

Barking without Biting: How Corwin Did Not Change M&A

Law Working Paper N° 808/2024

October 2024

Matteo Gatti

Rutgers University and ECGI

Martin Gelter

Fordham University and ECGI

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Abstract

This paper explores the impact of two Delaware Supreme Court cases, C&J Energy (2014) and especially Corwin (2015), on transactional merger practice. The Corwin decision, which replaced the enhanced scrutiny for directors of target companies imposed by Revlon with the less demanding business judgment rule when a transaction is approved by a fully informed, uncoerced vote of the disinterested stockholders, has been criticized by some legal scholars for de facto limiting directors' fiduciary duties by reducing the ability of plaintiffs to pursue monetary claims against boards of directors in M&A transactions. The paper analyzes the impact of these court decisions on M&A contracting practices, including the size of lock-ups and target termination fees, pre-signing market checks, and go-shop provisions. The study analyzes all domestic public deals in the 2010-18 period for a contestable domestic target with an equity value of at least \$100 million and found only a limited impact on M&A contracting practices and returns for investors.

Keywords: mergers, takeovers, Delaware, Corwin, deal protections, termination fees, merger agreements, auctions, Corporations, M&A, Mergers, Corporate Governance, Shareholder Litigation, Fiduciary Duties, Revlon, Shareholder Approval, Business Judgment Rule, Coercion, Disinterest, Full Information

Matteo Gatti

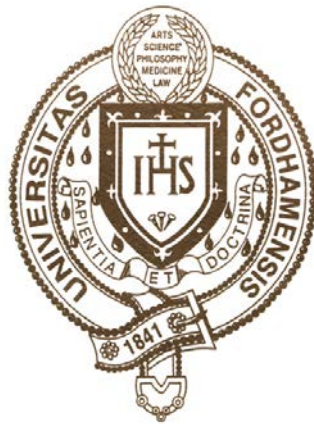
Professor of Law
Rutgers University
123 Washington Street
Newark, NJ 07102, USA
e-mail: mgatti@law.rutgers.edu

Martin Gelter*

Professor of Law
Fordham University School of Law
150 W. 62nd Street
New York, NY 10023, United States
phone: +1 646 312 8752
e-mail: mgelter@law.fordham.edu

*Corresponding Author

Fordham University School of Law



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By

Martin Gelter

PROFESSOR OF LAW

&

Matteo Gatti

PROFESSOR OF LAW, RUTGERS LAW SCHOOL

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MATTEO GATTI* & MARTIN GELTER**

October 15, 2024

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* Professor of Law, Rutgers Law School; Research Member, ECGI.

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1. Introduction

M&A litigation is so ubiquitous that it is often characterized as a “deal tax” that parties must pay to the plaintiff’s counsel regardless of the lawsuit’s merits (see, e.g., Griffith 2019). Courts and other policymakers intervened to mitigate the litigation abuses of the early 2010s. One notable example is the *Corwin* case,¹ which is considered one of the most consequential corporate law decisions of the 2000s (Thomas et al. 2019, p. 505). The decision departs from the long-standing regime of enhanced scrutiny for directors of target companies, including those imposed by

¹ *Corwin v. KKR Fin. Holdings LLC*, 125 A.3d 304, 309 (Del. 2015).

Revlon,² which requires directors to seek the highest price reasonably achievable in a change of control transaction in favor of the much less demanding business judgment rule, whenever “a transaction . . . is approved by a fully informed, uncoerced vote of the disinterested stockholders.”³ *Corwin* was not well received by legal commentators, with many describing it as a setback in shareholder protection.⁴ Another important case that came down just a year before *Corwin*, *C&J Energy*, limited the possibility for plaintiffs to obtain a preliminary injunction in the absence of a rival bid.⁵ Combined, the two cases are often thought to have dramatically improved the option for boards of directors to commit to a single bidder with no credible threat of judicial intervention.

Against this backdrop, in this paper, we explore whether *Revlon* still constitutes a constraint for director action in M&A transactions that are, on their face, subject to such a standard. Our inquiry revolves around the impact of cases such as *Corwin* and *C&J Energy* in the context of transaction planning. If *Corwin* was genuinely impactful, we expect to observe—if not shortly after the decision, at least gradually—a more relaxed approach by M&A players in how deals are planned, structured, run, and protected. In our analysis of all domestic public deals in the 2010-18 period for a contestable domestic target with an equity value of at least \$100 million, we address some indicators of decreased shareholder protection. We investigate increased deal protections

² *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 182 (Del. 1986) (under *Revlon*, when a corporation is on sale, subject to a break-up or a change of control, the role of directors changes “from defenders of the corporate bastion to auctioneers charged with getting the best price for the stockholders at a sale of the company”). Note that *Corwin* is a defense for all enhanced standards of review outside of entire fairness: in the presence of the *Corwin* preconditions, directors who would otherwise be scrutinized under the *Unocal* standard (*Unocal Co. v. Mesa Petrol. Co.*, 493 A.2d 946 (Del. 1985)) are also subject to the business judgment rule. This is important because the *Omnicare* case analyzed deal protections under a *Unocal* lens and courts tend to refer to *Omnicare/Unocal* when it comes to scrutinize deal protection devices, such as the size of termination fees).

³ *Corwin*, 125 A.3d, at 309.

⁴ See *infra* Section 2.3.

⁵ *C & J Energy Services, Inc. v. City of Miami General Employees*, 107 A.3d 1049, 1072 (Del. 2014) (reversing a preliminary injunction on the grounds that that “the stockholders subject to irreparable harm are . . . capable of addressing that harm themselves by the simple act of casting a ‘no’ vote.”).

like the size of termination fees to see if they have grown (the larger, the more protected the original deal against improvement). We also investigate deficiencies in the deal process potentially reflecting a non-competitive sale price, such as the absence of pre-signing market checks, absence of go-shop provisions when a pre-signing market check is also absent, length of go-shops, and incidence of matching rights. If Corwin/C&J made Revlon (or Unocal, for that matter) weaker, one would expect the indicators of lower shareholder protection to grow in the aftermath of such decisions. Overall, we find little support for the prevalent view that *C&J Energy* and *Corwin* decreased shareholder protections in that we detect no considerable impact on merger contracting practices. Where we see a change over time, it is likely not caused by these cases but a continuation of an ongoing trend.

Section 2 describes the background of our study, the core judicial doctrines governing takeover law, the role of the two main cases of interest, and the existing literature. Section 3 describes our dataset and the variables we have obtained. Section 4 looks at the number of transactions in our dataset and whether they were affected by the cases. Section 5 provides the core of our statistical analysis and tests our hypotheses regarding terms of M&A deals, takeover premia and returns. Section 6 provides an analysis of the findings. Section 7 concludes.

2. Background and existing research

2.1. The significance of merger litigation and directors' duties in takeovers

Delaware courts famously developed two lines of cases shaping directors' duties when facing hostile takeovers, namely *Unocal* and *Revlon*.

In *Unocal v. Mesa Petroleum*,⁶ directors were empowered to adopt defensive measures so long as they meet a two-prong test that: (i) there are “reasonable grounds for believing that a danger to corporate policy and effectiveness exist[s]” and (ii) the response taken by the company is “reasonable in relation to the threat posed.”). The second prong, also known as the proportionality test, was clarified by the subsequent *Unitrin* decision,⁷ which stated that the test is failed if the board’s actions are “draconian, by being either preclusive or coercive;” if not draconian, the test is met if such actions fall “within a range of reasonableness.”

In *Revlon*,⁸ the target company responded to an acquisition attempt by a hostile bidder by selling itself to a white knight, which was offered several deal protections, including an asset lock-up. The *Revlon* ruling by the Delaware Supreme Court established an enhanced standard of conduct requiring directors to maximize value for the benefit of shareholders in the sale of the company above the protection of interests of other stakeholders, including maintaining the independence of the corporate entity. Specifically, under *Revlon*, the role of directors was transformed “from defenders of the corporate bastion to auctioneers charged with getting the best price for the stockholders at a sale of the company.”⁹ The Court clarified that “[a] lock-up is not per se illegal under Delaware law. . . . Such options can entice other bidders to enter a contest for control of the corporation, creating an auction for the company and maximizing shareholder profit. . . . However, while those lock-ups which draw bidders into the battle benefit shareholders, similar measures which end an active auction and foreclose further bidding operate to the shareholders’ detriment.

⁶ 493 A.2d 946, 955 (Del. 1985).

⁷ *Unitrin, Inc. v. Am. Gen. Corp.*, 651 A.2d 1361, 1367 (Del. 1995).

⁸ *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 182 (Del. 1986).

⁹ *Id.* at 182.

. . . [T]he result of the [Revlon] lock-up was not to foster bidding but to destroy it.”¹⁰ While the initial wording of *Revlon* seemed to suggest imposing a novel and stringent fiduciary duty, subsequent caselaw soon clarified that *Revlon* is a standard of judicial review—enhanced scrutiny (Gatti 2020, pp.359-66). In 2003, with the *Omnicare* decision,¹¹ the Delaware Supreme Court somewhat blurred the lines between the *Unocal* and *Revlon* doctrines regarding lock-ups. In that case, the chairman and the CEO of the target, who held voting control of the company thanks to super-voting stock, agreed irrevocably to vote their shares in favor of the deal with a preferred buyer. In contrast, the company agreed to a “force the vote” provision to hold the meeting for merger approval even if directors changed their recommendation (which they ultimately did, to no avail, to recommend a superior proposal by a rival bidder). The Delaware Supreme Court struck down the deal protections based on the *Unocal/Unitrin* standards because the “preclusive and coercive lock up” embedded in the deal protection devices “prevented [the board] from effectively discharging its ongoing fiduciary responsibilities.”¹²

2.2. *C&J Energy*

In *C&J Energy*, plaintiffs challenged a passive post-signing market check: no auction was run prior to entering the deal, yet there was no go-shop provision, so directors had no power to solicit a better deal, just a duty to engage with superior bidders should they emerge. The Chancery Court had granted a preliminary injunction because the plaintiffs had demonstrated a likely breach by the target board of the duty to seek the highest immediate value for the company in good faith.¹³

¹⁰ *Id.* at 183.

¹¹ *Omnicare v. NCS Healthcare*, 818 A.2d 914 (Del. 2003)

¹² *Id.* at 938.

¹³ *City of Miami Gen. Emps.’ & Sanitation Emps.’ Ret. Trust v. C&J Energy Servs., Inc.*, No. 9980-VCN (Del. Ch. Nov. 25, 2014), 2014 WL 7328818.

The Delaware Supreme Court reversed.¹⁴ In the Court’s view, there was no need “to involve an active solicitation, so long as interested bidders have a fair opportunity to present a higher-value alternative, and the board has the flexibility to eschew the original transaction and accept the higher-value deal.”¹⁵

Among the important factors in the *C&J Energy* decision, the Delaware Supreme Court noted that a majority of the target directors were independent,¹⁶ that the target termination fee associated with the fiduciary out to agree to higher bids was only at approximately 2.3% of the deal value,¹⁷ and that stockholders had the ability “to freely accept or reject the board’s preferred course of action.”¹⁸ This last point is crucial because it introduces something that *Corwin* will reinforce a year later: the elevation of shareholder voting as a better substitute than litigation in protecting shareholders' rights because “the stockholders subject to irreparable harm are . . . capable of addressing that harm themselves by the simple act of casting a ‘no’ vote.”¹⁹

Notably, the *C&J Energy* opinion stressed that *Revlon* is more about illegal defenses against a disfavored bidder than about running a proper sale process when no other bidders emerge:

“It is too often forgotten that *Revlon*, and later cases like *QVC*, primarily involved board resistance to a competing bid after the board had agreed to a change of control, which threatened to impede the emergence of another higher-priced deal. No hint of such a defensive, entrenching motive emerges from this record.”²⁰

¹⁴ *C & J Energy Services, Inc. v. City of Miami General Employees*, 107 A.3d 1049, 1054 (Del. 2014).

¹⁵ *Id.* at 1070. For an account chronicling the change of attitude of Delaware courts toward single-bidder process, see Laster (2018), pp. 204-19.

¹⁶ *C & J Energy*, 107 A.3d 1049, at 1070.

¹⁷ *Id.* at 1063-70.

¹⁸ *Id.* at 1068.

¹⁹ *Id.* at 1072.

²⁰ *Id.* at 1053.

Indeed, injunctions in the context of a one-bidder deal are extremely rare.²¹

2.3. *Corwin*

In *Corwin*, plaintiffs sought to challenge a stock-for-stock merger between KKR & Co. L.P. (“KKR”) and KKR Financial Holdings LLC (“Financial Holdings”). In the merger, each share of Financial Holdings’s was exchanged for 0.51 of a share of KKR stock, which, on the day the transaction was announced, implied a 35% premium over the unaffected market price of Financial Holdings for an aggregate value of approximately \$2.6 billion. The merger agreement contained mild deal protection devices such as a fairly low break-up fee (1% of deal value), a no-shop subject to customary fiduciary-outs, and matching rights for KKR (the target had to submit any alternative proposal to KKR within one day and KKR had four business days to match or improve it before the target could negotiate with the rival bidder).²² Under the merger agreement, the requisite majority to approve the merger was a majority of shares held by persons other than KKR and its affiliates.²³ On April 30, 2014, the merger was approved by the target’s shareholders, including a majority of the shares held by stockholders other than KKR and its affiliates.²⁴

At the motion to dismiss stage, plaintiffs attacked the transaction on the grounds that it was subject to entire fairness because they alleged KKR was, by virtue of the management agreement,

²¹ Vice Chancellor Laster made this point clear in a scholarly article. Laster (2013), p. 48 (quoting from *In re Netsmart Techs. S’holder Litig.*, 924 A.2d 171, 208 (Del. Ch. 2007): “When a plaintiff asks the Court of Chancery ‘to enjoin a transaction and another higher-priced alternative is not immediately available, [the court] has been appropriately modest about playing games with other people’s [i.e., the stockholders’] money.’” (brackets in original.)). *Cf. also* *Koehler v. NetSpend Holdings, Inc.*, Civil Action No. 8373-VCG, 2013 WL 2181518, at *23-24 (Del. Ch. May 21, 2013) (refusing, in the absence of a rival bid, to enjoin a transaction prior to a shareholder vote, even if plaintiffs demonstrated likelihood of success on the merits and irreparable harm); *In re Cogent, Inc. S’holder Litig.*, 7 A.3d 487, 515 (Del. Ch. 2010) (arguing that “it would be imprudent to terminate the only deal available, when the stockholders can make that decision for themselves.”).

²² *In re KKR Fin. Holdings LLC S’holder Litig.*, 101 A.3d 980, 988 (Del. Ch. 2014).

²³ *Id.*

²⁴ *Id.* at 988-89.

the controlling stockholder of Financial Holdings.²⁵ The Chancery Court ruled in favor of the defendants²⁶ and added that “[e]nhanced judicial scrutiny under *Revlon* is not implicated in this action because the stock-for-stock merger involved widely-held, publicly traded companies.”²⁷ However, as the plaintiffs on appeal contested this point,²⁸ the Delaware Supreme Court decided it did not have to rule on whether *Revlon* was triggered because it gave a ruling that expanded that of the Chancery Court by applying it *also* to *Revlon* transactions:

“[W]e need not delve into whether the Court of Chancery’s determination that *Revlon* did not apply to the merger is correct for a single reason: it does not matter. Because the Chancellor was correct in determining that the entire fairness standard did not apply to the merger, the Chancellor’s analysis of the effect of the uncoerced, informed stockholder vote is outcome-determinative, even if *Revlon* applied to the merger.”²⁹

²⁵ *Id.* at 991.

²⁶ KKR did not own a majority of the stock of Financial Holdings. Further, neither the Chancery Court nor the Supreme Court found what is considered necessary to establish control when majority control is not present: “a combination of potent voting power and management control such that the stockholder could be deemed to have effective control of the board without actually owning a majority of stock.” *Corwin*, 125 A.3d at 307-08.

²⁷ *In re KKR*, 101 A.3d. at 989 (citing *Arnold v. Soc’y for Sav. Bancorp, Inc.*, 650 A.2d 1270, 1290 (Del.1994): “[T]here is no ‘sale or change in control’ when ‘[c]ontrol of both [companies] remain[s] in a large, fluid, changeable and changing market[,]’” which in turn quoted *Paramount Commc’ns Inc. v. QVC Network Inc.*, 637 A.2d 34, 47 (Del.1994)).

²⁸ On appeal, the plaintiffs argued that ownership in KKR was not dispersed after the merger because “KKR is a limited partnership that is controlled by its managing partner, which is in turn controlled by KKR’s founders.” *Corwin*, 125 A.3d at 308 n.12. While the defendants lamented that the *Revlon* claim was a novel one that “should be made in the trial court initially, and not on appeal[,]” Chief Justice Strine decided to not rule on the issue for his ruling would absorb a *Revlon* claim if theoretically applicable (though he noted “the defendants are correct in their argument that the plaintiffs should have fairly raised their *Revlon* argument below and did not.”). *Id.*

²⁹ *Corwin*, 125 A.3d at 308.

The Delaware Supreme Court thus upheld the Chancery Court decision, establishing that “when a transaction not subject to the entire fairness standard is approved by a fully informed, uncoerced vote of the disinterested stockholders, the business judgment rule applies.”³⁰

Whilst on appeal, the plaintiffs complained that broadening the business judgment rule would water down *Unocal* and *Revlon*, Chief Justice Leo Strine stated that such cases were “primarily designed to give stockholders and the Court of Chancery the tool of injunctive relief to address important M&A decisions in real time, before closing . . . not tools designed with post-closing money damages claims in mind.”³¹ Indeed, among the crucial factors for the decision, he mentioned that

[W]hen the real parties in interest—the disinterested equity owners—can easily protect themselves at the ballot box by simply voting no, the utility of a litigation-intrusive standard of review promises more costs to stockholders in the form of litigation rents and inhibitions on risk-taking than it promises in terms of benefits to them.³²

Before Corwin, investors could rely on two separate levels of protection: their vote and the possibility to sue directors for breach of their fiduciary duties if the sale process was flawed. The crucial question is whether shareholder approval is a good substitute for process. Nowadays, the vote might be the sole protection for most deals, that is, deals in which no rival bid emerges (and where the expectation is that shareholders will likely approve). Given that rejection votes are very

³⁰ *Id.* at 309.

