

Paul R. Bessette

Partner

Trial and Global Disputes

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Paul Bessette, who serves as co-chair of the Firm’s Corporate & Securities Litigation Practice, defends clients in securities and shareholder litigation, government investigations and enforcement actions, and complex business disputes throughout the United States. For more than 30 years, Paul has represented companies, officers and directors, underwriters and accountants in securities fraud class actions, shareholder derivative litigation, regulatory investigations and bankruptcy D&O litigation. He regularly works with board committees leading internal investigations and advising companies on governance and fiduciary duty issues.

Paul is ranked by *Chambers*, *Best Lawyers in America*, and *Legal 500*, among others, and has been recognized by *Super Lawyers* and *Lawdragon*. He is rated AV® Preeminent™ by Martindale-Hubbel. Client and peer reviews in *Chambers* say Paul “has a fast growing reputation for the quality of his representation in a wide range of securities matters. Market sources laud his ability to engage with company directors, saying that he ‘is a very strong boardroom guy with a good team around him.’” “Practicing in this area is an art, and he is very good at it.”

Paul frequently speaks and writes on shareholder litigation, corporate disclosure, corporate governance and related topics. He has authored numerous securities-related articles for publications including *ABA Business Law Today*, *Insights*, *Financial Executive*, *Law360*, *Financial fraud Law Report*, *The D&O Diary*, *Bloomberg Law Reports*, *National Underwriter* and *The Securities Reporter*.

Matters

FXCM, Inc.: Obtained a hard-won dismissal for FXCM, Inc., its CEO, and its CFO in a securities class action following the Swiss National Bank’s unprecedented decision to allow the Swiss franc to trade freely against the euro. The Southern District of New York dismissed the case holding that FXCM’s losses were attributable to an unforeseeable market event, not to any fraud or recklessness by FXCM and its management. The Second Circuit remanded to allow the District Court to consider evidence from a regulatory investigation that concluded after the case was dismissed. The District Court once again dismissed the case and the Second Circuit affirmed the judgment. 767 Fed. App’x

139 (2nd Cir. 2019).

In re Hanger, Inc.: Obtained dismissal of a case against Hanger and its CEO that involved a large, four-year restatement and an audit committee investigation that concluded that some members of management created “cookie jar” reserves to smooth earnings and set an inappropriate “tone at the top.” In a panel opinion in August 2018, the Fifth Circuit reversed and remanded for further proceedings. After filing for panel rehearing and rehearing *en banc*, the panel vacated its August 2018 opinion and replaced it with a decision that fully affirmed the district court’s dismissal with prejudice. The panel held that the plaintiffs’ allegations constituted the impermissible group pleading of scienter and did not adequately address the individual defendants’ state of mind. 768 Fed. App’x 175 (5th Cir. 2019).

Neiman v. Bulmahn, et al.: The Fifth Circuit affirmed an August 2015 district court dismissal of a putative class action filed by ATP shareholders under the Securities Exchange Act of 1934. The shareholders accused ATP’s former officers of committing securities fraud by misrepresenting various aspects of the company’s business prior to bankruptcy, including its production from a particular oil-and-gas well, its liquidity, and the resignation of its CEO. The Fifth Circuit held that the shareholders failed to satisfy the heightened standard for pleading scienter. 854 F.3d 741 (5th Cir. 2017).

In re SemCrude L.P.: Obtained a permanent injunction preventing investors in bankrupt oil-and-gas company from bringing derivative claims against former CEO in Oklahoma state court. A successful Third Circuit appeal won reversal of orders that had denied injunctive relief, with the court quoting the former CEO's brief in a published opinion on the distinction between derivative and direct claims. 796 F.3d 310 (3rd Cir. 2015).

Miyahira v. Vitacost.com, Inc.: Obtained a full dismissal of plaintiff’s claims under the Securities Act of 1933 for misleading statements in Vitacost’s IPO prospectus. The Eleventh Circuit affirmed the dismissal, holding that the complaint did not state a claim for relief despite reliance on ten confidential witnesses and over 100 pages of allegations. This decision is significant given the nearly strict-liability nature of plaintiff’s Securities Act claims. 715 F.3d 1257 (11th Cir. 2013).

Bell v. Ascendant Solutions, Inc.: Defeated class certification in a securities fraud class action involving alleged fraud in connection with an IPO. In a widely followed opinion, the Fifth Circuit upheld the denial of class certification based on argument that the company’s stock did not trade in an efficient market during the class period. 422 F.3d 307 (5th Cir. 2005).

