



## Christopher J. Hewitt

### Partner

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Chris Hewitt is a businessperson's lawyer.

A corporate attorney with an M.B.A, Chris serves as a strategic advisor to the boards of directors and management of public and sophisticated private companies on mergers and acquisitions, takeover preparedness and defense, corporate governance, corporate counseling and SEC compliance. In short, Chris helps clients find solutions and avoid business problems.

**Business Transactions.** Chris has the business acumen to assist clients not only in structuring, negotiating, and closing sophisticated business transactions, but also in strategically analyzing and understanding how the transaction relates to the client's business. Chris began his career in the New York office of Skadden Arps and came to Tucker Ellis from Jones Day, where he was partner for 10 years in the M&A practice group. As a result, Chris brings a "Big Law" sophistication to each matter, while crafting cost-effective solutions with Midwestern practicality. He understands that negotiating a transaction is not about keeping score on deal points won or lost or taking polarizing positions. Chris practices the art of "getting to yes" negotiating, which means not only effectively articulating the client's interests in a transaction and making sure the documentation protects those interests, but also resolving, in a common-sense fashion, the myriad, idiosyncratic issues that often arise in transactions.

Chris has negotiated numerous high-profile, multibillion-dollar acquisitions and divestitures, as well as many smaller deals, and has worked on transaction financing, including debt and equity offerings. He works with clients in industries such as energy, minerals and mining, manufacturing, retailing, media and technology, to name a few.

**Corporate Governance and Compliance.** Now more than ever, boards of directors need the pragmatic advice of trusted lawyers like Chris who understand the issues directors face. Chris has extensive boardroom experience advising directors on the issues they confront in today's dynamic corporate governance environment—experience that enables him to cut through the clutter and

assist directors in making informed decisions.

In addition, Chris has successfully defended large and small public companies in contests for corporate control, including both hostile takeovers and proxy contests, and has assisted numerous companies in responding to shareholder proposals. He has also assisted engaged shareholders in establishing a dialogue with the board and management of struggling public companies.

Chris is frequently sought after to speak on corporate governance, M&A and securities laws matters, and has published several articles on these topics. He is also co-editor of the firm's blog on corporate law, *Lingua Negoti*, which means "the language of business."

Chris comes from a large family that includes two brothers and five sisters, and is a triplet with two of his sisters. He is the proud father of three children. Chris is also a fitness nut, working out every morning before work.

## Education

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- Georgetown University Law Center (J.D., magna cum laude, 1994)
- Georgetown University (M.B.A., 1994); Beta Gamma Sigma
- The University of Toledo (B.B.A. in Accounting, summa cum laude, 1990)

## State Admissions

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- Ohio, 1998
- New York, 1994

## Service Areas

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- Mergers & Acquisitions
- Securities & Capital Markets
- Corporate Governance
- Broker-Dealers
- Financial Services
- Hospitality
- Health Care M&A Transactions
- Venture Capital
- Private Equity
- Health & Life Sciences
- Corporate Law

