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Robert J. Ward Of Counsel

Contact

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Focuses on commercial and securities litigation.

Bob has represented major corporations, commercial banks, investment banks, private equity firms, hedge funds and other business entities in complex commercial and securities litigation, in federal and state courts, in New York and elsewhere.

He has defended and prosecuted claims of breach of contract, fraud, accountant liability, securities fraud, breach of fiduciary duty and negligence by corporate officers and directors, breach of covenants not to compete, professional malpractice and intellectual property infringement. He also has extensive arbitration and mediation experience.

Recent significant representations include:

 Black Diamond and Spectrum in connection with litigations involving Allied Systems

- Ruane Cunniff in connection with class actions and derivative claims
- GEMS Education in connection with litigation arising out of a lease agreement with a New York property developer
- Boston Properties in several real estate matters
- Starwood Capital and Starwood Hotels on a variety of commercial and securities law cases
- Credit Suisse in a case involving a complex debt restructuring
- Merrill Lynch & Co. in a case involving the Seminole tribe in Florida
- A subsidiary of Pfizer in a lengthy confirmation hearing in bankruptcy court
- Real estate developer Millennium Partners in various tax matters
- Several mutual fund companies in '40 Act claims in federal court.

Bob was selected by *Benchmark Litigation: The Definitive Guide to America's Leading Litigation Firms and Attorneys, The Legal 500 US* and *New York Super Lawyers* as one of New York's leading litigators.

He is the co-author of the "United States — New York" and "United States — Federal Law" chapters in *Getting the Deal Through – Dispute Resolution*, published by Law Business Research Ltd., and the author of "Breach of Duty: Classical Theory," a chapter in the *Insider Trading Law and Compliance Answer Book*, published by Practising Law Institute.

Bob is a member of the bars of New York, the U.S. District Courts for the Southern and Eastern Districts, and the U.S. Court of Appeals for the Second and Federal Circuits.

Practices

LITIGATION

COMPLEX COMMERCIAL LITIGATION

SECURITIES LITIGATION AND CLASS ACTION

REAL ESTATE

REAL ESTATE LITIGATION

SPECIAL SITUATIONS AND BANKRUPTCY LITIGATION

Bar Admissions

New York

Court Admissions

Southern District, New York, 1978

Eastern District, New York, 1978

US Court of Appeals, Second Circuit, 1978

US Court of Appeals, Federal Court, 1978

United States Claims Court, 1978

Education

New York University School of Law, J.D.

Tufts University, B.A., magna cum laude

Representations

- Represented a private equity firm in connection with fraud, breach of contract and breach of fiduciary duty claims asserted by a former partner. Obtained vacatur of a temporary restraining order and dismissal of the underlying action, filed in Illinois, on *forum non conveniens* grounds, and then commenced a declaratory judgment action against the former partner in Connecticut. Case settled favorably after multi-day deposition of litigation counsel for former partner. *Kukral v. Starwood Capital Group* (Circuit Court of Cook County, Ill.); *Starwood Capital Group v. Kukral* (Superior Court of the State of Connecticut, Stamford).
- Successfully defended a hotel company in action seeking \$2 billion in alleged damages for breach of contract claims arising out of two contracts relating to the provision of telephone, cable, security and various other electronic services at all Sheraton, Westin and affiliated hotels around the world. After extensive discovery, obtained summary judgment dismissing all claims arising under one contract and after a 24 day bench trial, judgment dismissing all claims arising under the remaining contract. *Intelnet International Corp. v. ITT Corporation* (N.J. Super. Court Camden County).
- Represented the defendant in a suit seeking \$150 million in damages for allegedly aiding and abetting breach of contract by the Town of Mammoth Lakes. Obtained dismissal of all claims on the grounds that defendants' actions were protected free speech and legitimate petitioning of federal and municipal government. MMLA v. Mammoth Mountain Ski Area(Cal. Super. Ct, Mono County).
- Represented the trustees of a mutual fund in connection with claims by investors under the '40 Act relating to alleged feesharing, which were dismissed on motion. In Re Oppenheimer Funds Fees Litigation (S.D.N.Y.).
- Represented a fund in connection with putative class action claims relating to sales of auction rate securities. *Miller v. Calamos Global Dynamic Income Fund* (S.D.N.Y.).
- Represented a merchant in connection with putative class action claims under Fair and Accurate Credit Transactions Act ("FACTA").

