

Douglas W. Henkin

Partner



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New York

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Overview

Doug is a member of Dentons' Litigation and Dispute Resolution practice and co-US lead of the global Financial Institutions sector. Doug's practice includes national trials and appeals, arbitrations, and regulatory proceedings, with a concentration in the following areas: securities and complex commercial matters, including class and representative litigation in both federal and state courts and before executive agencies; complex cross-border litigation, including securities and mass tort cases involving contemporaneous adjudications in the US, Canada and the UK; and disputes involving technology and complex financial instruments. Because of his special expertise relating to encryption and security issues, he also works on data protection and other cybersecurity and privacy issues in both counseling and dispute resolution contexts.

Experience

- **Former CEO of a Canadian oil company:** Represented the client in connection with multiple class actions and regulatory proceedings in the US and Canada.
- **Mortgage originator and RMBS issuer:** Defended the client in litigation demanding that it repurchase substantially all loans that formed the basis for certain residential mortgage-backed securities; summary judgment granted dismissing claims against client.
- **Various clients:** Advised on cybersecurity issues, including system breaches and data exfiltration, ransomware, encryption, and security review and enhancement, and represented a client in litigation regarding unauthorized data exfiltration.
- **Global reinsurers:** Represented three top global reinsurers in UK and US litigation relating to a large reinsurance policy in connection with an asbestos bankruptcy restructuring.
- **NYSE:**
 - Achieved dismissal of claims by market makers that they were improperly charged payment for order flow fees.
 - Successfully defended all NYSE equity and options exchanges and the Consolidated Tape Association against hundreds of challenges to the pricing of market data and co-location fees

(litigation that involved three DC Circuit appeals and a trial before an SEC ALJ) .

- Currently representing three NYSE exchanges in a class action alleging that all transactions on the major US equities exchanges were manipulated by high frequency trading firms; the class plaintiffs have proposed would be among the largest any plaintiffs have ever attempted to certify
- Represented in trial and appellate proceedings in putative class action challenging the creation of FINRA. The courts held the client was immune from claims, including proxy fraud claims, relating to the formation of FINRA. *Standard Investment Chartered, Inc. v. Nat'l Ass'n of Secs. Dealers, Inc.* , 637 F.3d 112 (2d Cir. 2011).
- **Global food company:** Currently representing in an M&A dispute with the seller relating to hundreds of millions of dollars of purchase price adjustments, contract breaches, and torts committed by the seller.
- **Former CEO of a solar energy company:** Successfully represented former CEO in achieving dismissal of securities litigation relating to the company's IPO and post-IPO statements.
- **Mutual fund management companies:** Represented the companies and their officers and directors in litigation in New York and Delaware alleging RICO and other claims based on the theory that investments in certain securities that were listed and publicly traded on the London Stock Exchange were "illegal" under US law. Achieved the first dismissal with prejudice in this type of case.
- **Underwriters:**
 - Represented the underwriters in *Fait v. Regions Financial Corporation* in a matter in which established that a plaintiff seeking to bring claims under the Securities Act of 1933 that statements of opinion were false must plead that a defendant did not in fact believe those statements when they were made.
 - Represented the underwriters in US state and federal and Canadian class actions relating to the IPO of Smart Technologies Inc.; all US claims against the underwriters were dismissed.
 - Represented the underwriters in *In Re Flag Telecom Holdings, Ltd. Securities Litigation*, in which the US Court of Appeals for the Second Circuit, after accepting discretionary review of a class certification decision, dismissed the vast majority of potential claims against the underwriters by requiring the exclusion of "in-and-out" traders from the class.
- **Insurance brokerage director:** Achieved dismissal of securities class action claims relating to alleged bid-rigging.
- **Investment bank and technology company:** Achieved a defense verdict after trial in a case alleging misrepresentation in connection with the sale of the tech company's stock, which was part of a bankruptcy estate.
- **Gold mining company:** Represented the company and its officers in securities class actions relating to the company's use of commodity derivatives in its hedgebook.
- **Large banking institution:** Represented it in a case involving high-yield short-term notes.
- **Leading securities firm:** Represented it in various Orange County litigation matters.
- **Global electronics company:** Represent it in a patent dispute concerning computer displays.
- **Technology company:** Defended it in a securities class action filed after the SEC mandated a change in accounting methodology that required the company to restate its financials
- **Plaintiff class:** Represented the class in an action against the New York City Department of Education, which resulted in entry of consent decree, payment of significant monetary awards to class members, and the creation of an entirely new unit of the NYC Department of Education.

