

Mark S. Sidoti

Partner

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Industries

Life Sciences

Practice Areas

Business & Commercial Litigation

Bar Memberships

New York

New Jersey

Mark– a commercial and products liability litigator and Co-Chair of the Gibbons E-Discovery Task Force – draws on his more than 30 years of litigation experience to help his clients assess and surmount a wide range of business challenges that require savvy negotiation and, at times, aggressive litigation. Whether the issues revolve around contract disputes, financial services, restrictive covenants, corporate medical litigation, ADA accessibility and discrimination defense, or products liability, Mark combines his litigation skills with a broad knowledge of e-discovery law and information governance principles to help his clients navigate the critical cost/benefit analysis involved in every litigation and to reach the most favorable resolution in the most economical way. Mark is a Director in the Gibbons Business & Commercial Litigation Group. His varied litigation practice focuses on business and healthcare litigation of all types. He has handled high stakes cases in various business areas, as well as high-profile catastrophic injury, wrongful death, and wrongful birth cases in the corporate medical arena, specifically in the clinical laboratory industry. As Co-Chair of the Gibbons E-Discovery Task Force, Mark heads an interdisciplinary group that provides counseling, training, and litigation-related assistance to companies on a full range of information management and e-discovery matters. He is a frequently sought educator and lecturer in both his primary disciplines – clinical laboratory risk and e-discovery/information governance. He practices before the state and federal courts of New York and New Jersey, as well as throughout the United States. He is included on the *New York Super Lawyers* list in the area of business litigation, as well as on the Martindale-Hubbell AV® Preeminent Peer Review Rated list.

Other Info About Mark

Experience

Business & Commercial Litigation

- Co-trial counsel for national healthcare provider in nationwide class action alleging violations of the Americans with Disabilities Act (ADA) and California's Unruh Act. The case, venued in the United States District Court for the Central District of California and tried in November 2022, is one of very few nationwide ADA discrimination class action matters to proceed through trial.
- Litigation defense counsel for companies facing class action lawsuits alleging violation of the Americans with Disabilities Act (ADA) with respect to the accessibility of their corporate websites to vision and hearing impaired individuals. Cases seek injunctive and compensatory relief for violations of the ADA and analogous state and local anti-discrimination laws, specifically alleging that the company's website is not compliant with the ADA and accessibility guidelines, including Web Content Accessibility Guidelines developed by the World Wide Web Consortium. Has successfully defended numerous matters, and published and lectured extensively in this area.
- Litigation counsel to several leading music Performance Rights Organizations in connection with copyright infringement, enforcement of licensing agreements, license fee recovery, and breach of contract matters. Obtained summary judgment in several matters resulting in precedential opinions.
- Outside general counsel to one of the world's leading litigation and jury consulting companies.
- Special litigation counsel to major supermarket chain in connection with its chapter 11 case pending in the Southern District of New York. Prosecuted action against a former lessee of the client to collect on an outstanding multimillion-dollar judgment through piercing the corporate veil, accessing

the assets of the lessee's principal and other alter ego entities, and avoiding and recovering millions of dollars in fraudulent conveyances.

- Counsel to leading automobile leasing company in a wrongful death action involving the deaths of three young adults. Case involved issues of vicarious liability, Dram Shop, choice of law, and negligent entrustment.
- Counsel to a leading international aviation ground services provider in a matter involving injuries sustained by accidental jet fuel release.
- Defense counsel to the world's largest footwear and accessories trade organization in federal court litigation involving a corporate plaintiff's tort claim for economic losses due to the company's loss of the services of its injured key employee. Successfully moved to dismiss the claim, arguing that indirect economic harm from the loss of "key employee" services, absent any direct injury to the employer, is not cognizable – an issue addressed by only a handful of courts throughout the country and one of first impression in New Jersey.
- Counsel to the General Agent and independent agency for a leading life insurance and financial services company in connection with a FINRA arbitrated restrictive covenant matter involving alleged non-compete and non-solicitation violations by certain agency producers.
- Counsel to one of the large offshore feeder funds in connection with the Madoff bankruptcy action, *Securities Investment Protection Corporation v. Bernard L. Madoff Investment Securities, LLC*, pending in the U.S. Bankruptcy Court for the Southern District of New York, arising from the $65 billion Ponzi scheme orchestrated by Bernie Madoff through his investment firm, Bernard L. Madoff Investment Securities ("BLMIS").

E-Discovery

- Served as co-counsel in two related AAA arbitrations to a securities execution services firm that provides a unique approach to algorithmic securities execution designed for high speed market structures through proprietary technology, software, programs and trading strategies. Both matters involve the alleged unlawful misappropriation and dissemination of the company's confidential and proprietary trade secrets and other information by former members of the company, unfair competition, breach of fiduciary duties, breach of contract, and spoliation of electronic evidence. Succeeded in obtaining a detailed forensic review of Respondents' computer systems and ultimately an award of permanent injunctive relief and significant monetary and other sanctions for electronic discovery spoliation and other discovery violations by the Respondents. Created and obtained orders memorializing detailed protocols for forensic computer inspection, and presented all aspects of spoliation case at arbitration hearings, including forensic evidence and expert reports and cross-examination of adversary's forensic experts.
- Engaged by one of the world's largest hospitality services companies to advise on and formulate a protocol for a company-wide remediation project involving more than 90,000 back up tapes.
- Served as counsel for the plaintiff in the high-profile defamation and tortious interference case *Treppel v. Biovail Corporation, et al.* Architect of motions resulting in the seminal e-discovery decisions reported at 233 F.R.D 363 (S.D.N.Y. 2006) ("Treppel IV") and 249 F.R.D. 111 (S.D.N.Y. Apr. 2, 2008) ("Treppel VII"), since cited in numerous court decisions, law review articles, and treatises, including *Arkfeld's Electronic Discovery & Evidence*, *Moore's Federal Practice*, and the Second Edition of the Sedona Principles. Several prominent e-discovery service providers selected Treppel IV as the top e-discovery decision of 2006.

