

Justin J.
Gunnell
Partner

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Education

Cornell Law School, J.D., 2008;
Editor, *Journal of Law and Public
Policy*
Cornell University, B.A., 2005, with
Honors; Dean's List; College of
Human Ecology "Outstanding
Senior" Award

Admissions

New York
U.S. District Courts for the Eastern
and Southern Districts of New York
U.S. Court of Appeals for the Third
Circuit
New Jersey

Clerkships

Hon. Rya W. Zobel, U.S. District Court
for the District of Massachusetts



Justin handles all types of commercial and business litigation, particularly matters involving employment law, intellectual property, complex commercial agreements, partnership and business breakups, fraud and securities law claims, and real estate. A tenacious litigator with a natural instinct for problem-solving, he excels at pursuing innovative solutions to his clients' toughest challenges.

Whether settling high-stakes litigation out of court or charting a smooth path to victory in the courtroom, Justin brings a proven track record of success to his work at Sher Tremonte. He has tried jury trials to verdict in federal court and won, prevailed on issues of first impression before the U.S. Courts of Appeals, and resolved numerous cases in his clients' favor through dispositive motion practice.

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Justin's prior experience gives him a comprehensive understanding of the issues his clients face. Having gained exposure to criminal investigations at the Public Defender Service for the District of Columbia as well as in-house practices at a large publicly traded publishing company, he is attuned to the interests of all relevant stakeholders – a perspective that enables him to accurately assess risk and formulate effective methods of resolution. He opens every matter with an extensive discovery period, then applies a rigorous review process to evaluate how the facts he has uncovered best fit into applicable law. His creativity and agile thinking routinely yield winning strategies, from advancing a novel but well-supported new theory of law to structuring a unique settlement component.

Before joining Sher Tremonte, Justin worked at Latham & Watkins LLP, where he represented large institutional clients and Fortune 500 companies in disputes involving antitrust, securities, intellectual property, and business law. He subsequently joined a prominent litigation boutique that focuses on trial practice and complex civil litigation and clerked for a federal judge in Boston, Massachusetts.

Experience

A groundbreaking win with implications for private fund advisors who serve on corporate boards: Achieved a major victory in issue of first impression before the U.S. Court of Appeals for the Third Circuit. The court held that the client, a non-voting board observer, could not be held liable under Section 11(a)(3) of the Securities Act of 1933 as a person “named in the registration statement” as “performing similar functions” to a director. This case received media coverage for its significance in determining the contours of potential liability of board observers, an issue that had not frequently been litigated.

Soundly defeating discrimination claims at trial: Successfully tried a case to verdict in the U.S. District Court for the Southern District of New York, resulting in the dismissal of all claims against clients (a nonprofit vocational college and two school administrators) related to claims of associational disability discrimination under the American with Disabilities Act.

Securing the dismissal of First Amendment claims from pre-trial through appeal: Achieved a complete victory on summary judgment in the Southern District of New York for a municipal corporation. A local blogger alleged that Justin's client, in violation of the First Amendment, engaged in a conspiracy to evict him because of his blog posts and viewpoints. Justin and his colleagues won dismissal on summary judgment of all claims against the client, and the decision was upheld on appeal to the U.S. Court of Appeals for the Second Circuit.

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A rare victory overturning a co-op board's renovation decision: Successfully brought an Article 78 Petition against a Manhattan co-op board that reversed the board's decision to revoke a previously issued renovation approval. The court ruled that the "the Business Judgment Rule is not a get-out-of-jail-free card." The client and his family were subsequently able to move forward with expanding and renovating their home without further intrusion from the board.

Rigorously protecting a client's intellectual property: Represented a religious organization in obtaining a temporary restraining order in a Southern District of New York action for trademark infringement and counterfeiting under the Lanham Act after rogue members of the organization used its trademark without authority.

Other notable work includes:

Fraud/Fraudulent Transfers/Securities Fraud

- Achieved a complete victory in the U.S. District Court for the Southern District of New York on special application seeking turnover of fraudulently conveyed funds to client, a large commercial steel mill services company. The court, applying the "sham issue of fact" doctrine, found that the transfers at issue were constructively fraudulent and that a further fact hearing was unnecessary, finding the opposing justifications for the transfers to be "lame conjecture."
- Achieved a complete victory on summary judgment of fraud claims involving the sale of a full-service medical laboratory. Justin's client, the seller, was sued by the buyer, who alleged that the client made fraudulent misrepresentations about whether the lab was subject to potential investigations and fines. The court concluded that the buyer failed to establish loss causation, transaction causation, and justifiable reliance, and dismissed all claims against the client.

Intellectual Property

- Successfully obtained a temporary restraining order and preliminary injunction on behalf of the co-founder of a high-frequency algorithmic trading platform in an action against a former partner for misappropriation of trade secrets and conversion of intellectual property.
- Advised a World Intellectual Property Organization panel member in connection with a decision transferring internet domain names where the registrant used trademarks in bad faith.
- Represented an engineering device company in connection with claims against a competitor for trade dress and trademark infringement due to competing product's similar shape and name.

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Complex Commercial Agreements/Partnership and Business Breakups

- Achieved a major victory on summary judgment in minority shareholder squeeze-out dispute. Justin's arguments convinced the court to dismiss all claims against his client by his former employer and business partners. This decision upheld the client's claims for improper dilution and excessive compensation claims, setting the stage for a favorable settlement.
- Successfully obtained a complete dismissal of action against clients, former members of a professional photography company, at the motion to dismiss stage where the court found that claims asserted were barred by prior written agreements based on principles of contractual privity.
- Negotiated a favorable settlement and judgment forbearance agreements with investment fund and fund manager for mismanagement of pre-IPO stock investment. The settlement resulted in Justin's client receiving significantly more than their original investment.

Real Estate

- Achieved a \$500,000-plus judgment against a title abstract company for inclusion of materially inaccurate property description in title insurance policy and failure to obtain a property survey according to industry standards.
- Negotiated a favorable settlement with utilities provider for claims, including res ipsa loquitur, that provider caused damage to a Manhattan residential apartment complex as a result of negligent operations.
- Negotiated a favorable settlement in an action against the client, a co-trustee of a family trust containing a residential apartment complex and strip mall, for breaches of fiduciary duties. The creative settlement involved appointment of a third-party bank as trustee to safeguard family assets.

Employment Law

- Achieved a complete victory on summary judgment in the U.S. District Court for the Eastern District of New York in a case involving a trainee apprenticeship program. The plaintiffs alleged that the client violated the Fair Labor Standards Act (FLSA) by allowing them to participate in an apprenticeship program without remuneration. Justin's argument that his clients were not "joint employers" under the FLSA convinced the court to dismiss all claims on summary judgment.
- Routinely mediate and negotiate settlements on behalf of clients asserting whistleblower, retaliation, constructive termination, and human rights claims.

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Recognitions

Selected to the Rising Stars in Business Litigation list, Thomson Reuters' *Super Lawyers* (2015-2023)

Affiliations

Mentor and Judge, American Mock Trial Association

Member, Litigation Committee, New York City Bar

Federal Bar Counsel

News and Publications

"When Emotionality Trumps Reason: A Study of Individual Processing Style and Juror Bias," *Behavioral Sciences & the Law* (June 2010)

"Evaluation of the Dilution-Parody Paradox in the Wake of the Trademark Dilution Revision Act of 2006," *Cardozo Arts and Entertainment Law Journal* (2008)

"Goldilocks and Three Federal Dilution Standards: An Empirical Review," *Texas Intellectual Property Law Journal* (2008)