APL-2023-00087
Appellate Division, First Department Docket No. 2022-00866
New York County Clerk's Index No. 651223/2020

Court of Appeals

of the

State of New York

NIGEL JOHN ECCLES, LESLEY JAYNE ROSS ECCLES, THOMAS GORDON GRIFFITHS, ROBAT JONES, CHRIS STAFFORD, ASKEK AHMED, ANDREW ALLAN, ALEXANDRA AMOS, JEANNICE ANGELA, KEN BERMAN, ALEX BIRD, DUNCAN BLAIR, CAMERON BOAL, EHI BORHA, JESSE BOSKOFF, GEORGE BOUGH, MICHAEL BRANCHINI, DANIEL BROWN, KELLI BUCHAN, CHARLENE BURNS, WILLIAM CARROLL, DAVE CAVINO, SHREE CHOWKWALE, CORAL HOUSE SERVICES LIMITED, CHRIS CORBELLINI, JIM CROFT, CYRUS DAVID,

(For Continuation of Caption See Inside Cover)

MOTION BY CONFLICT OF LAWS PROFESSORS PATRICK J. BORCHERS, CHRISTINE SGARLATA CHUNG, KEVIN McELROY, PATRICIA YOUNGBLOOD REYHAN, MICHELLE S. SIMON, STEWART E. STERK, AND AARON D. TWERSKI FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF IN SUPPORT OF REVERSAL OF THE DECISION BELOW

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DAVIDSON FAMILY REVOCABLE TRUST, JAMES DOIG, RYAN DONER, KEVIN DORREN, PAYOM DOUSTI, CARL EKMAN, RYAN FABER, JASON FARIA, VICTORIA FARQUHAR, RORY FITZPATRICK, ADRIAN GENAO, MITCHELL GILLESPIE, ALAN GOLDSHER, WILL GREEN, MELANIE GRIER, JUSTIN HANKE, RYAN HANSEN, PETER HENDERSON, MATTHEW HEVIA, ANDREW HEYWOOD, STEVEN HOLMES, JUSTIN HUME, GREGORY HUMPHREYS, F RESIDUAL LLC, TIM JACKSON, CORY JEZ, THANYALUK JIRAPECH-UMPAI, DEVASHISH KANDPAL, MICHAEL KANE, ALAN KARAMEHMEDOVIC, MARCUS KELMAN, DAVID KERR, GALINA KHO, DYLAN KIDDER, SARAH KILLARNEY-RYAN, ALLAN KILPATRICK, ALI KING, STEVEN KING, DAVID KNAPP, MIKE KUCHERA, ANGELA KUO, JESSE LAMBERT, AMY LANGRIDGE, DIOMIRA LAWRENCE, JOHN LIGHTBODY, FRANK LOCASCIO, ANDY LOVE, KRISTEN LU, GARY MA, KEVIN MACPHERSON, MAX MANDERS, JOHN MANGAN, SUNJAY MATHEWS, CAROLINE MCDOWALL, JULIE MCELRATH, KEVIN MCFLYNN, EILEEN MCLAREN, MARTIN MCNICKLE, DAN MELINGER, ANDREW MELLICKER, RAYNA MENGEL, MATT MILLEN, JOSH MOELIS, VINCE MONICAL, JEN MORDUE, EILIDH MORRISON, SIMON MURDOCH, ANDERS MURPHY, MATTHEW MUSICO, JAMES NEWBERY, OWEN O'DONNELL, XAVIER OLIVER-DUOCASTELLA, MARK PETERS, MICHAEL PETERSON, MICHAEL PINE, RICHARD MELMON TRUST, THOMAS RICHARDS, SHAWN RINKENBAUGH, IAN RITCHIE, JUSTINE SACCO, NICHOLAS SHARP, SCOTT SHAY, JAKE SILVER, KEITH STERLING, DAVID STESS, JOHN SUTHERLAND, WARRICK TAYLOR, STUART TONNER, JOHN VENIZELOS, KYLE WACHTEL, LYNNE WALLACE, WALLEYE INVESTMENTS, LLC, BRENDAN WATERS, SKYE WELCH, MICHAEL WILLIAMS AND PHYLLIS L. JONES, as Personal Representatives of the Estate of MARK WILLIAMS, Deceased, ROSS WILSON, KRISTIAN WOODSEND, KRIS YOUNG and ALEXANDER ZELVIN,

Plaintiffs-Appellants,

– against –

SHAMROCK CAPITAL ADVISORS, LLC, SHAMROCK CAPITAL GROWTH FUND III, LP, SHAMROCK FANDUEL CO-INVEST LLC, SHAMROCK FANDUEL CO-INVEST II, LP, KKR & CO., INC., FAN INVESTOR LIMITED, FAN INVESTORS L.P., MICHAEL LASALLE, EDWARD OBERWAGER, ANDREW CLELAND, MATTHEW KING, CARL VOGEL, DAVID NATHANSON, FASTBALL HOLDINGS LLC, FASTBALL PARENT 1 INC., FASTBALL PARENT 2 INC., PANDACO, INC., FANDUEL INC. and FANDUEL GROUP, INC.,

Defendants-Respondents.

STATE OF NEW YORK
COURT OF APPEALS

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Nigel John Eccles, Lesley Jayne Ross Eccles, Thomas Gordon Griffiths, Robat Jones, Chris Stafford, Ashek Ahmed, Andrew Allan, Alexandra Amos as personal representative of the Estate of Jay Amos, Jeannice Angela, Ken Berman, Alex Bird, Duncan Blair, Cameron Boal, Ehi Borha, Jesse Boskoff, Geoff Bough, Michael Branchini, Daniel Brown, Kelli Buchan, Charlene Burns, William Carroll, Dave Cavino, Shree Chowkwale, Coral House Services Limited, Chris Corbellini, Jim Croft, Cyrus David, Davidson Family Revocable Trust, James Doig, Ryan Doner, Kevin Dorren, Payom Dousti, Carl Ekman, Ryan Faber, Jason Faria, Victoria Farquhar, Rory Fitzpatrick, Adriana Estrada Genao, Mitchell Gillespie, Alan Goldsher, Will Green, Melanie Grier, Justin Hanke, Ryan Hansen, Peter Henderson, Matthew Hevia, Andrew Heywood, Steven Holmes, Justin M. Hume, Greg Humphreys, F Residual LLC, Tim Jackson, Cory Jez, Thanyaluk Jirapech-umpai, Devashish Kandpal, Michael Kane, Alan Karamehmedovic, Marcus Kelman, David Kerr, Galina Kho, Dylan Kidder, Sarah Killarney-Ryan, Allan Kilpatrick, Ali King, Steven King, David Knapp, Mike Kuchera, Angela Romano Kuo, Jesse Lambert, Amy Langridge, Diomira Lawrence, John Lightbody, Frank LoCascio, Andy Love, Kristen Lu, Gary Ma, Kevin MacPherson, Max Manders, John Mangan, Sunjay Mathews, Caroline McDowall, Julie McElrath (Anderson), Kevin McFlynn, Eileen McLaren, Martin McNickle, Dan Melinger, Andrew Mellicker, Rayna Mengel, Matt Millen, Josh Moelis, Vince Monical, Jen Mordue, Eilidh Morrison, Simon Murdoch, Anders Murphy, Matthew Musico, James Newbery, Owen O’Donnell, Xavier Oliver	APL-2023-00087 Appellate Division First Department Appeal No.: 2022-00866 New York County Clerk’s Index No.: 651223/2020

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Defendants-Respondents.

