

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

DELAWARE COALITION FOR	)	
OPEN GOVERNMENT, INC.,	)	
	)	
Plaintiff(s),	)	
	)	
v.	)	C.A. No.
	)	
THE HON. LEO E. STRINE, JR.,	)	
THE HON. JOHN W. NOBLE,	)	
THE HON. DONALD F. PARSONS, JR.,	)	
THE HON. J. TRAVIS LASTER,	)	
THE HON. SAM GLASSCOCK, III,	)	
THE DELAWARE COURT OF CHANCERY,	)	
and the STATE OF DELAWARE.	)	
	)	
Defendants.	)	

**COMPLAINT**

**PARTIES**

1. Delaware Coalition for Open Government, Inc. ("DelCOG") is a non-profit corporation duly organized and existing under the laws of the State of Delaware. DelCOG is dedicated to promoting and defending the people's right to transparency and accountability in government.

2. The Hon. Leo E. Strine, Jr. is the Chancellor of the Court of Chancery of the State of Delaware, whose duties including administering the statute challenged in this action.

3. The Hon. John W. Noble is a Vice Chancellor of the Court of Chancery of the State of Delaware, whose duties including administering the statute challenged in this action.

4. The Hon. Donald F. Parsons, Jr. is a Vice Chancellor of the Court of Chancery of the State of Delaware, whose duties including administering the statute challenged in this action.

5. The Hon. J. Travis Laster is a Vice Chancellor of the Court of Chancery of the State of Delaware, whose duties including administering the statute challenged in this action.

6. The Hon. Sam Glasscock, III, is a Vice Chancellor of the Court of Chancery of the State of Delaware, whose duties including administering the statute challenged in this action.

7. The Delaware Court of Chancery is a judicial institution of the State of Delaware existing pursuant to Article IV of the Constitution of the State of Delaware and Chapter 3 of Title 10 of the Delaware Code.

8. The State of Delaware is a State of the United States of America.

### **JURISDICTION AND VENUE**

9. This action arises under the First and Fourteenth Amendments to the United States Constitution, and under the Civil Rights Act of 1871, 42 U.S.C. sections 1983 and 1988.

10. This Court has jurisdiction of this cause under 28 U.S.C. sections 1331 and 1343.

11. As all parties hereto reside or exist in Delaware, venue is appropriate in this Court pursuant to 29 U.S.C. §1391(b) and (e).

### **BACKGROUND FACTS**

12. In or around April, 2009, the State of Delaware adopted 10 *Del. C.* §349, which states that:

(a) The Court of Chancery shall have the power to arbitrate business disputes when the parties request a member of the Court of Chancery, or such other person as may be authorized under rules of the Court, to arbitrate a dispute. For a dispute to be eligible for arbitration under this section, the eligibility criteria set forth in § 347(a) and (b) of this title must be satisfied, except that the parties must have consented to arbitration rather than mediation.

(b) Arbitration proceedings shall be considered confidential and not of public record until such time, if any, as the proceedings are the subject of an appeal. In the case of an appeal, the record shall be filed by the parties with the Supreme Court in accordance with

its rules, and to the extent applicable, the rules of the Court of Chancery.

(c) Any application to vacate, stay, or enforce an order of the Court of Chancery issued in an arbitration proceeding under this section shall be filed with the Supreme Court of this State, which shall exercise its authority in conformity with the Federal Arbitration Act, and such general principles of law and equity as are not inconsistent with that Act.

13. In furtherance of 10 *Del. C.* §349, the defendants adopted Chancery Court Rules 96, 97 and 98 on or about January 5, 2010. Pursuant to Rule 96(d)(1), arbitration is defined as “the voluntary submission of a dispute to an Arbitrator for final and binding determination...” Pursuant to Rule 96(d)(2), an “Arbitrator” is defined as “a judge or master sitting permanently in the Court.” Pursuant to Rule 96(d), an “Arbitration hearing” is “a proceeding, which may take place over a number of days, pursuant to which the petitioner presents evidence to support its claim and the respondent presents evidence to support its defense, and witnesses for each party shall submit to questions from the Arbitrator and the adverse party, subject to the discretion of the Arbitrator to vary this procedure so long as the parties are treated equally and each party has the right to be heard and is given a fair opportunity to present its case.”

