



O'MELVENY & MYERS LLP

Jonathan Rosenberg

PARTNER



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Jonathan Rosenberg is a Partner in O'Melveny's New York office, a member of the Firm's Policy Committee, and a member of the Securities Litigation Practice and White Collar Defense and Corporate Investigations Practice. He focuses on securities, M&A, and breach of fiduciary duty litigation, internal investigations and white collar criminal defense. Prior to joining the Firm, Jonathan was an Assistant U.S. Attorney in the Southern District of New York for six years, where he spent two-and-a-half years in the Securities and Commodities Frauds Unit and served as Deputy Chief of the Criminal Division. Jonathan has tried more than twenty cases in government and private practice. Jonathan has also argued many times before federal and state appellate courts, including the United States Court of Appeals for the Second Circuit and the Delaware Supreme Court.

Illustrative Professional Experience

- Leads an O'Melveny team as national coordinating counsel for all auction-rate-securities litigation against a financial institution, including: (i) a putative securities class action and a derivative action, (ii) two putative antitrust class actions; and (iii) numerous individual federal lawsuits and FINRA arbitrations.
- Obtained dismissal in February 2009 of a \$4 billion putative securities class action against a financial institution regarding alleged manipulation of a pharmaceutical company's stock. The suit regards an alleged conspiracy among short-selling hedge funds and analysts to drive down the company's share price. Previously obtained dismissal of a state court RICO action against the financial institution based on similar allegations.
- Obtained dismissal in November 2008 for a private equity firm of a federal antitrust class action alleging that the firm and other leading private equity firms

conspired to allocate the market for large leveraged buyout transactions, through improperly forming "bidding clubs" for the acquisitions.

- Obtained dismissal in November 2008 of a complaint that sought to compel a public electronic games company to include in its proxy statement a shareholder proposal to adopt a by-law opting out of the federal proxy access framework.
- Obtained dismissal in August 2009 of a complaint against an investment bank seeking treble damages under the Antiterrorism Act for engaging in financial transactions alleged to be tied to terrorism.
- Represented the special committee of a public media company's board of directors in a comprehensive internal investigation and resulting litigation in Delaware, Illinois, and Canada. The investigation and ensuing civil litigation resulted in ousting former senior management, the Company obtaining nearly two hundred million dollars in recoveries, and criminal convictions of the Company's former senior management.
- Co-tried in late 2007 the defense of eight-figure theft-of-corporate-opportunity and breach-of-fiduciary duty claims. Negotiated a settlement mid-trial resulting in client paying nothing.
- Lead trial counsel for the directors of a stock exchange in putative class action litigation challenging the exchange's merger with another company as a breach of the directors' fiduciary duties. The case settled during the late-2005 injunction hearing with no change in the merger consideration. *In re New York Stock Exchange/Archipelago Merger Litig.*, Index No. 60146/05 (NY Sup. Ct., NY Cty.).
- Represents a financial institution in shareholder class and derivative litigation regarding its merger with a mortgage finance company. The case settled with no change in the merger consideration.
- Obtained dismissal of breach of fiduciary duty and fraud claims against a hedge fund manager. *Lazard Debt Recovery GP, LLC v. Weinstock*, 864 A.2d 955 (Del. Ch. August 6, 2004).
- Obtained dismissal of securities fraud claims against an underwriter of mortgage-backed securities. *Manufacturers Life Ins. Co. v. Donaldson Lufkin & Jenrette Securities Corp.*, 2000 Fed. Sec. L. Rep. (CCH) 90,987 (S.D.N.Y. May 31, 2000).
- Obtained dismissal of Section 10(b) claims against a member of the audit committee of a theatre production company in bankruptcy. *In re Livent, Inc., Noteholders Sec. Litig.*, 174 F. Supp. 2d 144 (S.D.N.Y. 2001); *In re Livent, Inc., Sec. Litig.*, 78 F. Supp. 2d 194 (S.D.N.Y. 1999).
- Defending a large bank in litigation seeking more than \$3 billion for alleged breaches of the credit agreement providing financing for the Fontainebleau Las Vegas hotel and resort development.
- Represents two underwriters in a putative class action lawsuit pending in the Southern District of New York alleging Section 11 violations in connection with the IPO registration statement of a medical device manufacturer.
- Represents a maker and developer of online games in a putative securities fraud class action pending in the Southern District of New York arising out of the company's initial public offering.
- Represents the directors of a financial services firm in a bondholder putative class action pending in the District of Delaware arising out of the company's debt exchange offers.
- Represents the underwriting syndicate for a large mortgage company's mortgage loan pass-through certificates in a class action under the Securities Act currently pending in New Mexico state court. The complaint alleges that the registration statements for ten different issuances misrepresented the loan underwriting procedures for the underlying mortgages and other pertinent facts.

