

Recent Mergers & Acquisitions Representations

- Former Shareholders brought a suit against the Scottish online sports betting company, FanDuel, in connection with a 2018 merger transaction with another sports betting company Paddy Power Betfair. Affiliates of Quinn Emanuel's longtime client, KKR, are investors and preferred shareholders in the transaction and are named as defendants in the suit, brought in New York Supreme Court's Commercial Division. Plaintiffs' complaint alleges that in their role as investor, KKR and its affiliates improperly exercised a contractual drag-along right to force a sale of FanDuel at an improperly-low price, benefitting preferred shareholders more than common shareholders. Representing KKR, QE has moved to dismiss the complaint, noting that the dispute is governed by Scottish law, which does not provide for fiduciary duties running to shareholders, and that even under New York law the preferred shareholders executed the transaction and drag-along right consistent with the governing agreements.
- We represent a global investment firm in connection a dispute that has arisen over a potential acquisition in Europe. In particular, we are advising the client about its termination rights in light of recent material adverse events and the seller's failure to operate in the ordinary course of business as required by the parties' agreement
- We recently represented a buyer, pre-litigation, in disputes arising out of an alleged MAE and failure to comply with ordinary course covenant, in connection with the fallout from the COVID-19 pandemic. We obtained a \$100 million price concession for our client. We also represented the buyer against a lender syndicate that attempted to exercise alleged contractual rights to increase the cost of financing.
- We represent private equity fund **Snow Phipps Group** in its dispute with Kohlberg & Co. over the sale of DecoPac, a leading specialty bakery supplier with proprietary technology for customizing cakes. Despite signing a stock purchase agreement on March 5 with just 60 days to closing, Kohlberg & Co. claimed in April that its debt financing became unavailable for closing due to a dispute with its lenders about accounting for the effects of the pandemic. Kohlberg & Co. also purported to terminate the deal claiming that that the pandemic caused Snow Phipps to breach covenants to operate in the ordinary course and with no material adverse effects. The case is currently pending in the Delaware Chancery Court before Vice Chancellor McCormick. Trial will likely take place in early January 2021.
- We represent affiliates of **Mirae Asset Financial Group** in a dispute with AB Stable VIII LLC, an affiliate of Anbang Insurance Group Go., Ltd., which filed a complaint alleging breach of a Sale and Purchase Agreement providing for the purchase of 15 luxury hotel properties from AB Stable for a price in excess of USD 5.8 billion. Our

client filed counterclaims, alleging that AB Stable has breached numerous provisions of the parties' contract and failed to fulfill conditions precedent to closing. This case is being heard in the Delaware Chancery Court on an expedited basis with trial in August 2020 before Vice Chancellor Laster.

- We represented affiliates of private equity fund **Advent International Corporation** in connection with litigation filed by cybersecurity company Forescout Technologies, alleging violation of the terms of the parties' USD 1.9 billion acquisition agreement. Our client asserted that Forescout experienced a Material Adverse Effect, failed to operate in the ordinary course of business, and that specific performance was not an available remedy. The parties settled the dispute in advance of the scheduled July 2020 trial, with Advent achieving a significant reduction in the agreed purchase price.
- We represent **NantCell, Inc.** and **Altor BioScience, LLC** in litigation arising from NantCell's acquisition by merger of Altor, a biopharmaceutical company engaged in the discovery, development, and commercialization of immunotherapeutic agents for the treatment of cancer, viral infections, and autoimmune diseases. We defeated plaintiffs' efforts to enjoin the transaction and we obtained summary judgment dismissal of the fiduciary duty claims brought by certain plaintiffs on the basis of a covenant not to sue. Now that the merger has closed, plaintiffs' claims are proceeding as appraisal claims and as claims for breach of fiduciary duty (including a would-be class action) relating to disclosures in connection with the merger and plaintiffs' claim that the merger price was too low and the result of an unfair process. The case is currently pending in the Delaware Chancery Court before Vice Chancellor Slights. Trial has been scheduled for late October 2021.
- We represent an affiliate of **GIC Private Limited**, an investment company established by the Government of Singapore, in a dispute related to the acquisition of GBT, the American Express Global Business Travel service. After seller representative sued to enforce the Share Purchase Agreement, our client filed counterclaims, seeking a declaration that it was justified in not closing the transaction to invest in GBT based on sellers' failure to satisfy closing conditions and contractual breaches. Our client has asserted that GBT has experienced a Material Adverse Effect and failed to operate in the ordinary course. Seller representative's motion to expedite the matter was denied, and trial remains to be scheduled. This case is being heard in the Delaware Chancery Court before Vice Chancellor Slights.
- We represent **SoftBank Vision Fund** in two lawsuits arising from the termination of a tender offer by SoftBank Group Corp. to purchase USD \$3 billion in shares of WeWork from existing stockholders. The lawsuits, one filed by WeWork and one filed by Adam Neumann and his company, are currently pending in the Delaware Court of Chancery before Chancellor Bouchard. Each lawsuit alleges claims for breach of contract and breach of fiduciary duty. The cases have been consolidated, and trial is set for January 2021. Quinn Emanuel has filed motions to dismiss on behalf of SoftBank Vision Fund, which had limited obligations in connection with the tender offer and satisfied all of its obligations.

