

William Johnston Examines Litigation Risks California Investors May Pose for Delaware Funds in Bloomberg Law

Bird Marella partner William E. Johnston authored a Bloomberg Law article, “California Investors May Pose Unique Risks for Delaware Funds,” examining how California law may expose private fund sponsors to fraud and securities claims despite protections in Delaware fund documents.

Mr. Johnston explains that California investors may be able to pursue claims based on statements made during the fundraising process even when fund documents contain Delaware choice-of-law provisions and non-reliance clauses, in which investors represent they are not relying on any statements outside the fund documents in deciding to invest. California’s Corporate Securities Law can provide a cause of action for misleading statements or omissions without requiring an investor to prove reliance or intent, while California Civil Code Section 1668 can limit contractual protections against fraud claims. Given the rights afforded to investors under California law, California courts may refuse to enforce Delaware choice-of-law provisions.

For private equity, venture capital, and hedge fund sponsors raising capital in California, Mr. Johnston emphasizes the importance of treating fundraising communications with the same care as formal offering materials and maintaining contemporaneous support for representations made to prospective investors.

[Read the full article in Bloomberg Law.](#)