

# Nicholas Cutaia

*Director*

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Nicholas Cutaia is the co-chair of the firm's Litigation Group and its law firm defense practice. He handles a broad range of corporate, commercial and securities litigation in federal and state courts and arbitration. He also defends law firms in high-stakes professional liability matters.

Nick's clients include public companies, private equity firms, media and real estate organizations, Am Law 100 and 200 law firms, officers, directors, and high-net-worth individuals.

Nick's commercial litigation practice focuses on business torts, M&A litigation, partnership and investor disputes, and securities-related matters, including class action defense. He has significant expertise handling matters involving complex structures and financial instruments, including securitizations, joint ventures, and equity and debt investments.

In his professional liability practice, Nick defends top law firms in legal malpractice actions, partnership disputes, and other matters. His broad-based experience representing clients in high-stakes commercial matters has made him adept at understanding the complexities of legal negligence in numerous transactional and other practice areas.

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**

- Lawdragon, Leading 500 Litigators in America, 2024-2025

## **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 Southern District of New York

- U.S. District Court for the Eastern District of New York
- U.S. Court of Appeals, Second Circuit
- U.S. District Court for the Eastern District of Michigan

## **Education**

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

## **Representative Matters**

### **Fraud and State Securities Claims Arising from an M&A Transaction**

Representation of a high-net-worth individual in pursuing \$140 million fraud and state securities fraud claims in Delaware Chancery Court against AMMO, Inc. and others in connection with a \$240 million public-company merger.

### **Defense of Am Law 100 Firm in Malpractice Action Alleging Transactional Negligence**

Obtained a complete dismissal of legal malpractice claims against a top 10 Am Law firm arising from a complex corporate finance transaction and the drafting of underlying loan documents.

### **Racketeering and Related Claims Related to Mortgage Servicing for RMBS Trusts**

Representation of private entities and a public company in pursuing "baby RICO" and other claims against BlackRock and PIMCO related to their unlawful efforts to drive several mortgage servicing-related companies out of business.

### **Advice on Legal Malpractice and Ethical Issues Related to Class Action Cases**

Advised and defended a national law firm in connection with potential legal malpractice exposure related to the firm's management of a series of class action lawsuits brought on behalf of hundreds of clients.

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

Representation of a private equity portfolio company in pursuing \$50 million contract and fraud claims in the New York Commercial Division arising from the concealment of tax liability during an M&A transaction. Obtained a rare sanction for witness intimidation in a civil matter against the principal defendant, and successfully achieved a favorable resolution for the client.

### **Defense of Federal Section 13(e) Securities Claim**

Successfully defeated plaintiff's attempt to preliminarily enjoin a \$3.5 billion merger between client Sogou Inc. and a subsidiary of Tencent Holdings Limited, leading to a decision of first impression holding that no private right of action exists under Section 13(e) of the Securities Exchange Act of 1934. See *Boylan v. Sogou Inc.*, 2021 WL 4198254 (S.D.N.Y. Sept. 13, 2021).

### **Defense of Federal and State Section 11 Securities Class Actions**

Representation of Sogou, Inc., a foreign public company, in multi-jurisdictional class action lawsuits alleging material misrepresentations and omissions in violation of Section 11 of the Securities Act of 1933 related to the company's initial public offering. Successfully obtained a stay of state court proceedings in California in favor of a pending action in the SDNY, and thereafter obtained complete dismissal of the SDNY action. *See Jiajia Luo v. Sogou, Inc.*, 465 F. Supp. 3d 393 (S.D.N.Y. 2020).

### **Representation of Former CEO Asserting ERISA and Contract Claims**

Representation of former CEO of Flagstar Bank in pursuing claims for approximately \$16 million in unpaid compensation in violation of ERISA and operative agreements. Successfully defeated defendant's motion to dismiss. *See Campanelli v. Flagstar Bancorp, Inc.*, 2020 WL 5350245 (S.D.N.Y. Sept. 4, 2020).

### **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 hundreds of millions of dollars of potential liability for this client and other law firms. *See In re Thelen LLP*, 24 N.Y.3d 16 (N.Y. 2014).

### **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 seller's failure to provide accurate financial statements in accordance with GAAP and misrepresentations concerning seller's customer base. Successfully defeated (i) a motion for summary judgment and allegations of document spoliation, *see Platinum Equity Advisors, LLC v. SDI, Inc.*, 41 N.Y.S.3d 721 (N.Y. Sup. Ct. 2016), and (ii) a motion for a preliminary injunction seeking to enjoin related litigation in another forum, *see Platinum Equity Advisors, LLC v. SDI, Inc.*, 132 A.D.3d 420 (1st Dep't 2015).

### **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.

### **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 on behalf of an Am 100 firm during arbitration with an aggrieved former partner claiming wrongful discharge and seeking millions of dollars in unpaid compensation.

**DOJ and SEC Investigations 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.

## Press Releases

September 23, 2024

**Goulston & Storrs' Litigation Group Among BTI Consulting's 2025 "Most Feared Law Firms;" Eight Attorneys Named Leading Litigators in America by Lawdragon**

October 3, 2023

**Seven Goulston & Storrs Attorneys Named to Lawdragon's 2024 Leading 500 Litigators in America**

October 13, 2021

**Goulston & Storrs Defeats Attempt to Enjoin Sogou \$3.5 Billion Merger with Tencent**

June 15, 2020

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

April 10, 2020

**Expect More Malpractice Claims After COVID-Fueled Slump**

October 7, 2019

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

October 1, 2018

**Eight Goulston & Storrs Attorneys Selected for Inclusion to the 2018 New York Metro Super Lawyers and Rising Stars List**

April 2, 2018

**Goulston & Storrs Adds Five Attorneys to Expand its New York Litigation Practice**