



Arthur G. Jakoby

*Partner; Co-Chair, Securities Litigation and Enforcement*

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Arthur Jakoby is a seasoned securities and commercial real estate litigator. He is a former SEC prosecutor, who has successfully represented regulated companies, individuals, board directors and corporate executives in a wide range of complex matters.

### Complex Commercial Litigation and Securities Litigation

Arthur's experience in securities litigation includes:

- Regulatory enforcement
- Class actions
- Internal investigations
- Enforcement actions before the SEC, U.S. Attorney's Office, FTC, DOL, State Attorney General's Offices, District Attorney's Offices, FINRA, PCAOB, NFA and various state regulatory departments, including the New York State Department of Financial Services and the New Jersey Department of Banking and Insurance
- Securities defense litigation
- White collar defense litigation
- Arbitrations and alternative dispute resolution proceedings

Arthur's experience in commercial disputes includes:

- Breach of M&A agreements
- Commercial contract disputes
- Real property disputes
- Construction disputes
- Consumer fraud cases
- Lease disputes

According to the 2013 edition of *US Legal 500*, Arthur is "recommended for any matter requiring intelligence, perseverance and litigating and negotiating skills." A December 2012 article in *Forbes* lauded Arthur's \$165 million dollar litigation victory: "[...]Lead attorney Arthur Jakoby [achieved a] remarkable outcome...due in large part to a clever legal strategy featuring multiple parties, [and] multiple lawsuits...[T]he adoption of a shrewd multi-faceted legal strategy now 'virtually guarantees' that these investors will achieve what was previously unthinkable - realizing a legal profit from investing in [the Madoff] Ponzi scheme."

Prior to joining Herrick, Arthur was Special Trial Counsel in the SEC's Division of Enforcement. While at the SEC, he prosecuted stock and accounting frauds, insider trading matters and stock market manipulation cases involving individuals, public companies, broker dealers and

their principals. He was also assigned as a special Assistant U.S. Attorney to the U.S. Attorney's Financial Crimes Unit for the District of New Jersey.

### Real Estate Litigation and Title Insurance Litigation

Arthur is chair of Herrick's Title Insurance Litigation Group, which represents all of the major title insurance companies in New York and New Jersey in complex real estate claims on behalf of their insureds. In his 25-year career he has successfully resolved hundreds of real estate title insurance cases in the Northeast and Mid-Atlantic, as well as many class actions involving allegations of price fixing and overcharges by title underwriters. Real estate developers, owners and title underwriters frequently call on Arthur when faced with "bet the company" cases involving breach of contract, breach of fiduciary duty and fraud claims involving large commercial properties.

Arthur taught trial practice at Cardozo Law School, a class on insider trading and securities law at NYU's School of Continuing Education and has been a lecturer on title insurance at New York Law School. Arthur has consistently been ranked as one of New York City's leading commercial litigation attorneys by Super Lawyers (2006-2019).

### Services

- White Collar Defense & Investigations
- Securities Litigation and Enforcement
- Business Litigation
- Title Insurance
- Insurance & Reinsurance
- Litigation
- Israel
- Real Estate Litigation & Dispute Resolution

### Education

- Benjamin N. Cardozo School of Law (J.D., 1983)
- Boston University (B.A., 1979)

### Memberships & Associations

- Board Director and Secretary, Juvenile Diabetes Research Foundation (JDRF), Westchester Chapter

## Publications

### June 2018

Second Circuit Amends Martoma Insider Trading Decision

### August 2017

Second Circuit's Martoma Decision Enhances the Government's Ability to Prosecute Insider Trading Cases

### August 2017

First Appellate Decision Involving Federal Anti-Spoofing Provision Sends Clear Message to the Market

### June 2016

SEC Fines Morgan Stanley \$1 Million for Failing to Secure Client Data

June 2016

FINRA Adopts New Rule 2272 Regarding Securities Offers and Sales on Military Installations

June 1, 2016

Divided Appellate Court Rebuffs Challenges to the SEC's Administrative Proceedings