³¹ *Id.* at 312 (“the standards [*Unocal* and *Revlon*] articulate do not match the gross negligence standard for director due care liability under Van Gorkom, and with the prevalence of exculpatory charter provisions, due care liability is rarely even available”) (footnote omitted).

³² *Id.* at 313.

rare in the merger context (Gatti 2018), the *Corwin* defense significantly narrows the availability of post-closing damages and reduces the constraints of directors and officers.

On its face, *Corwin* reduces shareholder protection in M&A. Many legal scholars see *Corwin* as the poster child of an ongoing process that has been emphatically labeled with expressions such as “Delaware’s retreat” (Cox & Thomas, 2018; Korsmo, 2019), “the fall of Delaware standards” (Davidoff Solomon & Thomas 2019), and even “the death of corporate law” (Goshen & Hannes 2019). Indeed, to some authors, “heightened judicial scrutiny [in M&A] has . . . become something of a relic of the freewheeling 1980s” (Griffith & Lund 2019, p. 1151). As one commentator put it, “*Corwin* . . . represents a new direction in merger litigation, one that reduces directors’ legal obligations to, as a practical matter, full disclosure” (Lipton 2018, p. 318). Others added that the judiciary’s “clear message is that enhanced scrutiny is now generally unavailable. The sole constraint is now the shareholder vote” (Griffith & Lund 2019, p. 1164). Another author concluded that the decision “drastically limit[s] the ability of plaintiffs to pursue post-closing fiduciary duties claims against boards of directors in M&A transactions” (Anabtawi 2019, p. 192).

2.4. Previous empirical literature

The empirical literature has typically explored takeovers in general, or *Revlon* duties in general, without particular regard to the recent developments in the case law. Cain et al. (2020) put together a dataset of 1913 transactions between 2003 and 2017. Comparing deals subject to *Revlon* duties and others, they find that *Revlon* is associated with more protracted negotiations. They find that *Revlon* deals require more rounds of bidding and more days of negotiation until completion, they are more likely to attract multiple bidders and provide shareholders with larger premiums. Their results hold only within Delaware, thus indicating that they are linked to the doctrine.

Gubler (2021) looks at a random sample of 290 deals between 2009 and 2016, finding that Revlon duties are associated with active (rather than passive) market checks. He finds that Revlon duties correlate with higher returns and premia but argues that this is because the Revlon variable primarily indicates a cash deal once the deal process is controlled for. Including an interaction term between Revlon duties and the number of deals (which is non-significant), he suggests that while Revlon may affect the bidding process, it does not affect the final deal choice. Cain et al. (2020, p. 1715, note 103) disagree with Gubler (2021) on the presence of endogeneity.

Using a sample of deals between 1975 and 2000, Restrepo (2023) compares transactions subject to Revlon with others in a difference-in-difference model. He finds that the *Revlon* doctrine deals is associated with higher returns for shareholders.

In a somewhat similar setup, Restrepo & Subramanian (2017) look at the impact of a 2011 reform of the UK Takeover Code that prohibited many types of deal protection and found that the reform likely resulted in an increased number of deals in the UK (compared to other European countries). They did not find any evidence of an impact on the incidence of competing bids, deal jumping, premiums, and deal completion.

Some empirical literature similarly examines the effects of changes in Delaware law but relating to other issues. In particular, Restrepo (2021) looks at the impact of the *M & F Worldwide* case on freezeout mergers. He finds an increase in the use of majority-of-the-minority conditions in his control group but no evidence for higher premia or returns.

2.5. Hypotheses

If *Corwin* and/or *C&J Energy* were as impactful as scholars feared, one would have expected one of two things to happen, if not shortly after such decisions, at least gradually over time. First, more deals will be announced if they have become easier to complete (***hypothesis 1***).

Second, one would expect the incidence of certain M&A terms to increase, given that the courts will scrutinize them less strictly. The size of lock-ups and target termination fees should increase in the aftermath of such decisions (*hypothesis 2*). Lock-ups and termination fees protect the deal with the merger partner the target company prefers by providing it with a consolation price if another bidder prevails.³³ However, when the size of the lock-up relative to the aggregate deal price reaches certain levels, further bidding is disincentivized (if not made unfeasible altogether³⁴) because a termination fee “discourages second bidders from bidding [by] siphon[ing] value out of the target company for the first bidder’s benefit in the event of an overbid” (Restrepo & Subramanian 2017, p. 77). With fewer constraints stemming from the *Revlon/Unocal*³⁵ enhanced scrutiny, a target board could be more relaxed about lock-ups that “foreclose further bidding to stockholders’ detriment.”³⁶

Similarly, if such cases impacted M&A activity, one would expect deals with pre-signing market checks to decrease (*hypothesis 3*). A pre-signing market check consists of expressly putting the company up for sale and soliciting bids, which is generally considered the optimal way to obtain the highest price for the shareholders. The fewer the constraints from *Revlon*, the less inclined target boards to canvas the market before entering into an M&A transaction (especially because buyers would press them not to canvas).

³³ Lock-ups, including target termination fees, are deal protection devices aimed at inducing the other side to enter into the transaction despite the risk of being topped by a higher bid. Lock-ups can be granted in favor of a white knight (in case a takeover attempt is already ongoing and the target prefers another buyer to the original offeror) or a first-bidder (in the case of a friendly transaction). Lock-ups are essentially consolation prices: without a lock-up, a white knight or first bidder would otherwise worry it could become a stalking horse, should their offer not prevail in an auction for control. (Gatti 2020).

³⁴ In fact, the lock-ups *Revlon* granted to the white knight turned out to be invalid (*Revlon*, 506 A.2d, at 183). For a detailed description of the lock-up debate, see Coates & Subramanian (2000).

³⁵ See *supra* note 2.

³⁶ *Revlon*, 506 A.2d, at 183.

For similar reasons, if *C&J Energy* and *Corwin* were impactful and *Revlon* less of a constraint, one would expect fewer go-shop provisions even when a pre-signing market check is also absent (***hypothesis 4***). Common wisdom is that if a board does not perform a market check before selling the company, it would be best practice to introduce a go-shop period to obtain better offers after announcing the original deal. However, this has hardly ever been something deal planners have ever felt compelled to follow as a matter of law (Subramanian & Zhao 2020). The decreased risk of *Revlon* liability should suggest target boards abandon this safeguard. For the go-shops that still are present, if *Corwin* and *C&J Energy* were impactful, one would expect their length to decrease to give even fewer chances to a potential topping bidder (***hypothesis 5***).

Further, if *C&J Energy* and *Corwin* were impactful, they could make matching rights, which give a first-bidder the right to match a superior proposal from a rival bidder (Quinn 2011), even more ubiquitous (***hypothesis 6***) and longer (***hypothesis 7***).

Next, if *Corwin/C&J Energy* truly made *Revlon* (or *Unocal*, for that matter) weaker, one would expect one or more of the above indicators of a flawed process to grow in the aftermath of such decisions and, as a result, a decrease in the frequency of competing bids given the disincentives for rival bidders to join a control battle in which the first bidder is granted significant advantages (***hypothesis 8***).

Finally, one might expect effects either on takeover premia or on returns captured by shareholders after the announcement of a transaction. If there is less substantive judicial scrutiny of deals, bidders might be able get away with offering less money to stockholders, while both sides of a transactions may be able to prepare business combinations that are less favorable to investors (***hypothesis 9***).

3. Overview of data and variables

The core data were provided by Dealpoint Data (DPD) in February 2019. The dataset includes all 1823 deals (including mergers and tender offers) involving publicly traded companies announced from 2010 through 2018. We selected this period because it began after the 2008/09 financial crisis and because the Delaware Supreme Court's cases in whose impact we are most interested (*C&J Energy* and *Corwin*) were decided approximately in the middle of the period (2014 and 2015, respectively). From this dataset, we removed all deals where the target was not a member of the Russell 3000 at the time, all foreign targets, all deals with a target equity value of less than USD 100 Million (as reported by DPD), as well as all bank, insurance, and REIT targets. The DPD dataset provided extensive information about deal terms, deal value, and deal premia (1 day, 30 days, and 90 days out). We reviewed the proxy statements (for merger transactions) and the offer to purchase (for tender offers) in the SEC's EDGAR database. Where possible, we noted what percentage of stock was covered by a voting, tender, or support agreements, and what share of stock was owned by directors and officers.

Based on this, we coded a dummy variable of whether a transaction was for a target company whose control was contestable. We focus on contestable companies because it is with this type of firms that we can experience rival bids, and thus the *Revlon* doctrine plays a significant role. Notably, the *QVC* opinion made it clear that *Revlon* does not apply when “[c]ontrol of both [companies] remain[s] in a large, fluid, changeable and changing market.”³⁷ Under *QVC* enhanced scrutiny is justified to compensate shareholders for the “loss of voting rights” once the company becomes subject to one's control. But if a company is already not contestable because it is under

³⁷ *QVC*, 637 A.2d at 47.

the control of a shareholder, its minority shareholders have already “lost” the relevance of their voting rights (or bought shares at a lower price) because a change of control could not occur unless the controlling shareholder so decides. As a result, we disregard mergers between parents and subsidiaries and mergers in connection with a divestiture of a controlling interest, whereby *Revlon* plays a much smaller role because the exiting controlling stockholder is expected, and very often contractually bound, to support the transaction. In these so-called “done deals,” the outcome is not determined by market forces, and fiduciary duties are less of a constraint. Thus, we think that any possible change stemming from *C&J Energy* and *Corwin* is significantly less relevant.³⁸

For the remaining 996 firms, we matched our dataset with the target’s most recent 10-K before the relevant transaction (from Compustat) to obtain financial data and other information, such as the age of the target and its industry classification. We also created a deal activity variable by counting the deals announced during the past 90 days.³⁹ Finally, we obtained cumulative abnormal returns for the target firms from CRSP, using the Fama-French 3-part model.⁴⁰

Definitions of our variables are provided in Table 1. Table 2 provides descriptive statistics of the variable comparing Delaware and other states. Table 3 shows descriptive statistics within

³⁸ In that spirit, we carve out from the sample all mergers that are accompanied by voting or supporting agreements covering 35% or more of the voting stock, unless such agreements contain outs for shareholders if directors change their recommendation, in which case the target remains potentially contestable pending shareholder approval. Although the cut-off is admittedly arbitrary, any commitment to vote shares in excess of 35% makes it extremely improbable that the merger is voted down, as corporate planners will only need an extra 15% of voting stock in support out of a remaining float of 65% (so they would need approximately need 2.3 out of every 10 votes remaining). Because of this carve-out, mergers such as the acquisitions by Disney of Pixar and Marvel (with a voting agreement covering 40% and approximately 37% of the voting stock, respectively) are not in the sample and disregarded from observation.

³⁹ We extrapolated the number of deals for the transactions in the first 90 days of the dataset. The variable may help to address possible selection bias resulting from the incidence of certain deals changing as a result of *C&J Energy* or *Corwin*.

⁴⁰ The Fama-French model is preferable because it takes firm size into account, given that many of our target firms are outside the S&P 500.

Delaware only and compares strategic and financial buyers. Pearson correlations are shown in Table 4.

Table 1: Variables

Variable	Definition	Source(s)
1 Day Premium %	Indicates the difference between the current Price Per Share offered as consideration in the transaction and the 1 Day Closing Price, reflected as a percentage. For example, if the target's 1 Day Closing Price was \$50 and the current Price Per Share is \$100, then the 1 Day Premium = $((\text{Price Per Share} - 1 \text{ Day Price}) / 1 \text{ Day Price}) * 100$. Therefore, in this example the 1 Day Premium: $((100 - 50) / 50) * 100 = 100\%$.	Dealpoint Data
30 Day Premium %	Indicates the difference between the current Price Per Share offered as consideration in the transaction and the 30 Day Closing Price, reflected as a percentage. For example, if the target's 30 Day Closing Price was \$50 and the current Price Per Share is \$100, then the 30 Day Premium = $((\text{Price Per Share} - 30 \text{ Day Price}) / 30 \text{ Day Price}) * 100$. Therefore, in this example the 30 Day Premium: $((100 - 50) / 50) * 100 = 100\%$.	Dealpoint Data
90 Day Premium %	Indicates the difference between the current Price Per Share offered as consideration in the transaction and the 90 Day Closing Price, reflected as a percentage. For example, if the target's 90 Day Closing Price was \$50 and the current Price Per Share is \$100, then the 90 Day Premium = $((\text{Price Per Share} - 90 \text{ Day Price}) / 90 \text{ Day Price}) * 100$. Therefore, in this example the 90 Day Premium: $((100 - 50) / 50) * 100 = 100\%$.	Dealpoint Data
Target State of Incorporation	Indicates the state where the company involved in the deal was incorporated at the time the deal was announced. We distinguish (a) Delaware, (b) other <i>Revlon</i> states, (c) non- <i>Revlon</i> states with constituency statutes specifically applying the BJR (Indiana, Ohio, Pennsylvania, North Carolina, Maryland, Virginia), and additional non- <i>Revlon</i> states with weak constituency statutes (Wisconsin, New York, Illinois, Missouri).	Dealpoint Data Barzuza (2009)
Target Termination Fee (%)	Target Termination Fee (\$m) / Equity Value (\$m)	Dealpoint Data
Go-Shop	A Yes/No flag indicating whether the definitive agreement specifically allows the target company to solicit competing bids for a specific period of time after it has entered into a definitive agreement. Generally, a merger agreement specifically prohibits the target company from shopping themselves or talking to potential competing bidders unless they have received a superior proposal. A go-shop provision allows for the target to solicit bids for a period of time, after which the traditional no solicitation provision goes into effect.	Dealpoint Data
Initial Matching Rights	A Y/N flag indicating whether the definitive agreement provides the buyer with an opportunity to negotiate with the target's board for a specific period of time after receipt of notice from the target board of their intended change in recommendation as a result of a superior proposal and propose modified terms that are sufficiently improved so as to preclude the target from effecting a change in recommendation.	Dealpoint Data
Initial Matching Period (days)	Indicates the number of calendar days during which the target must negotiate with the buyer during the initial matching rights period.	Dealpoint Data
Last Look Matching Rights	A Yes/No flag indicating whether the definitive agreement provides the buyer with a further right to negotiate with the target in the event that the other bidder revises the proposed terms of their superior proposal. These further rights to negotiate are considered "last look" matching rights because the buyer always has an opportunity to choose whether or not to negotiate to match after the latest revised offer from the competing bidder.	Dealpoint Data

Last Matching Periods (days)	Look	Identifies the number of calendar days during which the target must negotiate with the buyer during the 'last look' matching rights period.	Dealpoint Data
Matching Rights Fallaway	Right	A Yes/No flag indicating whether the definitive agreement eliminates the acquirer's matching rights for any reason, including if the competing superior proposal that the target board is considering is greater than the acquirer's offer price by more than a stated percentage. For example, if the competing bidder's offer is more than 10% above the acquirer's offer price, then the acquirer's contractual matching rights are eliminated. Or, if the target company receives more than a given number of superior proposals. For example, if the target receives more than 2 superior proposals, then the acquirer's matching rights go away.	Dealpoint Data
Competing Bid Type	Bid	Indicates the type of competing bid as all deal jumpers are competing bidders, but not all competing bidders are deal jumpers. Competing: indicates that a competing bidder has made an offer for a target who has already received an unfriendly offer and has not yet reached a definitive agreement. An example of this would be two different acquirers both making unfriendly offers for the same target company – they are competing bidders because they are both trying to acquire the same target, but the second bidder is not a deal jumper because the first acquirer does not have a definitive agreement in place with the target. Deal Jumper: indicates that a competing bidder has made an offer for a target who has already reached a definitive agreement with another acquirer. An example would be an acquirer who makes a competing offer during the go-shop window of the first deal – the second acquirer is a deal jumper because they are making a competing offer for the target that already has a definitive agreement in place with a different acquirer.	Dealpoint Data
Buyer Type		Indicates whether the acquirer is a strategic or financial buyer. Strategic: indicates that the acquirer in the deal is making a vertical or horizontal acquisition, generally within its own industry, and expects to gain market share or increased synergies through the acquisition. Financial Buyer: indicates that the acquirer in the deal is general concerned with the return on equity of the target company and may be looking to improve its operational improvements over time and possibly sell the company to create liquidity. Generally, financial buyers include private equity firms, also known as financial sponsors, who only invest a small portion of their own money in the acquisition and borrow the rest to pay for the acquisition.	Dealpoint Data
Go-Shop Period days	Period	Length of the Go-Shop period	Dealpoint Data
Auction		Auction / Pre-Market Check: A Yes/No flag indicating whether the target activity solicited offers for the company prior to signing a definitive agreement.	Dealpoint Data
Bad Process		An indicator that is 1 when there is neither a go-shop clause nor a pre-market check (or auction), and 0 otherwise.	Calculated from Dataset
Contestable		1 if less than 35% of stock subject to voting agreement and/or held by directors, officers or one or more blockholders (other than 13G filers)	SEC disclosures
Voting Agreement	Agreement	Percentage of stock subject to voting, tender or support agreement	SEC disclosures
Directors & Officers		Percentage of stock held by directors and officers	SEC disclosures
Total assets		Total assets according to most recent 10-K before announcement of deal	Compustat

Net loss	Indicator whether company had net loss on the most recent 10-K	Compustat
Tobin's Q	$\text{Tobin's Q} = (\text{AT} + \text{CSHO} * \text{PRCC_F} - \text{CEQ}) / \text{AT}$	Compustat
Leverage	Leverage ratio (Total liabilities / Total assets)	Compustat
Sales growth	Percentage growth of sales over previous year	Compustat
Age	Age of firm at announcement since IPO	Compustat and Dealpoint Data
RoA	Return on assets ($100 * \text{IB} / \text{AT}$)	Compustat
Cash ratio	Cash holdings as percentage of total assets	Compustat
Deal activity	Number of deals announced during the past 90 days (extrapolated for earliest deals in dataset).	Calculated from dataset
Industry	2-digit SIC Code	Compustat
Target CARs (-1, +1), (-1, +10), (-1, +30)	Cumulative abnormal returns for target stock around the announcement date calculated by CRSP within the WRDS platform, using an estimation window of 100 days, with a minimum number of valid returns of 70 and a gap of 50 days. We chose the option to use the Fama-French 3-part model for the computation. The CARs were multiplied by 100 to bring them to the same scale as the premia (percentage points rather than fractions).	CRSP
GDP growth	Quarterly GDP growth per state as a percentage relative to the previous quarter (annualized)	U.S. Bureau of Economic Analysis (BEA)

