



## LORI VAN AUKEN

Counsel

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## BIOGRAPHY

Lori Van Auken is a noted litigator with extensive first-chair experience in a broad range of complex commercial litigation disputes, internal investigations and white collar criminal matters. She has deep experience in all phases of state and federal court litigation and arbitration, including trials and appeals. Lori has served as lead counsel in several high-profile cases affecting *Fortune* 50 companies across multiple business sectors, with a particular focus on financial services, insurance and telecommunications.

Lori's litigation experience spans a wide range of matters including financial crisis securities litigation, complex insurance fraud litigation, SEC regulatory proceedings, nationwide antitrust class actions, intellectual property litigation, employment and whistleblower claims, and workout and debtor/creditor litigation. She also advises clients concerning data privacy and cybersecurity matters and corporate M&A and governance issues.

In December 2020, Lori was awarded certification in Cybersecurity from the Harvard University Extension School following her successful completion of a two-year graduate program there. Among other things, Lori's coursework focused on privacy, information security risks, and incident response.

Lori also maintains a strong pro bono practice involving death penalty, domestic violence, immigration and nonprofit work. She is a former Thurgood Marshall Award winner from the New York State Bar Association in recognition of her pro bono work on behalf of a death row inmate in Tennessee, and a Thomas L. Sager Award recipient by the Minority Corporate Counsel Association for creation of a successful diversity initiative with a client company.

Lori is a contributing author to [Financial Regulation: Emerging Themes in 2022](#) – an extensive collection of articles around the themes of Sustainability & ESG; Talent & People and I&D; Regulatory Risk & Enforcement; Governance; Technology; and Changing Markets.

## CIVIC INVOLVEMENT & HONORS

- New York State Bar Association Thurgood Marshall *Pro Bono* Award, 2008
- Minority Corporate Counsel Association Thomas L. Sager Award, 2000
- Albany Law School, Women's Leadership Initiative - Advisory Committee, February 2021-Present
- SR Residents – NJ, A Nonprofit Corporation, *Secretary* and *Trustee*, 2020-Present
- Wandell School Education Foundation, 2006-2011; *Vice President*, 2010-2011, *Secretary*, 2009-2010, *Trustee*, 2006-2011, *Parent Leadership Award*, 2010
- Albany Law School, Women's Leadership Initiative - Advisory Committee, February 2021-Present

## PROFESSIONAL AFFILIATIONS

- American Bar Association
- New York State Bar Association
- New York City Bar Association
- Federal Bar Council, Sustaining Member
- Securities Industry and Financial Market Association (SIFMA)

- International Association of Privacy Professionals (IAPP)

## **ADMISSIONS**

- New York, 1987
- U.S. Court of Appeals, Second Circuit
- U.S. District Court, Eastern District of New York
- U.S. District Court, Northern District of New York
- U.S. District Court, Southern District of New York
- U.S. Court of Appeals, Federal Circuit
- Supreme Court of the United States

## **EDUCATION**

- Albany Law School, J.D., cum laude, 1986
- State University of New York-Albany, B.A., magna cum laude, 1983

## **RELATED PRACTICE AREAS**

- Business & Commercial Disputes
- Intellectual Property and Technology
- Securities Litigation and Enforcement
- Insurance
- Consumer Finance Disputes
- Consumer Fraud, RICO, & Unfair Business & Sales Practices
- Data Privacy & Security
- Banking & Finance Disputes
- Corporate
- Finance
- Investigations
- Litigation & Dispute Resolution
- Regulation, Compliance & Advisory
- Class Actions & Mass Torts
- Complex Coverage & Claims Disputes
- Financial Services
- Consumer Fraud

- Insurance (Class Actions)
- Pharmaceutical & Medical Devices (Class Actions)
- Enforcement
- Litigation
- Regulation
- Antitrust
- Appellate
- Class Actions

