



## Bruce E. Falby

### Partner

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### Boston

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Bruce Falby is a trial lawyer focusing on complex business disputes in state and federal courts and in arbitration.

He has represented clients in a wide range of business lawsuits involving breach of contract, breach of fiduciary duty, business torts, securities fraud, partnership and joint venture disputes, merger challenges, and noncompetition and nondisclosure covenants. He has tried numerous cases to verdict, decision, or award in court and arbitration.

Bruce is co-chair of DLA Piper's national Real Estate Litigation Practice. He has extensive experience representing real estate developers, lenders, owners, landlords, and tenants in all aspects of real estate litigation involving real estate acquisition, financing, development, operation, leasing, and disposition. He also represents clients in property damage, personal injury and negligence actions.

- Litigation, Arbitration and Investigations
  - Intellectual Property and Technology
  - Trademark and Copyright
  - International Arbitration
  - Banking and Finance Litigation
  - Corporate and Securities Litigation
  - Employment
  - Class Actions
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- Real Estate

## SELECTED DECISIONS

- *BP Watertown v. Home Depot USA, Inc.*, Mass. Superior Court, C.A. No. 2015-3344, Memorandum Decision Awarding Fees (Jan. 19, 2016), slip op. at 18 ("As a contemporary of Mr. Falby's in the Boston legal world, I have known of his sterling reputation for many years.")
- *Scion Breckenridge Managing Member, LLC et al. v. ASB Allegiance Real Estate Fund et al.*, 68 A.3d 665 (Del. 2013)
- *275 Washington Street Corp. v. Hudson River International, LLC*, 465 Mass. 16 (2013), affirming 81 Mass. App. Ct. 418 (2012)
- *ASB Allegiance Real Estate Fund v. Scion Breckenridge Managing Member, LLC*, 2012 WL 1869416 (Del. Ch. May 16, 2012) and 50 A.3d 434, 446 (Del. Ch. 2012) ("The lawyers who staffed the matter in this case are able and experienced practitioners, and they charged what are readily recognizable as reasonable rates for complex commercial litigation. . . .At trial, the DLA Piper attorney destroyed the credibility of Scion's expert. ASB's expert, by contrast, was unshaken on cross-examination. Preparation matters.")
- *Vicor Corp. v. Vigilant Insurance Company*, 674 F.3d 1 (1st Cir. 2012)
- *Moot v. Department of Environmental Protection*, 456 Mass. 309 (2010)
- *Hearts on Fire Company LLC v. Blue Nile, Inc.*, 603 F. Supp. 2d 274 (D. Mass. 2009)

- *ClearShot Holdings, LLC v. National Grid Wireless Holdings, Inc.*, 2007 Mass. Super. LEXIS 524 (November 26, 2007)
- *Blue Hills Office Park LLC v. J.P. Morgan Chase Bank, as Trustee, and CSFB 1999–C1 Royall Street, LLC*, 477 F. Supp. 2d 366 (D. Mass. 2007)
- *Ostler v. Codman Research Group, Inc.*, 241 F.3d 91 (1st Cir. 2001)
- *Lugosch v. Conroy*, 985 F. Supp. 40 (D.R.I. 1997)
- *Eastern Airlines, Inc. v. Chemical Bank*, 1997 U.S. Dist. LEXIS 7380 (S.D.N.Y. 1997)
- *In re Ionosphere Clubs, Inc.*, 177 B.R. 198 (Bank. S.D.N.Y. 1995)
- *Jordan v. McDonald*, 803 F. Supp. 493 (D.Mass. 1992)
- *Page v. Moseley, Hallgarten, Estabrook & Weeden, Inc.*, 806 F.2d 291 (1st Cir. 1986)