- We are acting for **Avonwick Limited** against Sergiy Taruta and Oleg Mkrтчan in a USD 1 billion fraudulent misrepresentation claim arising out of Ukraine’s largest ever M&A deal, the USD 2.7bn sale of Ukrainian metals company ISD.
- We are acting for the Joint Administrators of healthcare group **NMC Health PLC** which cares for COVID patients and was the subject of a multibillion dollar fraud involving suspected fraudulent M&A through related party transactions.
- We represent several other clients in connection with merger-related disputes arising out of the COVID-19 crisis and related events. Many of these representations are pre-litigation or otherwise confidential.
- We represent a Mexican entertainment company in a dispute related to its sale of a subsidiary in a deal valued at approximately \$500 million. The buyer has claimed the right to terminate the agreement, alleging that COVID-19 and related governmental actions constitute a material adverse event and left the company unable to operate in accordance with the ordinary course of business until closing. The parties have commenced an arbitration before the International Chamber of Commerce.
- We recently represented a buyer, pre-litigation, in disputes arising out of an alleged MAE and failure to comply with ordinary course covenant, in connection with the fallout from the COVID-19 pandemic. We obtained a \$100 million price concession for our client. We also represented the buyer against a lender syndicate that attempted to exercise alleged contractual rights to increase the cost of financing
- We represent a global investment firm in connection a dispute that has arisen over a potential acquisition in Europe. In particular, we are advising the client about its termination rights in light of recent material adverse events and the seller’s failure to operate in the ordinary course of business as required by the parties’ agreement.
- We represented **the Official Committee of Consumer Creditors in the chapter 11 bankruptcy of Ditech Holding Corporation**. As part of the representation, we objected to the Debtors’ chapter 11 plan, which sought to sell their mortgage businesses for over \$1.8 billion, because it did not sufficiently protect the rights of consumer borrowers. After a two-day contested confirmation hearing and several weeks of deliberations, the Court issued a 132-page opinion denying the Debtors’ plan, holding that it did not satisfy the bankruptcy law’s requirements when it came to our constituency. See *In re Ditech Holding Corporation*, Case No. 19-10412 (JLG), 2019 WL 4073378, (Bankr. S.D.N.Y. 2019). After the ruling, Quinn Emanuel negotiated a favorable settlement, incorporated in an amended chapter 11 plan ultimately approved by the Court, ensuring significant recoveries and providing for historically unprecedented protections for consumer borrowers in connection with the sale, including the appointment of a Consumer Representative to reconcile consumer claims, the preservation of borrowers’ recoupment rights and defenses, and an affirmative obligation for the Debtors and purchasers of the businesses to correct any borrower accounts that were misstated or otherwise incorrect.

