

## Gardner F. Davis

### Retired Partner

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Gardner F. Davis is a retired corporate lawyer who advised boards of directors and special committees regarding fiduciary duty issues in various contexts. He also has extensive experience restructuring financially distressed enterprises, both inside and outside of bankruptcy. He was a partner in the firm's Transactional & Securities, Bankruptcy & Business Reorganizations, Private Equity, and Venture & Growth Capital Practices.

Gardner frequently represented buyers and sellers in mergers and acquisition transactions, from management buy-outs to combinations of large public companies. Since June 1, 2005, he closed more than 150 mergers and acquisition transactions with an aggregate value of US\$13 billion.

#### Awards and Recognition

- The BTI Consulting Group's coveted BTI Client Service All-Stars list (2015) This elite group of standout attorneys is recognized as delivering the absolute best client service — identified solely through unprompted client feedback
- *Chambers USA: America's Leading Business Lawyers* (2005-2025)
- Best Lawyers® "Lawyer of the Year" in Jacksonville
  - Corporate Law (2016, 2018, 2021)
  - Mergers and Acquisitions Law (2015, 2019, 2024)
- *The Best Lawyers in America*® in the fields of:
  - Business Organizations (including LLCs and Partnerships) (2023)
  - Banking and Finance Law (2023-2024)
  - Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law (2019-2023)
  - Mergers and Acquisitions Law (2008, 2010-2023)
  - Corporate Law (2006, 2010-2023)
- *The Legal 500* for Mergers & Acquisitions: Middle Market (2010-2012, 2015, and 2016)
- "Florida's Legal Elite" by *Florida Trend Magazine*

- “Hall of Fame” (2017)
- *Florida Super Lawyers®* lists (2006-17 and 2021-2022)
- Who’s Who Legal: M&A and Governance 2022
- Peer review rated as AV Preeminent®, the highest performance rating in Martindale-Hubbell® Peer Review Ratings™ system
- Burton Award for Distinguished Legal Writing (2016)
- Turnaround Atlas Award – Transport and Logistics (2014)

## Affiliations

- Adjunct Professor, corporate law and advanced business document drafting, University of Florida Law School
- Past chair, Jacksonville Ready Child Coalition
- Former member, Mayor’s Literacy Advisory Committee
- Former member, Board of Episcopal Child Services Foundation
- Former chair, Corporations and Securities Law Committee of The Florida Bar Business Law Section
- Former chair, Business, Banking, and Corporations Section of the Jacksonville Bar
- Former chair, Florida Bar Business Law Section Committee
  - The committee studied the revision of the director’s conflict-of-interest sections of the Florida corporate statute
  - Member of the drafting committees for the Florida Revised Uniform Partnership Act, the Florida Revised Business Corporation Act, and The Florida Bar Report on Standards for Legal Opinions

## Presentations and Publications

- “Corporate Transparency Act ruled unconstitutional,” *Westlaw Today*, March 22, 2024
- “Delaware OKs forfeiture-for-competition in partnership agreements,” *Westlaw Today*, February 15, 2024
- “Delaware Supreme Court eliminates standing for stockholder to directly challenge corporation’s issuance of stock to controller for inadequate consideration,” *Westlaw Journal Delaware Corporation Law Update*, December 6, 2021
- “Board-Level Risk Oversight Deserves Renewed Attention,” *Global Banking and Finance Review*, October 16, 2019
- “New Corporate Board Procedures Advisable to Satisfy Duty of Oversight,” *Bloomberg Law*, September 26, 2019
- “Expansive Interpretation of Caremark Creates Challenges for Private Company Boards,” *Thomson Reuters Westlaw Journal*, August 16, 2019
- “Common Misconceptions Regarding Preferred Stock Create Risk of Costly Mistakes,” *Global Banking and Finance Review*, April 25, 2019
- “Court Allows Buyer to Walk Away From Deal Based on Material Adverse Effect,” *Westlaw Journal: Expert Analysis*, October 29, 2018

