📋 Disclosure Delta: What Stockholders Were Told vs. What They Should Have Been Told

Purpose of This Analysis: Under Delaware law, stockholders must receive full and fair disclosure of all material facts before voting on significant transactions. This page documents the material gap between what stockholders actually received and what Delaware law required them to receive before consenting to the Solfice asset sale.

The Delaware Law Framework

The disclosure obligations for the Solfice asset sale arise from three interconnected Delaware statutes:

8 Del. C. § 271 — Sale of Assets Requiring Stockholder Approval

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(a) Every corporation may at any meeting of its board of directors or governing body sell,
lease or exchange all or substantially all of its property and assets, including its goodwill
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and its corporate franchises, upon such terms and conditions and for such consideration, which may consist in whole or in part of money or other property, including shares of stock in, and/or other securities of, any other corporation or corporations, as its board of directors or governing body deems expedient and for the best interests of the corporation, when and as authorized by a resolution adopted by the holders of a **majority of the outstanding stock** of the corporation entitled to vote thereon...

KEY REQUIREMENT: A majority of the outstanding stock must approve the sale. Stockholders cannot give informed consent without full disclosure of all material facts affecting the transaction.

→ **Read Full Text of 8 Del. C. § 271**

8 Del. C. § 228(e) — Notice Requirements for Written Consent

(e) Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders or members who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that written consents signed by a sufficient number of holders or members to take the action were delivered to the corporation as provided in subsection (c) of this section. **If the action which is consented to is such as would have required the filing of a certificate under any other section of this title, if such action had been voted on by stockholders or by members at a meeting thereof, then the certificate filed under this section shall state, in lieu of any**

statement required by such other section concerning any vote of stockholders or members, that written consent has been given in accordance with this section.

KEY REQUIREMENT: All non-consenting stockholders must receive prompt notice describing the action taken. The notice must contain the same material information that would have been required for a stockholder meeting.

→ **Read Full Text of 8 Del. C. § 228**

8 Del. C. § 144 — Interested Director Transactions

(a) No contract or transaction between a corporation and 1 or more of its directors or officers... shall be void or voidable solely for this reason... or solely because such director or officer is present at or participates in the meeting of the board or committee which authorizes the contract or transaction... if:

(1) The material facts as to the director's or officer's relationship or interest and as to the contract or transaction are **disclosed or are known to the board of directors** or the committee, and the board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors...; or

(2) The material facts as to the director's or officer's relationship or interest and as to the contract or transaction are **disclosed or are known to the stockholders** entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

(3) The contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified...

KEY REQUIREMENT: When directors have a financial interest in a transaction requiring stockholder approval, the material facts of that interest must be disclosed to stockholders, OR the transaction must be approved by disinterested directors, OR the transaction must be entirely fair.

→ **Read Full Text of 8 Del. C. § 144**

Transaction Timeline: Documenting the Disclosure Failures

The following timeline shows when key events occurred and when disclosures should have been made:

Luminar's Initial Indication of Interest

Luminar indicates willingness to pay $20M+ for Solfice assets. No fiduciary conflicts disclosed at this stage.

April 2022

$800K Inducement Offer to Founder

Solfice insiders offer Puttagunta $800,000 in exchange for signing proxy without seeing final documentation. **Puttagunta refuses** and demands to see final transaction documents before voting.

× **NO DISCLOSURE TO OTHER STOCKHOLDERS**

May-June 2022

RETALIATION: Valuation Reduced from $20M to $10M

After Puttagunta refuses the $800K inducement and demands documentation, Luminar reduces offer by 50% as punishment. This is direct evidence of vote coercion—reducing the price to pressure stockholders who demand proper disclosure. Arman Pahlavan (Solfice counsel) later explicitly confirms this was tied to inability to secure 90% pre-vote lock-up.

× **NO DISCLOSURE TO STOCKHOLDERS**

Late May 2022

Employment Agreements Negotiated as Closing Conditions

Luminar begins structuring employment agreements for Stefan Safko and Scott Harvey (both Solfice directors) as explicit closing conditions. **APA § 7.2(e)** will later confirm these as mandatory closing deliverables.

