



## SHARAN NIRMUL

### PARTNER

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#### FOCUS AREAS

Securities Fraud Litigation  
 Global Securities Litigation  
 Direct and Opt-Out Actions  
 Fiduciary Litigation

#### EDUCATION

Cornell University  
 B.S.  
 New College, Oxford University  
 Joint Programme in International Human  
 Rights Law  
 The George Washington University Law  
 School  
 J.D.

#### ADMISSIONS

Pennsylvania  
 New Jersey  
 New York  
 Delaware  
 USDC, Southern District of New York  
 USDC, District of New Jersey

Sharan Nirmul, a partner of the Firm, concentrates his practice in the area of securities, consumer and fiduciary class action and complex commercial litigation, exclusively representing the interests of plaintiffs and particularly, institutional investors.

Sharan represents a number of the world's largest institutional investors in cutting edge, high stakes complex litigation. In addition to his securities litigation practice, he has been at the forefront of developing the Firm's fiduciary litigation practice and has litigated ground-breaking cases in areas of securities lending, foreign exchange, and MBS trustee litigation. Mr. Nirmul was instrumental in developed the underlying theories that propelled the successful recoveries for customers of custodial banks in *Compsource Oklahoma v. BNY Mellon*, a \$280 million recovery for investors in BNY Mellon's securities lending program, and *AFTRA v. JP Morgan*, a \$150 million recovery for investors in JP Morgan's securities lending program. In *Transatlantic Re v. A.I.G.*, Mr. Nirmul recovered \$70 million for Transatlantic Re in a binding arbitration against its former parent, American International Group, arising out of AIG's management of a securities lending program.

Focused on issues of transparency by fiduciary banks to their custodial clients, Mr. Nirmul served as lead counsel in a multi-district litigation against BNY Mellon for the excess spreads it charged to its custodial customers for automated FX services. Litigated over four years, involving 128 depositions and millions of

USDC, District of Delaware  
USDC, Eastern District of Pennsylvania  
USCA, Second Circuit  
USCA, Third Circuit  
USCA, Seventh Circuit

pages of document discovery, and with unprecedented collaboration with the U.S. Department of Justice and the New York Attorney General, the litigation resulted in a settlement for the Bank's custodial customers of \$504 million. Mr. Nirmul also spearheaded litigation against the nation's largest ADR programs, Citibank, BNY Mellon and JP Morgan, which alleged they charged hidden FX fees for conversion of ADR dividends. The litigation resulted in \$100 million in recoveries for ADR holders and significant reforms in the FX practices for ADRs.

Mr. Nirmul has served as lead counsel in several high-profile securities fraud cases, including a \$2.4 billion recovery for Bank of America shareholders arising from BoA's shotgun merger with Merrill Lynch in 2009. More recently, Mr. Nirmul was lead trial counsel in litigation arising from the IPO of social media company Snap, Inc., which has resulted in a \$187.5 million settlement for Snap's investors, claims against Endo Pharmaceuticals, arising from its disclosures concerning the efficacy of its opioid drug, Opana ER, which resulted in a recovery of \$80.5 million for Endo's shareholders, and claims against Ocwen Financial, arising from its mortgage servicing practices and disclosures to investors, which settled on the eve of trial for \$56 million. Mr. Nirmul currently serves as lead trial counsel in pending securities class actions involving General Electric, Kraft-Heinz, and the stunning collapse of Luckin Coffee Inc., following disclosure of a massive accounting fraud just ten months after its IPO. He also currently serves on the Executive Committee for the multi-district litigation involving the Chicago Board Options Exchange and the manipulation of its key product, the Cboe Volatility Index.

Mr. Nirmul received his law degree from The George Washington University National Law Center and undergraduate degree from Cornell University. He was born and grew up in Durban, South Africa.

