

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MAWSON INFRASTRUCTURE GROUP INC.,	:
a Delaware Corporation,	:
	:
Plaintiff,	:
	:
v	: C. A. No.
	: 2025-0789-JTL
RAHUL MEWAWALLA,	:
	:
Defendant.	:

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Chancery Courtroom No. 12B
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Friday, February 13, 2026
1:30 p.m.

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BEFORE: HON. J. TRAVIS LASTER, Vice Chancellor

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ORAL ARGUMENT and RULINGS OF THE COURT ON DEFENDANT'S
MOTION TO DISMISS OR STAY

CHANCERY COURT REPORTERS
500 N. King Street, Ste 11400, Wilmington, DE
(302) 255-0526

1 APPEARANCES:

2 FRANCIS G.X. PILEGGI, ESQ.
3 AIMEE M. CZACHOROWSKI, ESQ.
4 RAE RA, ESQ.
5 MALIHEH ZARE, ESQ.
6 Lewis Brisbois Bisgaard & Smith LLP
7 for Plaintiff

8 PETER J. WALSH, JR., ESQ.
9 DAVID A. SEAL, ESQ.
10 SAMUEL G. GUSTAFSON, ESQ.
11 Potter, Anderson & Corroon LLP
12 for Defendant

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1 THE COURT: Welcome, everyone.

2 ATTORNEY SEAL: Good afternoon, Your
3 Honor. David Seal with Potter, Anderson & Corroon on
4 behalf of defendant, Rahul Mewawalla. When me today
5 from my firm is Peter Walsh and Sam Gustafson. And we
6 are here today on the defendant's motion to dismiss or
7 stay.

8 ATTORNEY CZACHOROWSKI: Good morning,
9 Your Honor. Aimee Czachorowski of Lewis Brisbois here
10 for the plaintiff. With me today is my partner
11 Francis Pileggi and our associates Rae Ra and Maliheh
12 Zare. Also with us today is the chairman of Mawson's
13 board, Ryan Costello.

14 THE COURT: Thank you all for being
15 here. I appreciate it.

16 Do you want to proceed.

17 ATTORNEY SEAL: Your Honor, we are
18 here today because Mawson has engaged in forum
19 shopping, artful pleading, and gamesmanship by
20 ignoring multiple contractual obligations in
21 Mr. Mewawalla's employment agreement as CEO.
22 Mr. Mewawalla and Mawson negotiated to mediate any
23 disputes before bringing a suit and to have any suits
24 relating to that employment agreement brought in

1 Washington.

2 Now, after tensions arose between
3 Mr. Mewawalla and Mr. Costello, the chairman of the
4 board, Mawson developed a pretextual basis to
5 terminate Mr. Mewawalla for supposed fraud related to
6 payment of a bonus under that employment agreement.
7 It sent him multiple notices of cause, alleging how as
8 CEO he breached the employment agreement through that
9 conduct. And Mr. Mewawalla, in response, demanded
10 that Mawson comply with its mediation requirement
11 multiple times. But Mawson ignored him.

12 Then, on July 8 of 2025, Mawson
13 terminated him as CEO under the employment agreement.
14 And that very same day, Mawson filed this action.

15 Rather than bring claims under the
16 employment agreement in Washington, as it was required
17 to do, Mawson filed suit here in Delaware for supposed
18 breaches of fiduciary duty as a director, without even
19 a mention of the employment agreement. And Mawson
20 still did not mention the employment agreement when it
21 amended its complaint approximately two months later,
22 even though Mr. Mewawalla had informed Mawson that the
23 employment agreement squarely implicated the claims in
24 this action.

1 Now, Mawson thought it could avoid the
2 forum selection provision calling for Washington in
3 the employment agreement by not bringing it to this
4 court's attention. But that's not what the law
5 provides for. Here, the Court should enforce the
6 forum selection provision and dismiss this action.
7 And even if Your Honor believes that the claims are
8 not subject to the forum selection provision, it
9 should dismiss or, at the very least, stay this action
10 in favor of the related litigation in Washington under
11 *forum non conveniens*.

12 Now, I will begin with a brief
13 overview of the key events that led to this dispute,
14 as well as provide Your Honor with an update on the
15 status of the Washington action in the month and a
16 half or so since briefing concluded.

17 Approximately three years ago, in
18 January of 2023, Mr. Mewawalla joined Mawson's board.
19 A few months later, in May of 2023, Mawson appointed
20 Mr. Mewawalla as its CEO and president. In connection
21 with that, Mr. Mewawalla and Mawson entered into an
22 employment agreement to govern his service as CEO.
23 And they did so on May 22nd of 2023.

24 Now, as part of the employment

1 agreement, Mr. Mewawalla and Mawson mutually agreed on
2 a process and forums for resolving disputes.

3 Section 33 required that, in the event
4 of a dispute between the parties, the parties agree to
5 engage in nonbinding mediation. Then, only
6 afterwards, if the dispute cannot be mutually
7 resolved, the parties retained all legal rights to
8 commence legal proceedings. And there was no limit on
9 the nature of the dispute that could be mediated.

10 Moreover, there was a broad forum
11 selection provision for Washington. That provision
12 stated that "[A]ny action, suit or other legal
13 proceeding arising under or relating to any provision
14 of this Agreement shall be commenced in Seattle,
15 Washington" And the company and the executive
16 each consented to the jurisdiction of that court.

17 And the selection of Washington wasn't
18 arbitrary or coincidence. The employment agreement
19 provided that Mr. Mewawalla would live and work in
20 Washington. It's perfectly logical to expect that
21 Washington law and forum would govern disputes over
22 his employment.

23 That employment agreement also
24 provided that Mr. Mewawalla would be nominated to sit

1 on the board as a director, and placed in the
2 company's annual proxy materials, as long as he served
3 as CEO. Critically, the employment agreement also
4 governed cause and the procedures for termination as
5 CEO. Section 7 laid out the distinctions between "for
6 cause" and "without cause" termination. There is
7 definitions in Section 10 about what cause includes.
8 I won't read the whole thing, but I will note that it
9 includes breaches of the employment agreement and
10 gross and willful misconduct, which includes fraud in
11 his job duties.

12 Now, I think it's also important to
13 note here that Mawson and Mr. Mewawalla also signed
14 addendums to the employment agreement. The second of
15 those was signed on December 26th, 2023, by Mawson's
16 other board members. And that included Mr. Costello,
17 who was the very same board member who would later pen
18 the initial notice of cause for termination under the
19 employment agreement. So Mawson effectively
20 reaffirmed its understanding and agreement to the
21 obligation to mediate disputes and bring them in
22 Washington.

23 And for a long time, there were no
24 disputes. For the next couple years, Mr. Mewawalla

1 served admirably as CEO. And in accordance with that
2 service and the employment agreement, Mawson saw fit
3 to reward him with bonus payments. On November 26 of
4 2024, it approved a bonus of almost \$2.6 million in
5 cash, as well as some restricted stock units. And the
6 unanimous written consent which approved the bonus
7 made clear that it was awarded to him in his capacity
8 as CEO and president, repeatedly referring to him as
9 such. And the employment agreement, in Section 5(b),
10 governed the issuance of that bonus.

11 Now, in early 2025, tensions began to
12 rise between Mr. Mewawalla and Mr. Costello.
13 Mr. Mewawalla raised a number of concerns to Mawson's
14 board and officers related to things like selection of
15 a new board member, options backdating, and issues
16 concerning the selection of a 30(b)(6) witness for the
17 company in certain litigation. And Mr. Mewawalla
18 asked for an independent investigation into
19 Mr. Costello.

