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Semi-Annual Review of Key Delaware Corporate & Commercial Decisions

Presented by Francis G.X Pileggi, Sean M. Brennecke & Chauna Abner

Francis' blog has a more complete summary of the cases discussed and links to the decisions, which you can access here:

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Delaware Corporate & Commercial Litigation Blog

Highlights & Analysis of Key Decisions from Delaware's Supreme Court & Court of Chancery

New Delaware Corporate Litigation Podcast—Inaugural Broadcast

By Francis Pileggi on June 17, 2026
Posted in Commentary

Our new podcast series by Wilmington Managing Partner [Francis G.X. Pileggi, Esq.](#) and Partner [Chauna Abner](#), offers practical insights on fiduciary duties, shareholder disputes, corporate governance issues, and other high-stakes business litigation matters arising in the [State of Delaware](#) and beyond.

In our inaugural episode, Francis and Chauna welcome veteran trial lawyer [Jonathan Blank](#) of [McGuireWoods LLP](#) to the show for a discussion on what every non-Delaware attorney needs to know about litigating in the [Delaware Court of Chancery](#). From the unique role of Delaware counsel to the importance of collaboration in high-stakes corporate disputes, this episode offers practical insights from lawyers who have

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About Francis



Deadlock and Dissolution of LLCs Addressed by Delaware Court of Chancery

In re Dynamk Fund Advisors LLC, No. 2026-0002-JTL, 2026 WL 1416650 (Del. Ch. May 20, 2026)

- The decision provides guidance for both transactional lawyers drafting LLC agreements and litigators confronting dissolution disputes
- The court reiterated that LLC dissolution ultimately depends on the chartering state's authority, not purely on contract.
- Provisions that prevent dissolution in a deadlocked LLC can produce dysfunctional, stalemate outcomes.
- Deadlock analysis turns on the LLC's governance structure and allocation of authority in the agreement.
- Any LLC member may seek dissolution when it is no longer reasonably practicable to continue the business.

Delaware Court of Chancery Examines Duties of Blockholder Directors

Guilbeau v. Footprint International Holdco, Inc., C.A. No. 2024-0968-JTL (Del. Ch. April 30, 2026)

- This decision should be in the toolbox of all corporate and commercial litigators
- The court analyzed fiduciary duties of directors appointed by specific constituencies and addressed related contract and tort claims.
- The opinion restated the standards for implied covenant claims and engaged English law perspectives on that doctrine.
- Blockholder directors owe duties to the corporation and stockholders as a whole, not to individual stockholders/appointing constituencies.
- The court warned against directors serving two masters and discussed *Van Gorkom* and *Gantler* on this point.
- Delaware law does not generally recognize constituency directors.
- The opinion discussed efficient breach options for fiduciaries and analyzed the discretionary-exercise version of the implied covenant.
- The court recited elements of tortious interference and promissory estoppel

Chancery Upholds Tesla's Texas Bylaw Forum Provisions

In re Tesla, Inc. Derivative Litigation, Cons., C.A. No. 2024-0631-BWD (Del. Ch. April 13, 2026)

- The court enforced Tesla's bylaw requiring derivative suits in Texas after redomestication, despite suits filed under prior Delaware forum bylaws.
- Venue may be assessed at later procedural points, and stockholder-chosen forums should be respected absent inequity.
- Rule 12(b)(3) improper venue applies to dismissals based on forum selection clauses.
- Forum clauses are presumptively valid unless enforcement is clearly unreasonable, unjust, or tainted by fraud or overreaching.
- Forum selection bylaws can apply retroactively, and stockholders have no vested right to a specific forum.
- DGCL Sections 266(a) and 115 challenges failed given lack of vested rights and Tesla's Texas incorporation at adoption.
- The court declined to compare Texas and Delaware corporate regimes to assess reasonableness.