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NOTICE OF MOTION BY CONFLICT OF LAWS PROFESSORS PATRICK J. BORCHERS, CHRISTINE SGARLATA CHUNG, KEVIN McELROY, PATRICIA YOUNGBLOOD REYHAN, MICHELLE S. SIMON, STEWART E. STERK AND AARON D. TWERSKI FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF IN SUPPORT OF REVERSAL OF THE DECISION BELOW

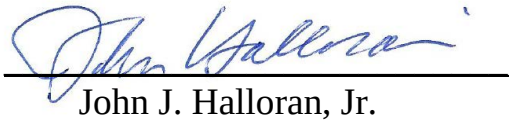
PLEASE TAKE NOTICE that upon the accompanying Affirmation of John J. Halloran, Jr., Esq., dated October 13, 2023, and all papers and proceedings herein, Conflict of Laws Professors Patrick J. Borchers, Christine Sgarlata Chung, Kevin McElroy, Patricia Youngblood Reyhan, Michelle S. Simon, Stewart E. Sterk and Aaron D. Twerski will move this Court, pursuant to 22 NYCRR § 500.23, at Court of Appeals Hall, 20 Eagle Street, Albany, New York 12207, on October 30, 2023, at 10:00 AM, or as soon thereafter as counsel may be heard, for an Order granting the movants leave to file the proposed *amicus curiae* brief in support of reversal of the Decision and Order of the Appellate Division, First Judicial Department, dated October 13, 2022, and granting any further relief that this Court deems just and proper.

Dated: October 13, 2023

Respectfully Submitted,

JOHN J. HALLORAN, JR., P.C.

By:



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Michelle S. Simon,
Stewart E. Sterk, and
Aaron D. Twerski

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Nigel John Eccles, Lesley Jayne Ross Eccles, Thomas Gordon Griffiths, Robat Jones, Chris Stafford, Ashek Ahmed, Andrew Allan, Alexandra Amos as personal representative of the Estate of Jay Amos, Jeannice Angela, Ken Berman, Alex Bird, Duncan Blair, Cameron Boal, Ehi Borha, Jesse Boskoff, Geoff Bough, Michael Branchini, Daniel Brown, Kelli Buchan, Charlene Burns, William Carroll, Dave Cavino, Shree Chowkwale, Coral House Services Limited, Chris Corbellini, Jim Croft, Cyrus David, Davidson Family Revocable Trust, James Doig, Ryan Doner, Kevin Dorren, Payom Dousti, Carl Ekman, Ryan Faber, Jason Faria, Victoria Farquhar, Rory Fitzpatrick, Adriana Estrada Genao, Mitchell Gillespie, Alan Goldsher, Will Green, Melanie Grier, Justin Hanke, Ryan Hansen, Peter Henderson, Matthew Hevia, Andrew Heywood, Steven Holmes, Justin M. Hume, Greg Humphreys, F Residual LLC, Tim Jackson, Cory Jez, Thanyaluk Jirapech-umpai, Devashish Kandpal, Michael Kane, Alan Karamehmedovic, Marcus Kelman, David Kerr, Galina Kho, Dylan Kidder, Sarah Killarney-Ryan, Allan Kilpatrick, Ali King, Steven King, David Knapp, Mike Kuchera, Angela Romano Kuo, Jesse Lambert, Amy Langridge, Diomira Lawrence, John Lightbody, Frank LoCascio, Andy Love, Kristen Lu, Gary Ma, Kevin MacPherson, Max Manders, John Mangan, Sunjay Mathews, Caroline McDowall, Julie McElrath (Anderson), Kevin McFlynn, Eileen McLaren, Martin McNickle, Dan Melinger, Andrew Mellicker, Rayna Mengel, Matt Millen, Josh Moelis, Vince Monical, Jen Mordue, Eilidh Morrison, Simon Murdoch, Anders Murphy, Matthew Musico, James Newbery, Owen O’Donnell, Xavier Oliver	APL-2023-00087 Appellate Division First Department Appeal No.: 2022-00866 New York County Clerk’s Index No.: 651223/2020

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Defendants-Respondents.

----------x

AFFIRMATION OF JOHN J. HALLORAN, JR. IN SUPPORT OF THE MOTION OF *AMICI CURIAE*

JOHN J. HALLORAN, JR., an attorney duly admitted to practice law before the Courts of the State of New York, affirms under the penalty of perjury, pursuant to CPLR § 2106, as follows:

1. I am managing partner of the law firm of John J. Halloran, Jr., P.C. with offices in White Plains, NY. I have been a member in good standing of the New York Bar since 1985.

2. On this motion, I am *pro bono* counsel to *Amici Curiae* conflict of laws professors Patrick J. Borchers, Christine Sgarlata Chung, Kevin McElroy, Patricia Youngblood Reyhan, Michelle S. Simon, Stewart E. Sterk, and Aaron D. Twerski.

3. I respectfully submit this affirmation in support of the motion of the above conflict of laws professors for permission to submit an *amicus curiae* brief in support of Plaintiffs-Appellants and urging reversal of the Decision and Order of the Appellate Division, First Judicial Department, dated October 13, 2022. *Eccles v. Shamrock Capital Advisors, LLC*, 209 A.D.3d 486, 176 N.Y.S.3d 35 (1st Dep't 2022), *lv. granted, Nigel John Eccles v. Shamrock Capital Advisors, LLC*, 2023 NY Slip Op 68686, 2023 NY Slip Op 68686, 2023 WL 4003947 (N.Y. June 15, 2023).

4. This motion is submitted pursuant to Rule 500.23 of the Rules of this Court. *Amici* seek leave to submit an *amicus curiae* brief on the grounds, as demonstrated by the accompanying proposed brief, that *Amici* are able to identify law or arguments that might otherwise escape the Court's consideration, and the proposed *amicus curiae* brief otherwise would be of

assistance to the Court. *See* Rule 500.23(4)(ii)-(iii). This motion is timely because it has been submitted as soon as practicable after the submission of the parties' main briefs on appeal in the above case.

5. Attached hereto as Exhibit A is the proposed *amicus curiae* brief of the conflict of laws professors. As demonstrated in the proposed brief, the interest of *Amici* in this case is profound:

> *Amici* are law professors who teach and write extensively about conflict of laws. *Amici* have no personal stake in this case and are not being compensated for preparing this brief.
>
> Collectively, they have decades of experience in legal education. By virtue of their extensive professional and academic experience, *Amici* have a deep familiarity with the bedrock principles of conflict of laws at stake in this case. This familiarity is enhanced by *Amici's* submission, with permission of this Court, of an *amicus curiae* brief upon the motion for leave to appeal in this case.
>
> Accordingly, *Amici* are well-equipped to identify law or arguments that might otherwise escape the Court's consideration and present views that otherwise would be of assistance to this Court.

See Proposed *Amicus Curiae* Brief, at 1 (footnote omitted).

6. This Court has long welcomed *amicus curiae* briefs that are designed to assist the Court,[1] including the *amicus curiae* brief of the conflict of laws

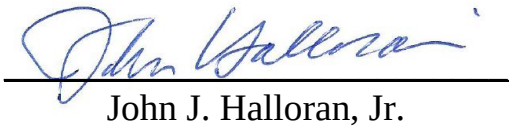
[1] *See, e.g., ABN AMRO Bank, N.V. v. MBIA Inc.*, 17 N.Y.3d 208 (2011) (Patrick J. Borchers, Omaha, Nebraska, pro se and Arthur R. Miller, New York City, pro se, amici curiae); *Sec. Pac. Bus. Credit, Inc. v. Peat Marwick*

professors which was respectfully submitted at an earlier stage of this appeal. *See Nigel John Eccles v. Shamrock Capital Advisors, LLC*, 2023 NY Slip Op 68689, 2023 NY Slip Op 68689, 2023 WL 4003966 (N.Y. June 15, 2023) ("Motion by Patrick J. Borchers, et al. for leave to appear amici curiae on the motion for leave to appeal herein granted and the proposed brief is accepted as filed."). The proposed *amicus curiae* brief is offered in this spirit.

