



**John J. Clarke, Jr.**

**Partner**

CO-CHAIR, CORPORATE AND SECURITIES LITIGATION PRACTICE

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John Clarke represents clients in complex litigation and internal investigations involving securities and financial instruments, financial institutions, structured transactions, accounting issues, bankruptcy and fraudulent transfer issues, merger litigation, and corporate governance disputes.

He has significant experience in litigation involving financial institution insolvencies. He is a frequent speaker and writer on issues involving financial institutions, corporate governance and the federal securities laws. He is a past chairman of the Banking Law Committee of the Association of the Bar of the City of New York.

## EXPERIENCE

Securities and Corporate Governance Litigation:

- Representing a national insurance company and two of its senior officers in a securities fraud action in the Northern District of Illinois challenging statements concerning the reasons for an unexpected increase in auto claim frequency. Successfully petitioned for review of class certification order, which was reversed by the Seventh Circuit on the merits
- Representing the defendants in three separate stockholder derivative actions filed in Illinois state and federal courts asserting claims for purported breaches of fiduciary duty in connection with the allegations in the federal securities action described above. Obtained dismissal for failure to allege demand futility in the first of these actions; obtained a stay under the Colorado River abstention doctrine in a later-filed federal action; the third action was dismissed after a special committee investigated a demand and recommended that the board of directors should not pursue the claims
- Representing a specialty commercial auto insurance company in a securities fraud action filed in the Northern District of Illinois after the company announced an increase in its reserves for incurred but not recorded insurance liabilities. After plaintiffs amended their complaint three times, the district court granted our motion to dismiss
- Representing a technology company and the members of its board of directors in a post-closing action for damages under section 14(a) of the Securities Exchange Act of 1934 for alleged disclosure violations in connection with a going private merger in which all of the Company's stock was acquired for cash

## RELATED SERVICES

- Corporate
- Litigation, Arbitration and Investigations
- Corporate and Securities Litigation
- Mergers and Acquisitions
- Public Company and Corporate Governance

## RELATED SECTORS

- Financial Services
- Life Sciences

- Representing a biopharmaceutical company and two of its senior officers in a securities fraud action filed in the Southern District of New York shortly after a joint advisory committee recommended that the FDA refuse to accept for filing the company's application for approval of an abuse-deterrent formulation of an opioid tablet
- Representing the underwriters in obtaining dismissal of '33 Act claims filed in the Western District of Oklahoma challenging trust unit offerings for two oil-and-gas royalty trusts due to plaintiffs' failure to comply with requirements of the PSLRA. A subsequent action asserting the same claims was dismissed as untimely under the applicable statute of repose
- Representing the former chief executive officer of a reinsurance company in a securities class action and SEC enforcement action in the Southern District of New York concerning accounting for a finite reinsurance transaction
- Representing the underwriters in obtaining the dismissal of a securities class action in the District of Massachusetts alleging '33 Act violations in connection with the initial public offering of a company in the alternative energy industry
- Representing the outside directors of a bank holding company based in Puerto Rico in consolidated stockholder derivative litigation in the Southern District of New York and related matters arising from a financial restatement
- Representing a biotechnology firm in successfully defending a securities class action concerning the circumstances surrounding its announcement that the FDA had refused to accept for filing its application for regulatory approval of a groundbreaking cancer therapy

#### *Insolvency and Bankruptcy Litigation*

- Representing an offshore fund in multi-jurisdictional litigation with affiliates of a video game company arising from the borrowers' failure to make required payments under a secured credit facility
- Representing an international bank in obtaining dismissal for lack of personal jurisdiction of claims brought by Louisiana investors in offshore hedge funds seeking to recover payments made to the bank before the funds were placed in liquidation proceedings. A subsequent adversary proceeding asserting fraudulent conveyance claims under New York law was settled favorably after we briefed a motion to dismiss for failure to state a claim
- Representing the receiver for numerous failed banks and thrifts in bankruptcy and receivership litigation in courts throughout the United States, involving jurisdictional conflicts between district courts and bankruptcy courts, banking law defenses to fraudulent transfer claims, enforcement of pre-petition capital maintenance commitments and other issues unique to financial institution insolvencies
- Representing the former chief executive officer of a failed bank and its holding company in successfully defending claims for alleged breaches of fiduciary duty brought by the bankruptcy trustee for the holding company

#### *Investigations and Enforcement Proceedings*

- Assisting Senator George J. Mitchell in his investigation into the alleged use of performance enhancing substances by players in Major League Baseball, including overseeing the preparation of Senator Mitchell's report to the Commissioner of Baseball with respect to that investigation
- Representing a review committee of a bank holding company board in evaluating a stockholder demand
- Representing a special committee of the board of a publicly traded REIT in an internal investigation of alleged GAAP violations
- Representing the former chief executive officer of a reinsurance company in a securities class action and SEC enforcement action concerning accounting for a finite reinsurance transaction
- Representing a broker of credit default swaps in connection with a FINRA investigation concerning alleged communications between interdealer brokers about proposed commission rate schedules
- Assisting Senator George J. Mitchell in his role as independent athletics integrity monitor under a consent decree by the NCAA against The Pennsylvania State University
- Representing numerous individuals and publicly traded companies in investigations by the Securities and Exchange Commission, the United States Department of Justice, and various self-regulatory organizations

## CREDENTIALS

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## Admissions

- New York
- Connecticut

## Education

- J.D., University of Virginia 1990
- A.B., Dartmouth College 1987

## Courts

- Supreme Court of the United States
- United States Court of Appeals for the Second Circuit
- United States Court of Appeals for the Third Circuit
- United States Court of Appeals for the Fifth Circuit
- United States Court of Appeals for the Seventh Circuit
- United States Court of Appeals for the District of Columbia Circuit
- United States District Court for the Southern District of New York
- United States District Court for the Eastern District of New York
- United States District Court for the District of Colorado
- United States Court of Appeals for the Tenth Circuit

## Memberships

- Association of the Bar of the City of New York
  - Banking Law Committee (Past Chairman)
- American Bar Association

## INSIGHTS

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### Publications

- "Expert Q&A on Tolling of Securities Claims After CalPERS," *Practical Law*, July 2017
- "Securities Litigation: Class Actions Arising from IPOs," *Practical Law*, April 2017

### Events

### Previous

#### Risks of the Small Business Administration's Paycheck Protection Program

5 May 2020 | 12:00 - 1:00 p.m. EST  
Webinar

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- "Recent Developments: Financial Advisor Liability in M&A Transactions," CLE Presentation, New York (January 14, 2016)
- Co-speaker, "The Omnicare Decision and its Effect on Securities Offerings Webinar" (April 29, 2015)
- Faculty, Practising Law Institute, How to Prepare an IPO (2005-2016)

