066 ¶89. Such a lofty ambition would require immense cost, but Amazon believed Project Kuiper would prove it was worth the investment by becoming the Company's "fourth pillar." *Id*.

Project Kuiper would directly compete with SpaceX's Starlink system, which similarly sought to provide global satellite-based internet. Musk had again beaten Bezos to the punch. SpaceX had announced Starlink four years earlier, obtained an FCC license in 2017, and launched its first satellite by 2018. A066-67 ¶90. When Amazon announced Project Kuiper, Musk publicly branded Bezos a "copy cat":

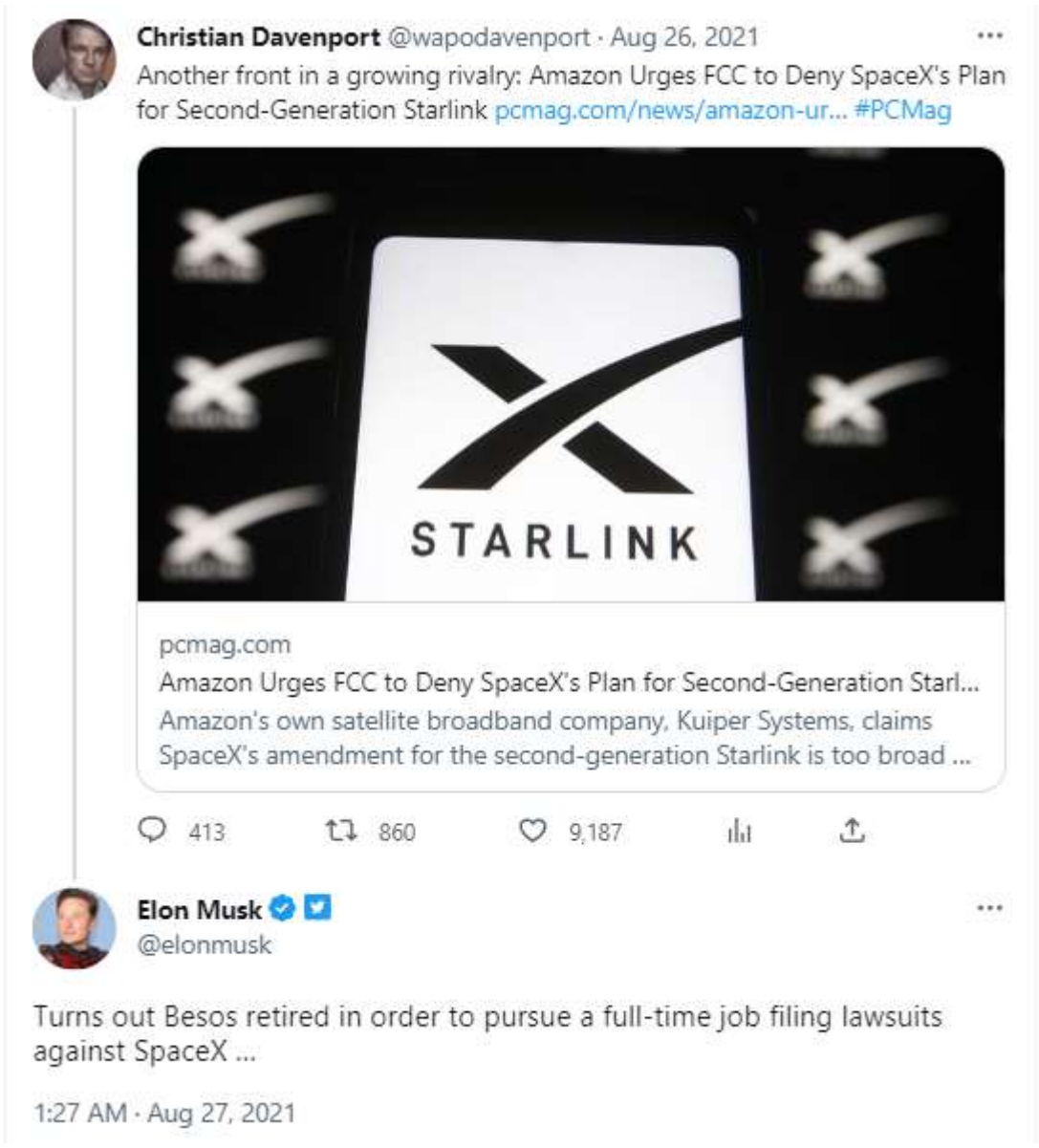

MIT Technology Review @techreview · Apr 9, 2019
Now Amazon plans to launch a massive constellation of more than 3,000 internet satellites
technologyreview.com
Now Amazon plans to launch a massive constellati...
The company is joining firms like SpaceX and OneWeb, which all want to send huge numbers of ...
95
749
4,124
Elon Musk
@elonmusk
.@JeffBezos copy
7:54 PM · Apr 9, 2019

A067 ¶91.

In April 2019, Amazon applied to the FCC for permission to launch its constellation of satellites. A068 ¶92. In July 2019, the FCC granted approval, binding Amazon to a strict schedule to deposit its thousands of satellites in orbit. Amazon needed to launch 1,618 (or half) of its constellation by July 30, 2026; and the remaining 1,618 by July 30, 2029. A068-69 ¶93. This timeline placed immense pressure on Amazon both to complete development of its satellites and to deliver them to orbit—something that would only be possible if Amazon had dependable rockets on which to launch them.

Project Kuiper and Starlink opened a new front in Musk and Bezos's rivalry. In 2021, Amazon and Bezos took preemptive aim at Starlink by asking the FCC to reject certain changes SpaceX had proposed to its Starlink network. A064 ¶86. Belying Bezos's personal animus towards Musk, Amazon wrote to the FCC: "[T]he conduct of SpaceX and other Musk-led companies makes their view plain: rules are for other people, and those who insist upon or even simply request compliance are deserving of derision and ad hominem attacks." *Id*. Amazon also wrote: "If the FCC regulated hypocrisy, SpaceX would be keeping the commission very busy." *Id*.

To no surprise, Musk responded with scorn:


Christian Davenport @wapodavenport · Aug 26, 2021
Another front in a growing rivalry: Amazon Urges FCC to Deny SpaceX's Plan for Second-Generation Starlink pcmag.com/news/amazon-ur... #PCMag
STARLINK
pcmag.com
Amazon Urges FCC to Deny SpaceX's Plan for Second-Generation Starl...
Amazon's own satellite broadband company, Kuiper Systems, claims SpaceX's amendment for the second-generation Starlink is too broad ...
413
860
9,187
Elon Musk
@elonmusk
Turns out Besos retired in order to pursue a full-time job filing lawsuits against SpaceX ...
1:27 AM · Aug 27, 2021

A065 ¶87.

