



David C. McBride

PARTNER

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While it is rare to find a litigator and a dealmaker in the same lawyer, Dave McBride has long thrived in both roles. This, he is convinced, gives him an advantage both at the negotiating table and in the courtroom. His litigation experience gives him an instinctive feel for what is important in a transaction, and he wastes little time on the sorts of provisions that will likely prove irrelevant in a lawsuit. Conversely, his understanding of how transactions come to be structured gives him unusual insights — often not perceived by others — into how they can be attacked or defended in litigation.

Narratives are important to Dave. He thinks deeply, not just about the rules governing a situation, but also about the reasons why the rules were established — and what that might mean to his narrative. Once he understands a rule's purpose, he can construct a narrative that effectively argues why that purpose is, or is not, served by applying it to his case.

Dave relishes the opportunity to learn other people's businesses, to master arcane factual material largely unknown to the court or to other lawyers. He considers himself fortunate to have made new law on many occasions in his long career. In litigation, he has articulated new M&A principles — strong precedents that have been widely applied elsewhere. In transactions, he has been instrumental in designing structures and provisions that have broken new ground in the field. In both disciplines, the power of persuasive narratives is a hallmark of Dave's practice.

FOCUS:

- Represents both defendants and plaintiffs in areas of corporate law and corporate and commercial litigation

- Represents corporate clients in mergers and acquisition litigation in Delaware Court of Chancery

- Counsels boards and stockholders in transactions and proxy contests

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Past involvement in many of Delaware's significant corporate law cases, particularly in the area of mergers and acquisitions.

Practices

- Alternative Dispute Resolution: Arbitration and Mediation
- Appeals
- Busted Deal Litigation
- Challenged Transactions Involving Controlling Owners
- Expedited Litigation
- Expert Witness on Areas of Delaware Law
- Internal Investigations
- Litigation Monitoring
- Mergers and Acquisitions
- Portfolio Company Representation
- Post-Transaction Earn-out, Escrow, and Indemnification Disputes
- Proxy Disputes and Stockholder Activism
- Resolution of Defective Corporate Acts
- Special Committee and Special Conflict Transaction Committees Representation
- Special Legal Counsel
- Statutory Actions under Delaware Corporate and Alternative Entity Law
- Stockholder Class and Derivative Actions

Education

- Emory University School of Law (J.D.)
- Georgetown University School of Foreign Service (B.S.F.S.)

Bar Admissions

- Delaware

Court Admissions

- U.S. Bankruptcy Court for the District of Delaware
- U.S. Court of Appeals for the Third Circuit

Distinctions

- *Chambers USA - America's Leading Lawyers for Business*, Chancery and Corporate M&A, 2006-Present

- American College of Governance Counsel, Fellow
- *LawDragon*, ranked as one of the top 500 lawyers in the country, 2006
- *The Best Lawyers in America*®, Corporate Law, Bet-the Company Litigation and Commercial Litigation, 1995 - Present; Corporate Compliance Law, 2019, Mergers and Acquisitions Litigation, 2019
- Delaware *Super Lawyers*®, Securities & Corporate Finance, 2007-2014, Mergers & Acquisitions, Business/Corporate, 2015-2016
- *Corporate Counsel* magazine's Top Lawyers, Bet-The-Company Litigation, 2009
- *Who's Who Legal*®, 2016

Memberships and Affiliations

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Appointed Member of the Committee on Corporate Laws of the Section of Business Law of the American Bar Association

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Former Chairman and currently a member of the Executive Council of the Corporate Law Section of the Delaware State Bar Association, the group responsible for recommending and drafting amendments to the Delaware General Corporation Law.

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American Law Institute

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American College of Trial Lawyers

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One of Delaware's three Commissioners to the National Conference of Commissioners of Uniform State Laws

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Rules Committee of the Delaware Court of Chancery

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American College of Governance Counsel

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The Uniform Law Commission

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Board of Editors of *Delaware Lawyer*

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Director of the Historical Society for the Delaware Court of Chancery

Publications

January 10, 2019

In re Xura, Inc. Stockholder Litigation: Fiduciary Duties of Officers, Ratification, and the Limitations of Corwin

November 27, 2018

Are Delaware's Judicial Political Balance Requirements Constitutional? Stay Tuned For The Third Circuit Decision In *Adams v. Carney*

January 7, 2014

Mistakes Happen: New Delaware Law Helps Corporations Fix Defective Corporate Acts
Delaware Corporate and Legal Services Blog, January 7, 2014

June 1, 2011

The Takeover King
2011 Pennsylvania Super Lawyers — June 2011 (Delaware Super Lawyers Focus)

May 4, 2009

Recasting The Gold Standard: Proposed Amendments To The DGCL
Metropolitan Corporate Counsel, May 4, 2009

June 1, 2006

Delaware's Flexible Approach to Majority Voting for Directors
Wall Street Lawyer, Securities in the Electronic Age, Vol. 10, No. 6

May 1, 2006

Delaware Law: Always Ahead of the Curve
The Metropolitan Corporate Counsel, May 2006 at 52

Representative Matters

David McBride's Corporate representations include:

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Paramount Communications Inc. v QVC Network, Inc.

