



A Message From Your Volume 41 External Managing Editor:

Greetings!

We are pleased to present the Spring Issue of the *Delaware Journal of Corporate Law* Semi-Annual Alumni Newsletter, which includes information on the *Journal's* events and on our Volume 41 Board and Staff.

This year's Commencement Ceremony for Delaware Law School's 2016 graduating class will take place on May 21, 2016. The *Journal* has thirteen members graduating this year! All alumni are encouraged to attend.

We are proud to announce that we have continued to expand our corporate and business law blog. The blog is a collaborative effort between the *Journal* and the Institute of Delaware Corporate and Business Law to discuss timely business law topics. The *Journal's* website contains the full blog post, while the Institute's website contains a summary of the post and a corresponding link. Alumni interested in contributing to the blog should contact Brandon Harper, the Volume 42 External Managing Editor, at brandonharper00@gmail.com.

This issue also contains information regarding our upcoming volume, the student notes and comments selected for publication, the Alumni Mentor Program, and the Ruby R. Vale Interscholastic Moot Court Competition. We are also pleased to announce the newly appointed Volume 42 Administrative Board.

The *Journal* is constantly looking for opportunities to improve, and we always welcome your feedback.

I look forward to seeing you at our upcoming events.

Kind Regards,

Sabrina M. Hendershot
External Managing Editor, Volume 41
sabrinamarieh@gmail.com

Upcoming Events:

ALUMNI HAPPY HOUR

Date: Tuesday, April 19, 2016
Time: 6:00 to 8:00 PM.
Location: Tonic Bar & Grille
111 W 11th St.
Wilmington, DE 19801

R.S.V.P. by Friday, April 15, 2016. Please email DJCL@Widener.edu or call 302-477-2145

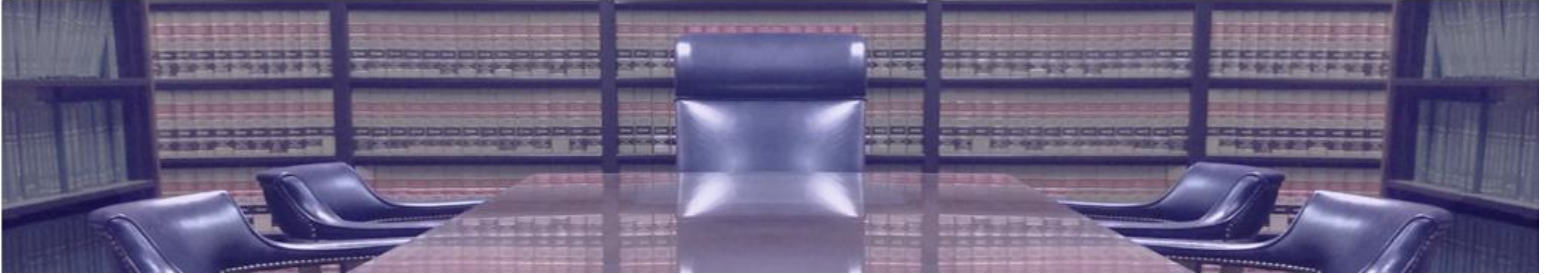
SPRING COMMENCEMENT CEREMONY

Date: May 21, 2016
Time: 3:00 to 5:00 PM
Location: Delaware Law School
4601 Concord Pike
Wilmington, DE 19803

ANNUAL BANQUET

Date: April 23, 2016
Time: 12:00 to 2:00 PM.
Location: TBA

For more information on our banquet or if you would like to attend, please contact Alexander Faris at Alexander.faris88@gmail.com.



Spring Alumni Happy Hour!



You're invited to attend our semi-annual Alumni Happy Hour on Tuesday, April 19, 2016. Meet current *Journal* members and network with *Journal* alumni.