- We represented **MHR Fund Management**, its founder, Dr. Mark H. Rachesky, and its affiliated funds relating to Carl Icahn’s 2010 hostile bid for control of Lions Gate Entertainment Corp. Icahn brought suit in both Canada and New York, seeking to undo a series of transactions in which MHR, a large shareholder, acquired additional shares in the company. Following a four day trial, the Supreme Court of British Columbia rejected Icahn’s bid to rescind the transactions or sterilize MHR’s votes. Two months later, the New York Supreme Court denied Icahn’s request for a preliminary injunction.
- We represented the family of the founder of Swiss construction chemicals maker **Sika AG** in what was widely described as Europe’s nastiest takeover dispute ever. The family owned a controlling stake in Sika, which it intended to sell to French Saint-Gobain for over CHF 2.7 billion. Overnight, a majority of Sika’s board of independent directors, working in concert with significant minority and activist shareholders initiated a legal and PR campaign to fight the transaction which effectively blocked the transaction. Following a 3.5 years takeover battle in and out of court, QE, as co-lead counsel for the family, facilitated a complex three-way settlement between Sika, Saint-Gobain and the family, which ultimately put our client in an even better position than under the initial share purchase deal.
- We represent the majority of the independent directors of international cinema and real estate company, **Reading International**, in a shareholder derivative lawsuit filed in Nevada state court. The action alleges, among other things, that these independent directors breached their fiduciary duties by rejecting a non-binding offer for all outstanding shares of the company. We obtained summary judgement on behalf of four directors. Trial against three remaining directors is set for late 2018.
- We represent **BAE Systems** and its ship repair division in two actions filed in San Francisco Superior Court and the Southern District of New York arising from its January 2, 2017 sale of its San Francisco shipyard to Puglia engineering. The yard, which is the longest operating privately owned shipyard in the country, services cruise ships and U.S. Navy vessels. Puglia claims it was defrauded by BAE in the sale, seeks to rescind the transaction and seeks to unwind the assignment of the lease from the Port of San Francisco.
- We represented **Spectra Energy Corporation** (“Spectra”) in defending both federal and Delaware state class actions filed by unitholders of Spectra Energy Partners, L.P. (“SEP”), a publicly traded Master Limited Partnership. The class alleged, among other things, claims for breach of contract and breach of the duty of good faith against the general partner of SEP arising from the general partner’s approval of an approximately \$1 billion transaction in which SEP recently transferred its interests in two natural gas pipelines. The class members also alleged, individually and derivatively, that Spectra, as parent of the general partner, tortiously interfered with their contract with the general partner by causing it to approve the transaction, which they allege undervalued the pipeline assets. We successfully obtained dismissal of both the federal and state matters.

- We represented two affiliates of the hedge fund **Elliott Management** in a \$300 million-plus shareholder class action in New Jersey state court. The case arose from the 2006 take-private merger of Metrologic Instruments. Plaintiffs alleged that Elliott, as a minority shareholder in Metrologic at the time of the merger, breached fiduciary duties that it purportedly owed to Plaintiffs. Quinn Emanuel took over the case from prior counsel after New Jersey’s Appellate Division reversed the trial court’s dismissal of Elliott from the case on summary judgment. Within a few short months we (i) successfully moved to strike plaintiffs’ jury demand; (ii) identified an alternative path to summary judgment and quickly filed a renewed motion for summary judgment; and (iii) moved to reopen expert discovery to enable us to supplement the expert record before trial. Within six months, we reached a settlement in principle on very favorable terms.
- We represented **Access Industries** (“Access”), and various of its officers and related companies, in a multi-billion dollar lawsuit brought by a Litigation Trustee representing various creditors of LyondellBasell Industries AF SCA (“LBI”) and its affiliates. LBI was owned by Access entities and created through a merger of two petrochemical companies in 2007. It filed for bankruptcy in early 2009. Shortly after the bankruptcy filing, the Trustee brought numerous claims against Access and its founder, Len Blavatnik, alleging mismanagement and fraud in the creation of LBI and seeking to recover billions of dollars in damages and allegedly fraudulent transfers. Following a 13-day bench trial in the Bankruptcy Court for the Southern District of New York, the judge issued a 173-page decision finding for Access on all but one small claim (resulting in an award to the Trustee of only \$7.2 million).
- We represented **Alteva, Inc.**—a leading provider of Voice over IP (VoIP) and cloud services—and its board of directors in a suit filed in New York state court by a shareholder of Alteva. The shareholder, who requested that the court certify a class of public shareholders, alleged that the company and its board of directors breached their fiduciary duties to public shareholders by entering into a proposed multi-million dollar merger agreement with an entity affiliated with Momentum Telecom, Inc. We successfully opposed plaintiff’s request for a temporary restraining order enjoining the shareholder vote on the proposed merger, as well as its subsequent request for a preliminary injunction enjoining the same. Due to our successful opposition of both motions, the vote was allowed to proceed and the shareholders approved the proposed merger. The case was subsequently dismissed with prejudice.
- We represented **Crest Financial Limited**, formerly the largest minority stockholder of Clearwire Corporation, a telecommunications company holding highly coveted broadband spectrum, in prosecuting its lawsuit to block Sprint Nextel Corporation’s attempted acquisition of Clearwire below fair market value. As a result of Clearwire’s challenge in court, Sprint substantially raised its offer, thus mooting the lawsuit.
- We represented **J. Christopher Burch and C. Wonder** in a Delaware Chancery Court action against Tory Burch and the directors of Tory Burch LLC. We filed a lawsuit asserting breach of fiduciary duty claims in the context of a proposed sale of Mr. Burch’s equity interests in the multi-billion dollar Tory Burch fashion brand, and also defended against counterclaims filed by Tory Burch. We achieved a highly favorable

settlement in less than four months after winning our motion for expedited discovery and proceedings, enabling Mr. Burch both to consummate a sale of his interests in Tory Burch LLC and to continue to operate his new fashion brand, C. Wonder.