December 10, 2014

Second Circuit Narrows the Government's Ability to Prosecute Insider Trading

March 2013

U.S. Supreme Court Limits Timing of Federal Enforcement Actions

February 2013

New Consumer Protection Act Targets New Jersey Insurance Companies

March 2012

Financial Firm Entitled to Restitution from Rogue Employee

February 2012

CFTC Finalizes Changes to CPO and CTA Registration and Compliance Rules

April 2008

New York Insureds Entitled to Consequential Damages

January 2008

U.S. Supreme Court's decision in *Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.*

*Beacon Associates LLC I et al v. Beacon Associates Management Corp. et al* (Case 1:14-cv-02294-AJP)

1999

When Co-Insureds Go To War

*New York Real Property Law Journal*, Vol 27, No. 4

1999

Spelling Counts When Searching Title

*New York Real Property Law Journal*, Vol. 27, No. 1

1985

SEC Investigations

*The Review of Securities and Commodities Regulation*, Vol. 18, No. 4

## Securities and Commercial Litigation

Madoff Feeder Funds - Unprecedented Recovery from Largest Investment Fraud in History  
Representation of two Madoff feeder funds that had collectively lost over \$160 million of principal and several hundred million dollars of phantom profit in the wake of the largest investment fraud in history. Herrick represented the funds in dozens of lawsuits including numerous class actions, an action by the Madoff Trustee, and an action by the Department of Labor. Herrick partner Arthur Jakoby ultimately orchestrated two settlements that will result in each of the funds' over 500 investors eventually recovering 100 percent of their principal

investment and what is estimated to be a more than 40 percent - possibly as high as 60 percent - profit on their Madoff investment - arguably the most favorable outcome in the world for any investor who invested with Madoff through an investment feeder fund. The firm's achievements on behalf of the funds were widely covered by the media, including a Forbes report entitled "Meet The Madoff Victims That Profited From Their Investment," which lauded Arthur's litigation strategy and the result.

#### Counsel and Law Firm - Successful Appeal of Contempt of Court Ruling

Secured a favorable ruling from the Second Circuit on behalf of attorneys and their law firm in their appeal of a district court's ruling holding them in contempt of court and sanctioning them for the alleged failure of their clients, the Republic of Iraq and Iraq's Ministry of Industry, to comply with a post-judgment discovery order. Finding that our clients had been given insufficient notice of the charges, and that the district court exceeded the bounds of its discretion when, under the circumstances, it proceeded to sua sponte find the attorney appellants in contempt, the Second Circuit vacated the order of contempt against our clients. In vacating the contempt finding, the Second Circuit also ruled that the attorneys had appellate jurisdiction even after the underlying case against their clients had settled and the judgment satisfied, a previously open question of law in this Circuit.

#### \$650,000 FINRA Arbitration Award in Dispute with Former Clearing House

Secured an award of over \$650,000 on behalf of a retail brokerage in a FINRA arbitration against the firm's former clearing house alleged to have unlawfully refused to release the client's funds. Herrick successfully argued that the termination provision in the standard clearing agreement functioned as a penalty rather than as liquidated damages and therefore could not be enforced. The FINRA panel also required the clearing house to deliver over 10,000 shares of a NASDAQ traded biotechnology company to our client while dismissing the respondent's counterclaim.

#### NYC Attorney - Successful Defense in \$80 Million Securities Fraud Civil Action

Defense of a New York attorney in a civil securities fraud action seeking \$80 million in damages and alleging our client and co-defendants participated in a broad-based conspiracy intended to deprive the plaintiff of its shares in a Chinese financial media company at artificially depressed prices in order to realize an unjust windfall for themselves. In response to our motion to dismiss, which included a request for sanctions against the plaintiff for naming our client, the plaintiff agreed to dismiss all claims against our client without any settlement payment.

#### Witness - SEC Investigation into Accounting Irregularities

Represented a regional accounting firm as a witness in an SEC investigation into accounting irregularities at a publicly traded internet consumer products company.

