

## Rising Star: Anderson Kill's David Graff

By Jamie Santo



*Law360, New York (April 25, 2014, 11:14 PM ET)* -- Charting a path that reaches China via Delaware, Anderson Kill PC's David Graff has helped shareholders of nonreporting foreign companies receive both records and recoveries, earning him a place as one of Law360's top 10 securities attorneys under 40.

A shareholder at Anderson Kill in New York and head of the firm's foreign investment recovery group, the 31-year-old Rising Star has built a reputation on getting results in Delaware Chancery Court for investors left at loose ends by Chinese companies that have gone dark.

Graff is a frequent visitor to the First State, where in the past two years he's successfully represented shareholders of China-based ZST Digital Networks Inc., Yinlips Technology Inc. and Southern China Livestock Inc.

Leading off with Section 220 books-and-records suits, Graff has helped investors get not just corporate documents but recoveries by convincing the Chancery Court to employ a range of remedies including contempt orders, limited receivers, and the right for investors to put their shares to the company.

"It all starts with very good friendships, a very good client base," Graff told Law360. "It allows me to be creative and aggressive in pursuing new remedies."

These methods got their first road test in ZST Digital, a case begun while he was Windels Marx Lane & Mittendorf LLP, when having won a court order for books and records, Graff and his team found themselves facing a company unwilling to hand them over.

They evaluated their options under Delaware law, Graff said, but determined a per diem fine wasn't going to compel the company to act, while revoking the corporate charter would hurt more than it helped.

"We needed a remedy that would benefit our client, but not harm the company, as, after all, our client owned a significant part of that company," Graff said.

They decided on a limited-purpose receiver, creating an arm of the court to able to deal and dispose with a judgment, and the client also determined he no longer needed to be invested in the company.

The problem with the second part was how to get out of the investment, Graff said.

“If a company stops reporting to the SEC and fails to provide information to the market, you can't value its shares, Graff said.

In March 2013, Vice Chancellor J. Travis Laster signed off on Graff's proposed order allowing his client to put the shares back to ZST at \$8.21 — their last reported book value — and appointing a receiver to enforce the court's orders.

Graff has since fine-tuned the valuation technique, utilizing available data to create a price-to-book multiple that provides investors with a fair value return.

“The importance of this can't really be overstated because you need to look at the cost basis,” Graff said. “The book value remedy already yielded a significant gain for investors over the cost basis of their investment and, with the potential for multiples to be applied to the book value, the potential for return may be significant.”

Anderson Kill clients have seen the method in action recent months.

In February, Vice Chancellor Donald F. Parsons Jr. accepted the valuation method and allowed the plaintiff to put Yinlips stock to the company at \$5.49 per share. Vice Chancellor John W. Noble took a similar view of the method in March, accepting \$8.96 as the fair value for SCLI stock.

“It's a unique and different technique for an investor who believes he's subject to a company playing games with accounting” Graff said.

The remedy isn't China-specific, Graff said, and also promises shareholders a greater return than the traditional method suing a company for accounting fraud.

“When representing equity holders, it is important to recognize they want to share in the the upside of the company,” he said.

Put rights and valuation techniques have now been blessed by three different vice chancellors, but Graff said he couldn't have explored them in the first place without clients willing to pursue new methods.

“You also need to work with people who aren't going to look at you like you're out of your mind, people who are willing to go down the rabbit hole with you,” he said.

Graff earned his law degree from Touro College's Jacob D. Fuchsberg Law Center in 2008, when the burgeoning economic crisis presented a host of investors needing to recover distressed assets.

He joined DeCotiis FitzPatrick & Cole LLP fresh out of law school, and the New Jersey boutique provided him the opportunity to hone his talents.

“Unlike a lot of folks, I got a lot of experience in trials, court, depositions, at a very young age,” Graff said. “In my first and second year, I was allowed to handle cases right away.”

Emboldened by the knowledge he could handle cases from beginning to end, Graff moved on Windel Marx.

“At that firm, I was able to have the freedom to go out into the marketplace and market these skills,” he said.

Graff joined Anderson Kill in June 2013, and everything has come together.

“The firm provides such a broad base of support, presenting you with resources, marketing and such good lawyers, from senior statesman to junior associates,” Graff said. “Since I've been there, the practice, which was growing at nice rate, has exploded.”

The Anderson Kill foreign investment recovery group — created following Graff's arrival — brings eight attorneys to bear for clients looking to monetize nonperforming instruments, whether they hold equity, debt or other esoteric investments.

Combining creatives techniques and attention to detail allows the group to operate in a cost-effective and streamlined way, Graff said.

“The real purpose of the group is to provide individuals and entities who have come out of the financial crisis holding nonperforming assets with a way to realize the fair value of those assets — as they expected when they invested.”

--Editing by Chris Yates.