

Sean M. Murphy

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Sean M. Murphy is a partner in the New York office of Milbank and a member of the firm's Litigation & Arbitration Group. Mr. Murphy's practice focuses on complex securities matters. He has defended dozens of companies and financial institutions in multi-jurisdictional class action and derivative litigation under state and federal securities laws, including claims under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940 and ERISA. He has extensive experience representing investment advisers and mutual fund boards in litigation and regulatory investigations involving management fees, revenue sharing, conflicts of interest, prospectus disclosure, distribution and trading, ERISA breach of fiduciary duty and prohibited transactions, portfolio mismanagement, Rule 12b-1, board oversight and fiduciary duty litigation. He represents clients in regulatory and enforcement proceedings before the SEC, CFTC, FINRA, DOL and state regulators.

Primary Focus & Experience

Mr. Murphy's practice focuses on complex securities matters. He has defended dozens of companies and financial institutions in multi-jurisdictional class action and derivative litigation under state and federal securities laws, including claims under the Securities Act of 1933, the Securities Exchange Act of 1934 and the Investment Company Act of 1940. He has extensive experience representing investment advisers and mutual fund boards in litigation and regulatory investigations involving management fees, revenue sharing, conflicts of interest, prospectus disclosure, distribution and trading, ERISA prohibited transactions, portfolio mismanagement, Rule 12b-1, board oversight and fiduciary duty litigation. He represents clients in regulatory and enforcement proceedings before the SEC, CFTC, FINRA and state regulators.

Mr. Murphy has represented some of the largest financial institutions in the country in complex securities cases, including Citibank, Merrill Lynch, Fidelity, Capital Group, AllianceBernstein, American Century, Dodge & Cox, Dreyfus, Federated Investors, First Trust Advisers, Great West Financial, the Hartford, Legg Mason, AXA, Neuberger Berman, Prudential, Putnam, Royal Bank of Canada, Russell Investments, Salomon Smith Barney, Voya Investments and Waddell & Reed.

He has extensive experience trying securities cases, including high profile and multi-billion dollar cases. In 2024, he successfully defended flexPATH Strategies and NFP Retirement in an ERISA class action lawsuit alleging breaches of fiduciary duty and prohibited transaction in connection

with their selection of proprietary funds for use on the plan's investment menu. In 2020, he successfully represented Putnam Investments in the first "virtual trial" of a complex securities case in the Southern District of New York. The case, involving Putnam's role as a collateral manager for a CDO, was covered by the *National Law Journal* and earned Mr. Murphy "Litigator of the Week" honors from *The American Lawyer*. Also in 2020, Murphy successfully defended Great West Capital Management in a three week bench trial, after which he secured a sanctions award of up to \$1.5 million against the plaintiffs' law firm for pursuing a frivolous suit.

In 2016, Mr. Murphy tried the first "manager-of-managers" case to go to trial under Section 36(b) of the Investment Company Act. There, he led the successful defense of AXA in a seven week trial involving a damages claim of approximately \$600 million based on allegations that the fees charged to mutual funds used in AXA's variable annuity offering were excessive. Murphy's victory for AXA led to his being named "Litigator of the Week" by *The American Lawyer*. In 2017, he scored a trial victory for Hartford Financial Services in a similar case seeking disgorgement of hundreds of millions of dollars. He also defended AllianceBernstein L.P. in a seven week jury trial in an action brought by the Florida state pension board in Tallahassee, Florida, seeking over \$3 billion in damages stemming from Alliance's investments in Enron. The jury returned a verdict in Alliance's favor which was ranked by *The National Law Journal* as one of the Top 10 Defense Wins of the Year. In addition, Mr. Murphy successfully defended Capital Research and Management Company in an action in which plaintiffs sought billions of dollars for an alleged breach of fiduciary duty in connection with the management of eight of the largest mutual funds in the country. Following a two week bench trial in August 2009, the court rendered an opinion dismissing plaintiffs' complaint with prejudice. *In re American Mutual Funds Fee Litigation*, No. CV 04-5593 GAF, 2009 WL 5215755 (C.D. Cal. Dec. 28, 2009).

Recognition & Accomplishments

Mr. Murphy has been recognized as a leading litigator by a number of publications, including: *The American Lawyer*'s "Fab Fifty" list of the top 50 litigators in the country under the age of 45; *Benchmark Litigation* selected him as among the "Top 100 Trial Lawyers in America" (2017-2018); he was selected as one of the top 500 litigators in the country in *Lawdragon's* 2023 and 2024 500 Leading Litigators in America guides; and *Legal 500* described him as "one of the best young lawyers for securities shareholder litigation, anywhere in the country." In 2019 and 2020, *Legal 500* named Mr. Murphy a Next Generation Lawyer in the area of Securities Litigation – Defense. From 2021-2023, *Legal500* named Mr. Murphy a Leading Lawyer for US Securities Litigation - Defense. *Lawdragon* also elected Mr. Murphy to its list of "100 Lawyers You Need to Know in Securities Litigation," and profiled him as a "rising star" in *The Lawdragon 500 New Stars, New Worlds*. Mr. Murphy also has been consistently recognized as a leading securities lawyer in *Chambers USA*, *Benchmark Litigation* and *New York Super Lawyers*.

Mr. Murphy has spoken on dozens of panels about complex litigation and regulatory issues, and has written a number of articles, including "The Trial of a Securities Case" (1996), "Litigation Under the Private Securities Litigation Reform Act" (1997), "Recent Developments in Litigation Under the Investment Company Act of 1940" (2004), "Mutual Funds Under Scrutiny" (2005), "Securities Plaintiffs Turn to Class Actions Under ERISA" (2008), "Court Finds Implied Private Right of Action Under the Investment Company Act" (2009), "The SEC's Mutual Fund Fee Initiative: What to Expect" (2010), "Fund Profitability in Mutual Fund Fee Litigation" (2012), "Claims Involving Investment Companies" (2014), "Trends in Fee Litigation: Actions Brought under Section 36(b) and ERISA" (2014), and "Halliburton and the Fraud-on-the-Market Theory" (2014). Recently, Mr. Murphy has authored articles including "The So-Called 'Fiduciary Exception' To the Attorney-Client Privilege in Section 36(b) Cases" (2017), "Mutual Funds and Securities Class Actions: A Square Peg In A Round Hole" (2018), "Judicial Deference To Mutual Fund Boards: Lessons From Post-Jones Excessive Fee Litigation" (2020). He also co-authored portions of the textbooks titled

ADDITIONAL DETAILS

EDUCATION

- Albany Law School, J.D.
- St. Lawrence University, B.A.

ADMISSIONS

- New York
- US Court of Appeals for the Second Circuit
- US Court of Appeals for the Third Circuit
- US Court of Appeals for the Ninth Circuit
- US Court of Appeals for the Tenth Circuit
- US District Court for the Southern District of New York
- US Supreme Court
- US District Court for the Eastern District of New York

EXPERIENCE

Litigation & Arbitration

Mutual Fund Litigation

Securities and Commodities Litigation

White Collar Defense and Investigations

United States

FEATURED NEWS

New York Appellate Division, First Department Holds That PSLRA Discovery Stay Applies to State Court Actions

Twenty Milbank Lawyers Recognized in *Benchmark Litigation* 2024 US Guide

Nine Milbank Partners Named in *Lawdragon's* 2024 500 Leading Litigators in America Guide

Milbank Partner Sean Murphy to Speak at PLI's Investment Management 2023 Program

Milbank Practices, Lawyers Earn Top Rankings in *The Legal 500* 2023 US Rankings Guide

