

David J. Berger

PARTNER

Litigation

*Palo Alto
San Francisco*

dberger@wsgr.com
650-320-4901



FOCUS AREAS

Arbitration
Board and Internal
Investigations
Corporate Governance
Corporate Governance
Litigation
Environmental, Social, and
Governance
Government Investigations
Litigation
Securities Litigation
Shareholder Engagement
and Activism

HIGHLIGHTS

- Corporate Governance and Activism Expertise**
David represents directors, enterprises, and stockholders on fiduciary duty and corporate control issues.
- Trial and Appellate Litigation Experience**
David has served as lead trial and/or appellate counsel in high-profile M&A and securities cases.
- Respected Among Corporate Governance Colleagues**
A Fellow of the American College of Governance Counsel and honored as a "BTI Client Service All-Star."
- Business and Community Leadership Roles**
David serves as a director on several business and community organization boards, including the Long Term Stock Exchange, the San Francisco Symphony, the Wildlife Conservation Network, and KDFC Classical Radio.

EXPERIENCE

David Berger specializes in corporate governance, M&A and securities litigation as well as rapid response shareholder activism and corporate governance risk oversight. David's practice is an unusual blend of corporate governance advisory work and litigation, and he is nationally recognized for his expertise in both the boardroom and the courtroom. David also represents directors and companies in internal investigations and public companies on disclosure and SEC proceedings.

David has served as lead counsel in many of the most significant governance, M&A and securities litigations over the last 25 years. During this time David has represented many leading technology and other companies in a variety of cases, including Alphabet (Google), Hewlett-Packard, Trade Desk, Genentech, Dropbox, Box, TD Ameritrade, Copart, Lumentum, Coherent, and Chevron. In addition, David represents many leading investment banks and private equity firms, including Morgan Stanley, SilverLake, TPG, Oak Hill, Francisco Partners, and Qatalyst Partners.

David is a senior fellow at NYU's Center for Corporate Governance and Finance and is a visiting professor at NYU Law School. David previously taught M&A Litigation and was a visiting Fellow in the Program on Corporate Governance at Harvard Law School and has been a visiting lecturer at a number of other leading law schools, including Duke, Stanford, Hebrew University, and Tel Aviv University, among others.

David is an advisor to the American Law Institute's Restatement on Corporate Governance project. He is a member of the American College of Governance Counsel, and previously served as counsel to the

NYSE's Commission on Corporate Governance as well as the NYSE's Proxy Working Group. David writes frequently on corporate law and governance matters, and his articles have appeared in a number of scholarly journals and business publications. He also regularly speaks at corporate governance and investor forums, including frequently addressing governance issues faced by Silicon Valley companies.

David has been at Wilson Sonsini since 1989. Among other leadership roles, he has been a member of the firm's board of directors and served as chair of the Policy Committee and chair of the firm's Pro Bono Committee.

David is a director of the Long-Term Stock Exchange, where he chairs the Nominating & Governance Committee. He also serves on many civic boards, including the Aspen Institute's Business and Society Program board of advisors and the San Francisco Symphony, where he is a member of the audit and finance committees. David also has an active pro bono practice, including serving as lead trial counsel for a variety of public interest groups.

David previously served on the board of directors of the California Culinary Academy (NASDAQ:COOK), including serving on the company's transactions committee as well as on the advisory board of Faurecia, a global leader in manufacturing auto parts based in Paris and served as general counsel to the Super Bowl 50 Host Committee.

CREDENTIALS

Education

- J.D., Duke University School of Law, 1987
- B.A., History, Duke University, 1982
Magna Cum Laude

Associations and Memberships

- Director, Long Term Stock Exchange
- Director, San Francisco Symphony
- Director, Wildlife Conservation Network
- Advisory Board Member, Faurecia Automotive
- Board Member, KDFC Classical Radio Station
- Member, Board of Advisors, Aspen Institute Business and Society Program
- Member, The American Law Institute

Honors

- Honored as a "BTI Client Service All-Star"
- Repeatedly selected for inclusion in the *Best Lawyers in America*
- Named a Fellow of the American College of Governance Counsel
- Repeatedly named in *Northern California Super Lawyers*

