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Guest Post: Zync v. Porsche and the D&O Risks of VC Board Seats

By Kevin LaCroix on July 31, 2026



Ben Dubin

In the following guest post, Ben Dubin, Managing Member of VC Expert Services, LLC, examines Vice Chancellor Laster's May 2026 opinion in the Zync v. Porsche case, a decision that highlights the legal and D&O insurance risks for investor-appointed directors and their sponsoring venture firms, particularly when directors are accused of acting as agents of the investor rather than exercising independent fiduciary judgment on behalf of the company. This post is the second of two guest posts from Ben discussing D&O risks associated with venture capital board seats. Ben's prior post on the topic can be found [here](#). We would like to thank Ben for allowing us to publish his articles as guest posts on this site. Here is Ben's article.

A recent Delaware Court of Chancery decision raises difficult questions about investor-appointed directors, aiding-and-abetting exposure for the appointing investor, and whether either of two D&O insurance programs responds when the alleged wrong is serving the investor rather than the company.

I. The Financing That Never Happened

A venture board seat is usually understood as a mechanism for protecting an investment. In ***Zync, Inc. v. Porsche Investments Management, S.A.***, the complaint alleges that a board seat became the mechanism through which an investment destroyed the company.^[1] On May 29, 2026, Vice Chancellor J. Travis Laster of the Delaware Court of Chancery denied the Rule 12(b)(6) motions filed by the Porsche entities and their board designee, allowing all four counts of the complaint to proceed against them.

The story the complaint tells is simple. Zync, a startup offering a cloud-based platform for in-vehicle entertainment, was running out of cash. An outside venture fund proposed to lead an \$8 million Series A at a \$32 million pre-money valuation; investor demand expanded the round to \$10 million at \$40 million. The financing required the approval of the director designated by Porsche, the company's strategic investor. According to the complaint, the designee would not act without instructions from his superior at Porsche. Months passed. When the board finally convened in April 2022, the designee announced that he would vote against the financing, killing the round. A later private equity proposal — restructured as a \$4 million loan followed by a \$15 million equity investment at a \$60 million pre-money valuation, including \$3.335 million to buy out Porsche at a premium — collapsed after Porsche allegedly conditioned approval on the fund indemnifying both Porsche and its designee. The company shut down.

At first glance, the dispute looks like a familiar Delaware fiduciary-duty case. For the D&O insurance community, it poses a more complicated question: whose policy protects an investor-appointed director when the alleged wrong consists of serving the investor rather than the company?

II. The Investment and the Governance Rights

Porsche invested \$2.9 million through a convertible note and received common shares representing five percent of Zync's fully diluted equity. A voting agreement committed the company to a three-member board and gave Porsche the right to designate one director for as long as Porsche held at least two percent of the common stock. An investor rights agreement provided that the company could not take specified actions — including issuing equity or debt securities, effecting a merger or dissolution, amending the charter, changing the size of the board, or entering into related-party arrangements — without the approval of the Porsche-designated director.

That structure deserves attention — not because it is exotic, but because it is not. Conventional venture financings typically layer two kinds of blocking rights: protective provisions in the charter, framed as class or series consent rights and exercised by the preferred holders at the stockholder level, and a covenant in the investor rights agreement — the National Venture Capital Association's model form titles it “Matters Requiring Investor Director Approval” — conditioning specified corporate actions on the approval of the investor's designated director. Zync's blocking rights, as the opinion describes them, ran through the second mechanism. The distinction matters because the two instruments sit in very different doctrinal postures. A preferred stockholder granting or withholding consent may ordinarily consider its own interests. A director granting or withholding approval acts as a person who simultaneously owes undiluted fiduciary duties to the company — and, as the court noted, the designee's exercise of the approval right can be imputed to the appointing investor under ordinary agency principles. *Zync* is, among other things, a reminder that a standard piece of venture architecture places a powerful veto in fiduciary hands.

Three roles were in play. Porsche was a contractual counterparty with consent rights, generally free to act in its own interest. Porsche's employee was a Zync director, who was not. And the same individual remained an employee accountable to Porsche management. The collision among those roles drives both the liability analysis and the insurance questions that follow.

III. The Allegations and the Court's Decision

The decision came at the pleading stage. The court was required to credit the complaint's well-pleaded allegations and draw all reasonable inferences in the plaintiff's favor. Nothing has been proven, and the defendants dispute the claims.

