

# Corporate Practices *of the Year* & GC Impact Awards



## GOVERNANCE



Left to right: Steven Bochner, Katharine Martin, Larry Sonsini and David Berger.



Wilson Sonsini Goodrich & Rosati  
PROFESSIONAL CORPORATION

# Corporate Practices *of the Year*

## & GC Impact Awards

### GOVERNANCE

## Boardroom Empire

### WILSON SONSINI GOODRICH & ROSATI

**W**ilson Sonsini has an enviable client list, but Chevron probably isn't a name you'd expect to see on it.

Yet Wilson is where the global energy giant turned for a key corporate governance battle. Wilson's deep bench draws clients with a broad spectrum of knotty governance concerns, helping the practice cement a reputation that goes well beyond its usual tech clientele.

A few years ago, the team caught the attention of Chevron Corp., which was looking for a way to curb multiforum shareholder litigation. Members of the firm's corporate group worked with Chevron's board of directors to adopt and later amend forum-selection provisions in the company's bylaws that designated Delaware courts as the exclusive forum for lawsuits concerning internal corporate governance matters.

The engagement escalated in February 2012 when complaints were filed in the Delaware Court of Chancery against 12 Delaware corporations, including Chevron, whose boards of directors had adopted the bylaws without a stockholder vote. All but two defendant corporations—Chevron and FedEx Corp.—dropped their

bylaw provisions. With Wilson Sonsini partner and former Chancellor of the Delaware Court of Chancery William Chandler III on its side, "Chevron chose to fight," said Palo Alto-based partner David Berger, who co-led the Wilson Sonsini team with Chandler.

In a highly anticipated decision, the Delaware Court of Chancery upheld the validity of the bylaws adopted by Chevron's directors in 2013. Not only did the ruling outline what companies can and cannot do with their bylaws, but it validated a powerful tool for responding to the problem of multiforum litigation and protecting stockholders' interests against duplicative litigation. "It has had a big impact on shareholder litigation against companies," Berger said.

Meanwhile, closer-to-home client Google Inc., which Wilson took public ten years ago, called on the firm's securities lawyers to craft and then defend its controversial plan to issue a third class of shares.

Google, like other tech companies, already had a dual-class structure designed to allow its founders to retain control. But as a public company, issuing a third class of shares is unusual.

Google's Class "A" shares come with one vote each, while the Class "B" shares, owned primarily by Sergey Brin and Larry Page, carry 10 votes each. Because issuing additional "A" shares would dilute the founders' voting rights, they proposed

creating non-voting Class "C" shares, to be distributed as a stock dividend to existing shareholders. The structure includes a unique "stapling" provision, meant to mollify investors by requiring that for every Class "C" share sold by the founders, they sell an equal amount of their Class "B" shares. The plan was approved over the protest of most of the Class "A" shareholders.

A Wilson Sonsini team led by Berger and Palo Alto-based partner Boris Feldman advised Google on how to create and structure the stock; negotiated with the board of directors and special committee; advised management on how to communicate the plan to employees and shareholders; achieved the appropriate regulatory approval to issue the stock; determined how it should be listed on the market; and navigated the related public relations issues.

When shareholders launched a putative class action challenging the recapitalization plan, Google called on Wilson to defend the founders. In June 2013, on the eve of a Delaware chancery court trial, a settlement was reached between Google and the suing stockholders. As part of the settlement, Google agreed to set aside a pot of money to be used to prop up the price of the non-voting shares so they don't trade at a discount to Class "A" shares.

— Nathalie Pierrepont