20 The effect of that was to cause
21 Mr. Costello and other members of Mawson's board to
22 launch a pretextual campaign to terminate
23 Mr. Mewawalla.

24 On May 30th of 2025, Mr. Costello sent

1 Mr. Mewawalla a purported notice of termination for
2 cause pursuant to the employment agreement. It was
3 clearly labeled in his capacity as CEO. Under the
4 employment agreement, it took issue with various
5 representations that were made related to payment of a
6 tax bill that was owed by Mawson and the company's
7 finances. And I will discuss the contents of that a
8 little bit later.

9 But Mr. Mewawalla responded. He set
10 forth the reasons why he disagreed. And importantly,
11 he also requested that the company mediate the dispute
12 under the terms of the employment agreement.

13 Mawson did not take him up on that
14 demand. Instead, on June 16th, Mawson sent another
15 letter to Mr. Mewawalla through its counsel seeking to
16 claw back the bonus, noting that as an executive he
17 may be liable.

18 And on June 17th, the board sent an
19 updated notice of cause to Mr. Mewawalla. Once again,
20 it's under the employment agreement. It discusses his
21 conduct as an officer. And it concerns many of the
22 same issues that are at issue in this litigation.

23 Mr. Mewawalla once again responds to
24 that promptly, and he demands mediation again. Once

1 again, Mawson doesn't take him up on that.

2 Instead, on July 8th of 2025, Mawson
3 purports to terminate Mr. Mewawalla's employment as
4 CEO and president for cause under the employment
5 agreement. That very same day, Mawson files this
6 action seeking to effectively claw back that bonus
7 payment for supposed breaches of fiduciary duty as a
8 director and fraud on the board, without nary a
9 mention of the very same employment agreement which it
10 terminated him under that same day.

11 Now, what happened in the following
12 months is that ultimately Mr. Mewawalla still pursued
13 his right to have the dispute mediated. Ultimately,
14 after the filing of the complaint, Mawson agreed to
15 mediate. That mediation occurred on November 19 of
16 2025. It was not successful, which is why we're here
17 today. But Mr. Mewawalla diligently pursued and
18 complied with his contractual rights. A few weeks
19 after that, he brought suit in Washington.

20 I think it's also actually important
21 to note that on September 5, Mawson amended its
22 complaint. It added certain allegations related to a
23 BE Global contract. But once again, there was nothing
24 about the employment agreement in that, despite

1 correspondence related in which Mr. Mewawalla asserted
2 that the Delaware action implicates the employment
3 agreement and the mediation provision.

4 So Mr. Mewawalla brought suit in
5 Washington in accordance with the forum selection
6 provision. There are seven counts there. Four
7 defendants were named: Mawson and Mr. Sites,
8 Mr. Soles, and Mr. Costello. Trial is currently
9 scheduled for December 14th of 2026. All of the
10 defendants have been served. Mr. Sites has appeared
11 and moved to dismiss. Briefing on that motion is
12 complete. A ruling is expected shortly. My
13 understanding is that Mr. Soles has not responded by
14 the deadline and that Mr. Mewawalla will be seeking
15 default judgment against him. My understanding is
16 also that Mawson's deadline to appear and respond to
17 the complaint is today and that Mr. Costello's is
18 February 23rd.

19 Mr. Mewawalla served discovery on
20 Mr. Sites, and he will do so on the other defendants
21 when they appear, which is the earliest time he can do
22 so under the applicable court rules. And
23 Mr. Mewawalla is prepared to do what it takes to move
24 forward with trial in Washington on December 14th.

1 And I know, obviously, the most recent events are not
2 in the record. If Your Honor wants a written
3 submission or supplement, we are happy to provide it.
4 But that's where things stand right now.

5 So getting to the merits of the claims
6 here, the first reason Your Honor should dismiss this
7 action is the forum selection clause. And it's a
8 broad forum selection clause. It covers claims
9 arising out of or relating to the employment
10 agreement. That's a common construction. In cases
11 like *Flotek*, this Court has explained how the action
12 need not allege contract-based claims in order for
13 those forum selection clauses to be enforced; that
14 it's a very broad construction.

15 THE COURT: It seems to me the
16 precedent that I need you to deal with is *Parfi* and
17 its progeny. I'm always wrestling with how far *Parfi*
18 really goes and when it makes sense. I think of *Parfi*
19 as the case that says because fiduciary duties exist
20 independent of the agreement, you don't necessarily
21 have to implicate the agreement for that to happen.

22 So talk to me about that and why this
23 isn't a *Parfi* case, in your view.

24 ATTORNEY SEAL: Absolutely, Your

1 Honor. I do recognize the plaintiff has cited *Parfi*.
2 And I agree it's a touchstone in this area that I know
3 Your Honor and other judges have dealt with. And I
4 think there, what the law -- what the case talks
5 about, and many of the other cases in that progeny, is
6 touching on the rights and obligations under the
7 contract.

8 Now, I think what plaintiff would say
9 is, well, if the duty itself exists outside of the
10 contract, that automatically means that you're beyond
11 the -- you're beyond the clause. I don't think it
12 stands for something quite so broad. And what I would
13 say here is it's important to look at the nature of --
14 the nature of what they have alleged has been done and
15 the relief that is sought. Because the conduct -- and
16 I will get to this in a moment -- is really all done
17 as CEO. That's the capacity in which he has entered
18 into the employment agreement. It is alleged to have
19 been fraud in connection with payment of the bonus,
20 which is done pursuant to the employment agreement.
21 And I think when we talk about rights and obligations,
22 you know, that's an obligation under the employment
23 agreement, the payment here.

24 This isn't a situation where, you

1 know, it's -- it's not a situation where the bonus
2 here was for his service as a director or some other
3 separate contract. Nor is it a situation where -- you
4 know, there are some cases, I think, that deal with
5 more transactional agreements where there's a broad
6 forum selection clause for anything arising out of,
7 but the claims themselves go into really whether that
8 agreement itself was properly entered into, or
9 sometimes fiduciary duties, parties who -- or
10 individuals who weren't even signatories to that
11 contract. Instead, what we are talking about here is
12 conduct that Mawson, as we will show, has already
13 conceded was in the capacity that is covered and
14 relates to an obligation and payment under the
15 agreement itself. And the relief sought here is
16 basically repayment or disgorgement of that bonus.

17 So I think that puts us in the general
18 language that *Parfi* uses and the general principle
19 here, which is it's meant to cover what the parties
20 anticipated and intended to put into arbitration. And
21 I think we are talking about a very narrow window of
22 fiduciary duty. And I think it's something that
23 reasonably fits in here. So for that reason, we think
24 we are aligned with *Parfi*.

1 THE COURT: In your view of the world,
2 if the company wanted to assert the breach of duty
3 claims against the CEO in his director capacity as
4 counterclaims in Washington, is that something they
5 could do? Or do you think for some reason they are
6 foreclosed from doing that, setting aside whatever
7 view you may have as to the merits of whatever they
8 assert. But is there any impediment you see, if the
9 company wanted to assert those things out in
10 Washington? Is there any reason why they couldn't at
11 least assert them?

12 ATTORNEY SEAL: No, I don't believe
13 so, Your Honor. I note here, they point to an
14 exclusive forum selection clause in the bylaws. But
15 there's an exception for that for where the company so
16 agrees as to otherwise. And I think that's what we
17 have here through this agreement.

