

Delaware Law Update: 2019 Year in Review

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Related People:

Philip D. Amoa

Our Delaware Corporate, LLC and Partnership Law attorneys closely follow the opinions coming from Delaware's Supreme Court and Court of Chancery. Our 2019 Year in Review is a collection of brief summaries of selected cases concerning Delaware Corporate, LLC and Partnership 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, LLC and Partnership 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, LLC and Partnership 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 Denies Italian Citizen's Bid to Divest the Court of Jurisdiction Over a Matter Involving Delaware Limited Liability Partnerships

By **Matthew Rifino**

AlixPartners confirms what most onlookers already suspect—the Court of Chancery will not refrain from deciding a matter within its jurisdiction, particularly a controversy implicating the internal affairs of a Delaware limited liability company. [Read this article](#)

Court of Chancery Confirms Managerial Bump-Out Theory Is Not Valid Under Delaware Law

By **Philip D. Amoa**

The Delaware Court of Chancery addressed the validity of the appointment of managers of a Delaware LLC, recognizing that the Delaware LLC Act allows for an expedited procedure to determine the proper composition of a corporate board. [Read this article](#)

Delaware Court of Chancery Calls 'Earmuffs!' in Response to Trade Libel Claims

By **Matthew Rifino**

Preston Hollow Capital serves as a reminder of the limitations on the Court of Chancery's authority. Merely styling a claim as one for injunctive relief will not suffice; rather, the plaintiff must plead claims in equity to derive the benefit of the court's expertise. [Read this article](#)

Court of Chancery Holds That Sale of Shares Transfers Fiduciary Duty Claims to the Buyer in Dispute Between Founders and VC Fund

By **Philip D. Amoa**

The Delaware Court of Chancery addressed the validity of the appointment of managers of a Delaware LLC, recognizing that the Delaware LLC Act allows for an expedited procedure to determine the proper composition of a corporate board. [Read this article](#)

A Delaware Court of Chancery decision contains important practice points for practitioners negotiating corporate disputes—namely, that by transferring shares of a company, the transferring stockholder also transfers breach of fiduciary duty claims associated with those shares to the buyer. [Read this article](#)

Delaware Court of Chancery Decides ‘Null and Void’ Statement Overrides the Common Law

By **Philip D. Amoa**

The Delaware Court of Chancery emphasized the meaning of “null and void” in the context of an LLC agreement. In this case, an LLC member transferred her membership interest to an entity that she controlled. The court held that the null and void language in the LLC agreement reflected a specific intent to override the common law and caused the transfer to be void, signifying that the phrase can have unintended consequences in this context. [Read this article](#)

Delaware Supreme Court Asserts No Presumption of Confidentiality for Books-and-Records Production Under Section 220

By **Philip D. Amoa**

The Delaware Supreme Court has held that there is no presumption of confidentiality for books-and-records inspection requests under Section 220 of the Delaware General Corporation Law, making it clear that stockholders do not need to demonstrate urgent circumstances to grant certain restrictions. [Read this article](#)

Court of Chancery Holds ‘Executed’ Contract Unenforceable, Highlighting the Risks of Using Stand-Alone Signature Pages

By **Alexandra M. Joyce**

The Delaware Court of Chancery’s recent decision in *Kotler v. Shipman Associates, LLC* serves as two important reminders to practitioners and clients. First, parties to a contract should keep thorough records of contract negotiations. Second, parties should keep the proposed agreement and corresponding signature pages together at all times. [Read this article](#)

Stillwater Mining Appraisal Opinion Lands on Merger Price as the Best Indicator of Fair Value in a Single-Bidder Process

By **Sarah E. Delia**

The Delaware Court of Chancery has ruled that the per share price paid for Stillwater Mining Co. was the best measure of the fair value of the company’s shares. This is consistent with the Delaware courts’ trend toward crediting the market when valuing companies that are acquired through arm’s-length transactions that display certain “indicia” of fairness. [Read this article](#)

New Amendments to the Delaware LLC Act Relating to Series LLCs

By **Philip D. Amoa**

On August 1, 2019, amendments to certain sections of the Delaware LLC Act took effect, including those related to Series LLCs. While the Delaware LLC Act has long recognized the Series LLC, its use has been very limited, but that is changing. This summary will provide a general overview of Series LLCs while addressing a few of the amendments relating to Series LLCs. [Read this article](#)

Delaware Court of Chancery Favors the Plaintiff in Finding the Defendants' Understanding of an LLC Agreement Not the Only Reasonable Interpretation