## Experience

### Additional Experience

#### Heckmann Corp.

As lead counsel, Sharan spearheaded an innovative securities case arising from this Special Purpose Acquisition Company's merger with a Chinese water company, accomplished through a merger proxy that was alleged to have materially misstated the Chinese Company's financial condition, and Heckmann's due diligence into the transaction. This was one of the first cases to develop a trial damages model for determining damages to shareholders under Section 14(a) of the Exchange Act and resulted in a stock and cash recovery for investors of \$30 million.

### Ongoing Cases

- Advanced Auto Parts: Fraudulent Financial Projections Case Moves Ahead in Delaware Federal Court

In January 2019, Kessler Topaz filed a class action in the United States District Court for the District of Delaware on behalf of a U.S. institutional investor against Advance Auto Parts, Inc. (AAP), its CEO Thomas R. Greco, and its former CFO Thomas Okray. The complaint alleges that Greco and Okray disregarded internal forecasts of negative sales growth and made materially false and misleading statements regarding AAP's ability to deliver "positive" sales and operating margin growth in fiscal year 2017.

On February 7, 2020, U.S. District Judge Richard G. Andrews sustained in large part the investors' claims. Discovery is ongoing.

### Settled

- Bank of America: BoA/Merrill merger fraud allegations settle

Obtained a \$2.4 billion settlement in litigation against Bank of America (BoA) relating to its merger with Merrill Lynch & Co. (Merrill). Our clients, Dutch National pension fund PGGM and Swedish National pension fund AP4, alleged that BoA gave shareholders false and misleading information about Merrill's financial condition and obligations prior to a key vote on the merger.

The settlement, which included an undertaking to improve corporate governance policies, was the 6<sup>th</sup>-largest ever in a securities class action and the largest so far to come out of the subprime meltdown and credit crisis.

- BNY Mellon/Sigma: BNY Mellon settles fiduciary breach charges in securities lending case  
Served as co-lead counsel in case alleging that BNY Mellon Bank, N.A. and the Bank of New York Mellon (BNY Mellon) breached fiduciary and contractual duties in connection with its securities lending program.  
On behalf of the Electrical Workers Local No. 26 Pension Trust Fund, we claimed that BNY Mellon imprudently invested cash collateral obtained under the lending program in medium term notes issued by Sigma Finance, Inc.—a foreign structured investment vehicle that went into receivership—in breach of its common law fiduciary duties, its fiduciary duties under ERISA and its contractual obligations under the securities lending agreements. After the close of discovery, the case settled for \$280 million.
- Countrywide: Mortgage-backed securities settlement ends six-year battle

As co-lead counsel representing the Maine Public Employees' Retirement System, secured a \$500 million settlement for a class of plaintiffs that purchased mortgage-backed securities

(MBS) issued by Countrywide Financial Corporation (Countrywide).

Plaintiffs alleged that Countrywide and various of its subsidiaries, officers and investment banks made false and misleading statements in more than 450 prospectus supplements relating to the issuance of subprime and Alt-A MBS—in particular, the quality of the underlying loans. When information about the loans became public, the plaintiffs' investments declined in value. The ensuing six-year litigation raised several issues of first impression in the Ninth Circuit.

- **Delphi Corporation: Shareholders recover in accounting case**  
Represented an Austrian mutual fund manager, Raiffeisen Capital Management, as co-lead plaintiff in class action litigation alleging that auto-parts manufacturer Delphi Corporation (Delphi) had materially overstated its revenue, net income and financial results over a five-year period. Specifically, we charged that Delphi had improperly (i) treated financing transactions involving inventory as sales and disposition of inventory; (ii) treated financing transactions involving "indirect materials" as sales of these materials; and (iii) accounted for payments made to and credits received from General Motors as warranty settlements and obligations. When the fraudulent accounting practices became known, Delphi was forced to restate five years of earnings, and ultimately declared bankruptcy. We reached a \$38 million settlement with Delphi's outside auditor; in addition, the class has excellent prospects for recovery through bankruptcy litigation.
- **JPMorgan/Sigma: Securities lending case settles after massive discovery**  
Led class action on behalf of participants in JPMorgan Chase Bank's (JPMorgan) securities lending program that incurred losses on JPMorgan's investments in medium-term notes issued by Sigma Finance, Inc.  
Our clients, the American Federation of Television & Radio Artists Retirement Fund and the Imperial County Employees' Retirement System, asserted claims for breach of fiduciary duty under ERISA, as well as common law breach of fiduciary duty, breach of contract and negligence. During discovery, the parties produced and reviewed hundreds of thousands of pages of documents, took 40 depositions and submitted 21 expert reports. The case settled on the eve of trial for \$150 million.
- **Plaintiffs Reach Settlement with BNY Mellon Over Its Forex Practices**  
Launched the first class action brought on behalf of Bank of New York Mellon Corp's (BNY Mellon) Forex (FX) trading clients. On behalf of the Southeastern Pennsylvania Transportation Authority (SEPTA) Pension Fund and a class of similarly situated domestic custodial clients of BNY Mellon, we alleged that BNY