18 I would note Vice Chancellor Slight's
19 actually effectively dealt with that in one of the
20 earlier *McDonald's* cases in a footnote. But we think
21 they can bring it if they want to. One of their
22 footnotes effectively concedes that, for the Wage
23 Rebate Act, which so much of their brief is troubled
24 with, the question of whether there was a legitimate

1 dispute over payment and whether the actions here
2 constituted a breach of fiduciary duty may be a
3 defense. So, frankly, it's something we anticipate
4 they are going to be raising there.

5 THE COURT: It would put them in a
6 tough spot if you were saying you have to sue in
7 Washington State, but you can't assert these specific
8 claims here; you can only sue under the agreement that
9 we want you to sue under.

10 ATTORNEY SEAL: Yeah, that would put
11 them in a tough spot. And I don't think that's what
12 we're saying, Your Honor. And I think it's important
13 too, because their brief tries to make it sound like
14 we're arguing that this has acted as a waiver of the
15 duty of loyalty. We're not saying that. We know the
16 law there is very clear. A corporation director, you
17 can't waive it.

18 But what we're saying is that in this
19 specific context, it is something that the parties
20 have agreed to and foresaw as the type of claim that
21 should be brought in Washington. And so we don't
22 think it should be troubling under *Parfi* and its
23 progeny.

24 And there's no argument here that the

1 forum selection clause is generally invalid or that
2 there was any kind of fraud there. It was reaffirmed
3 multiple times that the parties had an opportunity to
4 have counsel negotiate it.

5 So Mawson's argument is, yes, this is
6 a breach of fiduciary duty claim. That's different.
7 It's internal affairs. It's not covered here.

8 But this is where you really do need
9 to, I think, look at the specific details of what was
10 alleged. And this court emphasizes substance over
11 form. We cite to the *PPF Safeguard* decision, which I
12 think is illustrative. There, the Court was presented
13 with claims that a CEO committed aiding and abetting
14 breaches of fiduciary duty and tortious interference.
15 He had an employment agreement that called for a
16 Louisiana forum selection. And the Court looked at
17 the substance of the allegations of the CEO, which
18 included things like improper expense reimbursements
19 or failing to devote enough time to company business,
20 and the Court ultimately decided that those types of
21 claims properly fell within the forum selection
22 clause. And what the Court said was it was rejecting
23 plaintiff's mental contortions and distracting
24 gymnastics, and instead that the claims plainly

1 implicated the employment agreement.

2 And I think mental contortions and
3 gymnastics is fitting to this case as well. Mawson
4 ignores, and asks the Court to ignore, that the crux
5 of its claim and the resulting damages sought are the
6 payment of a bonus to Mr. Mewawalla pursuant to the
7 employment agreement for his service as CEO and
8 president. And I mentioned it earlier, but the
9 definition of cause here for termination includes
10 engaging in gross and willful misconduct which
11 includes fraud or embezzlement of his job duties.

12 And if Your Honor will indulge me, I
13 would like to turn to the brief slide presentation
14 that we submitted, just to walk you through the
15 submission, or what Mr. Mewawalla received from Mawson
16 in connection with his termination and the amended
17 complaint. Because I think it's pretty stark here
18 what's happened.

19 So the first slide, this is an excerpt
20 from the initial notice of cause which Mr. Costello
21 delivered. "This letter stakes the position that you
22 are in violation of your Employment Agreement []."
23 And "After careful consideration and a review of the
24 facts and experiences observed relating to your

1 conduct as CEO" CEO conduct under the employment
2 agreement. Very plain.

3 Now, let's look at some of the conduct
4 alleged. In the bottom paragraph here, you can see
5 we're talking about allegations about assuring the
6 payment of past taxes and the summary of financial
7 condition of the company to assure the board that the
8 taxes could be paid and that they could act on the
9 bonus as well.

10 Now, we compare that with the amended
11 complaint. Those same representations are at issue in
12 the amended complaint.

13 And we look at what Mawson describes
14 as the purpose of those representations. "[I]n
15 connection with your Bonus Award . . . , your purpose . . .
16 was [made] to secure your bonus and salary increase."
17 And Mr. Costello says, "satisfies all [the] elements
18 for a legal finding of fraudulent misrepresentation."

19 Once again, when we look at what they
20 say about fiduciary duty, misrepresenting salient
21 details regarding the tax bill, and it's seeking and
22 it's about the approval of the bonus.

23 So I think from the very initial
24 notice of cause back on May 30th, we're talking about

1 a situation where it's the same conduct that forms the
2 basis for this amended complaint. But instead, at
3 that time Mawson is saying this is your conduct as an
4 officer under the employment agreement.

5 And when we look at what they seek for
6 relief in both, it's repayment of the bonus, the bonus
7 paid under the employment agreement.

8 Now, let's look at Lewis Brisbois'
9 June 16th letter sent a couple weeks later. It's the
10 same type of thing. This is all about the
11 representations related to the tax obligations and the
12 company's finances about cash liquidity or things like
13 that and available cash on hand. Once again, it's the
14 same things at issue in the amended complaint. And
15 then what does Lewis Brisbois say later? "As an
16 executive of a publicly traded corporation"
17 Officer capacity under the employment agreement.

18 Now, let's look at the updated notice
19 of cause.

20 So once again this is under the
21 executive's employment agreement. And it's in
22 addition to the conduct identified in Mr. Costello's
23 initial notice of cause. That conduct was under the
24 employment agreement as well. And the cause is under

1 the executive agreement.

2 Now, looking at the content of the
3 allegations, it's "Executive's misrepresentations to
4 the Board of Directors, Compensation Committee [and
5 the] individual Board members, to convince [them] to
6 approve an award of [the] Annual Bonus" And
7 looking at some of the specific allegations alleged,
8 there's a representation about Mawson's available cash
9 on hand.

10 And we look at the amended complaint;
11 it's the same thing. The same \$8 million in available
12 cash and four times the amount that was the actual
13 amount. Same conduct. But in its earlier
14 correspondence, it's as an officer under the
15 employment agreement. Then, under the amended
16 complaint, no, now it's as a director, and the
17 employment agreement is irrelevant and doesn't even
18 merit mention in the complaint.

19 And when we look too at some of the
20 other specific allegations, once again
21 misrepresentations. And there's an allegation here
22 about what the general counsel and the CFO were saying
23 and what Mr. Mewawalla supposedly had them do. If you
24 look at the amended complaint, when it comes to

1 payment of the bonus, we're really talking about the
2 same thing once again.

3 So looking through all of this, the
4 correspondence in May and June about cause for
5 termination, it's clearly under the employment
6 agreement and as an officer. And the conduct is the
7 same as what forms the basis for the amended
8 complaint. So Mawson has conceded that this is
9 conduct that is governed by the employment agreement.

10 Now, it's important here, too, to note
11 what they omitted. Once again, there's no mention of
12 the employment agreement in either complaint. There's
13 no mention of the forum selection provision. And
14 Mawson's position appears to be that they can just
15 ignore that and say, well, he was a director at the
16 time too. We get to bring it as this in Delaware.
17 Tough luck. You will figure out what to do with
18 Washington.

19 That's not what the law stands for. I
20 explained why that's not consistent with *Parfi*. It's
21 not consistent with the other law like *Ingres* and
22 other cases about the importance of enforcement of
23 forum selection clauses.

24 I think it's also important to

1 consider some of the other things that Mawson brings
2 up in their papers here. For example, they talk about
3 a breach of the compensation committee charter. But
4 the provision they say is breached is a provision
5 about the CEO not participating in deliberations over
6 the -- over his compensation.

