

The Delaware Court of Chancery Practice at Ballard Spahr

Ballard Spahr is one of the few national law firms with an established Delaware Chancery Court practice, making us a strong and well-connected ally on matters involving securities and corporate governance litigation.

Our Wilmington-based litigators are respected Chancery practitioners with extensive experience in all aspects of entity law litigation and a keen understanding of the nuances of cases tried in The First State. Their experience gives clients insight into how Chancery judges are likely to analyze the factual and legal issues presented by corporate transactions and governance issues. The group is led by David J. Margules, who has handled hundreds of matters before the Chancery Court and is widely considered to be one of the top Chancery Court litigators in Delaware.

The practice—coupled with Ballard Spahr’s recognized skill in securities litigation and extensive background in corporate law, both in Pennsylvania and in the 14 other states where we have offices—makes us unique. We combine the knowledge and experience of a local Delaware firm with the strength and depth of a national one.

We advise companies and their officers and directors on every type of securities and corporate governance claim—from derivative actions, shareholder class actions, and special committee representations to the more arcane issues falling under Delaware’s corporate and business entity statutes. We represent clients during challenges to mergers, acquisitions, and financing transactions as well as takeover battles, proxy contests, and changes of control. Because we represent both defendants and plaintiffs in major class actions and derivative suits in Delaware, our litigators bring a holistic perspective to their strategy on each matter.

Mr. Margules is nationally recognized for his skill in litigating business entity valuation disputes. We regularly represent the fund that pioneered the investment strategy known as “appraisal arbitrage”—buying into targets of announced mergers in order to pursue the statutory right to receive “fair value” as determined by the court in lieu of the merger consideration. That experience enhances our effectiveness in a broad range of governance disputes, which often involve valuation issues.

Our team advises corporations, boards of directors, special committees, and venture capital and private equity firms in investigations of derivative claims. We handle appraisal litigation, including dissenters’ rights and breach of fiduciary duty cases, and we coordinate with Directors and Officers liability insurers. We also work with boards of directors and executive committees during internal investigations, coordinating the response to derivative demands and defending against derivative claims that occur alongside allegations of securities fraud.

OUR INDUSTRY EXPERIENCE

- Telecommunications and Media
- Banking and Finance
- Energy
- Health Care
- Software and Computers
- Pharmaceuticals
- Private Equity and Venture Capital Companies
- Life Sciences and Technology
- Real Estate
- Manufacturing



DAVID J. MARGULES

David J. Margules leads the Chancery Court practice at Ballard Spahr. He has more than 30 years of experience representing companies and individuals in securities and corporate governance litigation in Delaware. In addition, he is an AAA-trained mediator certified by the Delaware Superior Court.

- Served on Delaware's Judicial Nominating Committee (appointed by former Governor and current U.S. Senator Thomas Carper)
- Selected by the Delaware Court of Chancery to serve as a Special Master, and by the U.S. Bankruptcy Court to serve as Special Counsel to the bankruptcy trustee to investigate and prosecute alleged fiduciary duty breaches by former officers and directors of the debtor
- Appointed by the Delaware Court on the Judiciary to serve as a member of its Preliminary Investigatory Committee, as well as by the Delaware Supreme Court to serve on its Permanent Committee on the Supreme Court Rules
- Adjunct professor at the University of Pennsylvania Law School, where he taught Mergers and Acquisitions

We have handled a wide range of matters before the Delaware Court of Chancery and have represented clients from publicly traded global corporations and shareholder groups to individual investors, hedge funds, and venture capital companies. Our experience includes:

- As co-lead counsel, representing former stockholders of Starz who sought a statutory appraisal of their shares pursuant to Section 262 of the Delaware General Corporation Law as a result of Starz's merger with Lionsgate. The appraisal petitioners hold in excess of \$700 million in stock, valued at the merger consideration, making this the largest appraisal action in Delaware history.
- Representing the majority stockholder of El Pollo Loco in defending allegations that it allegedly aided and abetted the company's disclosure of false and misleading information and traded on that information.
- Representing an investor in the fight for control of a Delaware corporation that owns a business entity with operations in South America. The consolidated actions seek judicial ratification of options, recognition of a multimillion-dollar debt owned by a wholly owned subsidiary, and collection of that debt.
- Representing several mid-market entities in connection with ongoing disputes with dissident stockholders.
- Representing the former stockholders of DirecTV, who sought a statutory appraisal of their shares pursuant to Section 262 of the Delaware General Corporation Law during the company's merger with AT&T. At issue: the fair value of stock worth \$90 million at the transaction price.
- Representing Merion Capital and others in an appraisal action arising from Towers Watson's \$18 billion merger with Willis Group Holdings PLC. The value of the petitioners' holdings, at the merger price, is roughly \$120 million.
- Representing one of the nation's largest drug store chain operators in a dispute with a former officer and director, who was convicted on 10 counts of a 35-count indictment arising from a conspiracy to defraud our client, its vendors, and the investing public. The matter tests the limits of various concepts applicable to indemnification law and the court's equitable jurisdiction.

- Representing a marketing consultant contracted by a credit card manufacturer to assist in developing new customers in exchange for a percentage of revenues generated by the new business. After our client produced a customer expected to generate more than \$10 million in fees, the credit card company repudiated the contract and obstructed our client's ability to generate additional business. The matter presents issues of traditional contract law as well as a claim that, pursuant to the credit card manufacturer's LLC agreement, the contract was not properly authorized.
- Represented Appaloosa LP, a hedge fund with more than \$11 billion under management, in a derivative action against TerraForm Power Inc. (TERP) and some of its directors. Appaloosa—one of the largest public holders of stock in TERP—challenged a transaction that would obligate TERP to purchase hundreds of millions worth of assets from TERP's controlling stockholder, SunEdison, Inc., so that it could repay financing required for an acquisition.
- Represented a wholly owned affiliate of Exelon in a dispute arising from Exelon's purchase of assets from a Midwestern wind power generator. The matter largely turns on contract construction issues relating to whether the seller is entitled to an earn-out based on Exelon's completion of a wind farm.
- Representing former stockholders of GFI Group Inc., who sought a statutory appraisal of their shares pursuant to Section 262 of the Delaware General Corporation Law as a result of GFI's merger with BGC Partners, Inc. The matter will present several novel issues of Delaware law relating to factors to be considered in a statutory appraisal.
- Counseling a Chinese investor that holds a significant equity and debt position in a nonpublic company involved in oil and gas exploration in Alaska. We advised on potential misconduct claims against former officers and are working with the client to analyze and structure potential transactions with the company or involving its securities.
- Representing former stockholders of Zale Corporation, who sought a statutory appraisal of their shares pursuant to Section 262 of the Delaware General Corporation law as a result of Zale's merger with Signet Corporation. The issue in the case was the fair value of the stock, which was worth approximately \$180 million at the transaction price. The matter was a showpiece case in a growing area of corporate investment arbitrage.
- Representing an energy sector company in disputes with certain shareholders over governance issues. We advised on various strategic options, including a reverse stock split and dealing with dissident holders. When one holder demanded a books and records inspection and brought an action to compel it, we represented the company in the litigation and settlement discussions.
- Providing strategic advice on structuring and implementing a corporate reorganization. We analyzed the litigation risks of various alternative strategies for implementing the transaction and assisted in designing the chosen strategy. This matter is an example of how Delaware counsel can effectively assist in shaping transactions to minimize litigation risk.
- Representing a business buyer who claimed that representations by the seller were false, misleading, and fraudulently induced the buyer to purchase the company at the contract price. We conducted an investigation into the claims, prepared formal notices in accordance with contract requirements, and are exploring a negotiated resolution.