TIME: 6:00- 8:00 PM

**TONIC BAR AND GRILLE
111 W 11th St.
Wilmington, DE 19801**

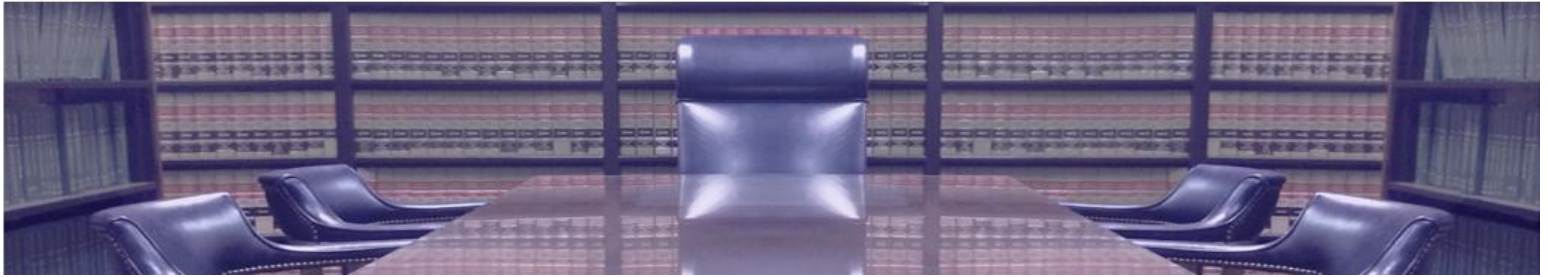
Hors d'oeuvres will be served!

*Please RSVP for this event by Friday, April 15, 2016
Email us at DJCL@Widener.edu or call 302-477-2145*

Register here:

<https://delawarelawalumni.widener.edu/events/wilmington-meet-and-greet>





Staff Awards & Recognition

Jennifer P. Buckley

Class of 2016 Valedictorian
William Prickett Corporate & Business Law
Scholarship
Alfred Avins Memorial Scholarship
William Conner Memorial Scholarship

Ashley B. DiLiberto

Justinian Society of Delaware County Scholarship
Harvery Alan Chernoff Memorial Scholarship

Sabrina M. Hendershot

Dean Anthony J. Santoro Scholarship
Fairfax Leary, Jr. Memorial Scholarship
William Prickett Corporate Law Award
Phi Kappa Phi Honor Society
Outstanding Student Service Award

Michael Laukaitis, II

Howard M. Berg Memorial Scholarship

Kaitlin E. Maloney

John F. Schmutz Corporate & Business
Law Fellowship Award
William J. Conner Memorial Award for
Administrative Law

Renée M. Mosley

Graham Foundation Award
Outstanding Student Service Award

Jason Rigby

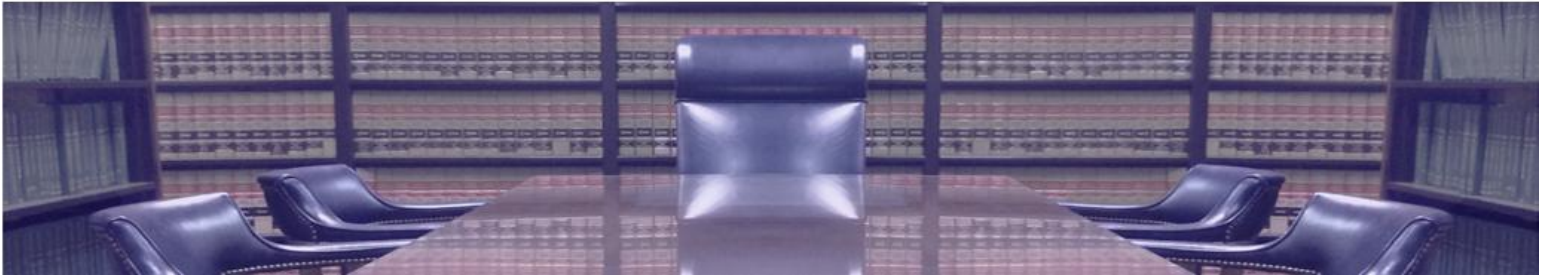
Charles P. Mirachi, Sr. Memorial
Scholarship

Kendra Rodwell

Best Contract in Transactional Law
Honor Society New Member
Competition

Cheneise V. Wright

Linda L. Ammons Diversity
Scholarship



See Where Our Members Are Working!

