

Michael T. Gass

SENIOR COUNSEL

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Mike Gass helps companies and their management and boards to successfully resolve high-stakes disputes involving securities laws, shareholder claims, and corporate governance. With over 35 years of experience, Mike has a strong record of obtaining early dismissals of cases. Clients appreciate Mike's substantial trial experience, his reputation as a "go to" resource for governance advice, his hands-on approach to serving clients, and the positive results he has achieved for them.

Mike has represented a wide range of clients in both private litigation – primarily shareholder class actions and derivative actions – and in investigations and enforcement actions brought by government and industry enforcement agencies, including FCA enforcement. He is also highly sought by boards and their committees to help in exercising their oversight responsibilities, particularly with respect to the delicate and challenging task of investigating and remediating alleged misconduct within the organization.

Mike also has substantial antitrust experience in both the commercial and higher education sectors. He is frequently been called upon by institutions of higher education to represent them in a range of admissions and financial aid matters, many of which relate to antitrust issues and related concerns. Mike is outside counsel to a consortium of more than 30 highly selective schools and colleges, providing guidance on the execution of its core missions of collecting relevant data and conducting research utilized by individual members to develop strategies to ensure educational access. He has represented COFHE and a number of individual institutions in connection with government investigations and civil litigation addressing these issues.

Mike's clients have included public and private companies including Microsoft, Akamai, Genzyme, Bruker, PTC, American Tower, and Sunbeam Television Corporation, as well as leading academic institutions including MIT, Amherst, Bates, Dartmouth, Tufts, and the Committee on Financing Higher Education ("COHFE").

Focus Areas

Litigation and Investigations

- Business and Financial Litigation
- Government Enforcement, Investigations & Compliance

Recognition

- "Litigation Star" by *Benchmark Litigation*
- *Best Lawyers in America* (2015-2026)
- "Lawyer of the Year for Corporate Governance" by *Best Lawyers* (2021)
- Recognized by *Best Lawyers* for Corporate Governance and Compliance Law (2021)
- *The Legal 500* (2024)
- *Massachusetts Super Lawyers*

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Representative Engagements

Securities and Complex Financial Litigation Matters

Has litigated a wide range of securities, shareholder and complex financial cases in federal and state courts, and before arbitration panels, throughout the country, including more than 25 trials. Claims have included alleged violations of federal and state securities laws, investment guidelines, contractual obligations, and fiduciary duties. Clients have ranged from large publicly traded companies to closely held companies operating under special fiduciary duty rules. Representative examples include:

- Successfully represented major corporation in claims involving auction rate securities.
- Successfully resolved claims for major pension fund arising out of bankruptcy of prime broker.
- Represented former president of multinational conglomerate in defending ERISA class action litigation.
- Represented major publicly traded communications company in shareholder class actions and derivative litigation arising out of stock option practices.
- Defended former fund managers of major mutual fund company against market timing and related claims in class actions and derivative actions brought by fund holders.

Corporate Governance, Counseling and Litigation Matters

Has represented more than 25 boards of directors and board committees in investigating, assessing and redressing a range of claims and demands raised by government enforcement agencies, non-government oversight bodies, shareholder demands, whistleblowers, and internal audit functions. Claims addressed include allegations relating to revenue recognition, accounting fraud, stock option backdating, financial restatements, government contracts, FCPA, insider trading, antitrust, international law, management misconduct and fiduciary duties. Representative examples include:

- Successfully represented a special committee of the board of directors of a Fortune 10 technology company in investigating and addressing a derivative demand targeting senior management relating to a multi-billion dollar fine levied by a foreign regulator for non-compliance with an antitrust directive. Obtained dismissal of derivative claims.
- Represented the audit committee of a publicly traded company in investigating and remediating whistleblower claims of tax and accounting mismanagement.
- Represented boards of several publicly traded companies facing claims from government enforcement agencies and shareholders of violating accounting and reporting standards as a result of stock option backdating.
- Counsel to a large number of public and private companies, officers, and directors in derivative litigation claiming breaches of fiduciary duties and seeking damages on behalf of the nominal corporate defendant

Antitrust Matters

Extensive antitrust litigation experience over a range of private and government antitrust claims. Successfully represented a major university in a landmark antitrust case brought by Justice Department's Antitrust Division alleging that cooperation among colleges and universities concerning financial aid violated the Sherman Antitrust Act, and is a 'go-to' antitrust litigator for colleges and universities under increasing antitrust scrutiny. He also represented MIT in the landmark "Overlap" case, defeating claims by the Department of Justice that coordination among higher education institutions to maximize access to talented but needy applicants violates the antitrust laws. The seminal decision in that case by the Third Circuit Court of Appeals remains the primary guidepost in the field to this day.

