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Gidon Caine is a Silicon Valley partner with Alston & Bird's Securities Litigation Group. He represents companies, 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 by *Chambers USA: America's Leading Lawyers for Business* as a "thorough and creative" lawyer who is "very sharp, very strategic and very results-oriented," with an "excellent technical approach" who "has an incredible command of the facts and can present them in a simple and coherent manner." Clients say 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. in 1988 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 in 1983. He clerked for Michael B. Mukasey of the U.S. District Court for the Southern District of New York from 1988 to 1989.

Representative Experience

Fiduciary Duty Litigation

- *In re Dell Technologies Inc. Class V Stockholders Litigation*, No. 2018-0816 (Del. Ch.). 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.

Appraisal

- *Dell Inc. v. Magnetar Global Event Driven Master Fund Ltd.*, 177 A.3d 1 (Del. 2017). 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.

Corporate Governance

- *Okada v. Wynn Resorts, Ltd.*, No. A-12-654-522-B (Clark County Nev. Super. Ct, filed Jan. 11, 2012). Represented a board member and major stockholder in action that established a director's right to inspect corporate books and records under Nevada law, in action seeking books and records regarding \$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.

M&A Litigation

- *High River LP v. Dell Tech.*, No. 2018-0790 (Del. Ch. Nov. 15, 2018). 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. Icahn withdrew the action and terminated the proxy contest.
- Dell/EMC Merger Litigation – 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 proposed \$67 billion acquisition of EMC Corporation.
- *In re Dell Inc. Shareholder Litigation*, C.A. No. 8329-CS (Del Ch. filed Feb. 6, 2013); *Nelson v. Dell Inc.*, No. D-1-GN-13-220 (Travis Co. Tex. Dist. Ct. filed Jan. 13, 2013); *Van Buiten v. Dell Inc.*, No 4:13-cv-1585 (S.D. Tex. filed May 30, 2013). Represented Dell Inc. in connection with stockholder challenges to the proposed going-private transaction.
- *New Frontier Media, Inc. v. Longkloof Ltd.*, No. 1:12-CV-01417 (D. Colo. May 31, 2012). Represent special committee of New Frontier Media, Inc., a leading provider of transactional television services and distributor of independent general motion picture entertainment. The committee is conducting a review of strategic alternatives, including the possible sale of the company. During the review, a group holding 15.9 percent of the issuer's stock made an unsolicited offer to purchase the company, and launched a proxy contest to replace four of the six directors. New Frontier sued the members of the group, alleging that they violated Section 13(d) of the Securities Exchange Act of 1934 by not properly reporting their identity and activities as a group. The suit also alleged that the notice of director nominations failed to comply with the advance notice of nomination requirements contained in the New Frontier's Amended and Restated Bylaws. The matter settled with an agreement by the group to end their proxy contest and participate in the process established by the special committee.
- *Zilberberg v. Abbe*, No. RG12623460 (Alameda County Super Ct., Consol. Apr. 19, 2012), and *In re Opnext, Inc. S'holders Litig.*, Consol. C.A. No. 7400-VCL (Del. Ch., Consol. Apr. 16, 2012). Represent Oclaro, Inc. in litigation challenging the merger between Oclaro and Opnext, Inc. The transaction successfully closed.
- *In re Monterey Gourmet Foods Merger Lit.*, No. M101914 (Monterey County Super. Ct. filed Nov. 12, 2009), and *Carrazza v. Monterey Gourmet Foods, Inc.*, No. CA 4992-CC (Del. Ch. filed Oct. 14, 2009). Defended Monterey Gourmet Foods in actions seeking to enjoin its acquisition by Pulmuone USA, Inc. The transaction closed, and the matter settled on favorable terms.
- *In re Bell Microproducts Inc. S'holder Litig.*, Case No. 1-10-CV-171341 (Santa Clara County Super. Ct. filed Mar. 30, 2010). Defended Bell Microproducts in an action seeking to enjoin its acquisition by Avnet. The transaction closed, and the matter settled on favorable terms.
- *McCune v. Barbarossa*, No. RG 09434156 (Alameda County Super. Ct. filed Feb. 3, 2009). Defended Bookham, Inc. in an action seeking to enjoin its merger with Avanex, Inc. The transaction closed, and the matter settled on nominal terms with the individual plaintiffs, after the Superior Court refused to certify a class.

- *McMichael v. Tarrant Apparel Group*, No. BC412320 (L.A. County Super. Ct. filed Apr. 22, 2009). Defended management and inside directors in an action seeking to enjoin a going-private transaction. The transaction closed, and the matter settled on favorable terms, after plaintiffs were convinced to withdraw a motion for expedited discovery.

