Shareholder Activist Litigation

We represent many prominent hedge funds, activist investors, boards of directors, special committees, individual directors, and large public and private companies in the defense and pursuit of activist investment strategies. These disputes often play out in boardrooms, in negotiations across the table between stakeholders, or in courtrooms—and we have proven success in all forums.

Our experience spans proxy contests, hostile takeover, and other contests for control, as well as disputes overboard representation and between stockholders over stockholder agreements. We have represented activists and targets in nearly every type of action, including bringing and defending books and records inspection demands, proxy contests, expedited proceedings to enforce or enjoin mergers and other strategic transactions, and full trials in the Delaware Court of Chancery and other courts around the country.

Quinn Emanuel's appearance in a case sends an unmistakable message to the other side: we will take this all the way. There is a reason why we have been recognized for over a decade as one of four firms that general counsel at major Fortune 500 companies fear facing the most. And we have taken that reputation to the Delaware courts and other courts around the country, where we have achieved many unparalleled, high-profile victories on behalf of our clients.

Our intimate understanding of where any activist campaign may end up—the courtroom—allows us to develop and execute a highly effective strategy from day one, whether in the initial outreach to a board on behalf of an activist investor seeking to effect change at the company or in the boardroom in responding to a demand or action taken by an activist investor. We also understand that an out-of-court resolution is often the optimal one. Time and time again, our expertise in knowing what is at stake and what an in-court litigation would look like allows us to craft efficient out-of-court resolutions that advance our client's best interests while minimizing management distraction and the unnecessary expenditure of our client's resources.

Perhaps our greatest strength in shareholder activist litigation is our independence. Because we are a litigation-only firm and do not have a corporate transactional practice, we approach each client and case with a fresh perspective. We are free from biases that come with having to defend past decisions and relationships or a desire to stick with the status quo. Instead, we develop bespoke strategies for our clients based on what will prevail, whether via settlement or in court if the dispute gets there. Having gone to trial more often than our peer firms, we understand that in litigation the overall record—which starts before an activist campaign even begins—must be shaped from inception. Careful attention must be paid not only to the applicable corporate governance principles, but also to how the actions our clients take in the heat of the moment may be perceived months, or even years, down the line in a courtroom. Our goal is simple: to help our clients win—whether pre-litigation at the negotiating table, during litigation, or after trial. And we win a lot.

Attorney Advertising. Prior results do not guarantee a similar outcome.

AREAS OF EXPERTISE

We frequently advise clients on shareholder activist matters in the following areas:

- Identification of activist opportunities
- Analysis of potential or threatened activist campaigns
- Behind-the-scenes negotiations with corporate entities and letter-writing campaigns
- Compelling special shareholder meetings
- Proxy contests, including compliance with relevant securities laws and corporate bylaws
- Books-and-records inspection demands and obtaining shareholder lists
- Publicity campaigns and solicitation of proxy votes
- Corporate governance disputes
- Unsolicited/hostile takeovers and takeover defenses
- Stockholder agreements and shareholder appraisals
- Mergers & Acquisitions and busted deals
- Analysis of potential and pending litigation against corporate entities
- Settlement of activist campaigns and litigation

NOTABLE CLIENTS

Some of our notable clients in the shareholder activist context include the following entities and their affiliates:

- Elliott Investment Management
- MHR Fund Management
- Steel Partners Holdings
- JANA Partners
- Pershing Square Capital Management
- KKR & Co.
- Blackwells Capital

NOTABLE REPRESENTATIONS

Some of our notable representations in the shareholder activist context include:

BOARD REPRESENTATION CAMPAIGNS

- We advised **Orthofix**, a leading global spine and orthopedics company, regarding a potential activist campaign. The campaign was resolved in our client's favor.

- We represented an individual activist shareholder in a proxy contest for a seat on the board of **Lone Star Steakhouse**, an underperforming restaurant chain with long-entrenched management. The company, controlled by its CEO and Chairman, sued the activist based on his proxy materials, alleging SEC violations, and sought a restraining order and an injunction. We successfully defended the activist and defeated the restraining order and injunction, allowing him to complete the proxy contest, whereby he was elected to the board along with his slate of candidates.

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- We represented a majority of the board of **Reading International**, a publicly held company, in a series of lawsuits over the termination of the CEO, including defending against investor claims challenging the board and seeking to change the direction of the company. We ultimately defeated all claims in Clark County District Court (Nevada) and obtained affirmance by the Nevada Supreme Court.