D. WITH NO OVERSIGHT AND MINIMAL DILIGENCE, AMAZON'S BOARD AGREES TO FUNNEL BILLIONS OF DOLLARS TO BEZOS'S BLUE ORIGIN

1. The Audit Committee learns that Amazon is negotiating multi-billion-dollar related party contracts with Blue Origin

On July 28, 2020, Amazon management gave the Audit Committee a single page memorandum titled "Potential Related Person Transaction – Project Kuiper" (the "Audit Committee Memo"). A070-71 ¶97. The Audit Committee Memo informed the Audit Committee that:

- Amazon was "currently in discussions with Blue Origin, United Launch Alliance (ULA), Arianespace, and [redacted] and "expect[ed] to enter into agreements with [redacted] launch providers." *Id*.

- Two of the four providers that Amazon was "in discussions with"—Blue Origin and ULA—had ties to Bezos. ULA was Blue Origin's business partner, and the Audit Committee was explicitly told that the launch vehicle that ULA would use for Project Kuiper would "incorporate[] an engine designed and manufactured by Blue Origin." *Id*.

- The "total cost to launch all [redacted] satellites [was] estimated to be at least $[redacted]." A071-72 ¶98.

- The negotiations were progressing rapidly: management told the Audit Committee that the contracts could be finalized for Audit Committee approval "[redacted]." A136.

This was the first list of potential launch providers that members of the Board received. Crucially, Bezos's Blue Origin and its business partner ULA featured prominently on this list. SpaceX—the most successful and proven launch provider in the industry—was excluded. A072 ¶99. Given Bezos's longstanding rivalry with

SpaceX and Musk, Bezos-led management's decision to not even consider SpaceX has an obvious explanation.

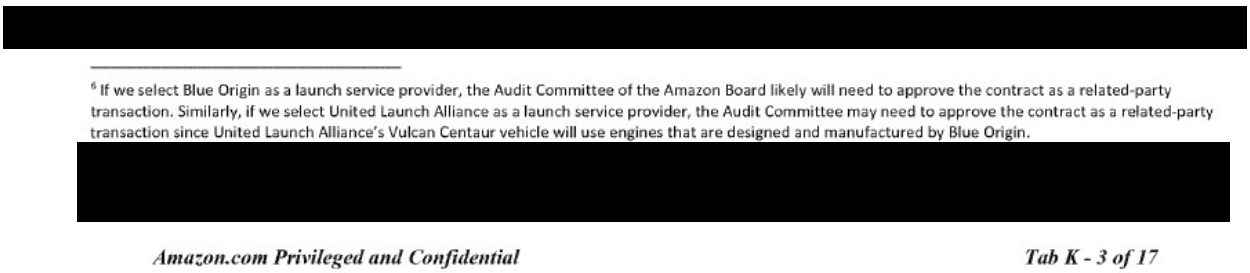
The Audit Committee met the same day it received the Audit Committee Memo. *See* A131-36. The Audit Committee did not discuss the multi-billion-dollar related-party transaction being negotiated with Blue Origin (A074 ¶103) or impose any guardrails to ensure that Bezos's conflict would not taint the negotiation of these multi-billion-dollar transactions. A072-76 ¶¶100, 103-104.

On November 4, 2020, the full Board learned that Amazon was negotiating multi-billion-dollar contracts with Blue Origin. During a meeting chaired by Bezos that day, management delivered a presentation about Project Kuiper. A078 ¶107. While only a handful of lines in the 17-page presentation involved the launch services agreements, these made clear both that Project Kuiper's rocket launches would be [redacted]. The presentation described Project Kuiper as an "[redacted]" and "[redacted]" that required "[redacted];" identified "[redacted]" as a [redacted] for Project Kuiper; and warned that the launch service agreements were a "[redacted]." A079-80 ¶¶109-110. Management also discussed the [redacted], citing its "[redacted]" and the possibility that [redacted]

[redacted].

A081 ¶111.

Along with Kuiper's [redacted], management also told the Board that management was actively "negotiat[ing] launch capacity and costs and plan to close that by [redacted]." A080 ¶110. The key fact that management was negotiating with Bezos's Blue Origin was obliquely disclosed in a footnote:



[redacted]

[6] If we select Blue Origin as a launch service provider, the Audit Committee of the Amazon Board likely will need to approve the contract as a related-party transaction. Similarly, if we select United Launch Alliance as a launch service provider, the Audit Committee may need to approve the contract as a related-party transaction since United Launch Alliance's Vulcan Centaur vehicle will use engines that are designed and manufactured by Blue Origin.

[redacted]

Amazon.com Privileged and Confidential *Tab K - 3 of 17*

A144.

Exhibiting similar passivity to the Audit Committee, the Board did not seek any information on the negotiations, did not inquire about or seek Bezos's recusal, and did not seek to monitor the negotiations. A081-82 ¶113. Over the next 14 months, the Board neither received nor sought a single update on the negotiation of these multi-billion-dollar related-party transactions.

2. The Board approves a much smaller, non-conflicted launch agreement with ULA

As Amazon management's unsupervised negotiations with Blue Origin continued, management presented a much smaller launch service agreement for the

Board's approval on May 25, 2021. At a Board meeting on that date, Amazon management presented an interim launch agreement with ULA of $[redacted] billion for nine launches (the "Interim ULA LSA"). A083-84 ¶117. Amazon management told the Board that the Interim ULA LSA would "[redacted]." *Id*.

Because this contract involved an older ULA rocket that did not use Blue Origin engines, it was not a related-party transaction that required Audit Committee approval. *Id*. Nonetheless, management provided the Board with information about the Interim ULA LSA's material terms:

> [redacted]**:** Management reported that it had "secured pricing, payment, and other terms that are [redacted]." A085-86 ¶119.
>
> [redacted]**:** Amazon could [redacted]." *Id*.
>
> [redacted]." *Id*.

[redacted]**:** Management informed the Board that "[redacted]." *Id.*

After being informed of the agreement's material terms, the Board discussed and approved the Interim ULA LSA on May 25, 2021.