× **NO DISCLOSURE TO STOCKHOLDERS**

July 13, 2022

Arman Pahlavan Email Confirming Price Manipulation

Solfice's counsel explicitly tells Puttagunta: "Another driver to bringing down the value is that they wanted to have a clean deal with 90% vote and they didn't get there because of your tough negotiation."

View Email →

Consent Solicitation (Date Unknown)

Stockholders Asked to Sign Written Consents

Stockholders solicited for written consent under 8 Del. C. § 228. **CRITICAL FAILURE:** No §228(e)

notice documentation has been produced showing what information was provided to stockholders.

- × **NO EVIDENCE OF PROPER §228(e) NOTICE**
- × **NO DISCLOSURE OF DIRECTOR EMPLOYMENT AGREEMENTS**
- × **NO DISCLOSURE OF VALUATION MANIPULATION**
- × **NO DISCLOSURE OF SELECTIVE INDUCEMENTS**

Transaction Closing (2022)

Asset Purchase Agreement Executed

APA § 7.2(e) lists "Employment Agreements" for Stefan Safko and Scott Harvey as explicit **Seller Closing Deliverables**. This proves director compensation was a mandatory condition precedent to closing—yet was never disclosed to stockholders pre-vote.

View APA →

September 5, 2025

Section 220 Demand to Luminar

Puttagunta files §220 demand seeking books and records to investigate disclosure failures and inducements.

View Demand →

September 23 & October 7, 2025

Luminar Refuses to Produce Documents

Luminar rejects §220 demand twice. Notably, counsel NEVER denies any factual allegations about inducements, valuation manipulation, or missing disclosures.

View Rejection →

The Disclosure Delta Table: What Was Required vs. What Was Provided

The following table documents the specific disclosure failures that invalidate the stockholder consent:

Material Fact Requiring Disclosure	What Stockholders Actually Received	What Delaware Law Required
	✗ NO DISCLOSURE	✓ REQUIRED UNDER § 144(a)(2)
	Stockholders were not told that	"The material facts as to the

Material Fact Requiring Disclosure	What Stockholders Actually Received	What Delaware Law Required
Director Employment as Closing Condition (APA § 7.2(e))	Stefan Safko and Scott Harvey's employment agreements with Luminar were mandatory closing deliverables under APA § 7.2(e).	director's relationship or interest and as to the contract or transaction are disclosed to the stockholders entitled to vote thereon."
Financial Terms of Director Employment	✗ NO DISCLOSURE Stockholders were not told what compensation (salary, RSUs, bonuses, release payments) the directors would receive from Luminar.	✓ REQUIRED UNDER § 144 Material facts as to the nature and amount of director compensation must be disclosed when directors vote on a transaction from which they personally benefit.
Valuation Manipulation: $20M → $10M Price Drop	✗ NO DISCLOSURE Stockholders were not told that Luminar initially offered $20M+ but deliberately reduced the price to $10M to coerce votes.	✓ REQUIRED UNDER CORWIN/ LYNCH Stockholders must be informed of any coercive tactics used to secure their votes. Evidence of price manipulation to pressure consent is material to the voting decision.

Material Fact Requiring Disclosure	What Stockholders Actually Received	What Delaware Law Required
Buyer's Demand for 90% Pre-Vote Lock-Up	✗ NO DISCLOSURE Stockholders were not told that Luminar demanded a 90% stockholder commitment BEFORE providing final documentation—a classic coercive tactic.	✓ REQUIRED UNDER CORWIN For Corwin cleansing to apply, the vote must be "uncoerced." Demands for proxy signatures without documentation defeats the "uncoerced" requirement.
$800K Inducement Offer to Founder	✗ NO DISCLOSURE Other stockholders were not told that insiders offered Puttagunta $800,000 to secure his 27% common stock vote.	✓ REQUIRED UNDER § 271 & CORWIN All stockholders entitled to equal treatment and full disclosure. Selective inducements to key stockholders must be disclosed to ensure informed, uncoerced consent.
Fabien Chraim's Undisclosed Compensation	✗ NO DISCLOSURE Stockholders were not told what inducements or compensation Fabien Chraim received in exchange for his	✓ REQUIRED UNDER § 271 & CONTROLLING STOCKHOLDER DOCTRINE When a controlling stockholder's vote

