

# Nicholas Cutaia

*Director*

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Nicholas Cutaia is an experienced litigator handling complex disputes in the financial services, securities, legal, and real estate industries. Known for his aggressive yet thoughtful approach, Nick helps clients navigate difficult and high-stakes matters involving a wide range of issues.

Nick's clients include public companies, investment banks, private equity firms and their portfolio companies, law firms, media and real estate companies, investment advisors, officers, directors and high-net worth individuals. He also represents entities and individuals in government investigations by federal and state authorities (e.g., SEC and DOJ).

Nick focuses his practice on fraud claims and other business torts, private entity breakups, partnership and investor disputes, and securities-related matters. He has significant expertise representing clients in matters involving complex structures and financial instruments (e.g., RMBS, CDOs), including sponsors, issuers, bondholders and loan servicers.

In addition to his commercial litigation practice, Nick represents law firms and lawyers in resolving partnership disputes, professional liability issues, and other claims asserted against those clients. He is a member of the New York City Bar Association's Professional Responsibility Committee.

Early in his career, Nick served as a law clerk to the Honorable William H. Pauley III, United States District Judge in the Southern District of New York.

## **Accolades**

- *Super Lawyers* "Rising Star", 2015-2018

## **Affiliations**

- New York City Bar Association
- Member, Committee on Professional Responsibility, New York City Bar Association

## **Admissions**

- New York

- U.S. District Court for the Eastern District of Michigan
- U.S. District Court for the Eastern District of New York
- U.S. District Court for the Southern District of New York

## **Education**

- St. John's University School of Law (J.D., *cum laude*, 2007)
- Tufts University (B.A., 2000)

## **Representative Matters**

### **Fraud and Breach of Contract Claims Arising from a Private Equity M&A Transaction**

Representation of a private equity portfolio company in pursuing claims for fraud and breaches of representations/warranties against defendants who concealed tens of millions of dollars in employment tax liability during an M&A transaction.

### **Defense of Federal and State Securities Class Actions**

Representation of Sogou, Inc., a foreign public company, in multi-jurisdictional class action lawsuits alleging material misrepresentations and omissions related to the company's initial public offering. Successfully obtained a stay of state court class actions in California in favor of a pending action in the SDNY.

### **Breach of Representation and Warranty Claims Arising from a Private Equity M&A Transaction**

Representation of SDI, Inc., a private equity portfolio company specializing in supply chain management, in pursuing claims for breaches of representations and warranties related to the seller's failure to provide accurate financial statements in accordance with GAAP and misrepresentations concerning the seller's customer base. Successfully defeated (i) summary judgment and (ii) a motion for a preliminary injunction seeking to enjoin related litigation in another forum.

### **Partner/Member/Investor Disputes**

Regularly represents partners, LLC members and investors in disputes involving (i) majority/minority shareholder controversies, (ii) withdrawal, buyout, expulsion and transition issues, (iii) loan and other investment defaults and (iv) other commercial matters.

### **Breaches of Contract and Fiduciary Duty Involving Losses in Excess of \$280M**

Representation of Triaxx, a CDO issuer, in litigation against RMBS trustees for breaches of contract and fiduciary duty involving losses in excess of \$280 million.

### **Unfinished Business and Fraudulent Conveyance Claims**

Successfully defended Dechert LLP against “unfinished business” (*Jewel v. Boxer*) and fraudulent conveyance claims in the SDNY, Second Circuit and New York Court of Appeals. Based on this advocacy, the New York Court of Appeals issued a landmark decision repudiating the “unfinished business” doctrine, which avoided tens of millions of dollars of potential liability for this client and other law firms.

**Breach of Contract Action Involving a \$30M Participation Interest in a Loan Facility**

Representation of Sumitomo Mitsui Banking Corporation, a major Japanese bank, in a breach of contract action involving a \$30 million participation interest in a loan facility.

**Arbitration With an Aggrieved Former Partner Claiming Wrongful Discharge**

Obtained a complete dismissal of claims for an international law firm during arbitration with an aggrieved former partner claiming wrongful discharge and seeking millions of dollars in allegedly unpaid compensation.

**Mortgage-Backed Securities Cases in Federal and State Court**

Defended various Deutsche Bank entities in a portfolio of mortgage-backed securities cases in federal and state court alleging hundreds of millions of dollars in repurchase liability related to poor quality loan portfolios.

**Fraud and Unjust Enrichment Claims in New York State Court**

Defense of a shareholder in an international architecture firm against fraud and unjust enrichment claims in New York state court arising from an international real estate transaction.

**Employment Discrimination Claims Against Securities Firm Managing Director**

Obtained a rare pre-hearing dismissal of employment discrimination claims against a Managing Director of a major investment bank during FINRA arbitration. Thereafter, successfully pursued indemnification from the bank, including defeating a motion to arbitrate the indemnification claims.

**Investigations by the DOJ and SEC Related to Allegedly Fraudulent Rating Practices**

Representation of CDO ratings analysts from Standard & Poor's during investigations by the DOJ and SEC related to allegedly fraudulent rating practices by the company.

## Publications

June 15, 2020

**Goulston & Storrs Wins Complete Dismissal of Section 11 Class Action Claims Against Sogou and Sohu**

April 10, 2020

**New York Court of Appeals Clarifies Lawyer Misconduct Subject to N.Y. Judiciary Law § 487**

October 7, 2019

**Goulston & Storrs Wins Stay of Sogou Class Action Litigation in California**