



## David A. Stockton

PARTNER

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### Services

Corporate Governance; Mergers & Acquisitions; Business & Finance; Private Equity; Securities; Joint Ventures & Strategic Alliances; Labor & Employment; Government & Regulatory; Special Committee Representation

### Industries

Retail & Consumer Goods; Home Furnishings; Food, Restaurant & Beverage; Consumer Goods

David Stockton advises businesses in all aspects of corporate finance. He has represented numerous issuers in initial and secondary public offerings and has extensive experience in private placements of securities. Mr. Stockton's focuses his practice on the full range of securities regulations applicable to officers, directors, and principal shareholders of public corporations, including share resale restrictions, Section 16, and insider-trading matters. He has extensive experience in the legal aspects of mergers and acquisitions, particularly those involving public companies. He has represented audit, compensation and various special committees of public company boards and has dealt with all aspects of public company corporate governance.

Mr. Stockton has been recognized in *The Best Lawyers in America*<sup>®</sup> in each year since 1995, most recently in the practice areas of Corporate Governance Law, Corporate Law, Mergers & Acquisitions Law, Securities/Capital Markets Law, and Securities Regulation. He was also named the 2013 "Atlanta Lawyer of the Year" in the area of Securities/Capital Markets Law and the 2015 "Atlanta Lawyer of the Year" in the area of Securities Regulation by *The Best Lawyers in America*<sup>®</sup>. Mr. Stockton has been listed in *Chambers USA: America's Leading Lawyers for Business* in Corporate Law/M&A Law each year since 2004, and was listed in band 1 in each year since 2013. He is AV<sup>®</sup> rated by Martindale-Hubbell.\*

\*CV, BV, and AV are registered certification marks of Reed Elsevier Properties Inc., used in accordance with the Martindale-Hubbell certification procedure's standards and policies.

### Experience Highlights

#### Sale of assets of health care services provider from over 400 locations

Sale of the assets of ten affiliated charitable entities that provided health care services from 140 intermediate care facilities, 214 home and community based support locations, and 53 behavioral health locations, which are located in four states.

#### Consolidation of three family businesses with over 425 locations

Assisted client to structure and implement the consolidation of businesses ran by three families descended from the business founder that sold specialty food products from stores and franchise locations, resulting in a consolidated company with over 425 system wide retail locations across the U.S. and substantial catalogue and internet sales operations.

#### Acquisition of Family Christian Bookstores

Represented a group, including Richard L. Jackson, the CEO and founder of Jackson Healthcare, the third largest healthcare staffing company in the U.S. in their acquisition of Family Christian Bookstores, the nation's largest Christian retail chain with 280 stores in 36 states.

#### Merger of Emageon Inc. with AMICAS Inc.

Represented Emageon Inc., a publicly traded medical image software developer, in connection with its merger with AMICAS Inc., a radiology information technology solutions provider. The transaction was structured as a tender offer followed by a short form merger.

#### Acquisition of BancIntelligence.com by Fiserv Inc.

Represented BancIntelligence.com, which develops application software for the banking industry, in the sale of all the company's stock to Fiserv Inc.

#### Financing advice for a leading U.S. operator of jewelry stores

Represented a leading U.S. operator of jewelry stores in the investigation of refinancing alternatives, including loans from control shareholders.

#### Acquisition program for Miller Industries

Represented Miller Industries, Inc., the largest manufacturer of tow trucks in the world, in its vertical integration strategy involving the acquisition of more than 120 companies within its industry in more than 75 markets.

#### Initial public offering for Interland Inc.

Represented Interland Inc., a web hosting company, in its \$60 million initial public offering.

#### Privatization and international initial public offering of Banco Hipotecario

Represented Argentine state-owned national bank, Banco Hipotecario, in connection with its privatization and international initial public offering, including the Rule 144A and Regulation S offering of American Depositary Receipts and International Options.

