

# David A. Crichlow

*Partner and Chair, Commercial Litigation Practice*

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## Practices

FOCUS: Litigation  
Appeals and Critical Motions  
Commercial Litigation  
Financial Markets and Funds  
Financial Markets Litigation and Enforcement

## Industries

Energy  
Finance and Financial Markets  
Pharmaceutical and Life Sciences

## Education

JD, University of Pennsylvania Law School  
BA, Hofstra University

## Bar Admissions

New York

## Court Admissions

US Supreme Court  
US Court of Federal Claims  
US District Court, Eastern District of New York  
US District Court, Northern District of New York  
US District Court, Southern District of New York

## Community Involvements

Lawyers' Committee for Civil Rights Under Law, Board of Trustees  
The Legal Aid Society, Board of Advisors

David Crichlow, national chair of the Commercial Litigation group, represents large companies in some of their most important litigation. He serves as lead trial counsel on high-stakes commercial, class action and bankruptcy litigation, with experience that includes nine- and ten-figure disputes. David has represented clients in multibillion-dollar RMBS consolidated litigation, fraudulent inducement claims with respect to asset purchase agreements for significant commercial businesses, and litigation in or related to the bankruptcies of the Caesars Entertainment Operation Company, Solutia, Enron and Refco.

## Commercial, class action and bankruptcy disputes

Clients that turn to David include some of the largest banks in the United States and Europe, major oil and industrial gas companies, private equity firms and large pension funds. His wide-ranging experience includes representing an indenture trustee in its \$6 billion claim against the gaming company Caesars pursuant to a parent guarantee in the applicable indenture, the equity committee in the Solutia bankruptcy in its \$2 billion claim against a former parent, and a Cayman Island hedge fund against a \$324 million preference action in the Refco bankruptcy.

David's class action defense practice includes his work defending an indenture trustee against a "bet-the-company" class action claim relating to a bond offering alleged to be part of a Ponzi scheme, and defending a US auto financing company against a nationwide class bringing consumer claims under various motor vehicle leasing consumer protection statutes. In over 30 years of practice, he has gained particular experience with clients in the financial services and life sciences industries.

## Representative Experience

- Lead trial counsel defending a Cayman Island hedge fund against a \$324 million preference action brought by the creditors' committee in the Refco

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bankruptcy. Obtained successful resolution prior to summary judgment hearing.

- Lead trial counsel for one of the country's largest oil companies in several adversary proceedings brought against the Enron Corporation, or its affiliates, in the Enron bankruptcy, with respect to disputes arising from a pipeline joint venture between the company's affiliates and Enron's affiliates.
- Lead trial counsel representing financial institution, as indenture trustee, in its \$6.3 billion claim on behalf of first-lien noteholders for payment in full on certain first-lien notes issued by gaming company Caesars Entertainment Operating Company (CEOC), in a suit before the US District Court for the Southern District of New York against CEOC's parent, Caesars Entertainment Corporation (CEC), for alleged breach of its parent guarantee under the applicable indenture and alleged violations of the Trust Indenture Act. The lawsuit resulted in a favorable settlement on the eve of summary judgment arguments, paving the way to a global settlement in CEOC's bankruptcy to which CEC contributed, resulting in the first-lien noteholders receiving payment in full on their notes with interest.
- Lead trial counsel for equity committee of insolvent multinational manufacturer of high-performance chemical-based materials for industrial and consumer use in its \$2 billion lawsuit against former parent, asserting that former parent undercapitalized company at spin-off, fraudulently transferred certain liabilities and misrepresented the scope of future environmental liabilities in public documents related to the spin-off. Obtained global settlement under bankruptcy plan and recovery for pre-petition equity holders.\*
- Lead trial counsel defending California loan originator against claims by Residential Funding Company, LLC (the successor-in-interest to ResCap) for alleged breach of warranty and indemnification arising from ResCap's purchase, securitization and sale of certain residential mortgage-backed securities. The aggregate damage claims in the consolidated actions in which the mortgage securities-related claims are proceeding involve more than \$7 billion in controversy.
- Lead trial counsel defending one of the country's largest automobile finance companies in a class action suit alleging violations of New York's Motor Vehicle Retail Leasing Act. Obtained voluntary dismissal of nationwide

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class allegations, and resolved state class claims favorably to client after extensive commercial mediation.