Table 2, Panel A: Continuous Variables (full dataset)

Variable	N	Mean	SD	N	Mean	SD	Test
	Delaware			other states			
termination fee %	745	3.512	1.003	244	3.33	0.691	F=6.947***
1-Day Premium	750	30.6	29.22	246	28.3	21.41	F=1.296
30-Day Premium	736	37.66	32.69	241	33.85	25.76	F=2.731*
90-Day Premium	731	48.88	100.3	241	39.42	30.71	F=2.076
CARs (-1/+1)	692	28.48	26.19	228	25.04	19.86	F=3.291*
CARs (-1/+10)	692	28.08	26.75	228	24.55	20.51	F=3.337*
CARs (-1/+30)	692	27.08	28.79	228	24.42	22.41	F=1.619
log (assets)	750	6.586	1.608	246	6.636	1.563	F=0.18
Tobin's Q	743	2.629	10.11	244	1.675	0.8638	F=2.162
leverage	747	0.5292	0.3098	246	0.4899	0.2375	F=3.312*
sales growth	731	12.02	48.71	245	5.516	21.94	F=4.082**
log (age)	750	2.568	0.7926	246	3.287	0.6291	F=167.761***
return on assets	750	-7.91	70.14	246	2.047	9.86	F=4.921**
cash ratio	742	18.35	18.14	241	12.63	13.59	F=20.287***
deal activity	750	33.3	6.843	246	32.92	6.655	F=0.571

Table 2, Panel B: Categorical Variables (full dataset)

Variable	N	Perc.	N	Perc.	Variable	N	Perc.	N	Perc.
	Delaware		Other states			Delaware		Other states	
Go Shop	750		246		Last Look Matching Rights	750		246	
... No	652	87%	220	89%	... No	65	9%	23	9%
... Yes	98	13%	26	11%	... Yes	685	91%	223	91%
Competing Bid	750		246		Matching Right Fallaway	750		246	
... No	688	92%	231	94%	... No	739	99%	239	97%
... Yes	62	8%	15	6%	... Yes	11	1%	7	3%
Auction	750		246		Post Corwin	750		246	
... No	278	37%	111	45%	... No	468	62%	164	67%
... Yes	472	63%	135	55%	... Yes	282	38%	82	33%
Bad process	750		246		Post C&J Energy	750		246	
... No	521	69%	154	63%	... No	402	54%	143	58%
... Yes	229	31%	92	37%	... Yes	348	46%	103	42%
Initial Matching Rights	750		246		Net loss	750		246	
... No	9	1%	6	2%	... No	442	59%	185	75%
... Yes	741	99%	240	98%	... Yes	308	41%	61	25%

Table 3, Panel A: Continuous Variables (Delaware only)

Variable	N	Mean	SD	N	Mean	SD	Test
Buyer Type	Financial			Strategic			
termination fee %	180	3.471	1.097	565	3.525	0.9716	F=0.388
1-Day Premium	180	24.36	23.51	570	32.57	30.55	F=10.945***
30-Day Premium	179	28.46	23.82	557	40.62	34.57	F=19.202***
90-Day Premium	179	33.59	29.18	552	53.84	113.8	F=5.543**
CARs (-1/+1)	154	21.64	19.74	538	30.43	27.47	F=13.732***
CARs (-1/+10)	154	20.98	20.1	538	30.12	28.06	F=14.241***
CARs (-1/+30)	154	19.76	23.44	538	29.17	29.83	F=13.009***
log (assets)	180	6.54	1.325	570	6.6	1.688	F=0.192
Tobin's Q	179	1.894	1.325	564	2.862	11.58	F=1.244
leverage	180	0.5752	0.2611	567	0.5146	0.3225	F=5.262**
sales growth	180	5.252	18.07	551	14.23	54.99	F=4.627**
log (age)	180	2.528	0.6612	570	2.581	0.8299	F=0.606
return on assets	180	-0.2415	13.71	570	-10.33	79.96	F=2.838*
cash ratio	179	16.92	14.6	563	18.81	19.12	F=1.479
deal activity	180	33.59	6.719	570	33.2	6.885	F=0.45

Table 3, Panel B: Categorical Variables (Delaware only)

Variable	N	Perc.	N	Perc.	Variable	N	Perc.	N	Perc.
Buyer Type	Financial		Strategic			Financial		Strategic	
Go Shop	180		570		Last Look Matching Rights	180		570	
... No	112	62%	540	95%	... No	10	6%	55	10%
... Yes	68	38%	30	5%	... Yes	170	94%	515	90%
Competing Bid	180		570		Matching Right Fallaway	180		570	
... No	164	91%	524	92%	... No	179	99%	560	98%
... Yes	16	9%	46	8%	... Yes	1	1%	10	2%
Auction	180		570		Post Corwin	180		570	
... No	44	24%	234	41%	... No	101	56%	367	64%
... Yes	136	76%	336	59%	... Yes	79	44%	203	36%
Bad process	180		570		Post C&J Energy	180		570	
... No	165	92%	356	62%	... No	92	51%	310	54%
... Yes	15	8%	214	38%	... Yes	88	49%	260	46%
Initial Matching Rights	180		570		Net loss	180		570	
... No	1	1%	8	1%	... No	116	64%	326	57%
... Yes	179	99%	562	99%	... Yes	64	36%	244	43%

Table 4: Pearson Correlations

	Termination fee %age	Go Shop	Competing Bid	Auction	bad process	Initial Match- ing Rights	Last Look Matching	Matching Right Falla- way	1-Day Pre- mium	30-Day Pre- mium	90-Day Pre- mium	CARs (-1/+1)	CARs (-1/+10)	CARs (-1/+30)	post Corwin	post C&J En- ergy	Delaware	Strategic Buyer	log (assets)	net loss	Tobin's Q	leverage	sales growth	log (age)	RoA	cash ratio
Go Shop	0.04																									
Compet- ing Bid	-0.03	-0.04																								
Auction	0.05	-0.12	-0.10																							
		***	***																							
bad pro- cess	-0.07	-0.26	0.11	-0.86																						
	**	***	***	***																						
Initial Matching Rights	-0.02	0.05	-0.06	0.09	-0.11																					
			*	***	***																					
Last Look Matching Rights	-0.02	0.03	-0.02	0.11	-0.10	0.40																				
				***	***	***																				
Matching Right Fallaway	-0.07	0.02	0.02	-0.05	0.02	0.02	0.04																			
	**																									
1-Day Premium	0.10	-0.02	-0.05	0	-0.01	0.03	0.01	-0.04																		
	***		*																							
30-Day Premium	0.06	-0.03	0.03	0	0	0.01	0.03	-0.05	0.72																	
	*								***																	
90-Day Premium	-0.06	-0.05	0.02	0	0.02	0.01	0.02	-0.02	0.27	0.37																
	*								***	***																
CARs (-1/+1)	0.09	0.01	-0.09	0.01	-0.04	0.01	0.02	-0.03	0.83	0.68	0.22															
	***		***						***	***	***															
CARs (-1/+10)	0.09	0	-0.06	0.01	-0.03	0.01	0.02	-0.04	0.82	0.67	0.21	0.98														
	***		**						***	***	***	***														
CARs (-1/+30)	0.07	0	-0.03	-0.01	-0.01	0.01	0.04	-0.05	0.78	0.65	0.19	0.92	0.95													
	**								***	***	***	***	***	***												
post Cor- win	0.06	-0.01	-0.06	0.12	-0.10	0.04	0.16	-0.01	-0.08	-0.04	0.01	-0.10	-0.10	-0.09												
	*		**	***	***		***		**			***	***	***												
post C&J Energy	0.02	-0.01	-0.03	0.12	-0.10	0.06	0.18	-0.02	-0.08	-0.04	0	-0.07	-0.07	-0.06	0.83											
				***	***	**	***		**			**	**	**	***											

Table 4: Pearson Correlations

	Termination fee %age	Go Shop	Competing Bid	Auction	bad process	Initial Match- ing Rights	Last Look Matching	Matching Right Falla-	1-Day Pre- mium	30-Day Pre- mium	90-Day Pre- mium	CARs (-1/+1)	CARs (-1/+10)	CARs (-1/+30)	post Corwin	post C&J En- ergy	Delaware	Strategic Buyer	log (assets)	net loss	Tobin's Q	leverage	sales growth	log (age)	RoA	cash ratio
Delaware	0.08 ***	0.03	0.04	0.07 **	-0.06 **	0.04	0.01	-0.04	0.04	0.05 *	0.05	0.06 *	0.06 *	0.04	0.04	0.04										
Strategic Buyer	0.01	-0.40 ***	-0.01	-0.14 ***	0.26 ***	-0.03	-0.05	0.06 *	0.10 ***	0.14 ***	0.08 ***	0.12 ***	0.12 ***	0.12 ***	-0.06 *	-0.02	-0.01									
log (as- sets)	-0.10 ***	0	0.03	-0.25 ***	0.27 ***	-0.05	0.05	0.04	-0.26 ***	-0.24 ***	-0.20 ***	-0.28 ***	-0.27 ***	-0.22 ***	0.10 ***	0.11 ***	-0.01	0.04								
net loss	0.16 ***	-0.05	-0.04	0.11 ***	-0.10 ***	-0.01	-0.04	-0.01	0.21 ***	0.20 ***	0.13 ***	0.23 ***	0.23 ***	0.19 ***	0.09 ***	0.10 ***	0.15 ***	0.05 *	-0.28 ***							
Tobin's Q	-0.01	-0.03	-0.03	-0.02	0.03	0.01	-0.08 ***	-0.01	0.16 ***	0.04	0	0.11 ***	0.10 ***	0.09 ***	0	0	0.05	0.04	-0.18 ***	0.07 **						
leverage	0.11 ***	0.02	0.02	-0.11 ***	0.12 ***	-0.05	0.02	0.01	0.01	-0.03	-0.02	-0.07 **	-0.07 **	-0.04	0.10 ***	0.08 **	0.06 *	-0.06 *	0.26 ***	0.08 **	0.38 ***					
sales growth	-0.01	-0.03	0.07 **	-0.03	0.04	0.01	-0.04	-0.01	0.01	0.05	-0.01	-0.01	0	0	-0.01	0.02	0.06 **	0.08 **	-0.05	0.03	0.19 ***	-0.06 *				
log (age)	-0.11 ***	0	0.06 *	-0.12 ***	0.10 ***	-0.04	-0.04	0.02	-0.12 ***	-0.16 ***	-0.08 **	-0.16 ***	-0.16 ***	-0.14 ***	0	-0.02	-0.38 ***	0.03	0.32 ***	-0.25 ***	-0.11 ***	0.04	-0.14 ***			
RoA	-0.07 **	0.04	0.01	0.01	-0.02	-0.01	0.07 **	0.01	-0.23 ***	-0.13 ***	-0.09 ***	-0.22 ***	-0.22 ***	-0.20 ***	-0.01	-0.01	-0.07 **	-0.06 *	0.27 ***	-0.25 ***	-0.91 ***	-0.42 ***	-0.03 ***	0.17 ***		
cash ratio	0	-0.04	-0.02	0.12 ***	-0.11 ***	0.01	-0.02	0	0.11 ***	0.15 ***	0.19 ***	0.17 ***	0.16 ***	0.13 ***	-0.04	-0.01	0.14 ***	0.04	-0.45 ***	0.24 ***	0.08 **	-0.22 ***	0.12 ***	-0.29 ***	-0.17 ***	
deal ac- tivity	0.01	-0.02	0.04	0.04	-0.01	0.03	0.08 ***	0.05	-0.06 **	-0.06 *	-0.01	-0.05	-0.04	-0.02	0.37 ***	0.34 ***	0.02	-0.02	0.07 **	0.06 *	-0.01	0.04	-0.05	0.01	0.01	-0.05 *

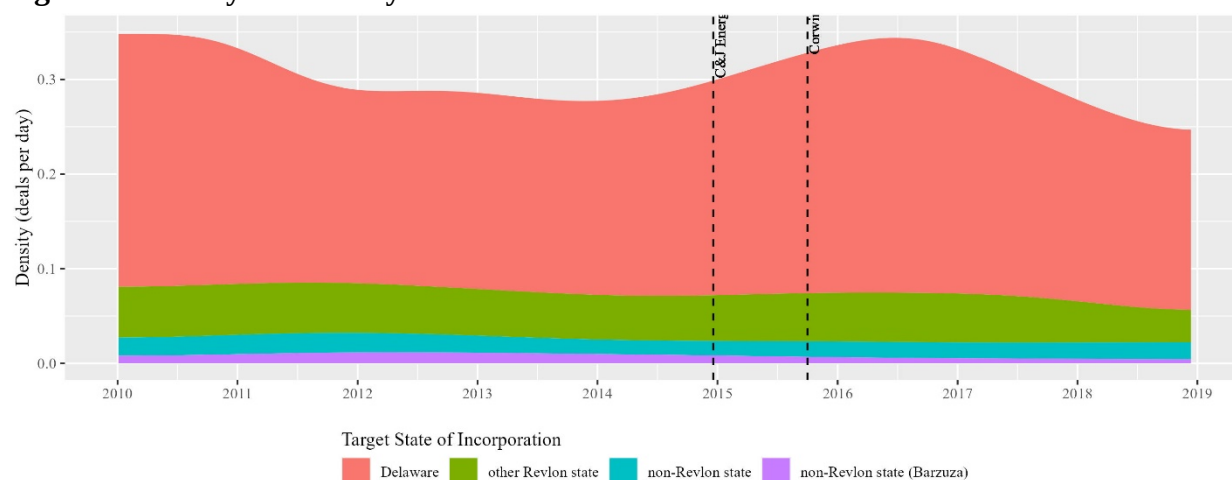
4. The number of transactions over time

For our subsequent analysis of the possible impact of the cases, it is essential to observe that these apply only to specific deals or some deals potentially more than others. First, there was an upswing in the number of cases in 2015 and 2016 driven by Delaware firms (which was followed by a decline). Without any claim to causality, we can say that a larger number of Delaware deals followed the cases, while mergers in other states remain stable. This can be seen in the upper part of Table 5 and the equivalent density plot in Figure 1.

Table 5: Target State of Incorporation and Buyer Type by Year

	2010	2011	2012	2013	2014	2015	2016	2017	2018
Delaware	99 (77.95%)	76 (68.47%)	79 (71.17%)	70 (72.92%)	78 (78%)	94 (75.81%)	102 (81.6%)	83 (73.45%)	69 (77.53%)
other Revlon state	21 (16.54%)	20 (18.02%)	18 (16.22%)	17 (17.71%)	16 (16%)	18 (14.52%)	18 (14.4%)	21 (18.58%)	12 (13.48%)
non-Revlon state	4 (3.15%)	11 (9.91%)	8 (7.21%)	6 (6.25%)	3 (3%)	9 (7.26%)	4 (3.2%)	6 (5.31%)	7 (7.87%)
non-Revlon state (Barzusa)	3 (2.36%)	4 (3.6%)	6 (5.41%)	3 (3.12%)	3 (3%)	3 (2.42%)	1 (0.8%)	3 (2.65%)	1 (1.12%)
Total	127	111	111	96	100	124	125	113	89
Financial	33 (25.98%)	25 (22.52%)	26 (23.42%)	26 (27.08%)	16 (16%)	21 (16.94%)	32 (25.6%)	36 (31.86%)	22 (24.72%)
Strategic	94 (74.02%)	86 (77.48%)	85 (76.58%)	70 (72.92%)	84 (84%)	103 (83.06%)	93 (74.4%)	77 (68.14%)	67 (75.28%)

Figure 1: Density of Deals by State over Time



Following Restrepo and Subramanian (2017), we set up count data regressions to determine whether the cases had a statistically discernable effect on the number of transactions in Table 6. For this regression we have 1,836 combinations of quarters and states (36 quarters, 51 states including the District of Columbia), 1,596 of have zero deals. Models 1, 2, 4 and 5 are negative binomial models.⁴¹ Models 3 and 6 include control variables that aggregate deal characteristics per state. As these are not applicable to units with zero bids, these models are hurdle negative binomial regressions. We report the results of the second stage only. Consistent with a visual inspection of the above table and figure, we find no evidence that either of the two cases had an effect on the number of transactions in Delaware relative to other states.⁴²

⁴¹ Overdispersion counterindicates the use of a Poisson regression.

⁴² We also performed similar regressions with only two groups per year, namely Delaware v. non-Delaware, with very similar results.

