

Securities Litigation Practice

Gibson, Dunn & Crutcher is a recognized leader in defending and handling securities class-action litigation, derivative litigation, M&A litigation, internal investigations, and investigations and enforcement actions by the SEC, DOJ and state attorneys general. When a company and its directors and officers experience an unexpected crisis, they usually face a perplexing array of challenges. In these circumstances, there is no substitute for experience and integrated multi-disciplinary solutions. Gibson Dunn has handled hundreds of such cases and investigations and has a proven track record of successful results.

Our firm is consistently ranked as one of the top securities litigation practices in the country. *Law360* recognized Gibson Dunn as its 2011 Securities Group of the Year. Many of our securities litigators have been recognized by publications such as *Chambers USA*, *The Legal 500*, *Institutional Investor's Benchmark Litigation Guide* and *The Best Lawyers in America* as among the best nationally and in key jurisdictions such as New York and California.

Lawyers in Gibson Dunn's Securities Litigation Practice Group bring unparalleled experience to every matter. Our partners include nationally recognized securities class action defense counsel, as well as a number of former senior officials with the Securities and Exchange Commission, FINRA and the Department of Justice (including two former U.S. Attorneys).

Gibson Dunn knows that each case and investigation is unique and that the best possible outcome requires an assessment of the facts and issues, development of a sound strategy in collaboration with our clients, and, of course, successful execution of that strategy. Whether a headline-grabbing corporate takeover battle, a major financial restatement case, an SEC probe of insider-trading issues, or a government enforcement action that puts an individual's professional reputation and personal assets at risk, our securities litigators have the experience to achieve a successful outcome. Working with our White Collar, Securities Enforcement and Crisis Management groups, we offer integrated solutions to the most complex and challenging situations facing corporate America.

Securities Class Actions

In the wake of the financial crisis and the corporate scandals of the past several years, U.S. corporations have been engulfed by securities class-action litigation. These lawsuits pose a significant financial risk not only to the company, but also to its senior management and directors, who are frequently named as individual defendants.

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Gibson Dunn has a proven track record of obtaining favorable results for our clients in major securities class actions. Examples include:

- Representation of The Bank of New York Mellon in a putative class action brought by plaintiffs holding notes sold by Medical Capital Holdings and related entities. BNYM served as the indenture trustee for a majority of the noteholder funds and is alleged to have improperly released those funds to Medical Capital. Gibson Dunn obtained dismissal without prejudice of the main class action. An amended complaint has been filed and a motion to dismiss is pending.
- Representation of Bank of New York Mellon as lead counsel for the appeal of a decision that affects more than \$8 billion in transactions in the bankruptcy proceeding of a Lehman Brothers subsidiary. The bankruptcy court's decision invalidated market-standard provisions of credit default swap agreements that were designed to protect investors in Lehman products. The bankruptcy court issued an order from which an appeal could be taken, despite stiff opposition from the debtor. Gibson Dunn then successfully appealed and the case settled on favorable terms.
- Won denial of class certification for PricewaterhouseCoopers, LLP, an Ontario Limited Liability Partnership, in the IMAX Corporation Securities Litigation pending in the Southern District of New York before Judge Naomi Reice Buchwald. The case includes class action claims under sections 10(b) and 20(a) of the Securities Exchange Act involving transactions where PwC-Canada acted as auditor. The court concluded that the Lead Plaintiff failed to establish Rule 23(a)'s typicality and adequacy of representation requirements. The court found that it could not satisfy the typicality requirement because it could not establish loss causation in its individual capacity.
- Representation of Deloitte Touche Tohmatsu in a high-profile securities fraud case brought by Starr Investments Cayman II, Inc. The amended complaint alleges that through the use of a reverse merger of a Chinese company and a U.S. company, the defendants fraudulently induced Starr to invest in China MediaExpress Holdings, Inc. as part of "a massive international fraud."
- Representation of UBS Financial Services, Inc. in a securities class action arising from the collapse of Lehman Brothers. UBS served as underwriter on the sale of in excess of \$1 billion in Lehman structured product securities during 2007 and 2008. The plaintiff shareholders allege violations of Sections 11 and 12 of the Securities Act of 1933. On a motion to dismiss, claims based on certain alleged misrepresentations were dismissed, but the case is proceeding to discovery on the remaining claims.
- Won motion to dismiss all common-law claims brought by Irving Picard, the Trustee for the liquidation of Bernard L. Madoff Investment Securities, LLC ("BLMIS"). Client UBS AG and its affiliates ("UBS") acted as service providers for two international feeder funds, Luxalpha SICAV and Groupement Financier Ltd., that directly invested in BLMIS. Along with certain "clawback" claims seeking to recover distributions from BLMIS, the Trustee sought over \$2 billion in damages against UBS pursuant to common law tort claims, including aiding and abetting fraud, breach of fiduciary duty, conversion and unjust

enrichment. Gibson Dunn moved to dismiss all common-law claims on the grounds that the Trustee did not have standing to pursue the claims, and the Trustee's common law claims were pre-empted by the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"). Judge McMahon held that the Trustee did not have standing to bring his common law claims against UBS. The decision leaves the Trustee with bankruptcy clawback claims on which he seeks a maximum of \$80 million from UBS.