WHEREFORE, movants respectfully request that this Court grant their motion for leave to submit the proposed *amicus curiae* brief to this Court.

Dated: White Plains, NY
October 13, 2023

Respectfully Submitted,



John J. Halloran, Jr.

Main & Co., 79 N.Y.2d 695 (1992) (American Institute of Certified Public Accountants); *William Iselin & Co. v. Landau*, 71 N.Y.2d 420 (1988) (same).

EXHIBIT A

APL-2023-00087
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(For Continuation of Caption See Inside Cover)

BRIEF FOR *AMICI CURIAE* CONFLICT OF LAWS PROFESSORS PATRICK J. BORCHERS, CHRISTINE SGARLATA CHUNG, KEVIN McELROY, PATRICIA YOUNGBLOOD REYHAN, MICHELLE S. SIMON, STEWART E. STERK, AND AARON D. TWERSKI IN SUPPORT OF REVERSAL OF THE DECISION BELOW

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Defendants-Respondents.

CORPORATE DISCLOSURE STATEMENT UNDER RULE 500.1(f)

The movants -- *Amici Curiae* conflict of laws professors -- are appearing herein in their individual capacities and not for or on behalf of a corporation or other business entity. The listing of school and title is for identification purposes only.

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Creighton University

Christine Sgarlata Chung
Gov. George E. Pataki Distinguished Professor in International Commercial Law
Albany Law School

Professor Kevin McElroy
Maurice A. Dean School of Law at Hofstra University

Patricia Youngblood Reyhan
Distinguished Professor of Law
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Michelle S. Simon
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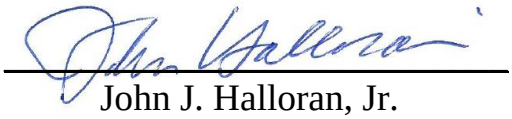
Stewart E. Sterk
H. Bert and Ruth Mack Professor of Real Estate Law
Benjamin N. Cardozo School of Law, Yeshiva University

Professor Aaron D. Twerski
Irwin and Jill Cohen Professor of Law
Brooklyn Law School

Dated: October 13, 2023

JOHN J. HALLORAN, JR., P.C.

By:



John J. Halloran, Jr.

TABLE OF CONTENTS

Page

Page

TABLE OF AUTHORITIES

Cases **Page**

Cases (Continued) **Page**

Cases (Continued) **Page**

Cases (Continued) **Page**

Restatement (Second) of Conflict of Laws (1971)

Scholarly Authorities **Page**

Additional Scholarly Authorities **Page**

BRIEF FOR *AMICI CURIAE* CONFLICT OF LAWS PROFESSORS PATRICK J. BORCHERS, CHRISTINE SGARLATA CHUNG, KEVIN McELROY, PATRICIA YOUNGBLOOD REYHAN, MICHELLE S. SIMON, STEWART E. STERK, AND AARON D. TWERSKI IN SUPPORT OF REVERSAL OF THE DECISION BELOW

Interests of *Amici Curiae*

Amici are law professors who teach and write extensively about conflict of laws. *Amici* have no personal stake in this case and are not being compensated for preparing this brief.

Collectively, they have decades of experience in legal education. By virtue of their extensive professional and academic experience, *Amici* have a deep familiarity with the bedrock principles of conflict of laws at stake in this case. This familiarity is enhanced by *Amici's* submission, with permission of this Court, of an *amicus curiae* brief upon the motion for leave to appeal in this case.[1]

Accordingly, *Amici* are well-equipped to identify law or arguments that might otherwise escape the Court's consideration and present views that otherwise would be of assistance to this Court.

[1] *Eccles v. Shamrock Capital Advisors, LLC*, 39 N.Y.3d 1179 (2023).

Preliminary Statement

Amici respectfully urge this Court to reverse the Decision of the Appellate Division,[2] and under this Court's traditional interest analysis, hold that New York law applies to the business torts alleged herein.

The Appellate Division concluded that the internal affairs doctrine automatically dictates that the law of the jurisdiction of a company's incorporation -- here, Scotland -- applies to business torts, without considering important New York interests as required by *Greenspun v. Lindley*, 36 N.Y.2d 473 (1975). Misapplying New York's choice-of-law approach, the Appellate Division found that Scots law does not recognize that directors owe a fiduciary duty to shareholders. It is this conflict of laws that warrants a studied interest analysis.

This Court has long led the Nation in formulating principled and flexible choice-of-law rules based upon the realities of the interests at stake and the interests of justice. *Greenspun* was such a case. While the jurisdiction of an entity's incorporation may generally be a reliable indicator of which law should be applied to address certain disputes concerning an entity's organic internal affairs, New York interests must also be considered. *Greenspun*, 36 N.Y.2d at 478 ("reject[ing] any automatic application of the so-called 'internal affairs' choice-of-law rule" and

[2] *Eccles v. Shamrock Capital Advisors, LLC*, 209 A.D.3d 486 (1st Dep't 2022), *lv. granted*, 39 N.Y.3d 916 (2023).

recognizing that application of New York law may be called for where "significant contacts with New York State" show the subject entity to be "'present' in our State").

The Appellate Division applied the internal affairs doctrine and dismissed Plaintiffs' business tort claims under its interpretation of Scots law. Yet, the Appellate Division did not cite *Greenspun*. The Court below did not explicitly consider New York interests. The Court below did not acknowledge that the main subject of the alleged tortious scheme – FanDuel, Ltd. – had a New York presence with New York headquarters and substantial business in New York. Nor did the Court acknowledge that New York has strong interests in protecting market participants and maintaining its stature as an orderly and honest global marketplace. Instead, the Court below mechanically applied the internal affairs doctrine without regard for *Greenspun* or any interest analysis and summarily applied Scots law because FanDuel was incorporated in Scotland.

This Court should conduct its traditional interest analysis and hold that New York law applies to the dispute. New York has a compelling interest in regulating the conduct of entities that are present in New York, even where the entity is incorporated outside of New York. The Decision below renders New York courts powerless to protect market participants, and the market itself, from allegedly tortious conduct in New York that injured New Yorkers. New York is not a modern-

day Barbary Coast that countenances harmful and tortious conduct within its borders.

Although Scotland's interests should not be ignored, on this record, Scotland has no real and substantial interest unconnected to economic protectionism. Scotland itself does not and could not claim a general license to export its tort immunity to every corner of the globe, nor does it arrogate to itself a prerogative to compel New York courts to adopt a *laissez-faire* attitude toward alleged corporate misconduct in New York.

The interest analysis should be conducted in a manner mindful of the rationale of the internal affairs doctrine. As confirmed by the Restatement (Second) of Conflict of Laws, the internal affairs doctrine serves a beneficial purpose where it would be impractical to apply law other than that of the jurisdiction of incorporation, such as in cases involving the issuance of stock and the declaration of dividends, which directly affect the organic structure or internal administration of the corporation. That issue is not present here. Rather, this case involves causes of action for commission of torts that can practicably be decided differently under the law of different jurisdictions. The imposition of standards of conduct for torts does not undermine the organic structure or internal administration of the corporation, and thus, falls outside the traditional ambit of the internal affairs doctrine in New York.