## REPRESENTATIVE MATTERS

### *Business Litigation*

- Represented pension fund investor joint venture partners in successful action to reform the waterfall provisions in three limited liability company agreements based on the doctrine of mistake. Tried case in Delaware Chancery Court, winning the first reformation award in Delaware's history based on unilateral mistake. Obtained opinion affirming the trial court's decision on the merits from the Delaware Supreme Court and an award of attorney's fees on remand for defendants' bad faith litigation conduct
- Represented lenders in case described by the Massachusetts federal court (Young, J.) as a "high stakes, winner-takes-all, quintessentially complex commercial case." After a nine-day trial, defeated US\$14 million lender liability claim that the borrower had brought against our lender clients, and obtained a US\$17.5 million full recourse judgment on our clients' counterclaim against the borrower and guarantors based on violations of carve-outs to nonrecourse liability under the loan documents
- Represented real estate developers in federal declaratory judgment action in Rhode Island against their limited partner to determine their right to own and develop Providence Place Mall, a nearly half a billion dollar project. Tried case jury-waived and obtained decision giving ownership and control of the project to clients
- Represented corporate party to merger agreement, defending and defeating federal court action to enjoin tender offer and to require further disclosures to shareholders
- Represented insurers in First Circuit appeal of jury verdict in general liability policy coverage dispute involving "loss of use" damages; obtained reversal of US\$16.5 million judgment against clients and, after remand, partial summary judgment and a favorable settlement of all claims
- Represented union employee benefit funds in successful arbitration action to enforce contract with provider of disease management services
- Represented associations of colleges, newspapers and businesses in successful First Amendment challenge in federal court to Maine statute regulating marketing to minors
- Represented plant owner in challenge to plant closing under Federal WARN Act and Maine state statutes
- Represented bank in dispute over prepayment term of commercial loan. After four day state court trial, defeated borrower's claim for breach of contract and recovered full amount of prepayment fee plus attorney's fees
- Represented seller of a business that developed wireless towers and broadband lease agreements. Obtained state court summary judgment award totaling US\$7.3 million, with prejudgment interest and attorneys' fees, on breach of contract claims, and defeated buyer's US\$3 million counterclaim alleging fraud and breach of contract
- Represented chairman of independent state authority in dispute with governor over latter's power of removal
- Represented lender in state court action against borrower of nonrecourse real estate loan secured by Boston office building to recover US\$1 million bank account the borrower withheld in connection with a deed in lieu transaction. Obtained summary judgment and turnover of the account in less than six months
- Represented a health care software company and its chairman in federal court case in New Hampshire brought by former executive, who alleged the company had defrauded him of multimillion dollar stock options in violation of federal securities law. Tried case to jury verdict in favor of clients on all counts, which was affirmed on appeal by First Circuit
- Represented automotive finance corporation, defending New Hampshire state court consumer class action lawsuit alleging violations of state law in connection with alleged failures to return unearned premiums on insurance for dealer financed car loans
- Represented investors in venture capital funds asserting breaches of contract, breaches of fiduciary duty, Blue Sky violations and

other claims in federal court in California

- Represented a partner in Costa Rican fish farm in federal court lawsuit in Maine involving alleged breaches of fiduciary duty and interference with the sale of the farm
- Represented an owner of corrugated box manufacturer in damages phase of state superior court action brought by would-be buyer of the company whose contract to purchase the company had already been found to have been breached. Tried case to jury verdict awarding small fraction of damages sought.
- Represented terminated electronics components distributor bringing multimillion dollar claims against Texas Instruments, trying the case before a three-member American Arbitration Association panel in Arizona
- Represented same electronics components distributor against seller of business bought by client, trying in arbitration in California various post-closing purchase agreement adjustments
- Represented a hospital doctor/research scientist in dispute with venture capital company over the commercialization of his inventions
- Represented a major speech recognition software company in dispute in bankruptcy court over asset purchase
- Represented manufacturer/installer of airport baggage systems in bid dispute with Massport
- Represented a pharmaceutical company in MDL litigation involving average wholesale pricing
- Represented a nationally known doctor of integrative medicine in arbitration with the publisher of his newsletter
- Represented officers of Bank of New England in federal court action brought by trustee of bank holding company alleging fraudulent conveyance of multimillion dollar assets to the holding company's subsidiary banks for the benefit of the FDIC
- Represented a major university in federal court securities action against major brokerage company alleging fraud in the sale of remarketed notes of a financial services corporation
- Represented an estate of bankrupt airline against major bank in adversary proceeding in SDNY involving disputed chargebacks. Obtained seven-figure summary judgment award
- Represented a large Georgia bank in federal court securities action defending and defeating on summary judgment claims of federal securities fraud brought by investors in bank customer
- Represented a client defrauded by her investment advisor in federal court case in Massachusetts for securities fraud, achieving full recovery at jury trial in settlement reached immediately before closing arguments
- Represented an investor in arbitration of his claims against his broker in NASD (now FINRA) arbitration.
- Represented bank alleged to have exerted sufficient control over borrower to make it liable for borrower's obligations to third party
- Represented creditors seeking to pierce corporate veil and impose liability on corporate successors and alter egos
- Represented beneficiary in will contest tried in probate court over disposition of Martha's Vineyard whaling mansion