- We represented **Elliott Management** in its activist campaign at Twitter, securing a board seat.

- We represented the **Harte Family Foundation** in connection with its proxy battle for Harte Hanks, Inc., securing a majority of board seats.

- We represented **a prominent hedge fund** in connection with a proxy battle, securing two board seats.

- We represented **a family foundation** in connection with a proxy battle for a publicly traded company, securing two board seats.

PLAINTIFF-SIDE REPRESENTATIONS

- We represented **Vishal Garg**, founder of Better Home & Financing Holding Co. (BETR), in a proxy battle to retake the company after a boardroom coup ousted him as CEO, and obtained consents from holders of more than 52% of the voting power to remove the directors behind his firing. As part of this case, we won a first-of-its-kind Section 14(a) ruling in the SDNY.

- We secured a landmark trial victory for **Market Basket** and its Board of Directors in the Delaware Court of Chancery, vindicating the Board's decision to terminate long-serving CEO Arthur T. Demoulas. In a 125-page opinion, Vice Chancellor Laster found that the Directors had acted independently and in the best interests of the company and all of its stockholders, completely rejecting Demoulas's request for reinstatement and his theory that the Board had breached its fiduciary duties and was improperly influenced by his co-owning sisters.

- We represented **Related Fund Management** in a proxy contest at two publicly traded real estate investment trusts (REITs), Global Net Lease, Inc. and The Necessity Retail REIT, Inc. Related sought to effect changes at the REITs, including corporate governance changes and the nomination of new board members. We defeated the REIT's preliminary injunction motion, which sought to prevent Related from soliciting proxy votes on the grounds of an alleged illicit joint venture between Related and another activist investor. Thereafter, the case settled on favorable terms, including the receipt of substantial equity in the REITs, the adoption of Related's proposed corporate governance reforms, and reimbursement for all expenses associated with the proxy contest.

- We represent **shareholders** in a class action against Medibank, Australia's largest listed private health insurer. Despite Medibank's representations to the market that it was compliant with regulatory obligations for data security, a Russian hacker stole private health information of millions of customers and then sold the data on the dark web. After Medibank's disclosure of this data breach, the company's share price plummeted. Plaintiffs assert claims relating to Medibank's violations of the Corporations Act and other statutes.

- We advise multiple **hedge funds** related to mass tort lawsuits filed against publicly traded companies, including providing assessments of likely outcomes and potential settlements.

- We served as co-lead counsel to a class of former Dell Technologies Inc. Class V (DVMT) **common stockholders** against the board of Dell Technologies—including Michael Dell—along with Silver Lake and Goldman Sachs, to challenge a 2018 transaction that redeemed all shares of Class V common stock for Dell Technologies Class C common stock and cash. We alleged that the transaction's unfair terms resulted from a deeply flawed process, including stockholder coercion and conflicts of interest. We obtained a $1 billion cash settlement—the largest such settlement in Delaware history by more than $700 million—on behalf of the class. The Delaware Court of Chancery approved the settlement in April 2023.

- We represented **a group of shareholders** who sold a cannabis company to a large multi-state operator in exchange for cash and a tranche of shares. The number of shares was to be determined in accordance with a formula based on the relative values of the two companies. The shareholders challenged the share determination in arbitration, alleging that the company valuations were skewed to depress the number of shares they were awarded.

- We represent **investors** in a case asserting breaches of federal and state securities laws, as well as voidable transfers, against several individual and entity defendants, including William Wrigley, Jr., scion of the Wrigley Family. Wrigley and his lieutenants, James Whitcomb and Jay Holmes, are or were directors and officers of Parallel, a cannabis company in which Wrigley in particular held substantial interests. Beginning almost immediately after Wrigley's assumption of the CEO role from Robert Bergmann (defendant to the voidable transfers cause of action), he overloaded the company with debt and otherwise mismanaged it to the point where a sale or substantial cash infusion was necessary to keep it afloat. Although hopeful of a sale through a SPAC, once that fell through, Defendants made various misrepresentations and omissions about the company, its finances and outstanding debt, and the level of interest from other equity investors (as well as from Wrigley himself) to induce our clients to invest $25 million in a Simple Agreement for Future Equity (SAFE). Among other misrepresentations and omissions, remarkably, just two days after our clients finished funding their investment, the company experienced a cascade of major defaults on the vast majority ($300 million) of its outstanding debt. Defendants had not disclosed these imminent defaults during our clients' diligence. On July 5, 2023, we defeated defendants' motion to dismiss and will now proceed to discovery.

