

## Résumé

### John H. Bitner

Born: Indianapolis, Indiana, 1940

Spouse: Vicki D'Ianni Bitner, 1961; three daughters; four grandchildren

College: Northwestern University, A.B. 1961  
English and History (double major)  
Delta Upsilon Fraternity

Law School: Columbia University, J.D. 1964, *cum laude* (top 7%)  
Editor, Columbia Law Review  
Harlan Fiske Stone Scholar  
Board of Student Advisers; Phi Delta Phi Fraternity

Occupation: Lawyer, Bell, Boyd & Lloyd LLP, Chicago, Illinois (now  
K&L Gates LLP) 1964-2008  
Partner, 1972 – 2008; now retired  
Specializing in corporate and securities, m&a, governance  
Chair or co-chair of corporate and securities group, 1986 - 1999  
Vice chair of executive committee, 1991 - 1999  
Member of firm's policy, compensation, development (past  
chair), recruiting and charitable contributions (past chair)  
committees

Arbitrator/Mediator/Expert Witness/M&A instructor<sup>1</sup> - 2007 - Present

Member: Roster of Neutrals, American Arbitration Association  
FINRA Public Arbitrator  
Arbitrator (chair qualified), Cook County Mandatory Program  
Union League,<sup>1</sup> Glen View<sup>1</sup> and Lawyers<sup>1</sup> Clubs  
American Bar and Chicago Bar Associations  
Life Fellow, American Bar Foundation  
Board of Visitors (Steering Committee),<sup>1</sup> Columbia Law School  
Board of Directors,<sup>1</sup> St. Gregory Episcopal Choir School  
Board of Directors,<sup>1</sup> Chicago Crime Commission  
Board of Directors,<sup>1</sup> James B. Moran Youth Advocacy Center  
Listed, The Best Lawyers in America, 1986 -  
Who's Who in America, 1990 –  
Adjunct Lecturer in M&A,<sup>1</sup> Northwestern University, Harvey  
Kapnick Business Institutions Program

<sup>1</sup>Not currently active in this entity or capacity.

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References: Karen Gowland, Vice President and General Counsel,<sup>1</sup>  
Boise Cascade LLC  
James H. Becht, Vice President and Deputy General Counsel,<sup>1</sup>  
International, Deere & Company  
Gary P. Schmidt, Senior Vice President and General Counsel,<sup>1</sup>  
Alberto-Culver Company  
David C. Sienko, General Counsel, Hecla Mining Company  
Marschall I. Smith, Senior Vice President and General  
Counsel,<sup>1</sup> 3M Corporation

Professional:

- Articles: on lawyers letters to auditors, attorney-client privilege in sensitive payments investigations, securities law topics, National Law Journal and Chicago Bar Record
- Addresses: on hostile takeovers, proxy contests, shareholder proposals, m&a developments, American Society of Corporate Secretaries and Chicago Bar Association
- Seminars: on going public, takeovers, emerging biotechnology issues, board and special committee investigations, National Business Institute and Northwestern University

From approximately 1966, my practice was concentrated in corporate and securities work, including representing issuers and underwriters in public offerings of stock and other securities, buyers and sellers in negotiated acquisitions and divestitures, incumbent management and insurgents in proxy contests for corporate control, targets and aggressors in hostile takeover battles, and numerous issuer-clients in connection with both routine and special filings or proceedings before the SEC, including sensitive payments investigations of six NYSE-listed clients and more recent audit and special committee internal investigations.

My m&a work has varied from negotiated to hotly-contested, small to very large, and includes several years of intense experience with three clients with “shelf” registration statements used for acquisitions. I was the principal outside lawyer for Alberto-Culver, Aramark, Baxter, Boise Cascade, Deere, W.W. Grainger, Hecla Mining, IMC Global, Motorola, Waste Management and Storage Technology in several corporate transactions, including acquisitions, divestitures and joint ventures, with an aggregate value of several billion dollars.

Corporate and securities work included several public offerings (including initial and follow-on offerings, Reg S, Rule 144A and lesser voting stock), and supervision of the defense of several Rule 10b-5 class action and stockholder derivative suits relating to alleged nondisclosures by a highly-regulated client.

Other litigation experience includes proxy contest, takeover and refusal to close lawsuits in Delaware state court, federal district courts in Illinois, Washington, New Mexico and Minnesota and in the Ninth Circuit. I have also provided expert witness testimony on corporate and federal securities law issues in federal district court proceedings in Iowa and Kansas and served as an expert on such issues in the defense of three large, national law firms against attorney malpractice claims.

In 1999-2000, I represented Deere in two significant acquisitions, one in South Africa and one in Finland (Timberjack, for \$600 million). In 2001-03, I represented Hecla Mining in a contested divestiture, two issuer tender offers and a \$100 million public offering. In 2003, I represented Boise Cascade in its \$1.3 billion acquisition of OfficeMax, and in 2004, in its \$1.1 billion self-tender for ten issues of public debt. In 2004-05, I represented an audit committee of a NASDAQ-100 company in an internal accounting investigation, and, in 2006-07, a special board committee in two investigations of employee stock option misdating. I have had significant recent experience with SOX compliance and corporate governance counseling.

One aspect of my work I found appealing was the frequent contact with companies in lines of business that were new to me, and working closely with their chief executive, financial and legal officers. I found battles for corporate control very stimulating; I also appreciated the more constructive nature of negotiated corporate transactions and counseling.

As chair or co-chair of my firm's corporate and securities group for 14 years (when it more than doubled, to approximately 60 lawyers), I had the opportunity to work with my colleagues and interface with them, our staff, our clients and potential clients and the legal and other communities to strengthen the ability of our group and our firm to provide the best possible service to our clients and the community.

In late 2006, I was appointed as a party arbitrator to serve on a three-member panel under AAA rules to resolve a dispute about a \$445 million acquisition of a quasi-public company by a public company (finally resolved in early 2009). My minority position on the scope of the arbitration contract was ultimately sustained in federal district court (see 535 F.Supp.2d 909) and the Seventh Circuit Court of Appeals (540 F.3d 533). My m&a experience added significantly to the panel's perspective, particularly as to alleged breaches of representations and warranties, adequate performance of due diligence, whether alleged fraud trumps agreed liability limits, waivers of reliance on and responsibility for financial projections and the important and developing Delaware law on what constitutes a material adverse change.

In March, 2010, I was added to the Roster of Neutrals of the American Arbitration Association. In October, 2009, I was enrolled as a public arbitrator by FINRA (the Financial Industry Regulatory Authority now administering securities industry arbitrations) and completed a 40-hour Mediation Certificate Training Course at the DePaul University College of Law Center for Dispute Resolution. I have been added as an arbitrator with the Cook County Circuit Court's Mandatory Arbitration Program (chair qualified), and as a Court Certified Mediator for that Court's Law and Chancery Divisions.

In Spring Quarters 2010 through 2014, I taught an m&a course to undergraduates in Northwestern University's Harvey Kapnick Business Institutions Program (a part of NU's Economics Department).

In 2012-13, I served as an expert witness in defense of a national law firm in a matter involving the ability of a company to "go public."