

Highlights of Key Decisions From Delaware's Supreme Court and Court of Chancery

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By **Francis G.X. Pileggi and Chauna A. Abner** | January 02, 2019

For the 14th year, we have created an annual list of important corporate and commercial decisions of the Delaware Supreme Court and the Delaware Court of Chancery. This list is not by any means a complete list of important decisions of the two courts that were rendered this year. Instead, this list includes notable decisions that should be of widespread relevance to those who



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work in the corporate and commercial litigation field or follow the latest developments in this area of Delaware law. [Prior annual reviews are available at this hyperlink \(https://www.delawarelitigation.com/annual-review-of-cases/\)](https://www.delawarelitigation.com/annual-review-of-cases/). This list focuses on the unsung heroes among the many decisions that have not already been widely discussed by the mainstream press or legal trade publications.

Delaware Supreme Court Decisions

- *Aranda v. Phillip Morris USA*, 183 A.3d 1245 (Del. 2018).

This Supreme Court decision should be required reading for anyone who has a forum non conveniens issue in Delaware. The opinion provides an overview of the Delaware law on forum non conveniens and clarifies that even if it is a minority view among the 50 states, Delaware only requires that the trial court “consider” whether an alternative forum is available as part of its analysis, and whether an alternative forum is available is not a deciding factor. In its analysis, the court explores three general categories of forum non conveniens cases. [A synopsis of the decision and a link to the full opinion is available at this hyperlink \(https://www.delawarelitigation.com/2018/04/articles/delaware-supreme-court-updates/supreme-court-addresses-forum-non-conveniencs/\)](https://www.delawarelitigation.com/2018/04/articles/delaware-supreme-court-updates/supreme-court-addresses-forum-non-conveniencs/).

- *Eagle Force Holdings v. Campbell*, 187 A.3d 1209 (Del. 2018).

For the first time, the Delaware Supreme Court clarifies the test to determine whether a contract’s terms are sufficiently definite to create an enforceable contract. Before setting forth the test, this opinion discusses the intent necessary for parties to be bound. This opinion also explains the three basic requirements for a valid contract and addresses the ancillary issue of whether the Court of Chancery could impose sanctions for violation of a court order prior to establishing that it had personal jurisdiction over the person who violated the order. [A synopsis of the decision and a link to the full opinion is](#)

available at this hyperlink

(<https://www.delawarelitigation.com/2018/05/articles/delaware-supreme-court-updates/supreme-court-clarifies-contract-formation-and-forum-selection-clause-principles/>).

- *Morrison v. Berry*, 191 A.3d 268 (Del. 2018).

In this opinion, Delaware's highest court limits the application of the *Corwin* doctrine and prohibits the cleansing effect of stockholder approval, in part due to inadequate disclosures. The opinion also explains the various nuances of the board's duty of disclosure to stockholders, describes the duty of candor owed by directors to each other, and provides a definition of materiality as well as an explanation of when an omitted fact is material. A synopsis of the decision and a link to the full opinion are available at this hyperlink (<https://www.delawarelitigation.com/2018/08/articles/delaware-supreme-court-updates/supreme-court-limits-application-of-corwin-doctrine/>).

- *Flood v. Synutra International*, 2018 Del. LEXIS 460 (Del. Oct. 9, 2018).

In this opinion with a vigorous dissent, the Supreme Court clarifies the *MFW* standard that was announced in *Kahn v. M&F Worldwide*, 88 A.3d 635 (Del. 2014). The court explains whether the prerequisites that must be satisfied for the *MFW* standard to apply must be imposed as a condition of the deal at the absolute beginning of negotiations. The opinion also discusses whether due care violations were pleaded in the complaint. A synopsis of the decision and a link to the full opinion are available at this hyperlink (<https://www.delawarelitigation.com/2018/10/articles/delaware-supreme-court-updates/draft-2/>).

Delaware Court of Chancery Decisions

- *KT4 Partners v. Palantir Technologies*, 2018 Del. Ch. LEXIS 59 (Del. Ch. Feb. 22, 2018).

The Court of Chancery determined that a stockholder satisfied the prerequisites of Section 220 in this case to obtain certain corporate records. This 50-page decision can serve as a primer for the requirements of Section 220, to which judicial opinions have added prerequisites that are not found in the text of the statute. [A synopsis of the decision and a link to the full opinion are available at this hyperlink](#)

[\(https://www.delawarelitigation.com/2018/02/articles/chancery-court-updates/chancery-explains-stockholders-rights-to-obtain-corporate-records/\)](https://www.delawarelitigation.com/2018/02/articles/chancery-court-updates/chancery-explains-stockholders-rights-to-obtain-corporate-records/).