Delaware High Court Reverses Chancery Decision To Bar Advancement For ERISA Fiduciaries

Invictus Global Management, LLC, et al. v. Invictus Special Situations Master I, L.P., Del. Supr., No. 283, 2025 (April 13, 2026)

- The Supreme Court held ERISA does not automatically bar advancement of expenses for state-law claims from ERISA assets.
- Advancement is not contingent on a showing of ability to repay, and recoupment protects plan rights.
- The court cited Johnson v. Couturier on when advancement may be enjoined under ERISA section 410.
- The Court distinguished indemnification limits under ERISA and noted no decisions bar advancement for state-law claims.

Chancery Imposes Attorneys' Fees for Breach of Confidentiality Order

Accelerant Twister, LLC v. Marjo, LLC, C.A. No. 2023-0887-LWW (Del. Ch. April 10, 2026)

- The court imposed fees for violating a Confidentiality Order after disqualifying an expert for significant noncompliance.
- Over 300 pages of confidential material were shared months before the expert signed the undertaking.
- The court awarded reasonable fees for bringing and briefing the sanctions motion.
- Fees covered investigation and litigation of the violation, with a blended rate just over \$1,000 found reasonable.

Chancery Imposes Penalties for Intentional Spoliation Coupled with Forgeries & Lies

NICbyte LLC v. Startup Investments, LLC, C.A. No. 2023-0637-NAC (Del. Ch. April 8, 2026)

- The court detailed vast deletion of relevant evidence around discovery and motion to compel events.
- Rule 37(e) permits adverse inferences only for reckless or intentional deprivation of information.
- Extensive intentional deletions, forgeries, and lies led to fee shifting and adverse inferences.
- The opinion also recited principles on authority doctrines, in pari delicto, and void versus voidable distinctions.

Chancery Declines to Nullify LLC Certificate of Cancellation

In re Reinz Wisconsin Gasket, LLC, C.A. No. 2022-0859-MTZ (Del. Ch. April 2, 2026)

- After trial, the court found LLC Act dissolution requirements were met and declined to nullify the cancellation.
- Nullification requires proving by a preponderance that the LLC Act was violated.
- Sections 18-804(b)(2)-(3) require provision for pending and foreseeable claims within 10 years, to the extent of assets.
- A certificate may be filed only after dissolution and completion of winding up, and nullification can revive the LLC.
- The court noted limits on Section 18-804's reach and addressed aiding and abetting damages requirements.

Section 225 Action Fails Based on Fraudulent Corporate Documents

Berg v. Bar-Lavi, C.A. No. 2025-0959-LWW (Del. Ch. March 27, 2026)

- The court denied relief in a Section 225 action after finding the claim relied on fabricated corporate documents.
- Poor and inaccurate records undermined ownership claims and written consents.
- Section 225 requires determining stock ownership first, and Section 227 permits resolving rightful owners.
- The court found fabricated documents, undermined conduct, and lack of standing due to failure to prove stockholder status.
- Basic principles included director removal under Section 141(k) and allowance of extrinsic evidence absent authentic ledgers.
- Failure to hold an organizational meeting under Section 108 rendered later director appointment ineffective.
- Fees were shifted 50% against the plaintiff for bad-faith fabrication, despite some defense misconduct.

Delaware Justices Divide Over Issue Of Post-Demand News Stories As “Credible Basis” for Suit Seeking Corporate Records

Paramount Global v. State of Rhode Island, No.129, 2025 (Del. March 25, 2026)

- The Supreme Court majority allowed post-demand, confidentially sourced news to support a credible basis in a Section 220 case.
- The minority would bar post-demand evidence to keep Section 220 litigation prompt and narrow.
- The majority emphasized deference to Chancery on mixed fact-law findings and reliability of hearsay in news articles.
- Background involved Redstone’s control of Paramount and reports on sale negotiations prompting the demand.