Media & Communications Matters

Has successfully represented major media outlets in libel, slander, privacy, First Amendment, right of access and antitrust claims.

Publications and Presentations

- "Recent Developments in Regulatory Investigations and Financial Institution Litigation," *presenter*, Bank of America CLE Seminar, New York, 2019

- "The Problem With Compliance Whistleblowers," co-author, *Securities Law360*
- "High-Frequency Trading Cases Slow to Take Shape," co-author, *Securities Law360*
- "Lawyers Weigh in on High Court's Halliburton Ruling," quoted, *Securities Law360*
- "Stakes Are High for ERISA Fiduciaries," *co-author, Securities Law360*
- "Private Indices in the Public Services: The Case of Libor," speaker, Columbia University Law School's Global Justice Forum
- "Keeping the Protections of Rule 10b5-1 as Government Ramps Up Investigations," author, *Corporate Board Member*
- "Libor Litigation Must Overcome Significant Obstacles," co-author, *Securities Law360*
- "Q&A With Choate's Michael Gass," featured, *Securities Law360*
- "Linchpins of a Successful Special Committee," speaker, Boston Bar Association, Boston
- "$104M Whistleblower Award – A Sign of Things to Come," co-author, *Law360*
- "Look Before You Leap into a Securities Litigation Trap," co-author, *Securities Law360*
- "Linchpins of a Successful Special Committee," co-author, *Securities Law360*
- "Caution: LIBOR Litigation Ahead," co-author, *Corporate Counsel*
- "Could SEC's Plan to Track Trades Also Combat Financial Fraud?" quoted, Forbes.com
- "Weathering Management Conflicts in Acquisitions," co-author, *Securities Law360*
- "Circuit Court Ruling Ends Confusion for Securities Attorneys," quoted, *Mass Lawyers Weekly*
- "Cybersecurity and the SEC: Disclosure Tips," co-author, *Securities Law360*
- "Surprising Interpretations of Janus Bright Line," co-author, *Securities Law360*
- "Going Private Deals Involving a Controlling Stockholder," co-author, *Law360*
- "The Role of Board of Directors in Risk Oversight in a Post-Crisis Economy," co-author, *Bloomberg Corporate Law Reports*
- "UK Bribery Act 2010: Corporate Exposure Extended Far Beyond the FCPA," co-author, *Law360*
- "Iqbal's Impact on SEC Enforcement Actions," co-author, *Law360*
- "The Changing Landscape For Credit Rating Agencies," co-author, *Law360*
- "Boardroom Dynamics in 2010: Changing Roles for Management, Independent and Investor Directors," panelist, Association of Corporate Counsel Conference – Northeast Chapter, Boston
- "Outside Counsel and Internal Investigations," co-author, *Law360*
- "Will There Be An Onslaught of ARS Litigation?" author, *Law360*
- "Q&A with Choate Hall's Michael Gass," featured, *Law360*
- "First Circuit to Revisit SEC Case v. Columbia Execs," quoted, *Law360*
- "Will the First Circuit Reverse Its Tambone Decision?" co-author, *Law360*
- "Proliferation of Global Anti-Corruption Laws," speaker, CBI's 6th Annual Pharmaceutical Compliance Congress, Washington, DC
- "Doing Business Internationally: Avoiding Sanctions," presenter, Bermuda
- "Press & Privacy: Freedom of the Press & the Public's Right to Know vs. Family Privacy Rights," speaker, Boston Bar Association's Massachusetts Practice & Procedure Committee Meeting, Boston
- "Foreign Corrupt Practices Act – Is Your Company at Risk?" panelist, Boston
- "Challenges Facing Boards of Directors: Key Issues in SEC Disclosure & Enforcement," speaker, Directors Roundtable
- "Avoiding Pitfalls of Rash ESI Decisions," co-author, *Securities Law 360*
- "A House Divided: When the Board Investigates Senior Management – Key Issues to Consider in Internal

Investigations," panelist, Boston

Professional & Community Involvement

- Member, Board of Directors of The Genesis Fund
- Member, American Bar Association Antitrust and Litigation Sections
- Member, Boston Bar Association (Antitrust Subcommittee Member)
- Member, Media Law Resource Center

Education & Credentials

- Harvard Law School, JD (1985) *cum laude*
- University of Michigan, BA (1982) *with highest honors, Branstrom Prize 1982*

Admissions

- Massachusetts
- Massachusetts Supreme Judicial Court
- U.S. District Court, Massachusetts
- U.S. Court of Appeals, First Circuit
- U.S. Supreme Court