

STEPHEN L. ASCHER, Partner

Stephen L. Ascher is co-chair of the firm's Securities Litigation and Enforcement Practice. Hedge funds, real estate companies, and other institutions have sought his help with a wide variety of disputes. He regularly tries cases in federal court, state courts throughout the United States, and arbitration proceedings.

Mr. Ascher's practice spans the gamut of securities and financial services litigation, from traditional 10b-5 class actions to disputes arising out of M&A transactions to fraud and contract claims by institutional plaintiffs. He frequently represents plaintiffs as well as defendants, including major financial institutions in structured finance disputes relating to CDOs, CMBS and derivatives. He has also represented hedge funds, private equity funds and their portfolio companies in matters relating to insider trading and other regulatory issues, as well as in commercial disputes. In addition to his practice in the financial services industry, Mr. Ascher has represented companies in commercial disputes in the real estate, health care, transportation and telecommunications industries, among others.

Mr. Ascher's current and recent representations include:

- Defending American Express in a class action arising out of the nonrenewal of its co-branding relationship with Costco. The complaint was dismissed on motion, and the dismissal was affirmed on appeal.
- Successfully representing a leading cannabis company in several disputes with minority investors and shareholders.
- Prosecuting a trade secrets claim on behalf of a biotech company against a Fortune 500 pharma company. Our client proved theft of its trade secrets.
- Prosecuting claims for Brookfield Asset Management relating to interest rate swaps. Brookfield resolved the claims for a \$500 million gain.
- Representing hedge fund investors and special servicers in numerous disputes relating to CMBS and CDO transactions.
- Chesapeake Energy in a well-publicized trial against a trustee concerning the timeliness of a redemption of a \$1.3 billion bond offering.
- A hedge fund in a trial against marketers who claimed an interest in the fund. The case settled favorably after Mr. Ascher's opening statement.
- A major US bank in several disputes with other financial institutions concerning CDOs. Our client recovered more than \$100 million.
- A foreign institutional investor in claims against banks relating to structured finance investments. Our client has recovered more than \$200 million.
- Several leading real estate firms in matters relating to the origination, sale, securitization, and servicing of commercial and residential mortgages.



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PRACTICE GROUPS

Financial Services Litigation
Litigation
Markets and Trading
Real Estate Litigation and Counseling
Securities Litigation and Enforcement
Trade Secrets and Restrictive Covenants

INDUSTRY GROUPS

Cannabis

EDUCATION

Harvard Law School, JD, 1991; *cum laude*

Harvard College, BA, 1988; *magna cum laude*

ADMISSIONS

New York, 1993

COURT ADMISSIONS

US Supreme Court, 2000

US Court of Appeals, Second Circuit, 2005

US Court of Appeals, Eleventh Circuit, 2004

US District Court, Southern District of New York, 1993

US District Court, Eastern District of New York, 1993

JUDICIAL CLERKSHIPS

Hon. Jesse E. Eschbach, US Court of Appeals, Seventh Circuit, 1991 - 1992

- A Big Four accounting firm in two dozen cases alleging malpractice and fraud in connection with tax motivated transactions;
- Four of the underwriters in the historic WorldCom class action;
- Various insurance companies in billion-dollar claims involving commodity derivative transactions and credit default swaps relating to Enron and Parmalat;
- A Japanese trading company defending antitrust claims and, separately, prosecuting fraud claims against several major investment banks; and
- An Irish bank prosecuting fraud claims against two major US financial institutions.

- The CEO of a major mutual fund in the first trial of SEC charges alleging fraudulent market timing;
- Individuals in several recent SEC enforcement actions concerning marketing and structuring of CDOs;
- Traders, hedge fund executives and others in matters involving insider trading, bribery, tax fraud and otherwise; and
- An individual in a seven-week trial in federal court concerning a multi-million dollar insurance fraud.

Awards

- *New York Super Lawyers*
Securities Litigation, 2008-2019
Criminal Defense: White Collar, 2010-2015
General Litigation, 2010-2015
- *Legal 500*
Dispute Resolution (Securities Litigation - Defense), 2016-2020
- Leaders League *Litigation & Competition* Directory
Securities Litigation, 2018

Other

- Financial Fraud Report
Member, Editorial Board

Service To The Bar

- American Bar Association
Member, Securities Litigation Committee
- Association of the Bar of the City of New York
Member
- New York State Bar Association
Member, White-Collar Criminal Defense Committee (2007-10)
- New York State Bar Association
Co-Chair, Hedge Fund and Capital Markets Litigation (2013)

