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The D&O Diary

A Periodic Journal Containing Items of Interest From the World of Directors & Officers Liability, With Occasional Commentary

Guest Post: Calumet and VC Board Designee Risk

By Kevin LaCroix on July 23, 2026



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In the following guest post, Ben Dubin, Managing Member of VC Expert Services LLC, discusses Delaware Vice Chancellor Laster's January 29, 2026 opinion in the Calumet Capital Partners case. This article, which is the first of two discussing recent Delaware decisions regarding VC firm's representative's service on the firm's portfolio company boards, argues that the Calumet decision creates greater litigation risk for venture capital firms whose employees or partners serve as board designees, because courts may more readily infer that the investor knowingly participated in a fiduciary breach when its own representative is involved. The author's companion article to this one will be published on this site next week. Our thanks to Ben for allowing us to publish his article on our site. Here is Ben's article.

I. Introduction

On Jan. 29, 2026, Vice Chancellor J. Travis Laster of the Delaware Court of Chancery denied a motion to dismiss in **Calumet Capital Partners LLC v. Victory Park Capital Advisors, LLC**.^[1] The case arose from a litigation finance joint venture, not a venture capital investment. VC firms have long placed their own partners and principals on portfolio company boards in reliance on doctrines that made aiding-and-abetting claims hard to bring. *Calumet* is a reminder that one of those doctrines is narrower than many deal lawyers assumed.

The opinion does not overrule or narrow *In re Mindbody* or *In re Columbia Pipeline*. Instead, it highlights a distinction in Delaware aiding-and-abetting doctrine that matters for VC firms: arm's-length acquirer cases remain difficult to plead, but claims involving an investor's employee or

affiliated board designee may be easier to allege. In that setting, the relationship between the investor and the designee may make knowledge and participation easier to infer.

That distinction matters because VC board representation often looks more like the employee-designee model than the arm's-length acquirer model. Venture-backed companies routinely give investors the right to designate board members, and those designees are often partners, principals, or employees of the investing firm. When a designee acts in a way that allegedly benefits the investor at the company's expense, *Calumet* suggests aiding-and-abetting claims may be easier to plead than the recent Supreme Court line, standing alone, would suggest.

This article explains how that distinction arose, why it matters, and what VC firms should consider when structuring board representation, managing conflicts, and documenting investor-side decision-making.

II. The Pre-Calumet Posture: Mindbody and Columbia Pipeline

To understand what *Calumet* changes, it helps to start with the cases that came before it. In *In re Mindbody, Inc. Stockholder Litigation*, the Court of Chancery initially held that a private equity acquirer could be liable for aiding and abetting a target CEO's disclosure breach where the acquirer knew of the underlying conduct and failed to correct it. The Delaware Supreme Court reversed in late 2024, holding that knowledge of the underlying facts was not enough; the acquirer also needed actual knowledge that its own conduct was legally improper, and the merger agreement's proxy-review provisions did not create a duty owed to target stockholders.^[2]

The Delaware Supreme Court's later decision in *In re Columbia Pipeline Group, Inc. Merger Litigation*^[3] reinforced the same basic point in another acquirer-defendant case. Together, the two decisions reflect a clear policy choice: arm's-length acquirers are expected to negotiate in their own interest, and Delaware will impose a high pleading bar before holding them liable for fiduciary breaches committed by directors on the other side of the transaction.

For VC-side defense counsel, those decisions created some reason to think the Court might extend that protective logic to other sophisticated investors. *Calumet* tested whether that assumption could survive outside the arm's-length acquirer context.

III. What Calumet Does: The Relational Distinction

The facts of *Calumet* arise in litigation finance, but the structure will feel familiar to VC lawyers. An investor, Victory Park, put \$5 million into a joint venture lending entity in exchange for a 10% membership interest and the right to designate one of three managers. It exercised that right by appointing its own employee, Luke Darkow. The plaintiff alleged that Victory Park, acting in part through Darkow, sought to undermine the joint venture and replicate its business through a competing vehicle, Bespoke Capital.

Vice Chancellor Laster distinguished *Mindbody* and *Columbia Pipeline* directly. Those cases, he wrote, involved third-party acquirers allegedly participating in fiduciary breaches by sell-side directors, a setting where Delaware imposes a high pleading bar because the acquirer is expected to bargain for its own interests. *Calumet* involved something different: an employer-principal alleged to have aided and abetted its employee-agent. In

that posture, the court reasoned, the “knowing participation” and “substantial assistance” elements of aiding-and-abetting liability are easier to plead because the agent’s conduct can be imputed to the principal, and the principal may be inferred to have directed or benefited from the conduct.

That is the doctrinal move that matters. *Calumet* does not displace *Mindbody* or *Columbia Pipeline*; it shows that Delaware may analyze aiding-and-abetting claims differently depending on the relationship between the defendant and the primary wrongdoer. The third-party acquirer cases remain hard to plead. Cases against an investor whose own employee sits on the board may be easier to plead.

IV. Why Venture Capital Sits on the Investor Side of This Distinction

The structural fit between *Calumet*’s reasoning and customary VC board practice is uncomfortably close. Standard venture capital deals — including those reflected in the National Venture Capital Association’s model documents — commonly give investors the right to designate one or more board members, and those designees are often partners, principals, or employees of the investing firm. They are paid by the investor, report through the investor’s internal process, and participate in follow-on, exit, and portfolio oversight decisions in that capacity.

That structure closely resembles the dual-fiduciary posture *Calumet* addresses. Delaware law recognizes “no dilution” of the duty of loyalty when a fiduciary holds dual or multiple obligations, and *Calumet* suggests that when an investor’s own designee acts in ways that benefit the investor at the company’s expense, aiding-and-abetting exposure for the investor may be easier to plead.