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Paramount Communications Inc. v Time Inc.

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Revlon Inc. v MacAndrews &



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Forbes Holding Inc.

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In re First Boston Inc. Shareholders Litig.

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In re Resorts Int'l. Shareholders Litig.

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Freedman v Restaurant Associates Indus., Inc.

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Robert M. Bass Group, Inc. v Evans (Macmillan, Inc.)

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Shamrock Holdings Inc. v Polaroid Corp.

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In re RJR Nabisco, Inc. Shareholders Litigation

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Henley Group v Santa Fe Southern Pacific Corp.

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Pennzoil Co. v Getty Oil Co.

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Edelman v Phillips Petroleum

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Omnicare, Inc. v NCS Healthcare, Inc.

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In re Oracle Corporation Derivative Litigation

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In re the Walt Disney Company Derivative Litigation

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Hollinger International Inc. v Black.

Experience

In re Oracle Corporation Derivative Litigation

Pershing Square, L.P. v. Ceridian Corporation, Delaware Court of Chancery, C.A. No. 2780-CC (May 11, 2007)

A seemingly narrow books and records request made by a self-styled “activist” hedge fund in connection with an announced proxy contest raised interesting issues regarding proper purpose and confidentiality in the context of a 220 request. The decision also explored the limits of a stockholder’s ability to communicate with and obtain information from senior executives within a company. In this case, the plaintiff-stockholders sought disclosure of three confidential letters written by senior executives of Ceridian to its board of directors that allegedly raised concerns about Ceridian’s senior management. Plaintiffs learned of the existence of the two letters from a Ceridian executive who was opposed to Ceridian’s senior management. The Ceridian executive disclosed the existence of the letters during secret meetings with representatives of the plaintiffs at which Ceridian representatives were not also present. At the same meetings, the Ceridian executive pledged his support to plaintiff-stockholders in the proxy contest to unseat the current board and his services in the future should the proxy contest succeed.

The Court denied the plaintiffs’ Section 220 demand and found that the plaintiffs’ real -- and improper -- purpose for making their demand was to “find a legal vehicle by which [the plaintiff could] publicly broadcast improperly obtained confidential information.” The Court chastised the plaintiff for seeking the Court’s assistance in a scheme to unseat the current management – a scheme that included disclosure of confidential information by a company executive to the plaintiffs in furtherance of “improper and self-interested goals.” The Court also ruled that the letters were confidential and should be protected from disclosure to avoid a “harmful chilling of candid communications between executives and a board of directors.”

Young Conaway handled the litigation of this matter on behalf of Ceridian Corporation along with lawyers from Wachtell, Lipton, Rosen & Katz. Within the firm, litigation of the matter was conducted by partners David C. McBride, Rolin P. Bissell, and Christian Douglas Wright and associate Tammy L. Mercer of the Corporate Counseling and Litigation Section.

Express Scripts, Inc. v. Crawford, Delaware Court of Chancery, C.A. No. 2663-CC (Feb. 23, 2007)

In one of the most hotly contested takeover battles of the year, Express Scripts obtained a preliminary injunction in aid of its efforts to effect a hostile acquisition of Caremark for approximately \$26 billion. Although Caremark’s stockholders ultimately voted to approve an acquisition by CVS (after CVS upped its offer by an additional \$3.3 billion), Express Scripts obtained significant judicial relief that increased its opportunity to achieve its business objectives. Additionally, the Delaware Court of Chancery issued important guidance respecting the nature of the disclosures required of a target company in a bidding contest and resolved an issue of first impression pertaining to the availability of appraisal rights where a merger is funded, in part, by a special dividend. The Court of Chancery also identified, but did not resolve, important issues respecting the validity and propriety of various deal protection measures adopted by Caremark and CVS.

Young Conaway handled the litigation of this matter and assisted Skadden, Arps, Slate, Meagher & Flom LLP in

connection with advising Express Scripts on the transaction. Within the firm, the Corporate Counseling and Litigation Section carried the laboring oar, with the formal presentation in the Court of Chancery.

American Legacy Foundation v. Lorillard Tobacco Co., Court of Chancery (C.A. No. 19406)

Litigation regarding whether the American Legacy Foundation's anti-tobacco marketing and advertising campaign directed at youth violated the terms of the Master Settlement Agreement resolving the various lawsuits filed by state attorneys general against the tobacco companies.

A summary judgment for our client was affirmed by the Delaware Supreme Court. Young Conaway served as co-counsel with Wilmer Cutler Pickering Hale and Dorr LLP.

In re The Walt Disney Company Derivative Litigation

On August 9, 2005, the Delaware Court of Chancery issued its much-anticipated opinion in the case of *In re The Walt Disney Company Derivative Litigation*, ruling in favor of all defendants in the long-running saga over the hiring and termination of Michael Ovitz as President of The Walt Disney Company in 1995 and 1996, and the benefits he received pursuant to his employment agreement with Disney when he was terminated.

