

**FOLK
on the
DELAWARE
GENERAL
CORPORATION
LAW**

**FUNDAMENTALS
2013 EDITION**

**Edward P. Welch
Andrew J. Turezyn
Robert S. Saunders**



Wolters Kluwer
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- Challenges to the enforcement of advance notice bylaws (*Sherwood v. Chan*; *Icahn Partners LP v. Amylin Pharmaceuticals, Inc.*);
- The timing of an annual meeting and related advance notice bylaws (*Goggin v. Vermillion, Inc.*; *Sherwood v. Chan*);
- Directors' duties of disclosure under Delaware law (*In re Micromet, Inc. Shareholders Litigation*; *In re SeraCare Life Sciences, Inc. Shareholder Litigation*);
- Procedural requirements and other issues pertaining to summary proceedings under section 220 to enforce a stockholder's right to inspect books and records (*Central Laborers Pension Fund v. News Corp.*; *Paul v. China MediaExpress Holdings, Inc.*);
- Whether a stockholder stated a proper purpose for inspecting a corporation's books and records (*Graulich v. Dell, Inc.*; *Central Laborers Pension Fund v. News Corp.*);
- The proof required in a books and records inspection case (*Hurd v. Espinoza*; *Graulich v. Dell, Inc.*);
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- Whether a director could be removed from office (*Shocking Technologies, Inc. v. Michael*);
- Whether a charter amendment was effective (*In re Delphi Financial Group Shareholder Litigation*);
- Whether preferred stockholders had a liquidation preference (*Alta Berkeley VI C.V. v. Omneon, Inc.*);
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- Special litigation committee of a stockholder's demand that the board take action (*Kahn v. Kohlberg Kravis Roberts & Co.*);
- The effect of a merger on existing derivative *Caremark* claims (*In re Massey Energy Co. Derivative & Class Action Litigation*);
- The effect of a merger on derivative claims against the directors of the selling corporation (*In re Massey Energy Co. Derivative & Class Action Litigation*);
- Whether claim for wrongful redemption by bankrupt corporation was a derivative claim under Delaware law (*In re CD Liquidation Co., LLC v. Paladini*);
- Whether claims are properly direct or derivative (*Hartsel v. Vanguard Group, Inc.*; *New Jersey Carpenters Pension Fund v. infoGROUP Inc.*);
- Whether presuit demand has been excused in a derivative case (*Hartsel v. Vanguard Group, Inc.*); and
- The application of demand futility rules to multi-tier derivative suits (*Sagarra Inversiones, S.L v. Cementos Portland Valderrivas, S.A.*).

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**FOLK on the
DELAWARE GENERAL
CORPORATION LAW:
FUNDAMENTALS**



Ernest L. Folk, III (1930-1989)

*Courtesy University of Virginia Law School Archives
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Folk on the Delaware General Corporation Law: Fundamentals

by Edward P. Welch, Andrew J. Turezyn and
Robert S. Saunders

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- A foreign corporation’s ability to obtain qualification to do business in Delaware (DGCL section 377);
- Procedures for surrendering of authority to do business in Delaware by foreign corporations (DGCL section 381); and
- A Delaware corporation’s transfer to, domestication or continuance in a foreign jurisdiction (DGCL section 390).



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In addition, the **2013 Edition** of Folk Fundamentals includes analysis of recent **Delaware Supreme Court** and **Court of Chancery** decisions addressing such topics as:

- The duties of directors of Delaware corporations in the sale of control context, including whether vesting of directors' options upon consummation of merger creates a conflict of interest (*Scheidt v. DRS Technologies, Inc.*);
- Whether a decision by directors to renominate fellow director for an additional term is *ultra vires* under Delaware law because such decision allegedly violated federal antitrust law (*In re eBay, Inc. Derivative Litigation*);
- Claims that directors failed to meet duties under *Revlon* by not seeking best value reasonably available to stockholders (*In re Answers Corp. Shareholders Litigation*; *In re El Paso Corp. Shareholder Litigation*; *In re SeraCare Life Sciences, Inc. Shareholder Litigation*);
- The application of the *Revlon* standard, including the review of directors' actions in adopting deal protection devices (*In re Smurfit-Stone Container Corp. Shareholder Litigation*);
- The application of the entire fairness standard of review to director actions (*Frank v. Elgamal*);
- Application of the entire fairness standard of review to board actions (*Ravenswood Investment Co., L.P. v. Winmill*; *New Jersey Carpenters Pension Fund v. infoGROUP Inc.*; *Encite LLC v. Soni*; *In re Southern Peru Copper Corp. Shareholder Derivative Litigation*);
- Whether insider trading may support a claim under Delaware law for breach of fiduciary duty to the corporation (*Kahn v. Kolberg Kravis Roberts & Co., L.P.*);
- Whether a complaint has alleged facts sufficient to rebut the business judgment presumption (*New Jersey Carpenters Pension Fund v. infoGROUP Inc.*; *In re Alloy, Inc. Shareholder Litigation*; *Hartsel v. Vanguard Group, Inc.*);
- Challenge to decision by directors of a wholly-owned subsidiary which allegedly benefitted parent and rendered subsidiary insolvent (*Direct Response Media, Inc. v. Seaport Capital, LLC*);
- Whether claims against former officers were indemnifiable (*Hermelin v. K-V Pharmaceutical Co.*; *Danenberg v. Fittracks, Inc.*);
- The effect of an exculpatory charter provision in litigation (*In re Alloy, Inc. Shareholder Litigation*);
- Challenges to executive compensation (*Freedman v. Adams*);

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