



## John W. Rotunno

### Partner

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## OVERVIEW

John W. Rotunno, a partner in K&L Gates' Chicago office, concentrates his practice in complex and multi-district litigation, including investment company litigation, securities litigation, shareholder derivative litigation, merger and acquisition litigation, fiduciary litigation, and consumers class actions. He has represented clients in internal investigations, valuation proceedings, including the valuation of a substantial interest in a founding NFL franchise, trade secret misappropriation cases, patent infringement litigation, trust litigation, partnership disputes and estate litigation. He also is experienced in distributorship and supply chain litigation and commercial tort and contract cases, as well as accountant's liability and RICO actions.

John has represented numerous publicly held corporations, investment companies, investment advisers, independent directors and trustees, major accounting firms, banks, savings and loans, corporate officers and directors and other individuals, including a former Attorney General of the United States, in the state and federal trial and appellate courts. He also served as coordinating counsel for a national consumer credit company in numerous lawsuits, many of which sought punitive damages for allegedly fraudulent practices.

John has practiced in the state and federal courts in Chicago and across the country, representing clients in actions pending in numerous jurisdictions including California, Delaware, Florida, Indiana, Maryland, Michigan, New Jersey, New York, New Mexico, Texas, and Wisconsin. He has tried cases in both the state and federal courts, including the United States Tax Court. In addition to his service as an advocate, John has counseled clients on contract, distribution, and licensing issues, as well as on compliance issues and internal corporate policies and procedures.

John has served as a global co-practice area leader for the firm's Litigation and Dispute Resolution practice area.

## ACHIEVEMENTS

- Listed in *The Best Lawyers in America*® for Commercial Litigation in Chicago, 2015-2024
- Consistently named to the Illinois Super Lawyers list

## PROFESSIONAL / CIVIC ACTIVITIES

- Martindale-Hubbell AV Preeminent Rating
- Illinois State Bar Association
- Federal Bar Association

## SPEAKING ENGAGEMENTS

John has addressed professional organizations and participated in forums on a range of subjects, including federal securities litigation, developments in investment company litigation, the responsibilities of independent trustees and directors of investment companies, the attorney-client privilege, and accountant's liability. He has served as a panelist at investment management industry conferences, including the Investment Company Institute's 2012 Mutual Funds and Investment Management Conference, and as a guest lecturer at Northwestern University School of Law on developments in investment company litigation.

## EDUCATION

- J.D., The University of Chicago Law School, 1976 (*co-recipient, Llewellyn Cup for appellate advocacy*)
- B.A., University of Illinois, 1973

## ADMISSIONS

- Bar of Illinois
- Supreme Court of the United States
- United States Court of Appeals for the Seventh Circuit
- United States District Court for the Eastern District of Michigan
- United States District Court for the Eastern District of Wisconsin
- United States District Court for the Northern District of Illinois
- United States Tax Court

## THOUGHT LEADERSHIP POWERED BY HUB

- 23 July 2018, Third Circuit Affirms Judgment for Investment Adviser in Section 36(b) Action
- 20 March 2018, United States District Court for the Northern District of Illinois Grants Summary Judgment in "Manager of Managers" Excessive Fee Case

## NEWS & EVENTS

- 18 August 2022, More Than 350 K&L Gates Lawyers Named Among 2023 Best Lawyers in America, Ones to Watch
- 19 August 2021, Nearly 300 K&L Gates Lawyers Named Among 2022 Best Lawyers in America, Ones to Watch

## AREAS OF FOCUS

- Securities and Transactional Litigation
- Capital Markets
- Class Action Litigation Defense
- Commercial Disputes
- Public Companies

