

#### **№** people



William H. Gussman, Jr. Partner

### Contact

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### Advises on complex commercial litigation, including securities fraud actions, fraudulent transfer actions, M&A litigation and partnership disputes.

Bill's clients have included domestic and foreign hedge funds, private equity firms, major corporations, investment banks, prime brokers, lenders and individuals. He has substantial trial experience, having tried cases in federal and state courts throughout the United States and in a variety of alternative dispute resolution venues, including AAA, FINRA and JAMS arbitrations.

He frequently litigates in bankruptcy court, often representing creditors in disputed matters in the plan confirmation process.

He also has particular experience in litigating issues concerning the Section 546(e) safe harbor in fraudulent transfer actions. He has extensive experience representing both buyers and sellers in deal-related disputes concerning a broad range of industries, including the telecommunications, energy, retail and automotive industries. Bill also has broad experience in matters relating to litigation finance and regularly advises clients with respect to champerty risk and the risk/reward profile of litigation-related assets.

Bill's jury trial experience includes the successful defense of a leading prime broker in a \$141.4 million fraudulent transfer action brought by the trustee of a defunct hedge fund. In that two-week federal trial, he helped to secure a unanimous verdict in favor of the prime broker.

He successfully defended a former officer and director of Merck & Co. in a high-profile securities class action and related cases concerning the painkiller Vioxx. That high-profile matter included the defense of federal and state securities law claims, breach of duty claims, product liability claims and other matters.

Practices LITIGATION LITIGATION FINANCE SPECIAL SITUATIONS AND BANKRUPTCY LITIGATION COMPLEX COMMERCIAL LITIGATION INSURANCE REAL ESTATE LITIGATION SECURITIES LITIGATION AND CLASS ACTION SPECIAL SITUATIONS

### **Bar Admissions**

New York, 1997

### **Court Admissions**

US Supreme Court US Court of Appeals, Second Circuit US Court of Appeals, Third Circuit US District Court, Eastern District of New York US District Court, Western District of New York US District Court, Northern District of New York US District Court, Southern District of New York

# Education

Harvard Law School, J.D.

Dartmouth College, B.A.

- summa cum laude
- Phi Beta Kappa

### Representations

#### Fraudulent Transfer and Bankruptcy-Related Litigations

- Ongoing representation of investment fund and other shareholder defendants in clawback actions. *In re Tribune Company Fraudulent Transfer Litigation* (S.D.N.Y.).
- Ongoing representation of investment fund defendants in fraudulent transfer action brought by liquidating trustee. *In re Boston Generating LLC* (Bankr. S.D.N.Y.).
- Representation of secured creditor in dispute with creditors' committee concerning entitlement to default interest, prepayment premium and other disputed amounts. *In re iHeartMedia Inc.* (Bankr. S.D. Tex.).
- Representation of Wilmington Trust Co. in a series of key wins over the FDIC to secure ownership of an expected tax refund of over \$400 million for the bankruptcy estate of Downey Financial Corp. *In re Downey Financial Corp.* (Bankr. Del.).
- Representation of various mezzanine lenders in connection with plan objections and associated litigation, including a challenge to enterprise valuation, in connection with the bankruptcy of Almatis, B.V., et al. *In re Almatis, B.V.* (Bankr. S.D.N.Y.).
- Defended Bear Stearns in connection with matters pertaining to the collapse of the Manhattan Investment Fund Ltd., obtaining jury verdict in favor of Bear Stearns on claim for \$141.4 million in alleged fraudulent transfers and securing dismissal of fraudulent transfer claims seeking \$3.6 billion in damages. *Gredd v. Bear Stearns Securities Corp.* (Bankr. S.D.N.Y.).

#### **Securities Fraud Matters**

 Successfully defended a former officer and director of Merck & Co. Inc. in a high-profile securities class action and related cases concerning the painkiller Vioxx. The high-stakes litigation included defense of federal and state securities law claims, ERISA claims, breach of duty claims, product liability claims and other matters. *In re Vioxx Litigation.*

- Obtained dismissal of securities law claims against underwriter defendant. *In re Quintus Securities Litigation* (N.D. Cal.).
- Successful representation of underwriter defendant in connection with securities law claims. *In re Livent Securities Litigation* (S.D.N.Y.).
- Successful representation of investment fund in defense of Section 16(b) short-swing trading claims. *Levy v. OZ Master Fund, et al.* (S.D.N.Y.).