#### Former President of Guatemala - Department of Justice Criminal Action

Herrick represented former Guatemalan President Alfonso Portillo in defense of a federal money laundering conspiracy charge following his extradition to the United States. President Portillo pled guilty to a reduced charge following successful negotiations with the U.S. Attorney's Office, Southern District of New York. Herrick then successfully argued to the U.S. Bureau of Prisons that it apply time already served by President Portillo - including time

served in Guatemala while awaiting extradition - to his sentence, greatly reducing the period of incarceration ultimately served.

#### Witnesses - SEC and Department of Justice Investigation into Alleged Securities Fraud Scheme

Successful representation of two former principals of a dissolved hedge fund in an investigation by the US Attorney's Office and the SEC into a high-profile "pump-and-dump" scheme involving shares in a Bermuda-based reinsurance company and nearly \$20 million in alleged illegal profits. The investigation, which led to the criminal indictment of 7 individuals for securities fraud, resulted in no charges against our clients.

Investment Advisor - Litigation Related to Failed Merger and \$700 Million in Asset Losses  
Represented a registered investment advisor, its managers and the RIA's proprietary funds in a series of four consolidated securities class actions lawsuits, two concurrent state court actions, and a Bermuda and SDNY bankruptcy, involving more than \$700 million in claims arising out of a failed merger between the funds and a public shell company.

#### Favorable Settlement Resolving FINRA Investigation into Self-Raise Through Debt Instruments

Herrick successfully defended a public company, its broker-dealer affiliate and the principal of each, negotiating a favorable settlement that resolved a nearly three-year long FINRA investigation into allegedly false and misleading debt instruments used to raise money for the broker-dealer that did not adequately disclose certain material information, including the use of the raised funds.

#### Tigrent Inc. - Reverse Merger

Represented Tigrent, Inc., global leader in high-quality and value-based training, conferences, publications, technology-based tools and mentoring to help customers become financially knowledgeable, primarily through its Rich Dad™ Education brand, in a reverse merger into a public shell company that allows Tigrent to be a public company.

#### Former Bank Directors - Favorable Resolution of FDIC Investigation

Herrick negotiated a favorable settlement on behalf of three directors of a failed New York City community bank, resolving claims by the FDIC that the directors had failed to exercise due care in their oversight of the bank's loan portfolio.

#### Regional CPA Firm - SEC and PCAOB Investigations into Improper Partner Rotations

Representation of regional certified public accountant in connection with SEC and PCAOB investigations into alleged improper partner rotation and related alleged accounting practice improprieties. Herrick was able to reach a settlement with regulators in which the client admitted no wrongdoing.

#### Broker-Dealer and Its Principal - FINRA Disciplinary Hearing

Represented an embattled broker-dealer and its founder in a 12-day disciplinary hearing initiated by FINRA alleging multiple counts of fraud, failure to supervise and general violations of FINRA rules.

#### NYC Attorney - Joint US Attorney and SEC Investigations into Alleged Misappropriation of Funds and Market Manipulation

Represented a prominent former New York City attorney in a joint federal criminal investigation, conducted by the U.S. Attorney's Office, District of Columbia and the SEC, into alleged misappropriation of funds of a large foreign public company and market manipulation of the securities of several small U.S. public companies. Herrick was able to resolve the federal criminal charges against our client through a guilty plea to a single count of obstruction of justice, resulting in a far lower sentencing guidelines range than would have resulted had the client pled to multiple securities fraud charges, as the Department of Justice was initially contemplating. The client was sentenced to two years of probation, later reduced to one year. Notwithstanding the criminal charges involving the sale of securities, the SEC did not bring charges.

#### Investment Advisor - Successful Conclusion to Internal Investigation

Conducted an internal investigation for a nationally recognized investment adviser to a series of hedge funds following a whistleblower's complaint concerning SEC compliance and operational issues. Upon submission of a report of our investigation, which determined that the whistleblower's allegations had no merit, the SEC never brought charges.

#### Brokerage Firm President - SEC Action

Representation of the former president and owner of a brokerage firm in post-trial proceedings following an SEC lawsuit involving the alleged employment of a barred person.

