BIRD MARELLA LLP

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Securities Litigation

One of Bird Marella's most significant areas of practice involves representing clients in securities litigation –– regularly representing parties in disputes involving corporate actions and securities matters, including both public companies as well as closely-held business organizations.

Overview

While Bird Marella handles many matters that are purely civil in nature, the firm's depth of experience in both civil and criminal securities litigation allows it to efficiently and successfully handle the parallel proceedings that frequently arise in securities fraud litigation.

The firm's securities litigation practice involves matters throughout the United States and abroad. In private civil cases, Bird Marella has represented corporations, individuals, or corporate committees in individual, derivative, and class action matters in every major commercial center in the country. In SEC investigations, the firm has represented clients in numerous informal and formal investigations, Wells submissions, and post-complaint lawsuits in federal courts across the country. Additionally, Bird Marella represents companies or shareholders in closely-held companies in contentious disputes over corporate management and control.

The firm also actively represents claimants or respondents in broker-dealer FINRA arbitrations involving substantial claims. Bird Marella has actively represented industry-leading broker-dealers in hundreds of disputes in both arbitration venues and federal and state courts. As a result, Bird Marella is highly respected by arbitrators and opposing parties for its extensive experience representing individual claimants in disputes with their brokers.

High-Demand Securities Law Experience

The post-financial crisis / Dodd-Frank era has reinvigorated regulatory enforcement, intensified the media spotlight, and magnified the risks of securities litigation. We work discreetly to mitigate threats and resolve claims and charges.

Bird Marella has defended numerous high-profile clients, as well as complex high-demand cases for investors and advisors. Our representative matters describe deep achievements in every area of securities law.

Securities Law Leadership

Legal publisher Chambers USA recognizes Bird Marella attorneys as senior statesmen in government investigation and white collar defense. Several generations of attorneys are former Assistant United States Attorneys and a former Bird Marella partner who previously served as associate regional director of the SEC.

We have earned credibility with the federal circuit bench and numerous regulatory authorities. Our attorneys serve as top-rung ABA leaders in securities law enforcement and white collar crime litigation and frequently speak on these topics.

Experience

SEC AND FEDERAL INVESTIGATIONS / LITIGATION

Settled $2B SEC Civil Claims, obtained No Criminal Charge in False Claims Act Case: We successfully represented the co-president and COO of the second largest publicly-traded health care company against allegations of $2 billion in False Claims Act, securities and health care fraud violations. We obtained a favorable civil settlement with the SEC and defended the executive in a parallel federal criminal investigation, which resulted in no charge.

Resolved Federal and State Fraud and Class Actions for CFO: Following a multi-billion dollar revenue restatement, we represented the former CFO of a telecom company who was sued in individual, derivative and class action litigation in numerous venues throughout the United States, and also was the subject of criminal and SEC litigation. The cases resolved favorably for our client.

Defending CFO in Revenue Recognition Parallel Investigations: We represent the former CFO of a public company currently facing SEC and federal criminal cases, focused mainly on revenue recognition issues, in parallel proceedings in the Southern District of New York.

Defending Investor in SEC and USAO Insider Trading Investigation: We serve as lead counsel for a highly successful private investor in connection with a current, high-profile insider trading case under investigation by the SEC and USAO.

Prevented Filing of Charges in SEC Backdating Inquiry: In representing a market-leading beverage distribution company in an informal SEC inquiry into backdating issues, we were able to convince the SEC to take no further action.

Convinced SEC to Drop Investigation of Gaming Company: During our representation of a gaming company owner in an SEC fraud investigation related to an acquisition bid, we persuaded the SEC to drop its investigation.

Defending Prominent Investor in SEC Investment Fraud Charges: We are representing a high-profile financial services client in SEC charges related to an alleged affinity investment fraud.

Persuaded SEC in Non-Fraud Settlement for Broker: We obtained a non-fraud settlement for our stock broker clients and a declination of criminal prosecution. We achieved this against the backdrop of numerous others being charged by the DOJ and SEC that resulted in civil fraud and criminal

convictions.

Counseling Hedge Fund in Parallel SEC-Grand Jury Investigations: We represent a hedge fund and its owner / operator in connection with a pending SEC case and parallel grand jury investigation.

Guiding CEO in Foreign Corrupt Practices Act Investigation: The firm is advising the CEO of a North American unit of a global company during an extensive FCPA investigation involving a government contractor.