3. The Audit Committee and the Board rubberstamp a $[redacted] related-party contract after exercising zero oversight and conducting minimal diligence

Eighteen months after the Audit Committee first learned that Amazon was negotiating multi-billion-dollar contracts with Blue Origin, Amazon management returned to the Committee with finalized contracts. On January 31, 2022, management presented two different contracts for the Audit Committee's approval: (1) a contract between Amazon and Blue Origin for up to 27 launches, under which Amazon would pay Blue Origin up to $[redacted]; and (2) a contract between Amazon and ULA for 38 launches on rockets fueled by Blue Origin engines, under which Amazon would pay Blue Origin up to $[redacted] (together, the "Blue Origin LSAs"). A087 ¶122. Management also told the Audit Committee that $[redacted] of the funds payable to ULA "[redacted]." *Id.*

For eighteen months, the Audit Committee had allowed Amazon management to negotiate freely with Blue Origin, with no information about—or supervision of—Bezos's role in those negotiations. A087-88 ¶123. During the January 31, 2022 meeting, the Audit Committee did not receive any information about Bezos's role, or about any steps taken to ensure that Bezos's and Blue Origin's conflicting interests did not adversely impact Amazon. *Id*.

The Audit Committee rapidly approved the Blue Origin LSAs during this lone meeting. Although the January 31, 2022 Audit Committee Meeting lasted 3 hours and 20 minutes, the Blue Origin LSAs were just one topic on a lengthy agenda, with several topics due to follow the LSAs' scheduled discussion. A089-90 ¶¶127-128. Thus, the Audit Committee inferably spent no more than a few minutes discussing these contracts. ¶¶127-128. Despite having done and knowing nothing about the related-party aspect of the $[redacted] Blue Origin LSAs, the Audit Committee approved the LSAs after this lone meeting.

The full Board later followed the Audit Committee's lead. On March 3, 2022, Amazon management presented three contracts for the Board's approval: the two Blue Origin LSAs that the Audit Committee previously considered and a $[redacted] LSA with Arianespace (together, the "Final LSAs"). A093-94 ¶133.

Together, the Final LSAs would cost Amazon up to $[redacted]—marking the second-largest capital expenditure in Company history. A095 ¶135.

Like the Audit Committee, the Board had not discussed or received updates about the negotiations of the Blue Origin LSAs at any point since November 2020, when the Board first learned of these negotiations. A093-94 ¶133. Also like the Audit Committee, the Board approved the Blue Origin LSAs at a single forty-minute meeting that was held via videoconference. A097-98 ¶¶139-140. The Board did not seek or receive any information about Bezos's involvement in negotiations, or why Amazon management never even contacted SpaceX. *Id*. The Board did not retain any financial, legal, or industry advisors to assist them in evaluating the Blue Origin LSAs. A097-98 ¶140. The Board did not even receive a presentation about the $[redacted] contracts or any information beyond a short summary of terms. *Id*.

The Audit Committee's and the Board's rapid-fire approval of the Blue Origin LSAs tied Project Kuiper's success to Bezos and Blue Origin. Amazon would not only be relying on Blue Origin to conduct its own launches, but would also be relying on Blue Origin to timely provide reliable engines to ULA—Blue Origin's business partner and one of the chosen launch providers. Together, Blue Origin and ULA would be responsible for launching at least [redacted] of Amazon's 3,236 satellites on 50 of 68 launches; or (at Amazon's election) up to [redacted] of Amazon's 3,236 satellites

on 65 launches. A094-95 ¶134. Stated differently, the Final LSAs made Blue Origin responsible for up to [redacted]. *Id*.

Further, the Audit Committee and the Board made this momentous decision despite knowing that they had not been provided with critical information. The Audit Committee and the Board had received more detailed information when they had approved the $[redacted], non-related party Interim ULA LSA in May 2021:

	INFORMATION PROVIDED REGARDING $[redacted], NON-CONFLICT TRANSACTION	**INFORMATION PROVIDED REGARDING $[redacted] CONFLICT, $[redacted] TOTAL TRANSACTION**
[redacted]		

Neither the Audit Committee nor the full Board asked to see similar information before rapidly approving the Blue Origin LSAs following minimal discussion.

E. AFTER THE BOARD HASTILY ENTERED INTO THE BLUE ORIGIN LSAS, BLUE ORIGIN FURTHER DELAYS THE NEW GLENN ROCKET

Less than three weeks after the Board tied Project Kuiper's fate to Blue Origin by entering into the Blue Origin LSAs, Blue Origin announced yet another delay of the New Glenn rocket. On March 23, 2022, Blue Origin announced that the New Glenn would not have its inaugural launch in 2022 after all; Blue Origin refused to provide a new target launch date. A099-100 ¶143. Although Amazon's Board met on March 3, 2022, the minutes do not reflect any discussion of this delay, creating a reasonable inference that the Board was not informed of this material development. A100 ¶144.

Despite this, the Board did nothing in response to learning that the key rocket for Project Kuiper was delayed indefinitely, and Blue Origin continued to profit despite failing to deliver.[2] By the end of 2022, Amazon had paid $585 million directly to Blue Origin and had paid a further $1.2 billion to Arianespace and ULA, some portion of which undoubtedly benefited Blue Origin as ULA's engine supplier. A101 ¶147. But this funding failed to prevent more setbacks: in March 2023, a Blue Origin engine exploded during testing, which also delayed ULA's own rocket. A102

[2] The documents Amazon produced in response to Plaintiff's books and records demand span January 1, 2017 through May 31, 2022, and reflect no Board discussion of Blue Origin's delay. A101 ¶146.

¶149. By August 2023, Amazon was forced to announce that it would launch its prototype Kuiper satellites on ULA's 20-year-old Atlas V rocket, because none of the next-generation rockets on which the Board agreed to spend $[redacted] were ready to fly. A103-04 ¶152.

At the time Appellant filed its amended complaint, Blue Origin had still refused to provide a new target launch date for the New Glenn. *Id*. Amazon likewise had not provided an update on Project Kuiper, instead only citing to ULA's statement that its rocket would fly before the end of 2023. A103 ¶150.

Blue Origin's repeated delays, together with delays from ULA and Arianespace, forced Amazon to belatedly procure three launches from SpaceX in December 2023—four months after Appellant filed the original complaint in this action. A105-06 ¶156. As Blue Origin (and, by extension, ULA) continued to struggle, SpaceX's dominance of the launch industry grew. SpaceX handled 66% of customer flights from American sites in 2022, and fully 88% of such flights in the first half of 2023. A104-05 ¶154. Amazon's press release announcing these launches cited a need to "reduce schedule risk and move faster in our mission." A105-06 ¶156. This "schedule risk" that Amazon was forced to belatedly cure resulted directly from the Board's egregious lack of diligence and oversight in approving the Final LSAs.

