



## Securities, M&A & Corporate Governance Litigation

In today's market, litigators with experience in securities, corporate governance, and M&A-related (collectively, "securities litigation") matters need to leverage their broad experience to serve as both advocate *and* as counsel and strategist, focused on helping clients to overcome not just a legal issue but a collective business problem. Given the frequent interplay between things such as corporate-control transactions, public offerings, activist shareholders, the use of complex derivatives and other financial instruments, bad news impacting stock performance, regulatory inquiries and investigations, and insurance coverage, strategic and tactical litigation decisions can have a wide-ranging impact on the success of a given transaction, as well as on companies, their boards, senior management, and advisors.

Our securities litigation team "sees the entire field," collaborating with lawyers from related practice areas—transactional M&A and securities, antitrust, white collar, bankruptcy, executive compensation—and those who are focused on our clients' sectors. We develop tailored strategies that protect our clients' interests and maximize their chances of success. We are well versed in litigating federal securities class actions, shareholder derivative suits, M&A-related challenges, proxy contests, ERISA class actions, and securities-related adversary proceedings in bankruptcy, and in conducting internal investigations and defending regulatory investigations and enforcement actions. We often handle multi-front litigation given the scourge of parallel proceedings.

### Key Contacts

James P. Smith III

### Areas of Focus

# Federal Securities Class Action Litigation Defense & Derivative Suits

We routinely defend public companies, directors and officers (D&Os), board committees, underwriters, auditors, and others in “stock-drop” and other class actions (and individual suits) brought by shareholders and other interested parties, alleging securities fraud and related claims. We have litigated claims brought under all federal and state securities laws and regulations. Our cases have arisen out of IPOs and other offerings, “earnings surprises,” financial restatements, government investigations, product failures and other bad news or “corporate trauma.”

## DERIVATIVE SUITS

We have similarly deep experience representing companies, boards of directors, board constituencies, special litigation committees (SLCs), and others in Delaware and state and federal courts nationwide in all types of shareholder and other derivative suits and related actions. We have responded to stockholder-demand letters, obtained dismissals of *Caremark* (“oversight”) claims for failure to plead “demand futility” and based on “102(b)(7)” exculpatory charter provisions, and successfully tried such claims to verdict, obtaining stays of derivative suits brought in parallel with federal securities class actions and responding to “220 demands” to inspect corporate books and records.

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## M&A Litigation

We represent private and public companies, directors, board committees, investors, private equity firms, and financial advisors in the full range of corporate-control litigation. We litigate in Delaware and other forums nationwide. We routinely handle matters arising out of tender offers, mergers and acquisitions, MBOs, LBOs, controlling-stockholder and other “going-private” transactions, spin-outs, spin-offs, recapitalizations, and asset purchases. Our experience includes:

- Hostile-takeover litigation
- Proxy contests
- Defense of expedited shareholder class actions seeking preliminary injunctions for alleged breaches of fiduciary duty, disclosure, and/or federal proxy rule violations
- Successful mounting and fending off challenges to defensive devices (poison pills, break-up fees, no-shops and other “lock-ups”)
- “Busted deal” (MAC/MAE) litigation
- Post-closing disputes relating to earn-outs, purchase-price/working-capital adjustments, and indemnification for breaches of representations and warranties

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## Representation & Warranty Insurance (RWI)

We are a frontrunner in the field of reps and warranties litigation. With an in-depth understanding of the complexities and nuances of contractual agreements, we are skilled at meticulously analyzing contracts, identifying potential breaches, and formulating comprehensive litigation strategies. This enables us to deliver favorable outcomes for our clients in SPAC-related matters, making us a go-to choice for clients seeking exceptional counsel in this nuanced area of law.

[Learn More](#)

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## Corporate Governance, Activism & Proxy Contests

We are well versed in the intricate landscape of corporate governance, shareholder activism, and proxy contests, and can navigate the complexities of these matters easily. We excel in advising and representing clients on issues such as boardroom disputes, activist campaigns, shareholder proposals, and contested proxy solicitations. Our proven track record of achieving favorable outcomes in corporate governance, activism, and proxy contests positions us as a trusted partner for clients seeking exceptional representation in this dynamic area.