7 They point to provisions about the
8 board of directors' ability to rely on officers and
9 advisors. Mawson's own -- Mawson's own arguments
10 effectively concede that this is under the employment
11 agreement and as an officer. And they tactically
12 chose to only bring fiduciary duty claims in the
13 directorial capacity. They ignored fiduciary duty
14 claims as an officer, presumably for the tactical
15 reason that they thought it would undermine their
16 ability to get away from the employment agreement.

17 And when you consider the allegations
18 of fraud as well, looking at the actual information
19 which was alleged to have not been disclosed, it's
20 information that Mr. Mewawalla would have received in
21 an officer capacity. It relates to information that
22 was provided to him by finance staff about the
23 company's financials. It relates to the status of a
24 contract, the BE Global contract that was negotiated

1 in his capacity as the CEO. And Delaware recognizes
2 these are the types of things that typically fall in
3 the CEO capacity. And we point to language from the
4 company's governing documents that explain, unless
5 otherwise provided, these are CEO or president-type
6 roles.

7 So we think it's very clear here that
8 everything here relates to officer action and falls
9 under the employment agreement.

10 Now, there's also some allegations
11 about controlling the flow of information, which I
12 think is effectively the same as the fraud. I mean,
13 it's ensuring that whatever the material information
14 that is being omitted or would undermine the --
15 undermine the fraudulent representations doesn't get
16 to the board. But once again, that's information
17 coming from lower-level officers or employees. That's
18 the type of thing a CEO controls. And the reason that
19 Mr. Mewawalla could actually control that flow is
20 because he was an officer, right. If he's just
21 another director, there's no real reason to assume
22 that he controls flow of information to the rest of
23 the board.

24 So I also want to note, the BE Global

1 contract, that allegation came in the amended
2 complaint; it is not in the notices of cause. I'm not
3 sure why Mawson contends that it wasn't aware of the
4 status of that contract before, but it's the contract
5 that was negotiated and would have been done so as
6 CEO. The press release announcing it talks about
7 Mr. Mewawalla as CEO. So I don't think anything about
8 that changes the analysis when they added that claim.

9 So unless Your Honor has any other
10 questions about the forum selection clause, you know,
11 we think that's enough to dispose of this action. But
12 if Your Honor disagrees, we do think *forum non*
13 *conveniens* provides another basis to either dismiss
14 or, at the very least, stay this action in favor of
15 Washington.

16 And I know Your Honor is familiar with
17 the *Cryo-Maid* factors. I won't list all of them out.
18 But there is a threshold question that must be
19 addressed in terms of how Your Honor applies them.
20 And specifically, what burden Mr. Mewawalla must meet
21 in order to have Your Honor invoke his discretion.

22 Our briefing explains that we think it
23 makes sense to treat the Delaware and Washington cases
24 as being filed at the same time and weighing those

1 factors neutrally. I will be honest, Your Honor. For
2 reasons I'm about to get into, I think you could even
3 effectively do this under *McWane* and treat Washington
4 as first-filed. But Mawson argues that because it
5 filed the Delaware action first, Mr. Mewawalla must
6 show overwhelming hardship from litigating in
7 Delaware. And it claims Mr. Mewawalla cannot meet
8 that higher standard. It goes so far as to blame
9 Mr. Mewawalla for waiting too long to act and bring
10 suit in Washington or bring this motion.

11 Mawson's argument would reward it for
12 breaching its obligations under the employment
13 agreement. First, the obligation to mediate, I went
14 through, Your Honor, earlier how Mr. Mewawalla
15 multiple times requested that Mawson mediate the
16 disputes, after receiving the notice of cause and the
17 updated notice of cause, and how Mawson ignored that.
18 And critically, the obligation to mediate was a
19 necessary precedent to bringing suit. So
20 Mr. Mewawalla could not just rush into Washington and
21 say I've got claims under the employment agreement.
22 Frankly, Mawson should not have been able to run into
23 this court and do the same as it did on July 8th, the
24 very same day it terminated him.

1 There is law that stands for the
2 proposition that we don't accord first-filed deference
3 to actions when they are filed in breach of a forum
4 selection clause. I think that should apply too in
5 the context of a precedent mediation provision. I
6 think there's other law out there that, while not
7 talking about breach of contract, recognizing when
8 there's gamesmanship, such as by filing a complaint
9 and withholding service for weeks or months just
10 because you wanted to get first-filed status, doesn't
11 lead to the court providing that deference. The point
12 is when a party acts inequitably or breaches a
13 contract, we don't accord deference.

14 And now Mawson says, well, you are
15 pointing to some cases under *McWane*. Yes, *McWane* and
16 *forum non conveniens* are not identical, but they all
17 go to the same analysis and principles of when do we
18 accord first-filed deference and respect of
19 plaintiff's choice of forum and how the court manages
20 its docket.

21 I think here, given Mawson's action
22 and Mr. Mewawalla's attempts to comply with his
23 obligations and his bringing of suit shortly after
24 finally exhausting the mediation requirement, there's

1 no reason to accord first-filed deference here. And
2 honestly, like I said, I think Your Honor could, if it
3 so chose, treat Mr. Mewawalla's claim as the first
4 filed since it was the only one filed in accordance
5 with contractual requirements. But even taking the --
6 even taking the more moderate approach of treating
7 them as effectively filed at the same time, that would
8 leave Your Honor with weighing the *forum non*
9 *conveniens* factors neutrally.

10 And only some of those are in dispute
11 here. In particular, there's dispute about whether
12 Washington or Delaware is favored under the provision
13 about the existence of other litigation involving
14 substantially similar parties or subject matter,
15 whether the controversy depends on a question of
16 Delaware law, and which courts should probably decide
17 those, and then other matters that may affect the
18 conduct of litigation and expedition and economic
19 administration of justice. We think all of those
20 factors weigh in favor of Washington.

21 First of all, regarding the existence
22 of other litigation, we recognized at the time we
23 initially filed the motion there was not other
24 litigation. That's because we had to mediate. Our

1 motion -- and we had made it clear to Mawson, and our
2 motion made it clear, we would be filing suit if the
3 mediation was not successful. I don't think that
4 there was any reason for us to wait to do so.
5 Instead, I think, particularly given the efficiency
6 concerns implicated, teeing this issue up and having
7 the motion on file was important.

8 And I don't think there is any real
9 dispute that these aren't the same issues. I know
10 Mawson tries to suggest, well, you know, that the
11 question there is really was he just wrongfully
12 terminated. But -- and as I think some of Your
13 Honor's earlier questions recognized, the question of
14 whether the termination here was pretextual or not,
15 whether there was actually a basis to believe that
16 what he did was fraudulent is squarely at issue in
17 both cases. Mawson and Mr. Mewawalla are parties to
18 both actions. So we think this factor weighs in favor
19 of Washington or is at least neutral.

20 Concerning the question of whether the
21 controversy depends on an issue of Delaware law, we
22 have explained in our briefing how Washington has a
23 strong policy interest in enforcing its employment
24 laws. And Mr. Mewawalla's Washington complaint

1 certainly implicates those employment laws. It's
2 brought under both statutory and common law claims,
3 including, actually, a claim for termination in
4 violation of public policy. And I know Your Honor has
5 recognized in some cases, like the *Holsopple* case,
6 that other states have an important interest in
7 enforcing their employment laws.

8 Now, Mawson's argument is to say this
9 is internal affairs; it's about the conduct of a
10 fiduciary. There's law that says -- and I know Your
11 Honor has put some of those opinions out there too
12 that say Delaware has a strong interest in regulating
13 the conduct of its fiduciaries. But this is where
14 it's once again important to look at the actual nature
15 of what's alleged. Yes, there is a fiduciary duty
16 claim here, but it's, I would say, a garden variety
17 fraud claim. The question is, what were the
18 representations made? Were they false? Were they
19 material? Were they relied on?