#### Corporate bond offering "reopening" for AGL Resources Inc.

Represented AGL Resources Inc., a *Fortune* 1000 energy services holding company and parent company of Atlanta Gas Light, in an underwritten public offering of \$125 million in senior notes. The offering was a "reopening" of an existing series of AGL bonds.

#### Astral Brands, Inc. recapitalization and repurchase of securities

Represented Astral Brands, Inc. in its recapitalization and repurchase of securities from holders of approximately 60% of the value of the company in June 2014. Terms were not announced.

#### Initial public and follow-on stock offerings for Innotrac Corporation

Represented fulfillment and logistics provider Innotrac Corporation in its initial public offering of its common stock, including its pre-IPO corporate reorganization, as well as its follow-on public stock offering.

#### Securities counsel to Internet Security Systems Inc. in connection with its \$1.3 billion acquisition by IBM

Served as securities counsel to Internet Security Systems Inc. in connection with its \$1.3 billion acquisition by IBM.

#### Acquisition of Five Point Partners, LLC by Ernst & Young LLP

Represented Five Point Partners, LLC, a consulting firm serving the power and utility industry, in its acquisition by Ernst & Young LLP in May 2014. The purchase price was not announced.

#### Merger of Innotrac Corporation

Represented Innotrac Corporation, a provider of eCommerce order processing, fulfillment and customer care services, in its aborted merger with GSI Commerce.

#### Sale of Capstone Consulting Partners, Inc.

Represented Capstone Consulting Partners, Inc., a strategic consulting company in the utility industry, in its sale to a strategic acquirer.

#### Special Committee considering strategic alternatives

Represented Independent board members of a North Carolina-based NYSE-listed services business in connection with their consideration of strategic alternatives.

#### Sale of assets associated with product lines

Assisted client in its sale of assets used in the production of several product lines to the exclusive purchaser of those products.

#### Acquisitions for Servidyne Inc.

Represented Servidyne Inc., a NASDAQ listed building performance consulting company, in its acquisitions of four businesses.

#### Refinancing of a NYSE-listed tow truck manufacturing company

Represented a NYSE-listed tow truck manufacturer in a series of financings involving its founding shareholder and a special committee.

#### Special committee representation for an Atlanta based building performance consulting company

Represented special committee of the Board of an Atlanta-based building performance consulting company in its negotiation of the settlement of a long term employment agreement with a board member.

#### Independent counsel to the Board of a joint venture

Served as independent counsel to the Board of a joint venture engaged in the manufacture of PET medical imaging equipment, and consisting of a publicly traded company and its largest shareholder, a global conglomerate.

#### Recapitalization of telecommunications company

Represented Special Committee of the Board of a telecommunications company in a recapitalization, which included a new investment of approximately \$85 million by a control shareholder of the company.

#### Special Committee of the Board of a textile company

Represented Special Committee of the Board of a textile company in connection with the acquisition of an affiliate of a company in exchange for \$84 million in Series A Convertible Preferred Stock and negotiation and issuance of \$118 million of newly designated Series A Preferred Stock.

#### Going private investigation for a Midwest-based REIT

Represented a Midwestern NYSE-listed REIT with a market capitalization of over \$700 million in its consideration of a management-led going private transaction.

#### Sale of Interland Inc.

Represented Interland Inc., a Web hosting company, in the sale of the company.

#### Acquisition of SBI Enteris Inc. by Enterpulse Inc.

Represented Enterpulse Inc., a privately held provider of business process improvement solutions, in connection with its acquisition of all of the outstanding capital stock of SBI Enteris Inc., a privately held technology and software consulting firm.

#### Repurchases of common stock for NYSE financial services firm

Represented Audit Committee of the Board of a NYSE listed financial services firm in its consideration of the optimal usage of excess capital and the ultimate negotiation of both:

a repurchase of \$150 million of common stock from an affiliated shareholder;

a repurchase of \$200 million of common stock from an affiliated shareholder.

#### Acquisition of Innotrac Corporation by Sterling Partners

Represented Innotrac Corporation (NASDAQ: INOC) in its January 2014 acquisition by Sterling Partners, a private equity fund, for approximately \$110 million in cash. The acquisition was effected through a tender offer followed by a short-form merger.