Admissions

- State Bar of California
- State Bar of New York

CLIENTS

Select Clients

- | | |
|------------------------------|-----------------------------|
| ▪ Alphabet (formerly Google) | ▪ Lyft |
| ▪ Box | ▪ Nasdaq |
| ▪ Coherent | ▪ New York Stock Exchange |
| ▪ Copart | ▪ Oak Hill Capital Partners |
| ▪ DropBox | ▪ Silver Lake Partners |
| ▪ Francisco Partners | ▪ TD Ameritrade |
| ▪ Genentech | ▪ Twitter |
| ▪ Hewlett-Packard | ▪ WeWork |
| ▪ Lumentum | |

INSIGHTS

Select Publications

- Co-author with S.D. Solomon, "[A Blueprint for University Governance](#)," Harvard Law School Forum on Corporate Governance, January 3, 2024
- Co-author with J. Morley and A. Simmerman, "[Anthropic Long-Term Benefit Trust](#)," Harvard Law School Forum on Corporate Governance, October 28, 2023
- Co-author with A. Simmerman and R. Greecher, "[Drag-Along Provisions and Covenants Not to Sue in the Private Company M&A Context](#)," Harvard Law School Forum on Corporate Governance, June 10, 2023
- Co-author with J. Fisch and S.D. Solomon, "[Extending Dual Class Stock: A Proposal](#)," Harvard Law School Forum on Corporate Governance, April 24, 2023
- Co-author with David H. Webber and Beth Young, "[The Liability Trap: Why the ALEC Anti-ESG Bills Create a Legal Quagmire for Fiduciaries Connected with Public Pensions](#)," Harvard Law School Forum on Corporate Governance, February 27, 2023
- Contributor, "[Modern Principles for Sensible and Effective Executive Pay](#)," The Aspen Institute, September 2020
- Contributor, "[The Next Move: 10 Ways to Bring Stakeholder Capitalism into Practice](#)," The Aspen Institute Blog, August 24, 2020
- Co-author, "[Federal Forum Selection Charter Provisions Validated by Delaware Supreme Court](#)," Harvard Law School Forum on Corporate Governance and Financial Regulation, March 22, 2020
- "Shareholder Activism 2020 – What to Expect and How to Prepare," *San Francisco Daily Journal*, January 21, 2020
- Co-author, "[Judicial Deference on Executive Compensation Decisions and Section 220 Demands](#)," Harvard Law School Forum on Corporate Governance and Financial Regulation, November 19, 2019
- Co-author with A. Simmerman, "[Response to CII Proposal to Amend DGCL](#)," Harvard Law School Forum on Corporate Governance and Financial Regulation, October 4, 2019
- "Reconsidering Stockholder Primacy in an Era of Corporate Purpose," *The Business Lawyer*, Vol. 74, No. 3, Summer 2019
- Co-author, "[Fiduciary Violations in Sale of Company](#)," Harvard Law School Forum on Corporate Governance and Financial Regulation, July 9, 2019
- "What's the Problem with Dual Class Stock? A Brief Response to Professors Bebchuk and Kastiel," Harvard Law School Forum on Corporate Governance and Financial Regulation, April 17, 2019
- "Why 'Sunset' Provisions for Dual Class Stock Are Not the Answer," *The CLS Blue Sky Blog*, March 29, 2019
- "Reconsidering Stockholder Primacy in an Era of Corporate Purpose," The Harvard Forum on Corporate Governance and Financial Regulation (also available on SSRN [here](#)), March 4, 2019
- Co-author with A. Simmerman and N. Emeritz, "[Implementation of MFW Standard in New York](#)," The Harvard Forum on Corporate Governance and Financial Regulation, June 12, 2018
- Co-author with A. Simmerman and A. Broderick, "[Non-Delaware Decisions on Director Nominations](#)," The Harvard Forum on Corporate Governance and Financial Regulation, May 18, 2018
- Co-author, "Are Dual-Class Companies Harmful to Stockholders? A Preliminary Review of the Evidence," The Harvard Forum on Corporate Governance and Financial Regulation, April 15, 2018
- "Why Dual-Class Stock: A Brief Response to Commissioners Jackson and Stein," The Harvard Forum on Corporate Governance and Financial Regulation, February 22, 2018
- Co-author with B. Sorrels and P. Sumpter, "[Delaware Court Ruling on Trading Price and Fair Value Appraisal](#)," The Harvard Forum on Corporate Governance and Financial Regulation, February 21, 2018
- "[Delaware Court Ruling on Dual-Class Recapitalization Involving Controlling Stockholders](#)," The Harvard Forum on Corporate Governance and Financial Regulation, January 8, 2018
- Co-author with B. Sorrels and K. Henderson, "[Analysis of Section 220 Demand Request](#)," The Harvard Forum on Corporate Governance and Financial Regulation, November 28, 2017
- "In Search of Lost Time: What if Delaware Had Not Adopted Shareholder Primacy?" The Harvard Forum on Corporate Governance and Financial Regulation, 2017
- Co-author with S. Bochner and L. Sonsini, "[Dual-Class Stock and Private Ordering: A System That Works](#)," The Harvard Forum on Corporate Governance and Financial Regulation, May 24, 2017
- Co-author with S. Davidoff Solomon and A.J. Benjamin, "[Tenure Voting and the U.S. Public Company](#)," *The Business Lawyer*, Vol. 72, No. 2, Spring 2017
- "Int'l Brotherhood—Reduction of Merger Litigation Risk by Massachusetts Supreme Court," The Harvard Forum on Corporate Governance and Financial Regulation, March 30, 2017
- "The 'Corporate Governance Misalignment' Problem," The Harvard Forum on Corporate Governance and Financial Regulation, March 23, 2017
- "[The American Prosperity Project](#)," The Harvard Forum on Corporate Governance and Financial Regulation, December 20, 2016
- "Brexit May Spell Elephants' Extinction," *The Mercury News*, July 12, 2016
- Co-author with S. Davidoff Solomon and A.J. Benjamin, "[Tenure Voting and the U.S. Public Company](#)," Social Science Research Network, March 1, 2016