Insights

- "Dr Pepper Sheds 'Diet' Drinks Weight Loss Dispute," *Law360*, April 2018
- "Breach of Wall Street's top regulator triggers scrutiny," *The Hill*, September 2017
- "Proposed IoT Cybersecurity Legislation Could Lead to Consumer Device Standards," *Legaltech News*, August 2017
- "Liberty Media Beats Insider Suit Over \$400M Live Nation Buy," *Law360*, June 2017
- "Hedge Fund Fights FINRA Bid To Ditch Bogus Payout Suit," *Legal360*, May 2017
- "FINRA, DTC Want Suit Over Bankruptcy Distribution Killed," *Law360*, April 2017
- "Magistrate Says To Trim Secrets Suit Against Ex-Rigzone Exec," *Law360*, March 2017
- "Overheard at the GCPA fall conference," *RTO Insider Gas and Electricity*, February 2017
- "Energy Industry Site Says Ex-Exec Belongs In Conspiracy Suit," *Law360*, January 2017
- "Investors, Exchanges Both Claim SEC's Favor At 2nd Circ.," *Law360*, December 2016
- "No Absolute Immunity For Exchanges, SEC Tells 2nd Circ.," *Law360*, November 2016
- "Energy Industry Site Says Exec Can't Duck Conspiracy Claims," *Law360*, September 2016
- "Oil Industry Website Exec Wants Out Of Info Theft Suit," *Law360*, August 2016
- "SEC Punts On Market Makers' Fee Challenge," *Law360*, July 2016
- "SEC Rebuffs Challenge To Nasdaq, NYSE Market Data Pricing," *Law360*, June 2016
- "Oil Industry Website Founder Sued Over Info Theft," *Law360*, June 2016
- "7th Circ. Rebuffs Bid To Rehear Securities Firms' Fee Suit," *Law360*, January 2016
- "Securities Firms Blast Exchanges' 7th Circ. Win In Fee Row," *Law360*, January 2016
- "7th Circ. Affirms Dismissal Of Securities Firms' Fee Suit," *Law360*, December 2015
- "Citadel Securities Tells 7th Circ. Its Fee Suit Can Bypass SEC," *Law360*, November 2015

Activities and Affiliations

- New York State Bar Association

Areas of focus

Practices

- Banking and Finance
- Competition and Antitrust
- Corporate Governance
- Financial Markets Litigation and Regulation

- Litigation and Dispute Resolution
- Privacy and Cybersecurity
- Securities and Corporate Finance

Industry sectors

- Aviation and Aerospace
- Communications
- Defense and Space
- Energy
- Financial Institutions
- Insurance
- Life Sciences and Health Care
- Media, Entertainment and Sports
- Mining
- Technology

Education

- University of Pennsylvania Law School, 1992, JD, *cum laude*, Editor, *University of Pennsylvania Law Review*
- Massachusetts Institute of Technology, 1988, SB, (theoretical mathematics)

Admissions and qualifications

- New York
- District of Colorado
- United States Supreme Court
- US Court of Appeals for the District of Columbia Circuit
- US Court of Appeals for the First Circuit
- US Court of Appeals for the Ninth Circuit
- US Court of Appeals for the Second Circuit
- US Court of Appeals for the Seventh Circuit
- US Court of Appeals for the Sixth Circuit
- US Court of Appeals for the Tenth Circuit
- US Court of Appeals for the Third Circuit
- US Court of Federal Claims
- US District Court for the Eastern District of New York

- US District Court for the Southern District of New York
- US District Court for the Western District of New York