- Lead trial counsel defending a Boise, Idaho company in a "bet-the-company" case against a putative class action related to the company's role as indenture trustee to a \$40 million bond issuance, indenture trustee's alleged breach of fiduciary duties, and contractual obligations, after issuer of notes declared bankruptcy and was alleged to have been engaged in a massive Ponzi Scheme. Obtained dismissal of all claims prior to class certification and without class discovery.
- Lead trial counsel in multiparty plaintiff actions brought by certain upstream oil producers against several of the nation's largest oil companies as downstream purchasers, for claims worth hundreds of millions of dollars alleging unjust enrichment, constructive trust and other equitable remedies.
- Represent clients with claims against the Reserve Fund for redemption of investments after the fund historically "broke the buck" during the financial crisis in the fall of 2008.
- Represented trustee for certificate holders under pooling and servicing agreements in connection with RMBS litigation and claims brought by monoline insurer against trustee for alleged breaches of contract and various other purported duties. Obtained dismissal of all claims.
- Represent large domestic public utility company in petition before US Supreme Court for a writ of *certiorari* to review lower court's decision on constitutionality of a Federal Energy Regulatory Commission ruling.

\*Experience prior to Katten

## Recognitions

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*Recognized or listed in the following:*

- *Crain's New York Business*
  - Notable Black Leaders and Executives, 2021

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- Hofstra University
  - Alumni Achievement Award, 2012
- International Law Office
  - Client Choice Award
    - Litigation, 2014
- Metropolitan Black Bar Association
  - Private Practitioner of the Year, 2011
- *National Law Journal*
  - Litigation Trailblazer, 2020
- *New York Law Journal*
  - Distinguished Leader, 2020
- Super Lawyers
  - New York, 2006, 2014–2021
- The Legal 500 United States
  - Recommended Attorney, 2014, 2017, 2020–2021
- Turnaround Atlas Awards
  - Gaming & Hospitality Turnaround of the Year, 2012
  - Basic Resources Category, 2011

## News

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- Katten Attorneys Named 2021 New York Super Lawyers and Rising Stars Honorees (September 30, 2021)
- Coronavirus (COVID-19) Resource Center (August 10, 2021)
- Katten Receives High Marks in Derivatives, M&A and Securitization in The Legal 500 United States 2021 Guide (June 10, 2021)
- David Crichlow Named to *Crain's New York Business* Notable Black Leaders and Executives List (April 1, 2021)

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- *National Law Journal* Honors David Crichlow as a Litigation Trailblazer (November 24, 2020)
- David Crichlow Honored as a 'Distinguished Leader' by the *New York Law Journal* (November 2, 2020)
- Katten Attorneys Chosen for New York Super Lawyers and Rising Stars Lists (October 28, 2020)
- *New York Law Journal* Selects David Crichlow and Kenneth Lore as 2020 Distinguished Leaders (July 1, 2020)
- Katten Named Top-Tier Firm in Structured Finance and Securitization by The Legal 500 United States 2020 Guide (June 16, 2020)
- Katten Attorneys Prepare Chicago High School Students for Career Success (November 8, 2018)
- Katten Attorneys Named to 2018 New York *Super Lawyers*, Rising Stars Lists (September 13, 2018)
- Katten Partner Tapped for American Bar Association Leadership Role (July 12, 2018)
- Katten Attorneys Acknowledged in 2017 New York Super Lawyers, Rising Stars Lists (September 20, 2017)
- Katten Distinguished by *The Legal 500 United States* 2017 (May 31, 2017)
- Eighteen Katten Attorneys Distinguished in 2016 New York Metro *Super Lawyers* List (September 21, 2016)
- Twenty Katten Attorneys Recognized in 2015 New York Metro *Super Lawyers* List (September 16, 2015)
- Eighteen Katten Attorneys Named to 2014 New York Metro *Super Lawyers* List (September 23, 2014)
- Eight Katten Practices and Forty-Two Attorneys Recognized by *The Legal 500 United States* 2014 (July 3, 2014)
- Katten's New York Office and Attorneys David Crichlow and Guy Dempsey Receive 2014 Client Choice Awards for Outstanding Client Service (April 14, 2014)
- Katten Brings on Top New York Litigator David A. Crichlow (July 13, 2012)

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## Publications

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- Is the Coronavirus Pandemic a Material Adverse Event? It Depends. (April 17, 2020)
- *In re Tribune Co.*: Allowance of Post-Petition Indenture Trustees Fees as Unsecured Claim (January 10, 2019)

## Presentations and Events

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- Pretrial Practice 2021 (April 21, 2021) | *Panelist* | *Responding to a Complaint*
- Precision Advocacy: Reinventing Motion Practice to Win (April 27, 2017) | *Presenter* | *Precision Advocacy: Reinventing Motion Practice to Win*
- Financial Services Litigation Symposium (October 16, 2014) | *Presenter*
- Pretrial Practice 2013 (May 20, 2013) | *Speaker* | *Responding to a Complaint*
- NYLS-BLSA 2012–2013 Alumni Dinner (April 19, 2013) | *Speaker*