20 Fraud is something that juries can
21 decide. Washington and Delaware law both support
22 that. And putting aside Mawson's invective against
23 the people of Washington, this is something that a
24 jury can decide, whether the action was fraudulent.

1 They have identified nothing here that implicates a
2 novel or developing area of Delaware law. And that's
3 important. We have cited to cases where the court has
4 said, you know, yes, this is -- this isn't a question
5 of governance or fiduciary duty, but it's a garden
6 variety -- it's a garden variety waste claim or
7 it's -- I think there was one just last year where the
8 court said, yes, this is technically a governance
9 question, but it's just a matter of contract
10 interpretation. We should defer to another court.

11 So I think here, whatever Delaware's
12 interested in -- and I'm not saying that it does not
13 have an interest. But Delaware's interest here, I
14 think, is relatively minimal. And there's been
15 nothing identified that I think strongly calls for
16 Delaware to be the one to decide this.

17 *I note there was also -- in effect,*
18 *it's the Blue Pointer and Chambers cases that I was*
19 *referring to there. But there's also this policy*
20 *argument that somehow Washington law and the Wage*
21 *Rebate Act, which allows for liability against*
22 *directors in certain circumstances, is contrary to*
23 *Delaware policy and would somehow encourage directors*
24 *to breach their fiduciary duty because they are*

1 worried about personal liability under that statute.

2 I will be honest. I don't follow this
3 argument particularly well. I don't think there's a
4 real concern here. Directors and officers of Delaware
5 corporations, which operate throughout all 50 states
6 and across the world, have to also comply with laws of
7 the states and other countries in which they operate.
8 They may have to factor that in when deciding how to
9 exercise their fiduciary duties.

10 But, frankly, here too it's important
11 to note they have already acknowledged that the belief
12 that Mr. Mewawalla breached his fiduciary duty and
13 wasn't owed these payments is a defense under that
14 act. So they've got -- they've got options here.
15 This is not a situation where acting in accordance
16 with a fiduciary duty is a -- represents a risk.

17 And then the last thing I will
18 discuss, Your Honor, is the other matters that affect
19 the conduct of the litigation and expeditious and
20 economic administration of justice. I think here the
21 biggest question is, well, if this action moves
22 forward and Washington moves forward -- and right now
23 there's nothing suggesting Washington won't move
24 forward -- what's going to happen? I mean, like we've

1 pointed out, the question of whether this was
2 fraudulent is an issue in both actions. This is a
3 collision course. There is a real risk here of
4 conflicting judgments. There's been no explanation
5 from Mawson about how are we going to deal with that.

6 We think, to the extent Your Honor
7 isn't inclined to dismiss it, that there's at least
8 good grounds for a stay here to ensure that there's
9 not waste, duplication, and, importantly, conflicting
10 judgments. I'm not sure what the courts do if one
11 court says, hey, he deserved the bonus and the other
12 court says, no, he didn't. We think that's a -- we
13 think that alone is good grounds to, at the very
14 least, stay.

15 Motive is also a factor. We think the
16 motive is clear. It's artful pleading to try to get
17 around the forum selection clause because they don't
18 want to be in Washington.

19 So we think at least three of the five
20 factors weigh in favor of Washington. The other
21 factors, I think the parties effectively concede, are
22 neutral at best. And so even applying these
23 neutrally, we think Washington is the appropriate
24 forum, and the Court should, if it decides *forum non*

1 *conveniens*, exercise its discretion in favor of a
2 dismissal or stay.

3 Unless Your Honor has anything else
4 for me, I will reserve the remainder of my time for
5 rebuttal.

6 THE COURT: Thank you so much.

7 ATTORNEY SEAL: Thank you.

8 ATTORNEY CZACHOROWSKI: Good
9 afternoon, Your Honor. Aimee Czachorowski again for
10 the plaintiff.

11 Your Honor asked whether Mawson could
12 bring these breach of fiduciary duty claims in any
13 other jurisdiction. It cannot. It cannot for three
14 reasons. The forum selection provisions contained in
15 the bylaws, in Article IX of the bylaws, requires suit
16 to be instituted in Delaware. The defendant's board
17 appointment letter, which incorporates the bylaws,
18 requires this suit to be brought in Delaware. And the
19 employment agreement, in paragraph 2, contains an
20 acknowledgment akin to a carve-out that Mewawalla's
21 board service is separately considered from his duties
22 as a CEO.

23 The fiduciary duty disputes presented
24 here simply do not fall within the employment

1 agreement. The employment agreement does not, as
2 defendant asserts, apply to any disputes – only those
3 disputes falling within the four corners of the
4 employment agreement.

5 His board service does not arise out
6 of or relate to his employment as CEO.

7 As Your Honor noted, *Parfi* is squarely
8 on point here. The fiduciary duty arises outside of
9 the employment so that the employment agreement forum
10 selection clauses are not implicated. *Parfi* says
11 specifically -- and I quote -- "the arbitration
12 provision, no matter how broadly drafted, can reach
13 only the claims within the scope of the contract, and
14 the fiduciary duty claims here are beyond that scope."

15 Following the *Parfi* case, the *Dunwoody*
16 case says that such language in arbitration provisions
17 referring to, relating to, or arising out of
18 "encompasses only 'claims directly pertaining to
19 rights based on the contract ...' and does not cover
20 ... claims [] merely 'touch[ing]' or relat[ing] to the
21 contract."

22 We submit that the fiduciary duty
23 claims presented here do not arise out of or relate to
24 the employment agreement. They fall squarely within

1 the bylaws, and litigation in Delaware is required.

2 If we brought these claims in
3 Washington, he could move to dismiss them on the basis
4 of the forum selection clause, and we would be subject
5 to fees for him having to assert that.

6 Our allegations do focus on his duties
7 to the board. The defendant misleadingly presented
8 the allegations pled. For example, he doesn't mention
9 in his presentation that we specifically allege things
10 presented in a board meeting in his capacity as a
11 board director to his fellow board directors.

12 As Your Honor has noted in several
13 other cases, humans have only one brain. He can't sit
14 in a meeting as a board member and not know things
15 that he knows as the CEO. And the duty of loyalty is
16 broadly construed. He simply can't sit in a board
17 meeting with a duty of loyalty and not present things
18 to the board that he knows are happening, to present
19 them with facts that he knows are false.

20 The defendant also expressed confusion
21 about the point of mentioning the BE contract. The
22 point of the BE contract is that the defendant used
23 that contract to represent to his fellow board members
24 that there would be sufficient funds to pay his bonus,

1 the taxes, and other operating expenses. He also used
2 that contract to tout his performance to request the
3 board issue the bonus. If the board had known that
4 the contract was not proceeding, that those revenues
5 would not be available, they would not have granted
6 him the discretionary bonus.

7 As the Chancellor recently noted in
8 *Los Angeles City Employees' Retirement System v.*
9 *Sanford*, allegations underlying different claims can
10 be similar. In that case, harassment claims and
11 fiduciary duty claims. She noted in that case that
12 the distinction between types of harm originating from
13 the same acts was captured in *Boeing*. In *Boeing*, the
14 same acts formed the basis of a variety of claims,
15 including personal injury and fiduciary duty claims.
16 There's no logical basis to conclude that the
17 defendant's acts, because they were terminable
18 offenses, cannot also form the basis of a breach of
19 fiduciary duty claim.

