

David A. Dorey | Partner

Business Litigation

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David Dorey is a business and corporate trial lawyer. He views litigation as an art. With creativity and imagination, David proactively employs efficient and effective litigation strategies to seek leverage for a client to quickly solve his clients' business and legal problems. David is involved from start to finish, from pre-litigation counseling on business resolution scenarios, to litigation through trial and appeals, if they become necessary. He thoroughly understands his client's business, culture, and values, and he knows that clients prefer early, productive solutions to disputes. David brings to his work uncompromising passion, enthusiasm, loyalty, and drive to achieve the best resolution possible so that the clients can return to growing their business.

Over the past 30 years, David has assisted clients with:

Corporate Litigation

- public and private company matters (in Delaware and other jurisdictions)
- representing directors and officers in cases involving breach of the duties of care/loyalty and fiduciary duties
- derivative suits
- efforts to remove directors/appoint corporate receiver (including China-based companies incorporated in Delaware)
- private company disputes ("corporate divorce," enforcement of/defense against minority shareholder or member rights)
- LLC/alternative entity member rights, and business valuation matters

Business Dispute/Business Tort/Commercial Litigation

- pure commercial breach of contract actions
- Uniform Commercial Code disputes
- post-merger/acquisition/sale of assets litigation
 - breach of representations and warranties
 - fraudulent valuation of assets
 - related intellectual property issues
 - post-acquisition asset distribution disputes
 - post-acquisition ownership of attorney-client privilege
 - forum selection clause drafting and enforcement
- fraudulent inducement claims
- consumer fraud actions (including class actions)
- fraudulent concealment of evidence (spoliation of evidence) claims
- civil RICO
- declaratory judgment actions

Construction Litigation

- construction contract formation
- breach of construction contract
- delay damages
- “pay when paid” clauses
- subcontractor Prompt Payment Act claims
- change order claims
- payment and performance bond matters
- mechanics lien rights
- architectural defects/disputes
- expert fault analysis

Real Estate

- breach of commercial lease and land purchase contracts
- enforcement of land purchase/right of first refusal options
- theft of customer lists/confidential information and breach of restrictive covenant actions
- foreclosure
- use and removal of *lis pendens*
- deed restrictions

Outside The Firm

David, his wife, and son are passionate about golf, and they particularly appreciate the tremendous character-enhancing values ingrained in the game. David combines this passion with a love of mentoring by serving, not only as the Board President of The First Tee of Delaware, but also as a certified The First Tee coach, where he regularly teaches and mentors program participants.

Select Engagements

Corporate Litigation

- Represented chairman and directors of Delaware public company in derivative/breach of fiduciary duty case in Delaware Court of Chancery.
- Represented 50 percent LLC member in defeating controlling-member application for dissolution of LLC in Delaware Court of Chancery.
- Represented minority member of Delaware LLC involved in energy infrastructure business, obtained emergent status quo order in expedited proceedings in Delaware Court of Chancery, reinstating client to management of the business, followed by negotiated, mutually beneficial separation of client from LLC.
- Worked with a Houston partner to achieve temporary restraining order ("TRO") in Texas state court on behalf of public company against Maryland business partners based on non-competition and non-solicitation agreements in connection with client's acquisition of Maryland practice, followed by confidential resolution.
- The namesake of a Delaware non-stock corporation, represented through appeal before the Delaware Supreme Court on expedited Section 225 action in Delaware's Court of Chancery to determine proper members of the Board of Directors.
- A mortgage assignee, represented before Delaware Supreme Court on unique foreclosure standing issue.
- Represented in Delaware Court of Chancery a seller of assets of a private company in a post-acquisition action brought by an acquirer for breach of representations and warranties, fraud and other claims.
- A Chinese company incorporated in Delaware, in Delaware Court of Chancery expedited proceedings by a shareholder/creditor seeking an appointment of receiver under Delaware law.
- Obtained a writ of attachment for public company shares given to purchase a business entity based on overstatement of agency's assets/value.
- Advised a corporate client on properly responding to 10 percent shareholder challenge to majority shareholder in construction claims consulting firm, leading to avoidance of litigation.
- A New Jersey real estate developer, in federal court in a civil RICO and oppressed minority shareholder action. Achieved dismissal of RICO claims and then defended an underlying shareholder oppression case in state court, achieving the separation/buyout of a minority shareholder.

