

Delaware Justices Affirm BLB&G's Post-Trial Win in *Williams*, Establishing Critical Delaware Legal Precedent on Poison Pills

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On November 3, 2021, the Delaware Supreme Court issued an order affirming the Chancery Court's injunction requiring the redemption of the "Poison Pill" adopted by The Williams Cos. in 2020. This follows the BLB&G team's trial win in February 2021, when the Court struck down what it described as the novel and "extreme" Pill, which the Court found to be targeted at stockholder activism generally, finding that the Williams board failed to show that the Pill was a reasonable and measured response to a specific threat.

This week's affirmation of the decision represents a victory not only for activist investors but for all stockholders. In affirming the Court of Chancery's decision, the Delaware Supreme Court confirmed that:

- *Unocal* remains the proper standard for analyzing the validity of any poison pill;
- Fiduciaries seeking to adopt a poison pill must identify a legitimate threat as generalized concerns about stockholder activism by Delaware fiduciaries does not constitute a cognizable threat that could justify adoption of a poison pill; and
- The "nuclear missile" poison pill adopted by the Williams board with its "extreme, unprecedented collection of features" including a 5% trigger, acting-in-concert or "Wolfpack" provision, daisy chain clause and faulty passive investor "carve out" was not a proportional response to any recognized threat to the company or its policies.

We believe that boards will take heed of the *Williams* decision and, hopefully, will be less likely to indiscriminately target stockholder activism in the future.

For background on this case, please visit the case description linked to under the Related Case section of this page.