14. Pursuant to Chancery Court Rule 97(a)(4), “[t]he Register in Chancery will not include the petition [initiating the Arbitration] as part of the public docketing system. The petition and any supporting documents are considered confidential and not public record until such time, if any, as the proceedings are the subject of an appeal.”

15. Pursuant to Chancery Court Rule 98(b), “Arbitration hearings are private proceedings such that only parties and their representatives may attend, unless all parties agree otherwise...Any communication made in or in connection with the Arbitration that relates to any

controversy being arbitrated, whether made to the Arbitrator or a party, or to any person if made at an arbitration hearing, is confidential.

16. In late September, 2011, Advanced Analogic Technologies, Inc. disclosed publicly that it had initiated proceedings under the above-referenced statute and rules against Skyworks Solutions, Inc. Such action amounts to a secret judicial proceeding.

**COUNT I**  
(Violation of 42 U.S.C. §1983)

17. The allegations of numbered paragraphs 1-16 are incorporated herein as if fully restated herein.

18. Pursuant to the First Amendment to the Constitution of the United States (ratified by Delaware on December 7, 1787), the public has a presumptive right of access to judicial proceedings and records, civil and criminal. This right of access is considered to be a right of contemporaneous access, meaning that the public has the right to attend judicial proceedings (as opposed to merely reviewing a transcript at a later time) and to review documents as they are filed with the Court or introduced into evidence.

19. 10 *Del. C.* §349 and Chancery Court Rules 96, 97 and 98 deny plaintiffs, and the general public, their right of access to judicial proceedings and records. Although the statute and rules call the procedure “arbitration,” it is really litigation under another name. Although procedure may vary slightly, the parties still examine witnesses before and present evidence to the Arbitrator (a sitting judge), who makes findings of fact, interprets the applicable law and applies the law to the facts, and then awards relief which may be enforced as any other court judgment. The only difference is that now these procedures and rulings occur behind closed doors instead of in open court.

20. The defendants' actions, under color of State law, constitute an unlawful deprivation of the public's right of access to trials in violation of the First Amendment as applied to the states by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, for the foregoing reasons, plaintiffs respectfully request that the Court enter judgment in their favor and against defendants:

- a. Declaring that 10 *Del. C.* §349 and Chancery Court Rules 96, 97 and 98 are unconstitutional, in violation of plaintiff's and the public's rights under the First Amendment;
- b. Permanently enjoining defendants from conducting any non-public proceedings under 10 *Del. C.* §349 and Chancery Court Rules 96, 97 and 98;
- c. Ordering the Court of Chancery to unseal all sealed documents filed pursuant to 10 *Del. C.* §349 and Chancery Court Rules 96, 97 and 98;
- d. Awarding plaintiffs' their costs, including reasonable attorneys' fees pursuant to 42 U.S.C. §1988; and
- e. Granting such other and further relief as the Court deems fair and just.

/s/ David L. Finger  
David L. Finger (DE Bar ID #2556)  
Finger & Slanina, LLC  
One Commerce Center  
1201 North Orange Street, 7th floor  
Wilmington, Delaware 19801-1186  
(302) 573-2525  
Attorney for plaintiff Delaware Coalition for Open  
Government, Inc.

Dated: October 25, 2011

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Delaware Coalition for Open Government, Inc.

(b) County of Residence of First Listed Plaintiff New Castle (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) David L. Finger, Finger & Slanina, LLC, 1201 N. Orange St., 7th fl., Wilmington, DE 19801-1186 (302) 573-2525

DEFENDANTS

Delaware Court of Chancery, The Hon. Leo E. Strine, Jr., The Hon. John W. Noble, The Hon. Donald F. Parsons, Jr., The Hon. J. Travis Laster, The Hon. Sam Glasscock, III, State of Delaware

County of Residence of First Listed Defendant New Castle (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. secs. 1983 & 1988

Brief description of cause:

Declaration that 10 Del. C. Sec. 349 violates plaintiff's First Amendment rights

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23, DEMAND \$ 0.00, CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

10/25/2011 /s/ David L. Finger

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.