- We represented **Access Industries** and its subsidiaries in shareholder class action litigation arising out of Access's purchase of Warner Music Group. We successfully negotiated a dismissal with prejudice for Access Industries and its subsidiaries.
- We represented the officers and directors of **Lukoil North Americas** in litigation commenced by the Liquidating Trustee of Getty Petroleum Marketing Inc., a former Lukoil subsidiary, challenging Getty's complex restructuring that involved a cash infusion of more than \$580 million and the sale of more than 300 gas stations. The matter was settled during a lengthy trial without any payment by our clients.
- We represented **Solutia Inc.** upon its exit from its Chapter 11 proceeding against Citibank, Goldman Sachs, and Deutsche Bank when the banks refused to fund the necessary \$2 billion exit financing, in connection with the banks' claim the credit market downturn constituted a materially adverse change entitling them to terminate the funding agreement. On the eve of closing arguments during the trial, the banks agreed to settle and provide the \$2 billion in exit financing needed to fund the plan.
- We represented **Live Nation** in a successful defense of aiding and abetting breach of fiduciary duty claims brought by Ticketmaster shareholders claiming they did not receive sufficient value in connection with the Live Nation/Ticketmaster merger.
- We obtained a complete victory for **First Reserve** in a case in which unsecured creditors were seeking standing to bring claims against First Reserve totaling \$1 billion. First Reserve is the private equity sponsor of Sabine Oil & Gas, which filed for bankruptcy in July 2015 following its merger with Forest Oil. Sabine's unsecured creditors sought leave of the bankruptcy court to bring claims for fiduciary breach and aiding and abetting fiduciary breach against First Reserve and its employees who served as directors on Sabine's board. Such motions for standing by unsecured creditors are routinely granted and rarely denied. Nonetheless, after a 14-day trial, the bankruptcy court denied the unsecured creditors' motion for standing, ruling that the claims it had plead against First Reserve were not colorable, and thereby eliminating a potentially lengthy and expensive lawsuit for First Reserve.
- We are representing a **South American power generation company** and its selling shareholders in a \$700 million contract dispute arising out of a share purchase agreement.
- We represented an **international pharmaceutical company** in litigation concerning breaches of representations and warranties in an agreement for the purchase of a pharmaceutical business.
- We represented an **AIG subsidiary** in litigation arising out of the failure to sell a portfolio company.

- We represented the selling **shareholders of a Brazilian company** that was sold to a US-based company in an action for breach of earn out obligations. The transaction was related to a multi-billion dollar acquisition in Brazil's healthcare industry, one of the largest in the country's history.
- We represented **Morgan Stanley** as syndicate lender in litigation arising out of a leveraged buyout by a private equity firm.
- We represented a **British publicly traded company** seeking to enjoin the merger of US-based public companies.
- We represented the **Chairman of Leap Wireless** in connection with shareholder class actions pending in San Diego Superior Court arising out of the publicly announced acquisition by AT&T, which settled on favorable terms.
- We represented the **NewPage Creditors Committee**, asserting \$2 billion in fraudulent transfer claims arising out of the company's failed leveraged merger transaction. We obtained a mediated settlement resulting in \$30 million in cash recoveries, a waiver of the secured creditors' \$50 million deficiency claim, and establishment of a litigation trust, all for the benefit of unsecured creditors.
- We are currently representing **Gaming & Leisure Properties** in a lawsuit regarding an asset acquisition agreement to purchase the Meadows Casino in May 2014. Gaming & Leisure has sued for fraudulent inducement, breach of contract, and a declaration that a Material Adverse Effect occurred by virtue of the company's poor financial performance.
- We represented the **President of the Bill Hannon Foundation**, a \$70 million foundation that contributes to Catholic charities and education, in a corporate governance dispute among board members. We resolved the dispute successfully and obtained Court-approved appointment of three additional directors, including the President of Santa Clara University.
- We are defending the last of the Peregrine-related securities actions on behalf of **Peregrine's former Chairman, John Moores**. After obtaining dismissal on the pleadings of the most significant claims, we obtained court approval of a favorable settlement dismissing Mr. Moores from consolidated federal class actions and a related state-court action that sought more than \$2 billion from him. After a prominent shareholder and former Harbinger director opted out of settlement and sought leave to bring claims against the Peregrine outside directors, we persuaded the district court that leave to amend would be futile. Following an appeal, remand, and second dismissal, the case is once again pending appeal.
- We obtained complete summary judgment in a case brought against our client by companies owned by **Ronald Perelman**, which had been seeking over \$135 million for alleged fraud in connection with the sale of an educational software company.

