



## Practices & Industries

# Shareholder and Securities Litigation

## Overview

Day Pitney is a leader in securities litigation, including securities class actions and derivative litigation, securities arbitration, regulatory enforcement proceedings and white collar criminal prosecutions. Public and private companies and their officers and directors, broker-dealers, investment advisors, and accounting firms count on our defense strategies for major securities fraud litigations, including many subject to the Private Securities Litigation Reform Act of 1995.

Our securities litigation team has tried class actions under Sections 10(b) and 20(a) of the Securities Exchange Act and has represented officers and directors in putative class actions. We defend corporations and individuals in derivative actions in state and federal courts, and also help them deal with New York Stock Exchange (NYSE), National Association of Securities Dealers (NASD), Securities and Exchange Commission (SEC) and state investigations and enforcement actions.

Both suitors and targets have sought our counsel in corporate control contests, and individual and institutional investors have relied on us for representation in fraud and derivative claims arising out of failed investments.

### Practice Areas

Day Pitney has broad experience in the full variety of litigation arising under the securities laws and regulations, including the following:

- Federal and state securities class actions
- Shareholder derivative litigation
- SEC, NYSE, NASD and state regulatory investigations and enforcement actions involving broker-dealers, investment advisors, hedge funds, public and private companies, and individuals
- Investigations and actions involving alleged accounting irregularities
- Public offering and proxy litigation
- Internal investigations
- Representation of special committees
- Sophisticated consulting services, including service as SEC monitor

### Broker-Dealer Representation

Our team defends broker-dealers and investment advisors in enforcement proceedings before the SEC, NYSE, NASD and other securities regulators; in arbitrations at self-regulatory organizations; and in parallel criminal proceedings before the U.S. Department of Justice and offices of state attorneys general. We also help them deal with private civil litigation in the federal and state courts.

Our lawyers also have significant experience in matters involving broker-dealer regulation, investment advisor regulation, investment company regulation, public company disclosure, insider trading, mutual fund market timing and late trading, and general securities fraud.

### Sophisticated Consulting Services

Clients also retain our securities litigation lawyers in a consulting capacity to handle a variety of issues. For example, we recently acted as independent consultant to an NYSE specialist firm pursuant to joint orders of the SEC and NYSE; served

as plan administrator to monitor a broker-dealer's SEC-ordered distribution of \$50 million to mutual fund investors; and published a white paper on behalf of a major technology vendor and service provider concerning the SEC's electronic record-keeping rule.

### **Integrated Securities Representation**

Day Pitney has a broad securities law practice, representing a wide variety of business enterprises in public and private offerings of debt and equity securities. In addition to counseling companies raising capital through securities offerings, we assist our diverse publicly owned corporate clients in complying with the regulatory requirements of the Securities Exchange Act of 1934, including the periodic reporting, proxy and insider trading provisions of the 1934 act as well as the evolving implications of the Sarbanes-Oxley Act. Our Securities Litigation practice group works closely with our White Collar Defense and Internal Investigations practice group to bring an extra dimension and perspective to matters. Clients are particularly pleased by our ability to marshal a multidisciplinary team to respond on extremely short notice to significant problems. On numerous occasions, they have called on us to respond to such matters as threatened or actual regulatory actions, injunctive proceedings, or corporate takeover scenarios.

## **Experience**

*No aspect of this advertisement has been approved by the highest court of any state. Prior results do not guarantee a similar outcome.*