Publications

- Co-Author, Real Estate Litigation Newsletter September 2020, September 24, 2020
- Contributor, Client Alert: Regulatory Alert: An Analysis of the Federal Reserve's New and Expanded Programs to Support the US Economy, April 14, 2020
- Co-Author, "SEC Investigation Shows Maturation of Cannabis Scrutiny," *Law360*, April 1, 2020
- Co-Author, Client Alert: Insider Trading Issues Raised by News of Senators' Reported Trades, March 24, 2020
- Co-Author, Client Alert: Second Circuit Allows Insider Trading to Be Proven Without Personal Benefit, January 10, 2020
- Co-Author, Client Alert: H.R. 2534 Insider Trading Prohibition Act Passes House, December 13, 2019
- Co-Author, "Deciphering Deer Park: Lessons for Fund Managers from a Recent SEC Valuation Settlement," *Hedge Fund Law Report*, August 15, 2019
- Co-Author, Client Alert: The Supreme Court Raises Questions About Private Rights of Action to Challenge Tender Offers Under Exchange Act § 14(e), April 25, 2019
- Co-Author, Client Alert: Supreme Court Holds That Statute of Repose Imposes Absolute 3-Year Bar on Opt-Out Claims, June 30, 2017
- Co-Author, Client Alert: *Kokesh v. SEC*, June 8, 2017
- Co-Author, "Friends and Benefits: US Supreme Court Clarifies How Insider Trading Liability under US Law Differs from UK Law," *Global Investigations Review*, June 7, 2017
- "*Salman v. United States* Leaves Continued Uncertainty in Insider Trading Law," Association of Corporate Counsel, New York, NY, December 20, 2016
- Client Alert: *Salman v. United States* Leaves Continued Uncertainty in Insider Trading Law, December 7, 2016
- Client Alert: Supreme Court Is Likely to Reaffirm *Dirks* Insider Trading Benefit Test, October 2016
- Co-Author, "Availability of Specific Performance to Jilted M&A Parties," *Law360*, July 22, 2016
- Co-Author, Client Alert: Companies Should Review Confidentiality, Severance and Other Agreements in View of New SEC Whistleblower Case, April 8, 2015
- Co-Author, Client Alert: *U.S. v. Newman*: Second Circuit Reverses Remote Tippees' Convictions for Insider Trading Where Tippers Never Charged, December 22, 2014
- Client Alert: *Halliburton*: The Supreme Court Upholds Fraud-on-the-Market but Allows Defendants to Disprove Price Impact, June 27, 2014
- Co-Author, Client Alert: Second Circuit Reverses Judge Rakoff, Sets Low Bar for Approval of SEC Settlements, June 16, 2014
- "SEC Cooperation: Game Changer or the Same Old Game?" *Financial Fraud Law Report*, April 2010
- "Motive and Opportunity Are Not Enough," *Securities Litigation Journal*, American Bar Association, Summer 2008
- "*Tellabs, Inc. v. Makor*. The Decline of Standalone Securities Fraud Cases?" *Bloomberg Law Reports: Securities Law*, Vol. 1 No. 30, July 30, 2007

- "How To Be A Plaintiff," *The Banking Law Journal* Vol. 124, No. 3, pg. 246, March 2007
- "*Tellabs, Inc. v. Makor*- The Problem of Pleading Fraudulent Intent," *Securities Regulation & Law Report*, Vol. 39, No. 6, February 12, 2007
- "Hiding In Plain Sight: Valid Business Practices Can Be 'Red Flags' of Fraud," *New England In-House*, Vol. 4, No. 4, January 2007
- "Dropping the Ball: The *Dabit* Decision," *National Law Journal*, Vol. 28, May 15, 2006
- "Defendants, Level the Playing Field in Enforcement Actions," *New York Law Journal*, Vol. 235, No. 735, April 17, 2006

Speaking Engagements

- "Insider Trading and *US v. Salman*," November Meeting of the Securities Regulation Committee of the NYSBA, November 16, 2016
- Speaker, "Financial Reform, Credit Bidding and Loss Recovery Strategies," Litigation Department Spotlight Live Seminar Series Event, New York, NY, February 24, 2011
- Speaker, "Securitization Practices & Related Liability," New York City Bar CLE program, New York, NY, October 21, 2008
- *Corporate Secretary* East Coast Think Tank, New York, NY, May 07, 2008
- "Walking the Line: Managing Privilege and Attorney-Client Communications," Martindale-Hubbell Counsel to Counsel Roundtable, New York, NY, February 27, 2008
- Panelist, American Lawyer Media's 19th Annual General Counsel East Coast Conference, New York, NY, June 04, 2007 to June 05, 2007
- Chair, *Corporate Secretary* East Coast Think Tank, New York, NY, May 22, 2007