- *Feldman v. YIDL Trust*, 2018 Del. Ch. LEXIS 75 (Del. Ch. Mar. 5, 2018).

In this opinion, the Court of Chancery adds to the relatively modest body of case law interpreting Section 273 of the DGCL. The court applies Section 273 to dissolve a joint venture with two 50/50 stockholders that was deadlocked. This is analogous to a “no fault business divorce” but the remedy is discretionary and the court will not always grant dissolution. [A synopsis of the decision and a link to the full opinion are available at this hyperlink](#)

[\(https://www.delawarelitigation.com/2018/03/articles/chancery-court-updates/chancery-grants-dissolution-of-50-50-joint-venture/\)](https://www.delawarelitigation.com/2018/03/articles/chancery-court-updates/chancery-grants-dissolution-of-50-50-joint-venture/). Shortly after the court issued its decision, the respondent moved for relief from the court’s entry of judgment and the court denied the motion. See *Feldman v. YIDL Trust*, 2018 Del. Ch. LEXIS 148 (Del. Ch. May 4, 2018).

- *PR Acquisitions v. Midland Funding*, 2018 Del. Ch. LEXIS 137 (Del. Ch. Apr. 30, 2018).

This Chancery decision is notable for enforcing the provisions in an agreement that provided a procedure and a comparatively short deadline for making claims for funds held in escrow. This decision was in the context of notice being mistakenly sent to the escrow agent when the agreement required that notice be sent to the seller. [A synopsis of the decision and a link to the full](#)

opinion are available at this hyperlink

(<https://www.delawarelitigation.com/2018/05/articles/chancery-court-updates/missed-notice-deadline-bars-contract-claim-for-escrow-funds/>).

- *CBS v. National Amusements*, 2018 Del. Ch. LEXIS 157 (Del. Ch. May 17, 2018).

In this high profile case, the Court of Chancery denies the request of CBS, a minority shareholder, for a TRO that sought to prevent the efforts of the Redstone family from exercising its voting control regarding a potential deal with Viacom. A synopsis of the decision and a link to the full opinion is available at this hyperlink

(<https://www.delawarelitigation.com/2018/05/articles/chancery-court-updates/chancery-denies-tro-prevents-minority-from-limiting-rights-of-controlling-redstone-family/>).

- *Basho Technologies Holdco B v. Georgetown Basho Investors*, 2018 Del. Ch. LEXIS 222 (Del. Ch. July 6, 2018).

This 126-page Court of Chancery opinion is a mini-treatise on the capacious capacity of the court to fashion creative and customized remedies when a breach of fiduciary duty is found. The opinion includes many key principles of Delaware corporate law and a description of different types of available remedies. A synopsis of the decision and a link to the full opinion is available at this hyperlink (<https://www.delawarelitigation.com/2018/07/articles/chancery-court-updates/chancery-describes-broad-remedial-powers-for-breach-of-fiduciary-duty/>).

- *In Re Oxbow Carbon Unitholder Litigation*, C.A. No. 12447-VCL (Del. Ch. Aug. 1, 2018).

In this opinion, the Court of Chancery provides the most comprehensive description of the broad and flexible authority of the Court of Chancery to fashion an appropriate customized equitable remedy in several decades. This decision should be treated as an indispensable reference for those involved in corporate or commercial litigation who might need to quote authoritative sources for the voluminous scope of the Court of Chancery's flexible and customized equitable remedial powers. [A synopsis of the decision and a link to the full opinion is available at this hyperlink \(https://www.delawarelitigation.com/2018/08/articles/chancery-court-updates/chancery-provides-comprehensive-explanation-of-the-broad-scope-and-flexibility-of-its-equitable-remedial-powers/\).](https://www.delawarelitigation.com/2018/08/articles/chancery-court-updates/chancery-provides-comprehensive-explanation-of-the-broad-scope-and-flexibility-of-its-equitable-remedial-powers/)

- *Applied Energetics v. Farley*, 2018 Del. Ch. LEXIS 277 (Del. Ch. Aug. 14, 2018).