#### *Real Estate Litigation*

- Represented commercial tenant under terminated lease, obtaining decisions from the Massachusetts Appeals Court and Supreme Judicial Court that the landlord was limited to the remedies specified in its lease and that landlord's right to indemnity under the lease could not be exercised until the twelve year lease term would have ended
- Represented Wang Theatre, Inc. in substantial dispute under its long term lease for the Wang Theater in Boston involving novel issue of whether naming rights and other sponsorship monies constituted revenues for purposes of calculating rent. Tried case in arbitration for 9 days and prevailed on all issues
- Represented developer of North Point mixed use project in Cambridge, Massachusetts, obtaining decision from Massachusetts Supreme Judicial Court that the project, which contained landlocked tidelands, was exempt from Massachusetts Chapter 91 wetlands licensing
- Represented developers of Providence Place Mall in case brought by limited partner seeking to force them to add millions of dollars of structural steel to support possible future office tower project to be built atop the mall. After week long arbitration, obtained decision in favor of clients rejecting limited partner's claims
- Represented developers of Providence Place Mall in all construction and lien litigation arising out of its construction, including US\$18 million claim by steel contractor
- Represented landowner in Land Court action to vindicate easement rights. Obtained summary judgment establishing the validity of clients' easement
- Represented different landowner in Land Court action challenging public way easement rights claimed by town. Obtained summary

judgment establishing that town had no such rights and client's land was free of any such easement

- Represented a minority partner in federal court action involving amounts allegedly owed for capital contributions to single purpose real estate partnerships
- Represented mortgage lender in Land Court trial of forged deed claim. After two-day trial, obtained decision rejecting plaintiffs' claims of forgery and upholding the validity of our client's mortgages
- Represented commercial landlord in state court eviction action against large commercial tenant, trying the case jury-waived in district court and to jury in superior court
- Represented national real estate development company asserting claims for breach of contract and engineering and construction defects in design and construction of sewer force main that failed
- Represented the owners of a multi-story apartment building, with persistent leaks in many units, asserting claims in state court for defective construction against the contractor. Obtained settlement requiring repair and monetary payment
- Represented a major New York bank in federal court action involving mezzanine loan financing of a Manhattan office building
- Represented a title insurer in Land Court trial of claims seeking equitable subordination of mortgage
- Represented a construction manager of old mill conversion bringing claims in arbitration against owner of the project, and obtained award of all amounts sought
- Represented a national property owner and builder in dispute with contractor over substantial construction defects in large apartment complex
- Represented a supermarket chain in state court action seeking damages resulting from negligence of its commercial landlord in allowing a fire to spread out of control and from landlord's deliberate delay in demolition and failure to rebuild
- Represented a gas pipeline company in federal court action to determine damages owed to railroad for real property taken under the Natural Gas Act

#### *Intellectual Property Litigation*

- Represented one craft brewer in successful trademark infringement action against another in Massachusetts federal court; following entry of consent permanent injunction obtained contempt ruling and award of fees against defendant
- Represented distributor of branded diamonds and jewelry in trademark infringement action asserting claims involving keyword advertising
- Represented semiconductor manufacturer of integrated circuits enabling the delivery of high speed data, voice and video signals, defending claims of breach of a development agreement and misappropriation of trade secrets
- Represented an electronics components distributor in federal court action in California asserting claims for trademark infringement and unfair competition against competitor, which was permanently enjoined from its infringing use
- Represented a telecommunications company in federal court in New Hampshire asserting claims for trademark infringement and enjoined the infringer's initial public offering
- Represented a state lottery commission in dispute with television station over its use of lottery logos during segments announcing lottery results
- Represented a broker of computer parts in federal court action asserting Lanham Act claims against distributor from which it had purchased counterfeit computer memory modules, obtaining seven-figure settlement
- Represented an Internet direct marketing company and services provider in trademark infringement action, defeating opponent's request for injunctive relief
- Represented a swimming pool company in arbitration involving trademark infringement by former owner of business, who was permanently enjoined from his infringing use
- Represented a manufacturer in patent infringement action to enforce patent for disposable electronic temperature monitoring devices against competitor
- Represented a major equipment manufacturer in patent litigation defending claims of infringement of a patent for catalytic, water-soluble polymeric films for metal coatings, obtaining dismissal of case
- Represented a well-known beer company in action in federal district court to obtain transfer of ownership of patent application involving misappropriated process and device for applying labels to bottles or packages, prevailing on summary judgment
- Represented a human resource management software developer bringing claims in federal court against former licensee for

copyright infringement, breach of license agreement, and misappropriation of trade secrets

- Represented a major pharmaceutical company in copyright case alleging infringement of biological data-mining software
- Represented a large direct mail marketing company in copyright case alleging infringement of a copyright in direct mail advertisements
- Represented a licensee of speech recognition software in connection with claims brought by licensor alleging breach of the license agreement and copyright infringement
- Represented a computer systems manufacturer in state court action involving claims by software developer
- Represented a travel agency in lawsuit brought against the developers of software system that did not perform as promised
- Represented an exclusive licensee of desktop faxing software in lawsuit against the developer and licensor for disclosing trade secrets and confidential information in the licensed software to others.
- Represented a manufacturer of temperature monitoring devices in lawsuit brought by licensors of technology used in the devices, alleging breach of the license agreement
- Represented a web site development company in dispute with large HMO over a web site development contract
- Represented a national apparel manufacturer in arbitration with software company involving functioning of integrated merchandise planning software