Derivative Litigation

- *In re Oclaro, Inc. Derivative Litig.*, 2014 WL 4684993, 2014 U.S. Dist. Lexis 132084 (N.D. Cal. Sept. 19, 2014); 2011 WL 4345099 (N.D. Cal. Sept. 14, 2011) and *Moskal v. Couder*, No. 1-11-CV-202880 (Santa Clara County Super. Ct. filed June 10, 2011). Defended Oclaro and its directors and certain officers in derivative litigation alleging breaches of fiduciary duty, waste and unjust enrichment. The matters settled on favorable terms.
- *Independent Directors of LTX-Credence Corp.* Represented 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. The shareholder did not pursue further remedies.
- *Lawrence W. Bezirdjian, IRA v. O'Reilly*, Case No. C07-01144, (Contra Costa County Superior Court Mar. 11, 2009), *aff'd*, 183 Cal. App. 4th 316 (2010). Defended 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.
- *Campbell v. Bell*, No. CIV 479833 (San Mateo County Super. Ct. filed Dec. 29, 2008). Defended directors in an action alleging, among other things, improper stock option backdating. The matter settled without the payment of money or return of stock by the directors and on favorable terms after successful motions directed at the plaintiff's standing to sue.
- *Karstedt v. Isenberg*, No. 4:07-cv-00509 (S.D. Tex. filed Feb. 6, 2007). Defended directors in an action alleging improper stock option backdating. The matter settled without the payment of money or return of stock by the directors and on favorable terms.
- *In re Semtech Corp. Deriv. Litig.*, Master File No. CV-06-03510-CAS-FMOx (C.D. Cal. 2006); *In re Semtech Corp. Deriv. Litig.*, Case No. Civ. 241299 (Ventura County Super. Ct. filed May 26, 2006). Defended a former director in actions alleging improper stock option backdating. The matter settled without the payment of money or return of stock by the director and on favorable terms.
- *Tinkler v. Hasler*, No. 776206-4 (Alameda County Super. Ct. filed Nov. 20, 1996). Defended directors of TCSI Corporation in derivative action alleging damages arising out of the company's defense of a securities class action. After a number of demurrers were granted to the original and amended pleadings, the matter settled on favorable terms.

Securities Litigation

- *Westley v. Oclaro, Inc.*, [2013 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 97,508 (N.D. Cal. May 30, 2013); 2013 WL 1355910 (N.D. Cal. Apr. 3, 2013); 897 F. Supp. 2d 902 (N.D. Cal. 2013); 897 F. Supp. 2d 892 (N.D. Cal. 2012); 2012 WL 1038647 (N.D. Cal. Mar. 27, 2012); [2011 Transfer Binder] Fed. Sec. L. Rep. ¶ 96,536 (N.D. Cal. Sept. 12, 2011). Defended Oclaro 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, for the first quarter of fiscal year 2011, as well as the full fiscal year. The matter settled on favorable terms.