## Experience

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### MERGERS & ACQUISITIONS

- Represented Ampex Brands – a Yum! Brands Inc. and 7-Eleven franchisee with more than 400 Pizza Hut, KFC, Taco Bell, Long John Silver's and 7-Eleven locations – in its acquisition of Au Bon Pain from Panera Bread
- Represented Colfax Corporation (NYSE: CFX) subsidiary DJO Global in its acquisition of MedShape, Inc., an orthopedic foot and ankle device company
- Represented Colfax Corporation (NYSE: CFX) subsidiary DJO Global in its acquisition of Trilliant Surgical, a national provider of foot and ankle orthopedic implants
- Represented Colfax Corporation (NYSE: CFX) subsidiary DJO Global in its acquisition of LiteCure, a designer and manufacturer of medical devices for medical and veterinary health care professionals
- Represented Colfax Corporation (NYSE: CFX) subsidiary DJO Global in its acquisition of Stryker Corporation's (NYSE: SYK) STAR total ankle replacement product and related assets
- Represented Kinderhook Industries' portfolio company Chemtron Corporation, a hazardous and non-hazardous waste transporter in the Midwest, in its acquisition of certain assets of Tonawanda Environmental Corporation and Tonawanda Tank Transport Service
- Represented The Ideation Lab, LLC in a deal making Coffee Holding Co., Inc. (Nasdaq: JVA) a significant minority owner in The Jordre Well, LLC, a cannabidiol beverage company
- Represented Eagle Specialty Materials, LLC in its purchase of the Eagle Butte and Belle Ayr thermal coal mines from Contura Energy, Inc. and Blackjewel L.L.C.
- Advised James McCool, co-owner of Desert Jet Holdings in the acquisition of sole ownership of the Desert Jet Group of Companies from founder and co-owner Denise Wilson
- Advised Dennis and Dawn Swit in the sale of all of the assets of Loan Protector Insurance Services – a leader in the lender-placed insurance space for the mortgage-servicing industry – to Brown & Brown Inc. (NYSE: BRO)
- Represented Macellum Advisors GP, LLC in an agreement between Big Lots, Inc. and an investor group composed of Macellum Advisors GP, LLC and Ancora Advisors, LLC and certain of their affiliates
- Advised Joshen Paper & Packaging based in Cleveland, Ohio, in its acquisition by Bunzl plc (OTCMKTS: BZLFF), an international distribution and services group based in London
- Advised Colfax Corporation, a leading diversified technology company that provides air and gas handling, fabrication technology, and medical device products and services to customers around the world, in its acquisition of GCE Group, Europe's leading gas equipment company
- Advised LKD Aerospace, LLC, a global distributor, manufacturer & MRO of aerospace components and a portfolio company of Resilience Capital Partners, in its \$25.8-million sale of Systron Donner Inertial, Inc., a world leading manufacturer of quartz MEMS navigation products, to EMCORE Corporation, a leading provider of advanced Mixed-Signal Optics products that provide the foundation for today's leading-edge defense systems
- Advised Pete & Pete Container Service, Inc., a provider of waste management containers for

commercial and residential use, in its acquisition of substantially all of the assets of Boyas Excavating, Inc., an aggregate mining company and landfill operator

- Advised Luminance Holdco, Inc., a designer and distributor of lighting products and a portfolio company of Resilience Capital Partners, in its acquisition of the Emerson Air Comfort Products ceiling fan business of Emerson Electric Co.
- Advised Fulton Technologies, Inc. and Mill City Communications, which service cellular telephone towers and install wireless radio, antenna technology, and small cells and portfolio companies of Resilience Capital Partners, in the sale of substantially all of their assets to ADDvantage Technologies Group, Inc.
- Advised Colfax Corporation its acquisition of Sandvik Material Technology's welding wire business
- Advised the shareholders of Intergulf Corporation, which provides solutions to industry partners by procuring, blending, treating, and processing petroleum, petrochemical products, and waste streams, in its sale to Kinderhook Industries, LLC, a private investment firm that manages over \$2 billion of committed capital
- Advised Olentangy Investment Partners LLC and FM Coal LLC in its acquisition of a family-owned group of coal mining companies in Alabama: Cedar Lake Mining, Inc.; Cane Creek, LLC; and MS&R Equipment, Inc.
- Advised Ultra Electronics Holdings plc, a British defense contractor that provides a wide range of products to the defense, aerospace, security, transport, and energy industries, as Ohio counsel in its proposed \$235 million acquisition of Sparton Corporation, a provider of complex and sophisticated electromechanical devices
- Advised Electrolux AB, a global leader in home appliances and appliances for professional use, in its \$108 million acquisition of Grindmaster-Cecilware, a leading U.S.-based manufacturer of hot, cold, and frozen beverage dispensing equipment
- Advised Electrolux AB in the sale of its Eureka® brand vacuum cleaner assets to China-based Midea Group, a leading global manufacturer of consumer appliances and heating, ventilation, and air conditioning (HVAC) systems
- Advised Colfax Corporation in its \$26 million acquisition of Arc Machines, Inc., a leader in automated orbital TIG welding for niche applications
- Advised The Channel Company, a provider of sales and marketing solutions for the technology channel, in the sale of a controlling interest to Stone-Goff Partners, a private equity investment firm that invests in lower middle-market founder-owned businesses and corporate carve-outs in the consumer and services sectors
- Advised New Media Investment Group, one of the largest publishers of locally based print and online media in the United States, in its acquisition of certain publications of The Dolan Company
- Advised New Media Investment Group in its acquisition of the assets comprising the print publication business of The Dispatch Printing Company, including *The Columbus Dispatch*
- Advised Diebold Nixdorf, Incorporated, a global leader in providing innovative self-service technology, security systems and related services, in its acquisition of Phoenix Interactive