- "Delaware Enacts New Rapid Arbitration Act," The Harvard Forum on Corporate Governance and Financial Regulation, April 14, 2015
- "The Next Wave of Proxy Access Proposals," The Harvard Forum on Corporate Governance and Financial Regulation, November 24, 2014
- Co-author with B. Sorrels, "Developments in Forum Selection since Chevron and Thoughts for the Future," *Insights*, Vol. 28, No. 10, October 2014
- "It's Critical to Review Board Conduct on Ex Ante Basis," *Daily Journal*, September 24, 2014
- "Delaware Court Finds Two Transactions Not Entirely Fair," The Harvard Forum on Corporate Governance and Financial Regulation, September 18, 2014
- "Delaware Court of Chancery Upholds Forum Selection Bylaw," The Harvard Forum on Corporate Governance and Financial Regulation, September 15, 2014
- "Lessons from *Mt. Holly*: Leading Scholars Demonstrate Need for Disparate Impact Standard to Combat Implicit Bias," 11 *Hastings Race and Poverty Law Journal* 241, Summer 2014
- "Delaware Court Endorses 'Fee-Shifting' Bylaw," The Harvard Forum on Corporate Governance and Financial Regulation, May 14, 2014
- Co-author with W. Chandler, T. Cleary, S. Guggenheim, K. Henderson, M. Ringler, T. Montgomery, and A. Simmerman, "Financial Advisor Liable for Aiding and Abetting Breaches of Fiduciary Duty," *Transaction Advisors*, April 2014
- "The Growth of Appraisal Litigation in Delaware," The Harvard Law School Forum on Corporate Governance and Financial Regulation, December 5, 2013
- "Forum Selection Bylaws: The New Frontier," *Deal Lawyers*, Vol. 7, No. 5, September-October 2013
- "Delaware Court of Chancery Upholds *Trados* Transaction as Entirely Fair," The Harvard Law School Forum on Corporate Governance and Financial Regulation, September 3, 2013
- "Court Affirms Dismissal of Stockholder Complaint as Derivative Following Merger," The Harvard Law School Forum on Corporate Governance and Financial Regulation, August 26, 2013
- Co-author with D. Clark, I. Salceda, and A. Kim, "Delaware Chancery Court Upholds Reasonableness of Board Strategy in Merger Transaction," *The M&A Lawyer*, Vol. 14, No. 9, October 2010
- "NYSE Commission Report Defines Core Principles of Corporate Governance," The Harvard Law School Forum on Corporate Governance and Financial Regulation, October 7, 2010
- "Delaware Chancery Court Upholds Adoption and Use of Poison Pill Triggered by Competitor's Acquisition of Stock," Wilson Sonsini Goodrich & Rosati Alert, March 5, 2010
- Co-author with L. Chu, W. de Wied, and R. Ishii, "RiskMetrics Issues 2010 Updates to Corporate Governance Policy," *Corporation*, Vol. LXXXI, No. 1, January 4, 2010
- Co-author with L. Chu and N. Morrison, "Delaware Court Applies Entire Fairness Standard of Review to a Sale to a Third Party When the Company Has a Controlling Shareholder," *The M&A Lawyer*, Vol. 13, No. 10, November/December 2009
- Co-author with K.M. Murray, "As the Market Turns: Corporate Governance Litigation in an Age of Stockholder Activism," *NYU Journal of Law & Business*, Vol. 5, No. 1, Spring 2009
- "2009 Proxy Season Update II: Recent Changes in Delaware Law," Wilson Sonsini Goodrich & Rosati Alert, April 20, 2009
- "2009 Proxy Season Update," Wilson Sonsini Goodrich & Rosati Alert, April 16, 2009
- "Delaware Supreme Court Defines Limits of *Revlon* Duties in a Change of Control," Wilson Sonsini Goodrich & Rosati Alert, March 30, 2009
- "Federal Court Allows Activist Stockholders to Vote Shares at Annual Meeting despite Failure to Comply with Disclosure Obligations of Federal Securities Laws," Wilson Sonsini Goodrich & Rosati Alert, June 19, 2008
- "Delaware Chancery Court Allows Activist Stockholder to Nominate Director Candidates without Complying with Advance-Notice Provision of Bylaws," Wilson Sonsini Goodrich & Rosati Alert, April 16, 2008
- "Delaware Chancery Court Issues a Trio of Opinions Reminding Boards and Corporate Counsel to Carefully Review Corporate Contracts and Documents," Wilson Sonsini Goodrich & Rosati Alert, April 9, 2008
- Co-author with E. Saunders, "Delaware Chancery Court Upholds 'Go-Shop' Provisions—But Enjoins Shareholder Votes Pending Supplemental Proxy Disclosures and Waiver of Standstill Agreement," *Corporation*, Vol. LXXVIII, No. 14, July 2007
- Co-author with I. Salceda, "Chancery Court Decisions Limit Access to Corporate Records in Going-Private Transaction and Following Derivative Suit," *Wall Street Lawyer*, Vol. 10, No. 12, December 2006
- Co-author with the Honorable Leo E. Strine, Jr., "Win Lose or Draw—Director Choice in a Litigious World," Duke Directors' College, March 2006
- Co-author with T. Chaplick and R.G. Sterne, "United States: Directors' Responsibility for Intellectual Property in U.S. Corporations," *IP Value 2006, Building and Enforcing Intellectual Property Value*, 2006
- "One Practitioner's Random Thoughts on Shareholders' Rights in the Modern Corporation," chapter in *The Accountable Corporation*, Volume 1, Greenwood Publishing, December 2005