#### *Employee/Employer Litigation*

- Represented employee and new employer, an IT consulting firm, in action brought by former employer alleging breach of noncompete agreement. Defeated request for injunction to restrain employee from working for new employer
- Represented a manufacturer of fiber materials in state court action against former employee for trade secret disclosure and violation of noncompete covenants
- Represented a former executive in action against company involving unfair treatment of shares in reorganization of company
- Represented a distributor in federal court diversity case in Massachusetts involving salesman's claim for commissions, trying the case jury-waived to successful conclusion
- Represented an insurance company executive in state superior court bench trial involving breach of severance agreement by his former employee
- Represented a publicly traded web site development company and employees in state court action involving claims by competitor that client had wrongfully solicited and hired employees in violation of their noncompetition and nondisclosure agreements
- Represented an advertising agency in state court action in Rhode Island to enforce former employee's noncompetition agreement, and in Massachusetts state court defending employment claims of terminated employee
- Represented a manufacturer of sophisticated computer telephone switching system in action in New Hampshire to recover source code misappropriated by former employee

## CREDENTIALS

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### Admissions

- Massachusetts

### Clerk Experience

- The Honorable R. Lanier Anderson, III, United States Court of Appeals for the Eleventh Circuit, 1983-84

### Recognitions

Bruce appears in *The Best Lawyers in America* in the categories of Bet-the-Company Litigation and Commercial Litigation. He is a Massachusetts *Super Lawyer* and has been included in the *Super Lawyers* list of the Top 100 lawyers in New England and the Top 100 lawyers in Massachusetts.

- *Chambers USA*

2021 - Band 3, Massachusetts Litigation: General Commercial

Chambers comments, "Bruce Falby works on a range of business disputes, including breach of contract claims and joint venture disputes." Clients say, "Bruce offers a balance of legal expertise and good business judgment." "He is an excellent writer and an excellent translator of complex legal concepts."

2020 - Band 3, Massachusetts Litigation: General Commercial

## Education

- J.D., Georgetown University Law Center 1983  
*magna cum laude*  
Executive Editor of the Georgetown Law Journal
- B.M., Baldwin-Wallace College Conservatory of Music 1979  
*magna cum laude*

## Courts

- United States Court of Appeals for the First Circuit
- United States Court of Appeals for the Second Circuit
- United States District Court for the District of Massachusetts

## Civic and Charitable

- Fellow, American Bar Foundation
- Fellow, Boston Bar Foundation, Member, Fellows Committee (2013-2014)
- Chair, Boston Bar Association ("BBA") Committee (reviewed and commented on Massachusetts Supreme Judicial Court proposed rule requiring mandatory training for new lawyers) (2012)
- Member, BBA Executive Committee (2009-2011) and Council (2008-2011)
- Chair, BBA Sponsor Firm Study Group (2009)
- Member, BBA Strategic Planning Committee (2008) Co-chair, BBA Litigation Section (2006-2008)
- Co-chair, BBA Intellectual Property Litigation Committee (2004-2006)
- Co-chair, BBA Computer and Internet Law Committee (2003-2004)
- Member, Former Board Co-Chair and President, New Philharmonia Orchestra (1995-present)

## INSIGHTS

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## Publications

- Co-author, "When Federal Courts Remand Eviction Actions Back To States," *Law360* (March 26, 2021)
- *Massachusetts Mortgages, Foreclosures and Workouts*, Chapter 1 (An Introduction to Mortgages and Foreclosures) co-author (MCLE, Inc. 5th Edition 2009, Supp. 2010 & 2013)
- *Massachusetts Real Estate Liens*, Editor, Chapter 1 (Introduction to Liens) co-author (MCLE, Inc. 2d Ed. 2010)
- "Guarantees and 'Bad Boy' Carve Outs," *Mortgage and Asset Backed Securities Litigation Handbook*, Chapter 5, Part III, Section B (2008)
- "Don't Mess with the Collateral: A Cautionary Tale," *CMBS World* (Winter 2008)

## Events

- Speaker and Panelist, Landlord Remedies – A Refresher in Landlord rights after 275 Washington Street Corp, Trustee v. Hudson

River Int'l, LLC, Boston Bar Association Leasing Committee (2013)

- Speaker and Panelist, Chapter 91 Licenses, Common and Complex Title Issues Seminar, Massachusetts Continuing Legal Education (2011)
- Speaker and Panelist, Betting the Company: Corporate Counsel and the Major Case, New England Corporate Counsel Association (2011)
- Panelist, ABA Teleconference - Reexamining Non-Recourse Carveouts in Light of Blue Hills (2007)

## NEWS

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## MEDIA MENTIONS

- "With flute in hand, Boston litigator set to take center stage," *Massachusetts Lawyers Weekly*, November 14, 2019