



David L. Forney

Partner

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OVERVIEW

David Forney is an M&A, strategic joint venture specialist and a “company side” corporate lawyer. For over 30 years, David has represented industry parties in hundreds of complex M&A, joint venture, and other strategic transactions. Today, David primarily represents large companies in M&A, strategic joint venture, alliance, and other transactions with competitors and strategic partners, primarily on the company side. He also acts as outside general counsel adviser to various clients.

David represents businesses on core business transactions primarily of a strategic nature. He has developed close working relationships with management, in-house counsel, in-house business development teams, internal due diligence teams, and subject matter legal experts. David has experience with internal approval processes, accounting and reporting matters, competition concerns, and risk tolerances unique to company side participants. He has 30 years of legal experience representing public and private industry participants, on top of a four-year foundation as a CPA at Price Waterhouse (now PWC).

David's experience includes domestic and international strategic joint venture and alliance transactions for public and private clients, such as Carrier Corporation, PPG Industries, Inc., Wheeling Pittsburgh Steel Corporation, World Wrestling Entertainment (the “WWE”), and the Voest-Alpine unit of Siemens. For more than 20 years, David has been approved M&A counsel for United Technologies Corporation (UTC) and its business units for transactions under \$1 billion and has handled more M&A transactions for UTC business units than any other outside lawyer during the past 20 years. He has completed over 150 transactions for Carrier Corporation, UTC Fire and Security, Pratt & Whitney, Hamilton Sundstrand, UTC's Innovation Business Development Division, and the UTC parent company in various M&A, joint venture, restructuring, and commercial transactions.

David represented United States Filter Corporation in most of its strategic acquisitions during its high-growth years before it was sold to Vivendi of France. David also represented Liberty Tire Recycling, the largest tire recycler in North America, in more than 75 strategic transactions ranging up to \$350 million and represented Liberty Waste Services, formerly in the municipal solid waste business, in more than 140 strategic transactions ranging up to \$325 million.

David's strategic transactional expertise spans a broad range of industries, including HVAC, aerospace, coal mining, metallurgical coke production, steel mill maintenance, software engineering, vehicle coatings for auto manufacturers, OEM product distribution, industrial explosion protection, home security monitoring, fire fighter

training systems, industrial power cell components, grand prix race tracks, electric hand dryers, water filtration systems, energy conservation services, fuel cell patent portfolios, automobile manufacturers, waste hauling, transfer stations and landfills, recycling, supply chain logistics, fund-of-funds investment companies, office and storage space systems, hospital patient and property tracking systems, commercial engineering, software engineering, interstate highway paving, school bus transportation, movie theatre chains, and even ice cream novelty products.

In addition to domestic and international strategic joint ventures and alliances, transaction forms include severe carve-outs, squeeze-out mergers, combined asset, stock and merger transactions, 50/50 partnership buyouts, options to acquire privately held businesses, and mergers.

David's primary office is in Washington D.C.

PROFESSIONAL / CIVIC ACTIVITIES

- Member, District of Columbia Bar Association
- Member, Maryland Bar Association
- Member, Pennsylvania Bar Association
- Member, Virginia Bar Association

SPEAKING ENGAGEMENTS

- *Joint Venture Agreements: Advanced Structuring, Drafting and Negotiating Strategies*; Center for Competitive Management (C4CM) Webinar.
- *Structuring Successful Joint Ventures: Navigating Formation, Capital, Control and Other Complexities*; Strafford Webinar.

ADDITIONAL BACKGROUND

Prior to attending law school, David practiced for four years at PWC (formerly Price Waterhouse) in Pittsburgh, PA as a Certified Public Accountant (CPA). David previously taught courses in accounting at Carnegie Mellon University and Point Park College as an adjunct professor and authored *BNA Tax Management Portfolio 19-7, Bad Debts*. Prior to joining K&L Gates in 1988, David practiced tax and corporate law for three years at Dechert in Philadelphia, PA.