- Represented a defendant in an action by the SEC to attach the proceeds from the sale of certain securities. SEC v. One Or More Unknown Purchasers Of Call Options For The Stock Of Placer Dome Inc. (S.D.N.Y.).
- Successfully defended an off-shore investment bank against a breach of contract claim in connection with the purchase of a Peruvian steel mill. Obtained summary judgment dismissing all claims, which was affirmed on appeal. Samsung America, Inc. v. GS Industries (N.Y. Sup. Ct., and App. Div., 1st Dep't).
- Defended large foreign bank, one of three administrative agent banks for multi-billion dollar loan facilities to Adelphia Communications Corp., in a cluster of suits in bankruptcy court and district court arising from the collapse of the giant cable company. The three administrative agents acted as the steering committee for more than 300 banks named as defendants in various class, derivative and individual actions by the creditors committee and former securities holders. Claims asserted included breach of fiduciary duty, aiding and abetting breach of fiduciary duty and fraud, equitable disallowance, equitable subordination, intentional and constructive fraudulent transfer and preference claims, violation of Federal Securities Laws, violation of Bank Holding Company Act and other common law and statutory claims. *In re Adelphia Communications Corp.* (S.D.N.Y.).
- Represented investment bank in an adversary proceeding in bankruptcy court in connection with claims seeking avoidance of fraudulent transfers and preferential transfers and payments arising out of commercial paper conduit. In re DVI, Inc. (Bankr., D.Del.).
- Represented large foreign bank in various adversary proceedings in bankruptcy court, including claims seeking recovery of alleged preferential payments and fraudulent transfers relating to fees received as arranger, lender and lead underwriter on various financing transactions, and claims of aiding and abetting accounting fraud by the debtor in connection with transactions allegedly structured and accounted for based on erroneous upfront revenue recognition in violation of GAAP. In re Global Crossing, Ltd. Securities Litigation (Bankr., S.D.N.Y.).

- Represented large foreign bank in an adversary proceeding in bankruptcy court brought by the unsecured creditors of a large Western Pennsylvania health care provider to recover \$89 million in loans the health care provider had repaid to the bank consortium three months prior to filing for bankruptcy. *In re AHERF Foundation* (Bankr., W.D. Pa.).
- Represented large foreign bank in the Enron bankruptcy and numerous other Enron-related litigations filed in federal and state courts, including in connection with various FAS 125/140 transactions between the bank and Enron, issues relating to GAAP requirements for equity purchases, true sale opinions, alleged facilitation of materially misleading financial statements and claims that the bank aided Enron in hiding debt by disguising loans as sales transactions. *In re Enron Corp.* (Bankr., S.D.N.Y.).
- Represented former senior employee who, after setting up a competing company, was sued by his former employer for damages and injunctive relief. On motion for summary judgment, obtained dismissal of all but one claim, which was tried thereafter to a jury, resulting in a verdict for defendant. Sawyer v. Silverado (N.D.Cal.).
- Represented defendant in breach of contract action arising out of investments made in Seminole Hard Rock Hotel & Casinos in Tampa and Hollywood, Fla. Power Plant Entertainment, LLC v. Merrill Lynch & Co., Inc. (S.D. Fla.).
- Defended a real estate development company and affiliated entities in several actions in Federal Court in New York, and in related litigation in the United Kingdom and the Netherlands, arising out of joint venture agreements to develop several buildings in New York City. Stratagem Development Corp. v. Heron International N.V. (S.D.N.Y.).
- Represented a defendant prime broker against investors' claims arising from collapse of hedge fund. Obtained dismissal of all claims, on motion to dismiss, based on lack of standing and absence of fiduciary duties to the investors. *Eurycleia Partners, LP, et al. v. UBS Securities, LLC* (N.Y. Sup Ct.).
- Represented real estate owners in application to compel the City of New York to apply real estate tax abatement to their real estate