- “Delaware Court Rules for the First Time That Buyer May Walk From Deal for Material Adverse Effect,” *Global Banking and Finance*, October 24, 2018
- Co-author, “Buy-side Directors Face Risk in Conflict Deals,” *The M&A Journal*, October 2018
- “Controlling Stockholder Breaches Duty by Extracting Unique Sale Benefit,” *Westlaw Journal Delaware Corporate*, September 10, 2018
- “Conflict M&A Transactions Create Risk for Buy-Side Directors,” *Bloomberg BNA Corporate Law & Accountability Report*, August 8, 2018
- Co-author, “Common Misconceptions Regarding Preferred Stock Create Risk of Costly Mistakes,” *Global Banking & Finance Review*, July 27, 2018
- “Preferred Stock Redemption Obligations: Not as Mandatory as You Might Think,” *Westlaw Journal Delaware Corporate*, May 21, 2018
- “Venture Capital Firms and Their Portfolio Company Directors Face Risk of Liability for Conflicts of Interest,” *Bloomberg Law*, April 27, 2018
- “VC Funds Face Risk Appointing Representatives To Board,” *Corporate Board Member*, April 12, 2018
- “The Changing Landscape of Delaware Appraisal Rights,” *Bloomberg BNA’s Securities Regulation & Law Report*, November 20, 2017
- “Delaware High Court Says a Fair Deal Price Should Get the Most Weight in Appraisal Valuation,” *Westlaw Journal: Delaware Corporate*, August 28, 2017
- “Beware! Delaware Case Law Sets Potential Pitfall in Merger Pact Indemnification Caps,” *Westlaw Journal/Thomson Reuters*, July 31, 2017
- “Don’t Assume Bankruptcy Remote Means Bankruptcy Proof,” *Global Banking & Finance Review*, April 2017
- “Delaware Court Invalidates Supermajority Bylaw to Remove Directors Without Cause,” *Westlaw Journal: Expert Analysis*, March 20, 2017
- “Blocking Director’s Fiduciary Duty Essential for Successful Remote Entity Structure,” *Delaware Corporate*, February 27, 2017
- “CEOs Provide Common Sense Corporate Governance Principles,” *Bloomberg BNA Corporate Law & Accountability Report*, October 18, 2016
- “Delaware high court restricts potential claims against bankers for flawed M&A process,” *Westlaw Journal: Delaware Corporate*, December 21, 2015
- “There Is Relief in Sight for Frivolous Merger Litigation From Shareholders,” *Chief Executive*, December 11, 2015
- “Delaware Curbs Frivolous Merger Suits with More Critical Review of Disclosure-Only Pacts,” *Westlaw Journal: Delaware Corporate*, October 12, 2015
- “Lessons Learned From Dole Foods: What Not to Do When a Controlling Stockholder Wants to Go Private,” *Bloomberg BNA: Mergers and Acquisitions Law Report*, September 28, 2015
- “Dole Buyout Case Attracts Scrutiny of Financial Projections,” *CFO*, September 17, 2015
- “Why CEO Was Held Personally Liable for \$148M in Dole Foods Buyout,” *Westlaw Journal – Delaware Corporate*, September 14, 2015