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### Director & Officer

As a leader in D&O securities litigation, we navigate such matters with precision. We are adept at formulating effective defense strategies, mitigating risks, and achieving favorable outcomes for our clients, consistently demonstrating our value as a trusted advisor and a formidable force in the field.

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### Demand Response & Board Committee Representation

We represent public and private companies, boards, audit committees, special committees, SLCs, and management, as independent special counsel and otherwise, in handling complex internal investigations arising from auditor 10A demands, shareholder derivative demands, whistleblower claims, and/or the client's own initiative. We advise directors and board committees on their fiduciary duties and corporate governance "best practices" during such investigations, protect applicable privileges, and minimize the risks such investigations can create for parallel or follow-on proceedings. We team well with forensic consultants, other experts, and/or the company's auditors, as needed.

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### SPACs

We have exceptional experience in Special Purpose Acquisition Company (SPAC) and de-SPAC litigation. Operating at the vanguard of this area, we possess an in-depth understanding of the complex regulatory framework governing SPAC transactions. We possess a proven track record of successfully advising and representing clients involved in SPAC mergers and acquisitions and guiding them through the de-SPAC process. With a combination of legal acumen, industry knowledge, and a keen eye for emerging trends, our firm is well equipped to provide our clients with tailored and innovative solutions in the realm of SPAC and de-SPAC litigation.

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“Hardworking, intelligent group of lawyers. Depth of resources is a big differentiator for them.”

Client Quote—*The Legal 500 US 2023*

## Related Capabilities

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Capital Markets

Class Actions & Group Litigation

Corporate Governance

Environmental, Social & Governance (ESG)

Litigation/Trials

Mergers & Acquisitions

Private Equity

White Collar & Government Investigations

Cryptocurrencies, Digital Assets & Blockchain Technology

Financial Services

Food & Beverage

Health Care

Life Sciences

Medical Devices

## Recent Experience

An Am Law LOTW Shout Out-Worthy Gold Medal Victory In \$Jenner

ESOP Class Claims Flop

Winston Blunts Earnout Payment

Delaware Court Sees Through Plaintiffs' Poorly Disguised Derivative Claims

Winston Wins Unanimous Supreme Court Case Clarifying Securities Fraud Liability

Won Rare Denial of Class Certification for Medtronic in Securities Fraud Litigation

Prevailed before Supreme Court for Omnicare in Landmark Securities Act Case

## Resources

[Class Action Insider](#)

## Related Insights & News

### BLOG

SEC and SolarWinds Reach Settlement in Cybersecurity Case

JULY 10, 2025

### BLOG

Former CEO Sentenced to Prison in First-Of-Its-Kind Prosecution Based Exclusively on Rule 10b5-1 Plans

JULY 2, 2025

### ARTICLE

*Chambers* Blockchain 2025 Global Practice Guide: Trends and Developments

JUNE 18, 2025

### RECOGNITIONS

Winston & Strawn Recognized in *The Legal 500 U.S.* 2025

JUNE 12, 2025

#### **CLIENT ALERT**

### **“SEC Speaks” Shift in Regulatory and Philosophy Priorities**

JUNE 3, 2025

#### **BLOG**

### **SEC Decides Staking Is Not (Always) A Securities Offering After All**

MAY 30, 2025

#### **RECOGNITIONS**

### **Winston Team Led by Jeffrey Steinfeld Featured in Litigator of the Week**

MAY 16, 2025

#### **IN THE MEDIA**

### **Joe Motto Discusses DEI Policy Disclosures with *Bloomberg Law***

MAY 7, 2025

#### **CLIENT ALERT**

### **Securities Litigation Risk in the Evolving DEI Landscape**

APRIL 28, 2025

#### **SPONSORSHIP**

### **Winston & Strawn Explores Digital Assets Regulations at Harvard Law’s Blockchain and FinTech Initiative Conference**

APRIL 25, 2025

#### **RECOGNITIONS**

### **Winston Team Featured in Litigator of the Week Column**

APRIL 25, 2025

#### **WEBINAR**

### **AI for Public Companies: Leveraging Innovation for Growth & Compliance**

APRIL 23, 2025