

# Paul R. Bessette

Retired Partner | King & Spalding  
Founder | Bessette Law PLLC



Paul is a senior litigation partner who retired from King & Spalding LLP in 2024, where he served as co-chair of the Firm’s Corporate & Securities Litigation Practice. Paul has decades of experience litigating high stakes, bet-the-company securities class action and shareholder litigation, as well as complex commercial and business litigation. He also works regularly with board committees leading internal investigations and advising companies on governance and fiduciary duty issues.

Paul has been ranked and recognized for 20 years by *Chambers*, *Best Lawyers in America*, *Legal 500*, *Super Lawyers* and *Lawdragon*, among others. He is rated AV® Preeminent™ by Martindale-Hubbel. Client and peer reviews in *Chambers* say Paul “has a fast growing reputation for the quality of his representation in a wide range of securities matters. Market sources laud his ability to engage with company directors, saying that he ‘is a very strong boardroom guy with a good team around him.’” “Practicing in this area is an art, and he is very good at it.”

Paul frequently speaks and writes on shareholder litigation, corporate disclosure, corporate governance and related topics. He has authored numerous securities-related articles for publications including *ABA Business Law Today*, *Insights*, *Financial Executive*, *Law360*, *Financial fraud Law Report*, *The D&O Diary*, *Bloomberg Law Reports*, *National Underwriter* and *The Securities Reporter*.

## Significant Matters

*Digital Turbine, Inc.:* Paul and his team represented the Company and its executives in a securities class action lawsuit arising out of a 2021 restatement of financial results following two acquisitions of companies in the digital advertising space. We secured a motion to dismiss victory in 2023, and then we won dismissal of the case with prejudice in 2024.

*SolarWinds Corp.:* Paul and his team defended the Company and former executives in a securities class action lawsuit in the Western District of Texas alleging claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934. The lawsuit arose after SolarWinds’ December 2020 announcement that it had been victimized in a cutting-edge cyberattack seeking to compromise systems of SolarWinds’s U.S. Government and Fortune 500 clients that use its Orion software. The novel attack has been described as “the largest and most sophisticated” cyberoperation ever executed. It is estimated that more than 1,000 highly skilled engineers working on behalf of the Russian Foreign Intelligence Service took part in the attack. On March 30, 2022, the

Court entered an order granting dismissal of plaintiff's Section 10(b) claims against SolarWinds' former CEO, whom King & Spalding also represented, but allowing plaintiff's remaining claims to proceed to the discovery phase. The parties thereafter mediated the case and reached a settlement.

*Phunware, Inc.:* Paul and his team represented the Company and its pre- and post-SPAC officer and director defendants in a shareholder suit alleging breaches of fiduciary duty, a Delaware corporate law statutory claim, statutory fraud under Texas law and Texas Securities Act claims. Originally filed in Texas, the suit was transferred to the Delaware Chancery Court after King & Spalding successfully moved to transfer the case. This case is an early example of litigation following the recent SPAC transaction boom. Plaintiffs are investors in the pre-SPAC target company that invested in various early rounds of financing while the Company was privately held. The lawsuit followed the de-SPAC merger; plaintiffs allege that Phunware should not have subjected their shares to a 180-day lock-up following the de-SPAC transaction. During the 180-day period following the de-SPAC transaction, Phunware's stock price rose by hundreds of dollars per share but ultimately dropped significantly before the end of the lock-up period. Plaintiffs, who collectively owned more than 1 million Phunware shares, seek damages, including the lost value of their shares during the lock-up period, as well as costs and professional fees. Vice Chancellor Cook granted Phunware's motion to dismiss on the Texas Securities Act and statutory fraud claims and denied plaintiffs' partial motion for summary judgment on the Delaware statutory claim.

*Shattuck Labs:* Paul and his team represented the Company, its CEO and founder, CFO, Executive Chairman of the Board and founder, and members of the Board in a securities class action in the Eastern District of New York. The Company is a clinical-stage biotechnology company developing a new class of biologic medicine. The initial drug product candidates are in immuno-oncology. Shattuck was conducting a Phase I dose escalation clinical trial to determine the safety of its drug in late-stage cancer patients. Based on a misreading of scientific results, Plaintiffs argued that Shattuck misled investors about the efficacy of the drug in that trial. After we filed a compelling motion to dismiss, Plaintiffs chose to settle the matter cheaply.