- We represented **Warren Lichtenstein** in an expedited Delaware Court of Chancery action involving corporate control of Aerojet Rocketdyne Holdings, Inc. We secured a declaratory judgment, permanent injunction, and other equitable relief against defendants who had used company resources without authorization to advantage themselves in a proxy contest against our client.

- We represented **Chatham Asset Management** in an expedited action in Delaware Court of Chancery seeking to enjoin takeover defenses erected by the board of target company R.R. Donnelley. We facilitated execution of a merger agreement between Chatham and the Company.

- We represented **shareholders** in a class action against Australia's largest general insurer for misstating the likely effect of management's failure to update policies to exclude pandemic shutdowns in business interruption coverage.

- We represented **a large not-for-profit entity and minority investor** in several DAX companies in a campaign to get certain topics on the agenda for the companies' annual shareholder meetings.

- Represented **Blackwells Capital** in connection with its investment in SuperValu.

- We represented **Elliott Management** in connection with its sale of Metrologic to Honeywell.

- We represented **Elliott Management** in connection with its position in Bayer relating to Bayer's Roundup-related liabilities.

- We represented **Elliott Management** in connection with its investment in XPO Logistics, resulting in a €230 million buy-out.

- We represented **Madryn Capital** in connection with its investment in SomaLogic and its announced SPAC merger, resulting in a private sale.

- W represented **Crest Financial** in challenging Sprint's deal to acquire Clearwire, leading to an increased bid that raised the deal price by over $1.5 billion.

- We represented **shareholders** in a class action against a publicly owned law firm for misrepresenting revenue and fee recovery.

- We provided strategic advice relating to **minority shareholders' rights** with respect to a German squeeze-out resolution adopted by the general meeting.

- We represented **shareholders** in the annual general meetings of a German DAX company to exercise information rights.

- We represented three **"Zohar" CLO funds and current manager, Alvarez & Marsal Zohar Management**, in multiple actions in Delaware courts against the funds' creators and prior managers, Patriarch Partners and Lynn Tilton. We obtained trial judgments finding that Patriarch was in breach of obligations to turn over books and records, and that the Zohar Funds are the rightful owners of certain portfolio companies entitled to replace current boards of directors.

- We advised **minority shareholders** on their rights to adjust claims for fair compensation under domination and profit and loss sharing agreements.

DEFENSE-SIDE REPRESENTATIONS

- We represented **Elon Musk** and the **Tesla Board of Directors** in a landmark Delaware Supreme Court appeal challenging a lower court's decision to rescind Musk's $56 billion incentive compensation package. The Delaware Supreme Court reversed the Chancery Court's rescission order, finding that the remedy was improper and inequitable as it left Musk uncompensated for six years of substantial work already contributed to Tesla in satisfaction of the compensation package's hyperaggressive performance benchmarks. The court awarded the plaintiff only $1 in nominal damages and reduced the plaintiff's counsel fee award from $345 million to $54 million, affirming that Delaware courts will enforce bargains made with stockholders and validate stockholder choice. The decision restores Musk's options under the compensation package, which, at the time of decision, were worth approximately $140 billion.

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- We represented **Elliott Management** in an action brought by the co-founder of Crown Castle Inc. in the Delaware Court of Chancery. Plaintiffs sought an injunction and declaratory judgment to invalidate a cooperation agreement between Elliott and Crown Castle arising out of a proxy contest launched by Elliott, along with claims for breach of fiduciary duty against Crown Castle's board of directors and aiding and abetting such breaches against Elliott. The case settled on favorable terms.

- We represented **Elliott Management** in a class action brought on behalf of shareholders of BioMarin Pharmaceutical Inc. in the Delaware Court of Chancery. Plaintiff sought a declaratory judgment to invalidate a cooperation agreement between Elliott and BioMarin arising out of a proxy contest launched by Elliott, along with claims for breach of fiduciary duty against BioMarin's board of directors and aiding and abetting such breaches against Elliott. The case settled on favorable terms.

- We advised **Elliott Management** in connection with a proxy contest involving a publicly traded transportation company, which was resolved quickly and in our client's favor.

