Special Committee Representation

Trusted Advisors

The outcome of commercial litigation regarding conflicts for directors and officers is increasingly impacted by the presence of a functioning independent committee consisting solely of directors with no interest in the matter. With such a body in place, costly shareholder lawsuits challenging corporate decisions can often be averted; in its absence, those lawsuits can proceed, wasting director and management time and exposing them to liability. We frequently represent committees of outside directors or other special committees and deliver independent legal advice in response to shareholder demands and in advising independent committees in transactions involving management groups, major stockholders, or other company affiliates.

Reach

Maintaining Independence

Our attorneys advise on limiting conflicts in a wide range of transactions in which company insiders may have a substantial personal interest, including management buyouts, auction sales, and going private transactions. We regularly advise clients on a broad range of issues, including:

- Directors' fiduciary responsibilities
- Remedying or penalizing violations uncovered by board investigations
- Handling insolvent entities, both before and after the filing of a bankruptcy petition
- Analysis of potential legal claim
- Strategic aspects of a transaction
- Compliance with federal securities laws and state corporate laws

Approach

A Focus On Outcome

An important dimension of special committee representation is a focus on the critical objectives and responsibilities associated with the task at hand while understanding the dynamics between the individuals involved. While recognizing that each representation is unique, we guide our clients around major pitfalls common in conflicts situations.

Experience

Acted as lead counsel for the Blue Cross Blue Shield of North Carolina (BCBSNC) BOD tasked with investigating the massive 2016 Affordable Care Act computer failure occurring soon after the 2015 open enrollment period. The investigation lasted approximately six months, required interviews of

approximately 30 employees, and the engagement of multiple computer programming experts. Thereafter, engaged to represent BCBSNC in the vendors negotiations to resolve contractual performance issues that led to the failure, as well as corresponding concomitant monetary claims.

Acted as lead counsel for the special committee of the board of directors of NewBridge Bancorp in the investigation and dismissal of three derivative demands and subsequent derivative allegations in three suits seeking to enjoin the acquisition of NewBridge Bancorp by Yadkin Financial Corporation. The merger also proceeded as scheduled.

Represented audit committee and a special committee of a NYSE-listed health care information technology company BOD in their investigations of a series of employee allegations of accounting irregularities related to revenue recognition.

Conducted internal investigation for special committee of bank's board of directors related to misuse of bank resources by executive officers, including reports to special committee, board of directors, outside auditors, and regulators.

Conducted investigation for special committee of the board of directors of a corporation in response to shareholder demand letter.

Counseled special committee of board of directors in an investigation of shareholder demand issues, including full internal review and report of findings.

Represented the special litigation committee of All American Assurance Co. in a hotly-contested matter, lasting over five years and argued in the North Carolina Supreme Court three times, which ultimately established the standard under which derivative claims are reviewed, dismissed, or settled in North Carolina. Thereafter have represented numerous derivative claims special committees, as well as majority and minority shareholder groups in minority shareholder claims and dissolution actions.

Primary Contacts



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