



## *Ross E. Firsenbaum*

**PARTNER**

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Ross Firsenbaum has a broad civil litigation practice with an emphasis on securities, bankruptcy and complex commercial litigation. He has represented major investment banks, broker dealers, investment advisors, corporations and individuals in state and federal court litigation throughout the country, and has extensive experience trying FINRA arbitrations.

Mr. Firsenbaum maintains an active pro bono practice focused on wrongful convictions, including the representation of the ESPY's Arthur Ashe Award for Courage winner Dewey Bozella, which resulted in his release from prison after serving 26 years for a murder he did not commit, and a \$7.5 million eve-of-trial settlement securing Mr. Bozella record-breaking compensation for his wrongful conviction. Mr. Firsenbaum has represented former US Attorney General Meese, the National Association of Criminal Defense Lawyers, and other organizations in other wrongful conviction cases before the US Supreme Court, the Second Circuit and the New York Court of Appeals.

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### *Solutions*

Bankruptcy Litigation,  
Regulation and Policy  
Securities Litigation

Commercial Litigation  
  
Trials

Litigation

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## Experience

### — SECURITIES LITIGATION AND ARBITRATION HIGHLIGHTS

- Representing leading broker-dealer in FINRA arbitrations arising out of Puerto Rico municipal bond market crash of 2013. After first-chairing an 11-day final hearing in 2018 in which he Claimant sought more than \$65 million in damages, secured a final award in the client's favor, rejecting all claims brought by the claimant.
- Reached favorable settlement for leading custodian bank in state court action asserting breach of fiduciary duty, breach of contract, Uniform Securities Act and other state-law claims arising out of securities lending practices during the 2008-2009 credit crisis.
- Obtained the dismissal of a complaint filed by a court-appointed receiver asserting common-law tort claims against a leading financial institution on improper venue grounds.
- Obtained the dismissal of a putative securities fraud class action asserting Rule 10b-5 claims against former senior executive officers and directors of a publicly-traded manufacturing company. *Gissin v. Endres*, 2010 WL 3468508 (S.D.N.Y. Aug. 31, 2010).
- Represented the underwriting syndicate in a securities class action challenging prospectus disclosures in the Refco 144A private placement and initial public offering of Refco stock. The United States District Court for the Southern District of New York dismissed certain claims on the grounds that the Securities Act of 1933 did not apply to Rule 144A private placements. *In re Refco, Inc. Securities Litigation*, 503 F. Supp. 2d 611 (S.D.N.Y. Apr. 30, 2007); and 2008 WL 3843343 (S.D.N.Y. Aug. 14, 2008).

### — BANKRUPTCY LITIGATION HIGHLIGHTS

- Prevailed after a 6-day trial on behalf of a Fortune 500 company in bankruptcy litigation seeking to enforce an order authorizing the debtor's sale of intellectual property to the company for \$154 million pursuant to Section 363 of the United States Bankruptcy Code. The United States Bankruptcy Court for the Southern District of Florida ruled for the company on all issues, enforced the sale order, found the defendants in contempt of court, and awarded the company its attorney's fees incurred in enforcing the sale order. *TransUnion Risk and Alternative Data Solutions, Inc., v. The Best One, Inc. (In re TLFO, LLC)*, No. 13-20853, 2016 WL 9651125 (Bankr. S.D. Fla. Aug. 18, 2016). After filing a petition for attorney's fees, the company successfully argued in opposition to the defendants' summary judgment motion that, among other things, it was entitled to all of the fees it incurred as a result of the defendants' violation of the sale order and reimbursement of fees at prevailing New York legal market rates. *TransUnion Risk and Alternative Data Solutions, Inc. v. The Best One, Inc. (In re TLFO, LLC)*, No. 13-20853-BKC-PGH, 2017 WL 3669546 (Bankr. S.D. Fla. May 18, 2017).
- Obtained the dismissal of all claims against all 15 clients who were sued in a fraudulent transfer adversary proceeding brought by the Debtors in the bankruptcy case of Orion Healthcare, Inc. The plaintiff dismissed all claims (totaling over \$50 million) after the defendants established that they were conduits through which the proceeds at issue passed, rather than the beneficial holders who received such proceeds for their own accounts. *Orion Healthcorp, Inc., et al v. CHT Holdco LLC, et al*, Adv. Pro. No. 18-08048 (E.D.N.Y. 2019).

