



## Gidon M. Caine

Partner

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### *Related Services*

Securities Litigation ■ Class Action & Multidistrict Litigation ■ Corporate Governance ■ Financial Services Litigation ■ Commercial ■ Litigation ■ Issuers and Other Market Participants ■ Alternative Investments ■ Mergers & Acquisitions ■ Corporate & Business Transactions ■ Special Purpose Acquisition Companies (SPACs) ■ M&A Litigation

Gidon Caine is a Silicon Valley partner with Alston & Bird's Securities Litigation Group. He represents companies and their directors and officers in corporate control contests, governance disputes, and class and derivative actions involving fiduciary duty and securities laws, mergers and acquisitions, government investigations, regulatory enforcement actions, and internal investigations. He was co-lead counsel in the landmark Dell appraisal litigation.

Gidon has been interviewed on CNBC and in *USA Today* on securities and corporate governance issues. He is a regular panelist at Stanford Law School Directors' College and has taught at the Practising Law Institute.

Gidon has been recognized for eight consecutive years by *Chambers USA* in Securities Litigation. Clients report to *Chambers* that he is a "thorough and creative" lawyer who is "very sharp, very strategic and very results-oriented," with an "excellent technical approach[.]" He "has an incredible command of the facts and can present them in a simple and coherent manner." He is "a comforting ally in very difficult times."

Gidon is on the AIG, Chubb, and Marsh D&O panels.

Gidon earned his J.D. from New York University, where he was the notes and comments editor for the *Journal of International Law & Politics*, and his B.A., cum laude, from the University of Pennsylvania. He clerked for Michael B. Mukasey of the U.S. District Court for the Southern District of New York.

### *Representative Experience*

#### **Appraisal**

- Co-lead counsel for Dell in one of the largest appraisal cases ever tried in Delaware, concerning the value of Dell Inc. stock on the date the going-private transaction closed. The Delaware Supreme Court, in a precedent-setting opinion, held that when a management buyout was conducted according to an exemplary process, the deal price deserved heavy, if not dispositive, weight. *Dell Inc. v. Magnetar Global Event Driven Master Fund Ltd.* (Del.).
- Co-lead counsel for Dell in a motion that disqualified shares held by mutual funds seeking appraisal because their proxy advisory firm voted for the underlying transaction. In a prior opinion, the Court of Chancery held that investment funds that were beneficial owners of Dell stock lost their appraisal rights when their shares were involuntarily retitled in the names of their custodial banks' nominees, because the funds did not continuously hold the shares as stockholders of record from the date of the demand for appraisal through the effective date of the merger. *In re Appraisal of Dell Inc.* (Del.).

- Lead counsel for a former preferred stockholder in action seeking appraisal of its shares. *GII Apttus Investments, Ltd. v. Apttus Corp.* (Del. Ch.).

## **Fiduciary Duty Litigation**

- Co-lead counsel for company-affiliated directors in an action alleging breach of fiduciary duty in connection with Dell Technologies' multibillion-dollar exchange of its Class V stock for cash and shares of its Class C stock. *In re Dell Tech. Inc. Class V S'holders Litig.* (Del. Ch.).
- Represented Dell Technologies and Michael Dell in actions alleging breach of fiduciary duty arising out of Pivotal Software's \$2.7 billion sale to VMware. In the California action, the U.S. Supreme Court granted certiorari to resolve whether the Private Securities Litigation Reform Act's mandatory stay of discovery applied to claims brought in state court under the Securities Act of 1933. *In re Pivotal Software Inc. S'holders Litig.* (Del. Ch.); *In re Pivotal Software Inc. Secs. Litig.* (San Francisco County Super. Ct.).
- Represented Dell Inc. in an action alleging both direct and derivative claims arising out the alleged impact of Dell's purchase of EMC Corporation on the common stock of VMware, which as a result of the acquisition, was 81 percent owned by Dell. *Ford v. VMware, Inc.* (Del. Ch.).

## **Corporate Governance**

- Lead counsel for a board member and major stockholder in an action that established a director's right to inspect corporate books and records under Nevada law, where the underlying action sought books and records regarding a \$135 million donation to the University of Macau Development Foundation. Represented the board member in connection with a number of matters, including a proxy contest where the board member sought to nominate independent directors to the Wynn Resorts board of directors. *Okada v. Wynn Resorts, Ltd.* (Clark County Nev. Super. Ct.).
- Lead counsel representing a Brazilian company in an investigation into an alleged scheme by a United States subsidiary to secretly overcharge customers. Assisted in the post-remediation sale of the subsidiary.