- Won affirmation of a dismissal for Technical Olympic USA, Inc. (TOUSA) and two other individual defendants who served as TOUSA executive officers of a complaint asserting claims for securities fraud. The issue on appeal was whether the amended complaint satisfied the PSLRA's standard for pleading scienter. Apart from speculation and conclusory allegations, the court found the complaint failed to allege any "red flags" that would have alerted defendants that their statements were materially false or misleading.
- Won dismissal of a class action complaint and shareholder derivative action against Textron Inc., Textron Financial Corporation and senior officers of the companies. Plaintiffs claimed defendants failed to disclose that Cessna, a Textron subsidiary, had a material weakness in the backlog of aircraft orders, which allegedly caused a steep drop in Textron's stock price. The complaint asserted claims under Sections 11 and 15 of the Securities Act of 1933 and Sections 10(b) and 20(a) of the Securities Exchange Act of 1934. The court concluded that plaintiffs failed to plead sufficient facts to support their contention that the defendants' alleged misstatements were materially misleading.
- Obtained victory for Janus Capital Management in a decision where the U.S. Supreme Court concluded that the only entity that can be held liable in a private Rule 10b-5 securities fraud lawsuit for misstatements in a prospectus is the entity issuing the prospectus – in this case a mutual fund – and not the asset management fund that was advising it.
- Won dismissal of a securities class action lawsuit against RBC Capital Markets Corp. The preferred stock purchasers of the now-defunct Franklin Bank Corp. alleged that RBC, as the underwriter of the preferred stock issue, violated Section 11 of the Securities Act of 1933 by signing the preferred stock registration statement, which they alleged contained false and misleading statements. The court held that the plaintiffs did not adequately allege falsity and materiality and dismissed the lawsuit with prejudice.
- Won dismissal of all claims against Deloitte LLP in a securities fraud class action where Plaintiffs alleged that Crocs, Inc., maker of the well-known plastic footwear, mismanaged its inventory and hid that fact before taking two large write-downs. Plaintiffs alleged that Deloitte, which served as Crocs' outside auditor, ignored red flags when it opined that Croc's financial statements were fairly presented in conformity with Generally Accepted Accounting Principles. The court held that plaintiffs failed to allege sufficient facts to suggest that "Deloitte engaged in highly unreasonable conduct constituting an extreme departure from the standard of ordinary care."
- Won appeal for Ernst & Young in a case stemming from the alleged fraud by AOL in accounting for its advertising revenues following the 2001 merger with Time Warner Inc. The plaintiff shareholder sued Ernst & Young, AOL's outside auditor, alleging that fraudulent accounting was responsible for the drop in the stock price. The Southern District

of New York dismissed for failure to adequately plead loss causation under Sections 10(b) and 14(a) of the Securities Exchange Act of 1934 and under Section 11 of the Securities Act of 1933. The Second Circuit affirmed.

- Won summary judgment for Marsh & McLennan Companies, Inc. and Marsh Inc. in an action by shareholders alleging they suffered damages when the New York Attorney General filed suit accusing Marsh of bid rigging and steering insurance placement, which resulted in a substantial drop in MMC's stock price. Appellants asserted common law claims and violation of the California Corporations Code. The trial court sustained demurrers on the common law claims and granted a motion for summary judgment on the Code claim. The Court of Appeal affirmed, holding that appellants failed to adequately plead reliance on any alleged misrepresentation by MMC or Marsh. The court affirmed dismissal of the breach of fiduciary duty claim because it could only be asserted as a derivative claim.
- Won denial of class certification in a securities fraud action against The First American Corporation, its subsidiary eAppraiseIT, LLC, and certain current and former officers. The lawsuit was filed in the wake of allegations by the New York Attorney General of improper home-appraisal practices and an alleged drop of over \$2 billion in the market capitalization of First American. In denying class certification, Judge Lewis Kaplan of the Southern District of New York held that investors in First American stock were not entitled to a class-wide presumption of reliance and therefore could not satisfy the predominance requirement for class certification.
- Won dismissal of all claims in a putative securities class action against former and current officers of Canadian Imperial Bank of Commerce, including its President and Chief Executive Officer arising out of the decline of CIBC's stock price following the announcements of write-downs of the bank's mortgage-backed securities portfolio and alleging violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934.
- Won dismissal for Ernst & Young in a consolidated putative securities class action in connection with Bernard Madoff's Ponzi scheme. Investors in the Tremont Partners Inc. hedge fund sued over losses suffered when Madoff's Ponzi scheme collapsed. The putative class sought to hold Ernst & Young – which audited the hedge fund, but not Madoff's firm – liable. The Southern District of New York dismissed, holding that Ernst & Young could not be held liable for failing to audit Madoff's operations when they were not engaged to audit them, and no facts were alleged demonstrating that Ernst & Young had been complicit in the fraud, knew of it or had consciously disregarded facts that should have alerted it to the fraud. In a related victory, the court entered a final judgment of dismissal on the grounds that plaintiffs' non-fraud common law claims were preempted by the New York's Martin Act.
- Won dismissal for KV Pharmaceutical Co. in a class action in the Eastern District of Missouri accusing KV Pharmaceutical of misstatements and omissions amid widespread drug recalls. In the decision, the judge said that the plaintiffs' allegations that KV made materially false and misleading statements and omissions to investors about the company's compliance should be tossed because the plaintiffs had failed to allege with sufficient particularity that the statements were false and misleading.

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- Prevailed at a bench trial in two consolidated nationwide class actions for Vestin Mortgage, Inc. one of the nation’s leading real-estate based fund managers, involving alleged breaches of publicly traded real estate investment trusts. Gibson Dunn defeated plaintiffs’ motion for summary adjudication, successfully moved to strike plaintiffs’ prayer for punitive damages and obtained a dismissal with prejudice of plaintiffs’ tort claims. Plaintiffs had invested in real estate mortgage funds organized as LLCs and voted against a merger of those funds into publicly traded corporations operating as REITs. They contended the mergers constituted “roll up” transactions entitling the dissenters to certain rights, including a cash payout. The court rejected plaintiffs’ theories and concluded that the mergers were not roll ups, and there was no breach of contract.
- Successfully settled a securities class action on behalf of Merrill Lynch and UBS in a case arising out of the bankruptcy of Phoenix based Syntax-Brilliant Corporation, a former leading seller of liquid crystal display and high-definition televisions. Merrill Lynch and UBS served as underwriters for a secondary public offering of Syntax common stock. After Syntax filed for bankruptcy protection in 2008, plaintiffs asserted claims pursuant to Section 11 and 12 of the Securities Act of 1933 against the underwriters, alleging that Syntax prematurely recognized revenue by mischaracterizing consignment transactions as sales. The court granted class certification, but it significantly narrowed the scope of the class, and Gibson Dunn successfully negotiated a settlement on behalf of the underwriters.
- Won denial of class certification in a securities action against client Belo Corp. and certain officers and directors arising from acknowledged circulation overstatements at a flagship newspaper, the Dallas Morning News. The Fifth Circuit affirmed, accepting Gibson Dunn’s argument that the “corrective disclosure” included negative news unrelated to the circulation overstatement and that plaintiffs had failed to prove that the overstatement-related news, and not the unrelated negative news, caused a significant amount of the stock price decline that followed the disclosure.
- Won affirmance in a securities class action case, where the defendant faced potential liability of several billion dollars. In a published, unanimous opinion, the Tenth Circuit clarified a plaintiff’s loss-causation burden under federal securities laws. The opinion is significant not only for securities defendants, but also for class-action and other defendants, particularly in cases in which expert testimony figures prominently.
- Won dismissal of class action complaints for Deloitte & Touche Netherlands in connection with improprieties at Royal Ahold, the world’s third largest supermarket group. In the wake of an international scandal, Deloitte, which provided auditing services for Ahold, was sued in class actions in the United States and investigated by the SEC and DOJ, as well as authorities in the Netherlands. Gibson Dunn attorneys secured a dismissal of the class action complaints and defeated plaintiffs’ efforts to revive their complaint following Ahold’s \$1.1 billion settlement with plaintiffs.
- Won dismissal of a securities fraud class action against Cadence Design Systems, Inc. and four of its current or former officers. Plaintiffs alleged securities fraud based on restated revenue accounting for two transactions. The court rejected plaintiffs’ reliance on confidential witnesses’ accounts because they lacked personal knowledge linking the