#### M&A Litigation

- Successfully represented private equity fund in achieving voluntary dismissal of aiding and abetting breach of fiduciary duty claims in connection with take-private M&A transaction. *Tangoe Takeover Litigation* (Del. Ch.).
- Represented private equity fund acquirer of a public company in M&A class action shareholder lawsuits alleging breach of fiduciary duties and securities law violations. *Tellabs Takeover Litigation* (N.D. III.).
- Representations of numerous buyers and sellers in private postacquisition disputes, including working capital disputes and matters concerning alleged breaches of deal-related representations and warranties.

#### Arbitration

- Achieved complete victory for financial restructuring firm in AAA arbitration in dispute with former partner.
- Representation in JAMS arbitration of hedge fund in dispute regarding revenue share agreement.
- Representation in JAMS arbitration of private investment fund in defense of an \$11 million breach of contract claim in alleged "finder's fee" case.
- Representation in AAA arbitration of private equity fund seller in \$29 million purchase price adjustment matter.
- Represented Big Four accounting firm in AAA arbitration in connection with the accounting firm's internal investigation

regarding potential liability relating to relevant audit.

 Successful representation in *ad hoc* arbitration of investment fund in dispute over value of warrants.

#### Commercial/Business Litigation Disputes

- Successfully represented insurance company in dispute concerning liability for vehicle service contract obligations following Chrysler bankruptcy. *Chrysler Group v. CorePointe Insurance Company* (Michigan State Court).
- Successful defense of claims brought under an alter ego/piercing the corporate veil theory against private equity client concerning obligations of a portfolio company. Case resulted in a dismissal of claims at the pleadings stage.
- Representation of broker-dealer in dispute with individual claiming to be a member of the broker-dealer LLC. *Brownstone Investment Group LLC v. Levey* (S.D.N.Y.).
- Successful representation of litigation funding company in dispute with competitor concerning misappropriation of trade secrets.

## Publications

- "SPAC Litigation Alert: CEO of Acquisition Target Charged in First Criminal Indictment Connected to a De-SPAC Transaction," Schulte Alert, Aug. 9, 2021
- "SPAC Litigation Alert: SPAC Sponsor and CEO Agree to Pay Civil Penalties and Forfeit Sponsor Shares Following SEC's Charge of Disclosure and Due Diligence Failures," *Schulte Alert*, July 20, 2021
- "SPAC Litigation Alert: SEC Cautions SPAC Participants that Claims of Reduced Liability Exposure Are Overstated," *Schulte Alert*, April 13, 2021
- "SPAC Litigation Alert: Kwame Amo v. MultiPlan," Schulte Alert, March 29, 2021
- "Litigation Alert Force Majeure Under New York and Delaware Law," Schulte Alert, March 19, 2020
- "Supreme Court Defers to State Law on Ownership of Tax Refund," Schulte Alert, March 4, 2020; republished in Law Journal Newsletters, April 2020; republished in Accounting and Financial Planning for Law Firms, April 2020
- "Obtaining Information from Corporate Insiders," *Insider Trading* Law and Compliance Answer Book, Practising Law Institute, 2011-2020
- "Discovery Trends in Litigation Finance Arrangements," *Bloomberg Law*, April 2018, co-author; republished in *Harvard Law School Forum on Corporate Governance and Financial Regulation*, May 15, 2018
- "Regulation of Market Manipulation," *Federal Securities Exchange Act of 1934*, March 2018, co-author
- "Schulte's Leading Litigation Finance Practice: Holistic Expertise for a Booming Asset Class," *The Hedge Fund Journal*, March 2018 (quoted)

