Selected Wit and Wisdom:
The Honorable Sam Glasscock III
Retired Vice Chancellor of Delaware

UNIVERSITY OF DELAWARE

LERNER COLLEGE OF BUSINESS & ECONOMICS

WEINBERG CENTER FOR CORPORATE GOVERNANCE

2025 Distinguished Speaker: The Honorable Sam Glasscock III

The Weinberg Center is pleased to host the newly-retired Vice Chancellor in conversation with two of his former law clerks, Ashleigh Herrin and Abraham Schneider, on the topic of corporate law creation through equity jurisprudence, April 17 at Young Conaway in Wilmington.

VC Glasscock is famous for his command of the judicial craft, infusing his opinions with allusions and references to art, literature, science and more. We have curated a sampling of his wit and wisdom for this occasion.

In addition to the inspired elegance, the composition is designed illuminate the related equity jurisprudence.

***Touch of Italy Salumeria & Pasticceria, LLC v. Bascio*, 2014 WL 108895, 39 Del. J. Corp. L. 305 (Del. Ch. Jan. 13, 2014)**

A lie can be an insidious thing. It can destroy friendships and business relationships. It can also be the basis for a successful lawsuit, where it is in aid of fraud or conceals actionable wrongdoing. But sometimes a lie, no matter how morally problematic, is just a lie. This case, as pled, involves such a lie.

Williams v. Lester, 2023 WL 4883610 (Del. Ch. Aug. 1, 2023)

Scientists have found that the octopus is bizarrely adept at navigating mazes. Its protean and malleable body—together with a keen brain distributed throughout its nervous system, so that each arm can think independently—allows it to make short work of finding any exit that a biologist's apparatus has left it. But the octopus has nothing on the contortions exhibited in Plaintiffs' attempt to establish jurisdiction here.

In re Xoom Corporation Stockholder Litigation, C.A. No. 11263-VCG (Del. Ch. August 4, 2016)

The position of the Plaintiffs' counsel is reminiscent of a rodeo bull-rider. The cowboy gets his bull by the luck of the draw. A "good" bull is aggressive and vigorous; a "bad" bull is the opposite. A successful ride of a good bull results in a high score. It takes a good rider to ride a good bull, but not even a great rider can wring a high score from a bad bull. Not even great counsel can wring significant stockholder value from litigation over an essentially loyal and careful sales process.

Sequoia Presidential Yacht Group LLC et al. vs FE Partners LLC, 2013 WL 3724946 Del. CH. (July 15, 2023)

In Joseph Heller's satirical take on the Biblical King David, David laments the stupidity of his son, King Solomon. David invokes Solomon's famous decision resolving a case where two alleged mothers each claim the same baby—Solomon offered to cut the infant in two—which is considered the epitome of wisdom. David tells us the real story: Solomon was 'dead serious.' It is with chagrin that I recognize that this lengthy litigation has been nearly as deleterious for its 'baby'; the famous ex-Presidential Yacht Sequoia. The Sequoia, an elderly and vulnerable wooden yacht, is sitting on an inadequate cradle on an undersized marine railway in a moribund boatyard on the western shore of the Chesapeake, deteriorating and, lately, home to raccoons.

Solak v. Mountain Crest Capital, 2024 WL 4524682 (Del. Ch. Oct. 18, 2024)

The adult anaconda, they say, eats perhaps once a year; open its belly, and you will see not what it is eating, but what is has eaten in times past. So too with the progress of litigation through the belly of Chancery; the sorting out of the fiduciary problems inherent in the SPAC form, together with other factors, has reduced the SPAC population on the ground, but the bulge of SPAC carcasses continues to be digested in equity.

The Williams Companies Inc. v. Energy Transfer Equity LP, 2021 WL 6136723 (Dec. 29, 2021)

What, Langston Hughes asked, becomes of a dream deferred? When the dream is a multi-billion-dollar merger that changing market conditions no longer favor, it seems, it becomes a carcass that, like those of millions of turkeys featured in the holiday feasts just past, is diligently picked over. The carcass here is the remnant of the dreamed-of merger of The Williams Companies Inc. and Energy Transfer Equity LP.

In re AOL Inc., 2018 WL 1037450 (Jan. 17, 2018)

Each block of marble, Michelangelo believed (or purported to believe) contained a sculpture; the sculptor's job was merely to pitch the overburden to reveal the beauty within. Early jurists believed (or purported to believe) something similar about common law; that it existed in perfect form, awaiting 'finding' by the judge. By contrast, even Blackstone would expect that statutory law would be an explicit, if blunt, tool of justice; manufactured, rather than revealed. Our appraisal statute, Section 262 of the DGCL, is an exception. Broth of many cooks and opaque of intent, it provides every opportunity for judicial sculpting.