*In re PolarityTE:* Paul and his team represented the Company and its executives in a securities class action in the District of Utah. The lawsuit alleged that PolarityTE made false and misleading statements regarding the registration of its SkinTE product with the FDA, the Company's manufacturing facilities, and its new drug application for SkinTE. We won two motions to dismiss—the second with prejudice.

*Evolent Health, Inc.:* Paul and team represented the Company and several of its current and former executives in a securities class action lawsuit filed in the Eastern District of Virginia that asserted securities fraud claims arising from the Company's acquisition of its largest customer, a Kentucky Medicaid organization called Passport Health Plan. The operative complaint alleged that more than 20 statements were false or misleading, but after our compelling motion to dismiss, the court dismissed more than three quarters of the plaintiffs' allegations. This shortened the Class Period and significantly reduced the Company's exposure. Plaintiffs then filed a third amended complaint, and the third motion to dismiss was granted in part. Discovery into the remaining claims moved forward on a compressed "rocket docket" timeline, along with the class certification portion of the case. The parties reached a favorable settlement after a second mediation session.

*Adeptus Health, Inc.:* Paul and team defended the former CEO in breach of fiduciary duty actions in the Eastern District of Texas and in Delaware Chancery Court, brought by the Litigation Trustee appointed during Adeptus's bankruptcy. The Trustee alleges that the CEO and various directors benefited from synthetic offerings at the expense of the Company, and also that the CEO pursued a reckless growth strategy that harmed the long-term prospects of the Company. We aggressively litigated and settled the Trustee action. We also defended the CEO in a related federal securities class action and a Texas State Court opt-out case, both brought by shareholders of Adeptus alleging that former officers knowingly or recklessly made misleading and untrue statements to investors in Adeptus's registration statement for its IPO and in several secondary public offerings,

and in subsequent press releases and SEC filings regarding its free-standing emergency room operations, and failed to disclose material weaknesses in its internal accounting practices. We reached favorable settlements in both shareholder actions as well.

*FXCM, Inc.*: Obtained a hard-won dismissal for FXCM, Inc., its CEO, and its CFO in a securities class action following the Swiss National Bank's unprecedented decision to allow the Swiss franc to trade freely against the euro. The Southern District of New York dismissed the case holding that FXCM's losses were attributable to an unforeseeable market event, not to any fraud or recklessness by FXCM and its management. The Second Circuit remanded to allow the District Court to consider evidence from a regulatory investigation that concluded after the case was dismissed. The District Court once again dismissed the case and the Second Circuit affirmed the judgment. 767 Fed. App'x 139 (2nd Cir. 2019).

*In re Hanger, Inc.*: Obtained dismissal of a case against Hanger and its CEO that involved a large, four-year restatement and an audit committee investigation that concluded that some members of management created "cookie jar" reserves to smooth earnings and set an inappropriate "tone at the top." In a panel opinion in August 2018, the Fifth Circuit reversed and remanded for further proceedings. After filing for panel rehearing and rehearing *en banc*, the panel vacated its August 2018 opinion and replaced it with a decision that fully affirmed the district court's dismissal with prejudice. The panel held that the plaintiffs' allegations constituted the impermissible group pleading of scienter and did not adequately address the individual defendants' state of mind. 768 Fed. App'x 175 (5th Cir. 2019).

*Neiman v. Bulmahn, et al.*: The Fifth Circuit affirmed an August 2015 district court dismissal of a putative class action filed by ATP shareholders under the Securities Exchange Act of 1934. The shareholders accused ATP's former officers of committing securities fraud by misrepresenting various aspects of the company's business prior to bankruptcy, including its production from a particular oil-and-gas well, its liquidity, and the resignation of its CEO. The Fifth Circuit held that the shareholders failed to satisfy the heightened standard for pleading scienter. 854 F.3d 741 (5th Cir. 2017).

*In re SemCrude L.P.*: Obtained a permanent injunction preventing investors in bankrupt oil-and-gas company from bringing derivative claims against former CEO in Oklahoma state court. A successful Third Circuit appeal won reversal of orders that had denied injunctive relief, with the court quoting the former CEO's brief in a published opinion on the distinction between derivative and direct claims. 796 F.3d 310 (3rd Cir. 2015).

*Miyahira v. Vitacost.com, Inc.*: Obtained a full dismissal of plaintiff's claims under the Securities Act of 1933 for misleading statements in Vitacost's IPO prospectus. The Eleventh Circuit affirmed the dismissal, holding that the complaint did not state a claim for relief despite reliance on ten confidential witnesses and over 100 pages of allegations. This decision is significant given the nearly strict-liability nature of plaintiff's Securities Act claims. 715 F.3d 1257 (11th Cir. 2013).