Table 6: Quarterly Number of Deals

<i>Dependent variable: bids per state / quarter</i>						
	<i>Negative binomial</i>		<i>Hurdle negative binomial</i>	<i>Negative binomial</i>		<i>Hurdle negative binomial</i>
	(1)	(2)	(3)	(4)	(5)	(6)
Delaware	6.539*** (1.003)	6.547*** (1.003)	4.026*** (0.210)	6.559*** (1.002)	6.561*** (1.002)	3.968*** (0.185)
post C&J Energy	-0.105 (0.130)	-0.102 (0.129)	-0.050 (0.318)			
Delaware x post C&J Energy	0.184 (0.154)	0.149 (0.153)	0.088 (0.330)			
post Corwin				-0.170 (0.140)	-0.166 (0.140)	-0.363 (0.372)
Delaware x post Corwin				0.194 (0.165)	0.160 (0.164)	0.354 (0.384)
GDP growth		-0.009 (0.006)	-0.010* (0.006)		-0.010* (0.006)	-0.011* (0.006)
All cash deals			-0.272 (0.266)			-0.283 (0.264)
Acquirer Publicly Traded			-0.101 (0.395)			-0.053 (0.391)
Financial Acquirer			-0.052 (0.449)			0.013 (0.451)
Constant	-3.538*** (1.002)	-3.529*** (1.002)	-0.721* (0.437)	-3.530*** (1.001)	-3.520*** (1.001)	-0.686 (0.423)
Observations	1,836	1,836	1,836	1,836	1,836	1,836
Log Likelihood	-718.976	-717.780	-855.326	-718.964	-717.536	-854.874
theta	73.980 (78.878)	118.321 (183.564)	191.9837	67.187 (66.525)	114.714 (173.565)	187.0512
Akaike Inf. Crit.	1,543.951	1,543.559	1,738.653	1,543.928	1,543.073	1737.748

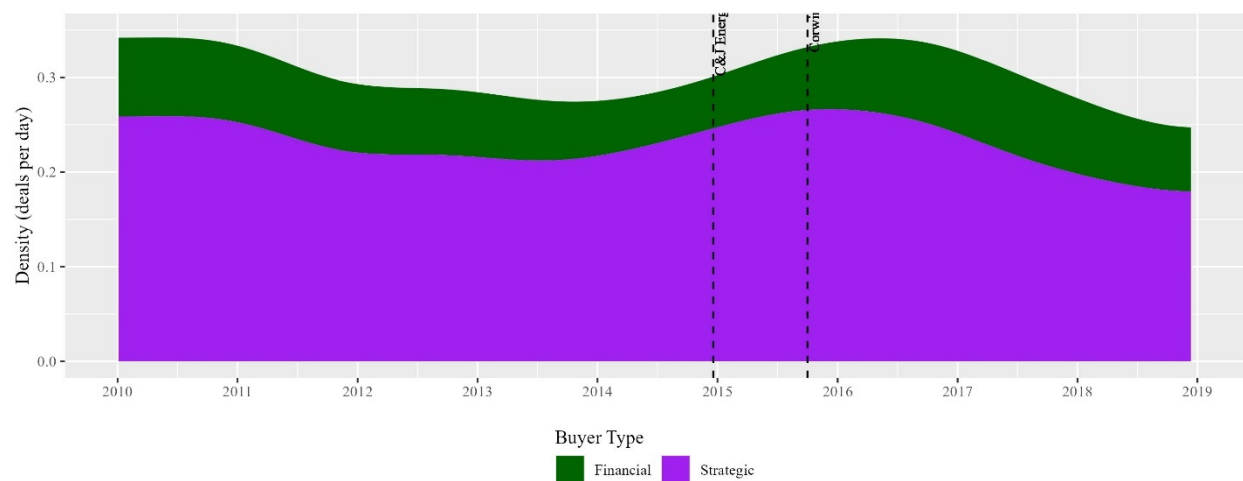
Notes: *p<0.1; **p<0.05; ***p<0.01

The dependent variable is the number of bids in a state in a given quarter. There are 1596 quarter-state observations where there are no bids. Models 1, 2, 4 and 5 are negative binomial regressions with state fixed effects. Columns 3 and 6 show the results of the second stage of a hurdle negative binomial model.

Second, one could ask whether the absolute or relative incidence of strategic and financially oriented deals changed. The lower part of Table 5 shows a spike in the number of strategic

acquisitions in 2015-2016, followed by one among financial acquisitions in 2016-2017 (mainly in Delaware). This is also illustrated by the density plot in Figure 2, which shows that the frequency of strategic deal announcements peaked approximately when *Corwin* was decided.

Figure 2: Density of Buyer Types over Time



As above, we also provide negative binomial regressions for the number of bids with a particular buyer type (strategic or financial) in Table 7 below. There are only 72 observations because we have 36 quarters and two types of buyers. In addition to the basic difference-in-difference specification, we add state-level economic growth as a control variable, as well as average deal characteristics for each unit as control variables (following Restrepo and Subramanian 2017). Interestingly, we find weak evidence of an increase in financial deals after Corwin (which may be due to the trough among financial acquisitions in 2014 and 2015). In the next section, we will return to the distinction between financial and strategic acquisitions when we explore possible effects on deal characteristics.

Table 7: Quarterly Number of Deals by Acquirer Type in Delaware

<i>Dependent variable: bids per acquirer type / quarter</i>						
	(1)	(2)	(3)	(4)	(5)	(6)
Financial	-1.215*** (0.127)	-1.215*** (0.125)	-0.905*** (0.336)	-1.279*** (0.116)	-1.278*** (0.113)	-0.994*** (0.329)
post C&J Energy	0.047 (0.097)	0.008 (0.096)	-0.043 (0.103)			
Financial x post C&J Energy	0.131 (0.184)	0.131 (0.181)	0.168 (0.181)			
post Corwin				-0.064 (0.102)	-0.099 (0.099)	-0.127 (0.097)
Financial x post Corwin				0.352* (0.189)	0.350* (0.185)	0.363** (0.183)
GDP growth		-0.012* (0.006)	-0.011* (0.006)		-0.012** (0.006)	-0.011* (0.006)
Deal Value			0.000 (0.000)			0.000 (0.000)
All cash deals			-0.455 (0.344)			-0.463 (0.332)
Acquirer Publicly Traded			0.217 (0.394)			0.159 (0.388)
Constant	2.741*** (0.065)	2.762*** (0.064)	2.865*** (0.421)	2.783*** (0.058)	2.798*** (0.056)	2.940*** (0.415)
Observations	72	72	72	72	72	72
Log Likelihood	-188.884	-187.098	-185.907	-187.873	-185.747	-184.358
theta	48.777 (46.426)	65.134 (77.649)	102.802 (182.544)	53.950 (55.039)	86.427 (130.311)	196.032 (626.038)
Akaike Inf. Crit.	385.768	384.196	387.814	383.747	381.493	384.715

Notes: *p<0.1; **p<0.05; ***p<0.01
 Negative binomial regression with the number of bids with a particular acquirer type (strategic or financial) by quarter as dependent variable

5. Statistical analysis of deal characteristics

5.1. Terms of the agreement relating to the auction process

We set up a series of multivariate Difference-in-Difference regressions to test our hypothesis about whether the C&J Energy and Corwin cases impacted deal terms. The primary regression model looks as follows:

$$y = \alpha + \beta X + \gamma \text{Delaware} + \eta \cdot \text{post}_{\text{case}} + \lambda \cdot \text{Delaware} \times \text{post}_{\text{case}} + \tau \cdot \text{quarter} + \nu \cdot \text{industry} + \varepsilon$$

Here, y is the dependent variable, i.e., the deal term of interest. α is the constant, X is a matrix of control variables, and β is the vector of coefficients. The subsequent term sets up a difference-in-difference model where we interact Delaware incorporation with the applicability of the respective case, hypothesizing that the case would only (or primarily) have effects relating to Delaware targets. We also include quarter-fixed effects to account for changes in the economic environment over time and industry-fixed effects (with the coefficients represented by τ and ν , respectively). The main coefficient of interest is therefore λ . ε is the error term. This section looks at target termination fees, market checks go-shop clauses, and an overall “bad process” variable. In combination, these variables should tell us whether a specific deal

As will be seen below, most of our regressions fail to reject the null hypothesis of no effect of the cases, it is helpful to discuss whether our analysis is sufficiently powered to identify a meaningful effect. We have calculated Cohen’s d , a measure of minimum detectable effect size (MDES), for all of our OLS regressions and report the results in Table 18 in the Appendix.⁴³ d can be transformed to the scale of the dependent variable by multiplying it with the pooled standard error (of the treatment and control groups).⁴⁴ Consequently, there are reasons to believe that our regressions are sufficiently powered to pick up economically meaningful effects.

⁴³ Cohen (1988), p. 20. The canonical formula for Cohen’s d is $d = \frac{m_t - m_c}{\sigma}$, where m_t and m_c are the means of the treatment and control groups, and σ is their pooled standard deviation. As a measure of MDES, we report the theoretical minimum d assuming a desired significance level of 5% and a statistical power of 80%, both standard values in the literature. For example, if our estimated $d = 0.2$, when applying a 5% significance level, there is only a 20% probability of a Type II error (false negative) if the effect of the variable corresponds to a difference in means that is 20% of the pooled standard deviation. Standard values in the literature for “small,” “medium,” and “large” effects are 0.2, 0.5, and 0.8. Our theoretical MDES is between 0.2 and 0.25 for most regressions, and between 0.3 and 0.35 for regressions where observations after Corwin have been removed.

⁴⁴ See, generally, Athay and Imbens (2017), p. 102, and Bloom (1995).

5.1.1. Target termination fees

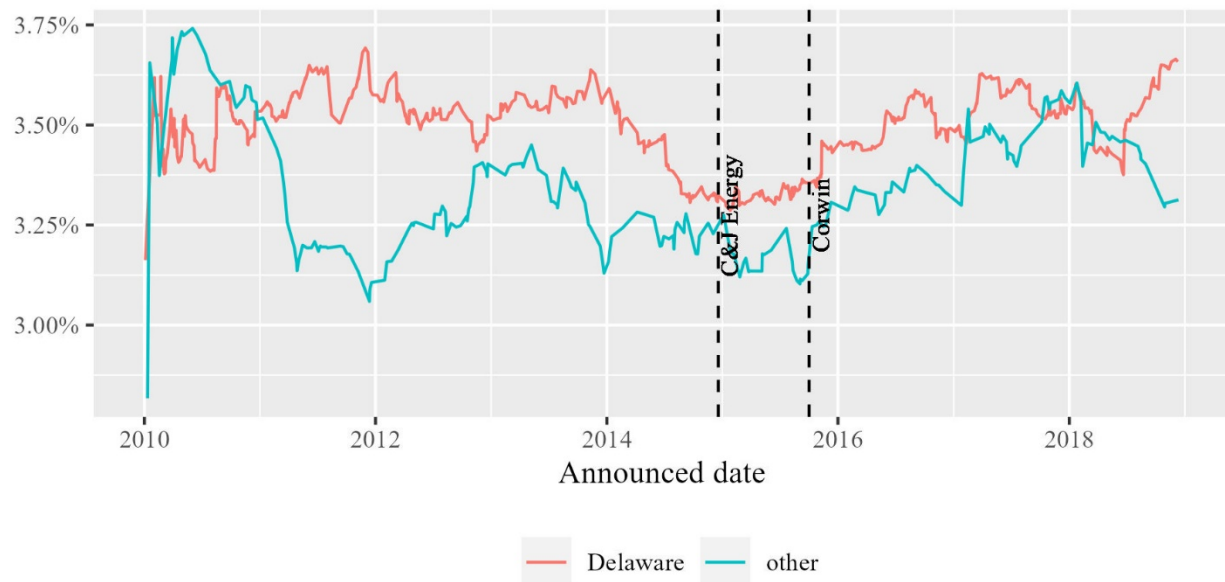
Target termination fees would generally be considered indicators of a flawed process. Since a large fee makes it more costly for the target to break the deal, they bind targets more closely to acquirers (Gatti 2020, p. 408). Moreover, a termination fee “discourages second bidders from bidding [by] siphon[ing] value out of the target company for the first bidder’s benefit in the event of an overbid,” higher fees reduce the likelihood of an overbid (Restrepo and Subramanian 2017, p. 284). With less strict scrutiny by the courts following C&J Energy and Corwin, one would expect target termination fees to increase.

Target termination fees are ubiquitous in deals. Out of the 996 deals in our pruned dataset, only seven do not provide a target termination fee. Over the observation period, termination fees in and outside Delaware remained approximately on the same level relative to equity value. Table 8 shows the quartiles for Delaware and non-Delaware targets. Figure 3 plots rolling averages of Delaware and non-Delaware targets, respectively.

Table 8: Termination Fee (as a fraction of equity value)

	<i>Delaware</i>			<i>non-Delaware</i>		
	25%	50%	75%	25%	50%	75%
2010	3.00%	3.26%	3.72%	3.07%	3.46%	3.97%
2011	3.17%	3.48%	3.96%	2.83%	3.10%	3.38%
2012	3.17%	3.47%	3.86%	3.09%	3.43%	3.88%
2013	3.12%	3.54%	3.85%	2.93%	3.08%	3.29%
2014	3.01%	3.37%	3.75%	3.00%	3.41%	3.75%
2015	3.01%	3.38%	3.77%	3.03%	3.32%	3.71%
2016	3.05%	3.42%	3.75%	3.05%	3.23%	3.56%
2017	3.15%	3.52%	3.74%	3.05%	3.36%	3.82%
2018	3.07%	3.37%	3.82%	3.02%	3.14%	3.62%

Figure 3: Termination Fees as a Percentage of Equity Value (360-day rolling average)



The descriptive statistics reveal neither an evident trend before *C&J Energy* or *Corwin*, nor do they indicate a significant difference between Delaware and non-Delaware targets at any point. In theory, confounding variables could mask a change precipitated by these cases.

As shown in Models 1 and 2 in Table 10, there is no evidence that either of the two cases has affected termination fees (as a fraction of equity value). Given that the Delaware and non-Delaware groups exhibited parallel trends before the cases, one would expect the interaction term to pick up changes caused by the decisions. Overall, it does not appear that either of the cases affected target termination fees.

5.1.2. Go-shops

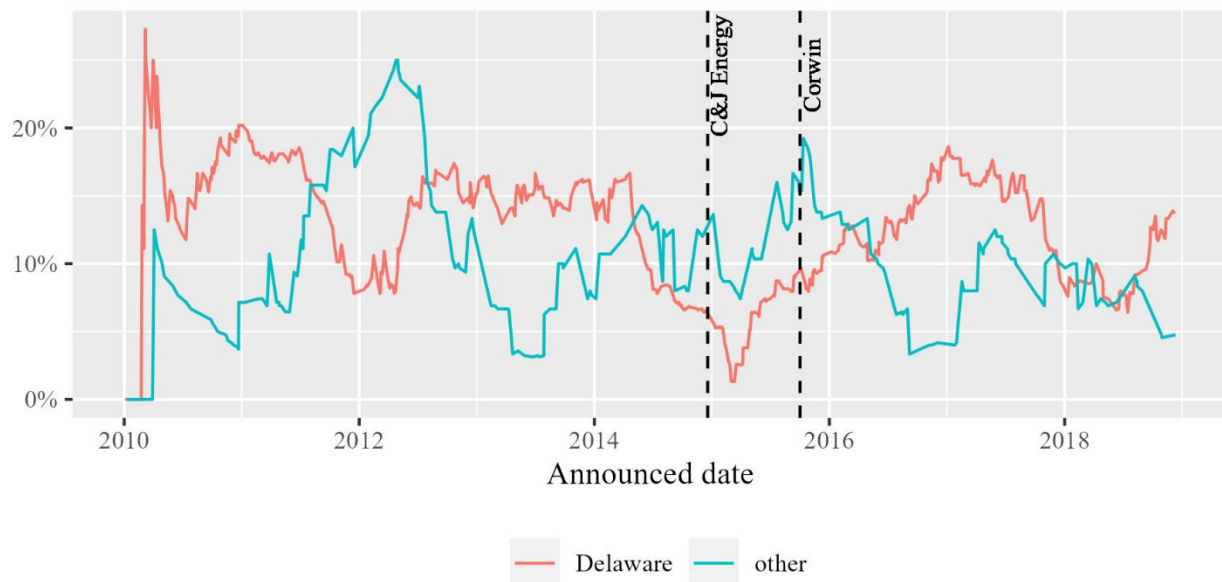
As shown in Table 9, a minority of deals provide for a go-shop period on the target side. However, there is no evident trend over time. The same is true for the length of the period, where the median and quartiles have not changed much over the years, although there are occasional

outliers. There is also no Delaware-specific trend. Figure 4 plots the presence of go-shop clauses as well as the quarterly probability of a go-shop provision.

Table 9: Go-Shop Periods

Go-shop period					Quantiles (length)				
No	Yes	Perc.	All	Perc. Del.	Min.	25%	50%	75%	Max.
2010	105	22	17.32%	20.20%	21	30	40	40	85
2011	99	12	10.81%	7.89%	30	30	40	42	45
2012	95	16	14.41%	15.19%	30	30	35	40.25	60
2013	84	12	12.50%	14.29%	18	30	40	41.25	45
2014	92	8	8.00%	6.41%	14	27.75	32.5	45	49
2015	110	14	11.29%	10.64%	21	30	35	45	60
2016	106	19	15.20%	17.65%	14	30	35	41	60
2017	103	10	8.85%	8.43%	30	30.25	33.5	42.5	60
2018	78	11	12.36%	14.49%	25	30	45	45	45

Figure 4: Probability of a Go-Shop Clause (360-day rolling average)

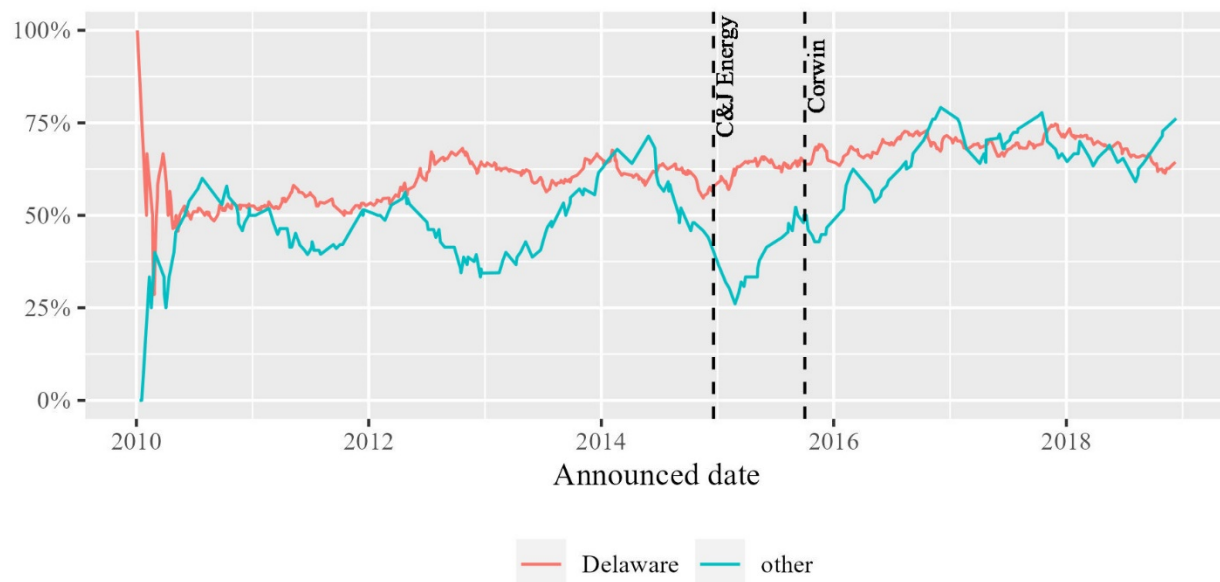


Models 3 and 4 in Table 10 show the result of a linear probability model with the inclusion of a go-shop clause as the dependent variable. Again, the difference-in-difference regressions provide no evidence for an impact of either *C&J Energy* or *Corwin* on the probability of having a go-shop clause in the merger agreement among Delaware targets relative to others. Unreported analogous logistic regression models yield similar results.

