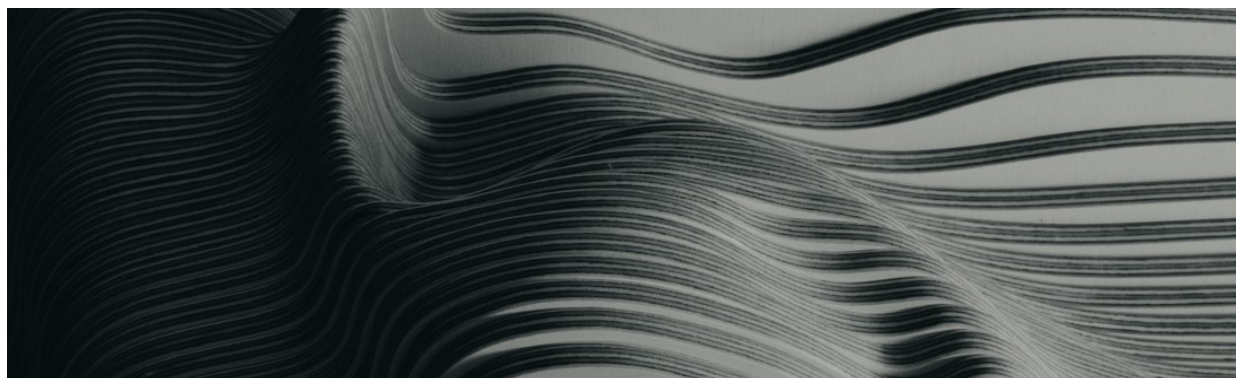


Corporate Governance and Shareholder Rights



Our firm has deep experience litigating issues of corporate law, including in Delaware. Our partners include a former clerk of the Delaware Court of Chancery, a former M&A attorney, and a former investment banker.

Our representative engagements include:

- **Fortis Advisors**, the former shareholders of revolutionary robotic surgery startup Auris Health, in an earnout dispute with its acquiror, Johnson & Johnson. Our clients alleged that Johnson & Johnson breached the merger agreement and defrauded the shareholders, resulting in its failure to achieve certain earnout milestones. After four years of litigation—including approximately 70 depositions, nine experts, and a 10-day trial—the Delaware Court of Chancery ruled on September 4, 2024, that Johnson & Johnson owed the former shareholders more than \$1.1 billion in damages. The significant 145-page decision found the former shareholders entitled to the largest earnout-related damages award in Delaware history.
- **UMB Bank**, as Trustee for holders of Celgene contingent value rights (“CVRs”), seeking nearly \$7 billion in damages arising from Bristol Myers’s failure to timely secure regulatory approval of the cancer therapies associated with the CVR payout.
- **Trifecta Multimedia Holdings** as plaintiff in an earnout dispute in Delaware Court of Chancery. The lawsuit contends that the defendant, WCG Clinical, took steps immediately upon purchasing Trifecta that prevented the company from reaching revenue milestones and interfered with its ability to secure new customers, which deprived Trifecta’s founder and employees of up to tens-of-millions of dollars in earnout payments. In June 2024, the court denied the majority of the defendant’s motion to dismiss, ruling that we had adequately pleaded our claim for fraudulent inducement based on representations made at the time of contracting. This matter is especially important because much of the earnouts were intended for Trifecta employees who helped build the business over nearly 20 years.
- **A tech-based venture capital firm** and its founders in a confidential arbitration dispute brought by a group of minority investors over a merger transaction that resulted in the investors being cashed out of the firm. The investors brought claims for breach of contract, breach of fiduciary duties, and unjust enrichment. Following a week-long hearing in February 2024, in which we demonstrated the fundamental unfairness of the claimants’ demands and significant flaws in their arguments, the panel ruled in our clients’ favor, concluding they did not breach any contract and acted with subjective good faith, consistent with their fiduciary duties. Claimants were ordered to pay our clients’ share of the arbitration costs, plus reasonable attorneys’ fees and expenses.

- **MassMutual**, one of the largest U.S. insurance companies, in a corporate governance suit arising out of its investment in Scottish Re. We achieved a full dismissal in the New York State Commercial Division of breach of fiduciary duty and waste claims asserted against shareholder clients, with the dismissal upheld on appeal.
- **An independent special committee of the board of the We Company (WeWork)** formed to review whether a previously constituted special committee should have the authority to continue a lawsuit against SoftBank seeking to enforce a \$3 billion Tender Offer. In 60 days, we conducted dozens of interviews of relevant senior executives, conducted document discovery, and issued a detailed report assessing important issues of corporate governance under Delaware law.
- **iGate Corporation and its former directors** in connection with a special committee investigation authorized under Pennsylvania law following the filing of two shareholder fiduciary duty lawsuits in the Pennsylvania Court of Common Pleas arising from iGate's acquisition by Capgemini, S.A.