Disney Stockholders sued Mr. Ovitz and the other members of Disney's board of directors, alleging that the directors breached their fiduciary duties in entering into that contract and wasted company assets in doing so, and that Mr. Ovitz and the Disney board breached their fiduciary duties in connection with Mr. Ovitz's termination because Mr. Ovitz should have been terminated "for cause" instead of being given a "non-fault" termination.

Following one of the Chancery Court's longest trials - 37 days - with testimony from 24 witness and more than 1,000 trial exhibits, Chancellor William B. Chandler III issued a 174-page opinion finding that none of the Disney directors breached their fiduciary duties in connection with Mr. Ovitz's hiring and termination.

As to Mr. Ovitz, the Court ruled that he acted completely in accordance with his fiduciary duties when he was terminated and that the plaintiffs had failed to prove their claims that his conduct as President merited a "for cause" termination. (The Court had, prior to trial, granted summary judgment in favor of Mr. Ovitz on plaintiffs' claims that he breached fiduciary duties to Disney when he was hired.)

Hollinger international Inc. v. Black

Action by corporation against parent and controlling owner arising from attempted sale of parent by controlling owner, for breach of fiduciary duty (including usurpation of corporate opportunity), breach of contract, improper by-law amendments and declaration of propriety of corporation's rights plan (obtained preliminary injunction against sale of parent and declaration of propriety of rights plan).

Omnicare, Inc. v. NCS Healthcare, Inc.

In re First Boston Inc. Shareholders Litigation

Paramount Communications Inc. v. QVC Network, Inc., 637 A.2d 34 (Del. 1994)

Freedman v. Restaurant Associates Indus., Inc.

Paramount Communications Inc. v. Time Inc.

In re RJR Nabisco, Inc. Shareholders Litigation

Shamrock Holdings Inc. v. Polaroid Corp.

Robert M. Bass Group v. Evans, 552 A.2d 1227 (1988)

Henley Group v. Santa Fe Southern Pacific Corp.

Revlon Inc. v. MacAndrews & Forbes Holding Inc.

Pennzoil Co. v. Getty Oil Co.

News

August 15, 2018

42 Young Conaway Lawyers Recognized by Best Lawyers in America, with 4 Attorneys Further Recognized as Lawyers of the Year (Wilmington, DE)

June 13, 2018

18 Young Conaway Attorneys Named 2018 Delaware Super Lawyers

May 4, 2018

23 Young Conaway Attorneys Ranked as "Leaders in their Field" in 2018 Chambers USA

August 15, 2017

41 Young Conaway Attorneys Named in The Best Lawyers In America and Three Attorneys Receive Additional Specialty Recognition as Lawyer of the Year (Wilmington, DE)

May 26, 2017

25 Young Conaway Attorneys Recognized As "Leaders In Their Field" by Chambers USA 2017 Edition

May 14, 2017

22 Young Conaway Attorneys Named 2017 Delaware Super Lawyers

November 1, 2016

Fifteen Young Conaway Lawyers Named "Top Lawyers" by Delaware Today Magazine; Six Attorneys Received Top Votes in Practice Area

May 27, 2016

28 Young Conaway Attorneys Ranked As “Leaders In Their Field” By Chambers USA 2016

May 13, 2016

23 Young Conaway Attorneys Named Delaware Super Lawyers, 4 Named Rising Stars

November 2, 2015

Delaware Today Announces 2015 Top Lawyers

August 17, 2015

36 Young Conaway Attorneys Named In 2016 Best Lawyers in America

May 28, 2015

21 Young Conaway Attorneys Featured as 2015 Delaware Super Lawyers, including 3 Rising Stars

May 19, 2015

24 Young Conaway Attorneys Ranked As Leaders In Their Field By Chambers USA 2015

May 27, 2014

19 Young Conaway Attorneys Featured as 2014 Delaware Super Lawyers, including 2 Rising Stars

May 23, 2014

25 Young Conaway Attorneys Listed As "Leaders in their Field" in Chambers USA for 2014

May 12, 2014

David McBride and Maris Kandestin Honored For Their Pro Bono Work

October 28, 2013

Nine Young Conaway Lawyers Chosen As "Top Lawyers" By Delaware Today Magazine

August 16, 2013

36 Young Conaway Attorneys Named Best Lawyers in America 2014

June 5, 2013

Twenty-Eight from Young Conaway are Delaware Super Lawyers 2013

May 24, 2013

Young Conaway -- Top Ranked in Chambers USA 2013

October 31, 2012

Delaware Today Names 14 YCST as “Top Lawyers” – The Most of Any Firm!

September 16, 2011

Young Conaway Attorneys Honored in The Best Lawyers in America® 2012

June 10, 2011

Chambers USA 2011 – 21 YCST Lawyers And More Practice Areas Than Any Other DE Firm!