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Gibson Dunn Wins Dismissal in Full of $700 Million Derivative Suit Against Client Alcon

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Gibson Dunn secured a complete Delaware Court of Chancery victory for Alcon Research, LLC, defeating a $700 million derivative suit brought by Aurion Biotech's former CFO after a hard-fought, four-case battle for control of the company.

The decision is the latest—and most decisive—chapter in a high-stakes fight over Aurion, a life-sciences company developing corneal endothelial cell therapy. Alcon held Series C preferred stock, board rights, and consent rights over major corporate actions. A rival stockholder faction pushed toward an IPO that would have converted Alcon's preferred shares and stripped those rights. Gibson Dunn first went on offense to protect Alcon's position. After an independent special committee postponed the IPO, Alcon moved to take control by buying additional stock, reshaping the board, and dissolving the special committee. Aurion's former CFO then brought a six-count derivative action claiming that Alcon and others had wrongfully derailed an IPO he valued at hundreds of millions of dollars.

Chancellor Kathaleen St. J. McCormick rejected the attack in full. She dismissed every count at the pleading stage, including fiduciary-duty claims against Alcon, director-defendant claims, a claim attacking a board resignation, a claim challenging the settlement of related litigation, an entire-fairness claim, and a right-of-first-refusal claim.

The plaintiff's central theory failed on the complaint's own timeline. The independent special committee had voted to postpone the IPO before Alcon became a controller and before the challenged conduct, and Aurion could not relaunch an IPO until audited financials that were months away. The Court refused to let the plaintiff recast business disagreement as fiduciary misconduct: "Delaware law does not permit the court to substitute Plaintiff's business judgment for that of the Board."

The director claims failed for the same reason. Because Aurion had an exculpatory charter provision, the plaintiff had to plead bad faith as to each director. Instead, he relied on group pleading and an ambiguous statement by one director that "we" opposed the IPO. Chancellor McCormick rejected that theory too: "A single plural pronoun, without additional facts, is insufficient to overcome the presumption of good faith."

The Court also rejected the claim that a director breached his duty of loyalty by resigning from the board, distinguished the extreme circumstances of In re Puda Coal, and dismissed the contract-based ROFR claim under the plain language of the parties' agreement and the last-antecedent rule.

The result is a clean sweep in one of the most closely watched courts in the country: six counts asserted, six counts dismissed. The ruling gives companies, directors, and strategic investors important Delaware authority on the limits of fiduciary-duty claims attacking control contests, board-designee conduct, alleged IPO interference, director resignations, group pleading against exculpated directors, and preferred-stock transfer

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The Gibson Dunn team was led by partners Mary Beth Maloney, Jonathan Fortney, and Monica Loseman and included of counsel Mark Mixon and associates Jacob Arber, Liesel Schapira, Hazel Granada, Swathi Rajan, and John Turquet Bravard. The case is Rostov v. Alcon Research, LLC, C.A. No. 2025-0648-KSJM (Del. Ch.).

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