For most of his adult life, David has been involved with organizations benefiting children. He is a friend and contributor to the Children's Inn on the campus of the National Institutes of Health (NIH) in Bethesda, MD, which provides the last hope for children who have exhausted all known conventional treatments. David was also a director for the Three Rivers Young People's Orchestra in Pittsburgh for 6 years.

EDUCATION

- J.D., University of Pittsburgh School of Law, 1985 (*Managing Editor, Law Review; Order of the Coif*)

ADMISSIONS

- Bar of District of Columbia
- Bar of Maryland
- Bar of Pennsylvania
- Bar of Virginia

THOUGHT LEADERSHIP POWERED BY HUB

- 3 November 2020, Delaware Court of Chancery Denies Motions to Dismiss Claims Alleging Breaches of Fiduciary Duty in Alleged Controlling Stockholder Tender Offer (*BlogPost*)
- 15 October 2020, Delaware Chancery Court Parses Valuation Methods in Battle of the Experts (*BlogPost*)
- 30 September 2020, Chancery Court Clarifies MFW Protections Must be Implemented Prior to Any Substantive Economic Negotiations (*BlogPost*)
- 9 July 2020, Court Finds Defendants Did Not Breach Fiduciary Duties by Causing Company to Accumulate Cash in Anticipation of Stock Redemption Rather than Investing in Long-Term Growth (*BlogPost*)
- 22 May 2020, Court of Chancery Decides Motions to Dismiss, Motion for Summary Judgment, and Motion for Judgment on the Pleadings When Plaintiff Sues Stockholders and Directors of the Company He Founded (*BlogPost*)
- 6 May 2020, Equitable Relief Granted to Stop Board Coup (*BlogPost*)
- 26 March 2020, Chancery Court Denies Purchaser's Theory of Recoupment with Time-Barred Claims to Offset Post-Merger Earn-Out Payments (*BlogPost*)
- 17 February 2020, Books and Records: Court Explains a Failure to Clear the Sometimes Deceptively Challenging Credible Basis Hurdle (*BlogPost*)
- 1 November 2019, Chancery Court Reaffirms Protection of Mandatory Advancement Rights (*BlogPost*)
- 22 August 2019, In a Reckless Re-price, Results are not Realized (*BlogPost*)
- 1 July 2019, Chancery Court Requires all Sellers to be Joined to a Rescission Claim Relating to Merger Agreement; Allows Unjust Enrichment Claim to Proceed (*BlogPost*)
- 21 June 2019, Chancery Court Enforces Privileged Communications Provision to Protect Seller Following Merger (*BlogPost*)

- 22 February 2019, Surgery Partners, Inc. Fails to Excise Conflicts Infecting Three Interdependent Transactions (*BlogPost*)
- 14 January 2018, Chancery Court Denies Dismissal of Breach of Fiduciary Duty Claims after Concluding that Stockholder Vote was Not Informed (*BlogPost*)
- 20 August 2018, Chancery Court Finds That Stockholders Have Standing For Direct Suit Relating To Unique Claims For Breach Of Fiduciary Duties (*BlogPost*)
- 16 April 2018, Chancery Court Finds Credible Basis for Demand to Inspect Books and Records of UnitedHealth in connection with Possible Medicare Overbilling (*BlogPost*)
- 29 January 2018, Court of Chancery Holds That Corwin Defense Is Not Appropriate for the Limited Scope and Purpose of a Books and Records Action Under Section 220 (*BlogPost*)
- 2 January 2018, Director's Breach of Contract Lawsuit Found to Violate the Underlying Contract's Confidentiality Clause (*BlogPost*)
- 19 October 2017, Chancery Court Partially Grants Books and Records Request (*BlogPost*)
- 24 July 2017, Court of Chancery Dismisses Complaint Seeking to Enforce a Stockholder's Section 220 Demand to Inspect the Books and Records of Fannie Mae on Issue Preclusion Grounds (*BlogPost*)
- 10 July 2017, Court of Chancery Holds That Shareholder Satisfied Burden of Proof under Section 220 to Show Credible Basis to Infer That Company Misled Shareholders Regarding Biggest Client (*BlogPost*)
- 10 April 2017, Court of Chancery Upholds Validity of General Release Between Company and Former President, Grants Summary Judgment in Former President's Favor (*BlogPost*)
- 15 September 2016, Chancery Court Determines the Appropriate Valuation Method for Use in Connection with an Appraisal Action Involving the Greatest Divergence among Valuations the Court Has Seen to Date (*BlogPost*)
- 12 March 2016, Court of Chancery Affirms That Minority Stockholder May Be Controlling Stockholder (*BlogPost*)
- 13 February 2016, Chancery Court Determines Appropriate Standard of Review for Cash Flow "Tunneling" by Controlling Stockholder (*BlogPost*)

