

# *James W. Prendergast*

## RETIRED PARTNER

BOSTON

+ 1 617 526 600

James Prendergast concentrated on civil class actions and other complex securities, corporate, high technology, consumer fraud, antitrust and commercial litigation. He has represented numerous public and private companies and/or their officers and directors in complex securities, antitrust and corporate governance matters, and handled individual, class and derivative litigation, as well as internal investigations and government enforcement inquiries, nationwide.

Mr. Prendergast has handled individual, class and derivative litigation and corporate investigations nationwide, involving, among other matters, allegations of securities fraud arising in connection with numerous pharmaceutical and other life science companies, initial and secondary offerings, mergers and acquisitions, limited partnership consolidations, proxy contests, consumer product advertising, software licensing and development disputes, control of close corporations, national distribution plans, cost accounting in the medical device industry and broker/dealer compliance. He also maintained an active antitrust practice, representing clients in merger reviews, private litigation and government investigations, and developing and implementing antitrust compliance programs involving a range of distribution, joint venture and marketing practices. His commercial litigation practice has included, among other matters, warranty, product defect and unfair practices disputes involving home construction materials, computer storage devices, merchant data security systems, and internet marketing programs.

Mr. Prendergast has represented clients including: State Street Corporation, Intercept Pharmaceutical, ModusLink, Icagen, Satcon Technology, Avid, Sonus Networks, Analog Devices, Bose, EMC, Iomega, NOVA Biomedical, Berkshire Realty, BJ's Wholesale Club, Marwan Investments, PolyMedica and Transkaryotic Therapies, among others.

In 1995, Mr. Prendergast went on leave from the firm to serve as a special assistant district attorney in the office of former Middlesex County District Attorney Thomas F. Reilly.

## *Professional Activities*

Mr. Prendergast is the chairman, former vice chairman (2001-2004) and former director (1997-2004) of The Volunteer Lawyers Project of the Boston Bar Association. He is a member of the Antitrust Section and the Business Law Section of the American Bar Association, and a member of the Massachusetts Bar Association.

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## *Solutions*

Antitrust and Competition  
Litigation

Securities Litigation

Class Actions

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## *Experience*

### *Recent Highlights*

- Won decision on "issue of first impression" from US Court of Appeals for the First Circuit defining the meaning of "efficiency" for purpose of the fraud-on-the-market theory in federal Rule 10b-5 securities litigation.
- Won dismissals of securities class action and derivative litigation on behalf of medical device maker arising out of FDA approval process.
- Successfully represented early-stage pharmaceutical company in securities class action litigation arising from co-development relationship with NIH.
- Representation of public high-technology logistics company through accounting restatement, internal investigation and SEC enforcement action, as well as securities class action and derivative litigation.
- Representation of several high technology and biotechnology clients in parallel securities class and derivative litigation, internal investigations and SEC enforcement proceedings
- Successful representation of digital media technology company in connection with merger review before the Antitrust Division of the US Department of Justice and European Commission
- Won dismissal of nationwide federal class action involving on-line enrollment practices of internet membership club
- Representation of board of publicly traded REIT in class litigation arising from going private transaction
- Won "major legal victory" (*Boston Globe*, 1/ 27/06) following six-week trial on behalf of class of mentally impaired children seeking new treatments under the Medicaid Act
- Obtained dismissals in separate consumer class actions against building materials manufacturer and national car sharing service, respectively
- Secured federal court approval of favorable settlement of nationwide class litigation against internet marketing company over objection of New York Attorney General
- Representation of retail merchant before the FTC, and in multiple related private lawsuits, including successful affirmance of dismissal in appeal to the Massachusetts Supreme Judicial Court, arising from the possible compromise of personal identity and credit card data of customers
- Eighty-five day arbitration of complex cost accounting and fraud matter on behalf of medical device manufacturer
- Successful defense of an investment company in fiduciary duty action involving close corporation through trial, appeal and certiorari to the US Supreme Court

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## *Recognition*

### **Honors & Awards**

- Recognized in the November 2004, 2010-2017 editions of *Boston Magazine* as a "Massachusetts Super Lawyer" in general litigation

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## Credentials

### EDUCATION

JD, Georgetown University  
Law Center, 1988

*magna cum laude*

*Order of the Coif*

AB, Government, Dartmouth  
College, 1984

### ADMISSIONS

Massachusetts

### GOVERNMENT EXPERIENCE

State and Local Government

*Special Assistant District  
Attorney, Middlesex County,  
Massachusetts*