Thus, this Court should conduct the requisite interest analysis and hold that New York has the predominant interest in the application of its law to the tort dispute and apply New York law.

ARGUMENT

POINT I

THE APPELLATE DIVISION ERRED IN FAILING TO CONDUCT THE REQUISITE INTEREST ANALYSIS.

A. New York's Settled Choice-Of-Law Principles Call For An Interest Analysis.

The official reports of this Court and law school casebooks are replete with this Court's landmark opinions setting forth principled choice-of-law rules in cross-border cases touching upon foreign and domestic interests. Stewart E. Sterk, *The New York Court of Appeals: 150 Years of Leading Decisions*, 48 Syracuse L. Rev. 1391, 1438-1442 (1998) ("The Court of Appeals has played a critical role in the development of choice-of-law theory during the twentieth century.").

This Court has been in the forefront of State high courts in formulating flexible choice-of-law rules that "take into account essential policy considerations and objectives" and avoid "unjust and anomalous results." *Babcock v. Jackson*, 12 N.Y.2d 473, 484 (1963) (Fuld, J.). *See also* David D. Siegel, Conflict of Laws, 19 Syracuse L. Rev. 235, 248-49 (1967) ("The approach [in *Babcock*] requires the court to parse the issues of each case and to apply to each issue the law of the jurisdiction

having the most significant contacts with that issue. . . . *Babcock* acknowledged the loss of predictability and deliberately deferred it to a rule better able to achieve justice").

Babcock stands for the unassailable proposition that the courts strive to achieve "[j]ustice, fairness and 'the best practical result' . . . by giving controlling effect to the law of the jurisdiction which, because of its relationship or contact with the occurrence or the parties, has the greatest concern with the specific issue raised in the litigation." *Babcock*, 12 N.Y.2d at 481 (citation omitted). *See* Patrick J. Borchers, *Conflicts Pragmatism*, 56 Alb. L. Rev. 883, 911 (1993) (recognizing "*Babcock's* pragmatic foundation" and "recalling, as the *Babcock* court did, that the judicial process is, after all, a search for justice"); Stewart E. Sterk, *The Marginal Relevance of Choice of Law Theory*, 142 U. Pa. L. Rev. 949, 995 (1994) ("[judges] ascertain[] where justice lies in the individual case").

"New York choice of law principles require a court to apply the law of the state with the most significant relationship with the particular issue in conflict." *Indosuez International Finance B.V. v. Nat'l Reserve Bank*, 98 N.Y.2d 238, 245 (2002). *Accord Padula v. Lilarn Properties Corp.*, 84 N.Y.2d 519, 521 (1994) ("In the context of tort law, New York utilizes interest analysis to determine which of two competing jurisdictions has the greater interest in having its law applied in the litigation."); *Intercontinental Planning, Ltd. v. Daystrom, Inc.*, 24 N.Y.2d 372, 382

(1969) (“‘the law of the jurisdiction having the greatest interest in the litigation will be applied’”) (citation omitted).

B. The Internal Affairs Doctrine Is Properly Applied Within The Framework Of The Modern Interest Analysis.

Where an actual conflict of laws exists and no statute controls, the courts consider whether the internal affairs doctrine militates in favor of the application of the law of the jurisdiction of incorporation or the law of some other jurisdiction with the most significant relationship with the issue in conflict.

Scope Of The Internal Affairs Doctrine

Historically, this Court has cautiously and flexibly addressed the internal affairs doctrine. “To trace in advance the precise line of demarcation between the controversies affecting a foreign corporation in which jurisdiction will be assumed and those in which jurisdiction will be declined, would be a difficult and hazardous venture.” *Travis v. Knox Terpezone Co.*, 215 N.Y. 259, 264 (1915) (Cardozo, J.). *Accord Cohn v. Mishkoff Costello Co.*, 256 N.Y. 102, 105 (1931) (“it is not always easy to say when jurisdiction will be taken and when declined” under the internal affairs rule); *Broida v. Bancroft*, 103 A.D.2d 88, 91 (2d Dep’t 1984) (Titone, J.) (“‘The vague principle that courts will not interfere with the internal affairs of a corporation whose foreignness is at best a metaphysical concept, must fall before the practical necessities of the modern business world’”) (citation omitted); Nat Stern, *Circumventing Lax Fiduciary Standards: The Possibility of Shareholder Multistate*

Class Actions for Directors' Breach of the Duty of Due Care, 72 Neb. L. Rev. 1, 65 (1993) ("the category of 'internal affairs' comprehended by the rule remains indefinite").

The Internal Affairs Doctrine Is Not Absolute

While the scope of the internal affairs doctrine is elusive, the "internal affairs doctrine . . . provides that relationships between a company and its directors and shareholders are *generally* governed by the substantive law of the jurisdiction of incorporation." *Davis v. Scottish Re Grp. Ltd.*, 30 N.Y.3d 247, 253 (2017) (emphasis added). Confirming that the internal affairs doctrine is not absolute, this Court "reject[ed] any automatic application of the so-called 'internal affairs' choice-of-law rule, under which the relationship . . . between shareholders and directors of a business corporation would be governed by the law of the State in which the business entity was formed." *Greenspun*, 36 N.Y.2d at 478. *Accord Hau Yin To v. HSBC Holdings, PLC*, 700 F. App'x 66, 69 (2d Cir. 2017) (Summary Order) ("New York courts reject a per se application of the internal affairs doctrine") (citing *Greenspun*).[3]

[3] Defendants concede that the Second Circuit's decision in *Hau Yin To* "summarized well the prevailing rule in this State." FanDuel Br. at 21; *see also* KKR Br. at 23-24 (*Hau Yin To* is "recent[]" and "accurate[]"). *Amici Curiae* law professors agree that *Hau Yin To* states the applicable rule.

Given that Defendants acknowledge that *Hau Yin To* is authoritative, there can be no doubt that the internal affairs doctrine should be applied within the framework of modern interest analysis. Applying New York law, the Second Circuit held that: (i) "New York choice-of-law rules apply an 'interest analysis' to determine which jurisdiction's law applies," (ii) "[u]nder the interest analysis, 'the law of the jurisdiction having the greatest interest in resolving the particular issue' applies," and (iii) "[t]he 'internal affairs doctrine' [is] a species of interest analysis." *Hau Yin To*, 700 F. App'x at 68-69 (citations omitted). New York law thus clearly holds that the internal affairs doctrine should be applied within the framework of modern interest analysis.

The Restatement Confirms The Accepted Rationale And Practical Limits Of The Internal Affairs Doctrine

The courts have looked to the Restatement for guidance about the scope of the internal affairs doctrine. *Zion v. Kurtz*, 50 N.Y.2d 92, 100 (1980) (law of state of incorporation generally applies to the "internal affairs" of the foreign entity such as "the relationship between shareholders and directors (cf. *Greenspun v Lindley*, 36 NY2d 473, 478; see Restatement, Conflict of Laws 2d, § 302, Comment g)"). The Restatement recognizes that the law of the state of incorporation will *not* be applied where there is an "overriding interest of another state in having its rule applied." *Id.* citing Restatement § 302, cmt. g.

