

Contact

Timothy W. Mungovan

Chairman of the Firm

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Tim Mungovan is the Chair of Proskauer. He is also the immediate past chair of the Firm's Litigation Department.

His practice is focused on securities, commercial litigation, governance, and bankruptcy-related matters. He has a national reputation for advising sponsors of private investment funds (hedge, private equity, private credit and venture capital) in a wide variety of matters, including litigation, governance, securities, fiduciary obligations, and regulatory enforcement.

Chambers USA describes Tim as "*an extraordinary lawyer who is a fierce and very talented litigator. He is extremely knowledgeable, responsive and client-oriented.*" *Best Lawyers in America* lauds Tim's experience, integrity, work ethic, communications and courtroom skills. Tim has been listed in the "Top 100 Lawyers" in Massachusetts, and *Benchmark Litigation* has continually recognized Tim as a Litigation Star in Massachusetts.

Over the last six years, Tim has been the lead litigator representing the Financial Oversight and Management Board for Puerto Rico in the historic restructuring of Puerto Rico's debts. The scale and complexity of this restructuring has resulted in one of the most active litigation dockets in the U.S. Almost every aspect of the litigation involved matters of first impression in part because the restructuring is

governed by the Puerto Rico Oversight, Management, and Economic Stability Act, which was enacted for Puerto Rico in 2016. The track record of success speaks for itself: in the more than 150 lawsuits filed, Tim and the Proskauer team have prevailed in almost 95% of the cases.

Tim is recognized nationally for his experience in private fund litigation and disputes, having focused on the industry for more than 25 years. As part of that focus, Tim created and is the lead editor of Proskauer's blog on Private Equity litigation, The Capital Commitment.

Matters

Investment Fund Disputes

- Financial Oversight and Management Board for Puerto Rico, in its own right and as debtors' representative, in litigation against various creditors including hedge funds, SPVs, and bond insurers related to the restructuring of the Commonwealth's $74 billion of bond debt and $50 billion of unfunded pension obligations (D.P.R.) (Bankr. D.P.R.)
- Several institutional limited partners in defense of claims related to alleged fraudulent conduct at a private equity-owned portfolio company prior to its leveraged buyout, in which the plaintiff trust is seeking the avoidance of approximately $250 million in equity distributions (D. Del. Bankr.)
- Fund sponsor, together with its funds and co-investment vehicles, in defense of claims related to sale of a portfolio company for tens of millions of dollars (Del. Ch.)
- A large institutional investor, as a limited partner and a member of the LP advisory committee, in investigating the misappropriation by a general partner of tens of millions of dollars, removing and replacing the general partner, and bringing an action against the general partner, and others, for fraud, conversion, and breach of fiduciary duty. (Cal. Super. Ct.)

- A limited partner (and majority interest holder) in connection with the dissolution of investment fund and court-ordered liquidation of fund assets(Del. Ch.) and derivative lawsuit initiated by member of general partner (Cal. Super. Ct.)
- Rhode Island governmental issuer of tobacco settlement revenue-backed bonds in defense of lawsuit brought by two municipal bond funds seeking to block proposed $600 million bond issuance. After expedited discovery, the court granted the issuer's motion for summary judgment in all respects, permitting the bond issuance to proceed. (*Oppenheimer Rochester High Yield Municipal Fund et al. v. Tobacco Settlement Financing Corporation* (R.I. Super. Ct.))
- A venture capital firm in defense of claims brought by limited partner related to alleged failure to make timely distributions of fund assets and properly allocate carried interest (N.Y. Sup. Ct.)
- A private equity firm and two of its founders in defense of claims brought by the third founder related to alleged improper distributions of tens of millions of dollars, misallocation of fees and expenses, and self-dealing (Del. Ch.)
- Investors in the International Management Associates Ponzi scheme/hedge fund fraud, defending against claw back actions filed by the trustee in bankruptcy who is seeking to recover redemptions of principal and profits
- An institutional investor and member of the liquidation committee of Fairfield Sentry Limited, the largest Madoff feeder fund, concerning complex issues including settlement with Madoff trustee Irving Picard, claims of fraud, claw back actions, investor class actions, distribution of recovered assets, and Chapter 15 proceedings in U.S. Bankruptcy Court
- Founder of private equity fund in connection with a dispute with a younger partner over control of the firm
- Multiple institutional limited partners in connection with litigation involving Wellspring Capital Partners IV LP brought by the litigation trustee of a portfolio company concerning distributions made in 2012-2013
- A large European investment fund that lost approximately $400 million in various Madoff feeder funds in the Madoff bankruptcy case

