



## John Mark Zeberkiewicz

### Director

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John Mark Zeberkiewicz focuses his practice on transactional matters involving Delaware corporations, including mergers and acquisitions, corporate governance, and corporate finance. He is a member of the Corporation Law Council of the Corporation Law Section of the Delaware State Bar Association and has served on drafting subcommittees responsible for significant amendments to Delaware's General Corporation Law, including the subcommittee responsible for the adoption of the statutes relating to the ratification of corporate acts, the amendments overhauling Delaware's nonstock corporate law, and numerous other technical provisions of the Delaware General Corporation Law. John Mark also assisted in drafting Delaware's Certificate of Adoption of Transparency and Sustainability Standards Act.

*Chambers USA* reported that clients "think the world" of John Mark, with one saying, "He is not only expert in Delaware corporate law, he is passionate about it. His advice is always practical, and he makes a real effort to collaborate and tailor his advice to our business needs." John Mark is a frequent presenter on Delaware corporate law and practice. He has published more than 50 articles in the field of corporate governance and mergers and acquisitions, he is a key contributor to definitive treatises on corporate law, and he serves on the editorial advisory board of *Insights*. He has served as an expert on Delaware corporate law matters, and has been appointed as a Special Master in a proceeding before the Delaware Court of Chancery.

### Experience

- Representation of numerous corporations, including Facebook, Inc., SeaWorld, GoPro, Etsy and others, in connection with the adoption of their IPO certificate of incorporation and bylaws and structural profile
- Representation of Allergan, Inc. in connection with the adoption of structural provisions of its certificate of incorporation and bylaws as well as its defense in the hostile offer from Valeant Pharmaceuticals and Pershing Square
- Representation of Apollo Global Management as Delaware counsel in connection

with multiple public company acquisitions, including ADT, Inc., Diamond Resorts International Inc., ClubCorp, as well as several private company sales and acquisitions

- Representations of multiple public and private companies in connection with ratification of defective corporate acts
- Representation of various private equity sponsors and portfolio companies in so-called “UP-C” transactions, including
- Representation of the Board of Directors of Selectica, Inc., in connection with the adoption of its NOL Rights Plan, the triggering of the plan, and the directors’ successful defense against claims relating to the operation of the plan
- Representation of numerous special committees, including the committee of AmTrust Financial in connection with an asset sale to its significant stockholder as well as the Committee of Crown Media, Inc. in connection with the recapitalization transaction involving its controlling stockholder

#### **Publications**

- "Precluding Pre-Merger Communications in Post-Merger Dispute," *The Harvard Law School Forum on Corporate Governance and Financial Regulation*, June 12, 2019
- "Olenik v. Lodzinski: More on Structuring Controlling Stockholder Buyouts," *Insights*, May 2019
- "2019 Proposed Amendments to the General Corporation Law of the State of Delaware," *Insights*, April 2019
- "Drafting Minutes and Preparing Disclosures in the Post-Corwin Era," *Insights*, March 2019
- "In re PLX: Delaware Court Provides Guidance on Potential Conflicts Involving Activist Directors," *Insights*, January 2019
- "Delaware Court of Chancery Strikes Federal Forum Selection Provisions," *Insights*, January 2019
- "Delaware Court Finds Material Adverse Effect Allowing Buyer to Terminate Merger Agreement," *Insights*, November 2018
- "Delaware Court of Chancery Validates Defective Acts and Clarifies Limited Scope of Dually Direct and Derivative Claims," *Insights*, September 2018
- "MHS Capital LLC v. Goggin: Reviewing Fiduciary Duty and Exculpation Provisions in Limited Liability Company Agreements," *Business Law Today*, June 15, 2018
- "Determining and Disclosing the Effect of Broker Non-Votes," *The Review of Securities & Commodities Regulation*, April 18, 2018
- "The Delaware Supreme Court Provides Guidance on Directors' Fiduciary Duty of Disclosure," *Insights*, April 2018

