

Securities Litigation

Our team focuses on partnering with institutional investors—including hedge funds, venture funds, and investment advisors—on high-yield, value-creating litigation strategies. By proactively identifying and seizing opportunities for litigation, our group has successfully secured major recoveries on behalf of Franklin Templeton, Janus Henderson Investors, Appaloosa, Highfields Capital, Valinor Management, Fred Alger Management, and other industry leaders.

Having served investors for more than two decades, we are well-versed in the procedures and nuances behind effective litigation—and we are exceptionally well-positioned to maximize returns. Our strength is in leveraging litigation for value creation and recovery, chiefly through opt-outs, appraisals, debt-holder rights, and activist litigation. The proprietary trading and legal-damages analytical tools we have developed enable us to more efficiently assess client opportunities and mitigate risk.

In opt-out litigation, we frequently recover several multiples of the amounts available to passive class action claimants. We see appraisals as a means for institutional investors to yield substantial premiums and/or the recovery of stock value in major transactions such as mergers and acquisitions (see our **Appraisal Blog**), as well as a useful part of a larger merger litigation strategy.

Our lawyers also help debt holders recover losses and enhance returns in matters relating to securities fraud, restructuring disputes, collateral dilution, successor liability, contract disputes, and other issues. Through these methods, we enable our portfolio manager and general counsel clients to become profit centers within their organizations, recovering losses and improving the bottom line.

Our success hinges in part on our holistic view of institutional investors and their businesses. As part of a leading full-service firm, our group integrates the work of our colleagues in Investment Management, Fund Formation & Structuring, Bankruptcy, Financial Reorganization & Creditors' Rights, Tax, and other practice areas to recognize additional opportunities and serve our clients' unique needs. We are keenly attuned to factors impacting any business decision or strategy, including investor relations, marketplace standing, media exposure, and the regulatory environment.

Clients value our team for maximizing recoveries and returns while minimizing the aggravations associated with complex litigation. We tailor our approach to individual businesses, ensuring that the strategies we pursue are consistent with each client's vision for success and are poised for optimum results.

Types of clients:

- Institutional and private investment funds
- Hedge funds
- Credit-focused funds
- Private investors
- Shareholder activists
- Debt holders

EXPERIENCE

Securities Fraud Claims

- > Represented several investor groups, including Cohen & Steers and Archer Capital Management, in the U.S. District Court for the Southern District of New York against VEREIT, Inc. (f/k/a American Realty Capital Properties Inc.), and several of its former senior executives in connection with accounting fraud.
- > Representing multiple investors, including Janus Capital Group, SunAmerica Asset Management, Brahman Capital, MSD Partners, Grantham, Mayo, Van Otterloo & Co., Discovery Capital Management, and Incline Global Management, in the U. S. District Court for the District of New Jersey against Valeant Pharmaceuticals and several of its former executives in connection with the company's undisclosed relationship with a related entity and artificially inflated financials.
- > Represented Discovery Capital Management in a direct securities fraud action against Petrobras and others related to its alleged bid-rigging and kickback scheme. Discovery's claims were sustained after a motion to dismiss. The matter was confidentially settled before trial.
- > Represented Highfields Capital Management and another investor in direct actions against Barrick Gold Corporation related to fraud allegations involving its major South American mining project, Pascua Lama. Highfields' claims and the other investors' claims were sustained on a motion to dismiss, and the matter was confidentially settled.
- > Represented entities related to Fred Alger Management and Valinor Capital Management in direct actions against LendingClub Corporation related to allegations regarding fraud by its former CEO and other executives. The matter was confidentially settled.
- > Represented the largest institutional equity investor in direct claims for alleged securities fraud against MF Global and former New Jersey Governor Jon Corzine.
- > Represented Pennant Capital Management in a claim against Ocwen Financial regarding multiple alleged frauds perpetrated on investors. The matter was confidentially settled on the eve of trial.
- > Counseled a major institutional investor regarding securities fraud claims against a Fortune 25 company, successfully settling the matter without filing a complaint.

- > Represented Franklin Mutual Advisers in direct claims for securities fraud against multiple companies, including Tyco, Beazer Homes, and AIG.
- > Represented Appaloosa Management, Franklin Mutual Advisers, and W.R. Huff Asset Management Co., recovering hundreds of millions of dollars from claims arising out of the Adelphia securities scandal.
- > Represented Special Situations Funds in a securities fraud involving Suprema Cheese, including successful appeal to the U.S. Court of Appeals for the Third Circuit.

Appraisal and Valuation Claims

- > Representing a shareholder group in an appraisal action regarding the purchase of Reynolds American by British American Tobacco.
- > Represented a hedge fund investor in Digital River Inc., who pursued statutory appraisal rights in Delaware arising out of Digital River's merger acquisition by an investor group led by Siris Capital Group LLC.
- > Represented an investor group in a Delaware appraisal claim with respect to a merger involving a medical staffing solutions company. The matter was confidentially settled before depositions.
- > Represented a major investor in a Delaware appraisal claim with respect to a merger involving two Fortune 500 companies in the telecommunications space. The matter was confidentially settled pre-petition.
- > Represented the Magnetar Funds in their claims against Dell in an appraisal case involving nearly half a billion dollars' worth of Dell shares. The case was brought by shareholders challenging the value of the merger price paid by Michael Dell and Silver Lake in their take-private acquisition of Dell in October 2013. The matter also involved statutory interest.
- > Represented an investor in Aeroflex Holding Corp., which pursued its statutory right to appraisal in Delaware following the company's acquisition by British defense contractor Cobham plc for \$1.5 billion. The case was favorably resolved by a confidential settlement prior to trial.
- > Represented the largest outside investor group in CKx Inc. (n/k/a CORE Media Group); the group pursued their statutory right to appraisal of their \$50+ million stake in the company following the acquisition of CKx by an affiliate of Apollo Global Management in 2011. CKx was the owner and manager of such iconic brands as *American Idol*, *Elvis Presley Enterprises*, and *Muhammad Ali*.
- > Represented Special Situations Funds in a Delaware appraisal action involving Leucadia's acquisition of MK Resources.

Debt Claims/Activist Issues/Litigation Strategy

- > Representing Appaloosa in claims arising out of the structured finance underlying the \$5 billion sale of Stuyvesant Town in New York City.
- > Represented a media company in a stock option backdating case in which the court dismissed the plaintiff's complaint and also denied the plaintiff's request for leave to replead and file a further amended complaint.
- > Represented a group of senior lenders under a credit agreement in an action against Freescale Semiconductor Inc. The breach of contract and declaratory judgment action was brought by several funds affiliated with institutional investors ING, INVESCO, Babson, Denali, Eaton Vance, and others, which lent approximately \$400 million to Freescale. The plaintiffs alleged that Freescale breached the credit agreement when it issued approximately \$924 million in incremental term loans. The case was successfully settled on confidential terms.
- > Successfully blocked a transaction worth \$800 million through expedited litigation filed on behalf of a major shareholder.
- > Successfully defended an appeal of a federal district court's dismissal of a complaint against officers and directors asserting breach of fiduciary duties in connection with the dissolution of a pharmaceutical company.

HONORS & AWARDS

- > **BTI Consulting Group: BTI Litigation Outlook 2019: BTI Consulting Group: BTI Litigation Outlook (2019)**
Honor Roll in Commercial Litigation