

BLB&G and NYSCRF Prosecution of *Qualcomm* Litigation Improves Transparency of Corporate Political Spending

February 22, 2013

With the successful resolution of the *Qualcomm Books & Records Litigation*, BLB&G and its client the New York State Common Retirement Fund ("the Fund") have broken potentially important new ground that can help the shareholder community in general.

In *Citizens United v. FEC*, 558 U.S. 310 (2010), the United States Supreme Court made it easier for corporate directors and executives to secretly use company funds - shareholder assets - to support personally favored political candidates or causes. Hidden corporate political spending has broad implications for the future of our democracy, and raises significant shareholder rights issues as well. In response to the *Citizens United* case, the institutional investor community has aggressively sought ways to obtain broader disclosure of corporate political activities.

Many shareholders have publicly and privately urged public companies to enhance their disclosures of political spending. These efforts have been successful with many companies. But because compliance is voluntary, these efforts cannot account for the companies for whom disclosure is most important - those who have something to hide in their political spending. Without meaningful regulation from the SEC or legal precedent to require public disclosure of political spending, shareholder efforts to improve transparency faced a roadblock.

In the Summer of 2012, the New York State Common Retirement Fund (the "Fund") retained BLB&G's Corporate Governance team to represent it in pursuing a novel alternative. In late August, the Fund demanded, pursuant to Section 220 of the Delaware General Corporation Law, that technology giant Qualcomm Inc. provide the Fund with corporate books and records reflecting its prior political spending. Section 220 lets shareholders obtain certain corporate books and records upon making a proper demand and showing a proper purpose for the request. While Section 220 is regularly used by shareholders seeking to investigate corporate malfeasance, it had never before been used to obtain disclosure of corporate political spending. After Qualcomm refused to provide the Fund with any of the requested books and records, on January 2, 2013, BLB&G filed a lawsuit on behalf of the Fund to enforce its rights under Section 220.

On February 22, 2013, following extensive private disclosures and constructive discussions, Qualcomm adopted a Political Contributions and Expenditures Policy that will provide its shareholders with comprehensive disclosures regarding the Company's political activities.

According to Thomas P. DiNapoli, New York State Comptroller and trustee of the Fund, Qualcomm's new policy represents "a significant milestone" and "sets a high standard for transparency in corporate political spending disclosure." Similarly, Karl Sandstrom, General Counsel of the CPA and former Commissioner of the Federal Election Commission, applauded the outcome of the action. Sandstrom stressed that "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."

Mark Lebovitch, the head of BLB&G's corporate governance practice, added that "every public company should be disclosing its use of shareholder funds for political activities when shareholders ask. Qualcomm's significant actions show that companies that don't have anything to hide can make these disclosures available to the public. And the law has to require disclosure from the companies that hide their political activities."