NEWS & EVENTS

- 30 March 2020, K&L Gates Advises Accion Labs on Investment by TA Associates (*Press Release*)
- 4 October 2019, K&L Gates Advises Evoqua Water Technologies on Memcor® Product Line Divestment (*Press Release*)

AREAS OF FOCUS

- Mergers and Acquisitions
- Corporate Governance
- Corporate, Acquisition, and Asset-Based Finance
- Private Equity Transactions

REPRESENTATIVE EXPERIENCE

- Strategic Joint Venture between WWE and Authentic Brands: Represented World Wrestling Entertainment (the WWE) in connection with a performance wear product joint venture between the WWE and Authentic Brands Group for the promotion and sale of the TapouT brand of athletic performance wear
- Strategic Joint Venture between UTC Climate, Controls & Security and Midea: Represented UTC Climate, Controls & Security, a unit of United Technologies Corp. in connection with the formation of a distribution joint venture with Midea America, a subsidiary of Midea Group Co., Ltd., a public Chinese OEM, for the supply of both parties' ductless HVAC systems through Carrier Corporation's distribution network in North America
- Strategic Joint Venture between Carrier Corporation and Bosch North America: Represented Carrier Corporation in connection with the formation of a production joint venture with Robert Bosch Corporation for the manufacture of water sourced heat pumps for sale to supply chains of Carrier Corporation and Bosch Thermotechnology in North America
- Strategic Global Alliance between PPG Industries and Kansai Paint: Represented PPG Industries in connection with a global alliance with Kansai Paint Corporation (a Japanese paint manufacturer) to supply automobile coatings from both participants to Japanese "transplant" auto manufacturers in North America, Europe and parts Asia.
- Strategic Joint Venture between Wheeling Pittsburgh Steel and Severstal: Represented Wheeling Pittsburgh Steel Corporation in connection with a production joint venture with Severstal to produce and supply metallurgical coke (used to make steel) from a coke battery in West Virginia to steel plants of both venture participants
- Strategic Distribution Joint Venture between Carrier Corporation and WATSCO: Represented Carrier Corporation in connection with the formation of a joint venture with WATSCO for the wholesale distribution of HVAC equipment at various locations in North America.
- Strategic Joint Venture between Carrier Corporation and Russell Sigler: Represented Carrier Corporation in connection with the formation of a joint venture with Russell Sigler for the wholesale distribution of HVAC equipment in the south-western U.S.
- Strategic Joint Venture between Carrier Corporation and Midlands Carrier Transsical: Represented Carrier Corporation in connection with a joint venture involving Reefer Systems, Inc. (Midlands Carrier Transsical) to provide HVAC wholesale distribution in California.

