



Damon W. Suden

Partner

dsuden@kelleydrye.com

New York
(212) 808-7586

About

Creative and compelling advocacy, focused yet flexible case strategies, and a level-headed, pragmatic, and business-minded approach define Damon Suden's complex commercial, civil, and class action litigation practice.

An accomplished and talented litigator and trial attorney, Damon understands that "winning" for his clients isn't always defined by a judge's ruling or jury's verdict. Instead, he strives to obtain an outcome that aligns with and achieves their business objectives, whether that result comes after a hard-fought trial or a hard-nosed negotiation. He works closely with each client to fully understand the issues that are most important to them and then designs a litigation strategy that parallels those goals.

In state and federal courts across the country and domestic and international arbitrations, Damon has successfully resolved claims involving contract disputes, corporate fraud and other torts, unfair competition, trade secret theft, antitrust, trademarks, bankruptcy, false advertising, and employment-related matters. His practice includes significant class action defense work in consumer protection matters, and he currently represents several companies in putative class actions alleging violations of the Telephone Consumer Protection Act.

Damon's clients are from a variety of industries, including banking and finance, design and fashion, insurance, healthcare, nonprofits, food and beverage, pharmaceuticals, and telecommunications, among others. They appreciate his ability to balance protecting their interests with conserving their resources, leveraging technology for maximum efficiency, and clearly communicating their options and the financial impact a given case or strategy will have on their organization.

An even-tempered, productive, and effective negotiator and advocate, Damon has a lengthy record of actual trial experience. The trust Damon earns with his clients is matched by the trust he develops with judges and decision-makers, who respect his candor, credibility, preparedness, and professionalism.

While Damon litigates to win, he also recognizes that litigation can be used strategically to achieve his client's business goals. With the right litigation strategy, Damon has helped his clients settle or otherwise resolve even their most complicated disputes out of court. But when settlement is not possible, Damon is a fearless litigator who will defend his client's interests throughout the process.

while striving to minimize the impact on their bottom line.

Recognized as one of the “Best LGBT Lawyers Under 40” by the National LGBT Bar Association, Damon is a member of Kelley Drye’s diversity and inclusion committee and co-chair of the firm’s LGBTQ Network.

Experience

Commercial Litigation

Obtained a complete dismissal of an over \$50 million lawsuit asserting claims for breach of contract, breach of fiduciary duty, fraudulent inducement, negligent misrepresentation, and gross negligence against a real estate investment company and its managing principals arising from the parties’ joint investment in a real estate development project in Miami, Florida.

Represented a global real estate investment management company in a dispute regarding a failed real estate development project in the Bronx, New York, successfully securing dismissal of claims without leave to amend.

Represented the largest privately held spirits company in the world as a defendant in a complex commercial/IP dispute involving a multiyear, multimillion-dollar exclusive marketing agreement with a major sports franchise. After extensive discovery and prevailing on numerous discovery motions, Damon successfully negotiated a settlement.

Part of the trial team representing a domestic construction company in a bench trial in the District of New Jersey against former owners for breach of contract based on a failure to disclose legal liabilities prior to the sale of the business. Achieved a complete victory with a judgment in favor of the client, including the recovery of legal fees.

Member of the trial team representing JPMorgan Chase Bank, N.A. in an eight-day bench trial in the Southern District of New York. In a complete victory for the bank, the judge dismissed a breach of contract and fraud suit alleging failure to disclose potential tax liabilities prior to the sale of a bank subsidiary to the plaintiff, NES Financial Corp.

Trial counsel for Polo Ralph Lauren Corp. in a multimillion-dollar breach of contract claim brought by a former licensee that alleged that the licensee’s rights to use certain trademarks was prematurely terminated. The case settled during trial.

Member of the team that successfully defended JPMorgan Chase Bank (JPMC) in a \$20 million lawsuit brought by bondholders of a complex collateralized debt obligation transaction asserting claims of breach of contract, breach of fiduciary duty and negligence arising out of JPMC’s role as indenture trustee on the deal. In a series of motions, the litigation team successfully argued that plaintiffs could not establish causation or damages as a matter of law. The court agreed and granted JPMC’s summary judgment motion. The plaintiff waived its right to appeal.