ARGUMENT

I. THE COURT ERRED BY FINDING THAT THE COMPLAINT DID NOT ADEQUATELY PLEAD DEMAND FUTILITY

A. QUESTION PRESENTED

Whether Appellant's Complaint adequately alleges that Appellees face a substantial likelihood of liability for approving the Blue Origin LSAs in bad faith, thereby excusing demand as futile for purposes of Rule 23.1.

This question was raised below (A265-275) and considered by the trial court (Ex. A at 3-4).

B. STANDARD OF REVIEW

This Court's review of decisions under Rule 23.1 is "*de novo* and plenary." *United Food & Com. Workers Union & Participating Food Indus. Emps. Tri-State Pension Fund v. Zuckerberg*, 262 A.3d 1034, 1047 (Del. 2021) (citing *Brehm v. Eisner*, 746 A.2d 244, 253 (Del. 2000)). In conducting this review, the Court must "accept as true all of the complaint's particularized and well-pleaded allegations" and grant "all reasonable factual inferences that logically flow from the particularized facts alleged." *Lebanon Cnty. Emps.' Ret. Fund v. Collis*, 311 A.3d 773, 795 (Del. 2023) (internal citations omitted).

C. MERITS OF ARGUMENT

The Demand Board consists of eleven members: Appellees Bezos, Jassy, Alexander, Cooper, Gorelick, Huttenlocher, McGrath, Nooyi, Rubinstein, Stonesifer, and Weeks.[3] To prevail, Appellant must plead a reason to doubt that six of the Demand Board members could have impartially considered a demand. Appellees conceded below that Bezos and Jassy are not independent. Appellant has adequately alleged that each of the remaining members of the Demand Board faces a substantial likelihood of liability for approving the Blue Origin LSAs in bad faith, excusing demand as futile.

1. Legal Standards

(a) Demand Futility

The Court asks three questions on a director-by-director basis when assessing whether a pre-suit demand is excused as futile:

> (i) whether the director received a material personal benefit from the alleged misconduct that is the subject of the litigation demand;

[3] At the time Appellant filed its amended Complaint, Amazon had added a twelfth director—non-defendant Brad D. Smith. Because Appellant's claims were "validly in litigation" at the time the original complaint was filed, the relevant Demand Board is the eleven-member board in place at the time the original complaint was filed. *Braddock v. Zimmerman*, 906 A.2d 776, 779 (Del. 2006). Appellant's demand futility allegations disqualify a majority of the new twelve-member board even if Mr. Smith is included in the relevant demand board.

> (ii) whether the director faces a substantial likelihood of liability on any of the claims that would be the subject of the litigation demand; and
>
> (iii) whether the director lacks independence from someone who received a material personal benefit from the alleged misconduct that would be the subject of the litigation demand or who would face a substantial likelihood of liability on any of the claims that are the subject of the litigation demand.

United Food, 262 A.3d at 1059. If the answer to any of these questions as to at least half of the relevant directors, demand is excused. *Id.*

Rule 23.1 asks "whether demand is excused because there is a reasonable doubt that the directors could have properly responded to a demand." *IBEW Local Union 481 Defined Contribution Plan & Trust v. Winborne*, 301 A.3d 596, 617 (Del. Ch. 2023) (citing *Zuckerberg*, 262 A.3d at 1049). The "reasonable doubt" standard is meant to be "sufficiently flexible and workable to provide the stockholder with 'the keys to the courthouse' in an appropriate case where the claim is not based on mere suspicions or stated solely in conclusory terms." *Id.* (quoting *Grimes v. Donald*, 673 A.2d 1207, 1217 (Del. 1996) (internal citation omitted)). The reasonable doubt standard simply means that the plaintiff has presented "a reason to doubt" a director's independence, and is "akin to the concept that the stockholder has a 'reasonable belief' that the board lacks independence." *Id.* (quoting *Grimes*, 673 A.2d at 1217 n.17).

"When considering a motion to dismiss a complaint for failing to comply with Rule 23.1, the Court does not weigh the evidence, must accept as true all of the complaint's particularized and well-pleaded allegations, and must draw all reasonable inferences in the plaintiff's favor." *Id.* at 617-618 (quoting *Zuckerberg*, 262 A.3d at 1048). This is true even if the Court believes an inference in favor of defendants is more likely. *La. Mun. Police Emps.' Ret. Sys. v. Pyott*, 46 A.3d 313, 356 (Del. Ch. 2012), *rev'd on other grounds*, 74 A.3d 612 (Del. 2013); *Grobow v. Perot*, 539 A.2d 180, 187-88 (Del. 1988). Further, the requirement that plaintiffs allege facts with particularity in the demand futility context does not change "the principle that the plaintiff receives the benefit of favorable inferences on a pleading-stage motion to dismiss." *Winborne*, 301 A.3d at 617. Nor does the particularity requirement "entitle a court to discredit or weigh the persuasiveness of well-pled allegations." *In re China Agritech, Inc. S'holder Deriv. Litig.*, 2013 WL 2181514, at *14 (Del. Ch. May 21, 2013).

(b) Bad Faith

To state an actionable claim for bad faith, all that is needed at the pleadings stage is "litigable inference of disloyalty or bad faith." *Voigt v. Metcalf*, 2020 WL 614999, at *26 (Del. Ch. Feb. 10, 2020). The Court's "good faith inquiry is a holistic one" that "requires a collective assessment of the complaint's allegations"

examining the "totality of the circumstances." *Winborne*, 301 A.3d at 626. At this stage, "the test is whether the complaint alleges a constellation of particularized facts which, when viewed holistically, support a reasonably conceivable inference that an improper purpose sufficiently infected a director's decision to such a degree that the director could be found to have acted in bad faith." *Id.* at 623.

Delaware courts allow plaintiffs flexibility in pleading a claim for bad faith. The state of mind sufficient to sustain a claim of bad faith at the pleading stage can range from an "intentional dereliction of duty," such as a "conscious disregard for one's responsibilities," to an intent to act "with a purpose other than that of advancing the best interests of the corporation," to an "actual intent to do harm" to the corporation or its stockholders. *Id.* at 622-623. Directors can be found to have acted in bad faith if a purpose other than pursuing the best interests of the corporation tainted their actions, and "[i]t makes no difference the reason why the director intentionally fails to pursue the best interests of the corporation." *In re Walt Disney Co. Deriv. Litig.*, 907 A.2d 693, 754 (Del. Ch. 2005).