## EXPERIENCE

### Financial Services - Banking and Insurance

- Lead defense counsel for global investment bank in residential mortgage-backed securities litigation brought by institutional investor seeking close to \$600 million in damages based on RICO, common law fraud and related claims. The case settled during the early stages of discovery on highly favorable terms.
- Lead defense counsel for global investment bank in residential mortgage-backed securities litigation involving claims for rescission and, alternatively, damages based on allegations of fraud and mistake. The case settled shortly after we filed a motion to dismiss.
- Represented global banking institution in several residential mortgage-backed securities litigation cases commenced in state and federal courts asserting federal securities law, RICO and common law claims. The cases, which collectively involved claims for damages in excess of \$1 billion, were settled following motions granting, in part, the bank's motions to dismiss.
- Represented investment bank in commercial mortgage-backed securities litigation asserting breaches of representations and warranties in a purchase loan and security agreement. After extensive discovery and successful *Daubert* motions, the case proceeded to trial and resulted in a judgment in the bank's favor dismissing all claims.
- Represented Fortune Five conglomerate in litigation, arbitration, and regulatory proceedings in the U.S., U.K. and Bermuda stemming from the company's efforts to recover insurance for its environmental cleanup liabilities and the ensuing restructuring, redomestication and insolvency of the client's affiliated insurer. The cases involved complex and novel insurance and reinsurance contract issues and all were resolved by favorable court decisions or settlements totaling several hundred million dollars.

- Lead counsel for life insurance and annuities company in connection with corporate governance, employment, and related matters following the company's spin-off as a stand-alone public company.
- Defended global insurance brokerage firm and subsidiary against SOX whistleblower, contract and fraud claims in parallel federal court and OSHA regulatory proceedings.
- Represented insurance claims administrator in federal court action seeking \$75 million based on client's alleged failure to adequately administer claims under NYC taxi and limousine fleet insurance policies.
- Representing global insurance company in dispute with insured concerning potential fraud in connection with the underwriting and administration of vehicle insurance policies.
- Defended New York hospital system in putative class action asserting violations of the Fair Debt Collections Practices Act and related claims based on allegedly disparate treatment of uninsured patients and seeking to set aside the hospital's not-for-profit status.
- Co-lead counsel for private equity firm in New York State court action seeking damages based on fraud and breach of personal guarantees issued to induce client's investment in fraudulent proprietary trading scheme. Our motion for summary judgment in lieu of complaint was granted by the trial court and affirmed on appeal.
- Lead counsel for global insurance brokerage firm and its subsidiary in multiple New York State court actions brought by insured contractor seeking indemnification based on allegations of broker malpractice. We successfully move to dismiss the actions and later obtained orders dismissing the contractor's appeals.
- Advised Russian-based insurer in connection with insured's proposed settlement of New York State court litigation asserting fraud and misrepresentation claims.
- Advised financial services company in connection with its D&O liability insurance policy renewals.

### **Antitrust/Unfair Competition**

- Represented major telecom company in landmark U.S. Supreme Court case, *Bell Atlantic v. Twombly*, a nationwide consumer antitrust class action involving claims the former regional Bell operating companies unlawfully conspired to monopolize the market for long-distance telephone and high-speed internet service. The case concluded with the U.S. Supreme Court's seminal opinion confirming dismissal under Fed. R. Civ. P. 12(b)(6) for failure to state plausible claims for relief under the Sherman Act.

- Obtained permanent injunction following three-week bench trial in the Eastern District of New York for major U.S. telecom company banning competitor's nationwide false advertising campaign.
- Defended insurance securities broker-dealer in FINRA arbitration and parallel federal court action brought by competitor alleging restrictive covenant violations and trade secrets theft. The case settled following closing arguments in the four-week long FINRA arbitration and shortly before commencement of trial in the federal court case.
- Represented home improvement retailer in action asserting patent and copyright infringement and unfair trade practices claims stemming from alleged purchase and resale of Chinese-manufactured replicas of plaintiff's lighting fixtures.
- Defended Greek yogurt manufacturer against copyright and trademark infringement claims asserted by competitor in parallel federal court actions in New York and Minnesota, and in hearings before the Trademark Trial and Appeals Board.
- Represented spray foam insulation manufacturer and distributor in federal court action alleging patent infringement, unfair trade practices and misappropriation claims. **Data**

#### **Privacy & Cybersecurity**

- Advised insurance company in connection with enforcement proceeding brought by the NY Department of Financial Services concerning alleged violations of the NY Cybersecurity Regulation.
- Assisted insurance company with cybersecurity risk assessment in connection with contract negotiations.
- Prepared litigation risk assessment for use in mediation and settlement of data breach class action.
- Advised surveillance software provider in connection with disclosure obligations and an assessment of its potential third party liability exposure.
- Provided fintech company with privacy and cybersecurity regulatory advice under New York law.
- Advised regional bank of disclosure obligations under Graham-Leach-Bliley Act Safeguards Rule.
- Provided private equity firm with advice concerning NY's Cybersecurity Regulation and NY's SHIELD Act.