Seabreeze Homeowners Association v. Marshall Jenney, 2015 WL 3631851 (June 11, 2015)

In my personal life, I have inherited my father's decades-long struggle with an improvidently-planted wisteria that has gone rogue. Wisteria, like litigation, can be an ornament to society or a noxious agent, depending on the circumstances. The instant litigation is the wisteria of my professional life.

Graciano v. Abode Healthcare, Inc., 2024 WL 960946 (Del. Ch. March 4, 2024)

Like its 18th century English predecessor, the Delaware Court of Chancery is a court of limited jurisdiction. Setting aside jurisdiction derived from statute, this Court may only act where complete relief is unavailable at law. That is the case where the law courts do not recognize an (equitable) cause of action, as well as where the cause of action is itself legal in nature, but where relief at law—money damages or declaratory judgment—are insufficient to remedy a plaintiff's injury.

The latter standard, in the hands of an artful pleader, is plastic; malleable to the extent that, without vigilance on the part of the Court, the legal shrubbery would soon overgrow the limited garden of equity. This matter requires such vigorous jurisdictional topiary.

Asbestos Workers Local 42 Pension Fund v. Bammann, 2015 WL 2455469 (Del. Ch. May 21, 2015)

The C.W. Morgan is the last surviving ship of the American whaling fleet. In 1820, another ship of that fleet, the Essex, was attacked by a sperm whale, which rammed the ship repeatedly until the planking was sprung and timbers broken. The Essex foundered, utterly destroyed. In 2012, another Morgan—JPMorgan Chase & Co….—was heavily damaged by another whale—the so-called London whale. JPMorgan did not founder, but suffered losses in the billions of dollars.

The Plaintiff here is a stockholder of JPMorgan, seeking derivatively to hold those at the helm accountable for the damage caused by the London whale. It seeks to sue the directors (and certain officers) of JPMorgan under a theory based on the rationale of this Court's decision *In re Caremark International Inc. Derivative Litigation*.

ISS Facility Servs. v. JanCo FS 2, LLC, 2023 WL 4096014 (Del. Ch. June 20, 2023)

The Labyrinth built by Dedalus on Crete was easy enough to enter, but near-impossible to navigate through—it was sufficiently baffling to detain the Minotaur. Chancery litigation, in a sense, is the opposite. It is not difficult to traverse — indeed, sometimes matters are resolved with great alacrity—but the entrance is straitened. Famously, three gates lead into the Chancery labyrinth, statutory jurisdiction and the two traditional entrances: via pleading an equitable cause of action or requesting equitable relief. Mere pleading of the latter is insufficient, unless it also appears that complete relief is not available at law.

In this matter, the complaint states three causes of action. One seeks a declaratory judgment regarding contractual breaches, a remedy available at law. The second and third seek specific performance of portions of the contracts at issue; this, obviously, is a request for equitable relief, and Chancery is available to vindicate such a request if—only if—the pleadings demonstrate that such relief is necessary to do justice. Before me is Defendants' Motion to Dismiss under Rule 12(b)(1).4 Having reviewed the parties' submissions, I find that that equitable jurisdiction is lacking.

Great Hill Equity Partners IV, LP v. SIG Growth Equity Fund I, LLLP, 2020 WL 7861336 (Del. Ch. Dec. 31, 2020)

Just over a century ago, the British army commenced one of the last great set-piece battles of World War I. The object was to break across the German trenches at the Ypres salient, in Flanders, and take the Passchendaele Ridge, and then the ports on the Belgian coast where the Germans maintained U-boat bases. The British offensive, after first making good progress in June to take nearby Messines Ridge, was launched in earnest on July 31, 1917. [P]rogress was slower than expected, as heavy rains (and the effects of 4.5 million British artillery shells fired into the German lines) turned the Flanders plain into a near-impassable swamp. By late August, the British had lost 70,000 men with little progress made, but the decision was taken to redouble efforts with fresh troops. The fighting continued for weeks, months, with the British making slow progress. Finally, on November 6-10, Canadian troops under British command took the village of Passchendaele and cleared Passchendaele Ridge, in what the Encyclopedia Britannica calls an "ostensible British victory." Strategically, the offensive failed, and the Allied forces were "no nearer reaching the ports that formed [their] goal than when" the battle commenced.3= The German Army could be credited with a similar Pyrrhic victory—their defense had cost them only 220,000 killed and wounded; the British suffered 275,000. The British effort had advanced their line five miles.

