

# Brian M. Lutz

## Partner

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San Francisco

Brian M. Lutz is a litigation partner in the San Francisco and New York offices of Gibson Dunn. Brian serves as a Co-Chair of the Firm's National Securities Litigation Practice Group, which is consistently recognized as one of the leading securities litigation practices in the country. Brian's practice focuses on complex commercial litigation, with an emphasis on corporate control contests, securities class actions, and shareholder actions alleging breaches of fiduciary duties. He represents and advises clients in connection with mergers and acquisitions, shareholder activist matters, and corporate governance issues, and regularly represents and advises boards of directors and board committees on litigation issues. Brian also handles a wide range of other business litigation, including real estate disputes, employment matters, and trade secrets litigation.

Brian is ranked by *Chambers* for securities litigation and is listed as pre-approved panel counsel for the major D&O insurance carriers. Brian has been named a Securities MVP by *Law360*, and was twice named a "Rising Star" by *Law360* in the Securities category—a distinction awarded annually to five attorneys nationwide under the age of 40. Brian was also named "Litigator of the Week" by *AmLaw Litigation Daily* (an *American Lawyer* publication) for his lead role in winning a rare preliminary injunction that prevented a hostile takeover attempt. In addition, *The Legal 500 United States* has named Brian to its "Hall of Fame" for M&A Litigation Defense and recognizes him as a "Leading Partner" for Securities Litigation Defense and M&A Litigation Defense. Brian was recently recognized by *Benchmark Litigation* as a "Litigation Star."

Brian received his Juris Doctor from Harvard Law School. He received his Bachelor of Arts in History and Political Science from the University of Michigan, where he was a member of Phi Beta Kappa.

### Representative Securities and Shareholder Derivative Matters

- **Meta:** Representing Facebook and senior officers and directors in securities class action and shareholder derivative lawsuits arising out of misuse of user data by Cambridge Analytica.
- **Nike:** Won complete dismissal of shareholder litigation against Nike and the company's directors arising out of allegations that Nike lacked adequate internal controls for reporting employee misconduct. Representing Nike and senior officers and directors in separate securities class action and derivative litigation arising out of shift in sales strategy.
- **Energy Transfer:** Defending largest pipeline company in the country and its senior officers in securities class action arising out of Pennsylvania pipeline project. Secured major win on summary judgment.
- **Goldman Sachs:** Defending Goldman Sachs and other major underwriters in securities class action arising out of IPO of entertainment company.



### Capabilities

Securities Litigation  
Emerging Companies / Venture Capital  
Life Sciences  
Litigation  
Mergers and Acquisitions  
Technology Litigation  
Trials

### Credentials

#### Education

Harvard University - 2002 Juris Doctor  
University of Michigan - 1998 Bachelor of Arts

#### Admissions

New York Bar  
California Bar

- **Block:** Won dismissal in Delaware Court of Chancery, and then on appeal before Delaware Supreme Court, of shareholder derivative action alleging that Block directors breached their fiduciary duties in connection with acquisition of TIDAL music business.
- **HP:** Won consecutive motions to dismiss in securities class action lawsuits relating to HP's printer supplies business; defending HP in separate securities class action relating to supplies business.
- **Okta:** Representing company and senior officers in securities class action and derivative cases arising out of integration of major acquisition.
- **USAA:** Defeated two shareholder actions arising out of USAA's investment in TrueCar.
- **Carvana:** Represented company in separate shareholder cases in Delaware arising out of equity offering and capital structure.
- **Biora Therapeutics:** Won three consecutive motions to dismiss securities class action arising out of company's IPO.
- **ContextLogic (Wish):** Defending company and senior officers in securities class action arising out of company's IPO.
- **Trinity Industries:** Successfully resolved N.D. Texas securities litigation against company and senior officers arising out of "ET Plus" guardrail program; successfully represented senior officers in shareholder derivative action that was voluntarily dismissed by plaintiff at the motion to dismiss phase.
- **Elliott Management:** Represented Elliott and related parties in various shareholder actions arising out of investments.
- **JP Morgan Chase:** Secured complete victory for independent directors of JP Morgan Chase in various derivative lawsuits arising out of "London Whale" trading losses.
- **UBS:** Represented UBS in action alleging violations of the federal securities laws in connection with the issuance of mortgage-backed securities. Won rare dismissal of all claims at the pleadings phase, which was affirmed by the Third Circuit Court of Appeals.

#### Representative Board and Committee Investigations / Matters

- **Salesforce:** Represented Salesforce Board in connection with shareholder litigation demand relating to acquired company.
- **General Electric:** Represented Committee of GE Board in connection with series of shareholder demands.
- **PG&E:** Represented Board Committee in connection with investigation of potential breaches of fiduciary duties arising out of San Bruno pipeline explosion.
- **Tenet Healthcare:** Represented Board Committee in connection with investigation of potential breaches of fiduciary duties arising out of alleged violations of anti-kickback statutes.

#### Representative Mergers and Acquisitions Matters

- **Aerojet Rocketdyne Directors:** Represented incumbent directors in hotly contested trial Delaware over board control in connection with proxy contest. Shortly after trial, our clients overwhelmingly won proxy contest and steered company to successful transaction.
- **Assertio:** Represented company in successful defense of hostile takeover attempt by Horizon Pharma. Won rare preliminary injunction stopping hostile takeover based on improper use of confidential information. Within one hour of ruling, the hostile bidder dropped takeover attempt altogether.

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- **Newport Corporation:** Won summary judgment for former directors of Newport in breach of fiduciary duty case arising out of sale of company to MKS Instruments. Also secured judgment ordering plaintiffs to pay millions of dollars to defendants following offer of judgment.
- **Tenet Healthcare:** Represented Tenet in successful defense of unsolicited takeover attempt by Community Health Systems. Less than one month after Tenet filed a complaint alleging securities violations, Community withdrew its takeover proposal.

#### Other Commercial Litigation Matters

- **Welltower:** Represented company in numerous litigation matters, including a highly successful litigation against former senior officer in action alleging violation of non-competition agreement, resulting in a settlement on the eve of trial that extended the period of the non-compete.
- **SES:** Represented world's largest satellite company in hotly contested bankruptcy court trial against leading competitor, Intelsat.
- **Baker Capital:** Represented private equity firm in lawsuit alleging fraud and breach of a fiduciary duty in connection with its investment in Wine.com. Won complete dismissal of all claims against our client after three-week trial in San Francisco Superior Court.
- **Confidential Client:** Obtained preliminary injunction in Delaware Chancery Court preventing former business partner of a leading international insurer from using trade secrets and confidential information.

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