Member of the team that prosecuted claims for approximately \$1.2 billion on behalf of JPMC against eleven insurance companies over surety bonds written in connection with transactions that the bank entered into with Enron Corp. A favorable settlement was achieved after closing arguments following a month-long trial.

Member of the team representing a national calling card company in federal and state class action litigation in California claiming false advertising and other consumer protection violations. Achieved

the dismissal of the federal class action lawsuit based on lack of subject matter jurisdiction. Involved in the precertification motion practice and discovery in state court. Participated in mediation before a former state court judge and negotiated the favorable settlement of the state class action.

Telephone Consumer Protection Act

Representing a major satellite communications provider in a case brought in the United States District Court for the Central District of Illinois on behalf of the Federal Trade Commission and several state attorneys general alleging violations of the Telemarketing Sales Rule, the TCPA and various state claims.

Represent real estate investment company in TCPA litigation in the Southern District of Florida arising from alleged auto-dialed text messages. Obtained dismissal for lack of personal jurisdiction and subsequently obtained a favorable settlement.

Represent mortgage company in TCPA litigation in the District of Oregon alleging violations of the do not call provisions. Obtained preemptive denial of class certification from the Magistrate Judge based on a unique factual dispute regarding whether plaintiff was a residential or business telephone subscriber.

Represent sneaker company start-up in TCPA litigation in the Eastern District of New York arising from alleged auto-dialed text messages. Obtained early, favorable settlement of the plaintiff's individual claims.

Antitrust and Competition

Member of a trial team that assisted an advertiser in securing a \$125 million settlement of its antitrust and false advertising claims against a competitor in the District of Minnesota. The case was settled after the first day of trial.

Represented Florida-based manufacturer of anti-shoplifting tags and devices in monopolization claim against competitor in Florida federal court. Obtained favorable settlement.

Represent pharmaceutical company in massive multidistrict price-fixing litigation involving dozens of class actions and multiple complaints filed by 49 States.

Represented pharmaceutical company in a reverse payment antitrust litigation in the Southern District of New York. Obtained an early favorable settlement.

Telecommunications

Represented major telecommunications carrier in litigation against municipality alleging a city's newly enacted telecommunications code violated Section 253 of the federal Telecommunications Act and the FCC's implementing orders and regulations by charging fees that exceed the city's reasonable costs associated with installation of telecommunications facilities in the rights of way.

Represent major telecommunications carrier in litigation against municipality alleging failure of the city to approve an eligible facilities request under Section 6409.

Represent major telecommunications carrier in its negotiations to renew contract with a cable television provider.

Trademark and Copyright

Representing the largest privately held spirits company in the world, defending its claims to the HAVANA CLUB trademark and seeking cancellation of Cuba's putative registration in the D.C. District Court. This brand and related case is one of the most significant United States Patent and Trademark Office (USPTO) trademark cases in history and was profiled on "60 Minutes" in January 2017.

Member of a litigation team that achieved a complete victory for a telecom company located in Singapore by obtaining the voluntary dismissal of a complex, international copyright infringement action in the Southern District of New York (all without ever making an appearance). The action was filed by an Israeli company to stop the client and Irish codefendants from moving forward with the worldwide launch of a smartphone app. The plaintiff attempted to obtain jurisdiction over the client through a United States subsidiary. Working closely with the client and local Singapore counsel, we executed a litigation strategy designed to maintain service and jurisdictional defenses, while also avoiding any jurisdictional discovery or rulings that could have a precedential effect. After intense negotiations and a warning to plaintiff from the court not to pursue frivolous claims, the plaintiff voluntarily dismissed its lawsuit against the client.

Labor and Employment

Member of the team that successfully defended a hospital in a lawsuit brought by its former director of risk management who alleged that she was fired in violation of New York's "whistleblower law" because she advocated for the reporting of alleged "adverse" patient incidents to the New York State Department of Health, pursuant to the "NYPORTS" reporting system. Successfully moved for a directed verdict after the close of the plaintiff's case with the judge holding that the case was "without basis in law or fact" and inviting the hospital to move to recover its legal fees from the plaintiff pursuant to the whistleblower statute. The case was reported in the *New York Law Journal* and *Crain's Health Pulse*.