- "Inside the Minds: Corporate Governance Law," *Aspatore Books*
- Co-author with A.T. Delmont, "The Good, The Bad and The Ugly: Director Risk in the Post-Enron World," *Securities Litigation & Enforcement Institute*, September 2005
- "Delaware Vice Chancellor Strine Suggests Reform of a Delaware Common Law Regarding Fully Negotiable Going-Private Transactions," *Wall Street Lawyer*, August 2005
- "What Did the Board Know?" *Legal Times IP*, July 2005
- "Stormy Weather: The Enron and WorldCom Settlements Make Waves," *D&O Advisor*, Spring 2005
- "Springboard to a Swan Dive? (Case Commentary: Should John Join Benchmark's Audit Committee?)," *Harvard Business Review*, February 2005
- "Collecting Documents on an Expedited Basis -- Practical Guidelines," *CGO Review*, Vol. I, Issue 3, September 2004
- "What the WorldCom and Enron Settlements Mean to You as an Outside Director," Wilson Sonsini Goodrich & Rosati Client Alert, January 10, 2005
- "As the World Turns: The Changing View of the Director Defendant in Corporate Litigation," September 2004
- "Creating an Effective Board," *Global Corporate Governance Guide 2004: Best Practices in the Boardroom*, 2004
- "Increased Costs Discourage Many Companies from Going Public," *Wall Street Lawyer* Vol. 6 No. 12, 2003
- "Recent Developments in State Court Derivative and Class Action Litigation: 'Evolving Expectations' or Revolutionary Changes in Delaware Law?"
- "Recent Developments in State Court Derivative and Class Action Litigation: The Evolution ('Revolution?') in Delaware"

Select Speaking Engagements

- Panelist, "AI and Corporate Governance: Challenging Governance and Ethical Issues Raised by Powerful Technology," Wilson Sonsini webinar, December 12, 2023
- Speaker, "Proxy Solicitation Reform: What Boards Should Know," Inside America's Boardrooms, August 5, 2020