5.1.3. Market checks

We next turn to market checks in the form of an auction. The “auction” variable is defined as whether the target board solicited offers for the company before signing a definitive agreement. As Figure 6 shows, the proportion of firms in Delaware is similar to that in other states. However, as seen in Figure 7, auctions are also more common among financial buyers (such as private equity firms) than strategic ones because, in the former case, there should be no inherent business reasons to prefer one buyer over another. Conversely, the price may not be the sole factor in deals with strategic buyers when a target seeks a combination with one particular acquirer. Intuitively, one would expect *C&J Energy* and *Corwin* to reduce the incidence of auctions because they would be less legal compulsion to conduct them. Contrary to this intuition, the share of deals preceded by auctions increased over time.

Figure 5: Auctions for Delaware and Other Firms (360-day rolling average)

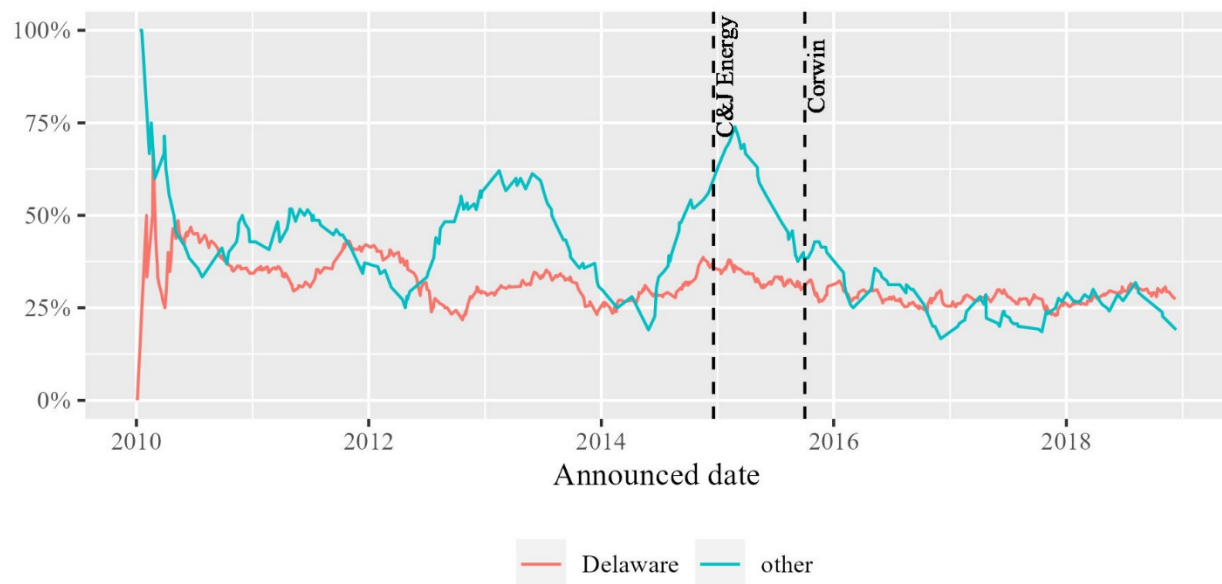


As we can see in Figure 5, which plots the quarterly mean probability for Delaware and non-Delaware firms, there is no apparent difference between the groups with possible convergence after Corwin. Again, we set up difference-in-difference regression models to investigate the likely impact of the two cases. Models 5 and 6 in Table 10 report linear probability models on whether the target activity solicited offers for the company before signing a definitive agreement (Analogous unreported logit models have similar results). Again, we find no evidence of an impact of the cases.

5.1.4. Bad process

Given that go-shop clauses and auctions are, to some extent, substitutes, we constructed an indicator variable “bad process” that is 1 when a transaction has neither a go-shop clause nor an auction and 0 otherwise. Figure 6 shows rolling averages looking 360 days into the past, the fractions of transactions with a flawed process have remained relatively stable. If anything, quarterly percentages have remained consistently lower in recent years in non-Delaware targets.

Figure 6: Bad Process (360-day rolling average)



Models 7 and 8 in Table 10 are Difference-in-Difference linear probability models and report only marginally significant coefficients on the interaction non-interacted indicators for being after the respective case (equivalent logit regressions show similar results). However, the interaction terms that might indicate a causal relationship are not significant. The best interpretation is probably that the probability of a bad process outside of Delaware was converging toward Delaware's level, which it largely reached after the cases. This appears to have been an ongoing trend and is unlikely to be connected to the development of Delaware case law.

Table 10: Agreement terms

	<i>Dependent variable:</i>							
	Termination Fee		Go Shop		Auction		Bad Process	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Delaware	0.157* (0.082)	0.145* (0.076)	0.017 (0.040)	0.010 (0.037)	0.057 (0.053)	0.056 (0.049)	-0.074 (0.050)	-0.057 (0.046)
post C&J En- ergy	0.111 (0.208)		-0.012 (0.108)		0.240 (0.174)		-0.311* (0.167)	
Delaware x post C&J Energy	-0.102 (0.128)		0.021 (0.053)		-0.060 (0.072)		0.113 (0.069)	
post Corwin		0.108 (0.216)		-0.034 (0.109)		0.251 (0.174)		-0.299* (0.168)
Delaware x post Corwin		-0.095 (0.143)		0.048 (0.054)		-0.072 (0.074)		0.093 (0.070)
log(total assets)	-0.088*** (0.030)	-0.088*** (0.030)	-0.007 (0.010)	-0.008 (0.010)	-0.078*** (0.013)	-0.078*** (0.013)	0.085*** (0.013)	0.085*** (0.013)
net loss	0.211*** (0.075)	0.209*** (0.075)	-0.029 (0.027)	-0.028 (0.027)	-0.017 (0.038)	-0.018 (0.038)	0.019 (0.036)	0.021 (0.036)
Tobin's Q	-0.018 (0.014)	-0.018 (0.014)	-0.011** (0.005)	-0.011** (0.005)	-0.004 (0.007)	-0.004 (0.007)	0.008 (0.008)	0.008 (0.008)
leverage	0.456** (0.221)	0.456** (0.221)	0.038 (0.053)	0.037 (0.053)	0.011 (0.070)	0.012 (0.070)	-0.022 (0.066)	-0.022 (0.066)
sales growth	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.001** (0.000)	-0.001** (0.000)	0.001** (0.000)	0.001** (0.000)
log(age)	-0.108** (0.053)	-0.109** (0.053)	-0.014 (0.017)	-0.013 (0.017)	-0.031 (0.024)	-0.032 (0.024)	0.026 (0.023)	0.027 (0.023)
return on assets	0.001 (0.001)	0.001 (0.001)	0.000 (0.000)	0.000 (0.000)	-0.000 (0.001)	-0.000 (0.001)	-0.000 (0.001)	-0.000 (0.001)
cash ratio	-0.004* (0.002)	-0.004* (0.002)	0.000 (0.001)	0.000 (0.001)	-0.000 (0.001)	-0.000 (0.001)	-0.000 (0.001)	-0.000 (0.001)
deal activity	0.001 (0.009)	0.002 (0.009)	-0.002 (0.003)	-0.002 (0.003)	0.006 (0.005)	0.006 (0.005)	-0.001 (0.005)	-0.002 (0.005)
Quarter FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Industry FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Constant	4.319*** (0.412)	4.321*** (0.410)	0.179 (0.160)	0.179 (0.159)	0.475** (0.205)	0.477** (0.205)	0.351* (0.202)	0.347* (0.203)
Observations	948	948	952	952	952	952	952	952
R ²	0.150	0.150	0.138	0.138	0.220	0.221	0.235	0.234
Adjusted R ²	0.045	0.045	0.032	0.032	0.125	0.125	0.141	0.140
F Statistic	1.433*** (df = 104; 843)	1.432*** (df = 104; 843)	1.299** (df = 104; 847)	1.305** (df = 104; 847)	2.302*** (df = 104; 847)	2.305*** (df = 104; 847)	2.498*** (df = 104; 847)	2.485*** (df = 104; 847)

Notes: *p<0.1; **p<0.05; ***p<0.01; OLS regression with standard errors robust to heteroscedasticity

5.1.5. Difference between buyer types

As discussed above, looking specifically at the difference between acquisitions with strategic and financial buyers may be worthwhile. The 360-day rolling averages in Figure 7 show that the trends look broadly similar prior to the cases. While about 40% of strategic deals tended to have a bad sales process, in financial transactions, the equivalent figure was below 10% before *C&J Energy*.

Figure 7: Bad Process in Delaware (360-day rolling average)

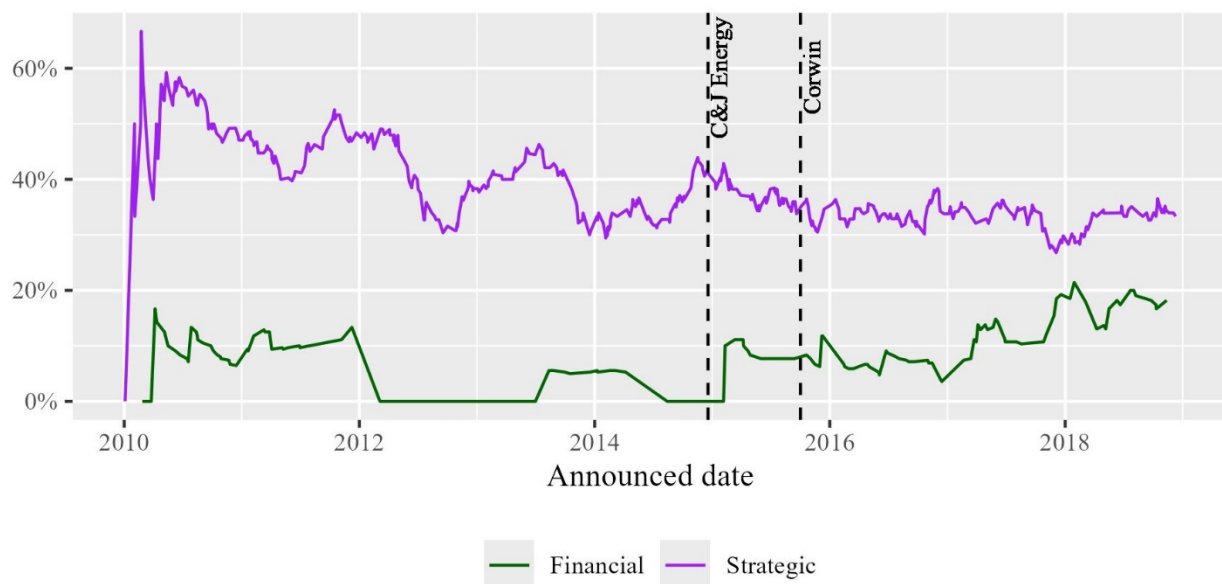


Table 11 shows difference-in-difference regressions only for Delaware targets, where we compare strategic and financial buyers.⁴⁵ Models 1 and 2 test the C&J Energy case, Models 3 and 4 look at the impact of Corwin. Since the “bad process” variable has a negative interaction term with the C&J Energy and Corwin cases, Models 5 and 6 use a truncated data set that ends before Corwin and includes an interaction term for C&J Energy. In the dataset remaining after dropping

⁴⁵ Equivalent regressions looking at the “go shop” and “auction” variables separately yielded no significant results.

incomplete cases, 385 cases before and 60 after C&J Energy remain. The interaction term is insignificant in the logit and the linear probability model. The better explanation here is that the impact originates in Corwin rather than C&J Energy. When we look at the numeric trends in Figure 7, we see an approximation between strategic and financial acquisitions. While strategic deals exhibit a bad process slightly less frequently, percentages have decreased to 10-20% for financial transactions. In light of regression models 5 and 6, it is probably Corwin rather than C&J Energy that accounts for the change.

Table 11: Bad process (Buyer Type)

	Full dataset				Pre-Corwin data only	
	<i>OLS</i>	<i>logistic</i>	<i>OLS</i>	<i>logistic</i>	<i>OLS</i>	<i>logistic</i>
	(1)	(2)	(3)	(4)	(5)	(6)
Strategic Buyer	0.344*** (0.049)	2.862*** (0.575)	0.328*** (0.048)	2.640*** (0.522)	0.347*** (0.054)	2.852*** (0.568)
post C&J Energy	0.053 (0.163)	0.659 (1.123)			0.070 (0.252)	1.171 (1.754)
Strategic Buyer x post C&J Energy	-0.196*** (0.068)	-1.694** (0.701)			-0.148 (0.184)	-1.721 (1.357)
post Corwin			0.046 (0.163)	0.456 (1.108)		
Strategic Buyer x post Corwin			-0.184*** (0.070)	-1.459** (0.676)		
log(total assets)	0.076*** (0.014)	0.492*** (0.097)	0.076*** (0.014)	0.487*** (0.097)	0.077*** (0.019)	0.491*** (0.128)
net loss	-0.005 (0.041)	0.050 (0.257)	-0.004 (0.041)	0.055 (0.257)	-0.010 (0.059)	0.046 (0.381)
Tobin's Q	0.005 (0.007)	0.043 (0.047)	0.005 (0.007)	0.043 (0.047)	0.003 (0.008)	0.032 (0.084)
leverage	0.018 (0.071)	-0.094 (0.493)	0.015 (0.071)	-0.109 (0.491)	0.063 (0.109)	0.367 (0.680)
sales growth	0.000 (0.000)	0.002 (0.002)	0.000 (0.000)	0.002 (0.002)	0.001** (0.000)	0.005 (0.003)
log(age)	0.015 (0.025)	0.085 (0.159)	0.016 (0.025)	0.088 (0.159)	0.016 (0.031)	0.092 (0.223)
return on assets	-0.000 (0.001)	0.000 (0.006)	-0.000 (0.001)	0.000 (0.005)	0.001 (0.002)	0.016 (0.013)
cash ratio	-0.000 (0.001)	-0.004 (0.008)	-0.001 (0.001)	-0.005 (0.008)	-0.001 (0.001)	-0.005 (0.011)
deal activity	0.001 (0.005)	0.011 (0.031)	0.001 (0.005)	0.012 (0.031)	-0.003 (0.007)	-0.019 (0.045)
Quarter FE	Yes	Yes	Yes	Yes	Yes	Yes
Industry FE	Yes	Yes	Yes	Yes	Yes	Yes
Constant	0.023 (0.220)	10.649 (3,956.181)	0.041 (0.221)	10.879 (3,956.181)	-0.662*** (0.246)	-22.649 (3,956.181)
Observations	714	714	714	714	445	445
R2	0.297		0.296		0.353	
Adjusted R2	0.180		0.179		0.209	
Log Likelihood		-313.004		-313.757		-184.726
Akaike Inf. Crit.		832.009		833.514		533.452
F Statistic	2.531*** (df = 102; 611)		2.520*** (df = 102; 611)		2.445*** (df = 81; 363)	

Notes:

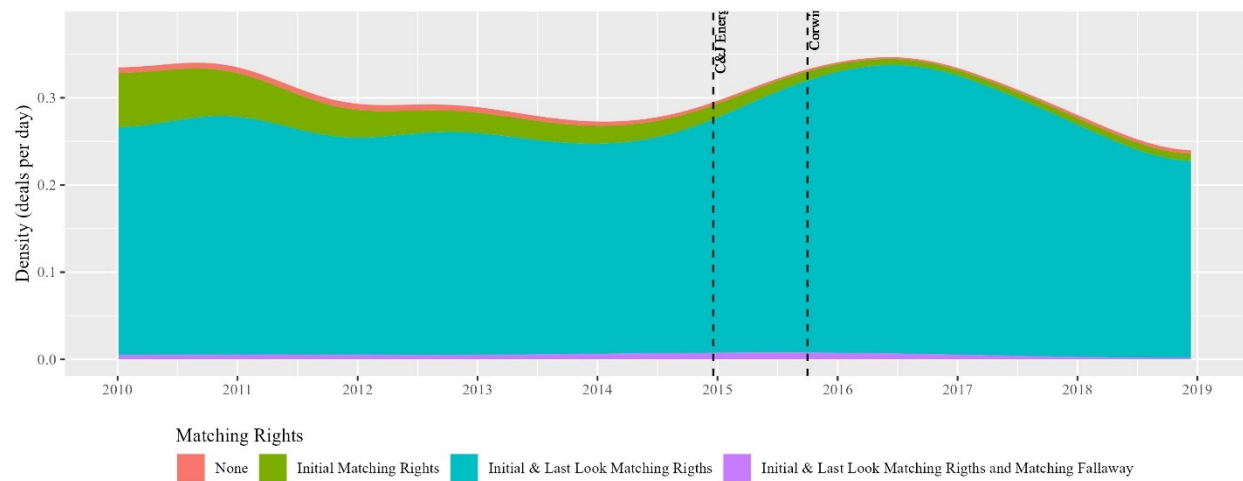
*p<0.1; **p<0.05; ***p<0.01

OLS regression with standard errors robust to heteroscedasticity

5.2. Matching rights

Merger agreements often include matching rights, which generally allow the buyer to further negotiate for a specified number of days and potentially improve their bid when the target company has indicated its desire to combine with a different bidder. *Initial matching rights* allow the buyer to negotiate with the target after receiving notice of the target board's intent to change its recommendation to another bidder who made a superior proposal. *Last-look matching rights* give the original bidder additional days when the competing bidder has revised its proposal. Both types of matching rights bind the target firm (whose board will often be required by fiduciary duty to consider superior offers) closer to the original bidder with whom the agreement was executed. A *Matching Fallaway* clause loosens this connection by eliminating matching rights when the competing offer exceeds a specified threshold (e.g., 10% over the original offer). The three types of clauses build upon each other: In our sample of 996 firms, 981 have initial matching rights. Of these 981 firms, 908 also have last-look matching rights. Of these 908, 18 also have a fallaway clause. In other words, there are no deals with last-look matching rights but not initial matching rights; all arrangements with a fallaway clause have both matching rights. Figure 8 shows the distribution of matching rights in deals over time.

Figure 8: Deals with Matching Rights over Time



We can see that deals providing only initial matching rights (or no matching rights) became increasingly rare from approximately 2016 onwards, when the number of deals went up. Figures 9A and 9B show rolling averages of initial and last-look matching rights within Delaware classified by buyer type, which again supports the almost universal use of both types in recent years.