Canadian Investor - SEC Insider Trading Action Settled with No Admission of Wrongdoing  
Herrick represented a Canadian investor in an SEC insider trading lawsuit filed in the Southern District of New York alleging that our client received stock tips from a business associate with access to insider information on upcoming mergers and acquisitions. After intensive negotiations involving individuals from the top echelon of the SEC's Division of Enforcement in Washington, we were able to reach a settlement resolving the charges against our client without any admissions of wrongdoing. No criminal charges were ever brought.

#### General Counsel - Options Backdating Class Action

Representation of the former General Counsel of a major technology company in a class action against the company concerning stock options backdating.

#### Hedge Fund Collapse - SEC Investigation

Representation of the chief operating officer of a \$1 billion hedge fund in connection with an SEC investigation into the fund's collapse and liquidation.

#### Securities Trader/Broker-Dealer - Investigations

The principal of a securities trader/broker-dealer in connection with investigations by the New York State Attorney General and the SEC into mutual fund trading practices including market timing and late trading.

#### Former CEO - SEC Investigation

The former CEO of a major fiber optic company in an SEC investigation of accounting irregularities. After a grueling deposition and an in-depth Wells Submission, the SEC determined not to pursue any action against our client.

#### Private Company Officers - SEC Investigation

Representation of officers of a non-public company in an SEC investigation of the company's unregistered offerings. The SEC alleged that the offerings violated various securities laws, but we convinced the SEC's New York Regional Staff to recommend that charges not be brought against these individuals.

#### Pharmaceutical Company - Insider Trading Investigation

Representation of the senior management of a pharmaceutical company in an SEC insider trading investigation of a PIPE offering.

#### Securities Broker - NASD Regulatory Proceeding

Representation of a broker in an NASD administrative proceeding alleging unsuitable and unauthorized transactions made in numerous clients' accounts.

#### Boards of Directors - Internal and SEC Insider Trading Investigations

Conducted an insider trading investigation on behalf of the boards of directors of two affiliated publicly owned computer software companies, and represented them in a related SEC investigation.

#### Corporate Director - Dismissal of Securities Class Action Complaint

The former CEO of a publicly owned telecommunications company in two securities fraud class actions stemming from the company's bankruptcy in the wake of the dot-com bubble burst. The first complaint alleged fraud in connection with disclosures about the company's credit facility. The plaintiffs then filed a second class action alleging that our client engaged in accounting improprieties and caused the company to issue false financial statements. The court granted our motion to dismiss the second complaint on the grounds that plaintiffs were on inquiry notice of a potential fraud long before they asserted their claims, and dismissed the action as barred by the statute of limitations. We were able to obtain a settlement of the entire matter on terms that were very favorable to our client.

## Independent Directors - Internal Investigation

The independent directors of a public corporation in conducting an internal investigation into shareholder derivative claims.

## Real Estate Litigation

### Real Estate Developer - Adverse Possession Dispute

Representing the insured buyers of a parcel of vacant land located in New York City's Lower Eastside in a dispute with a community activist group over the property's legal owner.

### Title Insurance Company/Property Owner - Restrictive Covenant Dispute

Representing the owner of a vacant parcel of land in Westchester County, New York in a dispute with neighboring property owners over our client's plans to construct an affordable housing complex on the property. Relying on a century-old restrictive covenant contained in a prior deed which prohibited development of a "tenement or flat-house" on the property, the neighboring property owners are attempting to block our client's planned development of the land. Herrick is defending the owner's right to develop the property, arguing that the planned modern day apartment complex is not a "tenement or flat-house" within the meaning of the restrictive covenant and, in any event, the restrictive covenant is unenforceable.