## **Regulatory Proceedings/Investigations**

- Defended entrepreneur in high-profile DOJ criminal prosecution under Foreign Corrupt Practices Act stemming from the privatization of the oil industry in Azerbaijan.
- Represented Fortune Five conglomerate and its former CEO in SEC investigation and related action involving executive compensation, benefits and stock option valuation and disclosure issues.
- Represented company and senior executives in DOJ and state insurance regulatory investigations.
- Represented former executive of investment bank in federal civil and criminal proceedings relating to the issuance of municipal bonds.
- Represented former executive of cable equipment manufacturer in DOJ investigation involving alleged accounting irregularities.

## **Employment Litigation and Disputes**

- Represented fashion designer in federal court action against big-box chain retailer for breach of employment consulting contract following retailer's refusal to honor agreement to develop branded clothing line. We persuaded the Second Circuit to reverse the district court's dismissal of the action and, on remand, won a motion for partial summary judgment.
- Defended global real estate construction conglomerate in action by former executive alleging breach of contract with respect to tax withholdings for compensation paid during overseas assignment.
- Represented venture capitalist in negotiation and execution of termination and indemnification agreements with senior executive.
- Defeated SOX whistleblower claims asserted by former employee of insurance brokerage firm in parallel federal court and OSHA regulatory proceedings.

## **Workout, Bankruptcy and Foreclosure Proceedings**

- Represented private equity firms in loan workout and threatened TRO and preliminary injunction proceedings involving motor vehicle dealership providing lease and maintenance services to ride-sharing service drivers.
- Represented private equity firm in workout and later foreclosure proceedings involving the Hilton Hotel in Scranton, PA.

- Represented telecom company as creditor in Chapter 11 insolvency and adversary proceedings following its acquisition of cable and long distance telephone business from Global Crossing.
- Represented members of board of directors in Chapter 11 proceeding of New York regional telecom cable communications service provider.
- Represented creditors' committee in Chapter 11 proceeding of global cable communications company.
- Represented telecom directory publisher in actions against advertisers for breach of contract.

## RELATED INSIGHTS

Insights

Oct 19, 2022

### **Cyber Incident Reporting for Critical Infrastructure Act, in 'Privacy & Cybersecurity Law Report'**

Global Data Privacy & Security Chair Amy de la Lama, Counsel Lori Van Auken and Associate Gabrielle Harwell authored an article published in the October edition of Privacy & Cybersecurity Law Report concerning cyber incident reporting for the Critical Infrastructure Act. The article outlines what critical infrastructure entities need to know about the new reporting rules under the Cyber Incident Reporting for Critical Infrastructure Act – now and in the future.

Insights

Jul 05, 2022

### **Cyber Incident Reporting for Critical Infrastructure Act – What Companies Need to Know Now**

Insights

Apr 05, 2022

### **NY DFS Cybersecurity Symposium: More Rigorous Rules, Exams and Enforcement Ahead**

Blog Post

Feb 10, 2022

### **Gensler Signals Major Cybersecurity Regulatory Changes**

Insights

Jan 31, 2022

### **SEC's Gensler: Major Cybersecurity Regulatory Changes On the Horizon**

A significant expansion of rules relating to cybersecurity risks—particularly for the financial sector—is under consideration by the Securities and Exchange Commission (SEC). In public remarks last week, SEC Chair Gary Gensler previewed a number of areas in which the SEC is looking to “broaden and deepen” its oversight of cybersecurity practices and risks. They range from a broad expansion of system integrity rules to changes



involving the timing and delivery of privacy notices. Although new rules governing cybersecurity disclosures have been anticipated for months, Gensler’s remarks indicate that the SEC’s plans go well beyond disclosure rules and are far more ambitious.

News

Dec 29, 2021

## **BCLP Lawyer in ‘Legaltech News’ on Predictions for Cybersecurity in 2022**

Webinars

Jul 14, 2021

## **Insurance Webinar Series Part II: Insurance Coverage for Cyber Incidents: The Current Landscape**

Insights

Apr 26, 2021

## **NYDFS Imposes Heavy Fine and Adopts Expansive View of Multi-Factor Authentication Requirements Under Cybersecurity Regulations: The Latest Lessons**

The New York Department of Financial Services (NYDFS) recently announced the resolution, through Consent Order, of its third enforcement action against entities subject to the agency’s Cybersecurity Regulations (“Cyber Regulations”). The settlement is notable because it reflects the first public interpretation of the multi-factor authentication (MFA) rule by the NYDFS – an interpretation not evident from the plain text of the rule itself – and the assessment by NYDFS of its largest fine under the Cyber Regulations to date.

Blog Post

Apr 01, 2021

## **Lessons Learned from New York’s Second Cybersecurity Action**