

Bäcker v. Palisades Growth Capital II, LP: Corporate Coups, Deception, and Walking Away

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In this article, co-authors Brian Hill and Joshua Turner, Associate at Reed Smith, discuss the impact of the Supreme Court of Delaware's decision to invalidate a "boardroom coup" when a father and son breached their fiduciary duties by "affirmatively deceiving" their fellow board member. The decision, *Bäcker v. Palisades Growth Capital II, L.P.*, 246 A.3d 81 (Del. 2021), is a reminder that "notwithstanding board members' adherence to the procedural requirements associated with conducting board business – as codified in statutes, bylaws, and articles of incorporation – directors may still be held liable for breaching fiduciary duties if these procedures are deceptively employed." This decision confirms that when corporate fiduciaries seek to make a play for power, they must do so without deception; it also demonstrates that if one is the subject of this deception, the most powerful weapon they could have in their arsenal may be the decision to walk away so as to avoid any "participation defense," the authors wrote.