Design, Inc., a world leader in developing innovative software solutions for ATMs and other financial self-serve applications

- Advised Novanta, Inc. (f/k/a GSI Group, Inc.), a designer, developer, and manufacturer of precision photonics and motion control components and subsystems, in its \$82.5 million acquisition of NDS Surgical Imaging from Riverside Partners LLC
- Advised Colfax Corporation in its \$55 million acquisition of the heavy duty air and material handling and specialty wind tunnel application business of The New York Blower Company
- Advised Colfax Corporation in its €193 million acquisition of the Global Infrastructure and Industry (GII) business of Fläkt Woods Group
- Advised Ampex Brands, one of the largest franchise organizations of Yum! Brands and Long John Silver's, in its acquisition of multiple Tim Hortons restaurants in Columbus and Dayton, Ohio
- Advised Morgan's Foods, Inc., the owner and operator of 68 KFC, Taco Bell and Pizza Hut Express franchises in Ohio, Pennsylvania, West Virginia, Illinois, New York, and Missouri, in its \$20.6 million sale to Ampex Brands
- Advised the shareholders of Trademark Games, Inc., a manufacturer and supplier of consumer products to mass market internet retailers, in the sale of a controlling interest to Blue Point Capital Partners
- Advised The Channel Company in the divestiture of its SharedVue platform
- Advised The Channel Company in its acquisition of the assets comprising the "Everything Channel" business of UBM LLC, a wholly owned subsidiary of UBM plc

## **CORPORATE GOVERNANCE**

- Advised Civista Bancshares, Inc., a regional bank holding company located in Sandusky, Ohio, in obtaining the vote of its shareholders to amend Civista's charter to eliminate pre-emptive rights and cumulative voting in the election of directors in anticipation of an equity offering
- Advise the board of directors of Stoneridge, Inc., a global designer and manufacturer of highly engineered electrical and electronic components, modules, and systems for the commercial vehicle, automotive, off-highway, and agricultural vehicle markets, on various corporate governance matters
- Advise public companies in addressing shareholder proposals under Rule 14a-8 under the proxy rules. Previous clients include, among others, Ferro Corporation, FirstEnergy Corp., and Penton Media, Inc.
- Advise the boards of directors of several closely held companies on corporate governance and shareholder relations matters

## **CONTESTS FOR CORPORATE CONTROL**

### **CORPORATE**

- Advised A. Schulman, Inc. on a negotiated settlement in response to a proxy solicitation by Barington Capital Group to obtain multiple board seats
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Successfully defended Cryo-Cell International, Inc. against a proxy solicitation by David Portnoy to replace the board of directors

- Successfully defended Dynamics Corporation of America against an unsolicited tender offer and related proxy solicitation by WHX Corporation; DCA entered into a negotiated merger with CTS Corporation
- Defended GenCorp, Inc. against a proxy solicitation by Pirate Capital LLC
- Successfully defended The Lamson & Sessions Company against a threatened proxy solicitation by Ramius Capital Group to obtain multiple board seats; Lamson entered into a negotiated merger with Thomas & Betts Corporation
- Successfully defended LCA-Vision Inc. against a consent solicitation by the founder and former Chairman to remove and replace the board of directors
- Successfully defended Myers Industries, Inc. against multiple proxy solicitations by GAMCO Asset Management Inc. to obtain multiple board seats
- Successfully defended Oglebay Norton Company against an unsolicited tender offer and related proxy solicitation by Harbinger Capital Partners; Oglebay entered into a negotiated merger with Carmeuse North America, a unit of Carmeuse Group
- Successfully defended Potash Corporation of Saskatchewan against an unsolicited tender offer by BHP Billiton Plc, which withdrew its offer
- Defended Zoran Corporation against a consent solicitation by Ramius Capital Group to remove and replace multiple directors; Zoran entered into a negotiated merger with CSR Plc