Consistent with *Hau Yin To*, the Restatement confirms that the internal affairs rule should be applied within the framework of modern interest analysis. "[I]n certain unusual instances the law of the forum or of another State having more significant contacts with the transactions might be applied in place of the law of the State of incorporation (Restatement, Conflicts of Laws 2d, §§ 302, 304, 309)." *Greenspun v. Lindley*, 44 A.D.2d 20, 22 (1st Dep't 1974), *aff'd*, 36 N.Y.2d 473 (1975). "[W]hile internal affairs matters are traditionally governed by the state of incorporation (Restatement (Second) Conflict of Laws, §§ 302-07, 309 (1971)), modern choice-of-law principles are sufficiently flexible to permit that state with the greatest interest in the consequences of a transaction to regulate the transaction, *see id.* § 188." Note, *The Constitutionality of State Takeover Statutes: A Response to Great Western*, 53 N.Y.U. L. Rev. 872, 922 n.374 (1978); *id.* at 934 (same). *See also* Stanley A. Kaplan, *Foreign Corporations and Local Corporate Policy*, 21 Vand. L. Rev. 433, 450 (1968) ("It should not be inappropriate to inquire whether the law governing corporate conduct should be determined by the same processes of judgment and selection used in other questions of conflict of laws and to examine the possibility that the law of the forum might be applied to internal corporate disputes under certain circumstances.").

Importantly, Section 309 of the Restatement (Second) of Conflict of Laws (1971) -- which has been relied upon by state and federal courts in New York --

underscores the accepted rationale and practical limits of the internal affairs doctrine that should animate the interest analysis. "The internal affairs doctrine posits that a state has an interest in applying its laws uniformly to issues relating to 'the organic structure or internal administration of a corporation' incorporated in that state. In contrast, more common issues, such as those 'relating to the liability of the directors and officers for [the making of a contract or the commission of a tort] can practicably be decided differently in different states.'" *Tyco Int'l, Ltd. v. Kozlowski*, 756 F. Supp. 2d 553, 560 (S.D.N.Y. 2010) quoting Restatement (Second) of Conflict of Laws § 309 cmt. c. *See also Greenspun*, 44 A.D.2d at 22 (citing Restatement § 309), *aff'd*, 36 N.Y.2d 473 (1975); *Norlin Corp. v. Rooney, Pace, Inc.*, 744 F.2d 255, 263 (2d Cir. 1984) (citing Restatement § 309 cmt. c).[4]

Consistent with the Restatement, there are surely some "'hard core areas' that demand governance by a single regime" (Stern, 72 Neb. L. Rev. at 69 (footnote omitted)), and nothing herein urges this Court to abandon the internal affairs doctrine in that subset of cases. In theory, the law of the jurisdiction of incorporation may generally and pragmatically be applied to "conduct that 'closely affect[s] the organic

[4] *Id.*, Reporter's Note, cmt. c ("The local law of a state other than that of incorporation was applied to determine the liability of a director or officer to a shareholder in *Mansfield Hardwood Lumber Co. v. Johnson*, 268 F.2d 317 (5th Cir.), *cert. den.*, 361 U.S. 885 (1959) and *Blazer v. Black*, 196 F.2d 139 (10th Cir. 1952). In both cases, the corporation had the great majority of its contacts with the state whose local law was applied.").

structure or internal administration of the corporation' (for example, the declaration of dividends)." Stern, 72 Neb. L. Rev. at 68-69 quoting Restatement (Second) of Conflict of Laws § 309 cmt. c.[5] An approach favoring uniformity in such "hard core areas" of internal governance does not, however, justify or explain the automatic application of the law of incorporation in cases seeking relief for alleged corporate misconduct in New York that allegedly injured New Yorkers. Stern, 72 Neb. L. Rev. at 70 ("differing state judgments about the existence of director's liability for breach of fiduciary duties do not fundamentally interfere with the ability of a corporation to do business").

Simply put, as this case illustrates, "not every corporate governance matter cries out for a single, stable rule." Ann M. Lipton, *Inside Out (or, One State to Rule them All): New Challenges to the Internal Affairs Doctrine*, 58 Wake Forest L. Rev. 321, 382 & n.377 (2023), citing, *inter alia*, *Sadler v. NCR Corp.*, 928 F.2d 48, 55 (2d Cir. 1991) (Newman, J.) (the right to inspect stockholder lists is a "recognized exception to the internal affairs doctrine" because different laws across jurisdictions

[5] An early iteration of the so-called "internal affairs" rule was applied to foreclose adjudication of the legality of the payment of a dividend by a foreign corporation. *Howell v. Chicago & North Western Railway Co.*, 51 Barb. 378, 383 (N.Y. Sup. Ct. 1868) (New York protects persons from economic harm and fraud inflicted by domestic or foreign wrongdoers; however, the court declined to enjoin the payment of a dividend of a foreign corporation).

will not create "irreconcilable conflict").

Ultimately, several theoretical justifications have been identified as supporting application of the law of incorporation under the internal affairs rule – "the charter as a contract, the corporation as a creature of the chartering state, certainty and ease of application, the difficulty of matching local law to foreign charters, conflict between local and foreign law, antiquated local laws, and lack of or improper local policies." *Constitutionality of State Takeover Statutes*, 53 N.Y.U. L. Rev. at 932 n.450 citing Elvin R. Latty, *Pseudo-Foreign Corporations*, 65 Yale L.J. 137, 138-43 (1955). Yet, these justifications have been found to be insufficient to confer exemption from local laws upon a foreign entity having little or no contact with the jurisdiction of incorporation. *Id.* at 932 n.450 (citing Latty). In other words, such justifications have not deterred "some courts [from] look[ing] outside the state of incorporation to determine management's fiduciary obligations where the corporation's predominant contacts have lain elsewhere." Stern, 72 Neb. L. Rev. at 69 & n.404 (collecting cases).

By all appearances, the Appellate Division did not consider the limited scope or accepted rationale of the internal affairs doctrine nor did it conduct the requisite interest analysis. Thus, this Court should conduct the requisite interest analysis which, as shown below, supports application of New York law to alleged business torts that were committed in New York and injured New Yorkers.

POINT II

JUSTICE, FAIRNESS AND THE BEST PRACTICAL RESULT ARE ACHIEVED BY GIVING CONTROLLING EFFECT TO THE LAW OF THE STATE OF NEW YORK.

In *Babcock,* this Court reversed a conclusory decision of the Appellate Division and decided a landmark conflict-of-laws issue as a matter of law in the context of a motion to dismiss. *Babcock*, 12 N.Y.2d at 477, 485, *rev'g*,17 A.D.2d 694 (4th Dep't 1962) (affirming without opinion the judgment of Special Term granting motion to dismiss the complaint). Similarly, this Court should reverse the cursory decision of the Appellate Division -- rendered in the context of a motion to dismiss -- and hold that New York law governs the dispute.

Defendants bear the burden of demonstrating that Scots law, rather than the forum-state law of New York, should govern the business torts alleged in the Complaint. *Schultz v. Boy Scouts of Am.*, 65 N.Y.2d 189, 202 (1985). On appeal, however, Defendants' burden is unsustainable. The Complaint's allegations are presumed to be true on a motion to dismiss (*Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994)), and "the facts relating to the choice of law issue are considered in the light most favorable to plaintiff." *Intercontinental Planning, Ltd.*, 24 N.Y.2d at 380. Viewed in this light, the Complaint alleges that FanDuel was present in New York, and the alleged tortious conduct occurred in New York and injured New Yorkers.

Accordingly, there can be no dispute that the Complaint alleges facts demonstrating New York's manifestly predominant interest in the dispute.