- The institutional limited partners and members of the LP advisory committee of two venture funds with combined assets of $670 million that were managed and advised by Bay Partners in a forced restructuring of the management and successfully negotiating a resolution through mediation that preserved the value of the investment portfolio and restructured fund management while avoiding litigation
- Boston Financial Qualified Housing Tax Credits L.P. IV , a public limited partnership, and its general partner in defeating a limited partner's efforts to gain control of the limited partnership by removing the general partner through a consent solicitation and litigation
- Founder of a hedge fund regarding a dispute with younger partner regarding control over the firm
- A private equity fund and two individual partners in litigation brought by a commercial lender arising out of the liquidation of a portfolio company, obtaining the dismissal of litigation against two individual partners and settling on highly favorable terms
- A registered investment adviser who placed more than forty clients into a hedge fund that failed in October 2008, two months after the initial investment, Successfully settling claims against the hedge fund and obtaining a full general releases for the adviser

Securities and Investment Management Litigation

- Indus Capital Partners in connection with its investment in Bright Scholar Education Holdings, Ltd., a Cayman domiciled company with operations in the People's Republic of China and ADS that is traded on the New York Stock Exchange
- Institutional limited partner regarding the investigation of certain alleged misconduct by members of the manager and related litigation pending in New York Supreme Court, JZ International LLC v. Rueda, et al., [Index# 65126/2022]
- .406 Ventures Management and Sparta Group in defending litigation pending in the Massachusetts Superior Court in connection with claims brought by the CEO of a portfolio company
- Fund sponsor in connection with an SEC investigation into Binance and crypto exchanges
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Shamrock Capital Advisors in a lawsuit filed after one of its portfolio companies, FanDuel, merged with Paddy Power Betfair, alleging breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and unjust enrichment against FanDuel board members and shareholders due to a claim on undervaluing of FanDuel. We obtained dismissal of all claims against Shamrock Capital Advisors

- Fund sponsor in connection with SEC investigation into claims by a co-founder that the sponsor covered up insider trading and self-dealing; the SEC closed the investigation with no finding of wrongdoing
- A registered investment adviser who placed more than forty clients into a hedge fund that failed in October 2008, two months after the initial investment, successfully settling claims against the hedge fund and obtaining a full general releases for the adviser and responding to and resolving an inquiry from the SEC

Complex Commercial Litigation

- Global pharmaceutical company in dispute with licensee over the reacquisition of two separate drugs in Japan
- Global pharmaceutical company in connection with claims arising out of termination of joint development contract and license
- Successfully defended the constitutionality of PROMESA against a complaint brought by several Puerto Rico-based labor unions that raised complex, novel theories regarding Puerto Rico's political status. UECFSE v. United States, No. 19-2243 (1st Cir. April 16, 2021). The union plaintiffs alleged PROMESA violates numerous provisions of the U.S. Constitution, including the First, Fifth, Thirteenth, Fourteenth, and Fifteenth Amendments, as well as various international accords. The Title III Court dismissed the complaint for lack of standing, holding that Plaintiffs had not alleged concrete and particularized injuries entitling them to the requested relief. The First Circuit affirmed, agreeing with the Board that the union plaintiffs raised only general grievances that were not sufficient to confer Article III standing
- Obtained a landmark Supreme Court victory on behalf of the Oversight Board, defending the constitutionality of PROMESA's mechanism for appointing its members. Several creditors—including a hedge fund, a bond insurer, and a local union—alleged that PROMESA's method for appointing the members of the Oversight Board violates the Constitution's Appointments Clause. In February 2019, the First Circuit ruled in the creditors' favor, holding the appointment of the Oversight Board's members was

unconstitutional. After granting cert, the Supreme Court reversed, holding that the Appointments Clause does not apply to the appointment of the Oversight Board's members because they are not "officers of the United States." This critical victory ensured that the Oversight Board is able to continue its important work

