

Robert A. Penza

SHAREHOLDER

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Practicing primarily in the preeminent Delaware Court of Chancery, Robert Penza builds client confidence and trust by establishing a deep understanding of their concerns and objectives before recommending a pragmatic solution. Bob has extensive trial experience in all aspects of litigation practice before the Delaware Court of Chancery as well as the other state courts in Delaware.

His depth of experience comes from handling corporate and commercial and litigation matters, including representing officers, directors and companies in breach of fiduciary duty matters, post-merger disputes and limited liability company contract disputes. Also, Bob represents institutional and individual trustees and beneficiaries in trust litigation.

Bob has been independently appointed by the Delaware Court of Chancery to serve as a receiver and many times as attorney *ad litem* for minor beneficiaries involved in trust matters before the court.

Education

- Villanova University Charles Widger School of Law (J.D., 1989)
- Drexel University (B.S., 1986)
 - Mechanical Engineering

Bar Admissions

- Delaware, 1989

Court Admissions

- U.S. District Court, District of Delaware
- United States Supreme Court

Memberships

- Delaware State Bar Association
- Delaware Trial Lawyers Association

Capabilities

- Delaware Court of Chancery
- Litigation
- Mergers & Acquisitions Litigation

- American Bar Association
 - Section of Real Property, Trust and Estate Law
 - Trust Litigation Group

Recognition

- Selected for *Best Lawyers*® "Lawyer of the Year" in Wilmington for Litigation - Trusts and Estates, 2023
- Selected for inclusion in *Best Lawyers in America*® for:
 - Commercial Litigation, 2024-2026
 - Litigation - Trusts and Estates, 2021-2026
 - Trusts and Estates, 2021-2026

Matters

Business Litigation

- Obtained temporary restraining order for client in Delaware Chancery Court to prevent its general partner from removing our client as the manager of a highly visible real estate project in Philadelphia.
- Successfully defeated TRO brought in Delaware Chancery Court seeking to enjoin our client's acquisition of an international precious metals company.
- In 2021, represented publically traded company in a contract dispute involving a supply agreement with a manufacturer, which was resolved through mediation by a sitting Vice-Chancellor though the Delaware Court of Chancery Rules for mediating business disputes.
- In 2020, represented group of managers of a Delaware limited liability company against the remaining managers over control of the board of managers and distribution of assets, which was resolved confidentially through private binding arbitration.
- In 2020, received a favorable decision in an appeal to the Delaware Supreme Court on a post-merger issue from a stock purchase agreement decided after trial by the Delaware Court of Chancery.
- In 2018, obtained judgment in excess of \$20 million dollars against certain directors for breach of fiduciary duty after trial in the Delaware Court of Chancery.
- *Kahuku Holdings, LLC v. MNA Kahuku, LLC*, C.A. No. 9991-VCG, 2014 WL 4699618 (Del.Ch. Sept. 15, 2014) (Represented Hawaiian minority members of a Delaware limited liability company which operates a wind farm in an action filed in the Delaware Court of Chancery by the controlling members. Obtained a successful decision from the Court granting the clients' motion to dismiss and enforcing an arbitration provision designating Hawaii as the forum to resolve the parties disputes)
- *Irrevocable Aloha Trust, et al. v. Green Revolution Cooling, LLC*, C.A. No. 9662-VCN (Del.Ch. 2014) (Defended Delaware corporation in a books and records ("220") action filed in the Delaware Court of Chancery by minority shareholders. Successfully resolved dispute with shareholders without the need for a hearing)
- *Cornell Glasgow, LLC v. La Grange, et al.*, C.A. No. 8475-VCL (Del.Ch. 2013) (Defended action filed in the Delaware Court of Chancery by a judgment creditor seeking to pierce the corporate veil of Delaware limited liability company which held real estate for residential and commercial development. Obtained a dismissal of the creditor's action on a motion to dismiss decided by the Court)

- Represented minority member of a Delaware limited liability company in an action filed with the American Arbitration Association to resolve disputes through binding arbitration with the other members as required by the company's operating agreement. Panel of three arbitrators issued favorable award to client which involved development of real estate owned by the client.
- Successfully mediated a resolution through the Delaware Court of Chancery mediation program before litigation was initiated against the client company by a minority shareholder on a stock valuation claim.

Trust Litigation

- *TrustCo Bank v. Mathews*, C.A. 8374-VCP, 2015 WL 295373 (Del.Ch. January 22, 2015) (Successfully represented settlor of Delaware asset protection trusts in fraudulent conveyance action initiated by bank creditor. Delaware Court of Chancery granted client's partial motion for summary judgment based upon statute of limitations barring New York bank creditor's claims against assets transferred by New York resident client to fund several Delaware asset protection trusts)
- *Matjkiw, et. al. v. Strauss et. al.*, C.A. 6102-CS (Del.Ch. Sept. 19, 2011) (Represented individual creditors in an action filed in the Delaware Court of Chancery for fraudulent conveyance claims against a settlor of a Delaware asset protection trust)
- *Scott v. Wilmington Trust Co, et al.*, C.A. 3493-VCS (Del.Ch. 2009) (Defended institutional trustee who presided over a trust for decades in an action filed in the Delaware Court of Chancery by the current beneficiary seeking to remove the Trustee claiming hostility. The client won a favorable summary judgment decision denying the beneficiaries claims against the Trustee)
- Represented institutional trustee in an action by outside potential creditor of the settlor of an irrevocable Delaware trust. Obtained successful declaratory judgment ruling from Delaware Court of Chancery.
- *In re Trusts Created by Farrell*, 2008 WL 5459270 (Del.Ch. December 18, 2008) (Filed Petition for instructions action in Delaware's Court of Chancery on behalf of institutional trustee of trusts transferred to Delaware by a spouse in the process of domestic relations litigation in Pennsylvania)
- *In re: Barker Trust Agreement*, 2007 WL 1800645 (Del.Ch. June 13, 2007) (Represented natural grandchildren of Settlor in a trust dispute with an adult adopted beneficiary, who claimed to take under the trust as a descendant of the settlor. Trust dispute was litigated in Delaware Court of Chancery with coordination of ancillary litigation in Florida where the adult adoption occurred)
- *Chavin v. PNC Bank, Delaware*, 816 A.2d 781 (Del.2003) and 873 A.2d 287 (Del.2005) (Represented grandchildren in dispute with trustee and other purported beneficiary over proper beneficiaries of a Trust created by clients' grandmother. Obtained reversal from Delaware Supreme Court of Delaware Court of Chancery summary judgment in favor Trustee and other purported beneficiary. When Trustee refused to restore to the Trust distributions to the wrong beneficiaries prior to the Supreme Court reversal, obtained reversal on a second appeal to the Delaware Supreme Court, that the trustee was liable to the clients for a surcharge of the amount disbursed by the trustee in good faith to the wrong beneficiary)

Publications

October 20, 2023

The Polsinelli Pulse: Mitigating Litigation Risk at the Deal Table and Beyond – Vol. 4

July 18, 2023

Disney Investor Suit Shows Limit Of Del. Books, Records Law

Co-Author, Law360

March 2, 2023

Delaware Court of Chancery Establishes Duty of Oversight Extends to Officers

August 23, 2022

New whistleblower allegations could factor into Twitter vs. Musk trial

Quoted, Washington Post

October 2, 2017

Ex-Basho CEO Tells Of Frayed Relations With Large Investor

Referenced, Law360