Figures 9A and 9B: Matching Rights for Delaware Targets by Acquisition Type (360-day rolling averages)



Table 12 shows regressions looking at the possible impact of the two cases on matching rights. Because of the data structure discussed above, the regression on last look matching rights

includes only deals that stipulate initial matching rights. Models 1, 2, 6, and 7 compare Delaware to non-Delaware target companies, whereas Models 3, 4, 8, and 9 look at differences between strategic and financial acquisitions. In light of the interaction term, there is some evidence that initial matching rights became more common after the cases. Model 5 looks at C&J Energy in a truncated sample to determine whether the significant result on strategic buyers should be attributed to Corwin or C&J Energy.

Overall, our models provide evidence for an increasing use of initial matching rights in strategic acquisitions after Corwin. Differences between types of deals seem to have decreased over time. While there were very few deals without matching rights throughout our observation period, this was not always true for last-look matching rights. Between 2010 and 2014, about 10-20% of strategic merger agreements lacked them. From 2015 onwards, this percentage decreased to 1-6% per year, with only one such deal in 2016.

Table 12: Matching Rights

	Initial Matching Rights					Last Look Matching Rights			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Delaware	0.007 (0.011)	0.006 (0.010)				-0.013 (0.034)	-0.012 (0.031)		
post C&J Energy	0.038 (0.046)		0.035 (0.069)		0.043 (0.081)	0.216* (0.124)		0.056 (0.142)	
Delaware x post C&J Energy	0.003 (0.016)					-0.014 (0.038)			
post Corwin		0.033 (0.046)		0.035 (0.070)			0.222* (0.124)		0.044 (0.141)
Delaware x post Corwin		0.009 (0.016)					-0.022 (0.035)		
Strategic Buyer			-0.019* (0.010)	-0.017* (0.009)	-0.024** (0.012)			-0.066 (0.043)	-0.069* (0.040)
Strategic Buyer x post C&J Energy			0.036** (0.014)		0.030 (0.023)			0.062 (0.045)	
Strategic Buyer x post Corwin				0.035** (0.015)					0.077* (0.042)
log(total assets)	-0.002 (0.003)	-0.002 (0.003)	-0.006 (0.004)	-0.006 (0.004)	-0.006 (0.007)	0.000 (0.007)	0.000 (0.007)	-0.001 (0.008)	-0.001 (0.008)
net loss	-0.001 (0.008)	-0.001 (0.008)	-0.000 (0.009)	-0.001 (0.009)	0.000 (0.017)	-0.028 (0.022)	-0.028 (0.022)	-0.043 (0.026)	-0.043* (0.026)
Tobin's Q	0.001 (0.001)	0.001 (0.001)	0.001 (0.001)	0.001 (0.001)	0.004 (0.002)	0.005* (0.003)	0.005* (0.003)	0.007** (0.003)	0.007** (0.003)
leverage	-0.018 (0.017)	-0.018 (0.017)	-0.017 (0.019)	-0.016 (0.019)	-0.044 (0.036)	0.096** (0.039)	0.096** (0.039)	0.077* (0.044)	0.078* (0.044)
sales growth	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)
log(age)	-0.000 (0.004)	-0.000 (0.004)	0.005 (0.005)	0.005 (0.005)	-0.003 (0.006)	-0.027** (0.014)	-0.027** (0.014)	-0.039** (0.015)	-0.039** (0.015)
return on assets	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)
cash ratio	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	0.000 (0.000)	-0.000 (0.000)	-0.000 (0.001)	-0.000 (0.001)	-0.000 (0.001)	-0.000 (0.001)
deal activity	0.000 (0.001)	0.000 (0.001)	0.000 (0.001)	0.000 (0.001)	-0.000 (0.002)	0.003 (0.003)	0.003 (0.003)	0.003 (0.003)	0.002 (0.003)
Quarter FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Industry FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Constant	0.496 (0.354)	0.496 (0.354)	0.988*** (0.052)	0.985*** (0.052)	1.007*** (0.072)	0.685*** (0.143)	0.685*** (0.142)	0.898*** (0.155)	0.897*** (0.153)
Obs.	952	952	714	714	445	941	941	707	707
R2	0.152	0.152	0.131	0.131	0.133	0.134	0.134	0.158	0.159
Adjusted R2	0.048	0.048	-0.014	-0.014	-0.061	0.026	0.026	0.016	0.017
F Statistic	1.462*** (df = 104; 847)	1.464*** (df = 104; 847)	0.904 (df = 102; 611)	0.902 (df = 102; 611)	0.686 (df = 81; 363)	1.241* (df = 104; 836)	1.242* (df = 104; 836)	1.111 (df = 102; 604)	1.120 (df = 102; 604)

Notes:

*p<0.1; **p<0.05; ***p<0.01

OLS regression with standard errors robust to heteroscedasticity. Models 1, 2, 6 and 7 use the full sample. Models 3 and 4 look only at Delaware targets. Model 5 looks only at Delaware targets where the offer was announced before Corwin.

5.3. Competing bids

The incidence of competing bids and deal jumps may also be linked to developments in the case law relating to *Revlon*. Competing bidders will be discouraged if it is easier for a target to commit to a specific bidder. This is particularly true for deal jumps, which are competing bids that are brought at a time when a definitive agreement between the original bidder and target has already been reached.

The descriptive statistics do not indicate such a trend. Contrary to what one might expect based on the case law, Table 13 shows an unusually high number of deal jumps in 2015 (almost 15% of all deals, as opposed to 2-10% as in the other years). However, out of the 18 competing bids in 2015, 6 were for non-Delaware corporations, a more remarkable change than the increase in Delaware to 12.

Table 13: Competing Bids by Year

	2010	2011	2012	2013	2014	2015	2016	2017	2018
Competing	1 (0.79%)	2 (1.8%)	0 (0%)	0 (0%)	5 (5%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Deal Jump	9 (7.09%)	11 (9.91%)	8 (7.21%)	4 (4.17%)	6 (6%)	18 (14.52%)	5 (4%)	3 (2.65%)	5 (5.62%)
none	117 (92.13%)	98 (88.29%)	103 (92.79%)	92 (95.83%)	89 (89%)	106 (85.48%)	120 (96%)	110 (97.35%)	84 (94.38%)
Total	127	111	111	96	100	124	125	113	89

Again, we set up difference-in-difference regression models shown in Table 14. The dependent variable here is whether any specific transaction is a competing bid (or deal jump). The regression confirms that deals in Delaware are more likely to compete with other offers. The interaction term on C&J Energy is statistically significant in Model 1, which means that the otherwise larger number of competing bids (by 7%) in Delaware relative to other states is disappearing.

While the result is only marginally statistically significant, the trend is more robust and more significant when we compare Delaware only to non-Revlon states, as seen in Model 3. We did not observe a difference between different buyer types (not reported).

Table 14: Competing Bids

	<i>Dependent variable:</i>			
	Competing Bid			
	Full dataset (1)	(2)	Delaware v. non-Revlon states (3)	(4)
Delaware	0.074*** (0.026)	0.067** (0.026)	0.095** (0.039)	0.069* (0.042)
post C&J Energy	0.000 (0.077)		0.030 (0.095)	
Delaware x post C&J Energy	-0.067* (0.040)		-0.129** (0.063)	
post Corwin		-0.002 (0.076)		-0.004 (0.097)
Delaware x post Corwin		-0.062 (0.039)		-0.091 (0.065)
log(total assets)	-0.005 (0.008)	-0.004 (0.008)	-0.001 (0.008)	-0.001 (0.009)
net loss	-0.021 (0.023)	-0.022 (0.023)	-0.022 (0.024)	-0.023 (0.024)
Tobin's Q	-0.015** (0.006)	-0.015** (0.006)	-0.013** (0.006)	-0.013** (0.006)
leverage	0.025 (0.039)	0.025 (0.039)	0.041 (0.042)	0.042 (0.042)
sales growth	0.001*** (0.000)	0.001*** (0.000)	0.001** (0.000)	0.001** (0.000)
log(age)	0.025* (0.015)	0.024 (0.015)	0.022 (0.016)	0.021 (0.016)
return on assets	-0.001* (0.000)	-0.001* (0.000)	-0.001 (0.000)	-0.001 (0.000)
cash ratio	0.000 (0.001)	0.000 (0.001)	0.000 (0.001)	0.000 (0.001)
deal activity	-0.003 (0.003)	-0.003 (0.003)	-0.002 (0.004)	-0.002 (0.004)
Quarter FE	Yes	Yes	Yes	Yes
Industry FE	Yes	Yes	Yes	Yes
Constant	0.519 (0.415)	0.521 (0.414)	-0.104 (0.148)	-0.083 (0.150)
Observations	952	952	783	783
R ²	0.181	0.180	0.210	0.208
Adjusted R ²	0.080	0.080	0.092	0.089
F Statistic	1.798*** (df = 104; 847)	1.791*** (df = 104; 847)	1.775*** (df = 102; 680)	1.753*** (df = 102; 680)

Notes:

*p<0.1; **p<0.05; ***p<0.01

OLS regression with standard errors robust to heteroscedasticity

Figure 10: Competing Bids (360-day rolling averages)

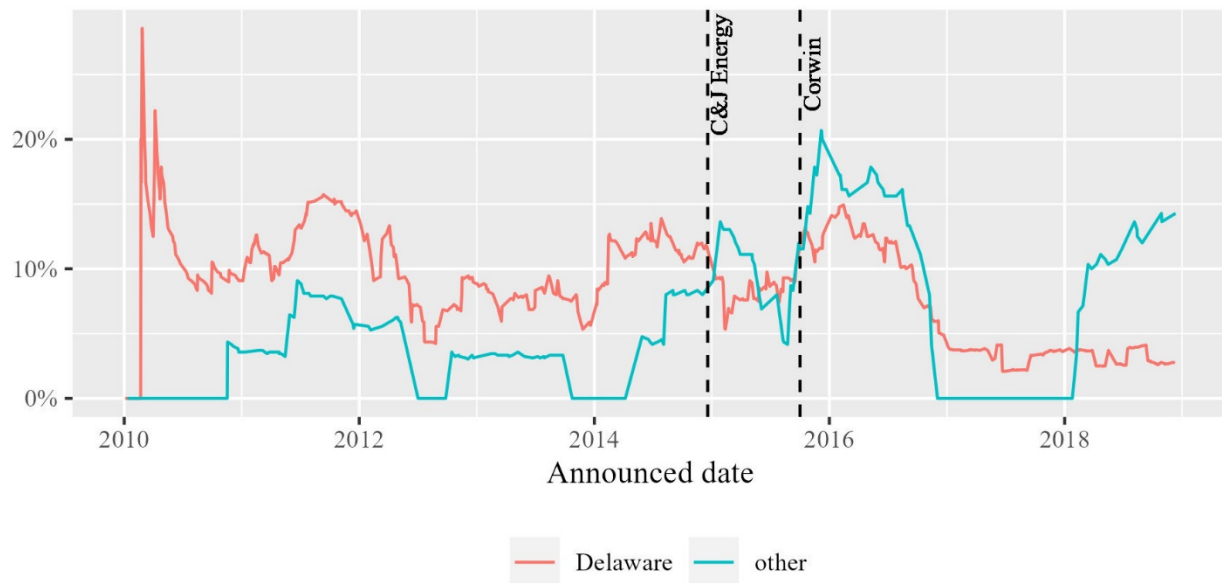


Figure 11 shows time trends that may be revealing for the regression results. While the trends before C&J Energy are parallel inside and outside Delaware, we see a larger number of competing bids in 2015 and 2016 outside Delaware, followed by a drop-off in 2017. If anything, C&J Energy would be associated with a temporary increase outside Delaware, not with a decrease in Delaware. It thus seems likely that the regression has captured other developments in the market rather than an impact of the case law.

5.4. Takeover premia and cumulative abnormal returns

Ultimately, the assessment of policy changes regarding takeover law might depend on the price paid to shareholders. Dealpoint Data provided us with 1-day, 30-day, and 90-day premia for the transactions in the dataset. The three panels of Figure 11, which show 1-day, 30-day, and 90-day premia, reveal no particular trend over time. The same is true for premia sorted by buyer type in Figure 12.

In addition, we obtained cumulative abnormal returns (based on the Fama-French 3-factor model) for the intervals of $(-1/+1)$, $(-1/+10)$, and $(-1/+30)$ from CRSP. The Fama-French model

has the advantage of considering general market developments by comparing cumulative returns for the target firm to the market in general. Starting the time window for CARs just before the announcement of the merger is advisable the timing of a merger announcement is contingent on market conditions. Bidders may strategically time the announcement to maximize gains.

Table 16 shows difference-in-difference regressions analogous to the ones in previous sections to explore whether the two cases are associated with changes in Delaware relative to other states but with the three types of premia and CARs as the dependent variable. Both premia and CARs have been winsorized at the 5th and 95th percentile.⁴⁶ While the regressions for CARs are not statistically significant, there are significant results for 1-Day premia and 30-day premia on the interaction term of Delaware with the C&J Energy case. The difference between Delaware and other states decreased, but apparently because premia outside Delaware went up. Corwin is not significant, likely because premia outside of Delaware went up after C&J Energy subsequently went down again, thus reinstating the previous gap between Delaware and non-Delaware deals.

⁴⁶ In these regressions, Winsorizing generally has results in smaller effect sizes and more statistically significant results.

Figure 11: Takeover Premia over Time by State (360-day rolling average)

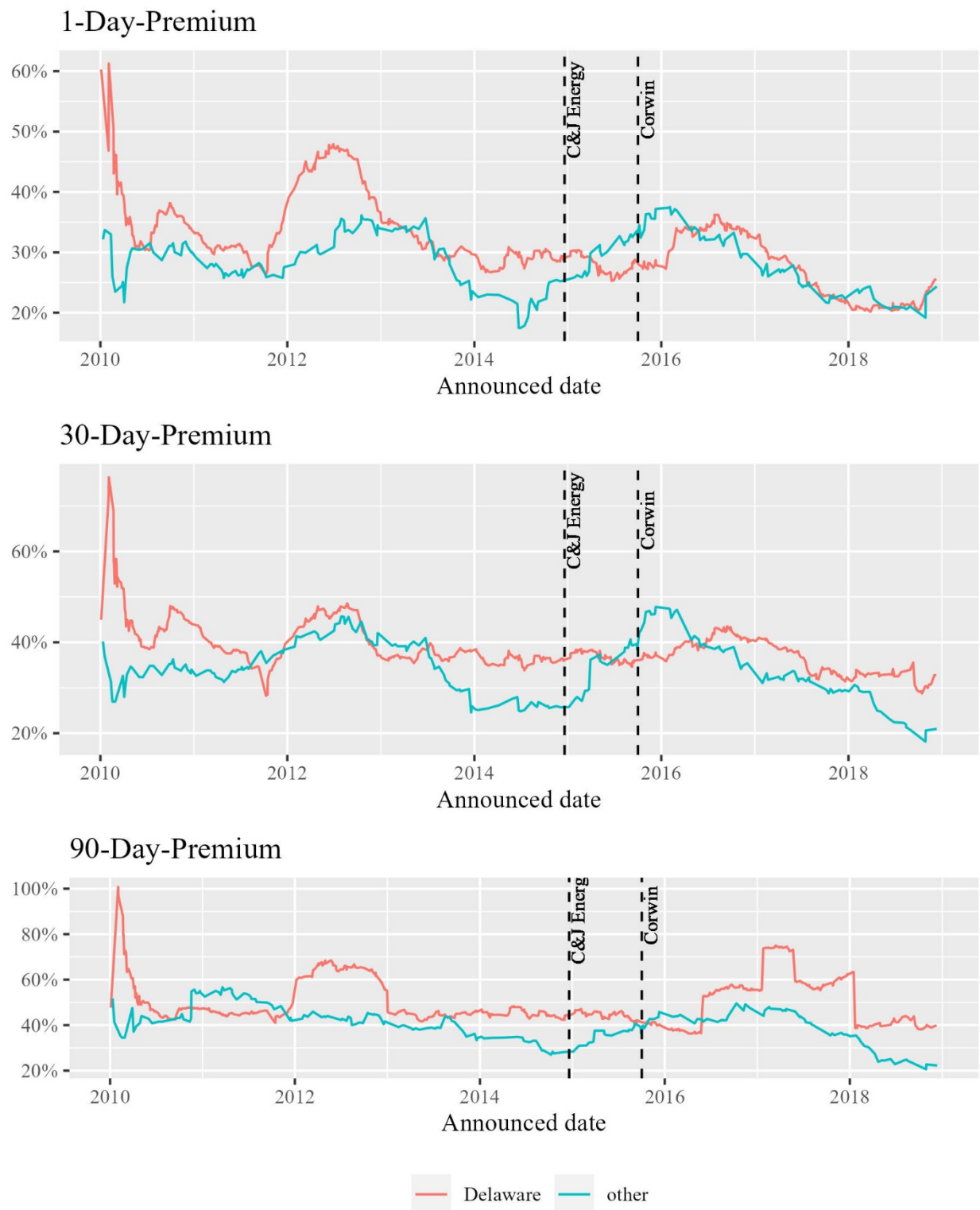


Figure 12: Takeover Premia over Time within Delaware by Buyer Type (360-day rolling average)