- We defeated an attempt by the purchaser of an auto component manufacturing company to obtain substantial damages from investment fund and management sellers based on alleged breaches of the merger agreement and alleged fraudulent representations during the diligence period for the acquisition.
- We represented **Northrop** against seven class actions alleging various federal securities law violations arising from a failed merger. The actions were dismissed and the dismissal was affirmed on appeal.
- We represented **Johnson & Johnson** and defeated a preliminary injunction seeking to enjoin a \$1.3 billion merger with Conor Medsystems.
- We represented **Hughes Electronics** and its directors in claims brought by shareholders arising out of an aborted merger. We obtained complete dismissal of breach of fiduciary duty claims, and affirmance from the Delaware Supreme Court.
- We represented the directors and venture backers of **Epinions** in litigation related to the merger with Dealtime to form Shopping.com. We achieved dismissal of the claims and then removed the amended case to federal court, leading to a confidential settlement.
- We represented **GE Commercial Finance** in litigation related to a merger and the subsequent revelation of accounting irregularities at HBOC.
- We represented **outside directors** in defending fraud claims related to a spin-off of a subsidiary into a newly formed entity, Crown Paper. The matter was dismissed and the dismissal was affirmed after Ninth Circuit argument.
- We represented **Superior National Insurance Group** and its successor litigation trust in claims arising from the acquisition of four workers' compensation insurance companies and its subsequent bankruptcy filing. We obtained in excess of \$150 million in settlements from the seller and its actuaries, including a \$137 million settlement from HealthNet a few weeks before trial.
- We represented **Vivendi** in defense of an "all holders, best price" rule class action filed by the Milberg Weiss firm arising from Vivendi's tender offer for U.S. Filter Corp. We obtained dismissal on the pleadings and the waiver of plaintiff's right to appeal.
- We represented **Carat Interactive** in an arbitration involving claims by shareholders of an acquired interactive media company under an "earn out" provision in the stock purchase agreement.
- We represented the internet start-up company **1GlobalPlace** in a successful arbitration against Verisign, a major internet services company, concerning the contractual interpretation of an "earn out" provision in the merger agreement under which Verisign acquired 1GlobalPlace.

- We represented the investment company **Waterton Management** and its manager in a securities action arising from the merger of two internet companies shortly before the dot com bubble burst. We obtained summary judgment on claims of common law fraud, securities fraud, and negligent misrepresentation, which was affirmed on appeal.
- We obtained a defense judgment for a defendant assisted living company in a trial in which the plaintiff claimed \$750 million in damages due to corporate self-dealing during a merger transaction.
- One of our partners defeated efforts by Nextel Partners, a **Nextel** affiliate, to enjoin changes to Nextel's brand following the merger of Nextel and Sprint, and to block Sprint Nextel's multimillion dollar rollout of the combined company's new brand.
- One of our partners acted in one of the largest ever LCIA arbitration involving an M&A and corporate governance five-party dispute, related to the RUSAL joint venture, with claims valued at \$50 billion.
- One of our partners represented the publicly traded general partner of **Enterprise Products, LP** and certain of its directors in Delaware litigation challenging the \$9 billion transaction in which Enterprise acquired the general partner.
- One of our partners represented **three private equity firms** in a Texas shareholder litigation over the terms of a management buyout of Kinder Morgan, Inc.
- One of our partners represented **a publicly traded MLP** in Delaware and Missouri courts challenging the MLP's acquisition of its general partner.
- One of our partners defended **Global Industries Board of Directors** in litigation in the Southern District of Texas challenging its merger with Technip.
- One of our partners defended **Statoil** in class actions challenging its acquisition of Brigham Exploration.
- One of our partners defended the directors of **C&J Industries** in litigation challenging an inversion transaction with Nabors Industries.
- One of our partners defended breach of fiduciary duty claims by unit holders against the directors of the general partner of **Breitbart Energy Partners** challenging amendments to unit holder voting rights.
- One of our partners represented **a major European airline** in the purchase of a 20% interest in a leading U.S. airline that led to governance disputes, litigation in New York and Delaware, and ultimately a sale of the equity back to the issuer as well as the creation of a successful, long-term trans-Atlantic alliance that benefits from antitrust immunity.