Obtained summary judgment in favor of a manufacturing company dismissing the plaintiff's claims in an age discrimination, retaliation and FLSA overtime action filed in the Southern District of New York.

Represented New York City-based hospital in long-running whistleblower suit against a former pharmacist. Obtained dismissal as a sanction for plaintiff's failure to comply with discovery demands.

Member of trial team defending hospital against a claim of race discrimination. Obtained favorable settlement after first day of trial.

Trade Secrets and Restrictive Covenants

Member of the trial team for a major chemical company in a fraud, unfair competition and breach of contract case arising out of the purchase of a company and the defendant's violation of a non-compete agreement. The case also involved a claim under the federal Computer Fraud and Abuse Act. Successfully obtained a multimillion-dollar jury verdict after a six-week trial and successfully prosecuted a contempt application against the defendant and his attorneys.

Represent major laboratory testing company in litigation against former senior executive for violation of their restrictive covenant in the Middle District of North Carolina. Obtained temporary restraining order and subsequently reached a favorable settlement.

Real Estate

Represented seasonal restaurant owner and landlord in a contract dispute with a purported leasee in the Supreme Court of New York, Suffolk County. Successfully opposed motions for temporary and preliminary injunctions, allowing the client to continue operating its business during the busy summer months. Negotiated a favorable settlement.

Represented a landlord in New York Supreme Court in a complex litigation against a commercial tenant who refused to pay rent while asserting claims for breach of contract and fraud totaling over \$20 million in damages. We successfully obtained a preliminary injunction permitting the landlord to regain access to the premises, and obtained an early court ruling that the tenant was likely in violation of a lease provision governing lease assignments. We then moved for summary judgment seeking an eviction before discovery commenced and the parties successfully settled all claims moments before oral argument.

International Arbitration

Member of the team that prevailed conclusively and convincingly in a hotly contested arbitration proceeding in London between Swiss and Indian companies before a former Justice of the Supreme Court of India. The dispute centered on whether the parties had taken a vote at a board meeting to unanimously terminate a distribution agreement that the firm's client wanted to end. Achieved a complete victory in the client's favor resulting in the termination of the distribution agreement and a full award of costs.

Pro Bono

Successfully assisted a 101-year-old man and his son in obtaining a temporary restraining order against a health care provider that was threatening to terminate lifesaving at-home health care services. Negotiated the favorable resolution of the matter so that the client would retain the health care services he was promised.

Successfully represented a client pro bono in a dispute with her former husband regarding the custody of their son.

Honors

Recommended in *US Legal 500* for his work in the area of Product Liability, Mass Tort and Class Action: Consumer Products, 2023-2024.

Recognized as one of the *Best LGBT Lawyers Under 40* by the National LGBT Bar Association, 2016.

Affiliations

American Bar Association

New York State Bar Association

Association of the Bar of the City of New York

LGBT Bar Association of New York

Community

Fordham Law School LGBTQ Alumni Affinity Group, founder and co-chair

The Trevor Project, member, 2012–present

Related Services

Amicus

Antitrust

Commercial Litigation

Consumer Class Action Defense

Employment and Employee Benefits

Generic Pharmaceuticals

Intellectual Property

Employment Litigation

Litigation

Telephone Consumer Protection Act (TCPA) Defense

Trademark and Copyright Litigation

Food and Drug

Education

Fordham University School of Law, J.D., 2002

Massachusetts Institute of Technology, B.S., 1999

- Mathematics and Political Science

Admissions

New York, 2003

Courts

U.S. Court of Appeals–First Circuit

U.S. Court of Appeals–Second Circuit

U.S. Court of Appeals–Third Circuit

U.S. Court of Appeals–Seventh Circuit

U.S. Court of Appeals–Eleventh Circuit

U.S. District Court–Southern District of New York

U.S. District Court–Eastern District of New York

U.S. District Court–Western District of New York

U.S. District Court–Central District of Illinois