PRIVATE LITIGATION

Representing Committee in Delaware Going Private Litigation: We are representing the special litigation committee of a hospital chain in "going private" transaction litigation in Delaware Chancery Court. Although plaintiffs initially filed a motion to enjoin the transaction, they withdrew their motion and abandoned their effort to block the merger.

Advising Investor in Auction Rate Securities Suits: The firm is representing a major corporate investor as plaintiff in ARS litigation against several financial institutions.

Settled High-Profile Options Backdating Claims for Major Technology Company: We represented the

special litigation committee of a major semiconductor company in a high-profile civil settlement involving a derivative action in stock options backdating claims.

Defense Victory on Behalf of Bank in Securities Lawsuit: Successfully defended one of the largest Asian-American banks in the country against misrepresentation claims brought by its former Chairman and largest private shareholder.

Obtained Jury Victory for Broker-Dealer in SEC – Civil Parallel Cases: We are defending a Beverly Hills broker-dealer in SEC and private plaintiffs' allegations of market manipulation in connection with investments through offshore hedge funds. The firm won a California civil court jury trial alleging fraud, unjust enrichment, and civil racketeering. The jury absolved our client while holding a co-defendant liable for a $5.2 million jury verdict. We also won a motion to dismiss a parallel civil suit in federal court in New York, and we continue our representation in connection with a pending SEC lawsuit involving the same set of facts.

Defending Directors in Shareholder Derivative Suits: Our experience in defending derivative actions includes representing the board of directors of a health care center against complex claims of mismanagement from a minority shareholder. For a separate client, we represented one set of competing directors / shareholders for control over an apparel company.

Eliminated High-Demand Threat for Tech Company with Jury Win: After a seven-week jury trial we obtained a defense verdict on behalf of Fortune 500 tech company. The client faced an eight-figure damages claim and punitive damages. The allegations included securities fraud and other business torts. As the prevailing party, our client also received $1.5 million in attorneys' fees.

Settled Fraud Charges After Trial for Tech Company: In our role as lead trial counsel in a three-week jury trial for a technology services company, we defended the company in allegations of securities fraud and breaches of fiduciary duties in connection with a corporate merger. We settled on favorable terms after the verdict.

Representing Beverage Company In Repeat Class Action and Derivative Litigation: We have represented a high-profile beverage company and its directors in multiple class action and derivative lawsuits. The first set of lawsuits, in state and federal court, involved allegations of options backdating that were wholly rejected on motions to dismiss by the federal district court in Los Angeles. A second set of lawsuits later alleged "channel stuffing" and fraudulent statements relating to performance. The derivative action was dismissed and a motion to dismiss the class action remains under submission.

Co-Counseling in Credit Union Agency's RMBS Securities Suit: The firm is serving as California co-counsel in representing an independent government agency that regulates and charters federal credit unions. Our client's suit against a global securities and investment banking firm asserts securities violations involving more than $490 million.

Settled Favorably Backdating Shareholder Class Action: We represented the CEO of a technology company in the successful civil settlement of a shareholder class action related to the backdating of stock options.

BROKER-DEALER ARBITRATION AND LITIGATION

Won $40M FINRA Arbitration for Prominent Brokerage Firm: Obtained a complete defense victory for brokerage firm in a FINRA arbitration involving more than $40 million dollars in alleged damages. Although motions to dismiss are rarely granted in FINRA arbitrations, the three-arbitrator Panel unanimously granted Bird Marella's motion to dismiss the case at the close of the claimant's evidence.

Representing Brokers and Investors in Trading Claims: Our representation of major market makers includes defending claims arising out of online trading and other trading activities involving all types of securities instruments and investment structures. We also have represented customers in connection with claims against their brokers.

Slashed $4M Customer Claims to Nominal Amount in FINRA Arbitrations: The firm served as lead trial counsel for a major online brokerage house in more than a dozen separate binding arbitrations before the NASD and FINRA. The claimants sought aggregate damages in excess of $4 million stemming from alleged improprieties in the handling of customer trades and brokerage accounts. Our client prevailed in all but one case, and paid damages of less than $10,000 in that case.

Prevailed in NASD Class Action Arbitration for Online Brokerage Firm: We represented a publicly traded online brokerage firm in a series of related class action cases alleging improper IPO allocations. The opposing parties did not recover any monies on their class action-related claims and recovered less than $25,000 on their individual claims.

Settled Trade Secrets Claims for Brokerage House at Trial: We served as trial counsel for a major brokerage firm in a trade secrets misappropriation action involving theft of customer information and client solicitation by a competitor. We successfully obtained temporary injunctive relief and the case settled on favorable terms.