

Gary D. Sesser

Partner

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contact

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Because of my years of experience and the knowledge and judgment that come with it, I take a wide-angle view that allows me to size up situations quickly. I always take a hard look at the strengths and weaknesses of every potential course of action and let clients know how I'd proceed if I were in their shoes. I tackle each matter aggressively in terms of legal tactics, but I'm not prone to drama or hyperbole. In fact, people tell me I'm easy to work with and cordial.

Bringing more than four decades of experience to his diverse commercial litigation practice, Gary Sesser advocates for clients in a variety of areas including trusts and estates disputes, art law, antitrust, maritime and transportation, and creditors' rights. Gary also has a stellar appellate record in complex and challenging cases.

Always meticulously prepared and quick on his feet, Gary relishes the competition and intellectual challenges inherent in litigation. He enjoys crafting creative strategies to counter adversaries' plans and achieve client objectives. His ability to read the other side and his excellent writing and oral advocacy skills help him in generating and presenting compelling arguments that persuade courts and other tribunals. With a knack for spotting an opponent's vulnerability, Gary never hesitates to exploit a weakness and pound away at it until it becomes part of the case's narrative.

Outside of litigation and arbitration, Gary regularly advises clients on corporate compliance issues, including antitrust. During his career, he has also litigated many maritime cases involving contractual conflicts between ship owners and charterers. These matters were predominantly arbitrated and international in scope at a time when the legal world was still bound by national borders.

Gary co-chairs the firm's Litigation Department, chairs the firm's Ethics Committee, and acts as the firm's General Counsel, and as a court-appointed mediator for the U.S. District Court for the Eastern District of New York. He is a Life Fellow of the American Bar Foundation, has received the highest ratings for professional competence and ethics from Martindale-Hubbell®, and has been recognized for many years by Super Lawyers and Best Lawyers in America.

Experience

- In 2013, won dismissal of two federal securities and commodities act lawsuits against a family of hedge funds and their advisors on the ground that the relevant transactions were not "domestic" in nature, even if the defendants were regulated entities located in the United States and there were other significant U.S. contacts. These two decisions – *Starshinova v. Batratchenko*, 931 F. Supp. 2d 478 (S.D.N.Y., 2013) (Judge Kimba M. Wood) and *Loginovskaya v. Batratchenko*, 936 F. Supp. 2d 357 (S.D.N.Y., 2013) (Judge J. Paul Oetken), redefine the applicability of federal commodities law to international financial transactions in light of the U.S. Supreme Court's decision in *Morrison v. Nat'l Austl. Bank, Ltd.*, 130 S.Ct. 2869 (2010). The *Loginovskaya* decision was affirmed by the Second Circuit in September 2014. *Loginovskaya v. Batratchenko*, 2014 WL 4358439 (2d Cir. 2014).
- In 2012, successfully persuaded the New York Court of Appeals to reverse a unanimous Appellate Division decision and to reinstate the judgment of the Surrogate's Court awarding ownership of *The Cry*, a monumental Jacques Lipchitz sculpture, to our client, a Canadian art collector.
- In 2012, obtained summary judgment in favor of renowned artist Robert Indiana (creator of the iconic LOVE sculpture, among other important works), dismissing Lanham Act and contract claims against him arising out of an agreement to produce and sell artwork depicting the Hindi word for "love" written in a Hindi alphabet. In 2013, obtained dismissal of claims brought by a Monaco art dealer who purchased ten so-called "English Prem" sculptures, believing them to be works of Robert Indiana.
- On behalf of a dissenting shareholder, overturned the settlement of a shareholders derivative case by successfully arguing in the U.S. Court of Appeals for the Second Circuit that the company's proposed indemnification of its former CEO for his \$186 million liability under Section 304 of Sarbanes-Oxley was unlawful, an issue of first impression decided in September 2010.
- Successfully argued en banc appeal before the U.S. Court of Appeals for the Third Circuit in the *In Re Cybergenics* case, involving the derivative right of a creditors committee to set aside fraudulent transfers on behalf of the bankruptcy estate.
- Provided expert testimony to the Competition tribunal in Peru on the Noerr-Pennington doctrine in support of our clients' successful defense of antitrust claims relating to their operation of rail service to Machu Picchu.
- Led an internal investigation of antitrust violations in the parcel tanker industry. Worked with co-counsel to secure complete immunity from criminal prosecution for the client and its executives under the Justice Department's Corporate Leniency Program.
- Prosecuted fraudulent transfer and veil piercing claims on behalf of a major Japanese insurance company to recover in excess of \$40 million lost in connection with the client's reinsurance of a financial guarantee.
- Defended clients in a variety of industries in treble damage and class action antitrust litigations as well as civil investigations by the Justice Department's Antitrust Division.
- Represent estates, art galleries, collectors, authentication boards, and art dealers in litigated disputes relating to authenticity, value, and ownership of works of art.
- Advise clients on corporate compliance issues, including antitrust, legal ethics, Foreign Corrupt Practices Act, anti-boycott and trade sanctions legislation.
- As trial counsel for a major Norwegian shipowner, attached \$21 million of real estate by piercing the corporate veil of 39 commonly-owned companies in order to secure a claim for breach of three oil tanker charter parties.

- Represented a Polish bank in an action against U.S. drawee and depositary banks for certification and payment of a multi-million dollar check over a forged endorsement; during the course of the litigation, successfully located the forger, assisted in his prosecution and conviction, and recovered 85% of the proceeds for the client through civil forfeiture proceedings.

Outside the Office

I've got a strong interest in history, and I like to read a variety of books in that area. In addition to riding my bike, I love to follow sports. As a Boston native, I'm naturally a fan of the New England teams. Beyond that I like to travel and spend time with my friends.

Practices

Antitrust
Art Law
Insolvency and Creditors' Rights
International Arbitration
Trusts & Estates

Admissions

Bar Admissions

District of Columbia
Massachusetts
New York

Affiliations

Fellow, American Bar Foundation
Member, The Association of the Bar of the City of New York
Member, Federal Bar Council
Member, Maritime Law Association
Member, American Bar Association

Education

The University of Michigan Law School (JD, *cum laude*, 1975)
Cornell University (BA, *magna cum laude*, 1972)

Awards/Honors

The Best Lawyers in America®, 2010-2024
Super Lawyers®, 2009-2023
Chambers USA, 2014
AV® Preeminent™ rated by Martindale-Hubbell®