Under these circumstances, this Court should reverse the judgment of dismissal below, determine that Defendants have not met their burden to apply Scots law, and hold, as a matter of law, that "[j]ustice, fairness and 'the best practical result' may best be achieved by giving controlling effect to the law of the jurisdiction" – here, New York – "which, because of its relationship or contact with the occurrence or the parties, has the greatest concern with the specific issue raised in the litigation" namely business torts committed in New York that injured New Yorkers. *Babcock*, 12 N.Y.2d at 481 (citation omitted).

A. New York Has Several Compelling Interests In The Dispute.

There are several limitations to the general internal affairs rule including, for example, where: (i) the subject entity is present in New York; (ii) there is a demonstrated interest in protecting those who do business in New York; and (iii) there is a demonstrated interest in maintaining New York's status as a national and international business center. Those limitations are particularly significant when the issue at stake lies outside the core areas of corporate governance for which the internal affairs doctrine was designed.

1. New York's Interest In The Tort Dispute Is Paramount When The Subject Entity Is Present In This State.

This Court's leading internal affairs decision is *Greenspun v. Lindley*, 36 N.Y.2d 473 (1975). In *Greenspun*, shareholders of a real estate investment trust brought an action in New York challenging the investment decisions and management of the trust. The trust was organized in Massachusetts and its shareholders agreed to be bound by Massachusetts law. On this basis, and in the absence of New York contacts, this Court found that "prima facie, Massachusetts law is applicable" to the business dispute. *Greenspun*, 36 N.Y.2d at 477.

Greenspun is an integral part of an unbroken line of authorities since *Babcock* that pragmatically assesses the interests in the dispute and eschews dogmatic reliance upon any single connecting factor that may or may not be significant to the realities of the dispute. *Greenspun* pointed out that the state of organization/incorporation, standing alone, does not automatically compel application of that jurisdiction's law to a New York business dispute. *Greenspun* teaches that it is necessary to consider New York contacts including, for example, "proof of a significant association or cluster of significant contacts on the part of the [entity] with the State of New York to support a finding of such 'presence' of the [entity] in our State as would, irrespective of other considerations, call for the application of New York law." *Greenspun*, 36 N.Y.2d at 477. *See* P. John Kozyris, *Corporate Wars and Choice of Law*, 1985 Duke L.J. 1, 73 ("[*Greenspun*] left open

the possibility that if the [entity] had been 'present' in New York -- doing business, headquarters, meetings, assets, shareholdings -- New York law may have been applicable."); Aaron D. Twerski, *Conflict of Laws Cases-Comments-Questions*, Cornell L. Rev. 1045, 1054 (1975-1976) ("The right of a state to apply its own law . . . to a situation which is so heavily centered within the state seems to make fundamental good sense."); *id.* at 1059 ("As the state's 'contact' with the event in question becomes more substantial, the state's policy for governing that kind of event takes on increasing importance.").

Consistent with *Greenspun*, the internal affairs doctrine "carr[ies] less weight when the corporation has little or no contact with [the state of incorporation] other than the fact that it was incorporated there [and] [i]n such situations, some other state will almost surely have a greater interest than the state of incorporation in the determination of the particular issue." Restatement (Second) of Conflict of Laws § 302 cmt. g (1971). *Accord* Willis L.M. Reese & Edmund M. Kaufman, *The Law Governing Corporate Affairs: Choice of Law and the Impact of Full Faith and Credit*, 58 Colum. L. Rev. 1118-19 (1958) ("[where] corporations . . . are incorporated in one state but have their principal place of business and conduct all, or nearly all, of their activities in another . . . there is greater reason . . . to disregard the law of the state of incorporation and instead to regulate the corporation by the law of the state in which it is localized") (footnotes omitted); Latty, 65 Yale L.J. at

144 ("courts make a sharp distinction when it comes to corporations whose business and personnel are predominantly identified with the local state, as shown by such factors as the places where the business is done, the location of property and records, and the location of the residence and meetings of directors.") (footnote omitted); Note, *Pseudo-Foreign Corporations and the Internal Affairs Rule*, 1960 Duke L.J. 477, 479 (1960) ("Where [] the corporation's only contact with the incorporating state is the fact of incorporation, and where all other contact points, such as residence of parties and place of business, are within the forum, local law should supplant foreign law").

The Second Circuit has applied *Greenspun* in *Hau Yin To*, 700 F. App'x at 68-69, and Defendants acknowledge that *Hau Yin To* correctly summarized the prevailing rule in this State. FanDuel Br. 21; KKR Br. 23-24, 37. Applying *Greenspun* and other modern authorities of this Court, the Second Circuit held:

> Although New York courts reject a per se application of the internal affairs doctrine, they generally apply the law of the place of incorporation unless another state has an "overriding interest" in applying its own law and a defendant has "little contact, apart from the fact of its incorporation, with the state of incorporation."

Hau Yin To, 700 F. App'x at 68-69 (citations omitted). The Second Circuit's language describes precisely this case based upon the presumptively-true allegations in the Complaint.

To determine whether the subject entity is present in New York, this Court identified factors to be considered, including "[1] where the business of the [entity] is transacted, [2] where its principal office is located or its records kept, [3] where the trustees meet, [4] what percentage of the investment portfolio relates to real property situate in New York, [5] what proportion of the shareholders reside in New York State or . . . [6] other facts on which a finding of such 'presence' in New York State might be predicated." *Greenspun*, 36 N.Y.2d at 477.

When these contacts with New York exist, they signify New York's predominant interest in the dispute. And in this case, the presumptively-true facts alleged in the Complaint show that all the *Greenspun* factors point to New York's interest:

1. *The Location Where Business Of The Entity Is Transacted*: "[A] substantial part of the events giving rise to the claims occurred in New York County. Defendants negotiated, executed, and celebrated the Paddy Power Betfair merger in New York." R.460-61 at ¶ 26. "Most of FanDuel's staff and executive team were located in New York." R.461 at ¶ 27.
2. *The Location Of The Entity's Principal Office*: "FanDuel['s] . . . headquarters have been in New York since 2011." R.461 at ¶ 27.

3. *The Location Of Board Meetings*: "Board meetings were held in New York throughout 2017 and 2018, and teleconference board meetings, of which there were approximately eight a year, typically included at least one New York participant. New York was where the officers and directors of FanDuel directed, coordinated, and controlled the Company's activities." R.461 at ¶ 27.
4. *Percentage Of The Business Activity In New York*: "FanDuel's business also had a strong nexus to New York. Approximately 97% of FanDuel's revenue was derived from the United States, with New York customers accounting for 10-15% of the Company's total revenue. Indeed, by 2015, FanDuel had over 250,000 New York customers." R.461 at ¶ 28.
5. *Proportion Of The Shareholders Residing in New York*: A substantial number of Plaintiffs-Shareholders are residents of New York. Lead Plaintiff resides in New York as do many other Plaintiffs-Shareholders. *See* R.461-62 at ¶¶ 29, 30, 34.
6. *Other Facts On Which A Finding Of "Presence" in New York Might Be Predicated*: "FanDuel has acknowledged its strong nexus to New York by designating New York law as controlling its terms of service." R.461 at ¶ 28. And "nearly all discussions by and among

> Defendants on the exercise of KKR and Shamrock's drag along right [], the value of the FanDuel shareholders' 40% interest in the new merged company, and the distribution of that interest under FanDuel's Articles of Association, occurred either in New York or on phone calls with New York participants." R.461-62 at ¶ 26.