- “El Paso Corp. Hit With \$171 million in Damages for Defective Related-party Transaction,” *Westlaw Journal: Corporate Officers & Directors Liability*, June 1, 2015
- “Delaware Court Delays C&J Energy Merger for Flawed Sale Process,” *Westlaw Journal: Corporate Officers & Directors Liability*, December 15, 2014
- “Delaware Court Applies ‘Business Judgment’ Test to KKR’s Acquisition of Managed Affiliate,” *Westlaw Journal: Corporate Officers & Directors Liability*, November 24, 2014
- “Anti-Takeover Laws Highlight Fiduciary Dilemma for Boards,” *CFO Magazine*, August 26, 2014
- “Ackman’s Allergan Takeover Bid is Easier Said Than Done,” *CFO Magazine*, June 16, 2014
- “Sotheby’s Poison Pill Battle Reshapes World of Shareholder Activism,” American Bar Association’s *Business Law Today*, June 2014
- “Directors at Risk for Investment Banker Conflicts,” *Bloomberg BNA’s Corporate Law & Liability Report TM*, May 23, 2014
- “Delaware’s New Pill Will Give Raiders Like Dan Loeb A Headache,” *Forbes.com*, May 19, 2014
- “Delaware High Court Applies ‘Business Judgment’ to Controlling-Stockholder Buyouts,” *Westlaw Journal: Corporate Officers & Directors Liability*, April 7, 2014
- “Investment banker held liable for flawed Rural/Metro sale process,” *Westlaw Journal: Corporate Officers & Directors Liability*, March 24, 2014
- “3rd Circuit rules Delaware Chancery Court arbitrations must be open to the public,” *Westlaw Journal – Delaware Corporate*, December 9, 2013
- “Rescue Merger Shields Countrywide Directors From Shareholder Suits,” *Corporate Board Member*, November 5, 2013
- “Bank of America merger shields Countrywide directors from pending suits,” *Westlaw Journal: Corporate Officers and Directors Liability*, September 23, 2013
- “Martin Marietta v. Vulcan: Delaware courts penalize unsportsmanlike conduct,” *Westlaw Journal – Delaware Corporate*, June 11, 2012
- “Breach of Confidentiality Agreement Leads Chancery Court to Enjoin Hostile Takeover Bid: Guidance for the Future,” *Bloomberg BNA’s Mergers & Acquisitions Law Report*, June 11, 2012
- “Goldman Directors Win Dismissal of Challenge to Management Compensation Structure,” *Westlaw Journal: Delaware Corporate*, October 31, 2011
- “Wesco Financial ruling has lessons for controlling stockholders in freeze-out transactions,” *Westlaw Journal: Corporate Officers & Directors Liability*, May 23, 2011
- “My banker, my frenemy,” *The Deal magazine*, May 9, 2011
- “Investment Banker Conflicts Pose Growing Risk For M&A Deals,” BNA’s *Mergers & Acquisitions Law Report*, May 2, 2011
- “Investment Banker Conflicts Are Growing Concern for Corporate Boards in Today’s M&A Environment,” BNA’s *Corporate Accountability Report*, April 29, 2011
- “Investment Banker Conflicts Attract Greater Judicial Scrutiny,” BNA’s *Securities Regulation & Law Report*, April 25, 2011
- “Regulatory: Insider Trading Policies and Confidentiality Agreements Need Review; Recent SEC enforcement actions raise new issues,” *InsideCounsel*, April 6, 2011