- Defended a class action against a prominent bank under Sections 10(b) and 20(a) of the Securities Exchange Act, which settled on terms favorable to our client.
- Represented the former officers and directors of a large manufacturer in a series of similar putative class actions.
- Defended an expert networks manager and some of its directors in a case involving allegations of manipulation of data and reports designed to suppress the price of the plaintiff's stock.
- Represented a global specialty pharmaceutical company in connection with a proposed securities fraud class action, which alleged that accounting irregularities and materially false or misleading statements by the company and its top executives artificially inflated the company's stock price.
- Represented a global investment banking firm's operations in defending securities fraud claims that certain investors in notes used to finance an acquisition, brought against the officers and directors of the acquiring firm and against the underwriters.
- Represented a regional bank holding company and certain of its former officers and directors in a consolidated class and derivative action alleging securities violations due to allegedly inadequate loan loss reserves for commercial real estate loans.
- Represented a company and the board of directors of a target company in a securities class action seeking to enjoin an acquisition.
- Represented a class of investors in an action involving a series of failed tax shelters that were formed in connection with the development and use of ethanol as an additive to gasoline.
- Represented a law firm in the defense of a securities action involving the firm's participation in the issuance of industrial revenue bonds.
- Represented an international accounting firm in connection with two securities class actions brought as a result of the bankruptcies of two of its audit clients.
- Represented a bank and its officers and directors in a class action under Sections 10(b) and 20(a) of the Securities Exchange Act, which was the largest such action to reach trial in Connecticut in the past 10 years.
- Represented a large electric utility and its current and former officers in seven consolidated securities fraud actions under Sections 10(b) and 20(a) of the Securities Exchange Act.
- Represented an underwriter in claims under Sections 11 and 12(2) of the Securities Act of 1933 and under the Connecticut Uniform Securities Act related to the initial public offering of Uniroyal Chemical.
- Represented leading accounting firms in accountant liability and securities fraud class action cases, including the Phoenix Shannon litigation, the First Connecticut S.B.I.C. litigation and (as co-counsel) the Fine Host litigation.

- Represented a former chief executive officer in class actions brought under Sections 10(b) and 20(a) of the Securities Exchange Act and in related derivative litigation.
- Represented current and former officers and directors of a large document management/office products company in putative securities fraud class actions and in derivative litigation.
- Represented former senior officers of a software company in a putative class action under Sections 10(b) and 20(a) of the Securities Exchange Act.
- Acted as co-counsel to a public company in consolidated actions under Sections 11, 12(a)(2) and 15 of the Securities Act of 1933 related to the company's secondary public offering.
- Represented a public company in litigation related to an unsolicited attempt to acquire another company.
- Represented and obtained summary judgment on behalf of the directors and officers of a large managed care company in connection with Section 11 and 12(2) of the Securities Act of 1933 and insider trading claims.
- Represented former officers and directors of a large manufacturing company and obtained the voluntary withdrawal of a shareholder class action against them that was pending in the Connecticut federal court.
- Represented a large direct mail company in shareholder derivative and securities fraud putative class actions in the U.S. District Court in Connecticut and the Connecticut Superior Court arising from the initial failure of a merger.
- Represented a multinational rental company and its officers and directors in shareholder derivative and securities fraud putative class actions in Connecticut state and federal courts arising from a failed acquisition.
- Represented a hedge fund, its principals and related broker-dealer in an extended investigation by the Connecticut Securities Division involving alleged fraud in management fees, market manipulation and supervisory issues involving the broker-dealer.
- Represented a registered broker-dealer and financial services company in successfully obtaining a temporary restraining order prohibiting defendants from taking the company's files and customers, and negotiated a stipulation continuing this temporary restraining order while the case was heard on the merits in an arbitration in a New York Supreme Court action.
- Served as the independent third-party auditor for a NYSE specialist firm pursuant to NYSE Rule 104(h), and conducted a review of all specialist systems employing algorithms and all algorithms to ensure that they operated in accordance with SEC and NYSE rules.
- Appointed by the SEC as Distribution Agent for \$50 million of civil penalties paid by a public company in settlement of SEC enforcement proceedings.
- Represented two former financial officers of a public company in connection with an SEC investigation involving improper "earnings management," including the use of "cookie-jar reserves" and undisclosed changes in revenue recognition accounting policies.
- Represented a public auditing firm in connection with a shareholder derivative suit involving the "going concern" qualification and the adequacy of review of related-party transactions.
- Represented a news organization in connection with two separate SEC inquiries concerning the dissemination of false rumors by short sellers.
- Represented a hedge fund executive in connection with the New York State Attorney General's investigation concerning the subprime mortgage-backed securities market.
- Represented the chief risk officer of a futures trading firm in connection with a Commodity Futures Trading Commission investigation and Board of Directors Audit Committee investigation concerning substantial trading losses suffered by the firm resulting from unauthorized after-hours trading by an employee.
- Represented a group of former SEC commissioners (including a former chairman) and officials and professors in submitting an amicus curiae brief to the U.S. Court of Appeals for the Second Circuit in *CSX v. TCI*, arguing that, under certain circumstances, total return swap agreements may result in beneficial ownership of the referenced shares under SEC Rule 13d-3(b).