The strength of that inference will depend on the relationship. A full-time employee or partner of the investor presents a cleaner agency theory than an outside independent director merely nominated by the investor. The closer the designee sits to the appointing investor — through employment, compensation, or reporting line — the more naturally *Calumet*’s reasoning applies.

This does not mean every VC board seat is suddenly a litigation problem. *Calumet* involved unusually stark allegations: a deliberate effort to harm the joint venture, a low-ball buyout offer, manufactured defaults, and a competing business launched with the help of the investor’s designee. The better reading is narrower and more useful: ordinary investor reporting and financing oversight are not the issue, but they become riskier if they are coupled with conduct that uses the board designee to injure the company, transfer confidential information, or divert a company opportunity.

V. The LLC Lesson — and Why Corporate Structure Does Not Fully Solve It

Calumet also matters because it shows how hard Delaware will look at private-ordering language that tries to erase fiduciary exposure. Vice Chancellor Laster focused on the joint venture’s LLC agreement, which was meant to eliminate fiduciary duties except for fraud or willful misconduct. He held that the provision was poorly drafted and that background fiduciary principles still applied to the alleged bad conduct.

Most VC-backed startups are Delaware C-corps, not LLCs, so they cannot eliminate fiduciary duties by contract. They can exculpate duty-of-care claims under DGCL Section 102(b)(7),^[4] but not loyalty claims. That means the drafting lesson from *Calumet* is not that VC startups should copy its LLC language; it is that Delaware will scrutinize any attempt to use form language to paper over a real conflict.

The more relevant corporate-law point is DGCL Section 144(a).^[5] The 2025 amendments strengthened the safe-harbor framework for interested-director and interested-officer transactions when material facts are disclosed and the transaction is approved by disinterested directors under the required process. That helps inside the company, but it does not fully answer a *Calumet*-style aiding-and-abetting claim against the investor that appointed the conflicted designee.

The practical lesson is straightforward: document conflict disclosures, use disinterested directors when a conflict arises, and do not rely on broad waiver language as a substitute for process. In a post-*Calumet* world, process is doing more of the work than boilerplate.

VI. Practical Considerations

Calumet does not mean VC firms should stop using board designees. Board service remains a core part of how venture capital adds value. The point is that, after *Calumet*, firms should be more deliberate about how they manage the risks that come with it.

First, observer rights can reduce exposure because observers usually lack voting authority and formal director status. But they are not a complete shield. Confidentiality obligations, information misuse, de facto control arguments, and coordinated investor conduct can still create risk if the facts turn bad.

Second, process matters more than boilerplate. Special committees, recusal, conflict disclosures, and DGCL Section 144(a) procedures are the kinds of steps that create distance between the investor and the conflicted decision. In a *Calumet*-style case, the absence of that process can itself become evidence of problem conduct.

Third, information flow deserves more discipline. VC-affiliated directors routinely report back to their firms, but the line between ordinary oversight and improper transfer of company information can be thin. Firms should think carefully about what is shared, why it is shared, and whether sensitive material should stay in the boardroom.

Fourth, contemporaneous documentation is no longer optional in any serious sense. If an investor declines financing, supports an adverse transaction, or takes another action that may hurt the company, the business rationale should be recorded at the time. That record can matter as much as the decision itself if litigation follows.

VII. Limits and Open Questions

Calumet is still just one trial-court decision, and its facts are unusually stark. A scheme to seize a joint venture's business and launch a competing vehicle is a long way from ordinary VC board service. The opinion may also be appealed, and the Delaware Supreme Court could narrow or expand the relational distinction when it next confronts the issue.

Even so, the case matters because it identifies a doctrinal seam that *Mindbody* and *Columbia Pipeline* did not fully address. Delaware may be more willing to infer aiding-and-abetting liability where the alleged wrongdoer is an investor's employee or closely affiliated designee, especially if the challenged conduct appears to benefit the investor at the company's expense.

Developments since this article was first drafted underscore the point. In **Zync, Inc. v. Porsche Investments Management, S.A.**, decided May 29, 2026, the Court of Chancery denied motions to dismiss claims against a strategic investor and its employee board designee at a venture-backed startup, citing *Calumet*'s implied covenant analysis and applying the same relational distinction to the aiding-and-abetting claim.^[6] The seam *Calumet* identified is already carrying traffic.

That does not make every VC board seat dangerous. It does mean the familiar structure of board representation deserves a fresh look, especially where the designee reports to the investor, shares sensitive information, or plays a role in conflicted decisions. In that setting, process and documentation are not just good governance; they are part of the defense.

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The author is not engaged in the Calumet or Zync litigation and has no relationship with any party to either matter. This article describes allegations and pleading-stage rulings only and is not legal advice.

^[1] **Calumet Capital Partners LLC v. Victory Park Capital Advisors, LLC**, C.A. No. 2025-0036-JTL, 353 A.3d 88 (Del. Ch. Jan. 29, 2026).

^[2] **In re Mindbody, Inc. Stockholder Litigation**, 332 A.3d 349 (Del. 2024).

^[3] **In re Columbia Pipeline Group, Inc. Merger Litigation**, 342 A.3d 324 (Del. 2025).

^[4] **Del. Code Ann. tit. 8, § 102(b)(7)**.

^[5] **Del. Code Ann. tit. 8, § 144**.

^[6] **Zync, Inc. v. Porsche Investments Management, S.A.**, C.A. No. 2025-0284-JTL (Del. Ch. May 29, 2026).

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