Business Dispute/Business Tort/Commercial Litigation

- Tried to jury verdict in federal court, North Carolina breach of contract claim for soft ballistic vest manufacturer; enforced oral contract under the Uniform Commercial Code specially manufactured goods exception.
- Tried to jury verdict in federal court, Missouri defense of ballistic vest manufacturer in breach of exclusive agreement claim and successful counterclaim for breach of contract.
- A New Jersey software company, defended in federal court in North Carolina against a \$10 million claim for fraud, unconscionable business practices,

breach of contract, breach of warranty, and civil conspiracy claims, among others; successfully enforced contractual limitation of damages provision reducing plaintiff's claimed damages to the fees paid to license the software program. The case then settled.

- A technology company, in federal court in Virginia to recover replacement costs in a claim of faulty industrial battery installation at a customer data center located in Georgia.

Real Estate/Construction Litigation

- A New Jersey real estate developer, in an action to enforce right of first refusal to purchase land for a shopping center.
- A general contractor, defended in a claim for delay damages based on alleged improper sequencing and management of the construction schedule, resulting in delays and a failure to pay the subcontractors. The contract portion of the case was settled after the court dismissed the delay claims based on the "no damages for delay" language in the contract.
- A general contractor, defended in federal court in Pennsylvania on a \$1.7 million claim by a subcontractor for the delay and extra costs. The case settled after client prevailed in summary judgment motion (published opinion), which ruling eliminated most damages based on execution of lien waivers and releases in exchange for progress payments throughout the job.
- A New Jersey real estate agency, in claim against former agent and the agent's subsequent agency for breach of contract, tortious interference with contract, and other commercial claims. Attained a favorable verdict in the same case on a separate, subsequently tried claim against both defendants for fraudulent and intentional concealment of evidence.
- An electrical subcontractor, in arbitration under the American Arbitration Association Construction rules conducted in Virginia to establish the existence of a construction contract and recover the costs and expenses for extra work on the project.
- Expediently protected client's right to purchase a shopping center and prevent the center's sale to a third party by filing a breach of contract suit in federal court in Maryland, and immediately filing against the property a *lis pendens* to stop a planned sale, and place other purchasers on notice of the client's claim and right to the property. This led to the seller negotiating with the client, who soon after suit was filed, purchased the shopping center.
- An entity in New Jersey, in an action to establish the existence of a contract and enforce the right of first refusal to purchase quarry for a commercial soil disposal business.
- Prevented an imposition in New Jersey state court of an injunction to shut down a retail store in a shopping center based on an alleged violation of a non-competition clause in the lease.
- A construction company, in a case against a governmental entity involving a \$202 million design-build project for the construction of a prison. The claim comprised increased construction costs arising from an eight-month delay due to a bid protest by a failed bidder.

Admissions

- Pennsylvania
- New Jersey
- United States Court of Appeals for the Third Circuit
- U.S. District Court - Eastern District of Pennsylvania
- U.S. District Court - New Jersey
- Delaware
- U.S. District Court - Delaware
- United States Court of Appeals for the Federal Circuit
- United States Court of Appeals for the Fourth Circuit

Memberships

- Delaware State Bar Association

Education

- Bucknell University, BA, cum laude
- Georgetown University Law Center, JD

Professional Activities

David is the President and Chair of The First Tee of Delaware, an organization that provides educational programs to young people that build character, instills life-enhancing values, and promotes healthy choices through the game of golf.

David also is a member of the Litigation and Corporate Law Sections of the Delaware State Bar Association.

David is a member of the Blank Rome's Pro Bono Committee.