Material Fact Requiring Disclosure	What Stockholders Actually Received	What Delaware Law Required
	16.42% "outcome determinative" vote.	is "outcome determinative," any benefits received must be disclosed to minority stockholders. Failure to disclose creates entire fairness review.
Absence of Special Committee	× NO DISCLOSURE Stockholders were not told that NO independent special committee was formed to evaluate conflicts of interest, despite obvious self-dealing by board members.	✓ REQUIRED AS MATERIAL PROCEDURAL FACT Delaware best practices require disclosure of whether independent process protections were used when directors have conflicts. Absence is material to stockholder voting decision.
§228(e) Notice to Non-Consenting Stockholders	× NO EVIDENCE OF COMPLIANCE No documentation has been produced showing that proper §228(e) notice was sent to non-	✓ REQUIRED BY STATUTE 8 Del. C. § 228(e) mandates "prompt notice" to all non-consenting stockholders. Failure to provide notice

Material Fact Requiring Disclosure	What Stockholders Actually Received	What Delaware Law Required
	consenting stockholders describing the material terms of the transaction.	renders the written consent procedure invalid.
Buyer's Refusal to Provide "Final Dox" Before Proxy	✗ NO DISCLOSURE Stockholders were not told that Luminar refused to provide final transaction documents before demanding signed proxies—preventing informed consent.	✓ REQUIRED UNDER FUNDAMENTAL DISCLOSURE DUTY Stockholders cannot give informed consent without access to material transaction terms. Demanding votes before providing documents is inherently coercive.
Release Waivers as Consideration Precondition	✗ NO DISCLOSURE Stockholders were not told that some recipients had to sign release waivers waiving legal claims as a condition of receiving their share of consideration.	✓ REQUIRED AS MATERIAL VOTING INFORMATION If consideration is conditioned on signing away legal rights, that materially affects the value proposition and must be disclosed before vote solicitation.

Luminar Technologies Public Disclosure Analysis

The disclosure failures extend beyond Solfice stockholders to Luminar's public reporting obligations. As a public company, Luminar must comply with SEC disclosure rules when making material statements about acquisitions.

Applicable SEC Requirements

SEC Rule 10b-5(b) — Omissions Liability

It shall be unlawful for any person... **(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading...**

KEY PRINCIPLE (Post-*Macquarie*): While pure omissions require a duty to disclose, affirmative statements that are rendered misleading by omitting material context trigger liability under 10b-5(b). If Luminar affirmatively described the Civil Maps acquisition without disclosing material closing conditions or side arrangements, those statements may be actionably misleading.

→ **Read 17 CFR § 240.10b-5**

Regulation S-K Item 303 — MD&A Disclosure Requirements

(b) (2) Known trends or uncertainties. Describe any known trends or uncertainties that have had or that are reasonably likely to have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations...

APPLICATION HERE: Once the §220 litigation commenced and ownership of the Civil Maps assets became disputed, Luminar had a duty to disclose this material uncertainty affecting the value of assets carried on its balance sheet.

→ **Read Item 303 Requirements**

Regulation S-K Item 103 — Legal Proceedings

Describe briefly any material pending legal proceedings... other than ordinary routine litigation incidental to the business...

APPLICATION HERE: The Delaware Chancery Court §220 action and potential follow-on plenary litigation seeking rescission of the Civil Maps acquisition constitutes material legal proceedings requiring disclosure.