In re Crossroads Systems, Inc. Securities Litigation: Obtained summary judgment in a securities fraud class action where the plaintiffs alleged that the company improperly accounted for inventory reserves and sought more than \$800 million in damages. The Fifth Circuit affirmed in *Greenberg v. Crossroads Sys., Inc.*, 364 F.3d 657 (5th Cir. 2004). This opinion is one of the key Fifth Circuit cases on what plaintiffs must show to demonstrate entitlement to the fraud-on-the-market presumption of reliance, a key element of a §10(b) securities-fraud claim.

Credentials

EDUCATION

Law Degree, Baylor University
B.A./B.B.A., The University of Texas at Austin

ADMISSIONS

Supreme Court of the United States

U.S. Court of Appeals for the Second Circuit
U.S. Court of Appeals for the Third Circuit
U.S. Court of Appeals for the Fifth Circuit
U.S. Court of Appeals for the Ninth Circuit
U.S. Court of Appeals for the Eleventh Circuit
U.S. District Court for the Eastern District of New York
U.S. District Court for the Southern District of New York
U.S. District Court for the Eastern District of Texas
U.S. District Court for the Northern District of Texas
U.S. District Court for the Southern District of Texas
U.S. District Court for the Western District of Texas
U.S. District Court for the Central District of California
U.S. District Court for the Eastern District of California
U.S. District Court for the Northern District of California
U.S. District Court for the Southern District of California
California
New York
Texas

Recognition

"He's very substantive and analytical as well as timely in providing information to clients. A strong securities player.

CHAMBERS, 2021

Acts on behalf of corporations and their Ds&Os in high-stakes securities litigation, including enforcement actions.

CHAMBERS USA, 2020, BAND 2

Paul Bessette maintains a specialty in securities litigation, which includes SEC enforcement actions and class actions.

CHAMBERS, LITIGATION: SECURITIES-TEXAS 2019, BAND 2

"An expert in the area and knows it extraordinarily well" "Practicing in this area is an art, and he is very good at it"

CHAMBERS USA 2018, BAND 2

Paul "has a fast growing reputation for the quality of his representation in a wide range of securities matters."

CHAMBERS USA, 2016

"Market sources laud his ability to engage with company directors"

CHAMBERS USA, 2016

Paul “is a very strong boardroom guy with a good team around him.”

CHAMBERS USA, 2016

“Strength in a full range of securities litigation matters.”

U.S. NEWS & WORLD REPORT, 2015

Recognized for Securities Litigation

THE BEST LAWYERS IN AMERICA, 2011–2021

One of “100 Lawyers You Need to Know in Securities Litigation”

LAWDRAGON, 2008

One of “3000 Leading Lawyers in America”

LAWDRAGON.COM, 2006, 2010–2011

Recognized by Texas Super Lawyers, Super Lawyers magazine

2007–2019

Recognized for Securities Litigation

SUPER LAWYERS, CORPORATE COUNSEL EDITION, 2009–2010

Insights

ARTICLE

May 23, 2021 • Source: The D&O Diary

SPACs and SPAC-Related Litigation: A Primer on Reducing Litigation and Enforcement Risk

May 12, 2020 • Source: Bloomberg Law

Steps to Limit Exposure to Pharma, PPE Shareholder Lawsuits

CLIENT ALERT

August 25, 2020

Court Dismisses Shareholder Suit Seeking To Recover Stock Drop from FDA Nonapproval of Experimental Drug

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Events

SPEAKING ENGAGEMENT

April 28, 2021

Paul Bessette to Speak at PLUS D&O Symposium

May 21, 2019

Paul Bessette to Speak at Institute for Energy Law’s 6th Mergers & Acquisitions in Energy Law

Conference

WEBINAR

November 10, 2020

13th Annual King & Spalding Medical Device Summit

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News

CASES & DEALS

September 10, 2021

Lexicon Pharmaceuticals, Inc. - 5th Circuit Court of Appeals Affirms Dismissal

RECOGNITION

June 10, 2021

Legal 500 United States 2021 Ranks King & Spalding Practices Among the Top in the Nation

May 20, 2021

Chambers USA 2021 Names 179 K&S Lawyers and 65 K&S Practice Groups as Leaders in Their Fields

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