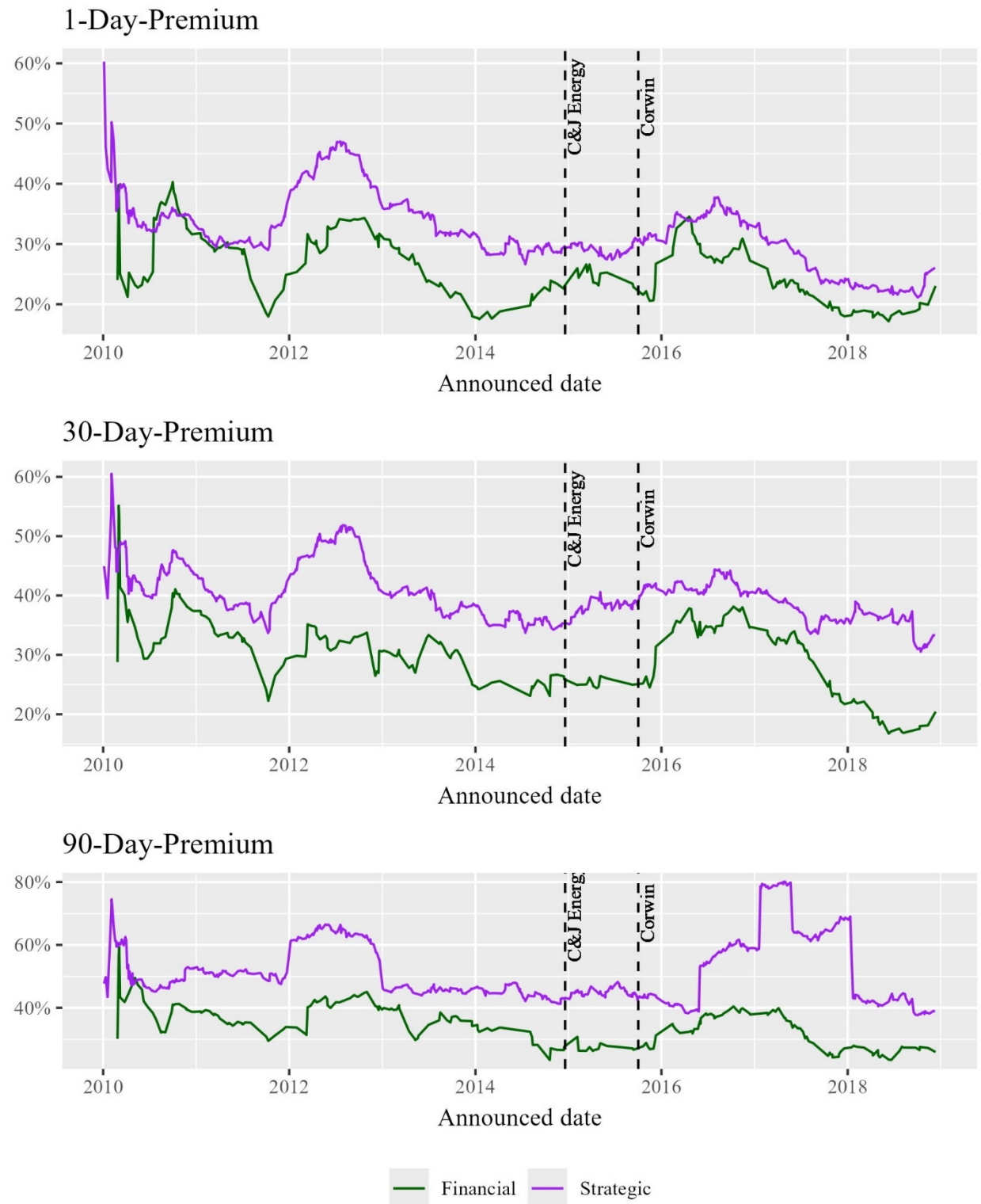


Table 15: Takeover Premia and Cumulative Abnormal Returns (State)

	1-Day Premium		30-Day Premium		90-Day Premium		CARs (-1/+1)		CARs (-1/+10)		CARs (-1/+30)	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
Delaware	0.256 (0.587)	-0.126 (0.549)	0.557 (0.764)	0.116 (0.713)	0.394 (1.105)	0.116 (1.031)	0.153 (0.465)	0.053 (0.433)	0.009 (0.527)	-0.069 (0.491)	-0.430 (0.714)	-0.275 (0.666)
post C&J Energy	1.463 (1.777)		-2.081 (2.307)		-2.651 (3.332)		0.548 (1.390)		-0.700 (1.577)		-1.910 (2.135)	
Delaware x post C&J Energy	-1.667** (0.838)		-2.151** (1.078)		-1.776 (1.560)		0.524 (0.661)		0.677 (0.750)		1.556 (1.015)	
post Cor- win		0.962 (1.797)		-2.586 (2.330)		-2.865 (3.363)		0.173 (1.403)		-1.064 (1.592)		-1.941 (2.158)
Delaware x post Cor- win		-0.981 (0.872)		-1.455 (1.118)		-1.456 (1.615)		0.979 (0.685)		1.112 (0.778)		1.542 (1.054)
log (total as- sets)	-0.479*** (0.153)	-0.479*** (0.154)	-0.386* (0.197)	-0.385* (0.198)	-0.100 (0.285)	-0.097 (0.286)	-0.362*** (0.122)	-0.367*** (0.122)	-0.382*** (0.138)	-0.388*** (0.138)	-0.319* (0.187)	-0.324* (0.187)
net loss	0.076 (0.436)	0.055 (0.437)	0.043 (0.563)	0.014 (0.564)	-0.793 (0.813)	-0.821 (0.814)	0.271 (0.343)	0.287 (0.343)	0.423 (0.389)	0.442 (0.389)	-0.103 (0.527)	-0.075 (0.527)
Tobin's Q	0.073 (0.097)	0.073 (0.097)	0.101 (0.123)	0.100 (0.124)	0.195 (0.178)	0.195 (0.178)	0.139* (0.074)	0.138* (0.074)	0.096 (0.084)	0.096 (0.084)	0.090 (0.114)	0.090 (0.114)
leverage	-0.235 (0.827)	-0.248 (0.828)	-0.332 (1.061)	-0.355 (1.063)	1.084 (1.533)	1.071 (1.533)	-0.179 (0.651)	-0.193 (0.650)	-0.533 (0.738)	-0.547 (0.738)	-1.265 (0.999)	-1.264 (1.000)
sales growth	0.007 (0.004)	0.007 (0.004)	0.005 (0.005)	0.005 (0.005)	-0.013 (0.008)	-0.013 (0.008)	-0.009*** (0.003)	-0.009*** (0.003)	-0.003 (0.004)	-0.003 (0.004)	0.002 (0.005)	0.002 (0.005)
log(age)	-0.351 (0.278)	-0.362 (0.279)	-0.321 (0.358)	-0.339 (0.359)	-0.891* (0.517)	-0.911* (0.518)	-0.110 (0.220)	-0.091 (0.220)	-0.129 (0.249)	-0.108 (0.250)	0.013 (0.338)	0.035 (0.339)
return on assets	0.006 (0.009)	0.006 (0.009)	0.006 (0.012)	0.006 (0.012)	0.019 (0.017)	0.018 (0.017)	0.015** (0.007)	0.015** (0.007)	0.011 (0.008)	0.011 (0.008)	0.009 (0.011)	0.010 (0.011)
cash ratio	-0.023* (0.013)	-0.024* (0.013)	-0.026 (0.017)	-0.027 (0.017)	-0.002 (0.025)	-0.003 (0.025)	-0.017* (0.010)	-0.017* (0.010)	-0.014 (0.012)	-0.014 (0.012)	-0.014 (0.016)	-0.013 (0.016)
deal activ- ity	-0.066 (0.053)	-0.063 (0.053)	-0.046 (0.069)	-0.043 (0.069)	-0.054 (0.099)	-0.051 (0.099)	-0.013 (0.042)	-0.014 (0.042)	0.016 (0.048)	0.015 (0.048)	0.043 (0.065)	0.041 (0.065)
Quarter FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Industry FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Constant	20.012*** (4.348)	20.081*** (4.355)	25.019*** (5.557)	25.145*** (5.564)	27.265*** (8.028)	27.354*** (8.029)	12.220*** (3.357)	12.213*** (3.353)	10.179*** (3.807)	10.167*** (3.804)	5.857 (5.155)	5.807 (5.155)
Observations	952	952	934	934	932	932	888	888	888	888	888	888
R ²	0.14	0.137	0.136	0.134	0.138	0.138	0.177	0.179	0.15	0.152	0.135	0.135
Adjusted R ²	0.035	0.032	0.028	0.025	0.03	0.029	0.068	0.07	0.038	0.039	0.02	0.02
F Statistic	5.217 (df = 847)	5.225 (df = 847)	6.639 (df = 829)	6.648 (df = 829)	9.589 (df = 827)	9.592 (df = 827)	3.973 (df = 783)	3.969 (df = 783)	4.506 (df = 783)	4.503 (df = 783)	6.101 (df = 783)	6.102 (df = 783)

Notes: *p<0.1; **p<0.05; ***p<0.01

OLS regression with standard errors robust to heteroscedasticity. Dependent variables are winsorized at the 5th and 95th percentile.

Figure 13: Cumulative Abnormal Returns Following C&J Energy and Corwin

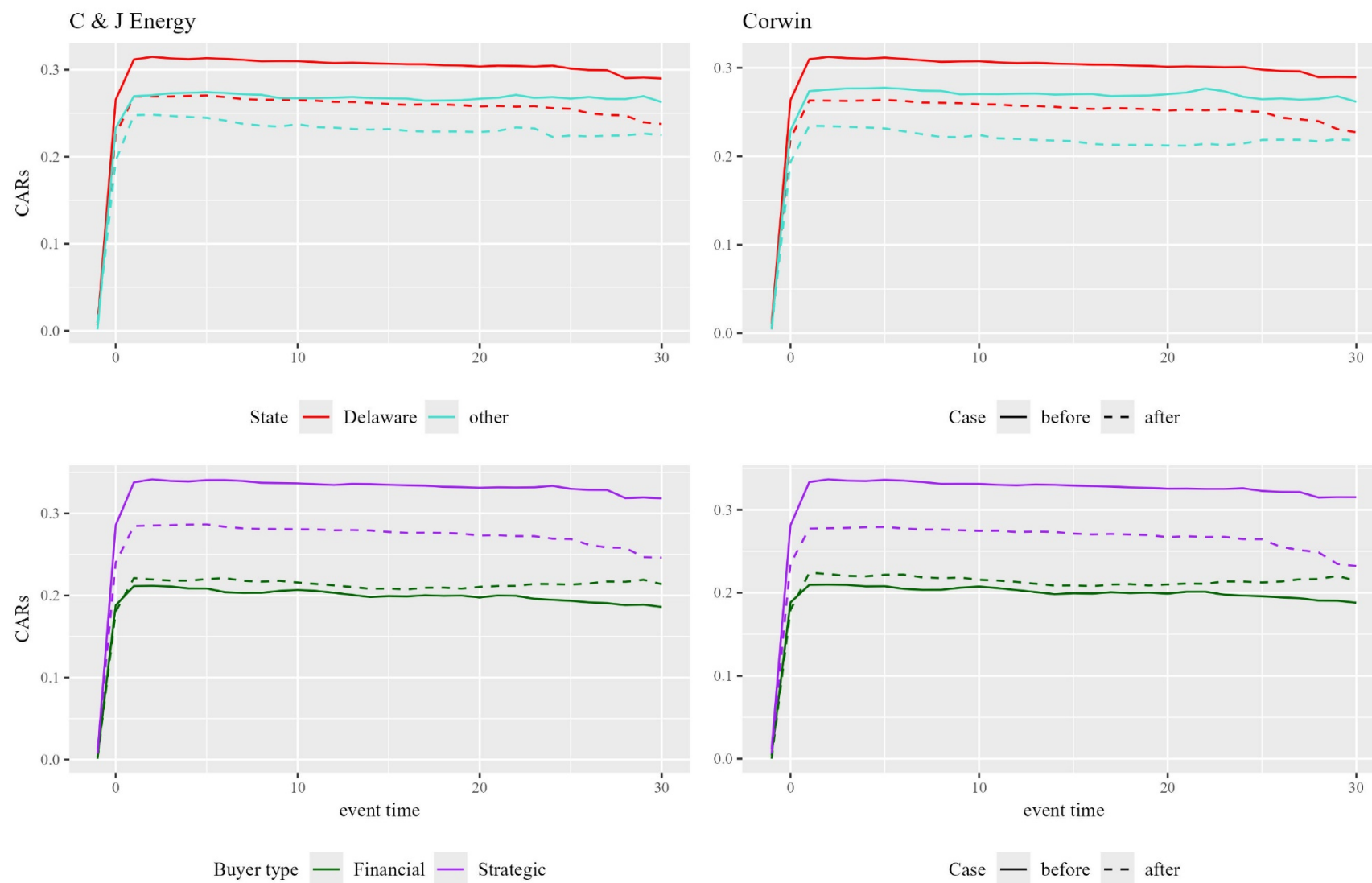


Table 17: Takeover Premia and Cumulative Abnormal Returns (Buyer Type) -

	<i>Dependent variable:</i>														
	1-Day Premium		30-Day Premium		90-Day Premium		CARs (-1/+1)				CARs (-1/+10)				CARs (-1/+30)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
Strategic Buyer	1.028 (0.731)	0.632 (0.697)	2.213** (0.944)	1.843** (0.898)	2.105 (1.355)	2.257* (1.287)	1.714*** (0.596)	1.410** (0.571)	2.219*** (0.651)	1.812*** (0.650)	1.593** (0.622)	2.428*** (0.756)	2.329** (0.933)	2.130** (0.892)	2.749*** (1.020)
post C&J Energy	1.890 (2.142)		-2.005 (2.738)		-4.431 (3.929)		4.598*** (1.661)		6.557** (2.806)	3.950** (1.813)		5.581* (3.257)	4.293* (2.601)		5.688 (4.395)
Strategic Buyer x post C&J Energy	1.897* (1.011)		-1.799 (1.298)		0.457 (1.863)		-2.746*** (0.804)		-4.793** (2.061)	-2.532*** (0.878)		-3.799 (2.392)	-2.797** (1.259)		-3.430 (3.228)
post Corwin		1.394 (2.151)		-2.451 (2.747)		-4.218 (3.938)		4.329*** (1.668)			3.808** (1.819)			4.210 (2.607)	
Strategic Buyer x post Corwin		-1.233 (1.020)		-1.191 (1.307)		0.172 (1.874)		-2.386*** (0.809)			-2.333*** (0.883)			-2.671** (1.265)	
log(total assets)	-0.576*** (0.188)	-0.586*** (0.188)	-0.514** (0.243)	-0.523** (0.243)	-0.200 (0.349)	-0.197 (0.349)	-0.488*** (0.147)	-0.494*** (0.148)	-0.432** (0.207)	-0.503*** (0.161)	-0.508*** (0.161)	-0.464* (0.240)	-0.483** (0.231)	-0.488** (0.231)	-0.241 (0.324)
net loss	0.202 (0.516)	0.216 (0.517)	0.360 (0.666)	0.373 (0.666)	-0.095 (0.957)	-0.099 (0.957)	0.223 (0.402)	0.231 (0.403)	0.376 (0.609)	0.432 (0.439)	0.438 (0.439)	0.432 (0.707)	-0.305 (0.629)	-0.301 (0.629)	-0.490 (0.954)
Tobin's Q	0.090 (0.104)	0.093 (0.104)	0.112 (0.133)	0.116 (0.133)	0.243 (0.191)	0.242 (0.191)	0.121 (0.079)	0.125 (0.079)	-0.028 (0.116)	0.072 (0.086)	0.074 (0.086)	-0.027 (0.134)	0.072 (0.123)	0.075 (0.123)	-0.072 (0.181)
leverage	-0.333 (0.944)	-0.376 (0.945)	-0.595 (1.217)	-0.637 (1.218)	0.657 (1.747)	0.671 (1.746)	-0.359 (0.734)	-0.412 (0.735)	-0.492 (1.087)	-0.845 (0.801)	-0.891 (0.801)	-0.947 (1.261)	-1.905* (1.149)	-1.953* (1.148)	-2.693 (1.702)
sales growth	0.007* (0.005)	0.007 (0.005)	0.004 (0.006)	0.004 (0.006)	-0.015* (0.008)	-0.015* (0.008)	-0.009*** (0.003)	-0.009*** (0.003)	-0.013*** (0.004)	-0.002 (0.004)	-0.002 (0.004)	-0.006 (0.005)	0.003 (0.005)	0.003 (0.005)	0.005 (0.007)
log(age)	-0.260 (0.323)	-0.263 (0.324)	-0.252 (0.418)	-0.256 (0.419)	-0.675 (0.601)	-0.672 (0.601)	0.040 (0.252)	0.035 (0.252)	0.058 (0.350)	0.092 (0.275)	0.088 (0.275)	0.276 (0.406)	0.207 (0.394)	0.203 (0.394)	0.526 (0.548)
return on assets	0.007 (0.010)	0.007 (0.010)	0.007 (0.012)	0.007 (0.012)	0.022 (0.018)	0.022 (0.018)	0.014* (0.007)	0.014** (0.007)	0.020 (0.017)	0.011 (0.008)	0.011 (0.008)	0.014 (0.020)	0.010 (0.012)	0.010 (0.012)	-0.008 (0.027)
cash ratio	-0.000435	-0.030** (0.015)	-0.044** (0.020)	-0.045** (0.020)	-0.016 (0.029)	-0.016 (0.029)	-0.020* (0.012)	-0.021* (0.012)	-0.004 (0.016)	-0.018 (0.013)	-0.019 (0.013)	-0.009 (0.018)	-0.022 (0.019)	-0.023 (0.019)	-0.016 (0.025)

deal activ- ity	-0.094 (0.062)	-0.093 (0.063)	-0.087 (0.081)	-0.086 (0.081)	-0.102 (0.116)	-0.102 (0.116)	-0.049 (0.049)	-0.047 (0.049)	-0.105 (0.074)	-0.017 (0.054)	-0.014 (0.054)	-0.071 (0.086)	0.024 (0.077)	0.027 (0.077)	-0.045 (0.117)
Quarter FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Industry FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Constant	21.111*** (6.086)	21.425*** (6.092)	26.336*** (7.780)	26.628*** (7.782)	25.113** (11.164)	25.002** (11.158)	12.384*** (4.611)	12.648*** (4.621)	1.919 (5.027)	8.657* (5.034)	8.871* (5.038)	-5.824 (5.835)	2.116 (7.220)	2.333 (7.220)	-12.404 (7.874)
Observa- tions	714	714	701	701	699	699	666	666	412	666	666	412	666	666	412
R ²	0.184	0.181	0.178	0.176	0.143	0.143	0.233	0.229	0.275	0.207	0.205	0.233	0.177	0.177	0.202
Adjusted R ²	0.047	0.044	0.037	0.036	-0.004	-0.004	0.094	0.089	0.097	0.064	0.061	0.045	0.028	0.028	0.006
Residual Std. Error	5.372 (df = 611)	5.381 (df = 611)	6.854 (df = 598)	6.861 (df = 598)	9.834 (df = 596)	9.835 (df = 596)	4.033 (df = 563)	4.044 (df = 563)	4.213 (df = 330)	4.403 (df = 563)	4.409 (df = 563)	4.889 (df = 330)	6.316 (df = 563)	6.318 (df = 563)	6.598 (df = 330)
F Statistic	1.347** (df = 102; 611)	1.322** (df = 102; 611)	1.266* (df = 102; 598)	1.253* (df = 102; 598)	0.975 (df = 102; 596)	0.974 (df = 102; 596)	1.675*** (df = 102; 563)	1.638*** (df = 102; 563)	1.543*** (df = 81; 330)	1.443*** (df = 102; 563)	1.426*** (df = 102; 563)	1.238 (df = 81; 330)	1.191 (df = 102; 563)	1.185 (df = 102; 563)	1.029 (df = 81; 330)

Notes: *p<0.1; **p<0.05; ***p<0.01

OLS regression with standard errors robust to heteroscedasticity. Dependent variables are winsorized at the 5th and 95th percentile.