*Bell v. Ascendant Solutions, Inc.*: Defeated class certification in a securities fraud class action involving alleged fraud in connection with an IPO. In a widely followed opinion, the Fifth Circuit upheld the denial of class certification based on argument that the company's stock did not trade in an efficient market during the class period. 422 F.3d 307 (5th Cir. 2005).

*In re Crossroads Systems, Inc. Securities Litigation*: Obtained summary judgment in a securities fraud class action where the plaintiffs alleged that the company improperly accounted for inventory reserves and sought more than \$800 million in damages. The Fifth Circuit affirmed in *Greenberg v. Crossroads Sys., Inc.*, 364 F.3d 657 (5th Cir. 2004). This opinion is one of the key Fifth Circuit cases on what plaintiffs must show to demonstrate entitlement to the fraud-on-the-market presumption of reliance, a key element of a §10(b) securities-fraud claim.

# Credentials

## EDUCATION

Law Degree, Baylor Law School  
B.A./B.B.A., The University of Texas at Austin

## ADMISSIONS

Supreme Court of the United States  
U.S. Court of Appeals for the Second Circuit  
U.S. Court of Appeals for the Third Circuit  
U.S. Court of Appeals for the Fifth Circuit  
U.S. Court of Appeals for the Ninth Circuit  
U.S. Court of Appeals for the Eleventh Circuit  
U.S. District Court for the Eastern District of New York  
U.S. District Court for the Southern District of New York  
U.S. District Court for the Eastern District of Texas  
U.S. District Court for the Northern District of Texas  
U.S. District Court for the Southern District of Texas  
U.S. District Court for the Western District of Texas  
U.S. District Court for the Central District of California  
U.S. District Court for the Eastern District of California  
U.S. District Court for the Northern District of California  
U.S. District Court for the Southern District of California  
California  
New York  
Texas

# Recognition

Fellow, Litigation Counsel of America  
LITIGATION COUNSEL OF AMERICA, 2024

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Recognized by Leading Lawyers of America  
LEADING LAWYERS OF AMERICA, 2024

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"Paul is great at handling complexity." "Paul is really well-spoken advocate. He is very succinct."  
BANK 1: LITIGATION: SECURITIES, CHAMBERS 2024

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Recommended for Securities Litigation Defense  
LEGAL 500 UNITED STATES 2024 GUIDE

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"Knowledgeable and experienced in dealing with securities litigation; very practical and efficient."  
CHAMBERS USA 2023, BAND 1

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Recognized by Best Lawyer  
THE BEST LAWYERS IN AMERICA - 2023

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"One of the best defense counsel in the industry—combines legal acumen, bus. awareness, communication & responsiveness."

CHAMBERS USA, LITIGATION, 2022, BUSINESS TODAY 2023

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"He's very substantive and analytical as well as timely in providing information to clients. A strong securities player."

CHAMBERS, 2021

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Acts on behalf of corporations and their Ds&Os in high-stakes securities litigation, including enforcement actions.

CHAMBERS USA, 2020, BAND 2

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Paul Bessette maintains a specialty in securities litigation, which includes SEC enforcement actions and class actions.

CHAMBERS, LITIGATION: SECURITIES-TEXAS 2019, BAND 2

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"An expert in the area and knows it extraordinarily well" "Practicing in this area is an art, and he is very good at it"

CHAMBERS USA 2018, BAND 2

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Paul "has a fast growing reputation for the quality of his representation in a wide range of securities matters."

CHAMBERS USA, 2016

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"Market sources laud his ability to engage with company directors"

CHAMBERS USA, 2016

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Paul "is a very strong boardroom guy with a good team around him."

CHAMBERS USA, 2016

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"Strength in a full range of securities litigation matters."