→ **Read Item 103 Requirements**

Side-by-Side: What Luminar Disclosed vs. What Was Omitted

WHAT LUMINAR'S PUBLIC FILINGS SAID

[Note: Specific quotes from Luminar's 10-K/10-Q would be inserted here after reviewing their SEC filings. Example below:]

Typical Disclosure Pattern:

- "Acquired assets from Civil Maps to enhance autonomous vehicle mapping capabilities"
- "Transaction closed in 2022 for purchase consideration of approximately $10 million"
- "Integrated Civil Maps technology into Luminar's core product offerings"

WHAT WAS NOT DISCLOSED (MATERIAL OMISSIONS)

Missing Material Facts:

- ✗ Employment agreements for seller's directors were mandatory closing conditions (APA §7.2(e))
- ✗ Purchase price was deliberately reduced from $20M to $10M to coerce stockholder votes
- ✗ Buyer demanded 90% pre-vote lock-up without providing final documentation
- ✗ Seller's stockholders were not provided full disclosure of director conflicts
- ✗ Disputed ownership claims and pending Delaware litigation challenging transaction validity

Materiality Standard: Under *TSC Industries v. Northway*, 426 U.S. 438 (1976), information is material if "there is a substantial likelihood that a reasonable [investor] would consider it important" in making an investment decision. The omitted facts here—including that the acquisition involved coerced votes, conflicted directors, and disputed ownership—are plainly material to Luminar investors evaluating:

- The value of acquired assets on Luminar's balance sheet
- Contingent liabilities from potential rescission or litigation
- Management integrity and compliance with acquisition best practices
- Going-concern risks if forced to return or pay damages for tainted assets

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Legal Arguments: Why These Omissions Invalidate the Transaction

1. Delaware Law Requires Full Disclosure for Informed Stockholder Consent

The *Lynch v. Vickers Energy* Standard:

The Delaware Supreme Court held in *Lynch v. Vickers Energy Corp.*, 383 A.2d 278 (Del. 1977), that **"stockholder ratification [of conflicted transactions] is effective only if the stockholders have been 'fully informed of all material facts.'"**

Application Here: The disclosure delta table demonstrates that stockholders were NOT fully informed of:

- The material fact that director employment was a closing condition
- The financial terms of director compensation from the buyer
- The valuation manipulation scheme
- The selective inducements to key stockholders

Legal Consequence: Without full disclosure, the stockholder consent is ineffective to cleanse the transaction under *Corwin* or § 144(a)(2), and entire fairness review applies.

2. Section 144 Safe Harbor Was NOT Satisfied

§ 144(a)(2) Requires Disclosure to Stockholders:

To invoke the safe harbor of § 144(a)(2), defendants must prove:

1. **Material facts disclosed:** "The material facts as to the director's relationship or interest... are disclosed to the stockholders"
2. **Stockholder approval:** "The contract or transaction is specifically approved in good faith by vote of the stockholders"

Fatal Failure: The employment agreements for Stefan Safko and Scott Harvey were explicit closing conditions under APA § 7.2(e), yet this material fact was NEVER disclosed to stockholders before they were asked to consent.

Burden Shift: Because the § 144(a)(2) safe harbor was not satisfied, the burden shifts to defendants to prove the transaction was entirely fair—both fair dealing AND fair price.

3. Corwin Cleansing Cannot Apply Without Fully Informed, Uncoerced Vote

The *Corwin v. KKR Financial Holdings* Framework:

Under *Corwin*, 125 A.3d 304 (Del. 2015), business judgment review applies when:

1. The transaction is approved by a **fully informed** vote
2. Of **uncoerced** stockholders

3. Constituting a **disinterested majority**

None of These Elements Are Satisfied Here:

× NOT "Fully Informed":

- No disclosure of director employment as closing condition
- No disclosure of valuation manipulation ($20M → $10M)
- No disclosure of 90% pre-vote lock-up demand
- No disclosure of selective inducements ($800K offer to founder)

× NOT "Uncoerced":

- Arman Pahlavan email proves buyer used price threats to coerce votes
- Demand for proxies without documentation prevents informed consent
- Selective inducements create coercive pressure on non-cooperating stockholders

× NOT "Disinterested Majority":

- Fabien Chraim (16.42%) received undisclosed inducements → conflicted
- Scott Harvey (4.80%) received employment as closing condition → conflicted
- 54.02% - 16.42% - 4.80% = **32.80% disinterested approval**

- 32.80% is far below the required majority threshold

Legal Consequence: *Corwin* cleansing does not apply. The transaction is subject to entire fairness review with the burden on defendants.