### Lender/Title Insurance - NY Supreme and Appellate Division Victory

Obtained reversal of a New York Supreme Court ruling finding that the deed transferring title to a property was void ab initio. Our client, a lender with a first priority mortgage lien on the property, had not been named as a party in the underlying action, but was sued in a subsequent action filed by plaintiffs seeking to use the ruling to extinguish our client's \$2.5 million lien on the property. We successfully intervened in the underlying lawsuit on behalf of the lender and argued that the Judge's original ruling -- finding that the deed was void ab initio -- was incorrect as a matter of law. The Judge agreed, vacated her own prior order and reinstated clean title in the mortgagor. The ruling was subsequently affirmed on appeal by the Appellate Division, First Department.

### All Claims Dismissed in Litigation Challenging \$9 Million Sale of Brooklyn Apartment Building

Secured a ruling dismissing all claims against the insured buyers of a Brooklyn apartment building in litigation seeking to strip them of their interests in the property. The plaintiff launched a multi-pronged attack on the \$9 million sale of the building, claiming the transaction had violated his right of first refusal, that the individual who had signed the deed transferring title to the property lacked capacity, and that the deed itself was a forgery. In its ruling, a New York state court granted our motion to dismiss in its entirety and cancelled the notice of pendency.

### Appellate Division Affirms Summary Judgment in Litigation over Title Agent Theft of Escrow Funds

Secured a victory in the Appellate Division, First Department, which unanimously affirmed the trial court's granting of summary judgment dismissing all claims against a title insurance company. Plaintiff sought to hold the insurer responsible for its title agent's theft of escrow funds at a closing on the sale of a New York City building. In a decision of potentially significant import to the title insurance industry, the Appellate Division held that a title



insurance underwriter cannot be held responsible for the escrow functions of its limited agent when the escrows are unrelated to the clearance of a defect in title.

**All Claims Voluntarily Dismissed Following Award of Sanctions in Real Estate Dispute**  
Successful defense of an LLC in litigation over the breach of an alleged joint venture agreement which plaintiffs claimed entitled them to an ownership interest in a valuable Manhattan property. Herrick obtained an order canceling plaintiffs' notice of pendency on the property, and successfully argued for sanctions based on frivolous litigation conduct. In addition to negotiating a substantial monetary settlement for attorneys' fees and for costs associated with delays in refinancing a \$32 million mortgage on the property, Herrick secured the voluntary dismissal of our client from the action and the plaintiffs' unconditional and irrevocable release of any and all claims to ownership of the property.

**Title Insurance Companies - Successful Resolution to Mortgage Fraud Litigation**  
Herrick achieved significant victories on behalf of title insurance companies in litigation with two former employees and a title issuing agent formerly authorized to issue policies on our clients' behalf, in connection with an alleged mortgage fraud scheme involving "mortgage stacking," or the practice of fraudulently obtaining multiple mortgages on a property by concealing outstanding liens. After negotiating a very favorable settlement with the corporate defendants, the firm obtained a decision referring an inquest on damages against the individual defendants to a Special Referee whose report, which recommended substantial damages, was ultimately confirmed by the court.

**Commercial Bank - Cross-Border Mortgage Dispute**  
Representation of a commercial bank in connection with a claim by a French entity that it held a commercial mortgage that was senior to our client's \$23 million mortgage on a Manhattan hotel. The trial court entered a \$242 million judgment of foreclosure in favor of the French entity which, if executed, would have extinguished our client's mortgage lien. On appeal, the Appellate Division reversed the trial court's decision and vacated the foreclosure judgment. We subsequently helped resolve the dispute with our client receiving payment in full.

**Successful Defense of Foreclosure Action Challenged on Eve of Scheduled Sale**  
Successfully represented the holder of a first priority mortgage secured by a West Harlem property insured by our title insurance client in an order to show cause proceeding initiated by parties claiming to be the debtor's custodians and seeking to challenge a fully litigated foreclosure action on the eve of the foreclosure sale. The court denied in its entirety the plaintiffs' motion to set aside the debtor's default and vacate the judgment of foreclosure and sale.

**Title Insurer - ARIAS UK Arbitration**  
Successfully represented a leading title insurance company in a London breach of contract arbitration initiated by the Cypress-based buyer of a \$32 million Ukrainian property. Herrick negotiated a settlement resolving the dispute for a small fraction of the original claim.