- Strategic Joint Venture Agreement among Three Major Competitors: Represented a world-wide OEM market leader in connection with a confidential joint venture among three major competitors to manufacture a primary OEM component from two facilities in Europe and one in the United States for the supply chains of all three competitors on both continents.
- Strategic Joint Venture between Newbold Corporation and Addressograph Bartizan: Represented Newbold Corporation in connection with a Canadian joint venture with Addressograph Bartizan to manufacture and sell credit card machines in North America.
- Strategic Joint Venture between Voest Alpine and Bethlehem Steel: Represented Voest Alpine Corporation in connection with a joint venture with Bethlehem Steel Corporation to provide heavy maintenance services to Bethlehem Steel's Sparrows Point, Maryland steel mill.
- Strategic Joint venture between carrier Corporation and Scroll Technologies: Represented Carrier Corporation in connection with a 50/50 scroll compressors manufacturing joint venture with Bristol Scroll Compressors
- Sale of Patent Portfolio: Represented the UTC Innovation Business Development Division in connection with the sale of a patent portfolio to Ballard Power Systems consisting of approximately 1,300 patents, patent applications and invention disclosures, and know-how primarily for proton exchange membrane fuel cell technology for civilian mobile applications combined with a strategic alliance arrangement led by a joint Advisory Council.
- Sale of Explosion Protection Business: Represented UTC Fire & Security in connection with a complex "carve-out" sale from seven UTC affiliates to Sentinel Capital Partners, a New York private equity firm, of an industrial factory explosion protection business unit that had substantial operations located in the United States, United Kingdom, France, Switzerland, and Germany.
- Sale to The Washington Post Company: Represented UTC Fire & Security in connection with the sale to The Washington Post Company of Forney Corporation (no relation) (a maker of combustion equipment for power plants) located in the United States and Mexico with Asian affiliates.
- Acquisition of NORESKO: Represented Carrier Corporation in connection with the acquisition of NORESKO (a provider of facilities energy conservation services) from a group of private equity firms.
- Sale of World Dryer Corporation: Represented Carrier Corporation in connection with the sale of World Dryer Corporation (maker of electric hand dryers) to a private equity firm and management.
- Chipwich: Represented the ownership group of Chipwich, maker of the first novelty ice cream product in the United States, in connection with its sale to Coolbrands and Integrated Brands.
- Sale of Shenango Incorporated to DTE (Detroit Edison): Represented family ownership group of Shenango Incorporated in connection with the sale by merger of Shenango Incorporated (owner of a metallurgical coke battery in Pennsylvania) to DTE, an affiliate of Detroit Edison.

- Sale of Mincorp and PBS Coals to Severstal: Represented the owners of Mincorp and PBS Coals (owners and operators of deep coal mines used for metallurgical coke) in connection with its sale to a Canadian affiliate of Severstal.
- Mashuda Corporation sale to Mountain Top Excavation: Represented the founders of Mashuda Corporation (a highway construction company) in connection with its sale to Mountain Top Excavation
- Acquisitions of Sensitech and FreightWatch: Represented Carrier Corporation in connection with the acquisition of Sensitech Corporation and a follow-on acquisition several years later of Freight Watch International (supply chain monitoring and logistics companies) from separate private equity firms.
- United States Filter Corporation: Represented United States Filter Corporation (one of the world's largest water filtration companies) over a six-year period in connection with its acquisition rollup of most of its water filtration and processing companies during its high growth years, including transactions with Permutit, Water Pro, Arrowhead, Polymetrics, Everpure, Jet-Tech, GeoPure, Ionpure, Davis Water, Membrolox, Kisko, Chester Engineers, Illinois Water Treatment, Smogless, Interlake Water Systems, Polymetrics, Utility Supply Group, and Zimpro.
- CollegeGrad.com sale to Blackboard: Represented the founder of CollegeGrad.com (an information service for college grads) in connection with its sale to Blackboard and subsequent repurchase, resale and repurchase of CollegeGrad.com over a 15 year period.
- Tele-Tracking Technologies: Represented Tele-Tracking Technologies over a seven-year period in connection with numerous acquisitions and restructuring transactions, including transactions with UPMC Pittsburgh Medical Center, Medhost, Hill-Rom, RadarFind, Spectrum Equity, and Net Health Systems.