#### Going private transaction for AHL Services Inc.

Represented the Special Committee of the Board of AHL Services Inc., a provider of outsourced marketing and merchandising support services, in a going private transaction.

#### Securities, M&A and Tax for James River Coal Co.

Represented James River Coal, an Appalachian coal mining company headquartered in Richmond, Virginia, in its efforts to raise capital for improving and expanding business operations and responding to new regulatory requirements. This included a public offering of \$150 million senior notes, four public offerings of common stock underwritten by Morgan Stanley and UBS Securities LLC from 2005 to 2008 for total proceeds of \$233 million, and a private offering of \$172.5 million of convertible notes in 2009. We also represented James River Coal on issues related to change of ownership and net operating loss limitations under Section 382 of the Internal Revenue Code and in implementing and amending on several occasions its senior credit facilities and shareholder rights plan.

#### Sale of Third Millennium Healthcare Systems Inc.

Represented Third Millennium Healthcare Systems, Inc., a privately-held provider of reimbursement process solutions to healthcare providers

#### Recapitalization and asset sales for a textile company

The firm represented a Special Committee of the Board of a Virginia textile company in a series of recapitalizations and asset sales where the interests of the controlling shareholders were not aligned with those of the other equity holders.

#### Redemption of National Vision Inc.'s senior secured notes and its acquisition by a private equity firm

Represented National Vision Inc., one of America's largest retail optical chains, in connection with the redemption of its 12% Senior Secured Notes, its acquisition by Berkshire Partners LLC, a Boston private equity firm, and its simultaneous acquisition of Consolidated Vision Group, another retailer of optical products. The merger of National Vision and Consolidated Vision Group resulted in the fourth largest retail optical chain in the United States.

#### Acquisition by National Vision Inc. of Eyeglass World

Represented National Vision Inc., one of America's largest retail optical chains, in its acquisition of another retail optical chain, Eyeglass World.

#### Special committee representation for board of healthcare company

Represented Audit Committee and a Special Committee of the Board of a NYSE-listed healthcare information technology company in their investigations of a series of employee allegations of accounting irregularities related to revenue recognition.

#### Stock-for-stock merger of a public textile business

Represented a Special Committee of the Board of a public textile company in its consideration and consummation of a stock-for-stock merger with an affiliated company.

#### Merger agreement with Scientific Conservation, Inc.

Represented Servidyne, Inc., a building efficiency services provider with shares listed on NASDAQ, in its consideration of strategic alternatives, negotiation, and execution of a merger agreement with Scientific Conservation, Inc. providing for the acquisition of all the shares of Servidyne.

#### Sale of interest in a joint venture

Represented Miller Industries, Inc. (NYSE: MLR) in its March 2014 sale of all of its interest in a manufacturing joint venture to its joint venture partner. The purchase price was not announced.

#### Acquisition of International Resource Partners for James River Coal Company

The firm assisted James River Coal Company (James River) in its acquisition of International Resource Partners (IRP) for \$515 million in cash. We assisted our client in negotiation of a \$400 million bridge loan commitment, three separate offerings of \$180 million of common stock in an SEC registered offering and \$230 million of convertible notes and \$275 million of senior notes in private placements to institutional investors, and a \$150 million tender offer for all of its outstanding senior notes. All three offerings raised total proceeds of approximately \$685 and closed along with the acquisition of IRP in April 2011.

#### Venture capital investment fund for a health care investment company

Represented a venture capital fund focused on the health care industry in connection with multiple investments.

#### Executive suite transition arrangements

Represented the Governance and Compensation Committee of the Board of a NYSE-listed financial services company in their negotiation of transition arrangements with their retiring Co-Chief Executive Officers and of new employment agreements for the new Chief Executive Officer and other C-level executives.

#### Security financing and exchange offer for National Vision Inc.

Assisted National Vision Inc., a national eyeglass retail chain, in issuance of \$125 million principle amount of 12.75% senior notes with a Rule 144A exchange offer.

