

## Joel M. Miller

*Of Counsel*

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Joel Miller is recognized as a leading commercial litigator in New York. Esteemed for his intense personal commitment to clients and his deep experience with complex commercial, financial and securities transactions, Joel is often asked to take over for other counsel that have not been successful in resolving complex problems.

Joel represents companies and C-suite executives and law firms and lawyers in a broad range of complex commercial disputes. These matters involve securities transactions, finance and lending arrangements, complex instruments and derivatives, mortgage securitizations, mortgage servicing, and other financial matters. Joel advises on real estate, executive movement and employment disputes. He also counsels clients on structuring and negotiating contracts and transactions to minimize the potential for future litigation.

Known for his impressive track record and talent as an aggressive trial lawyer, clients turn to Joel when they need a true trial lawyer to try an action commenced by other counsel. Based on his trial success, he is often requested to represent clients in various courts outside of New York. Joel regularly represents clients not only in state and federal courts, but also in industry and private arbitrations and mediations. He also represents clients in enforcement actions and investigations by the Securities and Exchange Commission, Office of Thrift Supervision, the U.S. Department of Justice, FINRA and other oversight bodies.

Prior to joining Goulston & Storrs, Joel founded a top litigation boutique in New York and was its managing partner for more than 40 years.

### **Accolades**

- New York Metro Super Lawyers, Business Litigation, 2007-2024

### **Affiliations**

- American Bar Association
- New York State Bar

- The City Bar of New York
- Committee on International Litigation, New York State Bar Association

## **Admissions**

- New York

## **Education**

- Columbia University School of Law (J.D.)
  - Harlan Fiske Stone Scholar
- Amherst College (B.A., *cum laude*)

## **Community**

Joel's passion for contemporary art drives him to give generously of his time to serve as a Trustee of the Independent Curators International ("ICI"). This non-profit was established in 1975 and focuses on the role of the curator as a force in contemporary art.

ICI also connects emerging and established curators, artists and art space into regional and international networks, and it produces exhibitions, events, publications, research and training opportunities for curators and diverse audiences around the world.

## **Representative Matters**

### **Defense of Legal Malpractice**

Representation of national law firms in defense of malpractice and disciplinary claims of conflict of interest.

### **Federal Court Summary Judgment Dismissing Action Against Former CEO**

Obtained federal court summary judgment dismissing action against former CEO of thrift institution by purchasers of thrift's securities.

### **Fraudulent Conveyance, Successor Firm Liability and Jewel v. Boxer "Unfinished Business" Claims**

Representation of a major law firm in adversary proceedings asserted by bankruptcy trustee of a dissolved law firm alleging fraudulent conveyance, successor firm liability and Jewel v. Boxer "unfinished business" claims. The unfinished business doctrine requires a law firm that hires partners from a bankrupt firm to pay the profits from matters not finished before bankruptcy to the trustee. Successfully argued for the client and seven other major firms in the New York Court of

Appeals which determined the unfinished business doctrine is not New York law. Based on this decision, California also dismissed similar claims.

**FINRA Arbitration Against a Financial Advisor**

FINRA arbitration against a financial advisor. Encouraged the panel to grant a motion to dismiss prior to discovery or evidentiary hearings on the ground of the interests of justice related to the age of the claim and the likelihood that other family members would be required to testify. Such dismissal is rare if not unprecedented.

**Action for Breach of Contract to Sell Securities**

Substituted for counsel who lost a summary judgment motion in an Illinois state court action for breach of contract to sell securities. The client, needing a last-ditch effort to avoid a \$20 million judgment, obtained an order setting aside summary judgment. After obtaining discovery disclosing weaknesses in plaintiff's claim, the case settled on first day of trial for a small part of the potential judgment.

**Employer Refusal to Indemnify an Employee for Defense Costs**

Where an employer refused to indemnify an employee for defense costs, persuaded the state court to refuse to order arbitration on the ground that the employer had waived its right to arbitrate by refusing to proceed in a prior arbitration.

**Breaches of Representations and Warranties**

Substituted for counsel in a California state court action defending a bank sued by purchaser of a portfolio of home loans for breaches of representations and warranties.

**Oversee Counsel Preparing for Trial to Revise Trial Strategy**

Asked to oversee Florida counsel preparing for trial to revise trial strategy and use a more aggressive approach, arranging a beneficial settlement.

**Adversary Proceeding in Bankruptcy Court Concerning the Purchase of Subprime Servicing Rights**

Representation of a mortgage loan servicer in adversary proceeding in Bankruptcy Court concerning the purchase of subprime servicing rights from the debtor.

**Defense of Principals of a Hedge Fund Advisor Against SEC and Criminal Charges**

Defended principals of a hedge fund advisor against SEC and criminal charges where the fund terminated business following the failure of the fund's strategy. No indictment was returned and the SEC claims were settled favorably.

**Maritime Writs of Attachment**

Advised international bank as to the validity of numerous maritime writs of attachment served daily to attach electronic fund transfers from non-U.S. parties moving millions of dollars through the bank's wire facility in New York.

**Pre-Hearing Settlements for Two Large Institutional Investors**

Obtained extremely favorable pre-hearing settlements for two large institutional investors in litigation over hundreds of millions of dollars of auction rate securities.

**Action to Terminate a Fund Advisory Contract**

Defeated action to terminate a fund advisory contract for a mutual fund based on allegations of fraud as to a related fund.

**Defended Broker/Dealer Against Claim by an Investor in a Real Estate Partnership**

Defended broker/dealer against claim by an investor in a real estate partnership and obtained minimal settlement during discovery.

**Defended Partner in Large National Law Firm**

Successfully defended partner in large national firm against claim of malpractice which many thought was not defensible. Following cross-examination and presentation of a defense, the claimant abandoned the claim.

**Fraudulent Note Transaction**

Obtained dismissal on motion for an international law firm that provided a closing opinion to a fund that invested \$50M in a fraudulent note transaction created by Marc Dreier.

**Defended Claims in FINRA Arbitration Brought by a Former Employee of an Investment Bank**

Successfully defended claims in FINRA arbitration brought by a former employee of an investment bank for deferred compensation.

**Actions and Arbitration Against Former Employees Who Left to Join Competitors**

Representation of a major investment bank in actions and arbitration against two groups of former employees who left to join competitors; obtained temporary restraining orders to prevent dissemination of client's trade secrets, proprietary information and violations of employees' garden leaves and non-solicitation agreements.

**Defended Attorney Against Claims of Aiding and Abetting Clients' Tortious Action**

Defended attorney against claims of aiding and abetting clients' tortious actions. The First Department dismissed this action on motion in an opinion affirming the limitations of lawyer liability.

**Raiding and Theft of Confidential Information**

Settled at nuisance value a claim against two employees of investment bank in arbitration seeking \$25M for raiding and theft of confidential information.

## Speaking Engagements

- Risk Management- the Role of the Opinion Committee in Risk Management, American Bar Association Working Group on Legal Opinions, May 2013
- Enabling Early Resolution of Lawsuits, American Bar Association Working Group on Legal Opinions, May 2012
- Protecting an Attorney Against Client Misrepresentations, American Bar Association Working Group on Legal Opinions, October 2011
- Madoff and Me: How to Avoid Accidentally Representing Crooks and Survive if You Do, American Bar Association Standing Committee on Lawyers Professional Liability, September 2010