Jonathan D. Fortney

Partner

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New York



Jonathan D. Fortney is a litigation partner in the New York office of Gibson Dunn. He has spent his entire professional career at the Firm, where he has been a long-time member of the Firm's Litigation and Securities Litigation practice groups, with each consistently recognized as a leading national practice. He regularly represents investment funds, private equity firms, portfolio companies, corporate issuers, directors and officers in complex disputes, including M&A litigation, securities class actions, stockholder derivative suits, and corporate control contests. Jonathan also handles sensitive internal and government investigations for public and private companies that involve complex asset valuation and esoteric securities and trading matters.

Jonathan is an aggressive and strategic litigator with a national practice, regularly litigating in courts in Delaware, Manhattan, and other jurisdictions around the country. He has almost as much experience litigating affirmative claims for clients as he does defending claims against them. He brings a plaintiff's side mindset to every engagement, going on the offensive to uncover critical evidence and craft compelling themes that rewrite plaintiff-driven narratives, reclaim the high ground for clients, and secure pivotal wins throughout the litigation cycle.

Jonathan actively engages in high-impact pro bono litigation. He has successfully represented members of New York's artistic community, led a winning voting rights trial team, and defended press freedoms by representing a journalist arrested while reporting on a protest.

Jonathan earned his J.D. from the University of Pennsylvania Law School, where he served as Editor-in-Chief of the *Journal of International Law* and pursued specialized studies in transnational corporate law at Université Paris I Panthéon-Sorbonne. He earned a B.A. in Political Science, *magna cum laude*, from Bob Jones University, where he was recognized as an Avro Manhattan Scholar.

Representative Securities and Stockholder Derivative Matters:

- Medallion Financial: Represented company and senior officers in a multi-year SEC investigation and subsequent securities fraud action brought by the SEC in the Southern District of New York, where the case is stayed pending settlement negotiations.
- Danimer Scientific: Represented company, directors, and certain officers in securities class actions and multiple derivative lawsuits that followed a de-SPAC transaction; secured voluntary dismissal of all Securities Act claims and Section 14(a) Exchange Act claims after filing pre-motion letters and a motion to dismiss. Secured complete dismissal at the pleadings stage in the Eastern District of New York of all Securities Act and Exchange Act claims with prejudice and without leave to amend—all affirmed by the Second Circuit.

Capabilities

Securities Litigation
Litigation
Mergers and Acquisitions
Trials

Credentials

Education

University of Pennsylvania - 2009 Juris Doctor

Bob Jones University - 2005 Bachelor of Arts

Admissions

New York Bar

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- Northwest Biotherapeutics: Representing company in Delaware Court of Chancery derivative action challenging incentive compensation approved by an overwhelming stockholder vote.
- Elliott Management: Represented Elliott and related parties in various stockholder actions arising out of investments.
- Third Point Management: Represented Third Point and related parties in various stockholder actions arising out of investments.
- Major Retailer: Represented company and several directors and senior officers in securities class actions and derivative suits in multiple jurisdictions related to FCPA allegations.
- JPMorgan Chase: Secured complete victory for independent directors of JP Morgan Chase in derivative lawsuits arising out of “London Whale” trading losses.
- National Association of Corporate Directors: Represented NACD before the Delaware Supreme Court in the Rural/Metro Corporation litigation, drafting an amicus curie brief to provide a voice for directors who were not present at the trial in the Court of Chancery, as all had settled on the eve trial, leaving only financial advisors as defendants.
- International Hedge Fund: Represented client in pursuing securities litigation in the Southern District of New York to protect its investment in a foreign private issuer, including developing novel securities law claims tied to the foreign private issuer’s American Depository Receipts.
- Fortune 50 Company: Represented client in responding to demand on its board of directors related to ongoing civil litigation concerning last-mile delivery projects.
- Fortune 50 Company: Represented client that faced hostile overtures from activist investors related to an anticipated equity issuance; reviewed company’s bylaws, proposed equity offering, and related SEC filings to assess potential liability and litigation theories that activist investors might employ to attack the company and build an activist response playbook.
- Fortune 150 Company: Represented client that faced a potential hostile takeover attempt; reviewed company’s bylaws, assessed special meeting issues, and implemented amendments.
- Hedge Fund of Funds: Represented one of the first hedge fund of funds in litigation related to the collapse of Amaranth.
- Hedge Fund of Funds’ Directors: Represented former directors of a hedge fund of funds in multi-district litigation related to the collapse of Refco; secured voluntary dismissal of all claims of directors following extensive multi-national discovery.
- Representing public and private companies in both pursuing and defending multiple unrelated books and records demands from stockholders. Successfully tried and defended multiple books and records summary proceeding trials.