These contacts, viewed quantitatively or qualitatively, support application of New York law to the instant business dispute arising within the borders of New York. They are especially significant when the countervailing reasons to apply the law of the jurisdiction of incorporation are absent because the issues at stake fall outside the core areas of corporate structure.

2. New York Has A Protective Interest In Preventing And Deterring Tortious Conduct Within Its Borders.

"[T]his State has a strong interest in regulating commercial transactions which take place largely within its boundaries." *Israel Disc. Bank, Ltd. v. Rosen*, 59 N.Y.2d 428, 432 n.1 (1983). In the conflict-of-laws context, New York has a strong policy in "protect[ing] not only its own residents, but also those who come into New York and take advantage of our position as an international clearing house and market place." *Intercontinental Planning, Ltd.*, 24 N.Y.2d at 383-84.

The prevention and deterrence of tortious conduct in New York are important aims of tort law. *Padula*, 84 N.Y.2d at 522 ("Conduct-regulating rules have the prophylactic effect of governing conduct to prevent injuries from occurring.");

Howell v. City of N.Y., 39 N.Y.3d 1006, 1052 n.15 (2022) (Rivera, J., dissenting) ("[a] salutary goal of tort law [is] incentivizing compliance, encouraging adequate training, and deterring bad actors") *citing id.* at 1025-1026, 1033-1035 (Wilson, J., dissenting). Such aims are undermined by tort immunities and protections. *Bing v. Thunig*, 2 N.Y.2d 656, 666 (1957); *see also* Aaron D. Twerski, *A Sheep in Wolf's Clothing: Territorialism in the Guise of Interest Analysis in Cooney v. Osgood Machinery, Inc.*, 59 Brook. L. Rev. 1351, 1358 (1994) ("The classic arguments against tort immunities are that they encourage lax standards of care and, concomitantly, lead to negligent conduct.") (footnote omitted); *id.* at 1361-62 ("An immunity rule grants the immunized party license to act in a tortious manner and often egregiously so.").

New York's protective interest is at or near its apogee in the context of fiduciary relations. Fiduciaries "owe to one another, while the enterprise continues, the duty of the finest loyalty." *Meinhard v. Salmon*, 249 N.Y. 458, 463-64 (1928) (Cardozo, C.J.). As then-Justice Titone stated: "New York has a special responsibility to protect its citizens from questionable corporate acts when a corporation, though having a foreign charter, has substantial contacts with this State." *Broida*, 103 A.D.2d at 92. Where, as here, fiduciary relations are at the core of the dispute, New York courts may well consider its special responsibility to hold

the fiduciary "to something stricter than the morals of the market place." *Meinhard*, 249 N.Y. at 464.

New York's protective interest supplants the internal affairs doctrine under the presumptively-true facts alleged in the Complaint. It has been correctly noted that "[a] state's motivation in holding directors of foreign corporations accountable for their harm to shareholders represents the type of interest to which modern [choice-of-law] approaches give considerable weight." Stern, 72 Neb. L. Rev. at 68. "[T]he state of the residence of the shareholders has a 'superior claim' to the state of incorporation because shareholders are the 'ultimate beneficiaries' of directors' fiduciary duties." *Id.* at 69 (citation omitted). *See also* Donald L. Block Baraf, *The Foreign Corporation -- A Problem in Choice-Of-Law Doctrine*, 33 Brook. L. Rev. 219, 248 (1967) ("the automatic reference to the law of the state of incorporation which the rule requires entirely disregards the protective interests of other states in which foreign corporations are doing business."). Accordingly, it is appropriate to give effect to the local protective policy.

And consistent with *Greenspun*, the interest of the forum state with respect to claims of breach of duty is heightened where the corporation has little or no operational contact with the state of incorporation. *See, e.g.*, Deborah A. DeMott, *Perspectives on Choice of Law for Corporate Internal Affairs*, 48 Law & Contemp. Probs. 161, 171 (1985) ("The cases in which courts have applied local law to impose

liability on directors and officers for breaches of duties owed the corporation appear primarily to be instances in which the corporation's economic activities were situated exclusively in the forum state.").

Accordingly, New York's protective interest in preventing and deterring breaches of fiduciary duty in New York that harmed New Yorkers further supports New York's predominant interest in the dispute.

3. New York Has An Interest In Maintaining Its Status As A Major, Global Center Of Commerce And Finance.

New York's interest analysis properly considers New York's status as a national and international business center.

"New York is a national and international center for the purchase and sale of businesses and interests therein" and it strives to "protect not only its own residents, but also those who come into New York and take advantage of [New York's] position as an international clearing house and market place." *Intercontinental Planning, Ltd.*, 24 N.Y.2d at 383-84. *Accord J. Zeevi & Sons, Ltd. v. Grindlays Bank, Ltd.*, 37 N.Y.2d 220, 227 (1975) ("New York has an overriding and paramount interest in the outcome of this [commercial] litigation. It is a financial capital of the world, serving as an international clearinghouse and market place for a plethora of international transactions"), *cert. denied*, 423 U.S. 866 (1975); *Pallavicini v. Int'l Tel. & Tel. Corp.*, 41 A.D.2d 66, 69 (1st Dep't 1973) (New York activities gave New York a substantial interest in applying its own law to commercial transaction to

"'protect principals in business transactions [and] encourage use of New York as a national and international business center'") (citation omitted), *aff'd*, 34 N.Y.2d 913 (1974).

New York "dispassionately administers a known, stable, and commercially sophisticated body of law [and this] may be considered as much an attraction to conducting business in New York as its unique financial and communications resources." *Ehrlich-Bober & Co. v. Univ. of Hous.*, 49 N.Y.2d 574, 581 (1980) (citations omitted). Part of this body of law is *Greenspun*, which puts the sophisticated business community on notice that New York law may be applied where, for example, the founders or managers of the foreign company choose to make New York its headquarters and the situs of substantial business activities. Adherence to *Greenspun* and respect for *stare decisis* "promote[] predictability in the law, engender[] reliance on [this Court's] decisions, encourage[] judicial restraint and reassure[] the public that [this Court's] decisions arise from a continuum of legal principle rather than the personal caprice of the members of this Court." *People v. Peque*, 22 N.Y.3d 168, 194 (2013). This orderly and predictable jurisprudence "contributes to the economic development of our State" (*Intercontinental Planning, Ltd.*, 24 N.Y.2d at 384), which is "a strong State interest." *Allstate Ins. Co. v. Stolarz*, 81 N.Y.2d 219, 226 (1993).

To maintain its status as a global commercial center, New York has a compelling interest in ensuring the "*integrity* of its marketplace." *NBT Bancorp v. Fleet/Norstar Fin. Grp.*, 87 N.Y.2d 614, 623-24 (1996) (emphasis added); *People v. Telehublink Corp.*, 301 A.D.2d 1006, 1010 (3d Dep't 2003) ("New York has a vital interest in 'securing an honest marketplace in which to transact business'") (citation omitted). "The State's goal of securing an honest marketplace in which to transact business is a quasi-sovereign interest." *New York v. Gen. Motors Corp.*, 547 F. Supp. 703, 705 (S.D.N.Y. 1982) (citation omitted); *accord People v. Credit Suisse Sec. (USA) LLC*, 31 N.Y.3d 622, 655 (2018) (Rivera, J., dissenting) ("the state's interest in the integrity of its markets is . . . one of its general, fundamental concerns").