- “Regulatory: M&A in the Boardroom; How General Counsel Can Assist the Board With Revlon Duties,” *InsideCounsel*, March 23, 2011
- “Delaware Court Provides Guidance on Sale Process, Exclusivity, Conflict Disclosure in Proxy,” *Delaware Corporate*, Westlaw Journal/Thomson Reuters, March 21, 2011
- “Regulatory: Corporate Compliance Programs Need Reevaluation; Dodd-Frank Act provides new incentives for whistleblowers,” *InsideCounsel*, March 9, 2011
- “Delaware court delays Del Monte merger over investment banker misconduct concerns,” *Corporate Officers & Directors Liability*, Westlaw Journal/Thomson Reuters, February 28, 2011
- “Regulatory: The Evolving Role of the General Counsel; How general counsel can assist the board in risk oversight,” *InsideCounsel*, February 23, 2011
- “Regulatory: Say on Pay Hits Corporate Boardrooms; Dodd-Frank Mandate Gives Shareholders Advisory Vote on Executive Pay,” *InsideCounsel*, February 9, 2011
- “Post-closing price adjustments upheld by Delaware court,” *Mergers & Acquisitions*, Westlaw Journal/Thomson Reuters, December 2010
- “Poison Pills to Protect NOLs Win Acceptance,” BNA’s *Corporate Accountability Report*, November 5, 2010
- “Delaware Supreme Court Upholds New NOL Pill,” *Mergers & Acquisitions*, Westlaw Journal/Thomson Reuters, October 28, 2010
- “Single-Member LLC Will Not Shield Debtor’s Assets from Judgment Creditor,” *American Bankruptcy Institute Journal*, October 2010
- “Delaware court upholds poison pill with ‘grandfather’ exemption for existing large stockholder,” *Delaware Corporate*, Westlaw Journal/Thomson Reuters, September 3, 2010
- “The Old Boys Club still rules; Why the Delaware Chancery Court approved Barnes & Noble’s poison pill, even with “grandfather” exemption,” *CFOZone.com*, August 30, 2010
- “Frozen Gas: CNX Gas thaws the controlling stockholder freeze-out role for special committees,” *The Deal* magazine, July 19, 2010
- “FL Supreme Court closes LLC loophole,” *Florida Real Estate Journal*, July 2010
- “Delaware Court Applies Unified Standard for Review of all Freeze-out Transactions by Controlling Shareholders,” *Delaware Corporate Litigation Reporter*, Westlaw/Thomson Reuters, June 14, 2010
- “Special Litigation Committee’s Recommendation Rejected Amid Concerns Regarding Independence and Reasonableness of Investigation,” *Delaware Corporate Litigation Reporter*, Westlaw/Thomson Reuters, April 5, 2010
- “NOL and Void: Delaware’s Chancery court upholds a poison pill designed to protect net operating loss carryforwards,” *The Deal* magazine, April 5, 2010
- “Del. Court Upholds Low-Threshold Poison Pill to Protect NOLs,” *Corporate Officers and Directors Liability Litigation Reporter*, Westlaw/Thomson Reuters, March 29, 2010
- “Advising the Board of Directors Regarding Sale of Financially Troubled Company,” chapter in *Buying and Selling Distressed Businesses*, Aspatore, Thomson Reuters, July 2009
- “Directors’ Fiduciary Duties: Increasing Focus on Good Faith and Independence,” 84 *Fla. B.J.* 38, July 2009

- "In the Clear: The Delaware Supreme Court provides relief for directors against personal liability in the sale of the company," *The Deal* magazine, May 5, 2009
- "Delaware Supreme Court Decision Shields Directors from Personal Liability for Sale of Company," *Corporate Officers & Directors Liability Litigation Reporter*, Westlaw/Thomson Reuters, April 13, 2009
- "A Matter of Faith," *The Deal* magazine, November 10, 2008
- "Impact of Bankruptcy," Chapter 16, *Florida Construction Law and Practice*, Florida Bar, 2006
- "Directors of the Financially Troubled Company: Guidance for a Thankless Job," 76 *Fla. B.J.* 47, July 2002
- "Director Conflicts of Interest Under the Florida Business Corporation Act: Hidden Shoals in a Safe Harbor," 72 *Fla. B.J.* 31, January 1998
- "Corporate Compliance Programs: Protecting the Business from the Rogue Employee," 70 *Fla. B.J.* 34, January 1996
- "The Forgotten Asset: Not Operating Losses of the Chapter 11 Corporate Debtor," 68 *Fla. B.J.* 69, March 1994
- "Bankruptcy Trustee's Personal Liability for Debtor's Violation of Hazardous Waste Laws," 67 *Fla. B.J.* 44, February 1993
- "Report on Standards of Florida Counsel of the Special Committee on Opinion Standards of the Florida Bar Business Law Section," 46 *Bus. L.* 1407, 1991

## **Sectors**

- [Food & Beverage](#)

## **Practice Areas**

- [Corporate](#)
- [Finance](#)
- [Mergers & Acquisitions](#)
- [Private Equity](#)
- [Transactions](#)

## **Education**

- Duke University (J.D., with high honors, 1984)
  - Senior editor of the *Journal of Law and Contemporary Problems*
  - Judicial clerkship with the Hon. Gerald Bard Tjoflat, U.S. Eleventh Circuit Court of Appeals
- Dartmouth College (B.A., 1981)

## **Admissions**

- Florida