defendants to the alleged fraud. The court held that plaintiffs' allegations regarding GAAP violations, motive to meet Wall Street expectations, the resignation of certain executives, and the restatement of financial statements were insufficient to create a strong inference of scienter.

- Won dismissal of three consolidated securities fraud putative class action lawsuits brought against clothing retailer Tween Brands, Inc. and three of its officers. Plaintiffs alleged that Tween Brands and its officers misled the market with optimistic earnings projections, while knowingly withholding negative information about the company's performance. On an amended complaint, the court agreed with Gibson Dunn that plaintiffs did not allege any facts showing that the defendants had acted recklessly or with actual knowledge of falsity, which is required for forward-looking projections. Because plaintiffs already had amended previously, the court, in June 2009, dismissed the complaint with prejudice.
- Represented PricewaterhouseCoopers in federal securities class action litigation in connection with the restatement by a pump and valve manufacturer of its financial statements. The district court denied plaintiffs' motion for class certification and granted PwC's motion for summary judgment on Section 11 claims. The Fifth Circuit remanded, holding that the district court had employed an incorrect standard with respect to the burden of proof, but left open the possibility that PwC could obtain summary judgment applying the correct standard.
- Won dismissal of a high-profile shareholder class action for client Vivendi, permitting it to complete its multibillion dollar Business Combination Agreement with Activision, Inc. to form Activision Blizzard.
- Successfully defended ValueClick, an online affiliate marketing network, in international class action alleging inadequate monitoring of publisher misconduct, leading to alleged commission hijacking. Gibson Dunn developed a complex damage analysis that led to a steeply discounted settlement because of the impossibility of class certification highlighted by the analysis and avoided expensive and protracted litigation.
- Won summary judgment for Marsh & McLennan in an Oregon securities fraud suit seeking millions of dollars in actual and punitive damages. Gibson Dunn convinced an Oregon state court that the Oregon statute under which shareholders were suing was unconstitutional. On June 11, 2008, Judge Frank Bearden granted summary judgment in favor of the Marsh Defendants. On June 19, 2008, the Court awarded the Marsh defendants "final judgment in their favor and against plaintiff."
- Won dismissal for Levi Strauss in a securities fraud action, where two former employees of the company's tax department filed a securities class action asserting Section 10(b) and Section 11 claims, the latter involving two offerings of bonds aggregating over \$1 billion. The court dismissed the fraud claims and applied a heightened pleading standard to the tax-fraud allegations. The court found that fraud could not be inferred, and the case settled for a nominal amount, which was paid by the company's insurer.
- Won reduction of class size for Veeco Instruments, Inc. as part of defense and favorable settlement of securities law class action. Before trial, the court held that class members who either sold their shares after a corrective disclosure at a price higher than their purchase price,

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or who kept their stock past the point at which the stock price recovered to their purchase price, could prove no economic loss and were not entitled to damages. This ruling substantially reduced the number of class members, as well as the damages available to the class.

- Won appeal for Bjurman, Barry & Associates (“BB&A”) and one of the mutual funds it advises in a securities case where the plaintiff claimed BB&A breached its fiduciary duties under Section 36(b) of the Investment Company Act by causing the fund to incur excessive fees for promotion, marketing and distribution services. BB&A never received any of the fees. Gibson Dunn secured an important victory when the Second Circuit held that the mere fact that BB&A may have been liable for the fees had the fund not paid them did not make BB&A “recipients” of such fees.
- Won dismissal for A.G. Edwards & Sons, Inc., RBC Capital Markets Corporation and UBS Investment Bank in a securities class action filed by purchasers of Star Gas.
- Won dismissal for Marsh & McLennan Companies, Inc. in a securities class action brought on behalf of purchasers and acquirers of common stock of Axis Capital Holdings Limited in the Southern District of New York. Following the decision, plaintiffs decided not to amend their complaint and did not appeal the dismissal.
- Won appeal for Nasdaq Stock Market, Inc. in a securities class action challenging Nasdaq’s statements to the marketplace and its decisions to cancel trades executed on Nasdaq. We obtained a victory in the Second Circuit, where the Court held that Nasdaq was absolutely immune for its activities in operating the Nasdaq Stock Market.
- Won summary judgment for Merrill Lynch in an ERISA class action against Merrill Lynch, WorldCom and its officers and directors, and Arthur Andersen.
- Obtained successful settlement for SpectraLink in a consolidated securities class action and related federal and state derivative cases. After we deposed plaintiffs’ “confidential informant,” and the district court denied the plaintiffs’ motion to amend the complaint, the securities class action settled for less than 2 percent of the claimed damages.

Derivative Litigation

All too often, derivative actions are filed on the heels of securities fraud class actions. These cases, which are purportedly brought on behalf of the company against its directors, pose a particular concern for board members.