- "2018 Proposed Amendments to the General Corporation Law of the State of Delaware," *Insights*, April 2018
- "The Limits of Ratification: Delaware Supreme Court and Director Equity Incentive Awards," *Insights*, January 2018
- "Delaware Court of Chancery Rulings Highlight the Importance of a Plaintiff's Subjective Intent in Books and Records Action," *Insights*, January 2018
- "*DFC Global*: Delaware Supreme Court Emphasizes Role of the Market in Certain Appraisal Proceedings," *Insights*, November 2017
- "The Delaware Court of Chancery Revisits Director Equity Awards," *Insights*, May 24, 2017
- "2017 Proposed Amendments to the Delaware General Corporation Law," *Insights*, April 30, 2017
- "*Frechter v. Zier*: Delaware Court of Chancery Provides Guidance on Supermajority Voting Provisions," *Insights*, March 31, 2017
- "Delaware Supreme Court Revisits Director Independence in Considering Derivative Demands," *Insights*, February 28, 2017
- "Delaware Supreme Court Clarifies Grounds for Jurisdiction," *Insights*, June 2016
- "2016 Proposed Amendments to the General Corporation Law of the State of Delaware," *Insights*, April 2016
- "Disclaiming Reliance on Extra-Contractual Representations under Delaware Law," *Insights*, April 2016
- "The New Paradigm (Burden) Shift: The Business Judgment Rule After *KKR*," *Insights*, December 2015
- "Recent Delaware Court of Chancery Opinion Provides Guidance on Advancement and Indemnification," *Insights*, October 2015
- "New Delaware Court of Chancery Opinion Provides Guidance for Director Compensation Practices," *Insights*, June 2015
- "Court Sanctions Forum Selection Arrangements and Confirms Power to Restrict Books and Records Inspections," *Insights*, March 2015
- "The Rights and Duties of Blockholder Directors," *The Business Lawyer*, Winter 2014/2015
- "Recent Chancery Court Opinions on Ripeness," *Delaware Business Court Insider*, December 10, 2014
- "Chancery Dismisses Stockholder Suit Over Expedia CEO Award," *Delaware Business Court Insider*, July 30, 2014
- "Proposed Amendments to the DGCL to Limit Applicability Of the Delaware Supreme Court's Holding in 'ATP Tour'," *Corporate Counsel Weekly*, June 18, 2014
- "Chancery Court Decides First Action Under New Section 205," *Delaware Business*

*Court Insider*, May 7, 2014

- "2014 Proposed Amendments to the General Corporation Law of the State of Delaware," *Insights*, May 2014
- "Considerations in Drafting Board Observer Arrangements," *Business Law Today*, April 2014
- "Restoring Equity: Delaware's Legislative Cure for Defects in Stock Issuances and Other Corporate Acts," *The Business Lawyer*, February 2014
- "*Klaassen v. Allegro*: Implementing the Stockholders' Agreement," *Delaware Business Court Insider*, December 4, 2013
- "Preserving (or Limiting) Contractual Claims to Address 'Sandbagging'," *Delaware Business Court Insider*, July 24, 2013
- "Significant Proposed Amendments to the General Corporation Law of the State of Delaware," *Insights*, June 2013
- "Streamlining Two-Step Mergers With Proposed Amendment to DGCL," *Delaware Business Court Insider*, April 24, 2013
- "The Equitable Case for Ratification," *Delaware Business Court Insider*, March 27, 2013
- "Court of Chancery Addresses Validity of Entity Action," *Delaware Business Court Insider*, October 24, 2012
- "Chancery Arbitrations after Year One: Annotated New Form," *ABA*, August 16, 2012
- "Delaware Chancery Court Questions Use of Advance Notice Bylaw," *Delaware Business Court Insider*, June 27, 2012
- "Chancery Court Provides Guidance on Structuring Financings," *Delaware Business Court Insider*, April 4, 2012
- "Revisiting the Special Committee Process: 'In re Southern Peru Copper Corporation'," *BNA's Corporate Counsel Weekly*, November 30, 2011
- "Valid Issuance of Capital Stock," *The Review of Securities & Commodities Regulation*, September 7, 2011
- "Chancery Court Sensitive to Potential Conflicts of Financial Advisors in M&A," *Delaware Business Court Insider*, September 7, 2011
- "Fair Summary II: An Update on Delaware's Disclosure Regime Regarding Fairness Opinions," *The Business Lawyer*, August 2011
- "Chancery Court Addresses *Revlon* Duties and Deal Protection Measures in Small-Cap Transaction," *Delaware Business Court Insider*, May 11, 2011
- "Reviewing the Standards of Review in Delaware," *Insights*, March 2011
- "New Day for Nonstock Corporations: The 2010 Amendments to Delaware's General Corporation Law," *The Business Lawyer*, February 2011

