

Qualcomm Books & Records Litigation

COURT: Delaware Court of Chancery

CASE LEADERS: Mark Lebovitch

On January 2, 2013, BLBG, on behalf of the New York State Common Retirement Fund (the “Fund”), filed an action against QUALCOMM Incorporated (“Qualcomm” or the “Company”) pursuant to Section 220 of the Delaware General Corporation Law (“Section 220”) seeking access to information about how Qualcomm is spending corporate funds in the political arena. [Click here to see the Fund’s complaint.](#)

In 2010, the United States Supreme Court’s decision in *Citizens United v. Federal Election Commission* expanded the powers of corporate fiduciaries to spend shareholder funds in the political arena. A principal corollary of the Supreme Court’s decision to nullify pre-existing restraints on corporate political spending was that corporations would actually disclose their political spending to their shareholders or, at the very least, that shareholders could otherwise obtain this information.

In the wake of the *Citizens United* decision, corporate political spending increased dramatically. Shareholders now face a heightened risk that corporate fiduciaries could be using shareholder funds to achieve personal objectives which may be antithetical to the best interest of the corporation and its shareholders. Moreover, academic studies have shown a negative correlation of corporate political spending levels with corporate value levels.

To mitigate these risks, the Fund has engaged in a comprehensive corporate governance initiative to urge companies in which it invests to fully disclose their political spending, including friendly engagement and proxy solicitation efforts. While a significant number of America’s largest companies have heeded the Fund’s request for transparency, Qualcomm continued to obscure its political spending. Qualcomm’s website lacked meaningful disclosure regarding the Company’s corporate giving. As a result, the Company received a low ranking on the 2012 CPA-Zicklin Index of Corporate Political Accountability, a comprehensive study detailing how the largest U.S. companies disclose their political spending.

The Company’s lack of disclosure regarding political spending does not mean Qualcomm is not politically active. Qualcomm spent more than \$4.5 million on federal lobbying efforts in 2012. Moreover, senior figures associated with Qualcomm, including the Company’s current CEO as well as his father, the Company’s founder and a Qualcomm director until 2012, are widely reported to be politically active and in recent years have donated more than \$2 million of their personal funds in furtherance of political purposes. Thus, the Fund, the largest public pension fund holder of Qualcomm stock, was concerned that Qualcomm’s senior executives and directors may have been spending corporate resources to support their favored political candidates or causes in a manner not focused solely on creating stockholder value.

In an attempt to allay these concerns, on August 29, 2012, the Fund sent Qualcomm a Section 220 demand to inspect certain books and records related to the Company’s political spending. Despite repeated efforts to engage with Qualcomm to obtain increased transparency without litigation, Qualcomm refused to provide the Fund with any of the requested books and records. Thus, on January 2, 2013, BLBG, on behalf of the Fund, filed an action under Section 220 to exercise its statutory right to obtain information about how Qualcomm is spending corporate funds in the political arena.

On February 22, 2013, the Fund and the Company announced that following informative discussions and the Company's implementation of a revised political spending disclosure policy on its website, the Fund decided to withdraw the Section 220 lawsuit. The Company's new disclosure policy will provide Qualcomm stockholders with comprehensive information regarding its corporate political spending. Qualcomm will post online the Company's contributions to political candidates and political parties, political expenditures to trade associations and Section 501(c)(4) organizations and contributions to influence ballot measures. Click [here](#) to see Qualcomm's new political spending disclosure policy and click [here](#) to see the joint press release announcing the implementation of the disclosure policy.

The Company's revised policy has been lauded by the Center for Political Accountability ("CPA"). According to Karl Sandstrom, General Counsel of the CPA and former Commissioner of the Federal Election Commission, "Qualcomm's new disclosure policy puts it near the top of the CPA-Zicklin Index of Corporate Political Accountability and Disclosure. With this new policy, Qualcomm will become the standard bearer for corporations looking to provide stockholders with transparency with respect to its political spending."

Case Documents

- January 2, 2013 - Verified Complaint
- January 2, 2012 - Qualcomm Verified Complaint