

John J. Tumilty

Member

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Chairperson of the Firm's Litigation Group, John has handled numerous complex business disputes involving breach of contract, unfair trade practices, breach of fiduciary duty, indemnification, fraud, and misrepresentation claims for companies, partnerships, and individuals involved in litigation, arbitration, and mediation.

John also has substantial experience successfully representing clients involved in issues ranging from ongoing management and operational issues to contractual, licensing, and dissolution issues.

In addition, John has significant experience in mergers and acquisitions disputes (both pre- and post-closing) and securities disputes, including disputes involving allegations of securities fraud, failure to disclose material information, false disclosures, and breaches of fiduciary duty. John has defended both entities and individuals against such allegations in the context of class actions, derivative actions, individual actions, and in arbitration proceedings. John has represented several private equity funds in investigations by the U.S. Securities and Exchange Commission and he has also conducted internal investigations in the mutual fund area for a Fortune 100 financial services company and for companies analyzing their stock option practices.

John has trial and appellate experience in both state and federal courts, and before various arbitration bodies. John has represented domestic and foreign clients, including clients from France, Germany, China, Italy, Japan, and Sweden in courts across the country and in international arbitrations.

Representative Matters

- Successful defense of **MicroFinancial Incorporated** in two Massachusetts class actions seeking to enjoin a tender offer by affiliates of Fortress Investment Group LLC for all of the

Education

Suffolk University Law School, J.D., *cum laude*; Law Review member and editor

Boston College, B.A.

Admissions

Massachusetts Bar

U.S. Court of Appeals for the First Circuit

U.S. District Court for the District of Massachusetts

Practice Areas

Alternative Dispute Resolution

Business Litigation

Corporate Governance

IP Litigation

Litigation

Probate & Trust Litigation

Securities

Industries

Educational Institutions & Hospitals

outstanding shares of common stock of MicroFinancial Incorporated.

- Successful defense of **Essilor International SA**, a French société anonyme and its indirect wholly-owned subsidiary in five Rhode Island class actions challenging the acquisition of Costa Inc.
- Successful defense of **Kelta, Inc.** in four New York class actions challenging the acquisition of Tii Network Technologies, Inc.
- Successful defense of **Perfumania Holdings, Inc**. in four Delaware and Florida class actions challenging the acquisition of Parlux Fragrances, Inc.
- Successful defense of affiliates of **Takeda Pharmaceutical Company** in a Massachusetts class action arising out of Takeda's $8.8 billion acquisition of Millennium Pharmaceuticals, convincing the court to deny plaintiff's request for injunctive relief enjoining a tender offer and merger.

- Successful defense of affiliates of **ABRY Partners** in class actions in Delaware and Virginia challenging the $1.2 billion acquisition of RCN Corporation, enabling the client to complete its acquisition of RCN Corporation.
- Successful defense of affiliates of **ASSA ABLOY Inc.** in five class actions in different states arising out of a tender offer to acquire the outstanding stock of LaserCard Corporation.
- Successfully obtained the dismissal of all claims against a group of former directors of **Amp'd Mobile, Inc.** in an adversary proceeding brought in the United States Bankruptcy Court in Delaware in connection with the company's bankruptcy, including claims arising from the redemption of stock and other payments by the company at a time when the company's capital allegedly was impaired.
- Successful defense of a purported nationwide class action brought by lessees against a finance lessor and one of its dealers. The alleged class consisted of approximately 25,000 lessees who leased "virtual terminals" or the ability to process credit card transactions over the Internet in connection with the sale of their products.
- Successfully obtained the dismissal a class action brought under the Massachusetts Consumer Protection Statute against a national retailer by a purported class of consumers alleging unfair and deceptive trade practices.
- Successfully obtained the dismissal of a Rule 10b-5 fraud and control person liability securities class action based on alleged accounting irregularities on behalf of a microticket leasing company and various officers. Successfully defended the decision on appeal.
- Successful representation of a plaintiff limited partnership and its general partner in an action against a transfer agent who was refusing to register the transfer of in excess of $50 million worth of securities purchased in multiple tender offers.
- Successfully obtained the dismissal of a federal securities class action arising out of a rights offering involving a limited partnership.
- Successfully obtained the dismissal of all claims brought in the Delaware Chancery Court by a group of plaintiff investors against two clients in connection with the clients' decision to withdraw and ultimate withdrawal as the majority investors in entities designed to launch a takeover of a French conglomerate.
- Obtained the dismissal of various claims and partial summary judgment on other claims on a 11 count complaint alleging class, individual, and derivative claims for fraud, breach of fiduciary duty, negligent misrepresentation, breach of contract, and civil conspiracy involving a securities offering, the subsequent operations of the subject real estate development entity, and the eventual restructuring of $125 million in debt. Following the favorable rulings on

Life Sciences

Recognition

AV® Preeminent™ Rated Lawyer, Martindale-Hubbell®



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summary judgment the case settled on terms favorable to the client.