## **M&A Litigation**

- Co-lead counsel for Dell Technologies in an expedited action brought by a group of funds affiliated with investor Carl Icahn seeking disclosure of books and records pursuant to Delaware Code section 220, as part of a proxy contest against Dell's proposed exchange of Class V common stock for cash and Class C common stock. *High River LP v. Dell Tech. Inc.* (Del. Ch.).
- Co-lead counsel for Dell Inc. and its affiliates in connection with litigation in state and federal courts in Massachusetts, and Delaware Chancery Court, arising out of Dell's \$67 billion acquisition of EMC Corporation. Dell/EMC Merger Litigation. (D. Mass, Mass. Super. Ct., Del. Ch.).
- Represented Dell Inc. in connection with stockholder challenges to the proposed going-private transaction. *In re Dell Inc. S'holders Litig.* (Del Ch.); *Nelson v. Dell Inc.* (Travis Co. Tex. Dist. Ct.); *Van Buiten v. Dell Inc.* (S.D. Tex.).
- Co-lead counsel for a special committee of New Frontier Media, Inc. responding to an unsolicited offer by a 15.9 percent stockholder to purchase the company, and a proxy contest to replace four of the six directors. New Frontier sued the members of the group, alleging that the stockholder and affiliates' activities violated the Williams Act, and that its director nominations failed to comply with the advance notice requirements in the company bylaws. *New Frontier Media, Inc. v. Longkloof Ltd.* (D. Colo.).
- Lead counsel for Oclaro, Inc. in litigation challenging the merger between Oclaro and Opnext, Inc. *Zilberberg v. Abbe* (Alameda County Super Ct.); *In re Opnext, Inc. S'holders Litig.* (Del. Ch.).

- Lead counsel for Monterey Gourmet Foods in actions seeking to enjoin its acquisition by Pulmuone USA, Inc. *In re Monterey Gourmet Foods Merger Litig.* (Monterey County Super. Ct.); *Carrazza v. Monterey Gourmet Foods, Inc.* (Del. Ch.).
- Defended Bell Microproducts in an action seeking to enjoin its acquisition by Avnet. *In re Bell Microproducts Inc. S'holder Litig.* (Santa Clara County Super. Ct.).
- Lead counsel for Bookham, Inc. in an action seeking to enjoin its merger with Avanex, Inc. *McCune v. Barbarossa.* (Alameda County Super. Ct.).
- Lead counsel for management and the inside directors of Tarrant Apparel Group in an action seeking to enjoin a going-private transaction. *McMichael v. Tarrant Apparel Group.* (L.A. County Super. Ct.).
- Lead counsel for the Troy Group and certain directors and officers in actions for breach of the Williams Act and defamation. *Troy Group, Inc. v. Tilson.* (C.D. Cal.).

## **Derivative Litigation**

- Lead counsel for Oclaro and its directors and certain officers in derivative litigation alleging breaches of fiduciary duty, waste, and unjust enrichment. *In re Oclaro, Inc. Derivative Litig.* (N.D. Cal.); *Moskal v. Couder.* (Santa Clara County Super. Ct.).
- Lead counsel for independent directors of LTX-Credence Corporation in connection with their response to a shareholder demand that the board take action against certain directors as a result of a failed merger with another company. *Independent Directors of LTX-Credence Corp.*
- Defended the Chevron Corporation in a derivative action against current and certain former members of its board, in connection with Chevron's participation in the United Nation's Oil for Food Program. The action was dismissed after a special committee refused the stockholder's demand, and that dismissal was affirmed on appeal. *Lawrence W. Bezirdjian, IRA v. O'Reilly.* (Contra Costa County Super. Ct.; Cal. Ct. App.).
- Defended directors in an action alleging, among other things, improper stock option backdating. *Campbell v. Bell.* (San Mateo County Super. Ct.).
- Defended certain Nabors Industries, Ltd. directors in an action alleging improper stock option backdating. *Karstedt v. Isenberg.* (S.D. Tex.).
- Defended a former Semtech Corp. director in actions alleging improper stock option backdating. *In re Semtech Corp. Deriv. Litig.* (C.D. Cal.); *In re Semtech Corp. Deriv. Litig.* (Ventura County Super. Ct.).
- Defended directors of TCSI Corporation in derivative action alleging damages arising out of the company's defense of a securities class action. *Tinkler v. Hasler.* (Alameda County Super. Ct.).