Representative M&A and Deal-Related Matters:

- Representing private equity firms and/or their PortCos in multiple unrelated commercial disputes.
- Alcon: Represented the company in expedited litigation and trial in the Delaware Court of Chancery, as well as an expedited appeal to the Delaware Supreme Court, over a voting proxy and preferred shareholder consent rights relating to ownership stake in early-stage med tech company. Secured victory after trial on a voting proxy revocation that successfully halted the med tech company’s planned IPO and paved the way for Alcon to acquire all the company’s preferred stock from early-stage investors.
- Deer Park Road: Represented the firm in expedited litigation in the Delaware Court of Chancery relating to its ownership stake in an early-stage tech company disrupting the real estate broker market. Secured an early status quo order

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freezing the controlling stockholder from taking any material actions and aggressively enforced that order, ultimately yielding a settlement through with the majority stockholder gave up control of the company's board.

- Private Equity Firm: Represented a leading LatAm firm in deal-adjacent litigation brought by an opportunistic company seeking a finder's fee related to a port acquisition. Secured a successful resolution after narrowing the case by winning dismissal of two of three claims at the pleadings stage.
- Vista Outdoor: Represented the company in a high-stakes earn-out dispute initiated by Vista against the sellers of a business Vista acquired. Following expedited discovery, won summary judgment in the Southern District of New York on affirmative claims and dismissal of defendants' counterclaims—all of which the Second Circuit affirmed, with the District Court awarding Vista substantial attorneys' fees and costs. The District Court's memorandum and order is now a leading opinion addressing the duty of good faith and fair dealing under NY law.
- Private Equity Firm: Represented client in an escrow dispute related to its sale of one of its PortCos. Filed a lawsuit against the buyer after receiving a notice of claims and refusal to release escrowed portion of the purchase price, securing a prompt and favorable resolution for client.
- Private Equity Firm: Represented client in a corporate control dispute litigated in the Illinois Chancery Division and the Delaware Court of Chancery related the firm's investments in an energy recycling company; filed and won, after trial, a parallel books and records proceeding in the Delaware Court of Chancery that yielded a highly favorable resolution of all claims, including payment of client's attorneys' fees and costs.
- Itron: Represented Itron in a $60 million contract dispute regarding a subsidiary it acquired; resolved case on the morning trial was to start in the Delaware Court of Chancery.
- Corvex Management & The Related Companies: Represented clients in a two-week arbitration (the result of which was publicly disclosed) that resulted in invalidating all material anti-shareholder defenses of CommonWealth REIT, whose Trustees Corvex/Related ultimately removed in a consent solicitation. Major media outlets described the outcome as a "major victory" for Corvex/Related.
- Private Equity Firm: Represented client in investigation and litigation for one of its PortCos in the Delaware Court of Chancery against a former employee regarding improper competition and soliciting of the PortCo's customers in violation of non-compete and non-solicitation covenants; successfully secured extension of covenants and full refund to the PortCo of all salary paid to the former employee during the non-compete period.

Other Commercial Litigation Matters:

- Coupang, Inc.: Represented the global e-commerce company in the Delaware Court of Chancery in a contract dispute that a former employee belatedly brought years after departing the company and on the eve of its IPO.
- Major Financial Institution: Represented client in a $160 million lawsuit in the Delaware Court of Chancery related to corporate owned life insurance policies; successfully resolved dispute in the early stages of discovery and secured complete indemnification for client.
- Major Financial Institution: Represented client in a multi-week bench trial in the Southern District of New York in which client sought billions of dollars of damages on its claims of contract and fiduciary duty breaches, fraud, and civil RICO; secured favorable settlement during trial.
- Intel: Represented Intel in a commercial dispute involving a telecommunications entity in which it had invested, securing dismissal at the pleading stage of all causes of action with prejudice.
- Empire Blue Cross Blue Shield: Represented Empire in an action by pension funds

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that sought millions in rebates rightfully earned by Empire, securing a dismissal from the bench at oral argument of all causes of action with prejudice. Obtained affirmance of that dismissal on appeal before both the New York Appellate Division and Court of Appeals.

- Major Financial Institution: Represented client in antitrust class action alleging bid manipulation in the municipal derivatives industry. Case was favorably resolved with no payment by client.

Representative Investigations & Regulator Responses:

- Representing certain financial institutions and executives in multiple unrelated ongoing criminal investigations by the U.S. Department of Justice and Securities and Exchange Commission.
- Hedge Funds: Represented funds in government investigation regarding block trading. Following multiple submissions, government did not pursue investigation of any clients.
- Hedge Fund: Represented leading structured credit hedge fund in a government investigation pursuing a novel theory of undervaluation of assets; secured a favorable resolution for client.
- Multinational Hedge Fund: Represented one of the largest hedge funds in the world in connection with an internal investigation of securities trading by a senior manager.
- Risk and Financial Advisory Firm: Represented client in a government investigation of the valuation of collateralized debt obligations by a hedge fund the firm advised. Following submission of white paper and expert report, government took no action against client.
- Multinational Insurance Company: Represented client in a government investigation of its issuance of annuities and subsequent changes to the terms of those annuities during the 2008 Financial Crisis. Following submission of responses to targeted inquiries, government dropped the investigation.
- Multinational Hedge Fund: Represented one of the largest alternative asset managers in the world in connection with government investigations of its valuations of esoteric assets.

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