Porsche designated Christian Knörle, an executive within Porsche's venture organization who reported to a managing director of Porsche Investments. The complaint alleges that Knörle repeatedly refused to approve financings without authorization from Porsche; that he delayed board action for months while awaiting instructions; that he conditioned a promised Porsche bridge loan — which shrank from a suggested \$750,000 to \$290,000 before being withdrawn in favor of demands for a personal guarantee from the founder and an additional board seat — on the company sharing its confidential draft agreement with Mercedes-Benz and internal data concerning other competitors; and that, after the company's bridge lender sued, he resigned from the board on Porsche's instruction.

The court held that these allegations state a claim against Knörle for breach of the duty of loyalty. Two features of the analysis stand out.

First, the dual-fiduciary problem. Delaware recognizes “no dilution” of the duty of loyalty where one person holds dual or multiple fiduciary roles.^[2] As a director, Knörle owed fiduciary duties to Zync; as an employee — and therefore an agent — he owed duties to Porsche. When Porsche's interests diverged from the company's, it was reasonably conceivable that Knörle faced a disabling conflict, and that he resolved it in Porsche's favor. The court rejected the argument that Porsche's note and equity positions aligned its interests with the company's, reasoning that the complaint adequately alleged competitive incentives: Porsche could benefit more from keeping the company's technology away from Mercedes and BMW than it would lose by writing off a comparatively small investment. “Chess players make sacrifices all the time,” the court observed.

Second, inaction. The defendants argued that Knörle could not have breached his duties because neither financing was formally put to a vote. The court disagreed: directors can breach their duties through informal action and conscious inaction, and a designee's refusal to act without investor permission may itself become the fiduciary act under review.^[3] In venture governance, in other words, inaction is not necessarily neutral.

The court also sustained three claims against the Porsche entities: aiding and abetting Knörle's alleged breaches, intentional interference with the two prospective financings, and breach of the implied covenant of good faith and fair dealing inherent in the investor rights agreement. (A Porsche executive named individually was dismissed for lack of personal jurisdiction in a separate decision issued three days earlier.)^[4]

IV. The Two-Masters Problem

Investor-appointed directors routinely occupy overlapping roles: portfolio-company fiduciary, fund partner or employee, investment-committee participant, monitor of the investment, and — in corporate venture capital — employee of a commercial partner or potential competitor. None of that is improper in itself. Delaware permits directors to consult with the stockholders who designated them and to take their concerns into account, and the *Zync* opinion cites recent authority acknowledging exactly that.

What the opinion does not countenance is the pattern the complaint alleges: a designee who treated the investor's instructions as controlling. Venture organizations often speak of “their” board seats and “their” directors. The shorthand is commercially understandable and legally hazardous, because once appointed, the designee is not the investor's representative seated inside the portfolio company; he or she is a fiduciary

of the portfolio company. Statements like “I cannot vote until the investment committee approves,” “headquarters has not authorized this,” or “send us the agreement and the funding will follow” are not automatically wrongful. But *Zync* shows how each can become evidence that the director’s judgment belonged to someone else.

V. Liability Travels Up the Chain

The development that will matter most to the insurance community is not that the director remained exposed. It is that the claims against the investor survived.

The aiding-and-abetting analysis is the doctrinal heart of the opinion. In *In re Mindbody* and *In re Columbia Pipeline*, the Delaware Supreme Court raised the pleading bar for aiding-and-abetting claims against third-party acquirers, requiring actual knowledge and affirmative conduct.^[5] The *Zync* court declined to extend that protection beyond the arm’s-length setting that produced it. Other alleged aiders and abettors are differently situated, Vice Chancellor Laster explained, and an employer-principal alleged to have directed its employee-agent is the paradigm: the agent’s knowledge and conduct can be imputed to the principal, and instructions can supply knowing participation. The court drew the same relational distinction earlier this year in *Calumet Capital Partners LLC v. Victory Park Capital Advisors, LLC* — a decision the *Zync* opinion cites — where the alleged aider and abettor was likewise an investor whose own employee served as its board designee.^[6] The pattern is now difficult to miss: claims against arm’s-length counterparties remain hard to plead, while claims against an investor whose employee occupies the board seat may be considerably easier.

The intentional interference claim survived on related reasoning. An investor’s financial interest in a company would ordinarily privilege efforts to protect its position, but that privilege is unavailable at the pleading stage where the alleged means of interference — causing the designee’s breach of loyalty — are themselves wrongful.

The implied covenant claim is where *Calumet* does the most work. The investor rights agreement gave Porsche discretionary approval rights exercised through its designee, and, quoting its earlier decision, the court held that a party may not wield a discretionary contractual right “maliciously and without any justification rationally related to the shared contractual purpose.” The court was careful about the limits. Porsche could have used its veto for many rational purposes — concerns about pricing, harm to the company, or even protection of Porsche’s own interests — without facing an implied covenant claim. What the complaint adequately alleged was different in kind: the use of the right for the sole purpose of harming the company.