Gibson Dunn has decades of experience representing companies and their directors and officers in defending, and taking control of, shareholder derivative actions. Examples include:

- Scored a significant victory on behalf of the directors of Allergan, when Central District Court Judge David O. Carter dismissed with prejudice the first amended shareholder derivative complaint against the directors of Allergan, Inc. The complaint sought the return of \$600 million paid by Allergan in September 2010 pursuant to a misdemeanor guilty plea agreement and settlement of qui tam cases asserting that Allergan implemented an illegal

marketing “scheme” to promote BOTOX® for unapproved off-label uses. The complaint alleged violations of federal securities laws, violations of California Corporations Code, breach of fiduciary duty, waste of corporate assets, and unjust enrichment. The company filed a motion to dismiss for failure to make a demand on the board of directors, and Gibson Dunn filed a motion to dismiss on behalf of the director defendants arguing that plaintiffs failed to allege any action or inaction by the directors sufficient to state a claim. Gibson Dunn argued that plaintiffs’ allegations were either unsupported conclusions or misstatements of the documents cited in the complaint. In dismissing the complaint, the court concluded that there is “no evidence that [the directors] have broken the law or acted in any way that would be an invalid exercise of business judgment” and granted the directors’ and the company’s motions.

- Representation of the Board of Directors of Hewlett-Packard in a derivative shareholder action brought against current and former directors and officers of HP for breach of fiduciary duty and corporate waste arising from alleged improper conduct by HP, including the alleged misconduct of HP’s former CEO Mark Hurd, as well as violations of the Foreign Corrupt Practice Act and other claims. Plaintiff also asserts federal securities law claims for violation of Section 14(a) of the Securities Exchange Act of 1934 relating to HP’s proxy statements issued and disseminated in 2010 and 2011. Gibson Dunn’s motion to dismiss the complaint is pending.
- Defeated two derivative suits against Bidz.com, the largest on-line jewelry auction site. Plaintiffs filed derivative actions in state and federal court alleging a wrongdoing by the defendants. The California state court and the Central District of California granted Gibson Dunn’s first set of motions based upon inadequate allegations of demand futility with leave to amend. Following the filing of amended complaints, Gibson Dunn again challenging the demand futility allegations under applicable Delaware law. The state and federal court dismissed the actions with prejudice for failure to allege demand futility.
- Won dismissal of a shareholder derivative action against current and former members of Textron’s Board of Directors and the Company’s former Chief Executive Officer and Chief Financial Officer. The decision, by Judge Paul Barbadoro of the U.S. District Court for the District of New Hampshire, followed a similar decision three weeks prior in which the court granted Gibson Dunn’s motion to dismiss a federal securities class action complaint against Textron. The shareholder derivative complaint adopted many of the allegations in the securities complaint, which asserted that Cessna, a Textron subsidiary, had a material weakness in the backlog of aircraft orders, which allegedly caused a steep drop in Textron’s stock price. Judge Barbadoro concluded that the derivative complaint failed to adequately plead that the shareholder plaintiff was excused from making a demand on the Textron Board before bringing suit, finding that the complaint failed to plead with particularity that a majority of the board members faced a substantial likelihood of liability for any claim.
- Representation of GridPoint Inc. in direct and derivative suits arising out of GridPoint’s 2010 acquisition of Standard Renewable Energy, LP. Following the acquisition, shareholders of both companies sued GridPoint and its board members, alleging that GridPoint misrepresented its financial situation at the time the offer was made. The case settled in 2011.*

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- Representation of DR Horton in a derivative action against the directors of DR Horton, claiming that the directors breached their fiduciary duties by failing to monitor and exercise oversight over DR Horton's labor, tax and immigration compliance practices. The shareholders voluntarily dismissed the case in 2011 to pursue a request for corporate records under Section 220 of the Delaware General Corporation Law. We continue to represent DR Horton in connection with the 220 request.*
- Representation of EXCO CEO Doug Miller in derivative actions and shareholder class actions in state and federal court in Texas. The cases, brought in 2010 by multiple shareholders against EXCO, its directors, and CEO Miller, challenged Miller's proposed offer to buy EXCO's stock on the grounds of inadequate price and unfair process. The proposed transaction to take EXCO private did not materialize, and the cases were dismissed as moot.*
- Defended the former CEO of Affiliated Computer Systems ("ACS") in multiple stock option "backdating" derivative lawsuits filed by shareholders in Delaware Chancery court and Texas state and federal court. The actions claimed that ACS had for many years issued backdated stock options to its employees and executives. ACS did not seek dismissal, and the matter proceeded to trial. The case was resolved favorably to the client and the company after discovery revealed that ACS's stock option plan permitted its Stock Option Committee (of which our client had never been a member) to establish "grant dates" in the past, and that the committee had regularly done so. The matter, therefore, turned solely on the proper accounting for those lawful grants, amounts that were not material to the company's financial statements.*
- Representation of the Board of Directors of BP plc in a shareholder derivative suit where the federal district court in Galveston, Texas dismissed all claims arising out of BP's oil refining operations in Texas City. The lawsuit alleged that EPA and OSHA violations, dating to a refinery explosion in 2003, were due to the board's failure to oversee and monitor the company's compliance programs. Before filing the derivative suit, the plaintiff-shareholder made demands on the company to bring claims against the directors and officers of the company for breach of fiduciary duty. In response, BP formed a special committee and retained Gibson Dunn to serve as the committee's independent counsel. The special committee concluded that there was no basis for asserting claims, and the company moved to dismiss the pending lawsuit. The court found that plaintiff lacked standing to sue under UK law and, therefore it did not need to address the Special Committee findings.
- Representation of the current and former outside directors of Revlon Corporation in connection with state and federal class action and derivative lawsuits in Delaware and New York arising out of an exchange offer conducted by Revlon in September 2009. The plaintiffs assert federal securities claims and direct and derivative claims for breach of fiduciary duty.
- Successful settlement of shareholder derivative litigation for Intel Corporation. In July 2010, the federal district court in Delaware gave final approval to a broad settlement of all shareholder derivative claims brought against the board of directors of Intel, arising out of Intel's alleged 20-year anticompetitive misconduct in the United States and foreign countries.