- Obtained the dismissal of all federal and state intentional fraudulent transfer and constructive fraudulent transfer claims against the former shareholders of Lyondell Chemical Company, totaling more than \$5.9 billion, brought by bankruptcy trustees in adversary proceedings arising out of the 2007 merger between Lyondell and Basell. The United States Bankruptcy Court for the Southern District of New York dismissed the trustees' state-law fraudulent transfer claims because they were barred by the safe-harbor in section 546(e) of the Bankruptcy Code for settled securities transactions. *Weisfelner v. Fund 1 (In re Lyondell Chem. Co.)*, Adv. Pro. No. 10-04917 (Bankr. S.D.N.Y. July 20, 2016). As a question of first impression, the United States District Court for the Southern District of New York adopted the shareholders' argument that the Restatement of Torts' standard should apply to an intentional fraudulent transfer claim: namely, that the debtor must know to a "substantial certainty" that a transfer will cause the debtor to become insolvent. *Weisfelner v. Hofmann (In re Lyondell Chem. Co.)*, No. 16-00518, 2016 WL 4030937 (S.D.N.Y. July 27, 2016). Applying that legal standard, the United States Bankruptcy Court concluded that the trustees did not prove that payments to Lyondell's shareholders in the merger were an intentional fraudulent transfer.
- Obtained the dismissal of three global financial institutions in an action brought by the Joint Official Liquidators of the SPhinX hedge funds asserting aiding and abetting claims under New York law. The United States District Court for the Southern District of New York dismissed certain of plaintiffs' claims for lack of standing (*Krys v. Sugrue*, 2010 U.S. Dist. LEXIS 41386 (S.D.N.Y. Feb. 3, 2010) (Report and Recommendation adopted by the Court)), the remaining claims against one of the three financial institutions for failing to allege adequately that the financial institution had actual knowledge of any wrongdoing (*Krys v. Sugrue*, 2011 U.S. Dist. LEXIS 142291 (S.D.N.Y. Dec. 8, 2011) (Report and Recommendation adopted by the Court)), and the remaining claims against the other two financial institutions for failing to present evidence that plaintiffs suffered any damages proximately caused by such institutions' alleged conduct. The Second Circuit affirmed the dismissal of all remaining claims against the financial institutions. *Krys v. Klejna*, 14-3446-cv (2d Cir. July 29, 2016).
- Represented three subsidiaries of global financial institutions in actions brought by the Chapter 7 Trustee of Suffolk LLC alleging fraudulent transfer and unjust enrichment claims arising out of payments made pursuant to a tender offer to purchase privately held stock. The United States District Court for the Southern District of New York dismissed the claims on the grounds that Section 546(e) of the United States Bankruptcy Code barred certain of the Trustee's claims and the Trustee's remaining claims were otherwise deficient. *In re Refco Securities Litigation*, 2009 WL 7242548 (S.D.N.Y. Nov. 13, 2009); and 2010 WL 5129072 (S.D.N.Y. Jan. 12, 2010).
- Represented three global investment banks in an action brought by the Refco Litigation Trustee alleging various state law causes of action. The United States District Court for the Southern District of New York dismissed the claims with prejudice on the grounds that the Litigation Trustee was barred from asserting his claims by the doctrine of *in pari delicto*. *Kirschner v. Grant Thornton LLP, et al*, 2009 WL 996417 (S.D.N.Y. Apr. 14, 2009), *aff'd Kirschner v. KPMG LLP, et al*, 626 F.3d 673 (2d Cir. 2010).
- **OTHER BUSINESS DISPUTE HIGHLIGHTS**
  - Obtained the dismissal of all claims against an investment advisor alleging violations of Section 36(b) of the Investment Company Act for allegedly excessive fees charged to mutual funds. Plaintiffs voluntarily dismissed the case after discovery showed that the investment advisor's investment management fee was

reasonable.

