

## Joseph D. Gustavus

### SERVICE AREAS

#### Business

- Export Controls
- Information Technology + Cyberlaw
- Mergers + Acquisitions
- Corporate, Securities + Commercial Transactions
- Automotive
- Intellectual Property
  - Licensing
- Venture Capital + Private Equity
- Economic Development Incentives
- International + Emerging Markets

#### Litigation + Trial

- Information Technology + Cyberlaw

#### Governments + Nonprofits

- Information Technology + Cyberlaw
- Intellectual Property
  - Licensing

### EDUCATION

- Wayne State University Law School, J.D.
- Michigan State University, B.A.

### BAR ADMISSIONS

- Michigan

### COURT ADMISSIONS

#### United States District Court

- Eastern District of Michigan



### Principal

#### Troy

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Joseph D. Gustavus is a corporate attorney representing multinational clients and clients primarily in the automotive, defense, aerospace, software and information technology sectors. Joe counsels and assists clients with their complex domestic and international acquisitions and commercial transactions, ITAR and export control compliance issues, corporate governance and with building, demonstrating, and protecting the value of their intellectual property rights.

His efforts at negotiating successful transactions for clients in these sectors and counseling them on ITAR and other export control compliance issues have won praise and yielded longstanding client relationships for Miller Canfield. He has served as an attorney in Europe and speaks fluent German. He is also a Certified Public Accountant.

*"I am ardent about providing responsive, quality, and experienced legal representation to my clients. I feel instinctively suited to it as my calling and would have no other profession or endeavor."*

Joseph D. Gustavus

### EXPERIENCE

#### Software Companies

Represents software company clients in the drafting and negotiation of agreements to facilitate development, implementation, licensure and maintenance of software technology. His approach is to work with a client to tailor an optimized agreement structure and then assist with its successful deployment with individual customers. The existence of customer-required deviations from the standard is well recognized. He counsels on the risks posed by the customer-requested changes, enabling the client to quantify and

### LANGUAGES

- German

weigh the risks against transactional benefits. The resultant goals are to:

- Match License Scope with Fee Models
- Accelerate Acceptance through Predefined Objective Acceptance Criteria and Processes
- Safeguard and Preserve Intellectual Property Rights
- Define and Circumscribe Warranty Obligations
- Delineate Support and Maintenance Obligations
- Minimize Liability Exposure
- Promote and Accelerate Revenue Recognition under Statement of Position (SOP) 97-2 and Related Guidance

Experienced in structuring software escrow relationships and variations from the traditional software licensing model including third party hosting relationships, web portal access, Software as a Service, integrated, ubiquitous or pervasive computing systems.

### Export Control Compliance

Member and leader of Miller Canfield's Export Controls Group. Represents clients on ITAR and other export control compliance issues and assists clients with controlled asset identification and classification, commodity jurisdiction requests, implementation of export control compliance programs, export license applications, drafting of government-approved TAAs, MLAs, other export control-compliant collaboration agreements, performing export control audits and rendering benchmark reports, performing export control due diligence on acquisitions targets, drafting Export Control Manuals and Technology Control Plans, drafting voluntary disclosures on export control violations, and employment of foreign nationals subject to export controls.

### Automotive Technology Companies

Member of Miller Canfield's Automotive Group. Represents automotive suppliers in negotiation and drafting of software license, IT service, component sourcing, and technology development agreements with their automotive OEM and Tier 1 customers. Among others, successfully facilitated repeated engagements with foreign and domestic automotive customers to supply automotive embedded software, Electronic Control Units (ECUs), development and system modeling software, production control and automatic

conveying systems and powertrain, emissions and vehicle subsystem test equipment.

### **Multinational Companies and International Business Transactions**

Represents and assists foreign clients with the establishment of a presence in the North American market through business acquisition, subsidiary formation, technology licensure, distribution or sales agent negotiation. Expands national and international market reach of North American clients through the development of international distribution, agency, VAR and alliance agreements.

### **Technology Company Acquisition, Divestitures, Mergers and Strategic Alliances**

Frequently represents software and IT companies in executing domestic and multinational mergers, acquisitions, divestitures, spinoffs, asset sales and joint ventures. Expands national and international market reach through the development of distribution agency, VAR and alliance agreements. Leads preacquisition due diligence engagements, researching and assessing target software and IT companies, underlying legal structure and strength of intellectual property rights. Experience in the acquisition of target software and IT companies includes:

- Using diligence to identify significant legal and intellectual property right issues previously unknown to the prospective acquirer; and
- Monetizing (assigning a monetary value to) discovered issues to adjust acquisition price or secure additional protections from the seller to address the discovered concerns.

### **Blanket Representation of Software and IT Portfolio Companies**

Provides blanket legal representation to software and IT portfolio companies owned by Venture Capital Firms and Private Equity Funds. Blanket legal representation results in implementation of unified objectives across portfolio and deliberate maximization of portfolio company value and intellectual property right protection. This controlled application of legal services helps to position software and IT portfolio companies to maximize TTM and EBITA multiples and attract investment from strategic and financial investors.

## Corporate Compliance

Counsels software and IT companies in implementing effective and coordinated legal compliance policies and procedures, increasing governance transparency and enhancing compliance with director and officer fiduciary responsibilities. Drafts shareholder agreements, stock purchase and option agreements for software and IT companies. Drafts related executive and technical personnel employment, non-compete, intellectual property assignment, and severance agreements for software and IT companies.

## PROFESSIONAL ACTIVITIES

- American Bar Association, International Property Law Section; Mergers & Acquisitions Section
- State Bar of Michigan
- Certified Public Accountant, Admitted to practice in Michigan, 1993; Illinois, 1991

## HONORS + AWARDS

- Wayne State University Law School, magna cum laude, Order of the Coif

## CIVIC, CULTURAL + SOCIAL ACTIVITIES

- City of Rochester Hills, Mayor's Business Council

## SEMINARS + EVENTS

- ITAR and Other U.S. Export Control Laws
- ITAR and Other U.S. Export Control Laws
- Cappuccino with Counsel: ITAR and Other U.S. Export Control Laws
- MSU-FBI Academic Alliance Conference
- International Traffic in Arms Regulations Compliance (ITAR) (Livonia, MI 8.4.11)
- Compliance with ITAR and other U.S. Export Control Laws Overview (Michigan InfraGard Quarterly Meeting)
- Webinar: Export Controls and Immigration: Avoiding Penalties
- International Traffic in Arms Regulations (ITAR) Registration Overview

## Joseph D. Gustavus

- International Traffic in Arms Regulations Compliance (ITAR) (Livonia, MI 10.6.10)
- International Traffic in Arms Regulations Compliance (ITAR) (Lansing, MI 6.11.10)
- Electronic Health Records Update

### ARTICLES

- Preventing Unlawful Diversion of U.S. Exports by Foreign Transaction Parties: U.S. Exporters Take Heed
- Global Automotive Newsletter
- New Export Control Law for Mexico
- Impending U.S. Export Control Reform - Managing Your Compliance Program

### ALERTS

- Latest U.S. Export Control Reform Updates