Court of Chancery Invalidates Founder/Executive Chairman's Unilateral Attempt to Remove the Only Other Members of the Company's Managing Board

Ropko v. Burdi, C.A. No. 2024-1193-PAF (Del. Ch. Mar. 16, 2026)

- An LLC operating agreement vesting management in a managing board requires board decisions for removals absent contrary language.
- The Executive Chairman's written consent removing two managers under a Voting Agreement was ineffective.
- Proxy authority must show clear agency appointment, which was absent in the agreements.
- The court rejected a futility excuse for bypassing governance formalities and enforced the operating agreement's procedures.
- Managers were awarded reasonable attorneys' fees under a fee-shifting provision.
- Practice reminders:
 - Proxy instruments must expressly evidence an agency relationship between the principal and proxy holder to be valid;
 - If the intent is for a board of managers to be able to remove board members without requiring the approval of those members, then the operating agreement should clearly state so

Delaware High Court & Chancery Agree On Reach Of Merger Pact's ADR Provision for Earnout Dispute

Fortis Advisors LLC v. Stillfront Midco AB, C.A. No. 2021-0870 (Del. Feb. 13, 2026)

- The Supreme Court upheld Chancery's ruling that earnout-related bad faith and conflict claims fell within the merger pact's ADR provision.
- The merger agreement set a base price, earnout tied to Adjusted EBITDA, Delaware court consent, and an ADR mechanism.
- Fortis's claims were compelled to arbitration, and vacatur was denied under narrow evident partiality, both reviewed de novo.
- The court treated § 2.14 as an arbitration clause, noting Fortis's own characterization during argument.

Chancery Analyzes Nuances of Claim for Aiding & Abetting Breach of Fiduciary Duty

Calumet Capital Partners LLC v. Victory Park Capital Advisors, LLC, C.A. No. 2025-0036-JTL (Del. Ch. Jan. 29, 2026)

- This decision is must-reading for anyone who wants to know the latest nuances and the latest developments under Delaware law regarding requirements for establishing an aiding and abetting claim for breach of fiduciary duty.
- The court provided an updated roadmap on aiding and abetting requirements and their evolution after Columbia Pipeline.
- It compared aiding and abetting with civil conspiracy and discussed affiliate versus third-party participant liability.

Chancery Enforces Restrictive Covenant in the Business Sale Context & Addresses Fiduciary Duties of Former CEO Retained by Purchaser

Arxada Holdings NA Inc. v. Harvey, C.A. No. 2024-0771-JTL (Del. Ch. Jan. 28, 2026)

- The court enforced a five-year, U.S.-and-Europe noncompete and nonsolicit covenants in a sale context.
- The former CEO formed a competing business using company assets and employees, breaching covenants and duty of loyalty.
- Enforceability requires reasonable scope and duration, advancing legitimate interests, and balancing equities, with broader limits in sale contexts.
- The buyer's \$450 million purchase supported restrictions on aiding competitors.
- The court granted a permanent injunction extending the full five-year term and outlined loyalty-breach remedies, including fees and disgorgement.
- Breach of fiduciary duty does not strictly require proximate cause or damages to grant relief.
- A related case also upheld a similar five-year noncompete tied to a business sale.

Delaware High Court Finds Investor Pact Suit Delay Fatal, Clarifies “Void/Voidable” Difference

Moelis & Company v. West Palm Beach Firefighters Pension Fund, et. al., No. 340, 2024 (Del. Jan. 23, 2026)

- The Supreme Court held a nine-year delay barred a challenge to a 2014 stockholder agreement because provisions were voidable, not void.
- The case background involved Moelis’s IPO and structure changes, with Chancery declaring provisions void and awarding fees.
- On appeal, the justices resolved timeliness via laches and noted legislative moves reacting to Chancery’s decision.
- Voidable actions can be lawfully accomplished by proper means and are subject to laches, unlike void acts.
- The plaintiff failed to carry the burden to show void status, and unexplained delay could not sustain the suit.

Chancery Clarifies Limited Scope of Representation for Corporate Counsel

Hecate Holdings LLC v. Repsol Renewables North America, Inc., C.A. No. 2024-0928-KSJM, Order (Del. Ch. Jan. 12, 2026)

