



John J. Clarke, Jr.

Partner

CO-CHAIR, CORPORATE AND SECURITIES LITIGATION PRACTICE

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John Clarke is co-chair of the firm's Corporate and Securities Litigation practice. He represents clients in complex litigation and internal investigations involving securities and financial instruments, trust indentures, merger and stockholder derivative litigation, financial institutions, structured transactions, and bankruptcy and fraudulent transfer claims. He has significant experience appearing as lead counsel in federal and state courts across the nation, including courts of appeal.

John is a frequent speaker and writer on issues involving the federal securities laws, corporate governance, and financial institutions. He is a past chairman of the Banking Law Committee of the Association of the Bar of the City of New York.

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

- Financial Services
- Life Sciences

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 global pharmaceutical company in an action for breach of a trust indenture that governed the terms of contingent value rights issued in connection with a public company merger
- Representing a global pharmaceutical company in putative securities class actions filed in federal and state courts alleging violations of the federal securities laws in statements concerning a series of contingent value rights issued in connection with a public company merger

- 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
- Represented an investment bank in obtaining dismissal of claims for aiding and abetting alleged breaches of fiduciary duty as sell-side financial advisor to an oil-and-gas servicing company in the Delaware Court of Chancery. The dismissal was affirmed in appeal by the Delaware Supreme Court
- Represented 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
- Represented 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
- Represented 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
- Represented 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
- Represented 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
- Represented 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

- Represented 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
- Represented 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
- Represented 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
- Represented 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 the board of a Michigan bank holding company in evaluating a stockholder demand and negotiating a settlement of alleged derivative claims
- Representing a special committee of the board of a publicly traded REIT in an internal investigation of alleged GAAP violations
- Representing a broker of credit default swaps in connection with a FINRA investigation concerning alleged communications between interdealer brokers about proposed commission rate schedules
- 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

Admissions

- New York
- Connecticut

Recognitions

- *Chambers USA*
2021 - Band 5, New York Litigation: Securities
Chambers comments, "John Clarke is an experienced securities litigator and fine choice for representation in class actions. He offers notable experience in acting for insurers." Clients say, "John Clarke is a very strong litigator. He's great on his feet in the courtroom and an excellent writer." "John is knowledgeable, strategic and thinks outside of the box."
- *The Legal 500 United States*
2015-21 - Recommended, Securities Litigation – Defense
2020-21 - Recommended, M&A Litigation: Defense

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 District of Columbia Circuit
- 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 Tenth 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 Connecticut
- United States District Court for the District of Colorado

Memberships

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