And then there *was Great Hill Equity Partners IV, LP v. SIG Growth Equity Fund I, LLLP.*

Teamsters Local 443 Health Servs. & Ins. Plan v. Chou, 2020 WL 5028065 (Del. Ch. Aug. 24, 2020)

It has become among the hoariest of Chancery clichés for an opinion to note that a derivative claim against a company's directors, on the grounds that they have failed to comply with oversight duties under *Caremark*, is among the most difficult of claims in this Court to plead successfully. As with many a cliché, there is truth in the notion. . . .

The facts of *Caremark* claims, on the other hand, often invoke judicial sympathies. Frequently, the facts of the case involve corporate misconduct that has led to material suffering among customers, or to the public at large. A judge in the Caremark context must be careful to remember the issues before her. At issue is not whether specific or society-wide victims may themselves receive a remedy for corporate misconduct. Instead, the issue is whether the corporation, whose directors have allegedly allowed it to commit bad acts, should itself recover damages that ultimately inure to the benefit of the corporate owners, its stockholders. . . .

It is of little wonder that *Caremark* liability is rarely imposed, as it is fortunately rare that directors, otherwise unconflicted, should nonetheless take actions knowingly inimical to the corporate interest, such as ignoring a known duty to act to prevent the corporation from violating positive law. I find, however—at least at this pleading stage where I must accept the allegations of the complaint along with reasonable plaintiff-friendly inferences—that the Plaintiffs here have pled such a case.

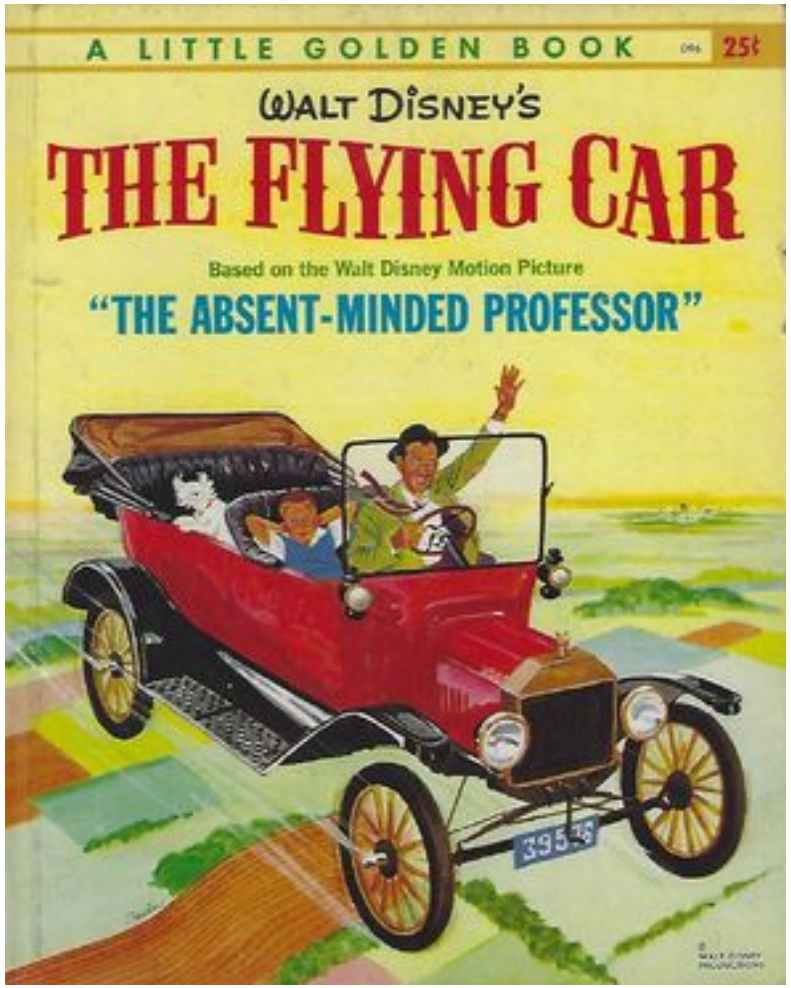
Alfred v. Walt Disney Co., Letter Ruling (January 14, 2015), https://aboutblaw.com/bflG

This matter is before me on the Defendants' motions to dismiss a complaint sounding in contract, filed by the Plaintiff, Mr. Alfred, pro se. That Complaint is remarkable. It is in my experience a unique example of the pleader's art. It cites to the epic of Gilgamesh, Woody Guthrie, the Declaration of Independence, Noah and The Great Flood, *Game of Thrones*, *Star Wars Episode V: The Empire Strikes Back*, *Star Trek*, President Obama, and Euclid's proof of the Infinity of Primes, among other references. It is well-written and compelling. In fact, it can be faulted only for a single—but significant—shortcoming: it fails to state a claim on which relief could be granted. Therefore, I grant the Defendants' Motions to Dismiss. . . .