20 As I discussed, Article IX of Mawson's
21 bylaws require these claims to be decided in Delaware.
22 There are two sections of the bylaw that are
23 applicable here. They provide, in relevant part, that
24 the forum for "any action asserting a claim of breach

1 of a fiduciary duty owed by any director, officer or
2 other employee ... or [] any action asserting a claim
3 governed by the internal affairs doctrine shall be a
4 state or federal court [] []in ... Delaware." The
5 breach of fiduciary duty and fraud claims presented in
6 this case fall squarely within those two enumerated
7 categories such that the forum selection provision
8 requiring litigation in Delaware applies.

9 Mawson has properly brought its claims
10 in this court. It would go against Delaware's public
11 policy to grant his request to allow a jury of laymen
12 in Seattle to decide issues of internal affairs of a
13 Delaware corporation and the duties of a Delaware
14 director.

15 As Your Honor stated in *Hamilton*
16 *Partners*, "Delaware courts have a significant and
17 substantial interest in overseeing the conduct of
18 corporate fiduciaries."

19 Defendant concedes at page 34 of his
20 opening brief that Delaware fiduciary law is
21 implicated here. I want to be clear that this action
22 is not merely about the bonus that he extracted from
23 the company. The company suffered other injuries,
24 including being put at risk of being delisted by

1 Nasdaq, the inability to pay its tax obligations,
2 having its directors defrauded, the false information
3 fed to the directors caused inaccurate public
4 statements concerning the company's true financial
5 condition, and the false information meant that the
6 board had an inaccurate assessment of the company's
7 anticipated future revenues to be derived from
8 publicly announced contracts that were not truly
9 forthcoming.

10 Mewawalla's own employment claims
11 under his employment agreement are proceeding in
12 Washington. However, this court is the only
13 appropriate forum for resolution of the company's
14 claims against him for breach of fiduciary duty.

15 I know Your Honor is familiar with the
16 facts, and I will not linger on them. But I do want
17 to point out that the defendant joined the board
18 before he became CEO. He continued in his role on the
19 board after his termination as CEO. And his fiduciary
20 duties as a board member continued throughout. It
21 would be irrational for his director duties to be
22 subject to the jurisdiction provisions in his CEO
23 employment agreement.

24 When Mawson learned of the fraudulent

1 conduct and breach of fiduciary duties, the defendant
2 was terminated as CEO, separately removed from the
3 board, and this litigation was commenced shortly
4 thereafter. His claims in Washington State were not
5 brought until about six months after the Delaware suit
6 was instituted and just days before our answering
7 brief on this motion was due.

8 We heard a lot about the timing of the
9 mediation. We don't necessarily agree with the
10 sequencing that was presented. And the Washington
11 complaint was not filed days or weeks after the
12 mediation; it was about a month.

13 We also made numerous attempts to
14 reach Mr. Mewawalla's Washington counsel, and we did
15 not receive responses. We attempted to schedule
16 arbitration in August; finally received a response.
17 At first, his Washington counsel conditioned agreement
18 to mediate on inclusion of the Delaware claims.
19 That's in an August 4th email from his Washington
20 counsel.

21 In light of that demand, and in good
22 faith to resolve all claims, not because of any
23 requirement under the employment agreement, we reached
24 agreement to include the Delaware claims in the

1 mediation. Then despite numerous outreaches from
2 Lewis Brisbois attorneys, Mr. Mewawalla's counsel did
3 not even begin discussing dates until August 27th, and
4 then on August 28th informed us he no longer
5 represented Mr. Mewawalla. His new counsel proposed
6 mediators with no availability into 2026. And we were
7 eventually, through numerous communications, able to
8 negotiate a November 19th mediation date. It was
9 unsuccessful.

10 He is now asking the Court to dismiss
11 a first-filed fiduciary duty action in favor of a
12 second-filed employment discrimination, whistleblower
13 act and wage payment act, wrongful termination action.
14 His request should be denied.

15 First, while there is admittedly
16 overlap in the facts that form the basis of both
17 claims, Mawson's claims here are independent of the
18 employment agreement.

19 Second, there is no basis for staying
20 or dismissing the Delaware claims in favor of the
21 Washington litigation. Mewawalla's acts committed in
22 his capacity as CEO formed the basis of the company's
23 decision to terminate him for cause, which is the
24 subject of the Washington case. But it is his failure

1 to disclose, and manipulation of information to the
2 board as a board member, that forms the basis for the
3 Delaware claims.

4 As the defendant points out, we do not
5 plead any claims against him as CEO in our complaint.
6 We focus only on how his actions as a board member
7 constituted a breach of his fiduciary duty and fraud
8 on the board. Although he makes much of the factual
9 overlap between his actions as CEO and his actions as
10 board member, there's no basis to conclude that he
11 should not be held accountable for actions he took as
12 a director in order to advance his own interests.

13 As we discussed, Your Honor has noted
14 at least twice in other cases humans have only one
15 brain.

16 Although he argues in favor of
17 considering these claims as employment issues, several
18 recent decisions in this court have confirmed that the
19 duty of loyalty can be implicated when actions by a
20 director or officer rise to the level of fiduciary
21 duty matters rather than employment matters. Recent
22 decisions in *Sanford* and *Calumet Capital* confirm Your
23 Honor's reasoning in the *McDonald's* case. Notably,
24 the Chancellor, in *Sanford*, instructed that "[w]hen a

1 director knows of a wrong, and subsequently conceals
2 that wrong or lies about it, that 'deception is
3 disloyal conduct in breach of his duty as a
4 fiduciary.'" She noted that the alleged breach of
5 fiduciary duty in *Sanford* was the cover-up and
6 retaliation. She also quoted retired Chief Justice
7 Strine in saying that "[b]ecause every act of a
8 director must be done for a proper, loyal purpose,
9 every act in every context implicates the duty of
10 loyalty."

11 She explained that preemption does not
12 foreclose fiduciary remedies, "[n]or is the existence
13 of employment laws a basis to preempt derivative
14 actions."

15 As in *Sanford*, employment law is not a
16 basis to preempt the company's fiduciary duty claims
17 here. Mewawalla had knowledge of certain facts and
18 disloyally deceived the board, in breach of his duty
19 as a fellow board member. He knew that the
20 information he was presenting to the board was wrong.
21 He knew that Mawson would not be able to pay the
22 company's back taxes, as he had promised. He knew
23 that the BE contract would not be proceeding. He knew
24 that the company did not have sufficient cash on hand

1 to pay his bonus, the taxes, and other obligations at
2 the same time. He knew that an involuntary bankruptcy
3 petition was looming and did not disclose that
4 promptly. He knew that the company was at risk of
5 Nasdaq delisting. He knew that the at-the-market
6 offering would not be happening and the cash
7 anticipated from that offering would not be available.
8 He knew that the finance department had concerns about
9 the availability of funds to pay his bonus. But he
10 told the board the opposite in order to get paid.

11 The company's position preserves the
12 distinction between officer and director, alleging
13 only that actions taken as a member of the board
14 support the claims of breach of fiduciary duty.

15 One can view the factual allegations
16 as a Venn diagram. Although there would be some
17 allegations that overlap in the middle, we do allege
18 actions only as a director and only as a CEO.

19 For example, some of the allegations
20 that belong only in the director column would be he
21 failed to -- paragraph 23: Mewawalla failed to advise
22 his board colleagues about the true status of the BE
23 contract. Paragraph 27: In October of 2024, the
24 board, including Mewawalla, discussed timely full tax

1 payment. There are other paragraphs - 39 to 40, 44
2 and 45, 50, 30 - in the overlapping circle. Some of
3 those allegations would be that he concealed the
4 finance department's information on the company's
5 ability to pay both the bonus and the other financial
6 obligations.