The Court has also recognized that bad faith is a "state of mind." *Winborne*, 301 A.3d at 619. At the pleading stage, "a defendant's state of mind and knowledge may be averred generally," including from "relevant circumstantial facts that bear

on scienter, which include the substance and effects of the defendants' conduct." *Voigt*, 2020 WL 614999, at *26.

"The exact scope of conduct constituting bad faith has gone intentionally undefined in our case law." *In re Trade Desk, Inc. Deriv. Litig.*, 2025 WL 503015, at *22 (Del. Ch. Feb. 14, 2025); *see also In re Walt Disney Co. Deriv. Litig.*, 906 A.2d 27, 67 (Del. 2006) (noting that courts have declined to create "a definitive and categorical definition of the universe of acts that would constitute bad faith"). But illustratively, a plaintiff can plead bad faith by alleging facts that support an inference that the defendant "acted with scienter, meaning they had actual or constructive knowledge that their conduct was legally improper." *Winborne*, 301 A.3d at 622 (citation omitted). The Court may also sustain a claim of bad faith where, although "defendants also have not acted with malicious intent to harm the corporation and the stockholders," "a purpose other than pursuing the best interests of the corporation and its stockholders tainted their actions." *Id.* at 623 (citation omitted).

Regardless of their motive, directors will have acted in bad faith and face liability if they "*knew* that they were making material decisions without adequate information and without adequate deliberation, and that they simply did not care if the decisions caused the corporation and its stockholders to suffer injury or loss." *In*

re Walt Disney Co. Deriv. Litig., 825 A.2d 275, 289 (Del. Ch. 2003) ("*Disney I*") (emphasis in original). The Court has also recognized that "[d]irectors make decisions collectively," and therefore that liability may fall on the directors as a cohesive group. *Winborne*, 301 A.3d at 626.

2. The Board's conduct fell egregiously short of the heightened standard required to oversee and approve the Final LSAs

Delaware law recognizes that even as the fiduciary duties that directors of Delaware corporations owe are "unremitting," they are not universal and static. *N. Am. Cath. Educ. Programming Found., Inc. v. Gheewalla*, 930 A.2d 92, 101 (Del. 2007). Instead, "the exact cause of conduct that must be charted to properly discharge that responsibility will change in the specific context of the action the director is taking with regard to either the corporation or its shareholders." *Id.* (citing *Malone v. Brincat*, 722 A.2d 5, 10 (1998)). Stated differently, directors' fiduciary duties are "always operative, but their application is context-dependent." *In re Columbia Pipeline Grp., Inc. Merger Litig.*, 299 A.3d 393, 453 (Del. Ch. 2023).

Here, the context in which Appellees operated is critical. Three characteristics set the Final LSAs a world apart from run-of-the-mill corporate transactions: (i) Bezos's deep conflict of interest with respect to the Blue Origin LSAs; (ii) the LSAs' huge strategic significance and the immense cost they would impose on Amazon; and (iii) the considerable scheduling and competitive pressure the Board was facing

with respect to Project Kuiper. Each of these factors elevated the "course of conduct" that the Board was obliged—but failed—to follow.

(a) Bezos had invested vast financial, personal, and reputational capital into Blue Origin, deepening his blatant conflict of interest

There is no dispute that the Blue Origin LSAs were a conflicted transaction. And not just any conflicted transaction: they pitted Amazon's interests against the interests of the person that founded, continued to lead, and was synonymous with Amazon. Further, Blue Origin was not an ordinary Bezos-affiliated company—it was Bezos's childhood dream, passion project, and colossal financial commitment all rolled into one. A046-47 ¶53. Bezos founded Blue Origin not long after founding Amazon, and for many years used the wealth he earned from Amazon to fund Blue Origin. A047 ¶54. Blue Origin was Bezos's "most important work." A047-48 ¶55.

Bezos poured huge financial, emotional, and reputational capital into Blue Origin. Under his leadership, Amazon announced Project Kuiper—an undertaking that called for precisely the sorts of rockets Blue Origin sought to produce. Viewed together, Project Kuiper and Blue Origin are integral parts of an integrated enterprise that Bezos chose to divide between two different companies that he founded and led.

Against this backdrop, rejecting Blue Origin as a launch provider would have humiliated Bezos. Even a facially independent Board would have had tremendous difficulty in impartially considering a matter that could result such a public and stinging rebuke of Amazon's visionary founder and leader.

Beyond Bezos's immense personal investment in Blue Origin, Blue Origin's day-one involvement as a potential launch provider injected other concerns. In the years leading up to the Final LSAs, Blue Origin lost contract after contract, most often to SpaceX. *See* A053-65 ¶¶68-87. Some of these contracts were worth billions of dollars. In 2020, Blue Origin lost a contract that would have brought in $3 billion in revenue, forcing a senior Blue Origin executive to admit that it "was a big hit for us" and that Blue Origin would be forced "to consider the economics" of its business. A054 ¶70. In 2021, Blue Origin lost out on another $2.9 billion contract to SpaceX. A055-56 ¶¶74-75. As Blue Origin repeatedly missed out on contracts, its need for funding from a source other than Bezos's pocketbook grew. Amazon's need for rocket launches, therefore, came at a most opportune time for Blue Origin.

By selecting Blue Origin as a counterparty under the LSAs, Amazon was able to *immediately* funnel hundreds of millions of dollars to Bezos's struggling rocket company before it had gotten a single satellite off the ground. By design, the Blue Origin LSAs were structured to help Blue Origin finance its rocket development:

Amazon management explicitly told the Audit Committee that $[redacted] of the funds payable to ULA "[redacted]." A087 ¶122. In the first year of its contract (2022), Amazon gave Blue Origin $585 million to help fund Blue Origin's operations. A101 ¶147. The Blue Origin LSAs provided critical funding to Bezos's (other) company when it needed it most.

Blue Origin's string of losses to SpaceX also bred a highly public rivalry between Bezos and Musk. As Blue Origin lost again and again to SpaceX, Bezos responded with litigation and other tactics. Bezos lost legal and administrative challenges, lost a public relations campaign, and failed in his efforts to use his personal wealth to bribe his way into a NASA contract. And Amazon's own fight with SpaceX betrayed the very personal animus that drove Amazon's and Blue Origin's litigiousness: in a filing with the FCC, Amazon wrote that "SpaceX and other Musk-led companies" believe "rules are for other people," and that "[i]f the FCC regulated hypocrisy, SpaceX would be keeping the commission very busy." A064 ¶86.