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- Obtained a settlement that ultimately proved affirmatively beneficial to the client in a consolidated action in the Delaware Chancery Court concerning alleged fraud and breach of fiduciary duty claims arising out of a rights offering.
- Obtained the dismissal of an NASD arbitration in which the plaintiffs alleged fraud, deceit, negligence, breach of fiduciary duty, breach of contract, and negligent and/or fraudulent marketing against a brokerage firm and several individuals.
- The successful defense of a limited partnership and its managing general partner in an action for an accounting and breach of fiduciary duty concerning distributions made over a ten year period in a two-tiered real estate limited partnership structure involving eleven limited partnerships.
- The successful representation of a plaintiff general partner concerning the property management of one of the largest apartment complexes on the East Coast. Full attorney's fees and costs awarded in favor of the plaintiff. Affirmed on appeal.
- Various representations of grantors, trustees, and beneficiaries in actions involving trusts with multi-million dollar values, including a multi-million dollar recovery for trust beneficiaries.

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Speaking Engagements

12th Annual Business Litigation Conference 2013, panelist, MCLE New England, January 2013.

Deals Gone Bad, 12th Annual Business Litigation Conference 2013, MCLE New England, January

25, 2013.

Legal Research in the Real World, panelist, The Moakley Law Library, Suffolk University Law School, March 2010, April 2011, and April 2012.

Relationship Challenges for General Counsel: Internal & External, speaker, Edwards Angell Palmer & Dodge and the Association of Corporate Counsel (ACC) Greater New York Chapter, June 2009.

Doing Deals and Litigating Them in a Downturn, speaker, Edwards Angell Palmer & Dodge and the Association of Corporate Counsel (ACC) Greater New York Chapter, New York, September 2008.

Litigating to Win Through Advanced Trial Advocacy, panelist, The National Business Institute, June 2008.

A House Divided: When the Board Investigates Senior Management – Key Issues to Consider in Internal Investigations, panelist, Boston, Massachusetts, May, 2007.

A Practical Guide to Federal Court Rules and Procedures in Massachusetts, The National Business Institute, February 2004.

Removal of a Class Action to Federal Court, Boston Bar Association Continuing Legal Education: The Life Cycle of a Class Action, 35, May 2002.

To Speak or Not to Speak – Communicating with Absent Class Members, Boston Bar Association Continuing Legal Education: The Life Cycle of a Class Action, May 2002.

Publications

Quoted: Judge: Remote-Working Exec Doesn't Support Jurisdiction, *Massachusetts Lawyers Weekly, September 10, 2020*

Quoted: M&A Forum Selection Clause Binds Non-Signatory, *Massachusetts Lawyers Weekly, July 18, 2019*

Tips for Enforcing Indemnification Provisions

Quoted: Scared Witness Must Testify Before SEC, *New England In-House*

Quoted: Allied Shareholders' Merger Settlement Torn Up By Judge, *Law360*

Quoted: Massachusetts Accuses Fidelity of Failing to Block Unregistered Advisers, *The New York Times*

Protecting Confidential Information Before and During Discovery, *Massachusetts Discovery Practice, 2nd Edition, 1st Supplement 2014 MCLE*

Litigation Involving LLCs, *Massachusetts Limited Liability Forms And Practice Manual § 7.11 C2013, 2014*

A Framework for Commercial Disparagement Claims, *co-author, Massachusetts Lawyers Weekly, April 4, 2013*

Protecting against UDAAP violations, *co-author, Inside Counsel, November 23, 2012*

The CFPB's Confusing Definitions of Unfair, Deceptive or Abusive Acts and Practices, *co-author,*

Inside Counsel, September 13, 2012

UDAAP Compliance Has Unintended Consequences, *co-author, National Mortgage News, July 23, 2012*

Expertly Navigating Federal Expert Disclosure Rules, *co-author, Law360, April 29, 2011*

Comprehensive Cross-Examination, *co-author, The National Business Institute, June 2008*

Supreme Court Requires Plaintiffs to Meet Stringent Pleading Standard: Under PSLRA's "Strong Inference" Requirement, Courts Must Consider Plausible Inferences Favoring Defendants, *co-author, Edwards Angell Palmer & Dodge Client Advisory, July 3, 2007*