Finally, the exculpation holding deserves the attention of every lawyer who papers venture financings. The voting agreement contained a provision captioned “No Liability for Election of Recommended Directors,” which Porsche read to shield stockholders and their affiliates from liability arising from a designee’s acts or omissions as a director. The court held the provision too ambiguous to support dismissal — and held, independently, that Delaware law does not permit parties to eliminate liability for intentional and bad-faith acts, whether by contract or through the governance-agreement authority the legislature added as Section 122(18) in 2024.^[7] Provisions of this general kind appear in customary venture documentation. *Zync* is a caution against reading them as a general liability shield for the appointing investor.

Once claims travel from the board designee to the venture organization, the insurance analysis becomes considerably less straightforward.

VI. The D&O Insurance Questions

The relevant policies are not public, and nothing here is a coverage opinion. The value of *Zync* for the insurance community lies in the questions its fact pattern forces — many of which readers of this publication will recognize from other contexts.

The portfolio company's policy. A designee facing these claims would ordinarily tender under the portfolio company's private-company D&O program. But the claimant here is the company itself, suing its own director — the classic trigger for insured-versus-insured or entity-versus-insured exclusion analysis. Private-company forms vary widely on the decisive details: whether the exclusion reaches claims brought directly by the insured entity; whether insolvency, receiver, trustee, or derivative-claim carve-backs apply once the company has collapsed; whether severability or non-imputation wording affects other potentially applicable exclusions; and whether a Side A difference-in-conditions policy provides broader protection above the tower.

Indemnification and advancement. Delaware law permits advancement of defense costs upon an undertaking to repay, with the scope of any mandatory rights fixed by the charter, bylaws, and indemnification agreements.^[8] But *Zync* allegedly shut down because it could not raise capital, and a contractual advancement right against an insolvent company has limited practical value — which is precisely the gap Side A protection exists to fill. There is a telling detail in the record on this point: in the final weeks, Porsche allegedly conditioned approval of the private equity financing on the fund indemnifying Porsche and its designee. Whatever else that demand shows, it suggests the participants understood in real time that the existing protection might not be enough.

Conduct allegations. The complaint pleads disloyalty and bad faith, not negligence. That implicates conduct exclusions — fraud, deliberate acts, improper personal benefit — and puts weight on final-adjudication wording, imputation provisions, and the carrier's obligations with respect to defense costs before any adjudication. Allegations are not adjudications, and the surviving-the-pleadings posture of *Zync* is exactly the situation those provisions were negotiated to address.

The venture organization's policy. The designee may also look to the investor's management-liability program. Private equity and venture capital policies frequently include outside-directorship liability coverage for personnel serving on portfolio-company boards, typically structured on a double-excess basis — sitting above indemnification and insurance available from the portfolio company. That structure generates its own questions on these facts: whether the portfolio company is a scheduled or qualifying outside entity; whether the coverage protects only the individual or also reaches the investor entities facing aiding-and-abetting and interference claims; how the excess attachment operates when the underlying company is insolvent and its own policy's response may be contested; and whether a board observer would fare differently than a director.

The capacity paradox. The most interesting coverage problem is structural. D&O policies generally insure acts undertaken in an insured capacity, and the two programs here would define that capacity differently — *Zync* director on one side, Porsche employee on the other. The plaintiff's theory of liability is that the designee acted as the investor's agent rather than as the company's fiduciary. The stronger that allegation becomes, the stronger a carrier's potential argument that the conduct fell outside the insured capacity, or within a dual-capacity or outside-position exclusion — on either

tower. This publication has covered decisions barring coverage for individuals acting in dual capacities;^[9] *Zync* presents the problem in its purest venture form.

The counterargument is equally substantial. A director does not necessarily leave the insured capacity by acting with an improper motive; the alleged breach may have been possible precisely because the individual exercised the authority of the *Zync* board seat. Motivation, loyalty, and capacity are related but distinct inquiries, and the answer would turn on the specific policy wording and on whether the claim is understood to arise from the exercise of board authority, employment responsibilities, or both. The merits theory and the coverage defense are mirror images — the same characterization that makes the fiduciary claim viable may make the coverage question hard — but *Zync* frames a genuine coverage contest, not a foreordained result.

Allocation. The litigation involves an individual director, multiple investor entities, and mixed fiduciary, tort, and contract claims — some potentially covered, some potentially not, spread across two towers with different retentions, attachment points, and exclusions. That is a recipe for allocation disputes over defense costs, separate counsel, priority of payments, and the erosion of shared limits.