7 We don't pretend that there isn't
8 overlap. The company's position is that Mewawalla had
9 the duty not to use his position as a director to his
10 advantage to defraud the board to the company's
11 detriment. As Your Honor has noted in other cases, it
12 would be difficult, if not impossible, for him to know
13 certain facts in his capacity as the CEO but not know
14 them in his capacity as a director. And if he knew
15 them in his capacity as a director, he had the duty to
16 disclose them to the board. Because he had that duty,
17 this action does not fall within the employment
18 agreement and belongs in this court.

19 Allowing a court outside Delaware to
20 adjudicate his breaches of fiduciary duty would be a
21 radical repudiation of Delaware public policy. The
22 fiduciary duties of Mawson's other board members are
23 also implicated here. When they learned about his
24 breaches of fiduciary duty, they would have been in

1 breach of their own fiduciary duties had they not
2 terminated him and removed him from the board.

3 The jury in the Washington case can
4 decide issues of Washington State employment law
5 without this court abdicating its role to decide core
6 issues of Delaware corporate law for Delaware
7 directors.

8 The Washington statute at issue -- one
9 of the Washington statutes at issue is draconian.
10 Mawson's board members have been sued individually,
11 and not only could be subject to a double damages
12 penalty they would individually be liable to pay; they
13 could also be subject to a finding that they committed
14 a misdemeanor.

15 A finding that Mewawalla breached his
16 fiduciary duty by this court could provide a defense
17 to the Washington matter, but it would not resolve it.
18 However, as we earlier discussed, the relevant forum
19 selection clauses make Delaware the exclusive forum
20 for fiduciary duty claims.

21 Unless Your Honor has questions about
22 the *forum non conveniens* analysis, I will skip that
23 part. With one note. I'm sorry. My friends on the
24 other side noted that fraud was at issue in both

1 cases, which I do not see. At issue in Washington is
2 Mewawalla's proving that he is a whistleblower, that
3 he was discriminated against, that he was wrongfully
4 terminated, and that he had improperly unpaid wages.

5 In sum, at this stage of the case, the
6 question is whether Mawson has properly pled its
7 claims. And it has. It has pled facts concerning his
8 manipulation of the flow of information to the board,
9 which is important because he was a board member. He
10 had control of the information flowing all the way up
11 to the top. And sitting in those board meetings as a
12 board director, he had the duty to present to his
13 fellow board members the information that he knew: his
14 deceit concerning the company's finances, tax
15 liabilities, and the looming bankruptcy filing, his
16 concealment of material facts regarding the company's
17 major contracts, improper pressure on the compensation
18 committee, in violation of the compensation committee
19 charter, and extraction of an unearned bonus, which is
20 the fruit flowing from his breach of fiduciary duty.

21 The facts pled are sufficient at this
22 motion to dismiss stage. The complaint provides
23 sufficient details about Mewawalla's breach of
24 fiduciary duties and his fraud, the fraudulent acts,

1 the board's reliance, the resulting harm, and the
2 comprehensive investigation conducted by the board
3 after the discovery of the fraudulent scheme.

4 Mawson respectfully requests that its
5 claims should proceed in Delaware and not be deferred,
6 stayed, or dismissed in favor of unrelated employment
7 litigation in Washington.

8 Thank you, Your Honor.

9 THE COURT: Thank you.

10 Reply.

11 ATTORNEY SEAL: Your Honor, I will be
12 brief.

13 First, there was some discussion of we
14 could assert, if they bring these claims in
15 Washington, that, oh, no, the forum selection clause
16 and the bylaws. Sorry, you are stuck in Delaware. We
17 are not going to do that. You heard me represent to
18 Your Honor that we believe that they can bring those
19 claims there. I also pointed out that there is the
20 "unless the company otherwise agrees" language in that
21 provision, which we think is implicated by the forum
22 selection provision in the employment agreement.

23 There was some talk about the Venn
24 diagram, and were these actions -- which were CEO,

1 which were director. Those actions, the notice of
2 cause that we went through, all fall within there.
3 It's wholly conclusory to say these are solely as a
4 director.

5 And I note, too, when attending board
6 meetings -- I mean, Mr. Mewawalla attended board
7 meetings as the CEO as well. I think minutes reflect
8 that. And that's common for dual fiduciaries.

9 There was some talk about the timeline
10 of the mediation. And I'm not going to get into the
11 whole "who shot John" routine of this. But what's key
12 for that analysis is that before the filing of this
13 action, Mr. Mewawalla demanded mediation. And there
14 was no effort to do that, which prevented him from
15 filing suit before the company rushed in here the very
16 same day it terminated him and brought this suit.

17 I also think that their argument would
18 effectively eviscerate forum selection clauses in
19 employment agreements. I mean, judging by what they
20 were describing, I'm not really sure what you couldn't
21 recharacterize as a fiduciary duty claim to get around
22 a forum selection provision. I understand the
23 boundaries of where that falls may be difficult, but I
24 think they take it too far.

1 And then last, there was some
2 discussion about flow of information and how that's as
3 a director. No; he had that information by reason of
4 his being and serving as the CEO. If it was purely as
5 a director, it would have been information all the
6 directors had.

7 So unless Your Honor has anything else
8 for me, we request respectfully that you grant the
9 motion and dismiss or stay this action. Thank you.

10 THE COURT: All right. I appreciate
11 counsel's arguments very much. They are very helpful.
12 I think I'm in a position to go ahead and give you an
13 answer now.

14 We're here today on a motion to
15 dismiss or stay this action filed by the defendant,
16 Rahul Mewawalla. The action is brought by his former
17 employer, Mawson Infrastructure Group Inc., which I
18 will call the "company." The company contends that
19 Mewawalla engaged in fraud and other fiduciary
20 breaches when presenting information to the board of
21 directors that in turn led the directors to approve
22 excessive and unjustified compensation for him. The
23 company seeks a remedy as a result.

24 Mewawalla seeks dismissal on the basis

1 of a forum selection clause in his employment
2 agreement. Paragraph 13 of that agreement provides
3 for the exclusive jurisdiction of the federal and
4 state courts in Seattle, Washington, for matters
5 arising out of or relating to his employment.

6 This is a recurring issue that we have
7 in terms of fiduciaries who act in multiple
8 capacities. Usually a CEO is also a director. They
9 may also be a controlling stockholder. And there may
10 well be an employment agreement that covers their
11 employment. The employment agreement usually calls
12 for arbitration or specifies a forum.

13 Yet, we know under Delaware law,
14 thanks to the Delaware Supreme Court's decision in
15 *Parfi*, that parties can sue independently when the
16 cause of action does not depend on the agreement in
17 question. An independent suit for breach of duty
18 theoretically does not implicate the forum clause.

19 You thus have two important principles
20 of law that can pull in competing directions. One is
21 that Delaware has an interest in providing a forum for
22 judicial oversight of the conduct of corporate
23 fiduciaries, like officers and directors. The other
24 is that Delaware values the ability of parties to

1 choose fora by contract and generally seeks to enforce
2 those provisions.

3 If we thought about the arc of legal
4 scholarship, we would run into the American legal
5 realism movement that viewed these types of competing
6 legal propositions as evidence that the law was
7 manipulatable by appellate courts and it wasn't really
8 law. And that was carried on by the critical legal
9 studies movement that said that really, because of
10 competing principles like this, the law is all
11 politics.

12 I don't think either of those
13 criticisms is correct. I think what these competing
14 principles mean is that we have to have a
15 fact-specific application of them by a decision-maker
16 who can weigh how the competing principles apply to a
17 specific case. And that's what I think I have to do
18 here.