The settlement followed the resolution of an antitrust case brought by AMD. Gibson Dunn negotiated a settlement that involved no monetary relief and limited governance enhancements. The court also approved a release of all derivative claims related to past or pending antitrust proceedings. In an earlier decision in related litigation in 2009, Gibson Dunn obtained dismissal of a shareholder derivative litigation against Intel's board.

- Won dismissal of all claims brought against a former officer of Altera Corporation. Plaintiff, an Altera shareholder, brought a derivative action against various officers and directors of Altera, asserting claims arising out of alleged stock option backdating at the company from 1996 through 2000. As to Gibson Dunn's client, plaintiff asserted claims for alleged false statements, insider trading, and unjust enrichment. The court dismissed six of the seven claims because plaintiff had failed to plead sufficient facts to state a claim. As to the seventh claim, the court held plaintiff could not proceed against the former officer because plaintiff had not made demand on Altera's board of directors, and demand was not excused.
- Representation of United Therapeutics Corporation in consolidated derivative actions in the Delaware Court of Chancery. The plaintiffs sought a judgment that would reverse the repricing of stock options and other incentive awards worth more approximately \$125 million to the company's employees and directors. In addition, the plaintiffs sought the cancellation of more than a million of the CEO's stock options. Gibson Dunn defeated the plaintiffs' motion to expedite the case and their motion for a preliminary injunction, and then negotiated a favorable settlement resolving all the claims on the defendants' terms.
- Successfully represented the board of directors of Hewlett-Packard in connection with shareholder derivative claims following the company's termination of its former CEO, Carly Fiorina. Several pension funds alleged that the board breached its fiduciary duty in granting a \$40 million severance package to the terminated CEO. In March 2008, the U.S. District Court for the Northern District of California dismissed all claims against the board, and in November 2009, the Ninth Circuit affirmed, finding that that the Board had broad discretion to make long-term incentive awards and that those awards did not violate any of the terms of HP's severance policies.
- Obtained dismissal of a derivative lawsuit alleging that directors and officers of ePlus Inc. unlawfully backdated stock options. The court agreed with Gibson Dunn's arguments that the plaintiff failed to plead sufficient allegations of derivative standing and demand futility.
- Represented Baker Capital and its related investment funds, which owned shares of Internet retailer Wine.com, in separate direct and derivative actions brought against our client by current and former shareholders of Wine.com. Plaintiffs sought damages of \$66 million, plus unspecified punitive damages and attorney fees. In July 2009, after more than three years of litigation, followed by an 18-day trial, Gibson Dunn obtained a complete victory for Baker Capital and its related investment funds.
- Obtained a dismissal for Computer Sciences Corporation and numerous current and former directors and officers in a federal shareholder derivative case in a stock options backdating matter. Plaintiff shareholders alleged that CSC's management and board colluded to improperly backdate and award in-the-money stock options to CSC executives in violation of company stock plans and then produced and disseminated false financial and proxy

statements concealing the alleged scheme. The court held that they had not sufficiently pled allegations of interestedness on the part of a majority of the CSC Board that plaintiffs' failure to make a pre-filing demand could be excused. The Ninth Circuit affirmed.

- Won two dismissals of a shareholder derivative action arising from allegations that former employees of Openwave improperly backdated certain stock option grants. The court accepted Gibson Dunn's argument that the plaintiffs had failed to demonstrate any pattern of stock option grants at favorable prices during the relevant time period.
- Secured dismissal of a shareholder derivative suit against directors of CSK Auto Corporation, Inc., one of the largest auto parts and accessories retailers in the United States, involving alleged breaches of duty and violation of the Sarbanes-Oxley Act in connection with accounting errors and irregularities discovered during a review of internal controls and the subsequent restatement of the company's financial results for fiscal years 2001 through 2005.
- Obtained a dismissal for THQ Inc. in a stock option backdating case filed against the company and its officers and directors by arguing that the plaintiff had not established standing to assert claims relating to grants made years ago and had not pled sufficient facts to establish demand futility.
- Represented Bear Stearns and its board members in a shareholder derivative action alleging breach of fiduciary duty by members of its board in connection with alleged research analyst conflicts and IPO allocations. We moved to dismiss the action against Bear Stearns and its entire board of directors, obtained dismissal, and then won a unanimous affirmance on appeal.
- Represented Edison Schools in securities class and shareholder derivative actions in the Southern District of New York and Delaware and New York state courts alleging that Edison misrepresented its revenues. The securities class action was settled as to Edison and its underwriters on favorable terms at the time of argument on Edison's motion to dismiss. The derivative actions were dismissed with prejudice.
- Represented FINOVA Group, Inc., certain of its subsidiaries, and its directors and officers in securities class and shareholder derivative actions filed against some or all of these entities in Tennessee, Arizona and Delaware. After filing motions to dismiss, both the securities class actions and the individual claims were settled on terms extremely favorable to FINOVA. The derivative actions were dismissed with prejudice.

Mergers and Acquisitions and Takeover Litigation

Gibson Dunn's Securities Litigation Group has extensive experience defending the litigation that inevitably follows the announcement of public company mergers. We work closely with our corporate lawyers and anticipate potential issues before a deal is announced, minimizing the costs and risks associated with the fast-paced discovery and preliminary injunction battles that often accompany such deals.

We have worked on many of the major hostile offers in the United States and abroad, including defending Emulex from a failed takeover by Broadcom and Tenet from a hostile offer by

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Community Health and the Unocal Corp. takeover of Mesa Petroleum, which is considered one of the landmark cases in the hostile takeover arena. We also represented: Maxwell Shoe Company, Inc. in connection with its defense of an unsolicited offer by Jones Apparel Group; Hallwood Realty in connection with an unsolicited hostile offer by an affiliate of Carl C. Icahn; and Atlantic Coast Airlines Holdings, Inc. in connection with its successful effort to fend off a hostile takeover attempt by Mesa Air Group.

Gibson Dunn's securities litigators also represent companies, directors and their financial advisers in connection with shareholder litigation arising out of proposed mergers. Assignments have included representation in the mergers of Harrah's Entertainment, ValueClick and K2.