- "US Supreme Court Limits Securities Safe Harbor Protection From Bankruptcy Clawback Suits," *Schulte Alert*, March 1, 2018; cited in *Harvard Law School Bankruptcy Roundtable*, March 6, 2018
- "Extending CaIPERS v. ANZ Securities To Exchange Act Cases," Law360, Sept. 21, 2017, co-author
- "Supreme Court Holds that Individual 'Opt Out' Securities Act Plaintiffs Cannot Rely on American Pipe Tolling to Extend the Statute of Repose," *Schulte Alert*, June 28, 2017, co-author; republished in *The Hedge Fund Journal*, July 27, 2017
- "Another Benefit to a Thoughtful Sale Process?" Corporate Board Member, Second Quarter, 2017, co-author
- "M&A Strategies for Success," Corporate Board Member, First Quarter, 2017 (interview)
- "Regulatory Change: 2015 Diagnosis, 2016 Prognosis Schulte Roth & Zabel's Leading Securities Litigation Practice," *The Hedge Fund Journal*, November 2015 (profile)
- "Beyond Halliburton: Securities Fraud Class-Action Appeals to Watch," Westlaw Journal – Securities Litigation & Regulation, Nov. 13, 2014, co-author
- "Resolving Post-Acquisition Disputes," *Financier Worldwide Magazine*, August 2014 (quoted)
- "Supreme Court Rules Securities Class Action Plaintiffs Need Not Prove Materiality at Class Certification Stage," *Schulte Alert*, March 4, 2013, co-author
- "US Supreme Court Provides Guidance on Section 16(b)'s Statute of Limitations," Schulte Alert, April 3, 2012
- "Amended Expert Discovery Rules One Year Later: Has Anything Changed?," New York Law Journal, Jan. 18, 2012
- "The Second Circuit's Adoption of the *Moench* Presumption of Prudence Provides 'Accommodation' for Employers Facing Stock Drop Suits," *Schulte Alert*, Oct. 24, 2011 (co-author)

- "Regulation of Market Manipulation," *Federal Securities Exchange* Act of 1934 (Matthew Bender & Company), 2010, co-author
- "Beware the Counterattack Against Activist Investors: The Group Trap," *Schulte's Activist Investing Developments*, Fall 2006
- "The Great Purchase Date Debate: When Does An Investor In A Convertible Security With a "Hybrid" Conversion Privilege
   "Purchase" Common Stock For Section 16(b) Purposes?" Schulte Investment Management Developments, Summer 2001

# Speaking Engagements

- "Management Company Planning, Disputes and Transitions," Schulte 30th Annual Private Investment Funds Seminar, January 2021
- Strafford Fraudulent Transfer Claims After Merit Management v.
  FTI: Implications for Safe Harbor Litigation Webinar, January 2019
- "FAQ: Civil Litigation," Schulte 28th Annual Private Investment Funds Seminar, New York, January 2019
- "Investing in Litigation Finance," Schulte 27th Annual Private Investment Funds Seminar, New York, January 2018
- "Doing M&A Deals: Strategies to Minimize Deal Risk," NYSE General Counsel Forum & Compliance Workshop, November 2016
- "Minimizing Disputes in International Contracts," Association of Corporate Counsel International Tool Kit – Best Practices for In-House Counsel in Dealing with Cross Border/International Issues, July 2015
- Schulte and BDO PE Dealmaking: Due Diligence and Minimizing Post-Acquisition Disputes, February 2015
- "GC and CCO Risks and Safeguards: Ethics in Practice," Schulte 24th Annual Private Investment Funds Seminar, January 2015
- FEA Private Equity Litigation and Liability Avoidance: Practical Advice Regarding "Alter Ego" Liability and Post-Acquisition Disputes, November 2014
- "Recent Court Decisions Affecting Distressed Investors," Schulte 3rd Annual Distressed Investing Conference, November 2014
- "Shareholder Activism in the Deal Environment," West LegalEdcenter New York M&A/Private Equity Forum, April 2014
- Schulte Liability Insurance Luncheon for Investment Fund Managers, March 2014

- "Sponsors and Their Portfolio Companies in Distressed Situations," Schulte 22nd Annual Private Investment Funds Seminar, January 2013
- "My Portfolio Company Did What!? Private Equity and the Perils of Alter Ego Liability," Schulte/KPMG Conference, May 2012

## Distinctions

• The Legal 500 US