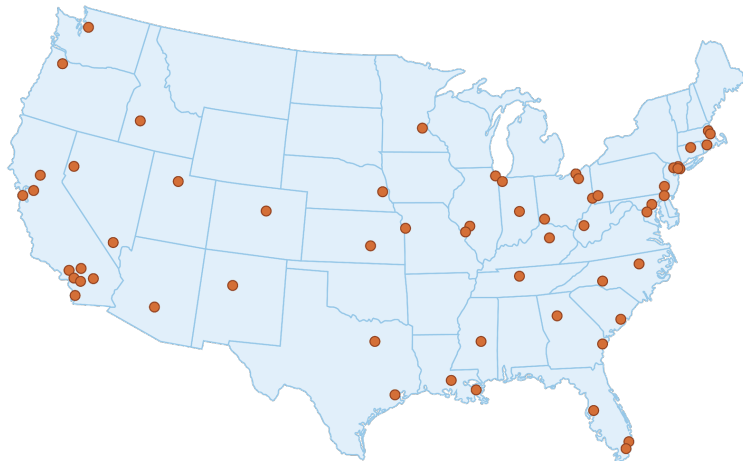
- The general rule continues to be that: representation of a company generally does not include the representation of the various constituencies of a corporation. See Rules of Professional Conduct, Rule 1.13.
- The court dismissed fiduciary duty claims against corporate counsel and clarified counsel’s duties run to the corporation, not minority stockholders.
- The court emphasized the important distinction between:
 - (i) the information-gathering right of a director designated by a stockholder that is not impeded because a director designee might be considered a “joint client” of corporate counsel; and
 - (ii) the stockholder who designated that director—for the purpose of addressing the scope of the attorney/client privilege of a corporation.

Questions?





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Francis G.X. Pileggi is the managing partner of the Wilmington office of Lewis Brisbois, Co-Chair of the Directors & Officers Litigation Practice, and a member of the Complex Business & Commercial Litigation Practice. His litigation practice emphasizes representation in high-stakes disputes of corporations, stockholders, members of boards of directors, members and managers of LLCs, and those with managerial or ownership interests in other forms of entities. He has extensive experience in matters involving fiduciary duties and corporate governance as well as summary proceedings under the Delaware General Corporation Law in the Delaware Court of Chancery.

He has been asked to testify as an expert witness on Delaware Corporate Law and Delaware LLC Law. One of his law review articles on corporate law has been cited by both the Delaware Supreme Court and the Delaware Court of Chancery. The Delaware Superior Court also cited one of his articles.

He has maintained for over 20 years the *Delaware Corporate and Commercial Litigation Blog* at www.DelawareLitigation.com, and he is the Editor-in-Chief of the *National Law Review's Delaware Corporate & Commercial Law Monitor*.

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Sean Brennecke is a partner in the Wilmington office of Lewis Brisbois and is vice-chair of the Directors & Officers Litigation Practice. For more than 15 years, Mr. Brennecke has represented corporations, alternative entities, and their respective directors, officers, shareholders, members, and managers, in complex litigation matters which frequently involve expedited proceedings and injunction practice. Mr. Brennecke's clients have ranged from two-member limited liability entities to large multi-national corporations, and from a single person to boards of directors.

Mr. Brennecke primarily practices in the Court of Chancery of the State of Delaware and the Superior Court of the State of Delaware; with a focus on the Complex Commercial Litigation Division. However, he has extensive experience litigating in the United States District Court for the District of Delaware and is often called upon to serve as Delaware or New Jersey counsel in patent infringement cases pending in Federal Courts in Delaware and New Jersey. He also has experience litigating adversary cases in the United States Bankruptcy Court for the District of Delaware and co-authored a chapter of 'Representing the Creditors' Committee, A Guide for Practitioners' which was published by the American Bankruptcy Institute in 2016.

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Chauna Abner is licensed to practice law in Maryland only. Chauna is a business and commercial litigation partner at Lewis Brisbois where she represents clients to resolve a wide range of business disputes in state and federal court and in arbitration.

Chauna's practice focuses on high-stakes disputes of corporations and other forms of entities, stockholders, members of boards of directors, and members and managers of LLCs. She has extensive experience in matters involving demands for books and records, fiduciary duties, and corporate governance. She also has experience representing financial institutions in a myriad of consumer financial disputes.

A graduate of Dartmouth College and American University Washington College of Law, Chauna has been recognized as a top-rated business litigation attorney by Super Lawyers and as a Top 40 Under 40 attorney by the National Black Lawyers.

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