

## Delaware Law: 2017 Year in Review

### Delaware Law Update

02.07.2018

Our Delaware Corporate and Alternative Entity Law attorneys closely follow the opinions coming from Delaware's Supreme Court and Court of Chancery. Our 2017 Year in Review is a collection of brief summaries of selected cases concerning Delaware Corporate and Alternative Entity Law. While this list is a selection of important cases, our intent is to provide our readers with the rationale behind a court's holding to ultimately provide information that may be helpful in strategic and business decisions concerning litigation and commercial arrangements. Our Delaware Corporate and Alternative Entity Law attorneys are experienced in all aspects of Delaware law, including representing our clients in a variety of business transactions and Delaware opinion work. The Delaware Corporate and Alternative Entity Law attorneys also represent public and private Delaware corporations, LLCs, LPs and GPs in corporate, commercial, shareholder and other litigation in the Delaware Court of Chancery.

#### **Delaware Court of Chancery Addresses Fee-Shifting Bylaws and Raises the Question of Whether Fee-Shifting Could Be Plausible by a Stockholder's Own Conduct or Act Under Section 102(b)(6) of the DGCL (2/1/17)**

This opinion confirms that corporate bylaws that attempt to shift litigation expenses, including attorneys' fees, to stockholders would be held to be invalid under Delaware law. [Read this article](#)

#### **Pleading Failures Doom Disclosure Claims in Short-Form Merger Case (2/8/17)**

*United Capital* serves as a reminder that appraisal is generally the only remedy available to stockholders in a short-form merger, and that even where potentially significant facts have not been disclosed (such as the specifics of personal relationships underlying disclosed conflicts), pleading disclosure violations can be difficult. [Read this article](#)

#### **Pleading Breach of the Implied Covenant of Good Faith and Fair Dealing in the Publicly Traded Master Limited Partnership Context (2/17/17)**

*Dieckman* serves as a reminder that even though Delaware limited partnerships are granted wide contractual freedom, including the freedom to disclaim all fiduciary duties, they cannot disclaim the implied covenant of good faith and fair dealing. [Read this article](#)

#### **Delaware Supreme Court Redefines Contractual Good-Faith Standard and Cautions Limited Partners That Their Obligations Under the LPA Can Be Enlarged Without Their Consent (4/27/17)**

#### Related People:

Matthew J. Rifino  
Benjamin A. Smyth  
David F. Broderick  
Daniel M. Silver  
Daniel J. Brown  
Michael P. Kelly  
R. Andrew Richards

This opinion is noteworthy because the Delaware Supreme Court, through this opinion, has provided a new, less stringent test for bad-faith conduct, departing from its earlier standard. [Read this article](#)

#### **The Steadfast Refusal of the Delaware Courts to Grant Creditors Quasi-Standing to Assert Fiduciary Claims at Insolvency(5/3/17)**

This decision highlights: 1) Delaware courts remain steadfast against the growing trend in other jurisdictions permitting creditor suits against LLCs and their members; and 2) lawyers advising clients involved with high-yield creditor ventures should pay close attention to agreements and create specific contract rights related to management duties to creditors, including potentially heightened duties as the venture approaches insolvency. [Read this article](#)

#### **Delaware Court of Chancery Affirms Fraud Exception to Parties' Contractual Allocation of Risk (5/31/17)**

This opinion is noteworthy in light of the Court's recognition of certain exceptions to the widely accepted practice of honoring the allocation of risk agreed to by contracting parties, particularly in the case of fraud. [Read this article](#)

#### **Delaware Court of Chancery Provides Clarity on the "Quasi-Appraisal" Remedy and Post-Closing Claims (6/2/17)**

This opinion reinforces that plaintiffs cannot easily sidestep the *Corwin* protections by pleading garden-variety disclosure claims. [Read this article](#)

#### **Delaware Supreme Court Explores the Definition of "Commercially Reasonable Efforts" (6/5/17)**

The Delaware Supreme Court's holding is noteworthy concerning its interpretation of the covenants to exercise "commercially reasonable efforts" and "reasonable best efforts" as imposing an affirmative obligation on the parties. [Read this article](#)

#### **Appraisal Arbitrage Risk; Delaware Court Finds Fair Value to Be Lower Than Merger Price (6/6/17)**

SWS exemplifies the risks inherent in an appraisal arbitrage strategy and demonstrates the Court of Chancery's willingness to declare an appraisal fair value that is lower than a merger price. [Read this article](#)

#### **Venture Capital Firms and Founders Should Heed Delaware Court Decision (6/23/17)**

The Court's decision is significant in light of the role that venture capitalists play in the development of startups and emerging growth companies and their evolving relationships with the founders of these companies. [Read this article](#)

#### **Delaware Court of Chancery Upholds Continuous Ownership Rule in Dismissing Derivative Claims of Mismanagement (7/7/17)**

The plaintiffs' remaining claim met a similar fate based on the Court's finding that the plaintiffs failed to set forth a claim for inseparable fraud. [Read this article](#)

#### **Delaware Supreme Court Rejects Over-Expansive Application of True-Up Provision in Purchase Agreement (7/21/17)**

This decision highlights the importance of construing specific contractual provisions in the context of the entire agreement. [Read this article](#)

#### **Lessons for Co-Founders Excluded from Business Venture (9/6/17)**

It is important to remember that a co-founder's actions prior to the formation of a business venture may impact the rights he or she may have if he or she wishes to seek equitable intervention by the Delaware courts. [Read this article](#)

**Anti-Reliance Provision in Merger Agreement Justifies Non-Payment of Working Capital Deficiency (9/14/17)**

In this opinion, the Delaware Court of Chancery addressed a situation in which a purchaser of a company discovered that the actual amount of working capital was less than the estimated working capital agreed to by the parties. [Read this article](#)

**What Is the Fair Value of a Stock? The Delaware Supreme Court Rejects Bright-Line Rule in Favor of the Transaction Price (10/2/17)**

In this highly publicized opinion, the Court of Chancery rejected the transaction price as the most reliable measure of fair value and valued the stock at a premium. [Read this article](#)

**Organovo Holdings, Inc. v. Dimitrov – Court of Chancery Does Not Hold Subject Matter Jurisdiction to Enjoin a “Short and Distort” Scheme Absent Interference with Specific Contractual or Economic Relationships (10/2/17)**

The case is important for two reasons. First, it affirms that the Court of Chancery will not enjoin libelous statements directed to the wide world, rather than to specific contractual or economic relations of the complaining party. Second and arguably more important, *Organovo* recognizes the availability of equitable jurisdiction over claims of trade libel, i.e., statements that are intended to interfere with the complainant's relationships with specific identified parties rather than with the wide world. [Read this article](#)

**“You Think He’s Gone? He’s Never Gone!” (10/5/17)**

In the movie “What About Bob?”, Dr. Leo Marvin's Lake Winnepesaukee family vacation is interrupted by the unexpected arrival of a patient, Bob Wiley. After Dr. Martin forces Bob to leave, his family protests. Dr. Marvin shouts, “You think he’s gone? He’s never gone!” And to prove his point, Dr. Marvin opens the front door to reveal a smiling Bob standing on the porch. In a recent decision, the Delaware Court of Chancery dealt with a corporation's attempt to keep itself free of unwanted “Bobs.” [Read this article](#)

**What Do Gordon Ramsay and Burgers Have to Do with Section 18-802 of the Delaware LLC Act? (10/5/17)**

This decision highlights the importance of carefully considering both the terms of LLC operating agreements and the character of potential business partners. [Read this article](#)