For his part, Musk responded in more informal fashion, offering such quips as "[i]f lobbying and lawyers could get u to orbit, Bezos would be on Pluto [right now]" and "[t]urns out Besos [sic] retired in order to pursue full-time job filing

lawsuits against SpaceX." A059, A065 ¶¶81, 87. With each victory, like clockwork, Musk crowed. But it was not Amazon that was feuding with Musk: it was Bezos, primarily because of Blue Origin. In considering potential launch providers, therefore, would Amazon's management—led by Bezos himself as executive chair, and Bezos's protégé as CEO—have even proposed SpaceX?

In a world without Blue Origin and Bezos's personal rivalry with Musk, SpaceX would be far and away the most obvious choice for launching Kuiper's satellites into orbit. SpaceX had the most successful and extensive track record of commercial rocket launches and was the only company capable of re-using rocket boosters. This key functionality allowed SpaceX to offer far lower prices than its less-established rivals. But Amazon's Board did not even *consider* SpaceX—and instead chose to pin Project Kuiper's success on Bezos's Blue Origin.

Blue Origin's involvement in the LSAs, therefore, posed three distinct reasons for the Board to be concerned about this conflict of interest: (i) Bezos's deep personal investment in Blue Origin, and the humiliating implications of Amazon rejecting Blue Origin as a launch provider; (ii) Blue Origin's need for funding following repeated losses; and (iii) Bezos's enmity with Musk and SpaceX, the most obvious and successful launch provider in the industry.

The Board did nothing to manage these concerns. Appellees cannot identify a *single action* they took to manage Bezos's conflict. The Audit Committee and the Board asked no questions, imposed no guardrails, and received no updates as Bezos's Blue Origin and Amazon management teams were left supervised during eighteen months of negotiations. A076, A081-82, A087-88 ¶¶104, 113, 123. The Audit Committee and the Board knew nothing about Bezos's involvement before they approved the Blue Origin LSAs. A087-88, A089-90, A093-94 ¶¶123, 127-128, 133. Nor did the Audit Committee or the Board ask anything about Blue Origin's poor track record, about Blue Origin's need for funding, or about SpaceX's wholesale exclusion from the process.

In short, the Board handled this $[redacted] conflicted transaction exactly how it would handle a trivial, non-conflicted transaction: no recusals, no supervision, and no effort to ensure or verify the management of the underlying conflict. The Board *chose* to do quite literally nothing about Bezos's glaring conflict.

(b) Project Kuiper was vital to Amazon, and the Final LSAs were vital to Project Kuiper

Compounding Bezos's manifold conflicts, the Final LSAs presented the Board with an undertaking of immense cost and consequence. Amazon believed that Project Kuiper would become the "fourth pillar" of its future, justifying the Company's decision to embrace such an "[redacted]" and "[redacted]

[redacted]." A066, A079-80 ¶89, ¶109. Because Project Kuiper depended on successfully depositing the thousands of Kuiper satellites into orbit, management warned the Board that the launch service agreements were [redacted] A080 ¶110. The $[redacted] cost of launching the Kuiper satellites to orbit—to say nothing of the overall cost of Project Kuiper—represented the second-largest capital expenditure in Amazon's history. A073 ¶101. The Final LSAs were vital—Project Kuiper would not exist without them.

But in approving the LSAs, the Board did not act with anything approaching the diligence and care expected when dealing with matters so costly and important. The Board did not retain financial, legal, or industry advisors. A097-98 ¶140. The Board held no meetings to discuss the LSAs before it approved them, and received no updates about the LSAs during the many months they were negotiated. A095 ¶135. The Board received no outside opinions that spoke to the fairness of the $[redacted] contracts. The Board did not even receive a presentation on the Final LSAs—it only received a summary of what management deemed to be material terms. A097-98 ¶140. Indeed, the Board received *more* information about the Interim ULA LSA, which was not only far smaller in cost, scope, and significance, but which was untainted by a conflict of interest. There is *nothing* about the Board's conduct that

sets its approval of the $[redacted], critically important LSAs apart from a routine, inexpensive contract.

(c) Amazon faced considerable time and competitive pressure for Project Kuiper

In addition to needing successful rockets to launch its satellites, Amazon's Project Kuiper faced substantial time pressure. As a condition of the FCC's approval of Amazon's constellation, Amazon needed to launch 1,618 satellites by July 30, 2026, and the remaining 1,618 by July 30, 2029. A068-69 ¶93. Adhering to this mandatory timeline required Amazon's chosen launch providers—Blue Origin chief amongst them—to deliver reliable rockets that could launch at the cadence Amazon needed. This made the choice of launch providers critical: any delays could imperil Project Kuiper itself. By the same token, choosing a proven, reliable provider could mitigate one of Project Kuiper's "[redacted]" by allowing Amazon to reasonably expect successful, on-time launches.

Amazon also faced competitive pressure from SpaceX's rival Starlink program, [redacted] A081 ¶111. [redacted] . *Id*. [redacted]

[redacted] This competitive dynamic made it all the more imperative that Amazon choose its Project Kuiper partners carefully.

Again, the Board's conduct does not reflect these pressures, and the Board neutered its ability to meaningfully vet and approve Amazon management's choices. The Audit Committee learned that Amazon management was negotiating with four launch providers (Blue Origin, ULA, Arianespace, and [redacted]) in July 2020. A070-71 ¶97. But the Board never even learned who Amazon was in discussions with until management presented the Final LSAs for approval in March 2022. *See* A097-98 ¶140. Despite the importance of choosing the right launch providers, the Board delegated this process entirely to Amazon management—even as both Amazon management and Blue Origin operated under Bezos's leadership—and made no efforts to oversee the negotiations or to even ask for updates.

In keeping with its hands-off approach, the Board never questioned SpaceX's wholesale exclusion from the process. Amazon's Bezos-led management team seemingly did not even consider SpaceX for any of Project Kuiper's dozens of launches despite SpaceX being far and away the most successful and obvious launch provider. A072 ¶99. The Board did nothing to stay informed about Amazon's choice of providers, and did nothing to ensure that SpaceX's exclusion was wholly uninfluenced by Bezos's personal rivalry with Musk and SpaceX.