### **SHAREHOLDER**

- Served as Ohio counsel to Macellum Capital Management in its threatened proxy solicitation to obtain multiple board seats at Big Lots, Inc.
- Advised Richard M. Osborne, an individual shareholder of Gas Natural Inc., a natural gas utility that distributes and sells natural gas to residential, commercial, and industrial customers, in a proxy contest to replace the entire board of directors
- Served as Ohio counsel to FrontFour Master Fund, Ltd. and Quinpario Partners, LLC in their combined proxy solicitation to obtain multiple board seats at Ferro Corporation; Ferro agreed to give FrontFour/Quinpario two board seats
- Advised Steve Bershada, an individual shareholder of GSI Group, Inc., in a threatened proxy contest to replace the board of directors; GSI Group filed for bankruptcy and the representation converted to representing the equity committee; Bershada is now Chairman of the Board
- Served as Ohio counsel to Triarc Companies, Inc. in its threatened proxy solicitation to obtain multiple board seats at Wendy's International Inc.; Triarc entered into a negotiated merger with Wendy's

## Publications & Events

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### SPEAKING ENGAGEMENTS

- “Director & Officer Fiduciary Duties: Ignore Them at Your Own Peril,” 2017 In-House Counsel Summit, Tucker Ellis LLP, Cleveland, Ohio (October 2017)
- “Anatomy of a Transaction,” Tucker Ellis Legal Update, Cleveland, Ohio (September 2016)
- “Expanding Your Fan Base: Addressing Stock Liquidity and Broadening Your Investor Profile,” Tucker Ellis/Elizabeth Park Capital Management Second Annual Banking Forum: Be an M&A Rock Star, Cleveland, Ohio (November 2015)
- “Activists, Hedge Funds and the Changing M&A Landscape of Corporate and Securities Laws,” 2015 In-House Counsel Summit, Tucker Ellis LLP, Cleveland, Ohio (October 2015)
- Shareholder Activism Panel, 2014 In-House Counsel Summit, Tucker Ellis LLP, Cleveland, Ohio (October 2014)
- Shareholder Activism Panel, Dix & Eaton, Cleveland, Ohio (Winter 2009)

### PUBLICATIONS

- [Lingua Negoti Blog Posts](#)
- “Winners Are Forged in the Fire of Economic Duress,” *Crain’s Cleveland Business* (January 2020)
- “Failure Is an Option,” *Ethical Boardroom* (Spring 2019)
- “Stifling Debate at Board Meetings Can Destroy Value at Your Portfolio Company,” *Crain’s Cleveland Business* (January 2019)
- “Diabetic Care RX Case Is a Warning Sign for Private Equity,” *Law360* (May 2018)
- “Championship-caliber Dealmakers Understand the Language of Business,” *Crain’s Cleveland Business* (January 2018)
- “A Shareholders Agreement Primer: The Corporate Pre-Nuptial Agreement,” *VC-List* (February 2017)
- “Salt Your Pasta Water,” *Today’s General Counsel* (April 2015)
- “Shareholder Activism and the Federal Proxy Rules,” *Westlaw Journal* (April 2015)
- “Shareholder Activism Engagement,” *Crain’s Cleveland Business* (January 2015)
- “Hiring Counsel with Good Judgment is Key to Dealmaking Success,” *Crain’s Cleveland Business* (January 2014)
- “Is there a Right Way to Go Private? Finessing Divided Legal Standards Poses a Challenge,” *Mergers & Acquisitions: The Dealmakers Journal* (July 2006)
- “Quick Draw: HSR Gunjumping Risks in M&A Transactions,” *The Deal* (May 2006)
- “Hostile Takeovers: A Comparison of the Means of Protection in the U.S.,” *Fusions & Acquisitions* (April 2004)

