

*Colleen Witmer v. Barry H. Golsen, Steven L. Packebush, Mark T. Behrman, Jonathan S. Bobb, Kanna Kitamura, Richard Sanders, Jr., Richard W. Roedel, Lynn F. White, Diana M. Peninger, Lsb Industries, Inc., and Computershare Trust Company, N.A.*

**COURT:** Delaware Court of Chancery  
**CASE NUMBER:** 2024-0351-PAF  
**CASE LEADERS:** Christopher J. Orrico  
**CASE TEAM:** Gregory V. Varallo, Jeroen van Kwawegen, Thomas James, Daniel Meyer, Eric J. Riedel, James Janison

Stockholder plaintiff Colleen Witmer (“Stockholder”) asserted claims for breach of fiduciary duty against the board of directors (the “Board”) of LSB Industries, Inc. (the “Company”) for its approval of a stockholder rights plan or “poison pill” with a 4.9% ownership trigger. Delaware law only allows for a poison pill with a 4.9% trigger if it is narrowly tailored to help a company preserve its valuable net operating loss (“NOL”) carryforwards which can be used to offset future tax liability. NOL carryforwards can be lost by the trading in Company shares of 5% or greater shareholders. Thus, the typical “NOL poison pill” is triggered at an ownership level in excess of 4.9% to dissuade stockholders from purchasing stock sufficient to trigger an ownership change that might threaten a company’s ability to use its NOL carryforwards.

In this case, Stockholder alleged that the Board authorized and sought to implement a 4.9% ownership trigger NOL poison pill under the guise of protecting NOLs, but in reality to prevent an activist shareholder from amassing additional stock ownership of the Company and potentially electing its own Board members. Stockholder asserted that the NOL poison pill contained improper features that served to entrench the positions of existing Board members and did not serve the purpose of protecting the Company’s NOL carryforwards.

Plaintiff filed a complaint challenging the NOL poison pill on April 3, 2024. On May 2, 2024, the Company amended its NOL poison pill to revise the language that Plaintiff challenged. The parties subsequently stipulated that Stockholder’s legal action was moot, and on May 14, 2024, the Court approved the stipulation.

On May 31, 2024, Stockholder filed an application for an award of attorneys’ fees and reimbursement of expenses (the “Fee Application”). On June 20, 2024, Stockholder filed a notice to the Company’s stockholders with information on how Company stockholders may object to the Fee Application. That notice can be found in the **Case Documents** list on the right of this page.

The Court will hear oral argument on the Fee Application on October 4, 2024.

## Case Documents

- June 20, 2024 - Notice