Robert Fulton was laughed at by his peers, as was Secretary Seward. Galileo faced the inquisition for promoting heliocentric theory. Stravinsky's Rite of Spring caused a riot when first played. The Impressionists' early work was considered unsalable, and Van Gogh "suffered for [his] sanity." Plaintiff and his vision of a vertical take-off and landing flying vehicle—which vehicle would revolutionize transportation and save lives and resources—as well as his marketing plan to achieve economies of scale by generating demand through a tie-in to a similar vehicle made popular via cinema, may be of this ilk. If so, the Plaintiff should persevere; it reportedly took Edison over a thousand attempts to create the light bulb before he struck upon the carbon filament. Because, however, the Plaintiff has failed to perfect jurisdiction over the individual Defendants, and has failed to state a claim against any of the Defendants, he is precluded from pursuing equitable relief in aid of the Flying Car in this action. . .

[See Exhibit A, attached to the Letter Ruling, on the next slide.]

EXHIBIT A


A LITTLE GOLDEN BOOK
25¢
WALT DISNEY'S
THE FLYING CAR
Based on the Walt Disney Motion Picture
"THE ABSENT-MINDED PROFESSOR"

Kuhns v. Hiler, C.A. No. 7586 (Del. Ch. March 31, 2014)

Oh, Danny Boy, the pipes, the pipes are calling From glen to glen, and down the mountain side.

The pipes in question, a water lateral likely installed in the 1920s or ’30s and a sewer lateral from the 1930s or ’40s, have been serving their designed purpose of carrying clean water in, and black water out, for perhaps 150 years combined. Yet their call went unheeded until recently, when the Petitioners undertook repairs and the parties discovered their existence. The pipes run from the Petitioners’ yard north under the Respondents’ property, along the eastern boundary of the Respondents’ lot, and ultimately to City water and sewer mains. No easement of record exists in favor of the Petitioners. Given that the burden on the Respondents’ lot was so minimal that it went unnoticed over the course of an average human lifetime, one might assume that mutual goodwill and neighborly regard would quickly have resulted in an agreement between the parties for use to continue. If so, one would be wildly optimistic. Instead, wearisome litigation, involving many quaint and curious volumes of forgotten lore concerning the history of public water and sewerage in the Town, and now City, of Rehoboth, ensued. Cross-requests for injunctive relief were filed, and damages demanded. The result is below.

State v. Sweetwater Point, LLC, 2017 WL 2257377 (Del. Ch. May 23, 2017) (condensed excerpt without noting omissions by ellipses or other punctuation)

Real property is a unique asset. It cannot be consumed, although its fruits may. It can be conceptually possessed, but not physically deployed or moved. Ownership of realty is simply the right to exclude others from the use and fruits of the land. Nonetheless, ownership of real property is basic to, and perhaps the basis of, our economic system. Because land cannot be "possessed" in the way that personal property can, peaceful and efficient use and alienation require community acceptance of the identity of the landowner. In common law jurisdictions, the systematic registries of deeds to realty provide one of the most long-running and elaborate sets of historical documents available. Land grants in the area in context here—Sussex County—can be traced back to grants and patents from the European sovereigns who asserted ownership—by fiat and by force of arms—starting in the 17th century. A diligent and motivated researcher can carry title to a Lincoln farm field or a suburban Ocean View acre back to colonial times.

Even careful registration, as with any work of humankind, is imperfect. Claims of title reaching back hundreds of years are inevitably dogged by imperfections; calls to boundaries that fail to close, or to monuments lost; bureaucratic transfer documents with incomplete property descriptions, and the like. Inevitably, therefore, disputes as to ownership arise. If every such dispute required a tracing of title over the entire history of the land back to the founding grant, litigation over title would be an expensive, exhausting, and frustrating pursuit. It would, in other words, resemble the case before me here.

Thank you, VC Glasscock!

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