Nor did the Board leave itself with any meaningful agency when the time came to approve the Final LSAs. Amazon management spent at least eighteen months negotiating the three Final LSAs unsupervised. A096-97 ¶138. By the time management presented the Final LSAs to the Board for approval in early 2022, Amazon had only [redacted] until it planned to deploy its first prototype to orbit, and only four years to finish developing and launch all 3,236 satellites into orbit. *Id*. With time ticking, rejecting any of the Final LSAs would have forced management to go back to the drawing board and spend another several months negotiating an agreement with a new provider. *Id*. These were months Amazon could not afford to waste. The Board, therefore, chose to remove itself entirely from conflicted management's process of selecting launch providers; and when management concluded this process, it left itself with no option but to say yes.

The Board should have been particularly attuned to its fiduciary duties given these pressures. But the Board's actual conduct fell far, far short of this standard, betraying no response to the particular exigencies the Final LSAs presented.

3. Appellees' conduct compares unfavorably to *DisneyI*

Appellants are aware of only one decision in which a Delaware court has sustained a bad faith claim at the pleading stage premised on an allegation that the board "consciously and intentionally disregarded their responsibilities, adopting a

'we don't care about the risks' attitude concerning a material corporate decision." *Disney I*, 825 A.2d at 289. Accepting Appellant's well-pleaded allegations as true, Appellees here acted with even less diligence than the *Disney I* board did, creating a litigable inference of bad faith.

Disney I involved a decision by Disney CEO Michael Eisner to hire his close friend Michael Ovitz as Disney's President. *Id.* at 278. Disney's Compensation Committee discussed Eisner's decision during a short meeting at which it was given only a "review" of Ovitz's employment terms, asked a few questions, and adopted a resolution approving the agreement. *Id.* at 279-280. The Compensation Committee was not given a copy of the employment agreement; an analysis of the potential payouts to Ovitz; or any information about how the terms offered to Ovitz compared to market comparables. *Id.* The Committee did not rely on any experts—even though it had used an expert when negotiating Eisner's employment contract. *Id.* at 280-281. The Compensation Committee also permitted Eisner to continue to negotiate final terms with Ovitz. *Id.* at 281. At a board meeting immediately after during which no expert was present, no materials were provided, and no questions were asked, the board determined to appoint Ovitz as Disney's President and tasked Eisner with finalizing the negotiations. *Id.*

Following their meetings, the Compensation Committee and the board received periodic updates on Eisner and Ovitz's ongoing negotiations, but otherwise did not engage in the process and put no procedural guardrails in place. *Id.* at 281-282. Neither the Compensation Committee nor the Board reviewed or approved the final employment agreement before it was executed and made binding upon Disney. *Id.* at 282. Eisner arranged for Ovitz's "non-fault termination" a year later, unilaterally and without Board approval. *Id.* at 284.

Viewing these allegations holistically, the Court weighed the board's "ostrich-like" approach and concluded that demand was futile because the plaintiff had adequately alleged that "the defendant directors' conduct fell outside the protection of the business judgment rule." *Id.* at 288-289. In reaching this conclusion, the Court pointed to a series of deficiencies in the process the Board followed in approving Ovitz's employment agreement, including:

- Devoting less than an hour to evaluating the agreement;
- Relying on a summary of the agreement's terms and conditions rather than reviewing the actual draft agreement;
- Failing to ask questions about the agreement;
- Failing to evaluate the details of Ovitz's salary or severance provisions;
- Failing to have an "expert present[]the board with details of the agreement, outline[]the pros and cons of either the salary or non-fault termination provisions, or analyze[]comparable industry standards for such agreements";

- Authorizing Eisner to directly negotiate with Ovitz; and
- Not asking to review the final terms.

See id. at 287-288.

The Court found that these allegations raised a credible reason to believe the directors may have acted in bad faith. The Court noted that rather than simply acting "in a negligent or grossly negligent manner," the Disney board "*consciously and intentionally disregarded their responsibilities*." *Id.* at 289 (emphasis in original). The Court further held that "[k]nowing or deliberate indifference by a director to his or her duty to act faithfully and with appropriate care is conduct, in my opinion, that may not have been taken honestly and in good faith to advance the best interests of the company." *Id.*

Here, even before considering the far more fraught context in which they operated, Appellees' conduct mirrored *Disney I* in almost all key respects:

- The Audit Committee and the Board "failed to "establish any guidelines to be used in the negotiations," and were "not otherwise involved in the negotiations." *Compare* A076, A081-82, A087-88, A093-94 ¶¶104, 113, 123, 133 *with Disney I*, 825 A.2d at 281, 287.
- The Audit Committee and the Board "lacked the benefit of an expert to guide them through the process." *Compare* A077, A090-91, A097-98 ¶¶105, 129, 140 *with Disney I*, 825 A.2d at 280.
- The Audit Committee and the Board received "no presentations, spreadsheets, written analyses, or opinions" from any expert or advisor on the Final LSAs. *Compare* A090-91, A097-98 ¶¶129, 140 *with Disney I*, 825 A.2d at 280.

- The Audit Committee and the Board did not receive, ask for, or "review[] the actual [] agreement[s]." *Compare* A090-91, A097-98 ¶¶129, 140 *with Disney I*, 825 A.2d at 288.

- The Audit Committee and the Board "received only a summary of [the] terms and conditions" of the Final LSAs. *Compare* A090-91, A097-98 ¶¶129, 140 *with Disney I*, 825 A.2d at 280, 287.

- The summaries of the Final LSAs given to the Audit Committee and the Board lacked material terms and were therefore "incomplete." *Compare* A091, A098-99 ¶¶130, 141 *with Disney I*, 825 A.2d at 280.

- The Audit Committee and Board did not "request or receive any information as to how the draft agreement compared with similar agreements throughout the [] industry" or any information about is "comparable industry standards." *Compare* A091, A098-99 ¶¶130, 141 *with Disney I*, 825 A.2d at 280, 288.

- The Audit Committee "did not make any recommendation or report to the board" concerning its approval of the Bezos Conflicted LSAs. *Compare* A093 ¶132 *with Disney I*, 825 A.2d at 281.

- "All that occurred during the meeting regarding [the Final LSAs] was that [management] reviewed the [] terms with the committee and answered a few questions. Immediately thereafter, the committee adopted a resolution of approval." *Compare* A089-90, A097 ¶¶127-128, 139 *with Disney I*, 825 A.2d at 280.

- The Board did nothing to protect Amazon and did not even discuss Blue Origin's indefinite delay of its original 2022 launch date, only three weeks after the Board approved the Final LSAs. *Compare* A099-101 ¶¶143-146 *with Disney I*, 825 A.2d at 281.