By **Matthew Rifino**

The Delaware Court of Chancery denied the defendants' attempt to dismiss a lawsuit filed on behalf of a widow concerning the interest of her deceased husband's estate in the assets of a Delaware limited liability company. The court found that the defendants' interpretation of certain provisions of the formation agreement was not the only reasonable interpretation, and thus, the widow's claims survive. [Read this article](#)

Delaware Supreme Court Ruling in Aruba Completes a Trilogy of Decisions Emphasizing Arm's-Length Merger Price in Determining Fair Value

By **Philip D. Amoa and Sarah E. Delia**

A significant contribution to Delaware appraisal jurisprudence, the Delaware Supreme Court's reversal of the Court of Chancery's ruling in *Verition Partners v. Aruba Networks* is the third Supreme Court decision in the past two years to rely on the negotiated merger consideration in determining a company's fair value. [Read this article](#)

Delaware Supreme Court Reverses Court of Chancery Decision That Applied the Implied Covenant of Good Faith and Fair Dealing to Allow Minority Members to Force an Exit Sale

By **Philip D. Amoa**

This case underscores the importance of carefully reviewing and complying with an operating agreement when a limited liability company undergoes a significant transaction. [Read this article](#)

Univar Defeats State of Delaware's First Attempt to Enforce Administrative Subpoena Since the State's 2017 Amendment of the Delaware Escheats Law

By **Matthew Rifino and Michael P. Kelly**

The Univar litigation represents the first known attempt by the state of Delaware to enforce its subpoena power under the Delaware escheats law since the General Assembly amended the law in 2017. [Read this article](#)

Delaware High Court to Address Propriety of Trading Price as Proxy for Fair Value in Aruba Appraisal

By **Travis J. Ferguson**

The *Aruba* decision was the first time the Court of Chancery awarded trading price as fair value in an

appraisal action since the comprehensive revision and adoption of the Delaware General Corporate Law in 1967. [Read this article](#)

Don't Forget to Consider This Simple Delaware Law Principle Before Taking Corporate Action

By Travis J. Ferguson

The Court of Chancery granted a preliminary injunction preventing the sale of 25 million shares of stock that the defendant previously issued to himself at a discounted price. Under the well-established preliminary injunction framework, the Court of Chancery found that the plaintiff was likely to prevail on its claims. This decision is a helpful reminder of a simple—yet easy-to-overlook and consequential—Delaware corporate law principle that requires strict compliance with statutory and bylaw provisions for valid corporate action. [Read this article](#)

Court of Chancery Holds No Personal Jurisdiction Over Lessors on a Leaseback Related to a Stock Purchase Agreement

By Andrew S. Dupre

The Court of Chancery ruled that a stock purchase agreement's Delaware forum selection clause did not bind seller affiliates who leased back assets for the sold businesses covered by the stock purchase agreement. The decision provides helpful guidance regarding the tension created by "arising from or related to" forum selection language. [Read this article](#)

The Court of Chancery Applies DCF to Determine the Fair Value of Trussway Holdings

By Sarah E. Delia

The court's analysis provides helpful insight into the meaning of "operative reality" as used in the Delaware appraisal statute and underscores the utility of the DCF methodology in the context of a private company valuation. [Read this article](#)

When Navigating Stormy Waters, Directors Must Steer the Ship Toward the Best Interests of Stockholders

By Alexandra M. Joyce

The court's holding that the business judgment rule would not cleanse a certain transaction must be considered in the procedural context in which this case was decided (i.e., a motion to dismiss). A board's risky or difficult decisions will still be given business judgment deference if made during difficult times, but at the pleading stage, directors must show that stockholders were fully informed of all "material aspects of the storm," including how the company got caught in it, alternative courses and the bases for the board's chosen course. [Read this article](#)

Ignoring Corporate Formalities Could Expose Board of Directors' Emails to Stockholders

By Matthew Rifino and Philip D. Amoa

Companies that do not follow corporate formalities and accepted bookkeeping practices may be more susceptible to an expansion of the types or forms of records they have to make available—namely email communications—to inquiring stockholders. [Read this article](#)

Delaware Court of Chancery Exercises Jurisdiction Over German Company Based on Rare Conspiracy Theory of Jurisdiction

By Matthew Rifino This action arises from the alleged breach of a technology agreement between Fraunhofer USA Inc. and plaintiff iBio, Inc. [Read this article](#)