Our track record is hardly surprising, as Gibson Dunn attorneys *created* many of the legal ideas and strategies that others in the legal industry now employ. Here is a sampling of some of our recent successes:

- Representation of Tenet Healthcare in the successful defense against a hostile of unsolicited takeover attempt by Community Health Systems. Less than one month after Tenet filed a complaint against Community Health alleging misstatements in connection with its proxy solicitation process, Community withdrew its takeover offer. Gibson Dunn also secured dismissals in favor of Tenet and its board in related shareholder suits on breach of fiduciary duty claims brought in Nevada and Texas.
- Representation of Transatlantic Re in litigation relating to its potential merger with reinsurer Allied World and Transatlantic's consideration of competing bids from Berkshire Hathaway's reinsurance business and Validus, a Bermuda reinsurer. Gibson Dunn filed a federal securities lawsuit alleging that Validus' proxy and exchange offer materials violate the federal securities laws. The firm is also defending shareholder lawsuits in New York and Delaware. In August 2011, Gibson Dunn persuaded the Delaware Court of Chancery to dismiss a suit filed by Validus seeking to compel Transatlantic to waive certain rights under its merger agreement with Allied.
- Represented Intel Corporation in the negotiation of favorable settlements in six shareholder class action lawsuits in which shareholders of Wind River Systems sought a preliminary injunction restraining our client from completing its announced tender offer to acquire the outstanding shares of Wind River. Gibson Dunn negotiated a settlement that involved limited enhanced disclosure but no other changes to the parties' merger agreement. Plaintiffs had sought to force Intel to raise its tender offer price and adopt a variety of changes to the merger agreement. Plaintiffs agreed to settle for "disclosure-only" changes to the deal and withdrew their preliminary injunction motion. As a result, Intel was cleared to complete its acquisition.
- Represented the Board of Directors of iBasis Inc. in connection with an all-cash, all-shares tender offer made by Koninklijke KPN N.V. for all of the outstanding shares of iBasis. Gibson Dunn litigated the case through trial and the case settled after KPN agreed to increase its tender offer price to \$3.00 per share. The offer price represented a 130.8% premium for shareholders over the closing price of iBasis shares on the last trading day prior to the

announcement of KPN's tender offer, and nearly a 100% increase from KPN's initial offer price of \$1.55 per share.

- Defended Emulex Corporation against a hostile takeover attempt by Broadcom Corporation. In a multi-pronged response, Gibson Dunn sued Broadcom in federal court for making false and misleading statements to Emulex's stockholders, sued Broadcom in state court for violations of California's unfair competition law, and defended Emulex's defensive measures in the Delaware Chancery Court. As a result, Broadcom abandoned its lawsuit, raised its offer and indicated that it would proceed with its \$11 per share offer only with the support of Emulex's Board. In July 2009, Emulex's Board rejected Broadcom's offer, and Broadcom announced that it would no longer pursue an acquisition of Emulex. Gibson Dunn also successfully opposed Broadcom's motions to dismiss Emulex's antitrust and defamation complaint. Broadcom claimed it had an immediate right to appeal California's Anti-SLAPP statute to the 9th Circuit, but we successfully argued that the defamation constituted commercial speech, which is exempted from the immediate appeal provision.
- Representation of Catterton Partners in connection with its acquisition of Restoration Hardware. Plaintiffs sued to prevent Restoration Hardware's stockholders from voting on Catterton's offer to acquire Restoration Hardware at \$4.50 per share and to force Restoration Hardware's board to re-open discussions with Sears, a potential rival bidder. After expedited discovery, Gibson Dunn convinced plaintiffs to withdraw their motion for preliminary injunctive relief, which allowed the transaction with Catterton to proceed to a successful vote of Restoration Hardware's stockholders, and close on schedule.
- Represented Currenex, Inc. and members of its senior management in a shareholder action challenging stock options granted to Currenex executives in connection with the acquisition of Currenex by State Street Bank & Trust. The California Superior Court dismissed all claims against Currenex, finding that the claims were derivative, not direct, and that plaintiffs had lost standing to sue when the merger extinguished their ownership rights in Currenex.
- Represented Computer Sciences Corporation and defeated a motion for preliminary injunction seeking to stop CSC's acquisition of First Consulting Group, Inc. After expedited discovery, including depositions in London, North Carolina, Chicago, Dallas and New York, and an expedited briefing schedule, the court denied the motion in its entirety.
- Obtained dismissal of securities class action against former CEO of Golden State Vintners, Inc. and a related acquisition entity. The class action was brought on behalf of a class of sellers of GSV stock who alleged that they sold their shares before the release of news that the company was going to be bought out for a higher price than the current trading price. Plaintiffs also alleged insider trading by our client. The court dismissed the complaint in its entirety, finding that plaintiffs had failed to adequately allege either the falsity of the challenged statements or defendants' scienter under the heightened pleading standards.
- Represented NASD (now FINRA) in a case involving the consolidation of certain of its regulatory functions with those of the New York Stock Exchange. NASD retained us to represent it in litigation brought by an NASD member firm that sought to prevent NASD from completing a transaction that would make the newly combined entity the single private-

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sector regulator of U.S. securities firms. We successfully moved to dismiss the complaint for lack of jurisdiction.

- Represented Delcath Systems, Inc. in connection with hedge fund Laddcap Value Partners' attempt to seize control of Delcath. In response to our arguments concerning discovery violations, Laddcap faced a consolidated preliminary injunction hearing and trial, a summary judgment motion and the threat of sanctions based on our arguments concerning discovery violations. As a result, Laddcap gave up its quest for control of Delcath and entered into a settlement agreement with Delcath that left control of the company in the hands of the board.

Subprime and Financial Crisis Related Litigation

The financial crisis has generated a new set of legal challenges for financial institutions and other mortgage industry participants. Our extensive experience in representing financial institutions in their most complex litigation and regulatory matters, combined with our interdisciplinary capabilities bearing on all aspects of the subprime and financial industry, allows our Subprime Working Group to provide exceptional representation to companies and individuals facing litigation or regulatory investigations involving subprime or financial crisis-related matters.

In connection with market turmoil in subprime lending, we represent investment banks, underwriters, mortgage originators, directors and others in a broad range of litigation and regulatory investigation matters.

