

Kimo S. Peluso

Partner

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kpeluso@shertremonte.com

Education

Harvard Law School, J.D., 1998,
magna cum laude; Managing Editor,
Harvard Law Review
University of California San Diego,
B.A., 1995, summa cum laude

Admissions

New York
U.S. District Courts for the Eastern,
Northern, and Southern Districts of
New York
U.S. District Court for the Eastern
District of Wisconsin
U.S. District Court for the District of
Colorado
U.S. Courts of Appeals for the
Second, Third, and Eleventh Circuits

Clerkships

Hon. Amalya L. Kears, U.S. Court of
Appeals for the Second Circuit



A clearheaded advocate with an outstanding record of success in high-stakes matters, Kimo brings 20 years of complex commercial litigation experience to Sher Tremonte. He represents Fortune 100 companies as well as small and mid-sized businesses and individuals from a broad range of industries, including real estate, health care, technology, life sciences, transportation, entertainment, and financial services.

Kimo has achieved positive outcomes in complex business disputes, environmental matters, government contract disputes, False Claims Act cases, civil RICO claims, and intellectual property disputes, among others. Clients laud his in-depth understanding of their business, his ability to anticipate the moves and counter-moves of his adversaries, and his willingness to make bold strategic decisions.

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Kimo handles cases from pre-dispute counseling through trial and appeal in state and federal courts across the United States as well as arbitrations. He has also represented clients in administrative proceedings and government investigations by state attorneys general, the DOJ, Congress, and federal and state regulators. He has extensive experience assessing and mitigating legal risk for clients, including in the context of mergers and acquisitions, joint ventures, and innovative customer offerings.

Before joining Sher Tremonte in 2017, Kimo was a partner at Manatt, Phelps & Phillips LLP. Previously, he served as an associate at Davis Polk & Wardwell LLP and Stillman & Friedman P.C.

Experience

Obtained a swift victory for a client exercising partnership buyout rights:

Represented the general partner in a substantial real estate investment venture seeking to enforce its extremely favorable buyout rights against a limited partner. The adversary refused to acknowledge its obligations to sell, a posture that threatened substantial delay, as the dispute arose amidst nationwide court closures at the outset of the global COVID-19 pandemic. We developed an aggressive strategy to bring the case to an early resolution, then filed a rare plaintiff's motion for judgment on the pleadings. We obtained a ruling that effectively narrowed the case to a single factual dispute, on which the court, at our request, ordered expedited discovery and summary judgment briefing. With a case that might have otherwise lasted for years now poised for immediate resolution, the adversary relented and complied with the client's buyout demands.

Obtained the successful resolution of a federal lawsuit involving decades-old environmental claims for a transportation equipment finance company : Served as counsel for a global leader in rail car leasing and other transportation services in a federal court litigation over the environmental clean-up of a 20-acre site in Middlesex, New Jersey. Our client, having operated the site between 1929 and 1974, was conducting an extensive remediation and sought contributions from both the current private landowner and the U.S. government, which owned neighboring properties. We litigated the case through discovery and then negotiated a complex settlement, including a fixed limit on the client's total exposure for all future remediation costs for the site.

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Post-closing dispute for the purchaser of industrial manufacturing business:

Represented a private equity firm asserting claims against the sellers of a business that manufactured power transmission facilities. The client discovered the presence of employee benefits obligations that had not been booked as liabilities on the company's financial statements. We asserted claims in New York state court for breaches of representation under the parties' purchase agreement, arguing that the sellers had falsely represented their financial statements to comply with GAAP. The case settled near the close of discovery.

Other notable work includes:

Real Estate

- Represented a lender in a district court action and successful appeal that reinstated claims that mechanics' liens triggered full recourse under a "bad boy" guaranty to a \$110 million loan.
- Represented a real estate investment trust (REIT) sponsor in numerous lawsuits with prior owners over the acquisition of a sponsor entity.
- Advised a client transportation operator on the termination of a 25-year public contract and private partnership for the long-term lease and management of publicly owned, bond-financed facilities.
- Represented numerous commercial tenants in New York City commercial buildings in disputes with landlords.

Fraud Recovery and Fiduciary Duties

- Successfully prosecuted an action on behalf of an industrial equipment manufacturer against a departing chief executive officer for waste and abuse, including entering into above-market contracts with suppliers, misusing company funds, and misrepresenting available financing to the board of directors.
- Successfully defended a world-famous live music brand facing a \$10 million lawsuit by a former production services vendor and pursued counterclaims under civil RICO statute after uncovering years' worth of overcharges and related-party transactions during discovery.
- Represented a technology company in actions to enforce non-solicitation and non-disparagement obligations of the departing chief executive officer.
- Represented a transportation company in the defense of employment discrimination claims by a departing executive and the pursuit of counterclaims for theft of business opportunities and breaches of employment contract.

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Health Care

- Successfully represented Medicaid Managed Care/Medicare Advantage Plans in numerous disputes with providers over claims for payment.
- Prevailed for a managed care organization in a lawsuit against a home health agency that was terminated from the provider network for offering kickbacks to organization personnel, resulting in a \$13 million judgment in our client's favor.
- Defended a health insurer against a lawsuit by a clinical laboratory seeking millions of dollars in payments, including successfully defeating an application to preliminarily enjoin the lab's termination from the provider network.
- Advised clients on numerous matters relating to the opioid crisis, including assessment of legal claims and obligations arising from corrupt referral arrangements as well as the disclosure of patient prescription data to parties in civil cases.

Recognitions

Selected to the Top-Rated Business Litigation Attorney list (2017-2021) and the Rising Stars list (2012-2014), Thomson Reuters' *Super Lawyers*

News and Publications

Co-author, "Regulators Continue to Look Closely at Medical Device Cybersecurity," *Lexology* (March 23, 2016)

Co-author, "Comments on Proposed Amendments to the Federal Rules of Civil Procedure and Proposed Amendments to the Federal Rules of Appellate Procedure," Federal Courts Committee of the New York County Lawyers Association (2015)

Co-author, "Work Product Protection for Experts: Notable Decisions Under the 2010 Amendments to Rule 26," *Bloomberg BNA Product Safety & Liability Reporter*, Vol. 40, No. 41 (2012)

"Work Product and Expert Discovery: Early Lessons from the 2010 Amendments to Rule 26," Practising Law Institute (2011)

Co-author, "VIP Witnesses: Preparation and Techniques for Deposition, Practising Law Institute (2010)

Co-author, "Expert Depositions," Practising Law Institute (2010)