- development in conformity with tax code. Application granted on motion. *Lincoln West Partners, L.P. v. Department of Housing Preservation and Development of City of New York* (N.Y. Sup. Ct.).
- Representation of hotel company in injunction action against former president and chief operating officer who resigned to work for competitor. Starwood Hotels & Resorts Worldwide, Inc. v. Kleisner (S.D.N.Y.).
- On behalf of a real estate developer and owner, successfully challenged a utility tax imposed on certain commercial buildings in New York City, effectively overturning the City's widespread practice in connection with this tax. Sage Realty v. City of New York (N.Y. Sup. Ct. and App. Div. 1st Dep't).
- Successfully represented a private equity firm seeking damages for breach of an agreement to purchase hotels in Florida, reaching a favorable settlement with defendant after motion to dismiss was denied. Starwood Capital v. Kaskel, et al. (N.Y. Sup. Ct.).
- Filed suit under Fair Credit Reporting Act against competitor who
 had improperly obtained credit report to discover plaintiff's sources
 of capital and other commercial information. *Mone v. Dranow*(N.D.Cal.).
- Defended media company against software developer's claims of fraud and breach of contract in connection with an earn-out from the sale of a software product. Schwartz v. Ziff Communications (S.D.N.Y.).
- Represented the defendant in an action alleging infringement of trade secrets. Sasnett v. Convergent Media Systems (D. Mass.).
- Defended media company against claims of fraud and breach of contract in connection with its purchase of a software product from plaintiff developer. *Pacific Data Services Inc. v. Ziff-Davis, Inc.* (C.D. Cal).
- Represented defendant in a case alleging breach of contract and fraud relating to brokerage services in the former Soviet Union.
 Dayco Corporation v. Foreign Transactions Corporation (S.D.N.Y.).

- Represented defendant, including trial, in connection with alleged breach of lease. Private Satellite Network v. Convergent Media Systems (N.Y. Sup. Ct.).
- Successfully defended an accounting firm against claims of fraud and negligent misrepresentation relating to sale of family of magazines, obtaining dismissal of claims on motion to dismiss and affirmance of dismissal on appeal. On behalf of the remaining defendant, obtained dismissal of claims (affirmed on appeal) and favorable settlement after argument before the New York Court of Appeals. CBS Inc. v. Ziff-Davis Publishing Co. and Touche Ross & Co. (N.Y. Sup. Ct., App. Div. 1st Dep't and Court of Appeals).

Publications

- "Litigation Coverage: Eddystone, Ferrellgas Lenders Clash Over Viability of \$140M Fraudulent Claims at Second Circuit," *Reorg*, Feb. 13, 2024 (featured)
- "Commercial Leasing," Commercial Litigation in New York State Courts (Thomson Reuters and the New York County Lawyers' Association), 5th ed., 2020
- "Breach of Duty: Classical Theory," Insider Trading Law and Compliance Answer Book (Practising Law Institute), 2011-2020
- "Senate Could Reaffirm Trust Land for Tribes," Law360, June 27, 2019 (co-author)
- "Provisional Remedies, Commercial Leasing and Document Discovery," Commercial Litigation in New York State Courts (Thomson Reuters), 2018 (co-author)
- "Expert Forum: Real Estate Disputes," Corporate Disputes, October 2018 (interview)
- "United States New York" and "United States Federal Law,"
 Getting the Deal Through Dispute Resolution (Law Business
 Research Ltd.), 2013-2019 (co-author)
- "Commercial Leasing," Commercial Litigation in New York State Courts (Thomson Reuters and the New York County Lawyers' Association), 2015 (co-author)

Speaking Engagements

- "Case Law Developments: Developments That Concern Real Estate Firms," IMN 5th Annual Real Estate General Counsels Forum, New York, September 2015
- FEA Private Equity Litigation and Liability Avoidance: Practical Advice Regarding "Alter Ego" Liability and Post-Acquisition Disputes, New York, November 2014
- "Recent Court Decisions Affecting Distressed Investors," Schulte 3rd Annual Distressed Investing Conference, New York, November 2014
- "Cutting-Edge Developments in the Financing Markets," iGlobal Forum 4th Global Hospitality Leaders Summit, New York, November 2014
- "Facilitating Workouts, Bankruptcy and Litigation," IMN 4th Annual Real Estate General Counsels Forum, New York, September 2014
- "Construction Lending Driving New Hotel Development," iGlobal Forum 3rd Global Hospitality & Lodging Investment Summit, New York, November 2013
- "Dealing With Distressed Hotel Properties: Is There Life After Debt?" iGlobal Forum 2nd Global Hospitality & Lodging Investment Summit, New York, November 2012
- "Real Estate Mezz Loans: What You Need to Know," Schulte Webinar, September 2011
- "What Bankruptcy Lawyers Need to Know About UCC Article 9 Best Practices for Mezzanine Foreclosures in 2011," ExecSense Webinar, May 2011
- "Managing Fund Liquidity," Schulte Greenwich Private Investment Funds Seminar, September 2008

Distinctions

- Benchmark Litigation: The Definitive Guide to America's Leading Litigation Firms and Attorneys
- The Legal 500 US
- New York Super Lawyers

Prior Experience

- Mayer Brown, 1995-2007
- Richards & O'Neil, 1994-95
- Shea & Gould, 1977-94