## **Securities Litigation**

- Lead counsel for a mobile advertising company and certain officers and directors in a purported class action alleging that defendants concealed the impact of the 2016 presidential election on the company's mobile advertising business and that the former CEO and CFO allegedly were stealing from the company. *Roper v. Sito Mobile Ltd.* (D.N.J.).
- Lead counsel for an issuer and certain of its officers and directors in a purported class action alleging that the defendants made materially false and misleading statements regarding business and financial conditions, including projections for revenues, earnings, and gross margins. *Westley v. Oclaro, Inc.* (N.D. Cal.).
- Defended an issuer and individual defendants in action alleging that officers' alleged material misstatements led the plaintiff to purchase and hold the issuer's securities. *Badihian v. Avanex, Inc.* (L.A. County Super. Ct.).

- Lead counsel for an issuer and individual officers and directors in an action alleging various material misstatements. *Berney v. Tarrant Apparel Group*. (L.A. County Super. Ct.).
- Represented an issuer in actions arising out of convertible offering. *Cogent Capital Fin. LLC v. Innofone.com, Inc.* (S.D.N.Y.), *Innofone.com, Inc. v. Cogent Capital Investments, LLC*. (C.D. Cal.).
- Defended an issuer and individual defendants in an action alleging that, in connection with a secondary offering, the issuer reported results that failed to disclose one-time adjustments to accruals and reserves and how a new contract with a major customer was indicative of a more competitive environment. *Romine v. Acxiom Corp.* (E.D. Ark., 8th Cir.).
- Defended an issuer and individual defendants in an action alleging that they made a number of allegedly false and misleading predictions regarding future sales growth. *In re Splash Tech. Holdings, Inc. Sec. Litig.* (N.D. Cal.).
- Defended an issuer and individual defendants in an action alleging that the defendants knowingly misrepresented that the company was growing and increasing its earnings during the class period. *In re Secure Computing Corp. Sec. Litig.* (N.D. Cal.).
- Defended an issuer and individual defendants in parallel state and federal actions alleging that the issuer's forecasts regarding the status of product development and the demand for its products were knowingly false. *In re Read-Rite Corp. Sec. Litig.* (N.D. Cal., 9th Cir.); *Ferrari v. Read-Rite Corp.* (Santa Clara County Super. Ct.).
- Defended an issuer and individual defendants in parallel state and federal actions alleging that the issuer's financial forecasts were knowingly false. *Copperstone v. TCSI Corp.* (N.D. Cal., Alameda County Super. Ct.).
- Defended an attorney sanctioned under Rule 11 based on the trial testimony of the client after the attorney successfully defeated a motion for summary judgment in a securities action. The Second Circuit reversed the sanction award. *Healey v. Chelsea Resources Ltd.* (S.D.N.Y., 2d Cir.).

## **Commercial Litigation**

- Lead counsel for an FX trading platform in commercial claims brought by a customer. *Medina v. OANDA Corp.* (N.D. Cal.).
- Lead counsel for Brocade Communications Systems, Inc. in parallel actions filed by a third-party provider of break-fix services for breach of contract, fraud, and other related claims. *Anacomp Inc. v. Brocade Commc'ns Sys., Inc.* (Santa Clara County Super. Ct.); *Anacomp Inc. v. McDATA, Corp.*
- Defended action arising out of alleged breach of equipment lease. *Winthrop Resources Corp. v. Bell Microproducts, Inc.* (D. Minn.).
- Lead counsel for the executors of an estate in an action alleging a conspiracy to violate the civil rights of an intestate taker. *Sudol v. Roth*. (S.D.N.Y., 2d Cir.).
- Represented amici in an action concerning the liability of accountants to third parties for allegedly negligent opinions. *Sec. Pac. Business Credit, Inc. v. Peat Marwick Main & Co.* (N.Y. Ct. App.).
- Represented a grain trader in an action arising out of a failed commodities transaction. *Action S.A. v. Marc Rich & Co.* (2d Cir.).