- Engaged by a Fortune 100 company to oversee a comprehensive e-discovery service provider RFP process for a project involving approximately four terabytes of data and five participating full-service providers.
- Engaged by a national telephone industry tariff filing and revenue distribution nonprofit to assist in the formulation of its corporate Litigation Response Plan, including litigation hold policies and procedures.
- Served as counsel for the largest clinical laboratory in the world regarding complex genetic variant test result relating to a minor who passed from a rare genetic epilepsy disorder. Succeeded in securing summary judgment on all substantive claims and significant sanctions for spoliation of electronic evidence against plaintiff and her counsel.

Laboratory Litigation

- Lead litigation counsel to a leading clinical laboratory in professional liability, complex personal injury, and wrongful death matters throughout the U.S.
- Counsel for the largest clinical laboratory in the world regarding complex genetic variant test result relating to a minor who passed form a rare genetic epilepsy disorder. Succeeded in securing summary judgment on all substantive claims.
- National counsel to a leading clinical laboratory for cytology (Pap smear) litigation. Served as lead litigation counsel in litigations in New York, New Jersey, Illinois, California, Missouri, Washington, Texas, and Arizona, alleging that a misread Pap smear led to a delay in the diagnosis of cervical cancer and related damages.
- Counsel to a leading international provider of biomedical sample and assay technologies and manufacturer of the only FDA approved test to detect the virus that causes cervical cancer. Developed a variety of risk management programs, including live events, teleconferences, and webcasts, designed to educate clinicians nationwide regarding the

evolving standard of care issues.

Information Governance

- Engaged as counsel to a multinational office and home products manufacturer regarding e-discovery counseling for ongoing class action litigation, as well as general information management and e-discovery best practices, IT infrastructure and data mapping, vendor selection, and relevant policy revisions.
- Engaged by one of the largest multi-user container terminal operators in the world to assess the company's current IT and information management infrastructure, and create comprehensive information management and litigation hold policies.
- Engaged to counsel a multinational construction company on information management and e-discovery best practices, and assisted in substantial revisions to its information management and litigation hold policies.
- Engaged to counsel a multinational eyewear manufacturer regarding information management, litigation hold, and other e-discovery best practices, assess the company's current IT infrastructure and litigation risk environment, and create a comprehensive information management policy.
- Engaged by a Fortune 200 pharmaceutical company to provide a formal opinion regarding e-discovery related risks relating to the company's consideration of various options for upgrading its global telephone and voicemail systems.

E-Discovery Law School Teaching

- Adjunct Professor, Seton Hall University School of Law, Digital Evidence in Litigation (eDiscovery), (2021-present)

- Faculty & Planning Committee, Georgetown University Law Center, "Georgetown University Law Center's eDiscovery Training Academy," Washington, DC, (2012-present)
- Faculty Member, ASU-Arkfeld eDiscovery and Digital Evidence Conference, "eDiscovery – The Present and the Future," Sandra Day O'Connor College of Law, Arizona State University, Tempe, AZ, (2012-present)

Education

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Fordham University School of Law, J.D.

- *International Law Journal*, Moot Court Board
  Best Brief Award, William Hughes Mulligan Moot Court Competition

be

Fordham University, B.S., summa cum laude

- Phi Beta Kappa, Phi Beta Ph

Courts

State of New York, State of New Jersey,

United States District Court for the Eastern District of New York,

United States District Court for the Southern District of New York,

United States District Court for the Northern District of New York,

United States District Court for the District of New Jersey

United States District Court for the District of Colorado

United States Court of Appeals for the Third Circuit

United States Court of Appeals for the Second Circuit

Ninth Circuit Court of Appeals

Recognition

Included on the *New York Metro Super Lawyers* list, E-Discovery

Included on the Martindale-Hubbell AV® Peer Review Rated list

Professional Affiliations

American Bar Association

New Jersey Bar Association

New York Bar Association

Seton Hall University School of Law
Adjunct Professor, Digital Evidence in Litigation (eDiscovery)

Defense Research Institute
Electronic Discovery Committee, Membership Chair – 2006-2008; Vice Chair – 2008-2010; Chair – 2010-2012

Instructor eDiscovery Training Academy at Arizona State University 2012

American Society for Cytotechnology

Georgetown University School of Law E-Discovery Training Academy
Faculty Member

Gibbons Law Alert blog (www.gibbonslawalert.com)
Editor in Chief

Civic Activities

Big Brothers Big Sisters of Long Island
Board of Directors/Presidents Council

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