#### Corporate governance investigation for a Midwest-based REIT

Represented a Midwest-based REIT in a corporate governance investigation. The firm reported to an audit committee of the NYSE-listed issuer regarding various corporate governance and disclosure issues arising out of an SEC investigation.

#### Special committee Section 16(b) liability investigation

Representation of independent board members investigating whether to pursue claims by a shareholder that certain officers, directors and underwriters in the company's initial public offering had violated Section 16(b) short swing trading prohibitions.

#### Centennial Healthcare going-private transaction

Represented the Special Committee of the Board of Centennial Healthcare, an operator of more than 100 nursing home facilities, in its consideration of two going-private proposals. The first \$300 million proposal was ultimately terminated after the commencement of a governmental investigation. We represented the Special Committee in a subsequent transaction for approximately \$180 million.

#### Proxy contest for Emageon Inc.

Represented Emageon Inc., a publicly traded medical image software developer, in connection with a hostile proxy contest by Oliver Press Partners, LLC, a New York based investment firm, seeking to place three nominees on Emageon's board of directors.

\*Experience gained by attorney prior to joining Kilpatrick Townsend

## **Publications, Articles and Speaking Engagements**

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### **The Outlook For M&A In Southeastern US**

Law360, January 26, 2017

"The Outlook For M&A In Southeastern US," Law360, January 26, 2017

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### **Special Issues When Acquiring Assets and Divisions**

February 25, 2016

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### **Rule 506(c) And The Future Of Private Placement Practices**

Law360, August 05, 2013

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### **Private Equity M&A**

State Bar of Georgia CLE Seminar, February 28, 2013

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### **The JOBS Act: What to Expect from the Not-So-Private Private Placement**

VCExperts, August 30, 2012

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### **New JOBS Act Facilitates Private and Public Capital Formation**

Cyberspace Lawyer, May 01, 2012

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### **The JOBS Act: What to Expect from the Not-So-Private Private Placement Regulations**

Corporate Compliance Insights, April 27, 2012

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### **Effective Lead Directors**

NACD Panel Discussion, April 18, 2012

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### **Private Equity Issues in M&A**

PLI Negotiated Corporate Acquisitions Seminar, February 22, 2012

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### **Public Company M&A**

Southeastern M&A/Private Equity Forum, October 12, 2011

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### **Issues in Public Company M&A**

National Association of Corporate Directors, March 16, 2011

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### **Implications of Board of Governance: What Can Go Wrong?**

Institute of Internal Auditors International Conference, June 08, 2010

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### **Corporate Governance for the Financier Worldwide**

Corporate Governance Roundtable for the National Association of Corporate Directors, March 15, 2010

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### **Putting the Brakes on Executive Compensation**

Fulton County Daily Report, November 30, 2008

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### **Private Equity Overview**

PLI Seminar, January 31, 2008

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### **Private Equity M&A**

Business Law Institute, October 07, 2007

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### **Topics of Interest to Public Company Directors**

National Association of Corporate Directors, September 01, 2007

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### **Investigating Strategic Alternatives**

National Law Journal, June 01, 2007

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### **Activist Hedge Funds**

National Association of Corporate Directors/Association for Corporate Growth, June 01, 2007

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Private Equity and M & A  
Business Law Institute, October 15, 2006

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Issues in Public Company M & A  
Southeastern M&A Forum, September 15, 2006

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Going Private: The Best Option?  
National Law Journal, June 15, 2003

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### **Professional & Community Activities**

American Bar Association, Federal Regulation of Securities Subcommittee, Member

Atlanta Bar Association, Member and Past Chairman of the Business Practice Section

Partnership Against Domestic Violence, Board of Directors, Member and Treasurer

State Bar of Georgia, Member and Past Chairman of the Business Law Section, and Past Chairman of the Business Law Section's Securities Committee

### **Education**

University of North Carolina at Chapel Hill, J.D. (1982)  
*with honors*

Emory University, B.A. (1978)

### **Bar Admissions**

Georgia (1982)