# MATTHEW C. BENEDICT

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### FOCUS AREAS

Securities Fraud

Corporate Governance & M+A

### EDUCATION

Haverford College
B.A. 1999

Villanova University School of Law
J.D. 2006

### ADMISSIONS

New Jersey

Pennsylvania

Matthew Benedict, an associate of the Firm, concentrates his practice in the area of mergers and acquisition litigation and stockholder derivative litigation. Matthew has represented both plaintiffs and defendants in numerous high-profile securities fraud class actions concerning Wall Street institutions' conduct before, during, and in the wake of the 2008 financial crisis.

### Settled

- Alon USA Energy, Inc.
  On October 29, 2021, Chancellor McCormick of the Delaware Court of Chancery approved a $44.75 million settlement to resolve class action litigation concerning the July 1, 2017 acquisition of Alon USA Energy by its controlling stockholder, Delek US Holdings. Representing the Arkansas Teacher Retirement System, Kessler Topaz brought this class action on behalf of former stockholders of Alon against Delek and Alon's board of directors. Through years of discovery, Kessler Topaz built a record demonstrating that Delek abused its power over Alon to secure an unfairly low price in the acquisition. The case settled just weeks before a June 2021 trial was set to commence.

- EchoStar Corporation
  On December 9, 2021, Judge Susan Johnson of the Clark County, Nevada District Court approved a $21 million settlement to resolve class action litigation concerning the August 19, 2019 sale of the majority of EchoStar Corporation's

broadcast satellite services business to DISH Network Corp. in exchange for DISH Class A Common stock.
Representing the City of Hallandale Beach Police Officers' and Firefighters' Personnel Retirement Trust, Kessler Topaz brought a class action on behalf of the public shareholders of EchoStar alleging Charles Ergen, the controlling shareholder of EchoStar and DISH, orchestrated the transaction through an unfair process and for unfair consideration in order to benefit DISH at EchoStar's expense, thereby breaching his fiduciary duties to EchoStar's minority shareholders and that Ergen was aided and abetted by the EchoStar and DISH defendants.

- ExamWorks Group, Inc.
  On September 12, 2017, the Delaware Chancery Court approved one of the largest class action M&A settlements in the history of the Delaware Chancery Court, a $86.5 million settlement relating to the acquisition of ExamWorks Group, Inc. by private equity firm Leonard Green & Partners, LP.
  The settlement caused ExamWorks stockholders to receive a 6% improvement on the $35.05 per share merger consideration negotiated by the defendants. This amount is unusual especially for litigation challenging a third-party merger. The settlement amount is also noteworthy because it includes a $46.5 million contribution from ExamWorks' outside legal counsel, Paul Hastings LLP.

- Facebook, Inc.
  Just one day before trial was set to commence over a proposed reclassification of Facebook's stock structure that KTMC challenged as harming the company's public stockholders, Facebook abandoned the proposal.
  The trial sought a permanent injunction to prevent the reclassification, in lieu of damages. By agreement, the proposal had been on hold pending the outcome of the trial. By abandoning the reclassification, Facebook essentially granted the stockholders everything they could have accomplished by winning at trial.
  As background, in 2010 Mark Zuckerberg signed the "Giving Pledge," which committed him to give away half of his wealth during his lifetime or at his death. He was widely quoted saying that he intended to start donating his wealth immediately. Facebook went public in 2012 with two classes of stock: class B with 10 votes per share, and class A with 1 vote per share. Public stockholders owned class A shares, while only select insiders were permitted to own the class B shares. Zuckerberg controlled Facebook from the IPO onward by owning most of the high-vote class B shares.
  Facebook's charter made clear at the IPO that if Zuckerberg sold or gave away more than a certain percentage of his shares he would fall below 50.1% of Facebook's voting control. The Giving Pledge, when read alongside Facebook's charter, made

it clear that Facebook would not be a controlled company forever.
In 2015, Zuckerberg owned 15% of Facebook's economics, but though his class B shares controlled 53% of the vote. He wanted to expand his philanthropy. He knew that he could only give away approximately $6 billion in Facebook stock without his voting control dropping below 50.1%.
He asked Facebook's lawyers to recommend a plan for him. They recommended that Facebook issue a third class of stock, class C shares, with no voting rights, and distribute these shares via dividend to all class A and class B stockholders. This would allow Zuckerberg to sell all of his class C shares first without any effect on his voting control.
Facebook formed a "Special Committee" of independent directors to negotiate the terms of this "reclassification" of Facebook's stock structure with Zuckerberg. The Committee included Marc Andreeson, who was Zuckerberg's longtime friend and mentor. It also included Susan Desmond-Hellman, the CEO of the Gates Foundation, who we alleged was unlikely to stand in the way of Zuckerberg becoming one of the world's biggest philanthropists.
In the middle of his negotiations with the Special Committee, Zuckerberg made another public pledge, at the same time he and his wife Priscilla Chan announced the birth of their first child. They announced that they were forming a charitable vehicle, called the "Chan-Zuckerberg Initiative" (CZI) and that they intended to give away 99% of their wealth during their lifetime.
The Special Committee ultimately agreed to the reclassification, after negotiating certain governance restrictions on Zuckerberg's ability to leave the company while retaining voting control. We alleged that these restrictions were largely meaningless. For example, Zuckerberg was permitted to take unlimited leaves of absence to work for the government. He could also significantly reduce his role at Facebook while still controlling the company.
At the time the negotiations were complete, the reclassification allowed Zuckerberg to give away approximately $35 billion in Facebook stock without his voting power falling below 50.1%. At that point Zuckerberg would own just 4% of Facebook while being its controlling stockholder.
We alleged that the reclassification would have caused an economic harm to Facebook's public stockholders. Unlike a typical dividend, which has no economic effect on the overall value of the company, the nonvoting C shares were expected to trade at a 2-5% discount to the voting class A shares. A dividend of class C shares would thus leave A stockholders with a "bundle" of one class A share, plus 2 class C shares, and that bundle would be worth less than the original class A share.
Recent similar transactions also make clear that companies

