



Top Ten 2013 Delaware Corporate and Commercial Decisions

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Editor's Note: [Francis G.X. Pileggi](#) is Member-in-Charge of the Wilmington office of Eckert Seamans Cherin & Mellott, LLC and publisher of the [Delaware Corporate and Commercial Litigation Blog](#). This post is based on an article by Mr. Pileggi, [Kevin F. Brady](#), and [Jill K. Agro](#). This post is part of the [Delaware law series](#), which is co-sponsored by the Forum and Corporation Service Company; links to other posts in the series are available [here](#).

This is our ninth annual review of key Delaware corporate and commercial decisions. During 2013, we reviewed and summarized over 200 decisions from Delaware's Supreme Court and Court of Chancery on corporate and commercial issues. Among the decisions with the most far-reaching application and importance during 2013 are the "top ten" that we are highlighting in this short overview. We are providing links to the more complete blog summaries, and the actual court rulings, for each of the cases that we highlight below.

Whenever a "top ten" list is prepared, there remains a risk of omitting some opinions that also are noteworthy, so we encourage readers to send us suggestions for additions to this list. In chronological order, the winners are:

Freedman v. Adams. The Delaware Supreme Court determined in this case that there is no fiduciary duty to structure executive compensation to take advantage of available corporate tax deductions. This decision is another example of how difficult it remains to challenge compensation decisions on the basis of Delaware corporate law. See fuller summary [here](#).

SIGA Technologies v. PharmAthene. In this important decision, the Delaware Supreme Court enforced a duty to negotiate in good faith. Most lawyers will be surprised to know that an obligation to negotiate can be enforced in Delaware even when a term sheet is not complete or final. See fuller summary [here](#).

Norton v. K-Sea Transportation. In one of many recent cases involving a limited partnership agreement that waived all duties except the non-waivable implied duty of good faith, the

Delaware Supreme Court upheld the presumption of good faith according to the terms of an agreement that made it almost impossible to challenge wrongdoing. N.B. Waivers of duties will be enforced. See fuller summary [here](#).

In re: Wayport, Inc. Litigation. The Delaware Court of Chancery clarified in this case the duty of disclosure owed by directors and majority stockholders when purchasing stock or selling stock to existing stockholders. This opinion provides a textbook-style explanation of the duty of disclosure in general, as well as in the context of selling and buying shares among existing shareholders. See fuller summary [here](#).

Christian v. Counseling Resource Associates, Inc. This decision is a must-read for lawyers (and their clients) to understand when court approval is needed to extend pretrial deadlines and the consequences of missing pretrial filing deadlines. In this case, the Delaware Supreme Court established a new standard for trial courts to determine the appropriate penalty for failing to comply with pretrial deadlines. See fuller summary [here](#).

Rich v. Chong, In re Puda Coal, Inc. Stockholders Litigation and In re: China Agritech, Inc. Shareholder Derivative Litigation. This trio of decisions, all involving operations in China of Delaware corporations, should concern directors of companies with far-flung operations in distant countries unless they make visits to those countries or otherwise make themselves sufficiently aware of those operations. These cases make clear that the Court of Chancery recognizes that a director's duty of oversight includes corporate operations in foreign countries. See fuller summaries [here](#), [here](#), and [here](#).

In re MFW Shareholders Litigation. This iconic Chancery decision provides a clear standard to practitioners who formerly had less definitive guidance (and multiple conflicting standards) to advise clients on the standard that would apply in Delaware to controlling shareholder freezeouts. In this case, the Court of Chancery applied the business judgment rule to a corporate transaction with a controlling stockholder that included various safeguards. This decision was appealed and on December 18, 2013, the Supreme Court heard oral argument *en banc*. When that decision is published, we will highlight it. See fuller summary [here](#).

Klaassen v. Allegro Dev. Corp. et al. This Court of Chancery decision addressing whether notice is required before a board ousts its CEO/controllers stockholder, is the subject of an expedited appeal to the Delaware Supreme Court. Among the issues to be addressed by Delaware's high court is whether the actions of a board to dismiss the CEO, who also had voting power over a controlling percentage of shares, are void—as compared to voidable. The trial court opinion considering a motion for a stay pending appeal provides a mini-treatise on the Delaware

law applicable to notice requirements for board meetings and the consequences of ineffective notice. The opinion is also a must-read for anyone interested in the proper approach to contests for control among warring factions of dissident directors and competing shareholder groups. See fuller summary [here](#).

Activision Blizzard Inc. v. Hayes, et al. The Delaware Supreme Court addressed whether a stockholder vote was required for particular business combinations. In a rare ruling from the bench, after oral argument, the Delaware Supreme Court reversed an injunction granted by the Court of Chancery. The formal written Supreme Court opinion was issued on Nov. 15, 2013. The issue addressed was whether the structure of the deal qualified as the type of business combination that required a vote by public stockholders. In a unanimous ruling, Delaware's high court ruled that no vote was required. Notably, merely a month or so transpired between the date of the complaint being filed and the Supreme Court's oral ruling after its review of an injunction that was issued by the trial court. Especially in a major case like this, that remains remarkable celerity. See fuller summary [here](#).

In re Primedia, Inc. Shareholders Litigation and Silverberg v. Gold. Two Court of Chancery cases, both involving insider trading, tied for the last spot in the top ten list. The *Primedia* opinion addressed whether equitable tolling of a state insider trading claim (called a *Brophy* claim in Delaware) applied to extend or suspend the statute of limitations. See fuller summary [here](#). In *Silverberg*, the Court of Chancery denied a motion to dismiss a *Brophy* claim based on an alleged failure to make a pre-suit demand on the board. See fuller summary [here](#).