



## KEVIN M. KENNEDY

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#### FOCUS AREAS

Corporate Governance & M+A

#### EDUCATION

La Salle University

B.A. in Business Administration, 2010

Temple University Beasley School of Law  
J.D., 2022 *summa cum laude*

Kevin Kennedy, an associate of the Firm, concentrates his practice on the areas of corporate governance and merger and acquisition litigation.

Kevin received his law degree from Temple University's Beasley School of Law in 2022 and his undergraduate degree from La Salle University in 2010. While in law school, Kevin interned as a law clerk to the Hon. Anthony J. Scirica of the Third Circuit Court of Appeals. Kevin also served as a Note/Comment Editor and the Symposium Editor for the Temple Law Review.

#### Current Cases

- Continental Resources, Inc.

Plaintiffs challenge the take-private acquisition of Continental Resources, Inc. by Continental's controlling shareholder, Harold Hamm, which closed on November 22, 2022 (the "Take-Private"). Hamm paid approximately \$4.3 billion to squeeze out minority shareholders in a deal that valued Continental overall at approximately \$27 billion. On May 17, 2023, Plaintiffs filed their Verified Consolidated Class Action Petition. The Petition alleges that Hamm violated his duty of loyalty to shareholders by paying an unfair price for Continental's public shares, after an unfair negotiation process. The Petition also alleges that Continental's other board members were conflicted and failed to protect the interests of public shareholders. Plaintiffs also alleged a breach of fiduciary duty by Hamm for engaging in insider trading by buying millions of shares of Continental stock and causing Continental to

buy back shares while he was secretly planning to launch the Take-Private. On October 3, 2023, the Court denied all defendants' motions to dismiss, allowing all of Plaintiffs' claims to proceed. Plaintiffs are now engaging in document discovery. Plaintiffs also filed their opening brief in support of class certification.

- Covetrus, Inc.

KTMC brought claims on behalf of the minority stockholders of Covetrus, Inc. ("Covetrus" or the "Company") to challenge the take-private acquisition of the Company by Clayton, Dubilier & Rice, LLC ("CD&R") and TPG Global, LLC ("TPG") for \$21.00 per share in cash (the "Merger"). Prior to the Merger, CD&R owned approximately 24% of Covetrus, and through that investment, CD&R was represented on the Company's board of directors (the "Board") by two of its partners, Ravi Sachdev ("Sachdev") and Sandi Peterson ("Peterson"). Furthermore, CD&R's investment agreement included a broad standstill provision that prevented CD&R from even expressing an interest in a transaction with the Company without prior Board authorization. However, after certain third parties expressed an interest in a transaction with Covetrus in mid-2021, the Company's CEO tipped off Sachdev and Peterson, and soon thereafter, CD&R was provided with diligence materials. By December 2021, CD&R expressed—in violation of the standstill provision—that it valued the Company at \$24.00 per share. But in March 2022, TPG offered to acquire the Company for a price between \$21.00 and \$22.00 per share, and immediately thereafter, Covetrus teamed up with TPG and submitted a joint bid at \$21.00 per share—\$4.00 per share less than what CD&R had indicated the Company was worth only months earlier. Only after the deal was nearly final, in May 2022, the Board formally granted a waiver of CD&R's standstill provision. The Company's proxy statement filed in connection with the Merger contained numerous misleading statements and omissions, including with respect to CD&R's violations of the standstill provision. Plaintiffs filed a complaint in November 2023, and in October 2024, the Delaware Court of Chancery denied Defendants motion to dismiss against CD&R, Sachdev, and Peterson. The case is now proceeding into discovery and the parties are preparing for trial.

- Foundation Building Materials, Inc.

KTMC brought claims on behalf of the minority stockholders of Foundation Building Materials, Inc. ("FBM" or the "Company") to challenge the take-private acquisition of the Company by American Securities LLC ("American Securities") for \$19.25 per share in cash (the "Merger"). The Merger was instigated by FBM's then-controlling shareholder, Lone Star Fund IX (U.S.), L.P. ("Lone Star") in order to trigger a contractual "change-in-control" provision that entitled Lone Star to a hefty lump-sum payment upon the sale of the Company. Lone Star orchestrated the sale process with the help of a conflicted financial advisor, RBC Capital Markets ("RBC") and

faced no resistance from a “special committee” of FBM directors— itself advised by a conflicted banker, Evercore Group LLC (“Evercore”). FBM’s minority stockholders were not given the opportunity to approve the Merger, and did not receive timely notice of their appraisal rights as required under Delaware law. Among other things, Plaintiff alleged breaches of fiduciary duties in connection with the unfair Merger, aiding and abetting of those breaches by RBC and Evercore, and violation of Delaware’s appraisal statute. Defendants moved to dismiss all claims, but the Delaware Court of Chancery denied, in large part, those motions. The case is now proceeding into discovery and trial preparation.

- SiriusXM Holdings, Inc.

KTMC brought claims by former minority stockholders of Sirius XM Holdings Inc. (“Sirius XM”) to challenge Sirius XM’s transaction with its controlling stockholder, Liberty Media Corporation (“Liberty Media”). In this transaction, Liberty Media separated Liberty SiriusXM Group, comprising Liberty Media’s ownership of Sirius XM, into a new company holding Liberty SiriusXM Group’s assets and liabilities, which then merged with Sirius XM to form “New Sirius” (the “Transaction”). Plaintiffs allege that the Transaction was unfair to Sirius XM’s minority stockholders for a variety of reasons, including that, (i) it permits Liberty Media to offload potentially massive, unrelated tax liabilities onto New Sirius, and (ii) causes New Sirius to assume almost two billion dollars of Liberty SiriusXM Group debt. Moreover, the apparent purpose of the Transaction was to close the value gap between the trading price of Liberty SiriusXM Group’s tracking stock and Sirius XM’s net asset value which would not benefit former Sirius XM shareholders. Plaintiffs filed their complaint on October 15, 2024, and are currently awaiting Defendants’ responses.

- Wells Fargo (City of Hollywood FPS)

On January 2, 2024, a California federal judge appointed Kessler Topaz and its client the Hollywood Firefighters’ Pension System to lead a consolidated shareholder derivative action against directors and officers of Wells Fargo & Company. In appointing Kessler Topaz and Hollywood Firefighters, the court denied requests by two other shareholders and their counsel to lead the action. Plaintiff challenges the defendants’ failure to comply with regulatory consent orders arising from persistent illegal conduct, including opening unauthorized bank accounts, improperly requiring auto insurance customers did not need, and improperly repossessing automobiles of active military personnel. The action alleges that the directors and officers breached their fiduciary duties by consciously disregarding repeated red flags regarding the Company’s regulatory compliance failures.

Kessler Topaz initiated the litigation by serving a books and records

demand pursuant to 8 *Del. C.* § 220 of the Delaware General Corporation Law in September 2021. After receiving these nonpublic records, Plaintiff filed its complaint on May 19, 2023. Defendants will now likely move to dismiss the action, which KTMC will oppose.

[Read May 19, 2023 Verified Shareholder Derivative Complaint Here](#)

### **Publications**

- [Watching the World Burn: Substantive Due Process and the Right to a Sustainable Climate](#)