19 I am going to grant the motion. I do
20 think that there was a good-faith basis for suing here
21 under *Parfi*. I also think that there was a good-faith
22 basis for the plaintiff to frame the causes of action
23 in terms of breaches of fiduciary duty against
24 Mewawalla in his director capacity. The plaintiff is

1 the master of its complaint and therefore can do that.

2 Nevertheless, what I think this case
3 is about is a course of conduct that happens because
4 an individual is acting simultaneously both as CEO and
5 as director. And as I read the allegations of the
6 complaint, it seems to me that the information that
7 he's obtaining and either sharing misleadingly or not
8 sharing with the board is information that he's
9 primarily deriving in CEO capacity, and he is
10 primarily presenting that information in connection
11 with a board compensation decision that is going to
12 relate to his compensation as a CEO.

13 I liked very much counsel's thought of
14 the Venn diagram. I still have some PTSD about Venn
15 diagrams after *Salzberg*. But we're not talking about
16 the newly discovered outer band; we're talking about
17 overlap in types of claims. But I think I see the
18 factual overlap differently, as I see quite a bit of
19 factual overlap and then minor crescents of nonoverlap
20 on both sides.

21 Under this set of circumstances, I
22 think it makes sense for a single adjudicator to deal
23 with these issues. And because the parties did agree
24 to the exclusive jurisdiction of the courts of

1 Washington, I think that is where the dispute should
2 happen.

3 My decision is also informed by my
4 experience in *Metro Storage*. The plaintiff helpfully
5 provided me with that, because I was searching my mind
6 for the case. That was also a case where the
7 fiduciary duties of an officer under Delaware law
8 overlapped with his employment agreement. And
9 essentially because of the way the case was presented,
10 and because of the limited arguments that were made in
11 favor of arbitration, I denied the motion to compel
12 arbitration. I didn't dismiss in favor of
13 arbitration. But it kept coming up during the
14 litigation. I think, although I muddled through, and
15 we all muddled through, what it showed me is that
16 there are unnecessary complications of splitting these
17 types of actions when the conduct really does
18 primarily involve officer-style actions, as here.

19 Contrast that with the *Feeley* case
20 that the parties also discussed. There, the principal
21 conduct was different. There, the principal conduct
22 was not employment related, and we were able to go
23 forward without a lot of Sturm und Drang regarding the
24 employment agreement once I had addressed the

1 arbitration issue.

2 I have taken into account the bylaw
3 argument that the company has made. I do think that
4 provision is something that the company can waive. We
5 have heard that the defendant won't assert it out in
6 Washington. I'm going to hold the defendant to that.
7 If, for example, the defendant makes some argument out
8 in Washington that for any reason the claims against
9 Mewawalla in his capacity as a director can't be
10 raised there, you-all can come back and reassert them
11 here. I'm not going to freeze the company out of
12 being able to litigate these claims by catching them
13 in a trap over where to bring them. If that turns out
14 to be the case out in Washington and you are whipsawed
15 by some argument that you were mandated to bring those
16 claims here, then certainly come back. And
17 notwithstanding any inefficiencies that may arise at
18 that point, I think Mewawalla will have created that
19 problem for himself.

20 The other issues that I have taken
21 into account are the arguments about the jury issue
22 and about the Washington Wage Rebate Act. The jury
23 trial issue is an interesting one. This one comes up
24 in federal court as well. And I think that the

1 company can argue out in Washington that under
2 Delaware law there wouldn't be a jury trial on issues
3 of breach of fiduciary duty because those fall under
4 the traditional heading of equity. That's usually how
5 it settles out in federal court. In other words, when
6 people make the motion and say this has to be decided
7 by a judge because it was historically on the equity
8 side and you couldn't get a jury verdict on this, at
9 least my recollection of the federal case law is that
10 that's pretty much a winning proposition. I'm sure
11 there's cases going both ways.

12 So I think the argument that a jury
13 will necessarily have to consider the Delaware law
14 issues out in Washington is not inherently true. Now,
15 clearly, I'm not trying to prejudge that issue for my
16 Washington colleague. I don't know what my Washington
17 colleague will do. I don't know what Washington law
18 provides. But my experience, at least, is that to the
19 extent you are bringing Delaware law claims that
20 historically would be governed by principles of
21 equity, that the argument can be made, and
22 successfully so, that the claims are not subject to a
23 jury verdict. That doesn't mean you won't get a jury
24 verdict on other things. I don't think I'm

1 foreclosing that issue by making my ruling.

2 The internal affairs argument based on
3 the Washington Wage Rebate Act is also a very
4 interesting one. This is not something that's
5 isolated to Washington, and it's also something where
6 I think here again the parties can make the case in
7 Washington that really internal liability for
8 something like wages should be an internal affairs
9 issue and not governed by Washington law.

10 One could imagine a system that truly
11 gave maximal respect to the internal affairs doctrine
12 in which other states could approve claims against the
13 entity but couldn't reach inside it. I don't think
14 that the internal affairs doctrine is so ironclad. I
15 think that there are situations, if you look at the
16 Restatement of Conflicts of Law, and other doctrines,
17 where states can regulate internally when they have a
18 supervening interest. But I think that ultimately
19 that's something that should be decided and raised
20 with the Washington court. I don't think it warrants
21 me seizing jurisdiction over this matter for that
22 purpose.

23 Ultimately, I'm asking myself what
24 makes sense here. Because I do think that it's the

1 same underlying conduct, because I do agree with
2 counsel that we have no reason to think that
3 Mr. Mewawalla has multiple minds, it therefore makes
4 sense that this all be litigated in one place. And
5 given the forum selection clause, I think that place
6 needs to be Washington. But should you-all encounter
7 difficulties proceeding in Washington and get
8 whipsawed, you can come back, and we will do what we
9 can to coordinate things.

10 I'm going to grant the order that the
11 defendant submitted with modifications. The defendant
12 said that the dismissal would be with prejudice. It's
13 not with prejudice. It's a forum-based dismissal, so
14 it's without prejudice. And it's for the reasons that
15 I have stated.

16 Thank you all for coming in today.
17 Thanks to our client representative who came in. It's
18 good to see all the Delaware lawyers. I particularly
19 don't think I have seen my friends Mr. Pileggi or
20 Mr. Walsh in a long time, so I'm glad to see that you
21 all are doing well. And my former intern,
22 Mr. Gustafson. We've got the new crop, Mr. Gustafson.
23 I'm not saying you have been replaced, but there are
24 new faces.

1 I hope you-all have a good rest of the
2 day. Thank you very much.

3 (Proceedings concluded at 2:40 p.m.)
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2 CERTIFICATE

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4 I, DEBRA A. DONNELLY, Official Court
5 Reporter for the Court of Chancery of the State of
6 Delaware, Registered Merit Reporter, Certified
7 Realtime Reporter, and Delaware Notary Public, do
8 hereby certify that the foregoing pages numbered 3
9 through 59 contain a true and correct transcription of
10 the proceedings as stenographically reported by me at
11 the hearing in the above cause before the Vice
12 Chancellor of the State of Delaware, on the date
13 therein indicated, except for the rulings on pages 50
14 through 59, which were revised by the Vice Chancellor.

15 IN WITNESS WHEREOF I have hereunto set
16 my hand at Wilmington, this 19th day of February,
17 2026.

18
19 /s/ Debra A. Donnelly

20 -----
21 Debra A. Donnelly
22 Official Court Reporter
23 Registered Merit Reporter
24 Certified Realtime Reporter
Delaware Notary Public

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