Commercial Litigation

Across the United States and in London, our Commercial Litigation attorneys represent public and private companies and other business organizations in every major industry, with respect to their complex commercial disputes. Our team of highly experienced litigators provides strategic and efficient counsel on the full spectrum of cases, ranging from contract disputes and regulatory matters, to class action lawsuits, antitrust matters, domestic and international arbitrations, appeals and other complex commercial litigation.

Protecting your interests through customized litigation strategies

Katten's 200 litigators have the knowledge, experience and resources to handle, and if necessary, to litigate through appeal, virtually any type of case. We regularly try high-stakes cases to verdict and appear in federal and state courts across the nation at the trial and appellate levels, before arbitration tribunals and administrative law judges, and in specialty courts.

Our litigators have extensive experience and the ability to handle all manner of complex commercial litigation. We understand your needs and can mobilize quickly to provide cost-effective strategies that best align with your business. We work with you to assess the ramifications of litigation on your business, not just the legal implications, and develop an approach accordingly. Whether we litigate a case to verdict, or guide the matter to resolution by way of negotiation, mediation or some other form of alternative dispute resolution, our multidisciplinary team brings its sophistication and wealth of skills to craft efficient solutions through the lens of your business objectives.

Making your case locally, nationally and globally

Our litigators have significant experience trying cases in all courts throughout the country, and will try those cases to verdict, when necessary. In recent years, we successfully defended a global leader in the credit insurance market against common law claims for fraud, negligent misrepresentation, breach of fiduciary duty and fraudulent concealment. We also successfully represented a large broker-dealer and dark pool operator against putative class claims relating to payment for order flow, the duty of best execution and alleged preferencing of high-frequency trading firms in a private order-execution venue. But we are known for being pragmatic in our approach. When settlement is the most desirable or practical outcome, our team is willing to negotiate business resolutions of commercial disputes on the terms most favorable to our

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client. We are adept at employing all forms of alternative dispute resolution mechanisms to effect reasonable outcomes.

Drawing upon an extraordinary breadth of knowledge in appellate advocacy

Our Appeals and Critical Motions practice has briefed and argued hundreds of consequential appeals, including actions in all 13 US courts of appeals, and numerous state supreme and intermediate appellate courts. We leverage this experience to develop arguments, jury instructions and other case elements that help minimize the likelihood of an appeal or to best position you should an appeal be filed. Our strong appellate bench is a powerful resource for managing the appellate process for cases where we are involved from day one, or where we are hired for the appeal.

Tackling ancillary litigation challenges efficiently and effectively so you can move ahead

Additionally, our group adeptly manages the many risks, investigations, government inquiries and proceedings that accompany large cases, and we help our clients manage any resulting parallel and complex proceedings. We have acted as national or regional counsel in multijurisdictional actions, coordinating closely with local and other outside counsel, to bring the best possible conclusion to those complex actions.

With a solid track record of success, our team believes that our commercial litigation victories must provide tangible value in support of your business goals. This positions us as better business partners for the long term and more successful strategists for immediate matters.

Our Experience

- Defended a global leader in the credit insurance market against common law claims against for fraud, negligent misrepresentation, breach of fiduciary duty and fraudulent concealment premised upon the insurer's supposed provision—above and beyond its insurance obligations—of trade credit assessment services based on alleged statements in marketing materials/on websites. The New York Supreme Court Commercial Division dismissed all claims, ruling that plaintiff failed to sufficiently allege any fiduciary or special relationship or duty running from the insurer to its insured and failure to allege fraud allegations with particularity. The Appellate Division affirmed.
- Defend large broker-dealer and dark pool operator against putative class claims relating to payment for order flow, the duty of best execution and alleged preferencing of high-frequency trading firms in a private order-execution venue. The suit alleges that, by paying for order flow, our client induced a retail broker-dealer to route its orders to our client, which then routed some of the orders to its dark

pool, where they were exposed to alleged predatory trading by HFT firms. The district court dismissed the case, finding the claims were precluded by the Securities Litigation Uniform Standards Act. Currently on appeal before the Ninth Circuit.

- Trial counsel on behalf of financial services company, as indenture trustee, in its $6.3 billion breach of contract claim against the parent of bankrupt gaming company Caesars Entertainment Operating Company with respect to Caesar's parent's alleged breach of its guarantee of Caesar's payment obligations to Caesar's first-lien noteholders, as well as the parent company's alleged violation of the Trust Indenture Act in attempting improperly to engage in an out-of-court restructuring without the consent of the noteholders.
- Represented multiple options market makers in a putative class action alleging violations of Section 10(b) and Rule 10b-5 in a dividend capture strategy executed at PHLX options exchange. The US District Court for the Eastern District of Pennsylvania dismissed the case, finding there was no proof of unlawful conduct.
- Represented the owner of a shopping mall in Rockville, Maryland, in a case involving client's ongoing efforts to redevelop the mall into a major mixed-use, town-center-style development. An anchor tenant of the mall sought to enjoin further redevelopment of the mall under a reciprocal easement agreement. In a published decision, the US Court of Appeals for the Fourth Circuit affirmed the denial of the anchor tenant's request for injunctive relief, holding that the proposed injunction would have required the district court to either supervise the restoration of the mall or freeze the mall's ongoing redevelopment efforts, both of which the court of appeals deemed infeasible.
- Litigation counsel for a REIT with respect to mixed-use expansion of shopping center in Washington, DC metro area. Asserted claims address change orders, general conditions and countervailing liquidated damages based on persistent delays and scheduling errors. Case was dismissed pursuant to settlement.
- Litigation counsel to real estate developer in dispute over proposed redevelopment immediately adjacent to property client owns in 16th Street Historic District in downtown Washington, DC. The demolition and construction on adjacent property would undermine structural integrity of improvements and party wall on our client's property; diminish property's character and value; and pose severe life-safety risks to our client's tenants and visitors. We submitted objections to building permit application, filed an appeal with the DC Office of Administrative Hearings regarding the issued raze permit, and instituted actions in the US Court of Appeals for the District of Columbia and before the DC Board of Zoning Adjustment. The dispute was successfully settled.

- Represent individual member of a prominent New York real estate family in alleging more than 20 direct and derivative claims against another family member, who has used his position of dominion over the family real estate business to loot and waste assets and to exclude our client from millions of dollars in distributions and fees to which he is entitled.
- Lead counsel to Apotex, a global pharmaceutical drug company, regarding antitrust and patent claims—including *Walker Process* fraud, the *Therasense* standard for inequitable conduct and reverse-payment liability theories—in relation to being illegally excluded from the billion-dollar-a-year market for a narcolepsy drug. We established that the relevant patent was invalid, not infringed and procured by fraud.
- Trial counsel for a food packaging company, and its private equity sponsor, in $100 million claim against seller of business for fraudulent inducement and breach of contract of the applicable asset purchase and transition services agreements between the parties. Settled the case on favorable terms to the client on the eve of trial during mediation requested by defendants after the submission of summary judgment motions.
- Represented Norwegian software company in suit for repayment of debt. We obtained a complete victory including summary judgment and sanctions.

Recognitions

Recognized or listed in the following:

- *Best Law Firms*
  - Commercial Litigation
    - National, 2012–2026
  - Charlotte, 2016–2026
    -
  - Chicago, 2022–2026
    - Dallas/Fort Worth, 2021–2026
  - New York, 2012–2026
    - Washington, DC, 2012–2026
- *Chambers USA*
  - Litigation: General Commercial
    - Illinois, 2006–2026