Examples of our experience in subprime-related litigation and regulatory matters include representation of:

- Won motion to dismiss a mortgage-backed securities class action complaint filed against UBS and several of its present and former officers. Plaintiff alleged violations of Sections 11, 12(a)(2) and 15 of the Securities Act of 1933 in connection with the sale of mortgage pass-through certificates, a form of mortgage-backed securities that are collateralized by mortgages principally originated by Countrywide and IndyMac. The Court dismissed the Amended Complaint on the grounds that plaintiff did not meet the pleading requirements of Section 13, but granted plaintiff leave to file an amended complaint.
- Defeated claims against TCW Asset Management Company in financial crisis lawsuit arising out of investment losses tied to multibillion-dollar mortgage-backed collateralized debt obligations (CDOs). The U.S. District Court for the Southern District of New York granted TCW's motion to dismiss all claims filed by Landesbank Baden-Wuerttemberg, including fraud, negligent misrepresentation, and unjust enrichment. The CDO at issue had been structured by Goldman Sachs, with TCW serving as the investment advisor to the entity that issued the CDO notes. In dismissing the action, the court held that arm's-length transactions between sophisticated counterparties cannot support negligent misrepresentation claims.
- Won final judgment in favor of Andrews Kurth in connection with a putative class action complaint claiming that Andrews Kurth aided and abetted the breach of fiduciary duty by the principals of various real estate and securities investment LLC's tied to mortgage lending. The plaintiffs represented a putative class of bankrupt

LLCs, which had been formed for investing in subprime real estate loans and derivative securities. They alleged that officers and directors had engaged in securities fraud and self-dealing and that Andrews Kurth had aided and abetted the LLCs' manager by issuing an opinion letter concluding that all necessary approvals had been obtained. In its motion to dismiss, which was filed in bankruptcy court, Gibson Dunn asserted that the plaintiffs failed to plead sufficient facts to support their allegations that Andrews Kurth had "actual knowledge" of the underlying tort and that financial statements contradicted those allegations. The bankruptcy court recommended dismissal, and the district court entered judgment in favor of Andrews Kurth.

- Won dismissal of claims against TCW Group Inc. in a case brought by China Development Industrial Bank (CDIB) alleging that TCW had fraudulently induced CDIB to enter into a \$250 million derivative swap transaction linked to a collateralized debt obligation tied to the U.S. real estate market. TCW acted as asset manager for the CDO, and CDIB acquired the derivative interest through a transaction with Morgan Stanley in which TCW played no role. CDIB named TCW as a defendant on state tort claims. The New York Supreme Court found that the allegations were without merit and dismissed the claims against TCW.
- Won dismissal of all claims against clients Citigroup, Oppenheimer, RBC Capital Markets, Stifel, Nicolaus & Company, and A.G. Edwards (now merged into Wells Fargo) in a subprime-related securities class action arising out of the collapse and subsequent bankruptcy of New Mexico-based Thornburg Mortgage, Inc. in 2008. The plaintiffs alleged that Thornburg made false or misleading statements in documents relating to four public stock offerings. The court granted the underwriter defendants motion to dismiss the plaintiffs' Securities Act of 1933 Act claims against them because he found that the complaint failed to allege any false or misleading statements in the offering. Plaintiffs moved for reconsideration, but the court refused to alter its original order and dismissed all the underwriter claims.
- Successfully settled securities class action on behalf of a group of underwriters (including Morgan Stanley, Goldman Sachs, Credit Suisse, Barclays, UBS, Deutsche Bank, J.P. Morgan, and Citigroup) in "credit crisis" securities class action, where investors sued former officers and directors of Washington Mutual, along with Washington Mutual's underwriters and audit firm. The case arose out of the September 2008 collapse of Washington Mutual, the largest bank failure in United States history. Plaintiffs alleged that despite Washington Mutual's representations to the contrary, its approach to mortgage lending was insupportably risky, its home valuation appraisals were fraudulently manipulated, and its loan-loss allowances were inadequate and in violation of GAAP. The complaint alleged claims under Sections 11 and 12(a)(2) of the Securities Act of 1933. Over the course of two years, Gibson Dunn successfully moved to dismiss several of the offerings upon which the underwriter defendants were sued. In 2011, Gibson Dunn reached a settlement of all remaining claims against the underwriters.
- Representation of RBS and its affiliates in mortgage-backed securities class action, pending in the U.S. District Court for the Southern District of New York, alleging violations of Section 11, 12(a)(2) and 15 of the Securities Act. In the early stages of this litigation, Gibson

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Dunn has forced the plaintiffs to withdraw a remand motion based on the strength of Gibson Dunn's argument in opposition to that motion.

- Representation of the former independent board of directors of Wachovia Corporation in shareholder derivative litigation in San Francisco, in which the directors are being sued for breaches of fiduciary duty arising out of Wachovia's subprime mortgage lending woes, and its troubled acquisition of subprime lender Golden West Financial Corporation in 2007.
- Successfully settled securities class actions on behalf of a group of underwriters, including Citigroup, Merrill Lynch, Goldman Sachs, UBS, J.P. Morgan, Credit Suisse, Banc of America Securities, Bear Stearns, Deutsche Bank and RBC, in litigation arising out of subprime mortgage issues affecting Countrywide Financial Corp., one of the nation's leading subprime lenders. The parties agreed to a settlement from Bank of America, which acquired Countrywide in which the underwriters paid nothing.
- The present and former independent directors of New Century Financial Corporation in securities class action litigation and related matters and proceedings arising from the company's announcement that it would restate certain financial statements and its subsequent filing for bankruptcy protection.
- The independent directors of Bear Stearns in a derivative action relating to the closing of two company-managed hedge funds that had portfolios containing subprime mortgage related assets.
- A major subprime mortgage originator and wholesaler in an SEC enforcement investigation involving subprime mortgage underwriting and securitization issues.
- A major investment bank in connection with an SEC enforcement investigation into loan-loss reserves for a major subprime lender.
- The board of the country's largest mortgage insurer in connection with capital raising, fiduciary duty and compensation issues arising out of subprime and related exposures.
- The board of the country's largest bond insurer in connection with disclosure, fiduciary duty and compensation issues arising out of subprime and related exposures.
- One of the country's largest mortgage-financing providers in connection with an investigation by the New York Attorney General.
- A major subprime mortgage wholesaler in connection with an investigation by the New York Attorney General.
- Bondholders of Franklin Savings Association and CenTrust Bank in connection with extensive litigation against the RTC/FDIC.
- Subprime lender Cityscape Financial Corporation in connection with numerous securities class actions.