- Led litigation on Act 7, Puerto Rico statehood legislation, where the Oversight Board was invalidating legislature in September 2021 that would have prohibited the Board of going forward with the plan of adjustment. Court invalidated and allowed to proceed to confirmation hearing in November 2021
- In December 2021, argued act 53 legislation, a debt authorization law in Puerto Rico, had passed to replace Act 7 and enabled issuance of replacement bond as part of the plan of adjustment continued accrual of pension benefits of certain government employees pursuant to a defined benefit plan
- Defeated the preliminary injunction filed by the Puerto Rico House of Representatives to prevent the Governor of Puerto Rico to use public funds related to a vote over the political future of the county to become independent or a state
- In a landmark decision, obtained summary judgement for the Oversight Board on several of its claims, finding the Governor and Government had violated PROMESA including by enacting and implementing a law (Law 29) in violation of PROMESA. As a result, the District Court entered an order nullifying Law 29 retroactively

Government Investigations and Regulatory

- A private fund sponsor in connection with the SEC's investigation into crypto exchanges
- Private fund sponsors in connection with the SEC's and Department of Education's investigations into for-profit colleges and educational institutions
- Multiple fund sponsors in connection with investigation by SEC into secondary market trading by pre-IPO shareholders
- A private equity firm in connection with SEC examination regarding compliance with the whistleblower provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act

- A hedge fund and its manager in insider trading investigations launched by the U.S. Attorney in the Southern District of New York and by the SEC concerning the use of "expert networks"
- Several venture capital firms in connection with an SEC investigation into alleged pay-to-play and expense shifting violations and whether certain firm personnel are "covered associates"
- A hedge fund, its manager, and trader in connection with SEC investigation for insider trading arising from a trade in listed call options in the hours preceding a takeover announcement, successfully obtaining a termination notice six months after the investigation was opened
- A registered investment adviser and private wealth manager in an SEC investigation of collapsed hedge fund, resulting in no action being taken against the client
- A global asset manager in an investigation by the Massachusetts Attorney General of a registered representative's sales and marketing practices and the ability of municipalities to invest legally in certain financial products, which settled with the filing of an Assurance of Discontinuance

Practices

Asset Management Litigation, Securities Enforcement, Investment Management, Litigation, Private Credit Restructuring, Private Funds, Restrictive Covenants, Trade Secrets & Unfair Competition, Securities Litigation, Special Situations, Trials, White Collar Defense & Investigations

Industries

Asset Management, Financial Services, Life Sciences, Private Capital, Private Equity

Market Solutions

Blockchain & Digital Assets, Environmental, Social and Corporate Governance (ESG), Regulatory & Compliance

Education

Suffolk University Law School, J.D.

cum laude

Editor of the *Suffolk University Law Review*

College of the Holy Cross, B.A.

Admissions & Qualifications

Massachusetts

New York

Clerkships

Supreme Judicial Court of Massachusetts - Judge Joseph R. Nolan

Court Admissions

Supreme Court of the United States

U.S. Court of Appeals, First Circuit

U.S. Court of Appeals, Fourth Circuit

U.S. District Court, New York, Southern District

U.S. District Court, Massachusetts

U.S. District Court, Maryland

Memberships

Boston Bar Association

Awards & Recognition

The American Lawyer Litigator of the Week, January 10, 2020

The American Lawyer Litigator of the Week, Runner Up, January 21, 2021

The American Lawyer Litigator of the Week, Runner Up, October 21, 2021

Benchmark Litigation Star 2024-2026

Best Lawyers in America 2013-2027

Chambers USA Massachusetts: Litigation: General Commercial 2022-2023

Chambers USA Massachusetts: Litigation: General Commercial, Eminent Practitioner 2024-2026

The Legal 500 United States: General Commercial Disputes 2023-2025

The Legal 500 United States: Dispute Resolution and Securities Litigation: Defense 2024-2025

Massachusetts Super Lawyers 2004-2025

Massachusetts Super Lawyers “Top 100 Lawyers in Massachusetts” 2012 - 2013