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Gibson Dunn Secures Rare Dismissal with Prejudice of Stockholder Derivative Suit for MIH Learning

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A Gibson Dunn team obtained a rare dismissal with prejudice of a stockholder derivative suit in the Delaware Court of Chancery on behalf of MIH Learning B.V. (MIH), a subsidiary of global technology private equity firm Prosus N.V. The case involved the acquisition of educational technology company Ryzac, Inc. (Codecademy) by Skillsoft Corp. (Skillsoft). MIH owned significant stakes in both companies. The plaintiff, purportedly a Skillsoft stockholder, alleged MIH controlled Skillsoft despite its 37.5% minority stake. They also argued that the acquisition of Codecademy (in which MIH was a 23.8% beneficial owner) was a conflicted controller transaction subject to entire fairness. Without making a demand on Skillsoft's board of directors, the plaintiff filed derivative claims for breach of fiduciary duty against Skillsoft's board and MIH. They claimed that Skillsoft overpaid for Codecademy at the expense of Skillsoft's stockholders. In granting Gibson Dunn's motion to dismiss, the court noted that even if the plaintiff had adequately pled MIH's controller status for purposes of surviving a motion to dismiss, they failed to plead facts supporting a reasonable inference that the transaction was economically or procedurally unfair. As Gibson Dunn argued in its briefs, MIH had the same interest as any other Skillsoft stockholder in Skillsoft paying a fair price for Codecademy. The court found the plaintiff had failed to articulate why MIH or the unaffiliated directors it allegedly influenced would have deliberately harmed its investment in Skillsoft by causing it to pay an unfair price for Codecademy. The Gibson Dunn team included partners Theane Evangelis, Craig Varnen, and Mary Beth Maloney, of counsel Mark Mixon (argued), and associates Andrew Kuntz, Chase Weidner, and Iason Togias.

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Litigation

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