## **Venture Funds**

- Lead counsel for a venture fund in an arbitration with a former venture partner contesting the terms of his termination by the fund.
- Lead counsel for a Chinese venture fund in its establishment of a U.S. affiliate.

- Lead counsel for a manager of a major venture fund's China practice in his separation from the fund and continued use of his track record and vesting in the fund's carry.
- Lead counsel for a venture fund operating in the United States, Germany, and England, and organized as a corporation, against claims made during its wind up that the fund was actually a partnership and that senior employees were entitled to a share of the fund's assets and carry.
- Lead counsel for one of two managing members of a general partner entity in a series of disputes that arose shortly after the closing of one of its funds.
- Lead counsel for a venture fund against a campaign by defaulting limited partners to stop paying their capital commitments and wind up the fund.
- Lead counsel for a managing member of a general partner entity in an internal investigation and subsequent negotiations arising out of his discovery of alleged misconduct by one of the managing members prior to formation of the fund.
- Lead counsel for limited partners seeking to restructure a venture fund after the managing member of general partner entity took an unauthorized loan of committed capital.
- Represented a venture fund against claims by an investor in one of its portfolio companies that it shut down the company in order to channel resources into a competing company in the fund's portfolio.

## ***Mutual Funds, Investment Advisers, and Broker-Dealers***

- Lead counsel for a mutual fund adviser and its lead trader in a CME investigation into the adviser's trading of bitcoin futures.
- Lead counsel for an investment adviser and certain of its directors and officers in action alleging fraud and breach of fiduciary duty in connection with the alleged issuing of options to purchase a portion of the adviser. *Malekar v. Birley*. (N.D. Cal.).
- Represented a mutual fund in an investigation by the Securities and Exchange Commission into pay-to-play allegations at a public pension fund.
- Represented two mutual funds in class actions alleging that they failed to file proofs of claim where they owned securities that were the subject of class action settlements. *Mutchka v. Harris*. (C.D. Cal.).
- Lead counsel for an executive of a broker-dealer in an action by the National Association of Securities Dealers alleging that he failed to follow net capital rules.
- Represented a mutual fund in investigations by the United States Attorney and the Securities and Exchange Commission into alleged late trading and illegal market timing.
- Represented the independent directors of a mutual fund in a series of investigations by the United States Attorney, the Securities and Exchange Commission, and the New York State Attorney General into alleged late trading and illegal market timing, which resulted in enforcement actions against certain former employees of the funds, as well as a subsequent private class action.

## ***Publications & Presentations***

### ***News Items***

- *Global Legal Chronicle* | Alpha Holdings, Inc. v. OncoSec Medical Incorporated, et al. | March 17, 2020

Brett Jaffe, Joe Tully, Matt Mamak, Dennis Garriss, Dave Brown, Mark McElreath, James Sullivan, Gerard Catalanello, Jim Vincequerra, Bryan Skelton, and Gidon Caine are noted for successfully representing OncoSec Medical Inc. in a putative shareholder class action.

- *Law360* | Emulex Doomed by Procedural Issues in Tender Offer Case | April 23, 2019

Gidon Caine comments on the dismissal of the *Emulex* case by the U.S. Supreme Court and what it means for future merger and acquisition shareholder suits.

- *Law360* | Justices May Clear Up Private Right to Sue over Mergers | April 12, 2019

Gidon Caine comments on how the upcoming U.S. Supreme Court *Emulex* case could cause a surge in merger and acquisition shareholder suits if the Court rules for the plaintiff.

## ***Publications***

- “The Delaware Court of Chancery and the California Jury Trial Right,” *The Corporate & Securities Law Advisor*, January 2024.
- “Emulex Will Likely Dictate Venue For Merger Shareholder Suits,” *Law360*, February 20, 2019.
- “Current Developments in the Federal Regulation of Cryptocurrencies and Tokens,” *Marsh Analysis*, June 2018
- “Biotech on the Front Lines of Fee-Shifting Debate,” *Daily Journal*, August 27, 2014.

## ***Professional & Community Engagement***

- Stanford Directors' College, faculty (2014 – present)

## ***Education***

- New York University (J.D.)
- University of Pennsylvania (B.A.)

## ***Languages***

- Hebrew

## ***Admitted to Practice***

- California
- New York