U.S. NEWS & WORLD REPORT, 2015

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Recognized for Securities Litigation  
THE BEST LAWYERS IN AMERICA, 2011–2025

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One of "100 Lawyers You Need to Know in Securities Litigation"

LAWDRAGON, 2008

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One of "3000 Leading Lawyers in America"  
LAWDRAGON.COM, 2006, 2010–2011

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Recognized by Texas Super Lawyers  
SUPER LAWYERS MAGAZINE, 2007–2019

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Recognized for Securities Litigation  
SUPER LAWYERS, CORPORATE COUNSEL EDITION, 2009–2010

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## Insights

### ARTICLE

*October 15, 2022 • Source: Harvard Law School Forum on Corporate Governance*  
Chancery Court Decision Illuminates Contours of Director Oversight Liability

*July 18, 2014 • Source: Business Law Today*  
Halliburton Ruling: High Court Affirms Basic v. Levinson

### CLIENT ALERT

*April 25, 2023*  
Dismissal of Securities Claims Against Utah Biotech Company Provides Guidance in Securities Cases Involving Food & Drug Administration Form 483 Inspections

*September 26, 2022*  
Delaware Chancery Court Decision Dismissing Claims Against SolarWinds Corporation's Board Illuminates Contours of Director Oversight Liability

*September 23, 2015*  
Disclosure-Only Settlements Face Continued Scrutiny In Delaware

*September 2, 2015*  
Delaware Chancery's In re Dole Food Co., Inc. Decision Provides Lessons For Corporations Considering Going Private

*May 19, 2015*  
Cornerstone Lets Directors Use 102(b)(7) Even Under Entire Fairness Review

*March 31, 2015*  
U.S. Supreme Court's Omnicare Decision Leaves Open Narrowed Theory Of Liability For Statements Of Opinion Under Federal Secur

*March 20, 2015*  
Delaware Court Refuses To Enforce Fee-Shifting Bylaw Against Former Shareholder Who Was Cashed Out Before Its Adoption

June 24, 2014

Supreme Court Affirms Basic In Halliburton Decision

## News

### CASES & DEALS

January 3, 2022

Trulieve Cannabis Corp Wins Dismissal with Prejudice of Securities Fraud Class Action

December 30, 2021

Trulieve Cannabis Corp. Wins Dismissal of Securities Fraud Class Action

April 24, 2017

King & Spalding Wins Significant Fifth Circuit Ruling on Behalf of Former Officers of Bankrupt Energy Company

August 18, 2015

King & Spalding Wins Dismissal of \$1.5 Billion Class Action Against Former ATP Oil & Gas Corp. Officers

August 17, 2015

King & Spalding Obtains Third Circuit Win on Behalf of Former Oil-and-Gas CEO

### IN THE NEWS

July 6, 2023 • Source: Law360 and Reuters

Paul Bessette and Mike Biles obtain a favorable dismissal on behalf of more than a dozen former SolarWinds executives and directors in a shareholder derivative case before a Texas federal court

June 16, 2023 • Source: Law360

Paul Bessette, Mike Biles and Daniel Wodnicki represent Phunware and its predecessors, officers and directors in a SPAC merger dispute before the Delaware Chancery Court

May 17, 2023 • Source: Law360 and Bloomberg Law

Paul Bessette, Mike Biles, Tyler Highful, Benjamin Lee and Benjamin Watson represent SolarWinds before the Delaware Supreme Court, which dismissed a stockholder derivative suit against the company related to a cyberattack

April 26, 2023 • Source: Law360

Paul Bessette, Michael Biles, Tyler Highful, Benjamin Lee and Benjamin Watson represent SolarWinds in a class action dispute with shareholders related to a cyberattack before the Delaware Supreme Court

November 22, 2022 • Source: LexBlog and Law360

Paul Bessette and Michael Biles counsel SolarWinds in its class action data breach settlement

October 3, 2022 • Source: Law360

Paul Bessette, Michael Biles and Daniel Wodnicki represent SolarWinds in a class action dispute with shareholders related to a cyberattack

September 8, 2022 • Source: Law360 and Bloomberg Law



Paul Bessette, Mike Biles, Daniel Wodnicki, Benjamin Lee and Benjamin Watson advise SolarWinds before the Delaware Chancery Court, which dismissed a stockholder derivative suit against the company related to a cyberattack

*August 10, 2022 • Source: Law360 and Bloomberg Law*

Ashley Parrish, Paul Bessette, Mike Biles, Jill Carvalho, Michael Smith, Cheri Grosvenor and Peter Starr counsel Evolent Health on its settlement with investors

*January 4, 2022 • Source: Law360 and Bloomberg Law*

Cheri Grosvenor, Jill Carvalho, Joe Akrotirianakis, Mike Biles and Paul Bessette advise Merit Medical Systems in a class action settlement

*January 3, 2022 • Source: Law360 and Bloomberg Law*

Paul Bessette and Mike Biles counsel Trulieve Cannabis before a Florida federal court, which dismissed a securities fraud class action lawsuit against the company