- We represented **Thoma Bravo, LLC and related entities** in a class action brought on behalf of shareholders of MeridianLink, Inc. in the Delaware Court of Chancery. Plaintiff sought an injunction and monetary damages arising out of MeridianLink's stock repurchase program, asserting claims for breach of fiduciary duty against MeridianLink's officers and board of directors and aiding and abetting such breaches against Thoma Bravo. The case settled on favorable terms.

- We represent **Dr. Mark H. Rachesky, MHR Fund Management, and certain of its affiliates** in a dispute related to the acquisition of Emisphere Technologies, Inc. by Novo Nordisk A/S. A number of minority Emisphere stockholders filed verified stockholder class action complaints in the Delaware Court of Chancery. The actions concern a merger in late 2020, by and among Emisphere and Novo, and a simultaneous asset purchase arrangement between Novo and MHR and certain of its affiliates. The principal claim is for breach of fiduciary duty against Dr. Rachesky and certain other members of Emisphere's board. The actions allege the Emisphere board failed to maximize the consideration for both the merger and the asset purchase agreement, and also allege a disproportionate amount of consideration was allocated for the asset purchase. The actions were consolidated on December 6, 2021. Stockholders filed a verified amended class action on February 11, 2022 and a verified second amended complaint on June 14, 2022. We moved to dismiss in part the second amended complaint. The motion was heard on April 3, 2023 and granted in part on August 2, 2023. Trial is scheduled for May 2025.

- We represent **KKR** in a suit brought by shareholders against the former directors, preferred shareholders, and corporate affiliates of Scottish online sports betting company FanDuel in connection with a 2018 merger transaction between FanDuel and another sports betting company, Paddy Power Betfair. Funds affiliated with KKR were preferred shareholders of FanDuel and are named, along with KKR itself and its board designees, as defendants in the suit. The complaint alleges that in their roles as investors, KKR and another preferred shareholder, Shamrock, breached their fiduciary duties (and/or aided and abetted the FanDuel board's breach of their duties) by improperly exercising a contractual drag-along right to force a sale of FanDuel at an improperly low price, which resulted in preferred shareholders receiving the entire benefit of the transaction at the expense of common shareholders, who were left with nothing. We moved to dismiss the complaint, arguing that as minority shareholders, KKR and Shamrock owe no fiduciary duties and, after repeatedly saving FanDuel from financial ruin, had properly invoked their

bargained-for drag along rights. The trial court dismissed all but one of the claims against KKR, holding that the shareholders failed sufficiently to plead a breach of fiduciary duty, but upheld certain other claims on the basis that those claims were stated under New York law and not the law of Scotland. We appealed the adverse portions of that decision, with the appellate court finding that Scottish law applied and that the shareholders failed to state a claim for breach of fiduciary duty. The appellate court therefore dismissed the remaining causes of action. The case is now proceeding to appeal before the New York Court of Appeals.

- We represented **NantCell, Altor BioScience LLC, and Dr. Patrick Soon-Shiong** in litigation in the Delaware Court of Chancery arising from NantCell's acquisition by merger of Altor BioScience, a biopharmaceutical company engaged in the discovery, development, and commercialization of immunotherapeutic agents for the treatment of cancer, viral infections, and autoimmune diseases. We defeated plaintiffs' efforts to enjoin the transaction and obtained summary judgment dismissal of, among other things, claims brought by certain plaintiffs on the basis of covenants not to sue. With the merger closed, plaintiffs/petitioners' claims proceeded as appraisal claims and as claims for breach of fiduciary duty (including a potential class action) relating to plaintiffs' claim that the merger consideration was inadequate and the result of an unfair process. We obtained favorable settlements with petitioners and class plaintiffs to resolve all claims prior to trial.

- We represented **Masimo Corporation** in an expedited action in the Delaware Court of Chancery brought by an activist investment fund regarding the enforceability of certain of Masimo's bylaws relating to director nominations.

- We represented **Create Music Group, Inc.** (CMG) in an action seeking rescission and asserting breaches of a stock repurchase agreement brought by Iraj Parvizi, a minority shareholder based in the United Kingdom, who contended that the company failed to pay the consideration due for his shares by the target closing date and that the stock agreement was procured by fraud, duress, or mistake. Mr. Parvizi alleged that he was unaware CMG was relying on third-party financing. CMG filed counterclaims seeking to enforce the agreement and conclude the share repurchase. After engaging in discovery, including taking and defending more than a dozen depositions, and more than a year of motion practice, the parties reached a settlement accomplishing the repurchase.