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- Auditors in securities litigation arising out of the bankruptcy of subprime lender Southern Pacific Funding Corporation.
- First National Bank of Marin in class action and Office of the Comptroller of the Currency in matters arising from alleged inadequate disclosures in connection with high-interest credit cards issued to subprime cardholders. We negotiated a complex class settlement that coincided with the announcement of an OCC settlement and thwarted filing of copycat class actions.
- Bankfirst, a South Dakota credit card lender, in connection with a Federal Reserve enforcement matter concerning its subprime lending practices.
- A privately held bank in conducting an internal investigation of “whistleblower” allegations that the bank’s mortgage lending subsidiary, whose business focused on making loans to lower credit quality customers, utilized inflated borrower credit scores in originating and selling mortgage loans. The report of this investigation was furnished to the bank’s independent auditors and to bank regulatory officials.
- ITT Corporation and its entities, Fair Isaac and Consumer Financial Corporation, in connection with consumer class actions involving reconveyances and other lending practices.
- Auditors in connection with the bankruptcy of PinnFund USA, a Ponzi scheme that deceived the public and investors into thinking it was engaged in making subprime loans.

DOJ, SEC and State Attorneys General Enforcement Actions

Gibson Dunn is a leader in defending companies and individuals facing investigations by the U.S. Department of Justice, the SEC, state Attorneys General, and other federal and state regulatory agencies.

We have represented directors, officers, issuers, underwriters and auditors in enforcement matters, including publicly disclosed proceedings involving Amazon.com, Homestore.com, Huntington Bancshares, Inc., Informix, Janus Capital Group, Mirant, PNC Financial Corporation, Sabre, Sunbeam, Tenet Healthcare, TimeWarner, Tyco and Waste Management, Inc. In addition, we represented NASD in a two-year probe of trading activities by the SEC and the Antitrust Division of the Department of Justice - one of the largest SEC investigations in recent history.

Our lawyers also routinely represent clients before FINRA (formerly NASD), the New York Stock Exchange, and other regulatory and self-regulatory organizations.

- Defeated an attempt by a NASDAQ-listed company to bring a collateral challenge to NASDAQ’s delisting procedures in federal court. The Southern District of New York concluded that the court lacked jurisdiction to stay a delisting and that the company had not satisfied the prerequisites for obtaining a stay. The plaintiff, CleanTech Innovations, Inc., originally filed suit in state court, where it obtained a temporary restraining order against NASDAQ. NASDAQ promptly removed the case to federal court and sought to vacate the TRO on the ground that the state court lacked jurisdiction. Judge Sullivan agreed and vacated

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the state court's TRO because "[t]he Exchange Act sets forth a comprehensive federal scheme for review" of decisions by securities self-regulatory organizations like NASDAQ, "which leaves no room for intervention by state courts."

- Won dismissal of securities fraud charge for client Stephen H. Brinck Jr. by a three-member disciplinary hearing panel of the Financial Industry Regulatory Authority (FINRA). The panel rejected the charge that Mr. Brinck, former head of the Fixed Income Desk at Thomas Weisel Partners LLP, had engaged in fraud when he authorized the purchase of \$15.7 million of auction rate securities (ARS) for three corporate clients two weeks before the freeze of the entire ARS market in February 2008. FINRA's Department of Enforcement had charged Mr. Brinck with fraudulently "stuffing" three client accounts with ARS, but the panel ruled that the Department of Enforcement failed to prove its fraud allegation. The FINRA enforcement staff had been seeking to bar Mr. Brinck from the securities industry for life.
- Obtained complete dismissal for the Financial Industry Regulatory Authority (FINRA) and its officers and directors, including former FINRA CEO and current SEC Chairman Mary Schapiro, on immunity grounds of all claims arising out of the 2007 regulatory consolidation of FINRA's predecessor, the National Association of Securities Dealers, with the regulatory arm of the New York Stock Exchange.
- Won contentious insider trading action brought by the SEC against hedge fund client Wynnefield Capital and its chief portfolio manager, Nelson Obus. The Southern District of New York granted summary judgment in favor of Gibson Dunn's clients following eight years of litigation. In a rebuff to the SEC, the court found that the Commission failed to adduce evidence sufficient to prove the elements of insider trading.

Internal Investigations

Securities litigation is sometimes preceded by or occurs parallel with an internal investigation under the supervision of a special committee of the board of directors. Our lawyers are frequently called on to advise such special committees in conducting internal investigations into alleged insider trading, improper revenue recognition, breaches of fiduciary duty and violations of federal and state statutes, including the Foreign Corrupt Practices Act. In recent years, we have conducted independent investigations for the audit committees of numerous Fortune 500 companies.

Gibson Dunn's securities litigators know that early and aggressive crisis management can enhance a corporation's credibility with law enforcement officials, regulators and the investment community and head off or limit the corporation's exposure.

General Securities Litigation

- Won cross-motion for summary judgment on behalf of its client Tyco International Ltd. in a case that arose from a tax agreement entered into by CIT Group Inc. and Tyco during Tyco's 2002 spinoff of CIT, which required CIT to pay Tyco for any tax benefits achieved through the use of pre-spinoff net operating losses. In CIT's prepackaged plan of reorganization under Chapter 11 of the Bankruptcy Code, it rejected the tax agreement, and Tyco filed a proof of

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claim for damages resulting from the rejection. CIT commenced an adversary proceeding seeking to subordinate Tyco's claim pursuant to § 510(b) of the Bankruptcy Code, arguing that the claim was for damages arising from the sale of CIT's securities. In granting summary judgment for Tyco, the court held that a mere connection between a claim and the purchase or sale of a security is not enough to support subordination.

** List includes some matters handled by current Gibson Dunn partners prior to joining Gibson, Dunn & Crutcher LLP.*

