



Andrew S. Dupre

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Business Litigation | Products Liability, Mass Torts & Consumer Class Actions |
Environment & Energy | Delaware Corporate, LLC & Partnership Law

Andrew Dupre is a litigation specialist with emphasis upon resolving complex Delaware and English law corporate and commercial disputes in the Delaware Court of Chancery, and in arbitration forums worldwide.

Andrew S. Dupre focuses his practice on Delaware law corporate and commercial disputes in the Delaware Court of Chancery, and in arbitration. Andrew regularly represents shareholders, corporations and their officers and directors in shareholder class and derivative actions, merger and acquisition disputes, and litigation involving corporate governance and fiduciary duty claims. He is experienced litigating for limited partnerships, limited liability companies and other alternative business entities. Dual qualified as a solicitor of England & Wales and a member of the bar of Delaware, Andrew frequently represents Delaware affiliates of UK and Commonwealth entities and their directors in investment disputes. Outside of the courtroom, Andrew advises board Special Committees on litigation risk and compliance in M&A transactions, and Special Litigation Committees on investigations of shareholder claims.

In addition to his Delaware and English law corporate work, Andrew focuses a significant amount of his practice on commercial disputes, often involving high-value supply agreements. Much of this work is rooted in Andrew's earlier career as a management consultant in the chemicals and pharma sectors, where he principally worked on acquisitions, divestments, and strategic planning for the DuPont company and its pharmaceutical joint ventures.

Andrew began his legal career as a law clerk in the Delaware Court of Chancery, and has practiced law in Madrid and Singapore. He lives in Media, Pennsylvania and Northeast, Maryland, where he boats the Chesapeake Bay, follows Atlético Madrid, and writes on law and economics.

Representative Matters

Former LLC officers and entity affiliates—Delaware Chancery Court advancement case win

International Rail Partners LLC et al. v. American Rail Partners LLC. Represented former LLC officers and their entity affiliates in an advancement action, demanding coverage for defense costs for a parallel breach of contract case in which adverse party American Rail alleged that the officers and entities breached their contract duties to properly manage American Rail pursuant to a certain management agreement. We won dismissal of the underlying contract action in August 2020 and In November 2020, the Court ruled that American Rail must advance the attorney fees incurred by our client. The advancement case is notable as it litigated a novel theory of exclusion of indemnification for first-party litigation under the Delaware LLC Act.

Technology company CEO—Alleged aiding and abetting of breach of fiduciary duty

In re Oracle Corporation Derivative Litigation. Represented the former CEO of NetSuite, Inc. in a derivative suit involving Oracle's \$9.3 billion purchase of NetSuite. Oracle stockholders alleged breaches of fiduciary duty in the acquisition and, raising an issue of first impression, claimed that our client and other NetSuite defendants tortiously aided and abetted the Oracle fiduciaries' breach of fiduciary duty. We filed a Motion to Dismiss the charges against our client which was granted by the Court.

Major chemicals firm—Supply agreement arbitration

Represented a chemical company in a confidential arbitration in which French, American, and UK chemicals firms disputed breach of contract claims related to the sale of a chemical plant and subsequent supply agreements. Key issues included performance duties required by "best efforts" clauses under Delaware and English law, validity of a series of force majeure declarations, whether the duty of good faith and fair dealing required expenditure to reach industry performance benchmarks, and requirements to retain key employees during a control transfer. Resulted in 8-figure award for our client, including attorneys' fees and costs.

The Chemours Company—Alleged breach of supply agreement

The Chemours Co., TT v. ATI Titanium LLC: Defend purported \$28 million claim for breach of the covenant of good faith and fair dealing on a chemical intermediates supply agreement, based upon price increases necessitated by safety improvements.

Multinational technology company—Acquisition defense

In re Aruba Networks, Inc. Stockholder Litigation: One of a trio of cases that eliminated "disclosure only" settlements of shareholder derivative cases from Delaware law.

Board of Directors of Yahoo—Special Litigation Committee

Buch v. Filo (a/k/a Yahoo Shareholder Lit'g): Special Litigation Committee of the Board of Directors of Yahoo investigating fiduciary duty claims against D&Os over compensation grants to officers prior to Verizon acquisition.

Real estate investment entity—Fiduciary duty

Feeley v. NHAOCG, LLC et al: Established that managers of Delaware LLC's owe default fiduciary duties unless expressly disclaimed in the LLC operating agreement, eliminating the "contractarian" theory of LLC governance from Delaware law.

Institutional investor—Breach of fiduciary duty for failure to redress sexual harassment

City of Monroe Employees' Retirement System v. Murdoch et al: Shareholder action asserting D&O liability for sexual misconduct patterns at Fox News, resulting in a first-of-its-kind settlement structure via creation of a Workplace Professionalism and Inclusion Council coupled with a \$93 million cash settlement.

Major chemicals firm—Supply agreement arbitration

Confidential Arbitration: US and Finnish chemicals firms arbitrating supply agreement claims following closure and divestment of a manufacturing plant, resulting in a defense award for our client supplier and a denial of the customer's 8-figure breach claims.

Multinational technology company—Appraisal defense

Verition Partners Master Fund et al v. Aruba Networks, Inc.: Appraisal litigation which established deal price as appropriate value of a widely-traded firm per the semi-strong efficient market hypothesis, curtailing Delaware law appraisal arbitrage.

Education

Widener University Delaware Law School, JD, *magna cum laude*, 2004

IE Business School (Madrid) and National University of Singapore Business School, MBA, with honors

University of Delaware, BA, 2001

Bar Admissions

Delaware

Court Admissions

U.S. District Court, District of Delaware

England & Wales

Judicial Clerkships

Judicial Law Clerk

The Hon. Peggy Ableman, Superior Court of Delaware, 2004–2005

Judicial Law Clerk

The Hon. Vice Chancellor Stephen P. Lamb, Delaware Court of Chancery, 2003–2004

Memberships & Certifications

American Bar Association

Litigation Committee and Pharmaceutical Litigation Subcommittee

Delaware State Bar Association

Law Society of England & Wales

Sedona Conference on Electronic Discovery™

Alerts

Court of Chancery Holds No Personal Jurisdiction over Lessors on a Leaseback Related to a Stock Purchase Agreement, Delaware Law Update, 3.26.2019

HBMA Holdings LLC v. LSF9 Stardust Holdings, Delaware Law Update, 2.7.2018

Delaware Law: 2017 Year in Review, Delaware Law Update, 2.7.2018

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, Delaware Law Update, 10.2.2017

Appraisal Arbitrage Risk: Delaware Court Finds Fair Value to be Lower than Merger Price, Delaware Law Update, 5.6.2017

Delaware Court of Chancery Provides Clarity on the “Quasi-Appraisal” Remedy and Post-Closing Claims, Delaware Law Update, 5.2.2017

Delaware Law: 2016 Year in Review, Delaware Law Update, 1.20.2017

Quoted

Shareholders Fight Hemispherx’s Fee-Shifting In Del. Chancery, Law360, 7.22.2014