- *Badihian v. Avanex, Inc.*, No. BC407722 (L.A. County Super. Ct. filed Feb. 13, 2009). Defended an issuer and individual defendants in action alleging that officers' material misstatements led the plaintiff to purchase and hold the issuer's securities. The matter settled on favorable terms.
- *Berney v. Tarrant Apparel Group*, No. BC415567 (L.A. County Super. Ct. filed June 10, 2009). Defended an issuer and individual officers and directors in an action alleging various material misstatements. The matter settled on favorable terms.
- *Cogent Capital Fin. LLC v. Innofone.com, Inc.*, No. 07 Civ. 2701 (JSR) (S.D.N.Y. removed Apr. 3, 2007), and *Innofone.com, Inc. v. Cogent Capital Investments, LLC*, No. CV-07-1793 (C.D. Cal. filed Mar. 19, 2007). Represented an issuer in actions arising out of convertible offering.
- *Romine v. Acxiom Corp.*, 296 F.3d 701 (8th Cir. 2002). 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. The District Court granted the defendants' motion to dismiss, and that dismissal was affirmed on appeal.
- *In re Splash Tech. Holdings, Inc. Sec. Litig.*, [2000-2001] Transfer Binder Fed. Sec. L. Rep. (CCH) 91,249 and 91,250 (Sept. 29, 2000), 160 F. Supp. 2d 1059 (N.D. Cal. 2001). 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 a series of often-cited opinions, the court dismissed claims based on the forward-looking statements with prejudice, holding that the safe harbor for forward-looking statements immunized such statements, without regard to the speakers' scienter, if they were accompanied by meaningful cautionary statements, and that the remaining statements were not shown to be actually false when made.
- *In re Secure Computing Corp. Sec. Litig.*, 120 F. Supp. 2d 810 (N.D. Cal. 2000) and 184 F. Supp. 2d 980 (N.D. Cal. 2001). 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 Read-Rite Corp. Sec. Litig.*, 2000 WL 1641275 (N.D. Cal. Oct. 13, 2000), 115 F. Supp. 2d 1181 (N.D. Cal. 2000), *aff'd*, 335 F.3d 843 (9th Cir. 2003); *Ferrari v. Read-Rite Corp.*, No. 1-96-CV-762735 (Santa Clara County Super. Ct. filed Dec. 11, 1996). 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. Both the state and federal courts dismissed the claims for failure to allege facts demonstrating scienter. The Ninth Circuit affirmed the decision of the District Court.
- *Copperstone v. TCSI Corp.*, 1999 WL 33295869 (N.D. Cal. Jan. 14, 1999), and *Copperstone v. TCSI Corp.*, No. 775199-2 (Alameda County Super. Ct., filed Nov. 4, 1996). Defended an issuer and individual defendants in parallel state and federal actions alleging that the issuer's financial forecasts were knowingly false. The matter was settled on favorable terms after the defendants successfully moved to dismiss the complaint in federal court, successfully demurred to the complaints in state court and blocked plaintiffs from using discovery in the state court action to prosecute the federal action.
- *Healey v. Chelsea Resources Ltd.*, 947 F.2d 611 (2d Cir. 1991), *rev'g* 133 F.R.D. 449 (S.D.N.Y. 1990). 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.

Commercial Litigation

- *Anacomp Inc. v. Brocade Commc'ns Sys., Inc.*, No. 1-07-CV-098855 (Santa Clara County Super. Ct. filed Nov. 14, 2007), and *Anacomp Inc. v. McDATA, Corp.*, No. 37-2008-00081476-CU-BC-CTL (San Diego County Super. Ct. filed Apr. 10, 2008). Defended parallel actions filed by a third-party provider of break-fix services for breach of contract, fraud and other related claims.
- *Winthrop Resources Corp. v. Bell Microproducts, Inc.*, No. 09-cv-00280-MJD-FLN (D. Minn., removed Feb. 6, 2009). Defended action arising out of alleged breach of equipment lease.
- *Sudol v. Roth*, 7 F.3d 221 (2d Cir. 1993). Represented the executors of an estate in an action alleging a conspiracy to violate the civil rights of an intestate taker. The Second Circuit affirmed the district court's dismissal of the action on Rooker-Feldman abstention grounds.
- *Sec. Pac. Business Credit, Inc. v. Peat Marwick Main & Co.*, 79 N.Y.2d 695, 597 N.E.2d 1080, 586 N.Y.S.2d 87 (1992). Represented amici in an action concerning the liability of accountants to third parties for allegedly negligent opinions.
- *Action S.A. v. Marc Rich & Co.*, 951 F.2d 504 (2d Cir. 1991). Represented a grain trader in an action arising out of a failed commodities transaction. The Second Circuit affirmed the entry of a default judgment against Marc Rich and his trading entity, as well as the award of punitive damages.

Venture Funds

- Represented 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.
- Represented 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.
- Represented a venture fund against a campaign by defaulting limited partners to stop paying their capital commitments and wind up the fund.
- Represented 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.
- Represented limited partners seeking to restructure a venture fund after the managing member of general partner entity took an unauthorized loan of committed capital.
- Assisted in the representation of 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. The fund won an award of fees.

Mutual Funds, Investment Advisers, and Broker-Dealers

- 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. The actions were dismissed without the payment of any money.
- Represented 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

Publications

- “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.
- “Trends and Developments in Annual Meeting Proxy Litigation,” *Corporate Counsel*, April 29, 2013.
- “Gearing Up for 2013 Proxy Litigation,” *ACC America*, March 2013.

Presentations

- “Defend Your Company, Defend Yourself: Private Litigation Strategies,” 25th Annual Stanford Directors’ College, Stanford, CA, June 23-25, 2019.

Professional & Community Engagement

- Stanford Directors' College, faculty

Education

- New York University (J.D., 1988)
- University of Pennsylvania (B.A., 1983)

Languages

- Hebrew

Admitted to Practice

- California
- New York

Related Services

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