Figure 13 shows cumulative abnormal returns around buyout announcements. The two panels in the first row plot Delaware v. non-Delaware bid separately, sub-classifying each group into cases before and after C&J Energy and Corwin. CARs are slightly larger in Delaware, and it appears that they were reduced in Delaware to a similar level as outside the state. However, the difference in the changes associated with the case law is not statistically significant in the regressions.

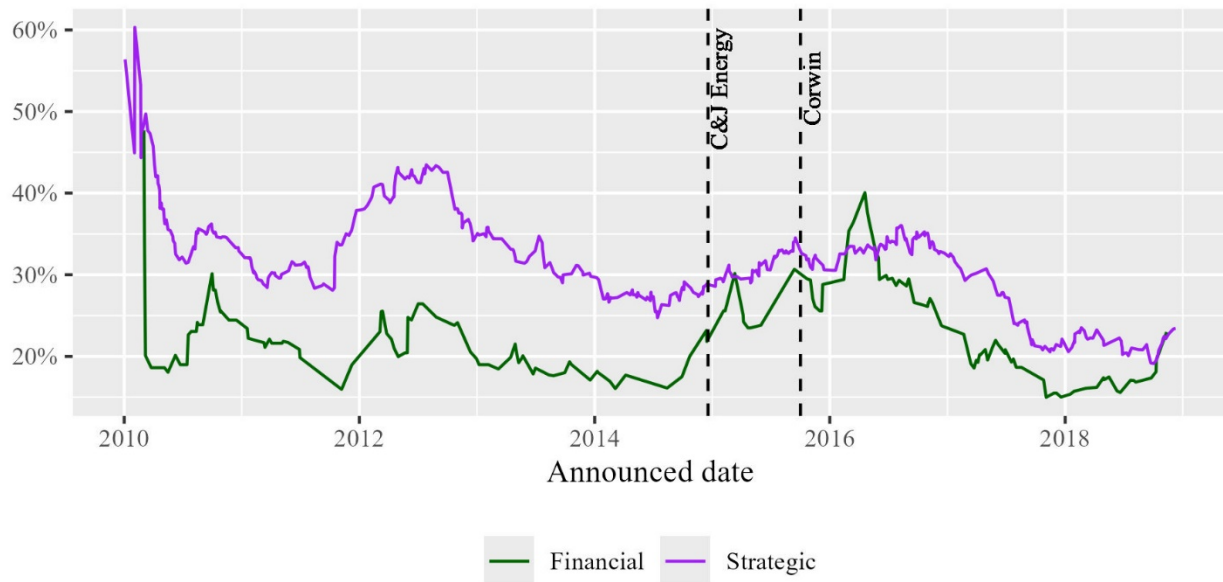
The lower row of Figure 13 shows equivalent event study graphs for buyer types within Delaware only. Here we see more interesting results. CARs for strategic acquisitions are higher than for financial ones, but the regressions indicate that the difference is smaller after the cases. Table 17 provides regressions for Delaware targets interacting the cases with the buyer type. While the regressions for takeover premia do not show statistically significant results those for cumulative abnormal returns do when we start the time windows at day -1, i.e. immediately before the announcement of the bid.⁴⁷

However, Models (7), (8), (10), (11), (13) and (14) show a significant negative coefficient both for Corwin and C&J Energy for the (-1/+1), (-1/+10) and (-1/+30) intervals. Models (9), (12) and (15) restrict the sample to observations before Corwin to see whether there is a significant result after C & J Energy alone; there is, but only for the intervals (-1/+1) and (-1/+10). CARs are lower in financial deals and higher in strategic deals after Corwin. As Figure 14 shows for, CARs (-1/+1) go up around C&J Energy, with the distance between the two types of mergers remaining closer together than before but continue to exhibit parallel trends.

⁴⁷ Results for time windows starting earlier are not or only marginally significant (not reported), likely due to the endogeneity of the time of the announcement.

Overall, these regressions provide evidence that CARs in financial and strategic deals have become more similar to each other.

Figure 14: Cumulative Abnormal Returns (-1/+1) for Delaware Targets by Acquisition Type (360-day rolling average)



6. Analysis

Overall, we have found only limited evidence for an impact of either *C&J Energy* or *Corwin* on merger agreements. Our study aligns with research demonstrating the significance of the Revlon doctrine for Delaware corporations (Cain et al. 2020; Restrepo 2023). However, it is the first to document that the doctrine remains significant, and that *Corwin* could be characterized as a “dog that barked but did not bite.”

First, we found an increase in the number of financial deals (relative to strategic deals) after Corwin, but we could not identify a difference between Delaware and non-Delaware targets.

Relatedly, we observe an increase in the incidence of what we term “bad process” in financial deals relative to strategic deals. While statistically significant, the change is not great quantitatively. We do not find a difference in the development of Delaware relative to other states.

We do find weak evidence for fewer competing bids in Delaware; however, the number of such offers is minimal, meaning that a few deals likely drive the statistical significance.

Finally, we find an impact of the cases on cumulative abnormal returns after deal announcements: Returns for financial deals increase and bring these closer to strategic deals, where CARs are generally higher. In other words, the gap between strategic and financial deals has become smaller.

There is no clear theoretical basis to explain why financial deals would – after the cases – increasingly exhibit poorer processes while, at the same time, the gap in returns between strategic and financial deals became smaller. Both before and after the cases, strategic deals on average yield greater returns compared to financial deals. This is because strategic buyers are “private value” buyers, not bound by common valuation constraints like financial buyers.⁴⁸ Synergies from cost-cutting post-merger allow strategic bidders to offer higher returns. In contrast, financial bidders, needing to avoid overpaying, are constrained by tighter calculations. Moreover, in strategic deals Revlon often does not apply if the transaction is stock-for-stock and control does not change;⁴⁹ if it does not, strategic deals might involve worse processes than financial deals. In the data, we see that the gap between the returns of financial and strategic deals became smaller. Because both curves move up and down largely in parallel, likely in reaction to overall market developments (see Figure 14), we cannot say if this is because strategic deals became less profitable, or

⁴⁸ Hill et al. (2023), p. 276-77 (noting that, unlike strategic buyers who attach idiosyncratic value to a target depending on synergies and cost savings unique to them, financial buyers view target firms as nothing more than a stream of fungible cash flows and, according to them, the target has a single, true objective value that they can only guess with estimates; for this reason, they are generally unwilling to participate in auctions).

⁴⁹ *Paramount Commc'ns Inc. v. QVC Network Inc.*, 637 A.2d 34, 47 (Del. 1994), which established that the Revlon review is triggered when there is a change in control, specifically when control of the company moves from the hands of a large, public stockholder base to a single controlling entity, while the sale of a corporation for stock in a company with a fluid, changeable, and changing market does not necessarily constitute a change of control.

because financial deals became more profitable for outside shareholders. Neither makes sense from a theoretical perspective. On the one hand, strategic deals should not be affected by permutations of a doctrine that is of little importance to them. On the other hand, because *C&J Energy* and *Corwin* seem to make it easier for target boards to adopt poorer processes in financial deals, it is unclear why bidders in such deals would increasingly see the need to offer higher payouts to shareholders; likely, this is due to shifts in transaction dynamics unrelated to these rulings. For example, the M&A market for financial buyers may have evolved to trade off price with deal terms, possibly due to increased liquidity in debt markets in the mid-to-late 2010s, a hypothesis worth further exploration.

Several plausible explanations exist for the small impact of *Corwin* on dealmaking. One explanation is that *Revlon* was already less strict in substance during the 2010s, and early-decade deal activity already systematically exhibited flawed process (Johnson & Ricca 2014). Another explanation is that directors of Delaware corporations and especially their advisors continue to respond strongly to deterrence (Gatti 2020). This deterrence is fueled by the risk aversion of deal planners to the possibility of rival bids, which might trigger a more extensive judicial review.⁵⁰ In particular, the ongoing effect of the preconditions to *Corwin* (full information, no coercion, and disinterest) adds to the deterrence factor.⁵¹ In fact, it has been observed that the Delaware judiciary has taken such preconditions very seriously and has not awarded the *Corwin* defense generously,

⁵⁰ In previous work (Gatti 2020), one of us pointed out that when the deal is negotiated parties do not know yet whether a competing bid will emerge—if it does, the rival bidder may sue to seek an injunction. In such a setting, courts may be more receptive to the plaintiff’s challenge than in the one-bidder deal scenario where they are concerned about injunctions because shareholders may lose the only deal at hand (in *C & J Energy* the Delaware Supreme Court made it clear that *Revlon* is ultimately a hostile / rival deal case).

⁵¹ Cf. Strine 2001, pp. 941-42 (arguing that even in non-*Revlon* deals like stock for stock mergers, shareholders should not be coerced to vote for a deal as a result of exorbitant termination fees).

especially after 2018 (Weinstein et al. 2019).⁵² To wit, legal scholars have pointed out that shortly after *Corwin*, Delaware judges expanded shareholders' inspection rights under section 220 of the DGCL, which allowed market players to gain access to valuable inside information pre-filing of deal disclosures, thus making it easier to establish if the preconditions were met (Shapira 2021). Market participants are thus discouraged from blatantly engaging in bad process due to the risk of losing the *Corwin* defense if their actions do not meet all preconditions.⁵³ In this respect, deal attorneys are critical in guiding transaction planners in a sale process. Although plaintiff attorneys have portrayed the new legal landscape negatively, transactional attorneys have not indicated that boards are now freer to shape the process (based on review of alert memos from major corporate law firms). In fact, deal attorneys have strong incentives to restrain their clients' worst impulses due to peer pressure and risk aversion inherent in their profession (Rock 1997). In *Revlon* deals, lawyers for the target expect to lose their client after the transaction closes and the acquirer absorbs the corporation. In such a scenario, the deal's legacy is more important than pleasing the client by accepting borderline provisions in the acquisition agreement.

In sum, we empirically tested *Corwin* during a period (end of 2015-2018) when the expectation was that it *could* make dealmaking laxer unless the preconditions were taken seriously by judges. It took judges a few years to send the signal that preconditions are in fact taken seriously. But when we tested dealmaking, that was not yet the expectation of the market—still, private parties “behaved.” Why? Maybe their lawyers had the intuition that sooner or later, judges would

⁵² Because of the importance of the preconditions to *Corwin*, future research should focus on their effects, including investigating whether *Corwin* has generated better deal disclosures overall, changed voting patterns, and resulted in new litigation strategies.

⁵³ Fried Frank (2020): “We have observed . . . that there appears to be a retrenchment to some extent by the court in applying *Corwin* in cases with a strongly negative factual context.”

have tightened their grip, as they did, via the preconditions. This confirms our findings: commentators rushed to the conclusion that judicial review was no longer important. In fact, transaction planners did not change their dealmaking approach. Judges ultimately reaffirmed that they will still scrutinize under a *Revlon* lens when there are flaws in the preconditions to *Corwin*. If anything, our data show that transactional practices in other states are converging toward those in Delaware in recent years. Litigation outside of Delaware still poses a risk, arguably increasing due to *Corwin*. It is possible that non-Delaware judges, who are not incentivized to reject excessive litigation, will not give *Corwin* too much deference to attract plaintiffs. This risk may make deal planners cautious about pushing the envelope too far to avoid a lengthy lawsuit with unpredictable outcomes.

7. Conclusion

This paper has examined the impact of the *Corwin* and *C&J Energy* cases on M&A contracting practices. Before *Corwin*, investors could rely on two distinct levels of protection: their voting rights and the option to sue directors for breach of their fiduciary duties in case of a flawed sales process. On its face, *Corwin* has narrowed the availability of post-closing damages and reduced the constraints of directors and officers.

We have analyzed all public deals from 2010 to 2018 for a contestable domestic target with an equity value of at least \$100 million and found no conclusive evidence of an effect on critical provisions in merger agreements. After *C&J Energy* and *Corwin*, one would have expected higher termination fees, fewer and shorter go-shop periods, less frequent market checks, and more frequent use of matching rights. The data do not support these expectations. We also did not observe a change in takeover premia.

There are several possible explanations for this lack of impact. Arguably, *Revlon* was already less strict in substance during the 2010s, meaning that the recent case law only continued

ongoing development. Moreover, directors of Delaware corporations and their advisors may continue to respond strongly to deterrence, fueled by deal planners' risk aversion to the possibility of rival bids, triggering a more extensive judicial review. In sum, Corwin can be characterized as a "dog that barked but did not bite" whose impact on corporate transactions has often been overstated.

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Appendix

Table 18: Power Analysis of OLS Regressions

Table	Model	Dependent variable	Group var.	Case	Group 1	Group 2	Cohen's d	MDES	Significant?
9	1	Termination fee	Delaware	C&J Energy	712	236	0.211	0.197	
9	2	Termination fee	Delaware	Corwin	712	236	0.211	0.197	
9	3	Go Shop	Delaware	C&J Energy	714	238	0.21	0.07	
9	4	Go Shop	Delaware	Corwin	714	238	0.21	0.07	
9	5	Auction	Delaware	C&J Energy	714	238	0.21	0.102	
9	6	Auction	Delaware	Corwin	714	238	0.21	0.102	
9	7	Bad Process	Delaware	C&J Energy	714	238	0.21	0.097	
9	8	Bad Process	Delaware	Corwin	714	238	0.21	0.097	
10	1	Bad Process	Buyer type	C&J Energy	536	178	0.243	0.111	***
10	3	Bad Process	Buyer type	Corwin	536	178	0.243	0.111	***
10	5	Bad Process	Buyer type	C&J Energy	346	99	0.32	0.15	
11	1	Initial Matching Rights	Delaware	C&J Energy	714	238	0.21	0.022	
11	2	Initial Matching Rights	Delaware	Corwin	714	238	0.21	0.022	
11	3	Initial Matching Rights	Buyer type	C&J Energy	536	178	0.243	0.024	**
11	4	Initial Matching Rights	Buyer type	Corwin	536	178	0.243	0.024	**
11	5	Initial Matching Rights	Buyer type	C&J Energy	346	99	0.32	0.037	
11	6	Last Look Matching Rights	Delaware	C&J Energy	707	234	0.212	0.055	
11	7	Last Look Matching Rights	Delaware	Corwin	707	234	0.212	0.055	
11	8	Last Look Matching Rights	Buyer type	C&J Energy	530	177	0.244	0.064	
11	9	Last Look Matching Rights	Buyer type	Corwin	530	177	0.244	0.064	*
13	1	Competing Bid	Delaware	C&J Energy	714	238	0.21	0.057	*
13	2	Competing Bid	Delaware	Corwin	714	238	0.21	0.057	
13	3	Competing Bid	Delaware	C&J Energy	714	69	0.354	0.098	**
13	4	Competing Bid	Delaware	Corwin	714	69	0.354	0.098	
14	1	1-Day-Premium	Delaware	C&J Energy	714	238	0.21	1.115	**
14	2	1-Day-Premium	Delaware	Corwin	714	238	0.21	1.115	
14	3	30-Day-Premium	Delaware	C&J Energy	701	233	0.212	1.429	**
14	4	30-Day-Premium	Delaware	Corwin	701	233	0.212	1.429	
14	5	90-Day-Premium	Delaware	C&J Energy	699	233	0.212	2.067	
14	6	90-Day-Premium	Delaware	Corwin	699	233	0.212	2.067	
14	7	CARs(-1/+1)	Delaware	C&J Energy	666	222	0.217	0.895	
14	8	CARs(-1/+1)	Delaware	Corwin	666	222	0.217	0.895	
14	9	CARs(-1/+10)	Delaware	C&J Energy	666	222	0.217	0.999	
14	10	CARs(-1/+10)	Delaware	Corwin	666	222	0.217	0.999	
14	11	CARs(-1/+30)	Delaware	C&J Energy	666	222	0.217	1.34	
14	12	CARs(-1/+30)	Delaware	Corwin	666	222	0.217	1.34	
15	1	1-Day-Premium	Buyer type	C&J Energy	536	178	0.243	1.336	*
15	2	1-Day-Premium	Buyer type	Corwin	536	178	0.243	1.336	
15	3	30-Day-Premium	Buyer type	C&J Energy	524	177	0.244	1.698	
15	4	30-Day-Premium	Buyer type	Corwin	524	177	0.244	1.698	
15	5	90-Day-Premium	Buyer type	C&J Energy	522	177	0.244	2.389	
15	6	90-Day-Premium	Buyer type	Corwin	522	177	0.244	2.389	
15	7	CARs(-1/+1)	Buyer type	C&J Energy	513	153	0.258	1.094	***
15	8	CARs(-1/+1)	Buyer type	Corwin	513	153	0.258	1.094	***
15	9	CARs(-1/+1)	Buyer type	C&J Energy	331	81	0.348	1.529	**
15	10	CARs(-1/+10)	Buyer type	C&J Energy	513	153	0.258	1.174	***
15	11	CARs(-1/+10)	Buyer type	Corwin	513	153	0.258	1.174	***
15	12	CARs(-1/+10)	Buyer type	C&J Energy	331	81	0.348	1.725	
15	13	CARs(-1/+30)	Buyer type	C&J Energy	513	153	0.258	1.653	**
15	14	CARs(-1/+30)	Buyer type	Corwin	513	153	0.258	1.653	**
15	15	CARs(-1/+30)	Buyer type	C&J Energy	331	81	0.348	2.286	

Note: Cohen's d was computed based on a significance level of 5% and a power level of 80%. The significance level in the last column indicates whether the interaction term between the respective case and the group variable is significant. *p<0.1; **p<0.05; ***p<0.01

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