- Represented a leading molecular diagnostics company in an international arbitration brought by a competitor alleging breach of contract and tortious interference with a contract, in which the competitor sought both a permanent injunction as well as more than \$60 million in damages. Following a 10-day evidentiary hearing, a three-member panel of the International Centre for Dispute Resolution rejected the competitor's claims and awarded attorneys' fees and costs to the company.
- Representing Major League Baseball player agency in breach of contract action brought by independent contractor against agency in New York Supreme Court. Obtained dismissal of four of five claims on motion to dismiss.
- Represented and resolved dispute prior to litigation for leading television production company regarding contract to provide production and showrunner services.
- Represented and resolved dispute for technology start-up in action filed in New York Supreme Court by former employee.
- **PRO BONO HIGHLIGHTS**
  - Pro Bono representation of Dewey R. Bozella resulted in \$7.5 million eve-of-trial settlement in section 1983 action seeking compensation from Dutchess County for his wrongful conviction and 26-year incarceration. Developed a record showing that Dutchess County had an unconstitutional disclosure policy spanning more than three decades that caused the violation of Mr. Bozella's constitutional rights under *Brady v. Maryland* and its progeny. *New York Times*, Jan. 13, 2015, at A-24; Feb. 13, 2015 at A-23.
  - Pro Bono representation of Dewey R. Bozella resulted in Mr. Bozella's release after serving 26 years in New York state prison for a 1977 murder in Poughkeepsie, New York, a crime for which he was wrongfully convicted. Led a team of attorneys during a two-year investigation that uncovered four pieces of favorable evidence, all more than 30 years old, that was never disclosed by the prosecution. On October 14, 2009, state Supreme Court Justice James T. Rooney ruled that Mr. Bozella was wrongfully convicted due to the Dutchess County District Attorney's violation of Mr. Bozella's constitutional rights. *People v. Bozella*, 2009 WL 3364575 (N.Y. Co. Ct. Oct. 14, 2009); NYLJ, Oct. 22, 2009, at 1. On October 28, 2009, Mr. Bozella was released from state custody. *New York Times*, Oct. 29, 2009, at A-21.
  - Served as amicus counsel to the National Association of Criminal Defense Lawyers, New York Association of Criminal Defense Lawyers, Innocence Project, and Innocence Network in support of Appellant in wrongful conviction appeal pending in the United States Court of Appeals for the Second Circuit. The Second Circuit adopted the analysis of amici, ruling for Appellant and vacating the District Court's dismissal of the complaint. *Bellamy v. City of New York*, No. 17-0859 (2d Cir. Jan. 29, 2019)

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## Recognition

- Recipient of the New York State Association of Criminal Defense Lawyers' 2010 Gideon Champion of Justice Award for the pro bono representation of Dewey Bozella, which resulted in Mr. Bozella's release after serving 26 years in prison for a murder for which he was wrongfully convicted
- Named a 2012-2018 New York *Super Lawyers* "Rising Star" in *Metro Edition* magazine

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## *Credentials*

### **EDUCATION**

JD, Boston College Law School,  
2005

*cum laude*

BA, Law, Amherst College,  
2002

*magna cum laude*

*Recipient, John Woodruff  
Simpson Fellowship 2002-2004*

### **ADMISSIONS**

New York

Massachusetts

### **CLERKSHIPS**

The Hon. Susan Beck,  
Massachusetts Appeals Court,  
2005 - 2006