lose value when a controlling stockholder increases the "wedge" between his economic ownership and voting control. Overall, we predicted that the reclassification would cause an overall harm of more than $10 billion to the class A stockholders.

The reclassification was also terrible from a corporate governance perspective. We never argued that Zuckerberg wasn't doing a good job as Facebook's CEO right now. But public stockholders never signed on to have Zuckerberg control the company for life. Indeed at the time of the IPO that was nobody's expectation. Moreover, as Zuckerberg donates more of his money to CZI, one would assume his attention would drift to CZI as well. Nobody wants a controlling stockholder whose attention is elsewhere. And with Zuckerberg firmly in control of the company, stockholders would have no recourse against him if he started to shirk his responsibilities or make bad decisions.

We sought an injunction in this case to stop the reclassification from going forward. Facebook already put it up to a vote last year, where it was approved, but only because Zuckerberg voted his shares in favor of it. The public stockholders who voted cast 80% of their votes against the reclassification.

By abandoning the reclassification, Zuckerberg can still give away as much stock as he wants. But if he gives away more than a certain amount, now he stands to lose control. Facebook's stock price has gone up a lot since 2015, so Zuckerberg can now give away approximately $10 billion before losing control (up from $6 billion). But then he either has to stop (unlikely, in light of his public pledges), or voluntarily give up control. There is evidence that non-controlled companies typically outperform controlled companies.

KTMC believes that this litigation created an enormous benefit for Facebook's public class A stockholders. By forcing Zuckerberg to abandon the reclassification, KTMC avoided a multi-billion dollar harm. We also preserved investors' expectations about how Facebook would be governed and when it would eventually cease to be a controlled company.

KTMC represented Sjunde AP-Fonden ("AP7"), a Swedish national pension fund which held more than 2 million shares of Facebook class A stock, in the litigation. AP7 was certified as a class representative, and KTMC was certified as co-lead counsel in the case.

- GCI Liberty Inc.

  On October 5, 2021, Vice Chancellor Glasscock of the Delaware Court of Chancery approved a $110 million settlement against John Malone and other former members of GCI Liberty Inc.'s board of directors in a case involving a challenge to the telecom holding company's merger with its affiliate, Liberty

Broadband Corp. The outstanding result was in addition to substantial equitable relief obtained via the parties' November 21, 2020 settlement of plaintiffs' suit to preliminarily enjoin the merger.
On behalf of plaintiff Sheet Metal Workers' Local Union No. 80 Pension Trust Fund, KTMC had brought a class action alleging that Malone and CEO Greg Maffei used their super-voting shares to opportunistically merge the companies in an all-stock deal at a time when the exchange ratio was tilted in their favor due to market volatility created during the Covid-19 pandemic. After weeks of expedited discovery, the defendants issued new disclosures and drastically altered the previously announced terms of the deal by agreeing to convert the super-voting shares into shares of one-vote common stock, so that Malone and Maffei would no longer obtain special treatment resulting in outsized control of the post-merger company. Subsequently, plaintiffs amended their complaint and successfully pursued monetary relief to correct for the unfair merger price that resulted from Malone's previously undisclosed, improper leveraging of his control position.

- KCG Holdings, Inc.
  On April 2, 2020, the Delaware Chancery Court approved a $22 million settlement on behalf of former stockholders of KCG Holdings, Inc. in connection with KCG's acquisition by Virtu Financial, Inc. on July 20, 2017. As a result of the settlement, KCG stockholders received a significant improvement on the $20.00 per share transaction consideration.
  The settlement followed Kessler Topaz first securing expedited relief for KCG stockholders in the summer of 2017, before the stockholder vote on the transaction. Kessler Topaz challenged the negotiation process and asserted that KCG's largest stockholder, Jefferies LLC, had reached an agreement with Virtu to support the acquisition in violation of Delaware's anti-takeover statute. To resolve the expedited claims, the defendants agreed to modify the stockholder vote to seek approval of the transaction by a 66 2/3% supermajority vote of KCG stockholders, excluding Jefferies, and issued significant additional disclosures concerning the negotiation process.

## News

- September 22, 2017 - Facebook and Founder Mark Zuckerberg Capitulate To KTMC On Eve Of Trial