Matters in which we litigated cases involving Delaware corporate law include our representations of:

- **Matterport Inc.**, a leading real estate technology company, against its former CEO following its loss in a phase one trial regarding the effectiveness of the company's post-SPAC by-laws to lock up legacy shareholders. As new counsel in a five-day phase two trial in Delaware Court of Chancery, defeated all remaining claims and cut the plaintiff's damages in half on the claim lost in phase one.
- **Mudrick Capital**, an investment advisor, in a trial victory in the Delaware Court of Chancery, in an action initiated by defendant's controlling shareholder under Section 220 of Delaware's General Corporation Law seeking corporate books and records to investigate an allegedly unfair merger. In an order adopting many of our factual allegations regarding the proposed merger, the defendant was ordered to produce e-mails from each of its CEO, the General Counsel, and the chair of the Special Committee that had approved the merger. One day after the ruling, the defendant-company called off the challenged merger rather than face potential applications to enjoin the merger and breach of fiduciary claims—an extremely rare but favorable result for our client.
- **Team Health Holdings**, a physician practice and hospital management company, in shareholder and appraisal litigation arising from its acquisition by the Blackstone Group for approximately \$6.1 billion. Defeated the shareholder litigation and settled the appraisal litigation shortly before trial.
- **Crestview Partners**, a private equity firm, in a six-day trial in the Delaware Court of Chancery against billionaire William Koch over enforcing the contractual right to conduct a sale of Koch's Oxbow Carbon LLC, in which the fund had bought a minority interest, and in which the court ruled in favor of our client, permitting the firm to cash out its \$150 million investment in the company.
- **Bristol-Myers Squibb**, the pharmaceutical company, in fiduciary duty litigation arising from its \$2.5 billion acquisition of Inhibitex, Inc. Plaintiffs voluntarily withdrew their motion for preliminary injunction upon receipt of our opposition brief, and subsequently dismissed the litigation.

Our experience with shareholder litigation includes representing:

- **Chobani**, the yogurt manufacturer, **and its founder and CEO Hamdi Ulukaya**, in purported shareholder derivative litigation in the Commercial Division of the New York Supreme Court. After successfully obtaining bifurcation on the threshold issue of plaintiff's status as a shareholder, achieved successful settlement at the close of discovery.

- **Vista Equity Partners**, a San Francisco-based private equity fund, in shareholder litigation alleging breaches of fiduciary duty arising out of its acquisition of TIBCO Software, Inc. for approximately \$4.3 billion. Defeated preliminary injunction, permitting the deal to close, and then defeated all claims against Vista at the pleading stage.
- **Avista Capital Partners**, a private equity firm:
 - In shareholder fiduciary duty litigation in Georgia state court and Delaware Chancery Court arising out of its acquisition of Knology, Inc. by its wholly-owned subsidiary, WideOpenWest, Inc. Defeated preliminary injunction and cases voluntarily dismissed.
 - In shareholder fiduciary duty litigation in Illinois Chancery Court and Delaware Chancery Court arising out of the acquisition of Telular, Inc. Settled after additional disclosures made in proxy statement.

Our experience with litigation involving breaches of fiduciary duty by boards of directors includes representing:

- **Herald Fund SPC** and its then-directors in securities and breach of fiduciary duty litigation brought by foreign investors arising from losses in the Madoff Ponzi scheme. Obtained dismissal at motion to dismiss stage of all claims on basis of *forum non conveniens* in the district court in New York, and successfully defended the dismissal in the Second Circuit.
- **Sagent Pharmaceuticals**, a manufacturer of pharmaceutical injectables and biosimilars, in shareholder fiduciary duty and securities litigation brought in Illinois Chancery Court and the Northern District of Illinois relating to the acquisition of the company by Nichi-Iko Pharmaceutical Co., Ltd. Defeated preliminary injunction and case voluntarily withdrawn.
- **Greenbriar Equity Group LLC** in shareholder fiduciary duty litigation in Connecticut and Wisconsin state courts arising from its acquisition of EDAC Corp., defeating the preliminary injunction – the case later dismissed voluntarily.
- **Apax Partners**, a private equity firm:
 - In shareholder fiduciary duty litigation in Florida state court arising out its acquisition of Bankrate, Inc. Defeated preliminary injunction and later settled.
 - In shareholder fiduciary duty litigation, both pre- and post-closing, in California state court arising out of its acquisition of Epicor Software Corporation. Defeated preliminary injunction and settled shortly before trial.