#### Title Insurance Company – Class Action Defense

Representation of a title insurance company in a class action alleging overcharges on premiums for policies sold to consumers in New Jersey. We settled—on terms favorable to our client—early enough in negotiations to minimize our client’s legal fees.

#### Title Insurance Company – Agent’s Fraud Imputed to Lender

Representation of a title insurance company against a lender whose agent committed a fraud that caused the loss of the insured mortgage. Our client successfully argued that since the agent acted on behalf of the bank, the fraud could be attributed to the bank and therefore fell under the policy’s exclusion for “acts of the insured.” The court’s ruling will have ramifications in the title insurance and mortgage lending industry since many sub-prime lenders relied upon unscrupulous agents to close their loans, and to the extent any frauds committed by those agents lead to a title loss, the lenders cannot look to the title insurers for indemnification.

#### Real Estate Development Company – Land Purchase Dispute

Representation of real estate development company in an appeal arising from its \$3 million purchase and development of 7.5 acres of land from Hebrew Huntington Congregation. A faction of the congregation challenged the court’s order that permitted our client to purchase the land under the Religious Corporations Law. The Second Department upheld the order and dismissed the appeal as moot, recognizing that our client was a bona fide good faith purchaser.

#### Real Estate Management Company – Repair and Restoration Dispute

Representation of a Manhattan real estate management company in a long-running dispute with a neighbor over the repair and restoration of a chimney. Immediately following a half-day bench trial, the justice ruled from the bench in favor of our client in the full amount claimed plus interest and attorneys’ fees.

#### Title Insurer – Fraud and Defalcation

Representation of a title insurance company in recovering \$8 million in losses incurred by defalcation and fraud of a title agent.

#### Title Insurer – Frivolous Claim Defense

Defended a title insurer in an action by a property owner seeking title insurance coverage. The court found the owner’s damages to be attributable to its own actions, and impressed sanctions against the owner and its counsel, which included attorneys’ fees, for prosecuting frivolous litigation.

#### Title Insurance Company – Fraud Action

Representation of a title insurance company in obtaining a \$1.4 million judgment and attachment of the defendants’ bank accounts in a fraud action.

Title Insurer/Secured Lender – Priority Dispute

Representation of a secured lender in its claim to the proceeds of the sale of a borrower's principal asset. The court granted our motion for summary judgment, ruling that our client's claim had priority over competing claims asserted by produce sellers under the Perishable Agricultural Commodities Act. *D.M. Rothman Co., Inc. v. Cohen Marketing Int'l, Inc.*, 2005 U.S. Dist. Lexis 14449, 2005 WL 1690524 (S.D.N.Y. 2005).

Title Underwriters – Island Mortgage Network Chapter 11

Representation of several national title underwriters in connection with the Chapter 11 cases of Island Mortgage Network, Inc. and related litigation in various courts.

*HSA Residential Mortg. Services of Texas v. Stewart Title Guaranty Co.*, 7 A.D.3d 426, 776 N.Y.S.2d 791 (1st Dep't 2004) -- achieved dismissal of \$50 million lawsuit brought by warehouse funder based on acts of alleged agent)

*In re AppOnline.com, Inc.*, 284 B.R. 181 (E.D.N.Y. 2002)

*Countrywide Home Loans, Inc. v. Lafonte*, 2003 WL 1389089, 2003 N.Y. Misc. Lexis 127 (Sup. Ct. Nassau County 2003)

Title Insurance Companies – Class Action Defense

Representation of two title insurance companies in two class actions alleging overcharges on premiums for policies sold to consumers in New York. After extensive litigation, we settled on terms favorable to our clients.

Congregation Yetv Lev D'Satmar, Inc. v. 26 Adar N.B. Corp. – Religious Corporations/Title Dispute

Appearance as *amicus curiae* on behalf of the New York State Land Title Association in an important appeal involving issues under New York's Religious Corporations law.

*Congregation Yetev Lev D'Satmar, Inc. v. 26 Adar N.B. Corp.*, 641 N.Y.S.2d 680 (2nd Dep't 1996)