VII. The Strategic-Investor Dimension

Traditional venture investors principally want financial returns. Strategic and corporate venture investors may also want technology access, commercial terms, competitive intelligence, and optionality over an emerging capability. None of that is improper, but it raises the probability that the investor's interests will diverge from the company's — and *Zync* alleges divergence in a stark form: an investor extracting a competitor's draft contract while allegedly blocking the financing the company needed to serve that competitor. The complaint also alleges that Porsche's conduct reflected a broader strategy of using minority investments and governance rights to keep emerging technology away from competing manufacturers; that allegation remains unproven. These tensions may become especially acute in artificial intelligence and other technology markets where a strategic investor can also be a supplier, customer, prospective acquirer, and competitor.

VIII. Questions *Zync* Puts on the Table

Zync is one pleading-stage decision on unusually hard facts, and the record may look different after discovery. But the questions it raises do not depend on the outcome.

For venture organizations and portfolio companies

The decision illustrates how internal shorthand and instruction-based workflows become the evidentiary record: whether communications reflect consultation or direction; whether the business rationale for withholding consent was recorded when the decision was made; and where information obtained through board service travels once it leaves the boardroom. For portfolio companies, the decision draws attention to how approval rights are structured — stockholder-level consents and director-level approvals sit in very different doctrinal postures — and to the value of indemnification agreements and D&O placement completed before distress arrives.

For brokers and coverage counsel

The fact pattern reads like a working checklist: insured-versus-insured wording and its carve-backs, outside-directorship coverage and its scheduling requirements, double-excess mechanics over an insolvent underlying company, capacity and dual-capacity exclusions, Side A adequacy, and priority-of-payments provisions.

For underwriters

Zync suggests a diligence distinction between financial and strategic investors — and a reason to ask how a fund’s designees actually receive, document, and act on instructions from the organizations that appointed them.

IX. Conclusion: The Board Seat Is Not the Fund’s Seat

Venture firms obtain board seats to protect their investments. *Zync* recounts allegations — so far only allegations — of a board seat operating as the instrument through which an investment destroyed the company. If those allegations are ultimately credited, the exposure will not have stopped with the director. It will have traveled to the investor that gave the instructions, through contracts that routed a veto through a fiduciary, and into two insurance programs whose responses may depend on incompatible characterizations of a single individual’s role. The board seat may be insured. The instructions behind the board seat may not be. For venture investors, the lesson is that a designee must exercise independent fiduciary judgment. For the D&O insurance market, the harder question is whether coverage follows the director when the complaint alleges that the independence disappeared.

Ben Dubin is the Managing Member of VC Expert Services, LLC, providing expert witness and litigation consulting in venture capital and private-company disputes. He is the author of *The Architect’s Guide to Venture Capital: The Forensics of Venture Capital Disputes* (Silicon Arbitrage Press), a six-volume book series on venture capital governance and dispute resolution. More at vcexpertservices.com.

The author is not engaged in the Zync litigation and has no relationship with any party to it. This article describes allegations and pleading-stage rulings only; it is not legal advice and expresses no opinion on the merits of the claims or on the existence or scope of any insurance coverage.

^[1] *Zync, Inc. v. Porsche Investments Management, S.A.*, C.A. No. 2025-0284-JTL (Del. Ch. May 29, 2026).

^[2] *Weinberger v. UOP, Inc.*, 457 A.2d 701, 710 (Del. 1983).

^[3] See *Shocking Technologies, Inc. v. Michael*, 2012 WL 4482838 (Del. Ch. Oct. 1, 2012).

^[4] *Zync, Inc. v. Porsche Investments Management, S.A.*, 2026 WL 1470324 (Del. Ch. May 26, 2026) (dismissing the individual Porsche executive for lack of personal jurisdiction).

^[5] ***In re Mindbody, Inc. Stockholder Litigation***, 332 A.3d 349 (Del. 2024); ***In re Columbia Pipeline Group, Inc. Merger Litigation***, 342 A.3d 324 (Del. 2025).

^[6] ***Calumet Capital Partners LLC v. Victory Park Capital Advisors, LLC***, 353 A.3d 88 (Del. Ch. 2026).

^[7] **Del. Code Ann. tit. 8, § 122(18)**.

^[8] **Del. Code Ann. tit. 8, § 145**.

^[9] See, e.g., **D&O Insurance: Coverage Precluded for Individual Acting in Dual Capacities**, The D&O Diary (July 2024).

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