Graduating Members

Jennifer P. Buckley, Judicial Law Clerk to the Honorable Karen L. Valihura, Delaware Supreme Court

Alexander Faris, Judicial Law Clerk to the Honorable Richard R. Cooch, Delaware Superior Court

Matthew B. Goeller, Judicial Law Clerk to the Honorable Randy J. Holland, Delaware Supreme Court

Sabrina M. Hendershot, Judicial Law Clerk to the Honorable Collins J. Seitz, Jr., Delaware Supreme Court

Kaitlin Maloney, Associate at Skadden, Arps, Slate, Meagher & Flom LLP

Renée M. Mosley, Associate at Richards, Layton & Finger, P.A.

Kendra Rodwell, Associate at Womble, Carlyle, Sandridge, & Rice, LLP

Summer Internships

Samantha Osborne, Summer Associate at Potter, Anderson & Corroon LLP

Ashley Callaway, Summer Law Clerk at the Delaware Department of Justice

Jacob J. Fedechko, Summer Associate at Skadden, Arps, Slate, Meagher & Flom LLP

Brandon Harper, Judicial Intern to the Honorable Collins J. Seitz, Jr., Delaware Supreme Court

Donald Huddler, Summer Associate at Morgan, Lewis & Bockius LLP

Michael Laukaitis, Judicial Intern to the Honorable Paul R. Wallace, Delaware Superior Court

John O'Toole, Summer Associate at Fox Rothschild LLP



CONGRATULATIONS TO THE VOLUME XLII ADMINISTRATIVE BOARD!

*The Volume 41 Board has selected the following members to comprise the
Volume 42 Administrative Board:*

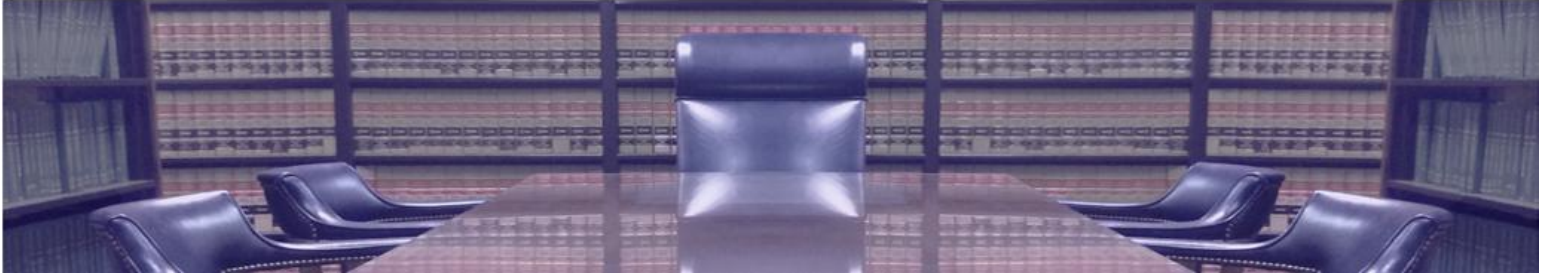
Donald Huddler
Editor-in-Chief

Brandon R. Harper
External Managing Editor

Samantha Osborne
Internal Managing Editor

Ashley Callaway
Michael Laukaitis
Johanna Peuscher-Funk
Jason Rigby
Articles Editors





Staff Articles Selected for Publication

THE VOLUME 41 BOARD HAS SELECTED THE FOLLOWING STUDENT ARTICLES FOR PUBLICATION:

THE DUPONT PROXY BATTLE: SUCCESSFUL DEFENSE MEASURES AGAINST SHAREHOLDER ACTIVISM

Brandon R. Harper

DODD-FRANK WHISTLEBLOWER PROVISION: DETERMINING WHO QUALIFIES AS A WHISTLEBLOWER

Samantha Osborne

FINANCIAL ADVISOR AIDING AND ABETTING OF A BREACH OF A FIDUCIARY DUTY POST *RURAL METRO*: CLARIFYING “KNOWING PARTICIPATION”

Jason W. Rigby

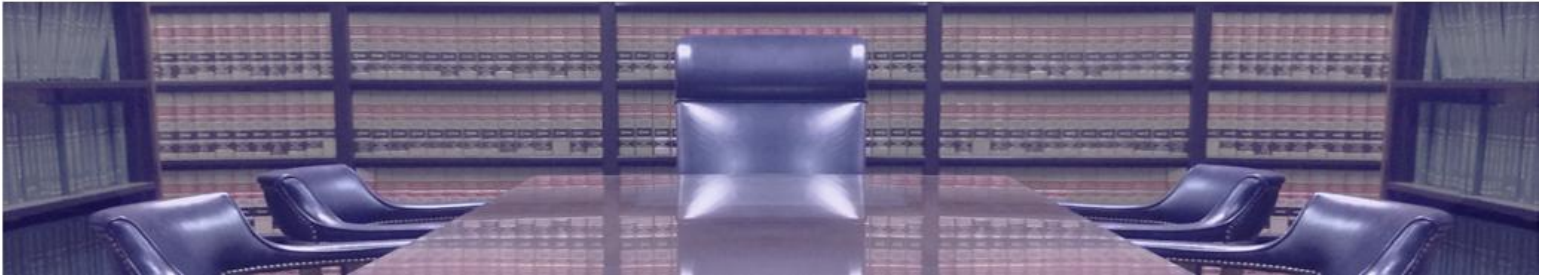
Other *Journal* Member’s Publications

Ashley B. DiLiberto, *Should FDA Ban Tanning Booths or Simply Allow States to Regulate?*, FOOD & DRUG L. INSTI.POL’Y F. (forthcoming April 2016).

Ashley B. DiLiberto, *Federal and State Regulation of Indoor Tanning Today: Beauty at any Cost—An Overdue Proposal to “Ban the Tan”*, PA. LAWYER (forthcoming July 2016).

Lawrence A. Hamermesh & Jacob J. Fedechko, *The Role of Judicial Opinions in Shaping M&A Practice*, in RESEARCH HANDBOOK ON MERGERS AND ACQUISITIONS (Claire Hill & Steven Davidoff Solomon eds., forthcoming 2016).

Jason W. Rigby, *Examining Trulia’s “Plainly Material” Standard for Disclosure-only Settlements and Practice Tips to Contour Settlements to Meet This New Standard in Delaware*, NAT’L L. REV. (April 4, 2016), available at <http://www.natlawreview.com>.



