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PRACTICE AREAS

Civil Litigation

Business and
Commercial Disputes

Capital Markets
Litigation

Creditors' Rights and
Bankruptcy Litigation

Securities and
Shareholder Suits

Derivatives

Corporate Governance

CLERKSHIPS

Honorable William H.
Timbers, United States
Court of Appeals for the
Second Circuit

EDUCATION

Fordham University
School of Law, J.D.,
1984

Manhattanville College,
B.A., 1978

Brian S. Fraser

Brian S. Fraser has been representing and advising clients in complex commercial and financial matters for more than 25 years. In financial litigation, Mr. Fraser represents clients in capital markets, derivatives, securities, including asset-backed securities, corporate governance and insurance litigation. Mr. Fraser represents hedge funds, fund managers, institutional investors, insurers, investment banks, and other clients involved in disputes arising from transactions or investments in the equity, debt, structured finance and derivatives markets.

In commercial litigation, Mr. Fraser has extensive experience representing manufacturing and other commercial clients in mass tort, antitrust, breach of contract and intellectual property matters.

Mr. Fraser has successfully represented plaintiffs and defendants in state and federal courts across the country and in arbitrations and mediations.

He also frequently advises clients on litigation risk and avoidance in connection with transactions and has often been called upon to evaluate likely litigation outcomes.

Illustrative representations include:

- The Boeing Company in wrongful death and tens of billions of dollars in property damage claims arising from the terrorist attacks on September 11, 2001;
- Financial Guaranty Insurance Company in litigation with municipalities throughout the United States arising from the insurer's credit ratings downgrade during the financial crisis;
- Institutional investors including a university endowment in an involuntary winding up proceeding against a hedge fund in the Cayman Islands;
- A Chinese government-owned corporation in civil litigation in the U.S. and a multi-jurisdictional criminal investigation arising from a Ponzi scheme that cost the company's U.S. subsidiary tens of millions of dollars;
- A fitness equipment manufacturer in antitrust and patent infringement litigation against its largest competitor;
- A significant investor in a group of hedge funds that defaulted on credit default swap protection providing "pay as you go" protection on notes issued by a CDO; and
- A large investment bank in substantial broken trade litigation against a foreign bank.

In addition, Mr. Fraser is a regular speaker and writer on a variety of topics, most recently including municipal bonds, securities, bank debt and trial practice.

He is a member of the Association of the Bar of the City of New York, the American Bar Association (Section of Business Law, Subcommittees on Civil Litigation and SEC Enforcement Matters, Private Investment Entities, and

BRIAN S. FRASER (Cont.)

Federal Regulation of Securities; Section of Litigation; Committee on Securities Litigation), the International Bar Association, and the Federal Bar Council. Mr. Fraser is a member of the Managed Funds Association and the Hedge Fund Roundtable. He has been named a Fellow of the Litigation Counsel of America and has repeatedly been recognized as a New York Super Lawyer for Business Litigation.

Mr. Fraser is a member of the New York bar and is admitted to practice before the United States District Courts for the Southern and Eastern Districts of New York, the United States Court of Appeals for the Second Circuit and the United States Supreme Court and has been admitted to practice before numerous federal and state trial courts around the country on a pro hoc vice basis.

HONORS & AWARDS

- Selected by *Super Lawyers* magazine as a New York Super Lawyer for Business Litigation (2007, 2010, 2011)
- Named as Fellow, Litigation Counsel of America, 2009

NEWS

Brian Fraser quoted in *Ignites* article "Lord Abbett Loses 'Bama Bond Gamble"

RK&O attorneys recognized as 2011 Super Lawyers

Brian Fraser quoted by *United Press International*, *The Boston Globe* and *The Bond Buyer* on Central Falls Bankruptcy

Brian Fraser quoted in *Law360* article "Superdome Owner Tries To Revive \$13M Insurance Suit"

Brian Fraser quoted in *The Wall Street Journal* article "N.Y.'s Oversight of Nassau County Will Be Long-Term Positive"

Brian Fraser quoted in the *Investor's Business Daily* article "Muni Bond Risks Mount, But Federal Bailout Unlikely"

Brian Fraser quoted in *The Wall Street Journal* article "Central Falls, RI, Needs State Aid To Avert Collapse"

Brian Fraser quoted in the *Dow Jones Newswires* article "Rhode Island's Receivership Law Shows Its Teeth"

Brian Fraser and Tamala Newbold author *Law360* Guest Column

Brian Fraser quoted by the *Pittsburgh Post-Gazette* article "Municipal bond certainties crumbling market riskier"

RK&O attorneys recognized as 2010 Super Lawyers

Jon Kibbe and Brian Fraser quoted in the *Debtwire* article "Loan Assignment Friction Flares; JPMorgan Case Tiptoes into Good Faith Territory"

Brian Fraser quoted in the *Palm Beach Daily News* article "Credit Rating Changes, New Rules to Take Effect on Municipal Bonds"

Brian Fraser quoted in the *Time* article "Municipal Bonds: The Next Financial Land Mine?"

Brian Fraser quoted in the *Bloomberg* article "Bond Insurer's Pledge to Keep Ratings Was 'Puffery,' Courts Say"

BRIAN S. FRASER (Cont.)

