

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FS PARALLEL FUND., L.P., FS	§	
EMPLOYEE INVESTORS LLC, FURMAN	§	
SELZ INVESTORS II L.P., ING FURMAN	§	No. 423, 2003
SELZ INVESTORS III L.P., ING	§	
BARINGS GLOBAL LEVERAGED	§	
EQUITY PLAN LTD. and ING BARINGS	§	Court Below: Court of Chancery
U.S. LEVERAGED EQUITY PLAN LLC,	§	of the State of Delaware, in and
	§	for New Castle County
Plaintiffs Below,	§	
Appellants,	§	C. A. No. 19853-NC
	§	
v.	§	
	§	
CHARLES W. ERGEN, DAVIS	§	
MOSKOWITZ, STEVE SCHAUVER,	§	
MARK JACKSON, ECHOSTAR	§	
COMMUNICATIONS CORPORATION	§	
and ECHOBAND CORPORATION,	§	
	§	
Defendants Below,	§	
Appellees.	§	

Submitted: September 23, 2003

Decided: April 15, 2004

Before **VEASEY**, Chief Justice, **HOLLAND**, **BERGER**, **STEELE** and **JACOBS**,  
Justices, constituting the Court en Banc.

**ORDER**

This 15<sup>th</sup> day of April 2004, upon consideration of the briefs and oral argument of the parties, and considering this Court's Opinion of April 2, 2004, in the case of *Tooley v. Donaldson*, No. 84, 2004, ("*Tooley*"), with respect to which the mandate from this Court issued on April 13, 2004, it appears to the Court that:

(1) In an opinion dated July 28, 2003, the Court of Chancery dismissed the claims of Plaintiff-Appellants under Court of Chancery Rules 12(b)(6) and 23.1.

(2) The Court of Chancery found the claims to be derivative, thus implicating the jurisprudential issues decided by this Court in *Tooley*.

(3) It is desirable that the Court of Chancery should evaluate its decision dated July 28, 2003, in light of *Tooley*, and this case be remanded for that purpose.

NOW, THEREFORE, IT IS ORDERED that this matter is REMANDED to the Court of Chancery to evaluate its decision dated July 28, 2003, in light of *Tooley*. Jurisdiction is not retained.

BY THE COURT:

/s/ E. Norman Veasey  
Chief Justice