



James V. Masella, III

Partner

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James Masella is a Partner in the Firm's Litigation department. Mr. Masella's practice focuses on complex securities litigation, white collar criminal and commercial matters. He represents corporate and individual clients in civil and regulatory matters nationally before trial and appellate courts and regulatory agencies. He regularly litigates disputes arising out of trusts and estate matters.

Mr. Masella's more than 20 years of experience also includes representing clients in investigations conducted by the New York Stock Exchange, Financial Industry Regulatory Authority (FINRA), the U.S. Securities and Exchange Commission (SEC) and the U.S. Commodity Futures Trading Commission (CFTC). He is active in trials and arbitrations resulting from these matters. He has litigated a number of cases arising from and concerning M&A transactions.

After graduation from law school, Mr. Masella served as a law clerk to the Hon. David N. Edelstein of the United States District Court for the Southern District of New York.

Mr. Masella's recent matters have included:

- Defended an Indenture Trustee against a challenge to fees charged and incurred by it in the Nortel bankruptcy proceedings in the U.S. and Canada. Specifically, two hedge funds (the "Fee Objectors") contended that approximately 50% of the fees charged and incurred by the Indenture Trustee should not be permitted. After expedited discovery, briefing and an evidentiary hearing, the Court largely rejected the challenge, holding that the Indenture Trustee was entitled to collect (i) 100% of its fees; (ii) 100% of Canadian counsel's fees; and (iii) 95.5% of current U.S. counsel's fees. Further, the Court held that the Indenture Trustee could recover 100% of the fees it incurred in defending against the Fee Objectors' challenge.
- Won a jury verdict in New York State Supreme Court on behalf of the defendant and counterclaim plaintiff in a case alleging breach of contract and violation of a restrictive covenant. After less than a day of deliberations, the jury found in favor of Mr. Masella's client on both the claims against it and its counterclaims.
- Successfully represented a defendant and counterclaim plaintiff in a case alleging breach of an exclusive distributorship agreement. An American Arbitration Association panel ruled unanimously in favor of Mr. Masella's client on both the claims against it and its counterclaims.
- Successfully represented a former majority shareholder in a case in which she alleged that a shareholder's agreement had been breached. An American Arbitration Association panel ruled unanimously in favor of Mr. Masella's client.

- Represented an international power generation company as plaintiff in a breach of contract dispute with an investment bank it had retained to provide restructuring advice. The defendant moved to dismiss our client's claims on the grounds, among others, of *forum non conveniens*. In a December 2016 decision designated a "Ruling of Special Interest" on the [Southern District of New York website](#), Judge William H. Pauley III soundly rejected in its entirety defendant's motion to dismiss. The case settled shortly thereafter.
- Represented the Chief Executive Officer and Founder of a company in an investigation commenced by the Securities and Exchange Commission regarding the CEO's alleged violation of the U.S. securities laws. On the eve of trial, the matter settled on favorable terms, with a penalty that was a small fraction of that which had originally been sought.
- Represented a Technical Accounting Advisor at a Fortune 500 company in a Securities and Exchange Commission investigation. The investigation was concluded without any enforcement action being taken by the Commission.
- Represented an individual in grand jury proceedings commenced by the Manhattan District Attorney's office. The matter was concluded without any adverse action being taken against the client.
- Represented the Chief Financial Officer of a Fortune 500 company in defense of a securities fraud class action as well as a Securities and Exchange Commission investigation. The class action was dismissed as to the client, with that dismissal being affirmed on appeal. The SEC investigation was concluded without any enforcement action being taken by the Commission.
- Represented the former head of a trading desk at a major financial institution in an investigation commenced by the U.S. Commodity Futures Trading Commission (CFTC) regarding the alleged manipulation of the ISDAFIX index. The investigation was concluded without any enforcement action being taken by the CFTC.
- Representing a number of corporations and individuals in defense of "clawback" litigation brought against them by the SIPC trustee for the estate of Bernard L. Madoff Investment Securities LLC. Certain of these matters are ongoing.
- Served, by appointment, as an arbitrator in a UNCITRAL arbitration concerning an alleged breach of contract.
- Represented a hedge fund in matters arising out of the action by The Reserve to "break the buck" with respect to its money market fund.
- Defended a large financial institution in class action litigation arising out of the failure of Enron Corporation. Plaintiffs, who sought \$40 billion in damages, alleged that the financial institution defendants violated the securities laws by engaging in transactions with Enron which Enron allegedly misreported in its public financial statements. On a discretionary appeal from the District Court's class certification order, the U.S. Court of Appeals for the Fifth Circuit reversed the class certification decision and rejected the plaintiffs' liability theory against the financial institution defendants.
- Defended a logistics company in claims brought against it by an offshore hedge fund. Plaintiff alleged that the logistic company violated the securities laws, induced detrimental reliance and breached other duties by making alleged misstatements and omissions regarding the likelihood that it would acquire another company. After discovery, the Honorable Tanya Walton Pratt of the U.S. District Court for the Southern District of Indiana granted summary judgment in defendant's favor on all claims.

Education

- Columbia Law School (J.D., 1992)

- Harlan Fiske Stone Scholar
- *Columbia Law Review*
- Cornell University (B.A., *magna cum laude*, 1989)
 - Phi Beta Kappa

Admissions

- U.S. Court of Appeals, Second Circuit
- U.S. District Court, Southern and Eastern Districts of New York
- New York
- Massachusetts

Professional Activities

MEMBERSHIPS: Association of the Bar of the City of New York

HONORS: Recognized in *The Best Lawyers in America*® in the area of Commercial Litigation; *Super Lawyers* in the areas of Securities Litigation and Business Litigation