

PRACTICE

## Business Litigation

### KEY CONTACTS

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## OVERVIEW

### BUSINESS LITIGATION

Litigation must always be focused on protecting your business goals and strategies. Our litigation team will evaluate the technical and practical implications of the matter and formulate a strategy that drives the business needs of the client.

Our strong team of litigators is made up of achieved trial lawyers. We know how to evaluate the situation, develop a strategy, and when necessary, try the case and win. Our clients include businesses of all types, from the Fortune 100 to local family businesses. We make certain to work closely with our clients to control the cost and potential disruptions associated with litigation.

### HOW WE CAN HELP

- Contract disputes and business torts
- Creditors' rights and business bankruptcy
- Business crimes and government investigations, including mortgage and securities fraud, and white collar defense
- Insurance disputes
- Corporate control
- Fiduciary and shareholder litigation
- Product liability and complex tort
- Professional malpractice
- Intellectual property, including trademarks, copyrights, and trade secrets

## EXPERIENCE

### SOLVING A DISPUTE WITH A DISSIDENT SHAREHOLDER

Advised a public company's board of directors regarding its relationship with a dissident shareholder. The shareholder had an objective which the majority of the board determined was not in the company's interest and was insisting on certain privileges to which he was not entitled. The company ultimately negotiated a settlement by which the dissident's shares were sold.

### MEDIATING BETWEEN A FOUNDATION AND ITS FOUNDER

When the founder of a large, private foundation claimed that the foundation was making grants beyond its stated objectives, we mediated an agreement whereby the founder withdrew his objections and was engaged by the foundation as an informal advisor.

### RESOLVING A FAVORABLE WITHDRAWAL FROM A PROFESSIONAL HEALTHCARE SERVICES PARTNERSHIP

A member of a health care practice wasn't getting along with the other two members of their LLC, based on money and personality issues. We filed a pre-emptive suit to stop her partners from forcing her out. That allowed time for us to negotiate a settlement favorable to our client, which included withdrawing from the LLC, resolving compensation issues and coming to an agreement on non-compete terms.

### DEFENSE OF MEDICAID FALSE CLAIMS AND EMBEZZLEMENT

In a recent matter involving suits pending in probate, superior, and federal district court, we defended against claims that a decedent had embezzled millions of dollars from Medicaid through his employer in an elaborate check-cashing scheme. The situation was complex, involving Medicaid, businesses, creditors, an estate and a whistleblower, but the solution only required the development of a simple argument. We argued at a hearing that based on the facts at issue, only one court had the authority to adjudicate the claims against the estate and that they could be resolved without a trial.

### DEFENSE OF ATTACK ON GENERAL PARTNER

Our client, a Puerto Rico-based business, had to go on the offensive to obtain a court ruling that it was the rightful general partner of a Massachusetts-based partnership operating housing complexes in Puerto Rico. A competitor to our client became a limited partner in the partnership as part of a strategic plan to ascend to the role of the general partner. Based on the partnership agreement, the competitor attempted to argue that our client had withdrawn as the general partner when it failed to file certain annual reports, resulting in the Secretary of State revoking its certificate of incorporation.

Our research and argument persuaded a Massachusetts court that the general partner's corporate status had been revived *nunc pro tunc* (in other words, as if the revocation had never occurred) and therefore, that the general partner had not withdrawn from the partnership.

### AN AGGRESSIVE LITIGATION STRATEGY SUCCEEDS

Our client, a world-wide manufacturer of high-tech devices, was sued by one of its foreign

distributors after entering into an agreement abroad. The distributor claimed breach of contract, implied covenant of good faith and fair dealing along with violations of Mass. G.L. c. 93a for failing to honor the exclusivity provisions of its distribution agreement and failing to deliver marketable goods. The distributor sought over \$2.3 million dollars in single damages, in addition to double or treble damages.

We helped the client prevail, successfully defending against the claim and winning its counter claim. The client obtained an arbitration award, with the arbitrator ruling in its favor on all counts and awarding \$300,000 for its counter claims along with a declaratory order terminating any further claims or rights of the distributor. This victory came at a time when the client was unwinding a prior growth strategy. We took the matter all the way to a decision, an approach that best suited the client's business strategy.

## HELPING A BANK CLIENT-CREDITOR

A regional bank in New England and the Mid-Atlantic turned to us for help collecting a multi-million dollar construction loan on an incomplete condo project that involved extensive litigation in the bankruptcy court. The client realized the return of all of its principal and interest and costs.

## OTHER EXPERIENCE

- International power company and utility in all litigation, commercial and tort defense in Massachusetts.
- National broker-dealer and financial services firm, including all of its securities-related litigation in Massachusetts.
- Parties in complex securities fraud claims, breach of contract and 93A where investment advisor and his company defrauded investors of millions of dollars.
- Massachusetts political party in defense of claims arising out of alleged misconduct in the nomination process for elected office.
- Investment advisors and financial services firm in breach of fiduciary duty claims regarding variable universal life insurance and variable annuity.
- Institutional financial services client accused of breach of contract and negligence in complex dispute over decedent's property.
- Negotiated dissolution of closely-held franchise partnership that held over 100 franchises, with favorable results to client.
- Non-profit behavioral health and rehabilitation services provider, along with licensed social worker, against negligence claims arising from treatment of minor.
- Regional medical product supplier breach of contract trial against a global provider of outsourced clinical development services in connection with failure to provide software and hardware for patient data management. After a three-day, jury-waived trial, the Court awarded damages in excess of \$35,000 and doubled them pursuant to M.G.L. c. 93A.
- Elder in breach of fiduciary duty claim against family member in connection with family business operations. After a four-day jury trial, the jury awarded damages in excess of \$135,000 and

ownership of the business reverted back to the elder.

- Litigated and mediated a derivative-shareholder lawsuit or “freeze out” claim, arising from a dispute between the owners of a closely-held corporation, on terms very favorable to our client.