

**COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE**

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VICE CHANCELLOR

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Date Submitted: April 12, 2023

Date Decided: April 12, 2023

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Re: *Atallah, et al., v. Malone, et al.*, C.A. No. 2021-1116-SG

Dear Counsel:

This matter is before me on all Defendants' motion to dismiss. This is a derivative action involving an alleged controller that arises out of a complex contractual scheme. As a result, it will require some consideration before I can issue a comprehensive written opinion.

Nonetheless, the motion to dismiss by Defendants Michael A. George and Evan D. Malone (the "Non-Committee Directors") under Rule 12(b)(6) and *In re Cornerstone* was not opposed by Plaintiffs in their answering brief or at oral argument.<sup>1</sup> Upon review of the complaint, I find that no sufficient pleading has been made as to these two director defendants under *Cornerstone*.

The Non-Committee Directors are not alleged to be interested in the transactions at issue or to have acted in bad faith. I assume for the purposes of this letter opinion that neither of these directors were independent of Defendant John C. Malone but, as such, the Non-Committee Directors were excluded from the special committees of the board that took the actions at issue. They are not alleged to have acted to advance John Malone's self-interest (or those of his co-Defendant, Gregory B. Maffei). Thus, the complaint fails to state a cause of action under *Cornerstone*.

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<sup>1</sup> *In re Cornerstone Therapeutics Inc. S'holder Litig.*, 115 A.3d 1173 (Del. 2015).

The Non-Committee Directors should not be left in this action pending my decision on the remaining motions. Accordingly, I dismiss them here.

To the extent the foregoing requires an Order to take effect, IT IS SO ORDERED.

Sincerely,

/s/ Sam Glasscock III  
Vice Chancellor