

MORRIS NICHOLS ARSHT & TUNNELL



S. MARK HURD
PARTNER

(302) 351-9354 T

(302) 498-6202 F

shurd@mnat.com

PRACTICE AREAS

Alternative Dispute Resolution
Alternative Entities
Appraisals & Business Valuations
Business & Contract Litigation
Class & Derivative Actions
Contests for Corporate Control
Corporate & Business Litigation
Mergers, Acquisitions & Divestitures
Special Committees
Statutory Proceedings under
Delaware's Business Statutes
Stockholder Activism

EDUCATION

J.D., cum laude, 1993, Georgetown
University Law Center
Administrative Editor and
Submissions Council, 1992-1993,
*Law and Policy in International
Business*
Legal Research and Writing Law
Fellow, 1991-1992, Teaching Assistant
B.S.F.S., international commerce and
finance, magna cum laude, 1990,
Georgetown University

CLERKSHIPS

Law Clerk to the Honorable Murray
M. Schwartz, U.S. District Court for
the District of Delaware, 1993-1994

ADMISSIONS

Delaware, 1994
New York, 1994
U.S. District Court for the District of
Delaware, 1995
U.S. Court of Appeals for the Third
Circuit, 1995

Mark is a partner in the Corporate & Business Litigation Group and the Firm's general counsel. He frequently represents committees of independent directors, including Fortune 500 corporations incorporated outside Delaware, in responding to stockholder demands and derivative litigation. As a co-author of "Special Committees of Independent Directors," Mark is frequently sought for his expertise and has assisted special committees of directors from a wide-range of industries in responding to demands relating to a panoply of allegations, including insider trading, violations of the Foreign Corrupt Practices Act, failure of oversight, related party transactions, and improper executive compensation.

Mark has assisted clients in successfully defending stockholder claims challenging going private litigation—including the recent acquisition of Dell, Inc. He has successfully represented clients in statutory actions relating to the governance and valuation of Delaware corporations and regularly provides advice regarding advancement and indemnification obligations under Delaware law.

Mark lectures across the country on issues of corporate governance, including multi-forum litigation. He is a recognized leader in his field, selected by his peers for inclusion in *The Best Lawyers in America* in Commercial Litigation, Litigation–Mergers & Acquisitions, Corporate Law and Corporate Governance Law, top-ranked among Delaware Chancery practitioners in *Chambers USA: America's Leading Lawyers for Business*, mentioned in *The Legal 500 US* for M&A litigation defense work, and listed in *Delaware Super Lawyers* for corporate and business litigation.

Professional Activities

- American Bar Association (Business Law Section, Committee on Business and Corporate Litigation; Litigation Section, Committee on Class Actions & Derivative Suits)
- Delaware State Bar Association (Corporation Law Section)

Community Activities

- The Tatnall School (Board of Trustees)

Representative Matters

- Successfully argued to the Delaware Supreme Court to reverse the Court of Chancery's denial of a motion to dismiss filed by the special committee of independent directors of Zhongpin Inc. The Delaware Supreme Court ruled that regardless of the applicable standard of review, stockholders may avoid dismissal of an action seeking monetary damages against facially independent directors only where the complaint alleges a non-exculpated claim for breach of fiduciary duty, resolving a split in decisions by members of the Delaware Court of Chancery.
- Served as lead counsel to Intervest Bancshares Corp. and its directors in

successful defense and settlement of an action filed in the Supreme Court of the State of New York, County of New York, challenging the \$230 million merger of Interinvest with Bank of the Ozarks, Inc.

- Successfully represented Lord Baltimore Capital Corporation in resisting claims by minority stockholders to compel a repurchase by the company of the stockholders' shares. Obtained dismissal and summary judgment without discovery, which were affirmed on appeal.
- Successfully represented the special committee of Dell, Inc. in connection with stockholder challenges to the going-private acquisition of the company.
- Represented special committees of two Fortune 200 corporations incorporated outside Delaware, and a NASDAQ-listed Delaware corporation, in rejecting stockholder demands related to alleged violations of the Foreign Corrupt Practices Act, breaches of fiduciary duty, and violations of the securities laws. Stockholders' counsel decided against filing litigation. Voluntarily dismissed the claims.
- Successfully represented a group of limited partners in obtaining judicial confirmation that they had validly removed the managing partner of two Delaware limited partnerships.
- Defended Alloy, Inc. and a majority of its directors in a class action challenging a going-private transaction by successfully opposing expedited proceedings and later obtaining a dismissal of those claims.
- Successfully represented minority stockholder in appraisal litigation arising out of a cash-out merger in a privately-held beverage distribution company in which the corporation had offered the stockholder less than \$5.5 million. After trial, the court awarded a total value, with interest, of approximately \$40.8 million.
- Defended two directors of The Walt Disney Company in derivative litigation challenging severance benefits paid to Michael Ovitz. The matter was tried to a defense judgment and affirmed on appeal.

mnat.com

1201 North Market Street, 16th Floor
P.O. Box 1347
Wilmington, DE 19899-1347