In addition to the parallels between the lack of diligence exhibited by the Amazon and *Disney I* boards, the difference between the nature of the transactions at issue provides further reason to question the Amazon Board's good faith. *Disney I* involved a fairly routine $140 million employment contract that management spent

around two months negotiating with Board involvement. 825 A.2d at 280. But this litigation involves a $[redacted] related-party transaction that the Board left entirely unsupervised for eighteen months and that was the foundation for the hugely consequential Project Kuiper. A087-88 ¶¶123-124. Further, the Board knew (or should have known) that it had not received sufficient information about the terms of the Final LSAs because it received less information before approving the Final LSAs than it had received before approving the Interim ULA LSA—a far smaller, far less important contract that was not a conflicted transaction. A098-99 ¶141. Finally, when Blue Origin announced that the New Glenn rocket on which Amazon had pinned its fortunes would be delayed indefinitely, the Board did even discuss this delay—even though it was announced only weeks after the Board approved the Final LSAs and even though it directly impacted Project Kuiper. A099-101 ¶¶143-146.

4. The Court of Chancery relied on a plethora of misplaced arguments and unwarranted inferences in granting dismissal

In granting Appellees' motion to dismiss, the Court of Chancery declined to write an opinion, opting to adopt Parts A(1) and B of Appellees' opening and reply briefs below. *See* Ex. A; A256-75; A285-310. Parts A(1) addressed Appellees' independence from Bezos, while Parts (B) addressed the Appellees' liability for

acting in bad faith. Appellant appeals only the liability-related arguments that the Court adopted below.

The Court of Chancery committed legal error in adopting the arguments Appellees advanced in Parts B of their opening and reply briefs. Appellees (and thus the Court of Chancery) ignored many of Appellant's well-pled allegations and improperly drew inferences in Appellees' favor. Appellees did not dispute that the Board took *no* action to manage Bezos's conflict, but instead advance procedurally improper arguments that (i) there is no evidence Bezos was involved and (ii) even if Bezos was involved, it would not matter. *See* A269-70, A300-03. Appellees also mistakenly described Appellant as contending that their failure to manage Bezos's conflict "establishes bad-faith conduct because it is reasonably inferable that Bezos participated on both sides of the negotiations between Amazon and Blue Origin." A300.

Appellees have it backwards. The Board's conceded failure to manage Bezos's conflict creates a reasonable inference of bad faith conduct because the Board *knowingly allowed* Bezos to participate freely in negotiations. Management went to the Audit Committee with the Blue Origin LSAs precisely because Bezos was the principal decision-maker on both sides. The fact that the Board knew of

such a deep conflict of interest but chose not to take any affirmative steps to manage it contributes to an inference of bad faith.

The Court also adopted Appellees' argument that Appellant did not credibly allege that Bezos was involved in negotiating the LSAs. A269-70. But Appellant's well-pleaded allegations are sufficient to create a pleading stage inference that Bezos *was* involved. Bezos was Amazon's founder and longtime CEO; Amazon admitted that in his new capacity as Executive Chairman Bezos would continue to be involved in "major decisions," while Bezos's successor as CEO was Bezos's hand-selected protégé. A041-42 ¶¶45-46. Bezos still held "tremendous influence" at Amazon and his transition from CEO to Executive Chairman was "more of a restructuring of who's doing what." A042 ¶46. Nothing in Amazon's books and records production suggests that Bezos was recused from or uninvolved in the negotiations.

Given Bezos's status as Amazon's senior-most executive, Appellees are not entitled to an inference that Bezos nobly and unilaterally recused himself from negotiations. *See Harris v. Junger*, 2022 WL 1657551, at *5 (Del. Ch. May 25, 2022) (court drew inference that conflicted director was involved in merger negotiations where he was a member of a since-disbanded special committee, but continued to regularly discuss merger without any committee in place). If Bezos

were recused or otherwise uninvolved in the LSAs' negotiation, Amazon's corporate records should and would say so. They do not.

Similarly, the Court adopted Appellees' claim that Appellant did not adequately allege that SpaceX had been excluded from Amazon's procurement process. A270-71. Appellant's well-pleaded allegations present a reasonable inference that it was. The Complaint presents detailed allegations about SpaceX and Bezos's bitter and public rivalry. A053-67 ¶¶68-91. The Complaint presents detailed allegations about SpaceX's domination of the launch industry and low costs. A051-53, A109-111 ¶¶64-67, 163-166. And the Complaint, relying on Amazon's own documents, alleges that management negotiated with only four potential launch providers—none of which were SpaceX. A070-71 ¶97. These allegations create a reasonable inference that SpaceX was excluded from the procurement process, despite the fact that it was the best and cheapest commercial launch provider in the industry.

Against these well-pled allegations, not a single document in Amazon's Section 220 production refers to discussions with SpaceX. And the only document that lists Amazon's potential counterparties does not include SpaceX. Yet, the Court agreed that Amazon may have indeed held discussions with SpaceX after all, based on nothing more than Appellees' speculation. At the pleading stage, this is improper.

In its brief order, the Court of Chancery wrote that Appellant's "allegations suggest at most that the directors perhaps could have done more—asked more questions, reviewed more information, attended longer meetings," and that a "bad-faith claim is reserved for disciplining directors who deliberately do essentially nothing, knowing they are breaching their duty." Ex. A at 3.

But how much closer to "essentially nothing" could the Board have gotten? After the Audit Committee and the Board learned of the conflicted negotiations with Blue Origin, they did not impose any guardrails and did not ask any questions about Bezos's role. While negotiations were underway, the Audit Committee and the Board held no meetings and received no updates about the LSAs. Once the LSAs were finalized, the Audit Committee and the Board held a single meeting each—the minimum—to approve the LSAs. They still asked no questions about Bezos's involvement, about Blue Origin's dependability, or about SpaceX's exclusion. The Audit Committee and the Board retained no advisors. The Audit Committee and the Board received no presentations. This virtually nonexistent diligence and oversight for a $[redacted] conflicted transaction on which Amazon's "fourth pillar" depended smacks of bad faith. It is certainly true that Appellees could have done more—but it is hard to imagine how they could have done less.

CONCLUSION

For the reasons set forth herein, the Court should reverse the court below, find that demand is excused as futile, and remand for further proceedings.

Dated: May 13, 2025

GRANT & EISENHOFER P.A.

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