Current Issue: 40-2

THE DANGERS OF INDEPENDENT DIRECTORS

By: Theodore N. Mirvis & William Savitt

OF BABIES AND BATHWATER: DETERRING FRIVOLOUS STOCKHOLDER SUITS WITHOUT CLOSING THE COURTHOUSE DOORS TO LEGITIMATE CLAIMS

By: Mark Lebovitch & Jeroen van Kwawegen

LONG-TERM SHAREHOLDERS AND TIME-PHASED VOTING

By: Lynne L. Dallas & Jordan M. Barry

***MARTINEZ v. DUPONT*: A LOOK AT THE FUTURE OF FORUM NON CONVENIENS IN DELAWARE COMMERCIAL LITIGATION**

By: Jacob J. Fedechko

BOARDS BEWARE: DELAWARE “GARNERS” SUPPORT FOR FIDUCIARY EXCEPTION TO ATTORNEY-CLIENT PRIVILEGE IN SECTION 220 SUITS

By: Sabrina M. Hendershot

Upcoming Issue: 40-3

FEE SHIFTING: DELAWARE’S SELF-INFLICTED WOUND

By: Stephen M. Bainbridge

HOW *RURAL/METRO* EXPOSED THE SYSTEMIC PROBLEM OF DISCLOSURE SETTLEMENTS

By: Joel Edan Friedlander

MODIFYING FIDUCIARY DUTIES IN DELAWARE: OBSERVING TEN YEARS OF DECISIONAL LAW

By: Brent J. Horton

ASKING THE RIGHT QUESTION: THE MIXED CONSIDERATION DENOMINATOR PROBLEM

By: Laura Bower Braunsberg

INNOVATION, THE STATE AND PRIVATE ENTERPRISE: A CORPORATE LAWYER’S PERSPECTIVE

By: Charles M. Yablon



2016 Ruby R. Vale Corporate Moot Court Competition

By: *Kaitlin Maloney*

From Thursday March 10, 2016 to Sunday March 13, 2016, the Widener University Delaware Law School Moot Court Honor Society hosted the 28th Annual Ruby R. Vale Interscholastic Corporate Competition. The competition is named for Ruby R. Vale, who lived in Milford, Delaware and practiced law in Philadelphia, specializing in corporation, banking, and insurance law. It introduces participants to the cutting edge of corporate law, and as Delaware's only law school, Delaware Law School is in a unique position to draw on the resources and experience of the distinguished Delaware corporate legal community.

Professor Lawrence Hamermesh authored this year's competition problem, which focused on stockholder appraisal rights and the related, recent cases of *Merion Capital LP v. BMC Software, Inc.*, *In re Appraisal of Ancestry.com*, and *In re Appraisal of Dell Inc.* The issues centered around the question of the appropriate interpretation of the statutory term "stockholder of record," and its effect on so-called "appraisal arbitrage," in which purchasers of shares after the record date for voting on a merger seek judicial appraisal of their shares. Eighteen teams from seventeen schools participated in the competition, which is the only corporate moot court competition in the country. The Ohio State University's Moritz College of Law took home this year's title, edging out a team from Mercer University School of Law before a panel comprised of Delaware Supreme Court Justice James T. Vaughn, Jr., Vice Chancellor Sam Glasscock of the Delaware Court of Chancery, and former Delaware Supreme Court Justice Jack B. Jacobs. The winning team comprised of Patrick Schlembach and Susan Restrepo, who was also the Best Oral Advocate. Marquette University School of Law won the Best Brief Award.

An integral part of the competition is the Distinguished Scholar Lecture. The 2016 Distinguished Scholar was Eileen T. Nugent, Esquire, the co-head of Skadden, Arps, Slate, Meagher & Flom's Global Transactions Practice. As a mergers and acquisitions partner in the firm's New York office, she has worked on a wide range of some of the most significant public and private M&A transactions since the mid 1980s. Ms. Nugent is also the co-author of a well-known M&A treatise and is an adjunct professor at University of Virginia School of Law.

In her lecture entitled *Living a Law School Exam Question: Issues Faced by a Practitioner in Applying Selected Provisions of Delaware Jurisprudence in Real Time*, Ms. Nugent addressed the need for M&A practitioners to keep abreast of Delaware cases due to their "real time" application in structuring deal transactions. Specifically, Ms. Nugent discussed the enforceability of fraud and non-reliance provisions as a remedy in acquisition agreements, and reviewed recent case law developments affecting disclosure-based settlements of stockholder class actions. Ms. Nugent discussed how recent cases in those realms have shaped how buyers and sellers approach the issues when drafting merger agreements and proxy statements, and the perhaps peculiar outcomes they have created going forward, including the possibility that planners will have an incentive to withhold more important information so that it can justify settlement of litigation challenging the deal.