"New York has an obvious and substantial leading interest in ensuring that it does not become either a base or a haven for law breakers to wreak injury nationwide." *In re Simon II Litig.*, 2002 U.S. Dist. LEXIS 25632, at *266 (E.D.N.Y. Oct. 22, 2002) (Weinstein, J.). *See* Patricia Youngblood Reyhan, *Conflict of Laws*, 54 Syracuse L. Rev. 933, 951-53 (2004) (discussing Judge Weinstein's landmark opinion in *Simon II*).

New York's status as a global commercial center also rests on its ability to fulfill its protective role. "New York's recognized interest in maintaining and fostering its undisputed status as the pre-eminent commercial and financial nerve center of the Nation and the world . . . naturally embraces a very strong policy of

assuring ready access to a forum for redress of injuries arising out of transactions spawned here." *Ehrlich-Bober & Co.*, 49 N.Y.2d at 581. "The fundamental policy is that there shall be some atonement for the wrong." *Loucks v. Standard Oil Co.*, 224 N.Y. 99, 111 (1918) (Cardozo, J.); *Battalla v. State*, 10 N.Y.2d 237, 240 (1961) ("It is fundamental to our common-law system that one may seek redress for every substantial wrong."). The Appellate Division did not appear to consider whether such fundamental interests would be offended by applying Scots law which, as found by the Court below, protects parties from accountability for their own allegedly tortious conduct in New York against New Yorkers.

Accordingly, New York's strong interest in maintaining its global stature as an orderly and honest marketplace further supports the application of New York law to the dispute.

B. <u>Scotland's Interests Are Insignificant.</u>

Although the law of Scotland – the place of FanDuel's incorporation – should be accorded respectful consideration, the record does not disclose any interest of Scotland in exporting its protectionist law to the "whole world." *Buchanan v. Rucker*, 9 East 192, 194, 103 Eng. Rep. 546, 547 (K.B. 1808) ("Can the Island of Tobago pass a law to bind the rights of the whole world? Would the world submit to such an assumed jurisdiction?"). *See generally J. Zeevi & Sons, Ltd.*, 37 N.Y.2d at

227-28 ("Laws of foreign governments have extraterritorial jurisdiction only by comity").

For its part, this Court does not export its conduct-regulating rules to tort disputes arising outside of New York (*Padula*, 84 N.Y.2d at 522-23), and indeed, does not "declare itself the command center over [foreign countries]." *In re Stern*, 91 N.Y.2d 591, 593 (1998) (citing *Buchanan*). Given New York's judicial restraint and proper respect for foreign sovereigns, it is a heavy burden to show that Scotland is taking the opposite path and claiming the right to export its law to regulate, or deregulate, conduct in New York. It's a burden Defendants have not carried.

The freedom of corporate founders and managers to select the place of incorporation may not be exercised in a manner that is "contrary to the public policy of an interested state." Katherine Florey, *Substance-Targeted Choice-of-Law Clauses*, 106 Va. L. Rev. 1107, 1176 (2020) (footnote omitted). The law of the place of incorporation may be supplanted where, for example, the forum state's law embodies an "important policy . . . and where the [foreign] corporation has little contact with the state of incorporation." Stern, 72 Neb. L. Rev. at 69 quoting Restatement (Second) of Conflict of Laws § 309 cmt. c. As demonstrated above, New York has a compelling and predominant interest in the application of its law to the dispute, especially because FanDuel was present in New York under all the

Greenspun factors, and Scotland's interest in the application of its law to the inherently New York dispute is nominal at best.

Application of New York law would not undermine any apparent interest of Scotland under the internal affairs doctrine – which is designed to ensure a uniform rule for issues involving the organic structure or internal administration of a corporation, not for protecting or immunizing tortious conduct in New York, by New Yorkers, that injured New Yorkers.

Application of New York law would not thwart the reasonable expectations of any party under Scots law. It is fair and reasonable to apply New York law to those who choose to make New York their headquarters and do substantial business in New York. This Court has recognized:

> As long as a foreign corporation keeps away from this state, it is not for us to say what it may do or not do. But when it comes into this state, and transacts its business here, it must yield obedience to our laws. For many purposes the fiction of its residence in the state of its origin must then be disregarded.

German-American Coffee Co. v. Diehl, 216 N.Y. 57, 63-64 (1915) (Cardozo, J.) (citations omitted). *See Harr v. Pioneer Mech. Corp.*, 65 F.2d 332, 334 (2d Cir.) (court may exercise jurisdiction over dispute concerning shareholders of Delaware

company where the company "in every real sense is of New York only"), *cert. denied*, 290 U.S. 673 (1933).[6]

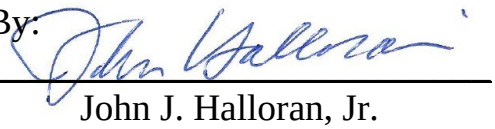
CONCLUSION

Amici offer no views on the merits and do not opine on whether there has been a breach of fiduciary duty. *Amici* urge this Court to reverse the Decision below and hold that New York law applies to the alleged business torts.

Dated: October 13, 2023

Respectfully Submitted,

JOHN J. HALLORAN, JR., P.C.

By: 

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[6] Similarly, American courts disfavor legal fictions designed to frustrate local law, particularly in the use of foreign law to thwart legitimate interests of creditors. Stewart E. Sterk, *Rethinking Party Autonomy in Trust Law*, 97 Tul. L. Rev. 1097, 1119-20 (2023) discussing *In re Portnoy*, 201 B.R. 685, 700 (Bankr. S.D.N.Y. 1996) ("it is not at all clear what the policy behind the [Jersey Channel Islands law] is except, perhaps, to augment business," and finding New York's "deep-rooted policies" mandate application of New York law to a Jersey Channel Islands trust). *See also* Stewart E. Sterk, *Asset Protection Trusts: Trust Law's Race to the Bottom?*, 85 Cornell L. Rev. 1035, 1037-38 (2000) (entrepreneurial offshore jurisdictions have sought to create legal regimes designed to attract trust settlors).

Statement Pursuant to Rule 500.23(a)(4)(iii)(a)-(c) of the Rules of Practice

No party's counsel contributed content to the brief or participated in the preparation of the brief in any other manner. No party or a party's counsel contributed money that was intended to fund preparation or submission of the brief. No person or entity, other than movants or movants' counsel, contributed money that was intended to fund preparation or submission of the brief. Counsel of record is representing *amici curiae* on a *pro bono publico* basis before this Court in this proceeding.

Dated: October 13, 2023

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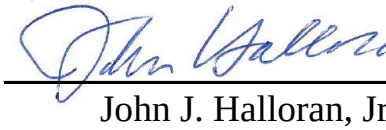

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Dated: October 13, 2023

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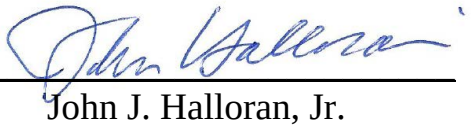

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STATE OF NEW YORK)		**AFFIDAVIT OF SERVICE**
)	ss.:	**BY OVERNIGHT FEDERAL**
COUNTY OF NEW YORK)		**EXPRESS NEXT DAY AIR**

I, Tyrone Heath, 2179 Washington Avenue, Apt. 19, Bronx, New York 10457, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above.

On October 18, 2023

deponent served the within: **Motion for Leave to File Amicus Brief**

upon:

See Attached Service Rider

at the address(es) designated by said attorney(s) for that purpose by depositing **1** true copy(ies) of same, enclosed in a properly addressed wrapper in an Overnight Next Day Air Federal Express Official Depository, under the exclusive custody and care of Federal Express, within the State of New York.

Sworn to before me on
October 18, 2023

Mariana Braylovskiy

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