

## Lawyers



### Penny Shane

Of Counsel

#### New York

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Penny Shane's practice focuses on litigation involving financial institutions, including class actions and governmental investigations arising out of the issuance and trading of securities, commodities or currency trading, interbank communications regarding interest rates or benchmarks, and other practices in connection with lending activities, trust administration and investment advisory services. She also litigates complex commercial disputes, including disputes over technology, contract performance and corporate governance.

In addition, Ms. Shane has extensive constitutional litigation experience, including landmark cases involving civil rights.

Ms. Shane is admitted to practice in New York state courts, the U.S. District Court for the Eastern, Western and Southern Districts of New York, the U.S. Court of Appeals for the Second Circuit, the U.S. Court of Appeals for the District of Columbia Circuit and the U.S. Supreme Court.

In 2006, Ms. Shane was commended in an opinion handed down by the U.S. District Court of the Southern District of New York relating to a prolonged pro bono case, *Ingles v. Toro, et al.*, which resulted in an overhaul of use of force policies and practices at Rikers Island.

#### **Professional Activities and Community Involvement**

- Author, "The Present and Future of Securities Litigation," *New Developments in Securities Litigation* (2014)
- Contributing Author, *Inside the Minds: New Developments in Securities Litigation*, 2014 ed.
- Member, Judicial Improvements Advisory Committee, Lawyers Advisory Group on Complex Civil Litigation (SDNY)
- Panelist, New York City Bar Association's "Where are the Women in Commercial and Appellate Litigation?" (March 2011)
- Founding Member, Kate Stoneman Project for Women in the Legal Profession (2009)
- Former director, City Bar Fund of the New York City Bar Association
- Former member of a task force appointed by former New York

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#### PRACTICES & CAPABILITIES

**Litigation**

**Securities Litigation**

**Supreme Court and Appellate**

**Financial Services**

**Estates & Personal**

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#### EDUCATION

**1988, New York University School of Law, J.D.**

**1985, Barnard College, Columbia University, B.A.**

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#### BAR ADMISSIONS

**New York**

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#### CLERKSHIPS

**The Honorable Richard Owen, United States District Court, Southern District of New York, 1988-1990**

State Court Chief Judge Kaye to improve legal services for the poor

## SELECTED REPRESENTATIONS

### Commercial Litigation and Arbitration

- **Enbridge Class Action and Derivative Litigation** – Successfully represented Enbridge Inc., its directors, and subsidiary Enbridge Pipelines (Alberta Clipper) L.L.C. in a class action litigation and derivative suit arising from Enbridge Energy Partners, L.P.’s purchase of a 66.67% interest in the American segment of the Alberta Clipper pipeline from its general partner in 2015, which included a ruling from the Delaware Supreme Court fundamentally changing the law on the application of the “entire fairness” doctrine.
- **Delaware Corporation Shareholder Litigation** — As counsel to founder and co-CEO of a privately held company in litigation arising out of disputes between founders, successfully opposed preliminary injunction applications, and narrowed claims to be determined at trial. Handled trial testimony of key witnesses as well as appeal of certain post-trial rulings.
- **Tronox Spin-off and IPO Litigation** — Served as counsel to former directors of Kerr-McGee Corporation in litigation brought in the Southern District of New York by shareholders and bondholders of Tronox Inc. alleging violations of securities laws in connection with the 2006 spin-off and IPO of Tronox—a former Kerr-McGee subsidiary. In June 2010, the Court dismissed many of plaintiffs’ claims against S&C’s clients.
- **Satellite Broadcast Television System Design and Construction Arbitration** — Represented major European electronics company in dispute over installation, functionality and performance of an innovative direct-to-user broadcast television system in Asia.

### Financial Services

- **Interest Rate Benchmark Litigations** – Represent a foreign bank and its affiliates in responding to allegations of conspiracy to manipulate certain interest rate benchmarks sometimes used to price swaps, currency-based instruments and foreign exchange derivatives.
- **IPO Allocation Investigations and Litigations** – Served as counsel to Goldman, Sachs & Co. and as liaison counsel for 55 underwriter defendants in over 300 securities class actions alleging fraud in the issuance and trading of Internet and technology stocks from 1998 through 2000. In October 2009, the district court ordered final approval of a \$586 million global settlement resolving all of the actions, which followed a landmark ruling by the Second Circuit reversing the district court’s decision to certify plaintiff classes. Also represented Goldman Sachs in purported antitrust and “short swing profit” litigation before the United States Supreme Court and in

IPO-related regulatory investigations.

- **Moody's Corporation Securities Litigation** – In putative shareholder class action and derivative actions against Moody's Corporation arising out of alleged misrepresentations regarding its independence when rating structured finance products, led the successful opposition to plaintiffs' motion for class certification in March 2011. Summary judgment was granted by the district court in August 2013.

- **State Court Actions**

- **eToys IPO Litigation** – Served as counsel to Goldman, Sachs & Co. in defense of an action that arose out of the May 1999 eToys IPO and raised novel claims about the relationship between IPO underwriters and issuers.

- Successfully persuaded New York State's highest court to dismiss three of plaintiff's claims, and in November 2010 obtained summary judgment in the state trial court, which dismissed the case in its entirety. Plaintiffs appealed this decision to the Appellate Division, First Department, which affirmed the dismissal in all respects. Also secured rulings requiring plaintiff to pay 50 percent of the cost of certain electronic discovery from Goldman Sachs, including attorneys' fees.

- Represented the **trustees of certain mutual funds**, and certain funds named as nominal defendants, in actions first brought in the Southern District of New York and then restyled as a breach of fiduciary duty action brought in Delaware courts arising out of investments in Internet gambling companies. Obtained dismissal of all claims in all actions and successfully defended the decisions on appeal to the Second Circuit and the Delaware Supreme Court.

## **Constitutional Litigation**

- **First Amendment Challenge to Insurance Regulations** —

- Represented a premier automotive insurer in landmark constitutional challenge to New York State's restrictions on referrals to automotive repair shops. Obtained summary judgment in insurer's favor, together with an injunction barring the State from enforcing the restrictions, and successfully defended decisions on appeal.

- **Landmark Challenge to "Don't Ask, Don't Tell" Policy** —

- Served as co-counsel in test case challenging the constitutionality of the federal government's policy to silence or exclude gay military service members. Obtained preliminary and permanent injunctive relief after a full trial on the merits, which included examinations of high-ranking military and Department of Defense witnesses.

## **RANKINGS & RECOGNITION**

- *Euromoney's Benchmark: America's Leading Litigation Firms and Attorneys* – recognized as a National Practice Area Star in securities (2015-2020), a Local Litigation Star in New York (2010-2023) and as one of the Top 250 Women in Litigation in New York (2012-2022)
- *Chambers USA: America's Leading Lawyers in Business* — recognized for securities litigation in New York (2009-2017, 2021, 2022)
- *The Legal 500 United States* — recommended in Antitrust: Civil litigation/class actions (2016)
- *New York Super Lawyers* — recognized as a leading lawyer in *Securities Litigation, Business Litigation and Class Action/Mass Torts* (2006-2022) and in the *Women's Edition* (2018)
- *Super Lawyers Corporate Counsel Edition* — recognized for Securities Litigation (2009)