- "An Overview of Delaware-Specific Issues for Stockholders' Meetings," *The Review of Securities & Commodities Regulation*, November 17, 2010
- "Poison Pills - How Effective Is Too Effective?," *The M&A Lawyer*, September 2010
- "Amendments to Delaware General Corporation Law," *Insights*, June 2010
- "Prediction Protection: The Delaware Supreme Court's *Amylin* Footnote," *Insights*, November 2009
- "Destaggering with Class: A Plan for Potential Targets in Troubled Times," *Deal Lawyers*, November-December 2009
- "The Delaware and SEC Proxy Access Regimes," *The Review of Securities & Commodities Regulation*, October 7, 2009
- "Stockholder Ratification: A Review of the Benefits and Burdens," *Bloomberg Law Reports*, February 2009
- "The Right Protection: More on Advancement and Indemnification," *The Review of Securities & Commodities Regulation*, December 2008
- "Commanding Officers: The Fiduciary Duties of Officers under Delaware Law," *Insights*, June 2008
- "Fair Summary: Delaware's Framework for Disclosing Fairness Opinions," *The Business Lawyer*, May 2008
- "Dealing with Dissidents: Vote-Buying and Management Slates," *Insights*, April 2008
- "Finding Safe Harbor: Clarifying the Limited Application of Section 144," *Delaware Journal of Corporate Law*, 2008
- "The Implications of Netsmart for Private Companies," *Insights*, January 2008
- "Winning the Class Struggle: Acquirer Strategies for Declassifying Classified Boards," *The Corporate Governance Advisor*, January 2008
- "No Surprises: The Mandatory Nature of Mandatory Advancement and Indemnification," *The Corporate Governance Advisor*, November 2007
- "The Price of Remorse: Paying Reverse Termination Fees to Excuse Performance," *Insights*, October 2007
- "Paying for the Privilege of Independence: Termination Fees Triggered by "Naked No Votes"," *Insights*, September 2007
- "The Shops Are Open: Delaware's New Take on Go-Shop Provisions under *Revlon*," *Insights*, July 2007

#### **Awards**

- Fellow, American College of Governance Counsel, 2018
- *Chambers USA*, since 2012
- *The Legal 500 US*, 2019, 2018, 2017, 2016
- *The Best Lawyers in America*, since 2013

- *Super Lawyers*, since 2012
- *Delaware Today*, Top Lawyer, 2016
- *Delaware Law Weekly*, Lawyers on the Fast Track, 2016

#### **Leadership**

- Chairman, Directors' and Officers' Liability Committee, ABA, Business Law Section
- Former Chairman, Corporate Documents and Process Committee, ABA, Business Law Section

#### **Education**

- J.D., *cum laude*, University of Pennsylvania Law School
- B.A., *magna cum laude*, University of Delaware, Phi Beta Kappa

#### **Admitted to Practice**

- Delaware
- New York

#### **Pro Bono Activities**

- William E. Proudford Sickle Cell Fund, Inc., Board of Directors
- Pro Bono Counsel, Mothers2mothers International, Inc.

#### **Practices**

- Corporate Advisory and Governance
- Special Committees
- Sustainability