## REPRESENTATIVE EXPERIENCE

### SECURITIES, INVESTMENT COMPANY, AND DERIVATIVE LITIGATION

- Defended a manufacturer of medical testing devices against claims asserted in consolidated securities class action litigation and two related putative derivative cases. Obtained the dismissal, with prejudice, of claims asserted under Section 10(b), Rule 10b-5 thereunder, and Section 20(a) of the Securities Exchange Act of 1934, as well as the dismissal, with leave to replead, of claims asserted under the Securities Act of 1933. Successfully opposed the plaintiffs' motion for reconsideration of the Court's dismissal Order, leading to a successful negotiated resolution of the securities class action plaintiffs' claims. Thereafter, the first-filed derivative action was dismissed with prejudice, pursuant to a stipulation between the parties, and the second-filed derivative action was dismissed voluntarily by the plaintiff.
- Obtained the dismissal under the Securities Litigation Uniform Standards Act of 1998 ("SLUSA") of three putative class actions alleging breach of fiduciary duty by the independent trustees of closed-ended investment companies in connection with the redemption of hundreds of millions of dollars in auction rate preferred shares. An appeal taken in one of the cases resulted in a ground-breaking decision of the United States Court of Appeals for the Seventh Circuit applying SLUSA to state law claims purporting to allege breach of fiduciary duty notwithstanding the absence of express allegations of fraud and plaintiff's disavowal of any intention to assert a claim based upon misstatements or omissions of fact. Mr. Rotunno successfully opposed a petition for certiorari which sought Supreme Court review on the ground that the Seventh Circuit's decision assertedly created a conflict among the federal Circuit Courts of Appeal.
- Successful resolution of market-timing related claims asserted against a mutual fund, an investment adviser to a second mutual fund and the independent trustees of a third mutual fund in numerous putative class and

derivative actions filed in various state and federal courts, two of which reached the United States Supreme Court.

- Successful resolution of actions under Section 36(b) of the Investment Company Act of 1940 against investment advisors to registered open-end management investment companies in which the plaintiffs contended that advisory fees charged to the funds were excessive.
- Representation of independent trustees of several registered open-end management investment companies in litigations alleging that advisory fees charged to the funds were excessive under Section 36(b) of the Investment Company Act of 1940.
- Successful representation of a corporation in an action seeking to enjoin a proposed acquisition of the company on the ground that the consideration to be received by the company's public shareholders assertedly was inadequate and the sale process was deficient.
- Successful defense of a putative national securities class action against a major national retailer of office supplies and several of its current and former officers and directors, obtaining the dismissal of the lead plaintiff's complaint.
- Representation of a publicly held corporation and its interested directors in derivative litigation alleging that the board breached its fiduciary duty in failing to detect the embezzlement of more than US\$30 million by a senior executive officer of the company. Successfully resolved the litigation, as well as a companion securities fraud class action.
- Successful defense of a closed-end investment company in what is believed to be the first putative securities fraud class action brought against an issuer of auction rate securities. Following the filing of a motion seeking dismissal of the case and requesting an award of attorneys' fees, the plaintiff agreed to dismiss the action with prejudice.
- Counseled a special committee of independent members of the board of trustees of Delaware statutory trusts in the conduct of an investigation into claims asserted in shareholder demands. Following its investigation, the committee unanimously concluded that the demanded action was not in the best interests of shareholders and recommended that litigation relating to the matters set forth in the demands not be pursued. The full board of each trust adopted the committee's recommendation, and the shareholders subsequently abandoned their demands.

## OTHER COMMERCIAL DISPUTES

- Defense and resolution on a highly favorable, class-wide basis of national consumer class actions.
- Successful defense of a major independent soft drink bottler against efforts to terminate its contract rights for alleged breaches of its bottling appointments.
- Successful defense of several officers and directors of a casino gaming corporation against claims arising out of an alleged contract to sell more than a one-third interest in the corporation.
- Represented an auto parts manufacturer in a consumer fraud act class action involving statements on its packaging and in marketing materials.

- Represented an international packaging company in the negotiation of settlement of dispute regarding asset purchase agreement and agreement governing development of new packaging products.
- Defended an auto parts manufacturer in litigation regarding long-term supply contracts disputes with other parts suppliers.
- Successful representation of the trustees of a US\$65 million charitable trust in an adversary action in probate in which the children of the deceased settlor sought to set aside the trust, as well as the decedent's will.