Ruling in 9/11 Property Damage Litigation May End Larry Silverstein's Pursuit of Billions in Damages

New York Court of Appeals hears oral argument regarding an *amicus curiae* brief filed by RK&O Partners Brian Fraser and Lucinda McConathy on behalf of the LSTA

New York Court of Appeals grants application to file an *amicus curiae* brief submitted by RK&O Partner Brian Fraser on behalf of the LSTA

RK&O Partners, Brian Fraser and Lucinda McConathy, submit an *amicus curiae* brief on behalf of the LSTA to the New York Court of Appeals

Federal Court Limits Aviation Defendants' Potential Liability in 9/11 World Trade Center Litigation
Richards Kibbe and Orbe Attorneys Named Super Lawyers

SEMINARS & SPEAKING ENGAGEMENTS

RK&O partners participate in the panel discussion "Receiving Information, Managing Risk, and Preserving Liquidity: Strategies for the Current Regulatory Landscape" at the Financial Services General Counsel Luncheon in San Francisco

Brian Fraser recently participated in the panel discussion "State of the States: Is Default and Muni-Bailouts in their Future?" at the Construction Industry Round Table Spring 2011 Conference

RK&O partners present "Receiving Information, Managing Risk and Preserving Liquidity: Strategies for the Current Regulatory Landscape" at the Alternative Asset Management General Counsel Luncheon in New York City

Brian Fraser and Shari Brandt present "What Litigators Need to Know About Dual Representation and Potential Conflicts of Interest During Internal Investigations - Understanding the Impact of *United States v. Nicholas*"

Brian Fraser participates as a Panelist in a Compliance Roundtable hosted by the LSTA

Brian Fraser participates as a Panelist in "Distressed Loan Trading and Collateral Loan Obligations: How to Buy, Sell and Finance Individual Loans and Portfolios"

PUBLICATIONS

"The Prospect of Municipal or State Defaults on Bond Obligations: Can Bankruptcy Help?" by Brian Fraser published in Thomson Reuter's *Aspatore Special Report*

"Municipal Securities Rulemaking Board Notice Raises Questions Whether Certain Loans to Municipal Governments are Securities" by Brian Fraser featured in *Law360*

"Municipal Securities Rulemaking Board Notice Raises Questions Whether Certain Loans to Municipal Governments are Securities" by Brian Fraser

"As Municipal Securities Market Grows, Increased Regulation is Needed" by Brian Fraser published in *New York Law Journal*

"Recent New York Case Demonstrates Limits of Big Boy Provisions" by Brian Fraser and Tamala Newbold published by *VCExperts*

BRIAN S. FRASER (Cont.)

"Court Tests a Borrower's Ability to Block Loan Transfers to Competitors" by Jon Kibbe, Brian Fraser and Eric Rosen published in the *Conference on Consumer Finance Law Quarterly Report*

"Big Boy Update: Recent New York Case Demonstrates Limits of Big Boy Provisions Where Affirmative Acts of Concealment Are Alleged" by Brian Fraser

Litigation Counsel of America Fellow and RK&O partner Brian Fraser featured in *Litigation Commentary and Review*

"Distress in the United States Public Finance Market?" by Jon Kibbe and Brian Fraser

"Are You Sure Your Settlement Negotiations Are Confidential?" by Brian Fraser published in the *New York Law Journal*

"New York Court Enforces 'Big Boy' Disclaimers in Credit Default Swap Transaction but Permits Novel Credit Rating Claim to Proceed" by Brian Fraser

Brian Fraser authors chapter in recently published book, *Inside the Minds: New Developments in Evidentiary Law in New York*

"Court Tests a Borrower's Ability to Block Loan Transfers to Competitors" by Jon Kibbe, Brian Fraser and Eric Rosen

Litigation Counsel of America Fellow and RK&O partner Brian Fraser featured in *Litigation Commentary and Review*

"The Dustbin of History? Second Circuit Makes Clear that Champerty Won't Impede the Rights of Secondary Purchasers" by Brian Fraser

"When Do Hedge Fund Managers Have a Duty to Disclose Material, Nonpublic Information?" by Brian S. Fraser published in *The Hedge Fund Law Report*

"Big Boys Don't Cry: How 'Big Boy' Provisions Can Help Hedge Fund Managers Avoid Liability for Insider Trading Violations" by Brian Fraser published in *The Hedge Fund Law Report*

"New York's Highest Court Relieves Debt Trading Market From Uncertainty Regarding The Application Of Champerty" by Brian Fraser

"Who's a Big Boy II: Superior Knowledge and the Duty to Disclose" by Brian Fraser

"Seventh Circuit Court Slams Bankruptcy Trustee for Asserting Frivolous Claims" by Brian Fraser and H. Rowan Gaither

"Equity and Debt Decoupling: Derivative Instruments Challenge Fundamental Assumptions of Corporate and Bankruptcy Law" by Jon Kibbe, Brian Fraser, Michael Friedman, H. Rowan Gaither and Julia Lu

"Who's a Big Boy? Non-Reliance Provisions and Claims of Insider Trading in Securities and Non-Securities Markets" by Brian Fraser

PROFESSIONAL AFFILIATIONS

Member, Association of the Bar of the City of New York (Antitrust and Trade Regulation Committee, 1991 to 1994)



BRIAN S. FRASER (Cont.)

Member, American Bar Association (Section on Business Law, Committees on Civil Litigation and SEC Enforcement Matters, Private Investment Entities, and Federal Regulation of Securities; Section of Litigation, Committee on Securities Litigation)

Member, International Bar Association

Member, Federal Bar Council

Member, Managed Funds Association

Member, Hedge Fund Roundtable

Fellow, Litigation Counsel of America