### MEDIA QUOTES

- “Did Business Roundtable Just Break a Fiduciary Oath?“, *FiduciaryNews.com* (August 2019)
- “With Few Options, Icahn Targets Oxy Board,” *Energy Intelligence Finance* (June 2019)
- “Icahn Wrests Control of SandRidge Energy in Proxy Contest,” *Oil Daily* (June 2018)
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- “Insiders: SandRidge Poised to Accept Midstates’ Offer,” *Oil Daily* (February 2018)
- “Midstates Proposes Merger With Rival SandRidge,” *Oil Daily* (February 2018)
- “Potential Icahn Threat Lingers at SandRidge,” *Oil Daily* (January 2018)
- “Shareholder Activism Poised for Busy, High-Stakes 2018,” *Law360* (January 2018)
- “SandRidge Concocts ‘Poison Pill’ as Activist Investors Gain Influence,” *Oil Daily* (November 2017)
- “5 Tips for Boards Blindsided by an Activist Campaign,” *Law360* (September 2017)
- “How Hedge Fund Managers Can Protect Sensitive and Proprietary Data from SEC FOIA Requests,” *Hedge Fund Legal & Compliance Digest* (September 2017)
- “Activist Shareholders Are Staying Active,” *U.S. News & World Report* (September 2017)
- “Whole Foods-Amazon Deal Comes on Heels of Board Refresh,” *Directors & Boards* (June 2017)
- “Herbalife Feud Raises Questions About Transparency,” *Institutional Investor* (September 2016)
- “The Hedge Fund LCD 2016 Mid-Year Review: Hedge Fund Activism Summary,” *Hedge Fund Legal & Compliance Digest* (August 2016)
- “How Clients Drive M&A Partners Nuts,” *Law360* (May 2016)
- “What to Expect for IPOs in 2016,” *U.S. News & World Report* (March 2016)
- “Corporate Spinoffs: Tops or Topsy-Turvy?“, *U.S. News & World Report* (January 2016)
- “Freeport McMoRan Takes Activist Hit,” *Corporate Counsel* (January 2016)
- “The 7 Firms Behind the Mammoth Pfizer-Allergan Merger,” *Law360 Mergers & Acquisitions* (November 2015)
- “3 Firms See Patience Pay Off with \$67B Dell-EMC Deal,” *Law360 Mergers & Acquisitions* (October 2015)
- “Activist Environment Demands More Strategy, Financial Savvy in Messaging,” *Crain’s Cleveland Business* (May 2015)
- “6 Tactics for Fending Off an Activist Shareholder Attack,” *Chief Executive Magazine* (March 2015)
- “6 Ways CEOs Can Be Prepared When Activist Investors Strike,” *Chief Executive Magazine* (February 2015)
- “Activist Investors Are Playing an Increasingly Strong Role in Company Actions,” *Crain’s Cleveland Business* (February 2015)
- “Activist Investors Target GM,” *Inside Counsel* (February 2015)
- “Proxy Access Could Be Top Issue for Activist Shareholders in 2015,” *Inside Counsel* (January 2015)
- “Stewart/SCI to Face Scrutiny; Upfront Divestiture Buyers Possible,” *Policy and Regulatory Report* (May 2013)
- “One Secret Buffett Gets to Keep,” *DealBook, The New York Times* (November 2011)



### **Honors**

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- BTI M&A Client Service All-Stars 2021
- *The National Law Journal*, “40 under 40” (2005)
- *Which Lawyer? Yearbook*, Leading Individual (2007-2009)
- IFLR1000, “Highly Regarded” in Banking (Ohio)
- Ohio Super Lawyers® (2011-2016)
- Ohio Super Lawyers Rising Stars® (2005-2007)
- The Best Lawyers in America® (2009-2022)
  - » 2020 Cleveland Lawyer of the Year (Mergers and Acquisitions Law)

### **In the Community**

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- Ohio State Bar Association
  - » Corporation Law Committee
    - » Public Company, M&A and Governance Subcommittee
- Cleveland Metropolitan Bar Association
- Leadership Cleveland, Class of 2014
- Association for Corporate Growth
- Society of Corporate Secretaries and Governance Professionals
- Law360 Mergers & Acquisitions Editorial Advisory Board (2015-2017)