This Court of Chancery opinion is a must read for litigators who need to know the finer points of how the amount for a requisite bond is determined for purposes of obtaining an injunction. The court found problems with both parties' estimates and essentially engaged in an abbreviated analysis of the appropriate measure of potential damages based on the claims in the case. [A synopsis of the decision and a link to the full opinion is available at this hyperlink \(https://www.delawarelitigation.com/2018/08/articles/chancery-court-updates/court-determines-amount-of-bond-for-injunction/\).](https://www.delawarelitigation.com/2018/08/articles/chancery-court-updates/court-determines-amount-of-bond-for-injunction/)

- *Godden v. Franco*, 2018 Del. Ch. LEXIS 283 (Del. Ch. Aug. 21, 2018).

In this opinion, the Court of Chancery explains several important principles that Delaware courts use to analyze issues in the LLC context, and interpretive rules involving LLC agreements. In doing so, the court provides a helpful analysis of the equitable powers of the court to fashion remedies in the context of an LLC—notwithstanding the often exaggerated explanation of LLCs as creatures of contract. In this vein, the court cites several exceptions to the

concept of LLCs being purely a product of contract. [A synopsis of the decision and a link to the full opinion are available at this hyperlink \(https://www.delawarelitigation.com/2018/09/articles/chancery-court-updates/llcs-are-not-only-creatures-of-contract/\).](https://www.delawarelitigation.com/2018/09/articles/chancery-court-updates/llcs-are-not-only-creatures-of-contract/)

- *Akorn v. Fresenius Kabi AG*, 2018 Del. Ch. LEXIS 325 (Oct. 1, 2018), *aff'd*, 2018 Del. LEXIS 548 (Del. Dec. 7, 2018).

This epic 246-page Court of Chancery opinion serves as a mini-treatise on several topics of importance to corporate and commercial litigators, including: interpretation of material adverse change clauses or material adverse effect clauses in merger agreements; and the meaning and application of the phrase “commercially reasonable efforts” or “reasonable best efforts” often found in merger agreements. [A synopsis of the decision and a link to the full opinion are available at this hyperlink \(https://www.delawarelitigation.com/2018/10/articles/chancery-court-updates/chancery-allows-termination-of-merger-agreement-based-on-material-adverse-change/\).](https://www.delawarelitigation.com/2018/10/articles/chancery-court-updates/chancery-allows-termination-of-merger-agreement-based-on-material-adverse-change/) Notably, the Supreme Court affirmed the decision in a three-page order in December.

- *Lexington Services v. U.S. Patent No. 8019807 Delegate*, 2018 Del. Ch. LEXIS 509 (Del. Ch. Oct. 26, 2018).

In this opinion, the Court of Chancery recognizes that a non-signatory to an agreement may enforce the provisions of a forum-selection clause under certain conditions. In doing so, the court discusses two principles of well-established Delaware law: the general enforceability of forum-selection clauses in Delaware; and the ability of officers and directors of an entity subject to a forum-selection clause to invoke its benefits when they were closely involved in the creation of the entity and were being sued as a result of acts that directly implicated the negotiation of the agreement that led to the entity's creation. [A synopsis of the decision and a link to the full opinion are available](#)

at this hyperlink

(<https://www.delawarelitigation.com/2018/11/articles/chancery-court-updates/non-signatory-may-enforce-forum-selection-clause/>).

- *Decco U.S. Post-Harvest v. MirTech*, 2018 Del. Ch. LEXIS 545 (Del. Ch. Nov. 28, 2018).

This Court of Chancery opinion adds to the modest body of Delaware case law that addresses whether an LLC should be dissolved based on the statutory standard that it is “not reasonably practicable” to carry on the LLC. The court explains that in determining the purpose for which an LLC was formed, it may not only look at the purpose-clause in the LLC’s operating agreement, but also to “other evidence ... as long as the court is not asked to engage in speculation.” A synopsis of the decision and a link to the full opinion are available at this hyperlink

(<https://www.delawarelitigation.com/2018/12/articles/chancery-court-updates/court-dissolves-llc-based-on-not-reasonably-practicable-standard/>).

- *Sciabacucchi v. Salzberg*, C.A. No. 2017-0931-JTL (Del. Ch. Dec. 19, 2018).

This recent seminal decision of the Court of Chancery must be included in the lexicon of every lawyer who wants to understand the boundaries of Delaware law on forum-selection clauses in corporate documents. The court determined that a forum-selection clause in a certificate of incorporation was invalid and ineffective to the extent that it purported to “require any claim under the Securities Act of 1933 to be brought in federal court” (the “Federal-Forum Provisions”). A synopsis of this decision and a link to the full opinion are available at this hyperlink.

(<https://www.delawarelitigation.com/2018/12/articles/chancery-court-updates/chancery-rules-on-limits-of-forum-selection-clauses-in-corporate-documents/>).

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