professional focus

White Collar Defense and Corporate Investigations
Securities Enforcement
Business Trial and Litigation
Securities Litigation

education

Northwestern University, J.D., 1984: *cum laude*; Order of the Coif; Managing Editor, *Northwestern University Law Review*

Columbia University, M.A., 1981

Queens College, B.A., 1980: *magna cum laude*; Phi Beta Kappa

admitted

New York

publications

Schoon v. Troy: Delaware Vice Chancellor Allows Retroactive Repeal of Director Advancement Rights (Corporate Counsel's Quarterly)

The Truck Stops Here: Closing the Holes in Loosely Written Public Company Advancement and Indemnification Bylaws (Corporate Counsel's Quarterly)

"Making Sense of New York's Corporate Opportunity Doctrine," *New York State Bar Journal* (June 2008)

- Represents a public snack food and beverage manufacturer in a putative ERISA class action pending in the Southern District of New York arising out of a change to the company's executive deferred compensation plan.
- Represented former President and Chairman and former Chief Operating Officer of ICG Communications, Inc., in a putative Rule 10b-5 class action arising from the failure of a large telecommunications company. After prevailing on the vast bulk of a motion to dismiss the consolidated complaint, ultimately obtained favorable settlement. *In re ICG Communications, Inc. Sec. Litig.*, No. 00-RB-1864 (D. Colo.).
- Represented former officer of a telecommunications company in securities class actions asserting claims under both the Securities Act of 1933 and the Securities Exchange Act of 1934. Obtained favorable settlement. *In re Global Crossing Inc. Sec. Litig.*, Case No. MDL-1630 (S.D.N.Y.).
- Represented founder and former CEO of an internet-based e-mail services company in a putative class action asserting claims under the Securities Act of 1933. Obtained favorable settlement. *In re Crayfish Co. Sec. Litig.* Master File No. 00 Civ. 6766 (DAB) (S.D.N.Y.).

In addition to successfully handling numerous significant securities and other complex commercial cases in state and federal courts and in arbitration, Jonathan's white collar criminal and regulatory experience is similarly deep and varied. He has represented more than sixty individuals and entities in various federal and state criminal, and SEC and SRO enforcement matters. Jonathan also regularly advises companies, boards of directors, and special committees regarding regulatory and corporate governance matters, internal investigations, and M&A litigation matters.

Among his more significant public criminal matters are the following:

- Senior member of the defense trial team that obtained the 1997 acquittal of a manufacturer of thermal fax paper in a criminal price-fixing trial.
- Obtained probation, and then the early termination of probation, for a record company executive in the largest payola case the U.S. Department of Justice has ever filed.
- Represented five employees of a bankrupt cable company in the SEC's and the Southern District of New York U.S. Attorney's office investigation.
- As a prosecutor, proved after a two-week evidentiary hearing that the former CEO of a finance company, who had pleaded guilty to orchestrating a \$400 million ponzi scheme, violated his cooperation agreement, resulting in a twenty-year sentence.
- Tried and convicted a former Wall Street high yield bond research analyst for participating in a kickback scheme involving the firm's bond trader.
- Obtained the conviction of the former chief of staff to a New Jersey governor for participating in a kickback scheme involving a municipal securities offering.

Professional Activities

Law Clerk, Honorable David N. Edelstein, US District Court, Southern District of New York

Admitted to Practice, US District Court, Southern, Eastern and Northern Districts of New York; US Court of Appeals, Eleventh and Second Circuits; US Supreme Court

Awards, *Chambers USA - America's Leading Lawyers for Business* (2009); Recognized as a New York "Super Lawyer" for Securities Litigation, Criminal Defense: White Collar, Business Litigation in a survey conducted by *Law & Politics Media Inc.* (2008)

Articles: "Loose Lips Sink Ships: The Importance of Director Confidentiality Programs," *Corporate Counsel Quarterly* (September 2009); "Making Sense of New York's Corporate Opportunity Doctrine," *New York State Bar Journal* (June 2008); "The Truck Stops Here: Closing the Loopholes in Loosely Written Public Company Advancement and Indemnification Bylaws," *Corporate Counsel Quarterly* (July 2006); "New York Securities Litigation Landscape Affected by Subtle Changes," *New York Law Journal* (December 16, 2002); "Reviewing Standards for Judicial Relief in ADR," *New York Law Journal* (January 16, 2002); "Recantation Defense in Federal Perjury Prosecutions," *New York Law Journal* (March 23, 1998); "Criminal Liability of Private Citizens for Extortion Under Color of Official Right," *New York Law Journal* (December 21, 1995)

Assistant U.S. Attorney, US Attorney's Office in the Southern District of New York, including two-and-a-half years in the Securities and Commodities Frauds Task Force

Deputy Chief, Criminal Division, US Attorney's Office