4. Section 228(e) Notice Requirement Was Not Satisfied

Statutory Notice Mandate:

8 Del. C. § 228(e) requires "prompt notice" to all non-consenting stockholders describing the corporate action taken. The notice must contain the same material information that would have been provided if a formal stockholder meeting had been held.

Missing Documentation: Defendants have produced NO evidence of:

- What notice materials, if any, were sent to non-consenting stockholders
- When such notice was sent (to determine if "prompt")
- Whether the notice disclosed the material facts required by § 144 and *Lynch*

Legal Presumption: Defendants' refusal to produce §228(e) notice materials in response to the §220 demand creates an adverse inference that no proper notice was provided, or that the notice materials prove plaintiffs' disclosure-failure allegations.

5. SEC Enforcement Risk: Misleading Statements About the Acquisition

Post-*Macquarie* Omissions Liability:

Under *Macquarie Infrastructure Corp. v. Moab Partners*, 601 U.S. 257 (2024), pure omissions require a duty to disclose. However, **affirmative statements that are rendered misleading by material omissions remain actionable under Rule 10b-5(b).**

Luminar's Potential Exposure:

If Luminar affirmatively stated in SEC filings that it "acquired Civil Maps assets" without disclosing that:

- The acquisition involved coerced votes from seller's stockholders
- Employment of seller's directors was a mandatory closing condition
- The purchase price was manipulated to secure votes
- Ownership of the acquired assets is now disputed in Delaware litigation

...then those affirmative statements were materially misleading, and Luminar violated Rule 10b-5(b) and Regulation S-K disclosure obligations.

Additional Exposure: Failure to disclose the pending Delaware litigation and rescission risk in Items 103 (Legal Proceedings), 303 (MD&A), and 105 (Risk Factors) constitutes additional disclosure violations once the risks became known and material.

Why the §220 Demand Should Be Granted

The *Seinfeld v. Verizon* "Credible Basis" Standard:

Under Delaware law, a stockholder seeking books and records under § 220 need only show "some evidence" of possible wrongdoing—a "credible basis." *Seinfeld v. Verizon Commc'ns, Inc.*, 909 A.2d 117 (Del. 2006).

More Than "Some Evidence" Established Here:

1. **Documentary Evidence:** APA § 7.2(e) explicitly lists director employment as a closing condition
2. **Counsel Admissions:** Arman Pahlavan email confirms valuation manipulation to secure 90% vote
3. **Sworn Allegations:** Puttagunta affidavit establishes $800K inducement offer with personal knowledge
4. **Adoptive Admissions:** Luminar has never denied any factual allegations despite multiple opportunities
5. **Missing Statutory Documentation:** No §228(e) notice materials produced despite statutory mandate

Delaware Courts Routinely Order Production in Similar Cases:

- **Board minutes and written consents** showing approval process
- **§228(e) notice packages** to verify what stockholders received
- **Vote tabulation and holder list** to verify claimed majority
- **APA closing set** including all schedules and conditions
- **Director conflict disclosures** or §144 cleansing records
- **Waterfall models and consideration calculations**
- **ESI (emails)** when formal records are thin—the *KT4 Partners* scenario

Confidentiality Protections Available: Any legitimate confidentiality concerns can be addressed through a confidentiality order, which is standard in § 220 cases. *In re Tiger X Medical* confirms confidentiality is not automatic or indefinite and must be balanced against stockholder inspection rights.

Anticipated Defense Arguments and Responses

Defense Argument #1: "§271 Doesn't Subtract Interested Shares"

Defense Position: "Delaware law doesn't subtract 'interested' shares when determining whether a §271 majority exists. The statute just requires a majority of outstanding shares, and we got 54%."