Adding Ethics to the Fiduciary Relationship

By: *Kaitlin Maloney*

This year's second installment of the Ruby R. Vale Distinguished Speaker Series was held on February 18, 2016 and featured Frederick H. Alexander. Mr. Alexander is the Head of Legal Policy at B Lab and Counsel to Morris, Nichols, Arsht & Tunnell LLP. His lecture, "Adding Ethics to the Fiduciary Relationship," discussed the importance of developing rules throughout the governance system that allow corporations to act in a responsible and ethical manner.

It is well established that fiduciaries manage the corporation and act on its behalf for the sole benefit of its investors. To remedy the potential agency problem that may stem from this fiduciary relationship, fiduciary duties were created to mitigate the risk of misappropriation of corporate assets. As Mr. Alexander described it, however, fiduciary duties protect only stockholder interests, while ignoring the interests of all other stakeholders in the governance system, such as employees, customers, and the community. Further, Delaware jurisprudence reinforces this notion, especially by imposing a Revlon duty on directors to perform their fiduciary duties in the service of maximizing the corporation's sale price. Sale price thus remains the most widely accepted measurement of a corporation's success.

This creates a "shareholder primacy" paradigm where directors' only responsibility is to increase profits for the stockholders' benefit. As a result, any corporate action that benefits employees, customers, or the community must first benefit stockholders to be a valid use of the corporation's assets. The shareholder primacy paradigm creates several problems, not only for society, but also for investors. First, shareholder primacy restricts management's ability to pursue a variety of commitments on behalf of the corporation. It is evident that any commitment entered into by the corporation will be contingent upon creating value for shareholders. This creates a trust problem within a corporation, either between the employer and its employees or between the current stockholders and future stockholders. Second, primacy causes negative externalities to be passed from one company to another, which affects universal investors' diversified interests in the general market. These two problems unite to form the overall problem with shareholder primacy: management's goal is to obtain as much value as possible, but that is not always the best way to measure a corporation's worth. Instead, Mr. Alexander argued that a corporation should be measured by its shared real value created when a corporation takes on certain commitments, thereby creating trusting relationships with stakeholders other than just stockholders.

Traditionally, the Delaware General Corporation Law ("DGCL") mandated that shareholder-elected directors manage the company carefully and loyally pursuant to their fiduciary duties and for the sole purpose of creating shareholder value. However, the DGCL now provides an option for corporations to elect to be a benefit corporation. In addition to creating value for its shareholders, a benefit corporation may also consider the interests of all stakeholders. Under DGCL § 362, a Delaware benefit corporation must operate in a "responsible and sustainable manner." A "public benefit" is a "positive effect (or reduction of negative effects) on one or more categories of persons, entities, communities or interests (other than stockholders in their capacities as stockholders) including, but not limited to, an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature." Today, thirty-two states have adopted provisions allowing for the option to become a benefit corporation, thus creating a new path for investment channels to follow.



In conclusion, Mr. Alexander emphasized that there is more to be done to encourage corporations to act in a socially responsible way. Because becoming a benefit corporation is still optional, corporations should adopt a set of fiduciary laws that recognize the interests of all stakeholder values and not just stockholder interests. In addition, investors should cease seeking short-term gains and instead invest private capital in avenues that result in positive social gains that benefit all stakeholders. Overall, Mr. Alexander urged that corporations should “stop competing to take and start competing to make.”



Calling all Mentors!

Navigating the path through law school, the bar exam, and ultimately to finding a career, can be overwhelming! Having already gone through this experience, you can lend valuable perspective to our *Journal* members who are trying to find their way. Please consider volunteering to be a mentor this year.

We will pair you with a current *Journal* member during the fall semester. You will then have the opportunity to meet your mentee at the semi-annual Alumni Happy Hour where you can also catch up with other alumni. After the initial meeting, you and your mentee can determine what type of relationship is most beneficial, but we hope that you will build a lasting one.

We would appreciate your participation in this program. Give back to the *Journal* by imparting wisdom and insight that will benefit current members.

If you are interested in joining please contact Brandon Harper by email at brandonharper00@gmail.com.

Administrative Board – Volume XLI

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