- We represented long-standing client **World Boxing Super Series AG** in defending actions brought in Swiss courts by former shareholders for repayment of loans and services.

- We represented **Athilon Capital Corp**. and its board of directors against Quadrant Structured Products LLC in a lawsuit in the Delaware Court of Chancery in which Quadrant sought $200 million for alleged breaches of fiduciary duty and an order requiring Athilon to liquidate its assets and shut its business down entirely. After a week-long trial, the court issued a complete defense verdict that denied all of Quadrant's requested relief and which permitted Athilon to continue executing the long-term business strategy that Quadrant challenged at trial. The decision was affirmed in its entirety on appeal.

- We served as lead counsel representing the joint and several administrators of **Cape Technologies**, an Australian financial service and technology company that collapsed into insolvency in late 2021 following a shareholder dispute between its founders and investors. Cape had limited cash and significant ongoing staff and operational expenses and, to hold the business together to facilitate its sale as a going concern, we designed a unique sale structure and accompanying court application in the

Federal Court of Australia. We negotiated the structure and subsequent sale of Cape and then designed and wrote the "judicial advice" court application, which ultimately allowed the accelerated sale to occur. The Federal Court of Australia granted the application, providing the administrators with justification to sell the business without a competitive sales process and without risking the business. Cape has now been recapitalized out of administration with a successful $33.1 million AU fundraising.

- We acted for **a global services entity** in a "bet-the-farm" shareholder dispute with a well-known billionaire shareholder who sought a greenmail outcome by obstructing the client from proceeding with a public listing. We successfully resolved the issue prior to trial and the client entity was successfully listed in 2021.

- We represented **Chairman Shin**, the CEO and majority shareholder of Kyobo Life Insurance Company, one of the leading life insurance companies in Korea. A consortium led by Hong Kong-based Affinity Equity Partners (AEP) commenced arbitration against Dr. Shin based on a shareholder agreement governed by Korean law. The shareholders agreement included a put option in favor of the Claimants, which the Claimants purported to exercise in late 2018 and demanded over $1 billion USD. We challenged the put option agreement as unenforceable under Korean law, and that in any event, the $1 billion demand was grossly inflated. After two hearings, the arbitration tribunal issued a final award holding that our client was not obliged to pay the Claimants' contended put price or any price at all for the Claimants' shares. This was a complete victory for our client in a true "bet-the-company" case.

- We represented **Alteva, Inc. and its board of directors** against a shareholder alleging that the board of directors breached its fiduciary duties to public shareholders by entering into a proposed merger with Momentum Telecom.

- We represented **JBS S.A. and six of its directors** in a derivative action brought in the Delaware Court of Chancery by minority shareholders of Pilgrim's Pride Corp., which was controlled by JBS. The shareholders asserted breach of fiduciary duty in connection with Pilgrim's Pride's 2017 acquisition of Moy Park, a wholly owned subsidiary of JBS. After negotiating the outright dismissal of certain individual defendants in the early stages of the litigation, we subsequently obtained a favorable settlement for JBS and the remaining director defendants.

- We represented **H.I.G. Capital** in a derivative action brought in the Delaware Court of Chancery by a minority shareholder challenging H.I.G.'s sale of its controlling stake in Surgery Partners, a medical provider company, to Bain Capital for over $500 million. The shareholder alleged that H.I.G. had a conflict of interest that tainted a related transaction in which Surgery Partners issued $310 million in preferred shares to Bain. We were retained after the court denied H.I.G.'s motion to dismiss in part. We litigated the case through discovery, after which the case settled favorably.

- We represented **MHR Capital Management** in its successful defense against a hostile takeover attempt for Lions Gate launched by Carl Icahn.

- We advised **E*TRADE and its board of directors** in connection with the board nomination rights of an E*TRADE investor.

- We represented **NextGen Healthcare, Inc.** in its successful defense against a potential proxy fight from an activist investor, resulting in an uncontested vote.

- We represented **GetSwift and its managing director** against an activist shareholder arising out of allegedly misleading statements made to the Australian stock exchange.

"Quinn Emanuel is the premier firm to go to if you have something you think you need to litigate. They are not afraid and are willing to think strategically."

Client Testimonial, ***Chambers and Partners***

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