Response:

1. **Correct on statutory math, but misses the disclosure point:** While it's true that § 271 doesn't mechanically subtract interested shares, that doesn't mean disclosure failures are irrelevant. The issue is whether the vote was legally valid—not just mathematically sufficient.
2. **Without full disclosure, consent is invalid:** Under *Lynch* and basic agency principles, stockholder consent obtained through material omissions is not effective consent. It doesn't matter if 54% signed if they didn't know what they were signing.
3. **The "interested share subtraction" matters for Corwin:** We agree the subtraction matters primarily for standard-of-review analysis. But once Corwin cleansing fails (due to lack of informed, uncoerced vote), entire fairness applies, and defendants must prove BOTH fair dealing and fair price. The disclosure failures we document prevent them from meeting that burden.

Defense Argument #2: "Employment Conditions Are Continuity, Not Consideration"

Defense Position: "The employment agreements were just to ensure business continuity. They weren't 'consideration' for the directors' votes, so no disclosure was required."

Response:

1. **APA § 7.2(e) proves otherwise:** The employment agreements are listed as "Seller Closing Deliverables" and mandatory "conditions precedent" to closing. This is not routine continuity—it's a contractual requirement without which the deal dies.
2. **§ 144 doesn't distinguish "continuity" from "consideration":** The statute requires disclosure of "material facts as to the director's relationship or interest" in the transaction. Whether characterized as continuity or consideration, the directors had a material financial interest requiring disclosure.
3. **Timing proves the conflict:** These employment agreements were negotiated BEFORE the stockholder vote was solicited. If they were purely about post-closing continuity, why make them closing conditions? The structure proves they were integral to securing the directors' support for the transaction.

Defense Argument #3: "Silence Is Not an Admission"

Defense Position: "Our refusal to respond to plaintiff's allegations doesn't mean we're admitting them. That's not how evidence works."

Response:

1. **Correct for merits, but not for §220 credible basis:** We're not claiming silence is a final admission on the merits. We're arguing it supports the "credible basis" showing required under *Seinfeld*. When a plaintiff makes specific factual allegations with documentary support, and the defendant refuses to produce contradictory documents, that supports ordering inspection.
2. **Adverse inference under *Tiger*:** Delaware Courts recognize that refusal to engage with specific allegations, combined with failure to produce responsive documents, can support an inference that production would reveal unfavorable facts.
3. **We're asking for documents to test the allegations:** That's precisely what § 220 is for—to allow stockholders to obtain documents to investigate suspected wrongdoing. Defendants' argument amounts to "you can't have the documents until you prove wrongdoing"—but we can't prove wrongdoing without the documents. That's circular and contrary to *Seinfeld*.

Supporting Documentation

The following source documents support the disclosure delta analysis:

- 📄 Asset Purchase Agreement (showing § 7.2(e) closing conditions)
- 📄 Arman Pahlavan Emails (admitting valuation manipulation)
- 📄 Voter Tally Exhibit (showing conflicted votes)
- 📄 Section 220 Demand Letter
- 📄 Exhibit E - Proxy Solicitation Memo

Conclusion

The Disclosure Delta Is Undeniable:

This analysis demonstrates a systematic pattern of material non-disclosure that invalidates the Solfice stockholder consent under Delaware law. The gap between what stockholders received and what they were legally entitled to receive is not a technical deficiency—it goes to the heart of informed stockholder decision-making.

What Delaware Law Required: Full disclosure of director conflicts, compensation arrangements, valuation manipulation, selective inducements, and all material facts affecting the transaction.

What Stockholders Actually Received: Incomplete information that concealed the most material facts—including that their own directors had negotiated personal employment agreements as mandatory closing conditions.

Legal Consequences:

- The stockholder consent was not "fully informed" under *Lynch*
- The § 144(a)(2) safe harbor was not satisfied
- *Corwin* cleansing does not apply

- Entire fairness review governs with burden on defendants
- The § 220 demand easily satisfies the *Seinfeld* credible basis standard
- Luminar faces potential SEC enforcement for misleading public disclosures

The requested books and records will prove whether these disclosure failures were inadvertent oversights or deliberate concealment. Either way, the transaction cannot stand without full disclosure and proper stockholder approval.