Mellon secretly assigned a spread to the FX rates at which it transacted FX transactions on behalf of its clients who participated in the BNY Mellon's automated "Standing Instruction" FX service. BNY Mellon determined this spread by executing its clients' transactions at one rate and then, typically, at the end of the trading day, assigned a rate to its clients which approximated the worst possible rates of the trading day, pocketing the difference as riskless profit. This practice was undertaken by the bank despite BNY Mellon's contractual promises that its Standing Instruction service was designed to provide "best execution," was "free of charge" and provided the "best rates of the day." The case asserted claims for breach of contract and breach of fiduciary duty on behalf of BNY Mellon's custodial clients and sought to recover the unlawful profits that BNY Mellon earned from its unfair and unlawful FX practices.

The case was litigated in collaboration with separate cases brought by state and federal agencies. Kessler Topaz served as lead counsel and Mr. Meltzer was a member of three person executive committee overseeing the private litigation. After extensive discovery, including more than 100 depositions, over 25 million pages of fact discovery, and the submission of multiple expert reports, Plaintiffs reached a settlement with BNY Mellon of \$335 million. Additionally, the settlement was administered with separate recoveries by state and federal agencies which brought the total recovery for BNY Mellon's custodial customers to \$504 million. The settlement was finally approved on September 24, 2015. In approving the settlement, Judge Lewis Kaplan praised counsel for a "wonderful job," recognizing that they were "fought tooth and nail at every step of the road." In further recognition of the efforts of counsel, Judge Kaplan noted that "[t]his was an outrageous wrong by the Bank of New York Mellon, and plaintiffs' counsel deserve a world of credit for taking it on, for running the risk, for financing it and doing a great job."

- Satyam Computer Services, Ltd.: Tech company, auditors settle fraud case for \$150.5 million  
Served as co-lead counsel on behalf of Norwegian mutual fund manager SKAGEN A/S in this securities fraud class action against Satyam Computer Services Limited (Satyam) and certain of its former officers and directors and its former auditor PricewaterhouseCoopers International Ltd. ("PwC"), relating to Satyam's disclosure that its former chairman had falsified the company's financial reports by inflating reported cash balances by more than \$1 billion.  
The news caused the price of Satyam's common stock and American Depository Shares to collapse. On behalf of the defrauded investors, we secured a \$125 million settlement from Satyam as well as \$25.5 million settlement from PwC, which allegedly signed off on the misleading audit reports.

- Transatlantic Holdings: Reinsurer paid \$75M in binding arbitration  
Arbitrator's award of \$75 million for Transatlantic Holdings, Inc., and its subsidiaries (TRH) in a case alleging that American International Group, Inc. (AIG) breached its fiduciary and contractual duties and committed fraud in connection with its securities lending program.  
Until June 2009, AIG was TRH's majority shareholder and administered TRH's securities lending program. We alleged that AIG breached its fiduciary obligations by imprudently investing the majority of the cash collateral obtained from TRH under its lending program in risky mortgage-backed securities, including Alt-A and subprime investments. We further alleged that AIG concealed the extent of TRH's subprime exposure and that when the collateral pools began experiencing liquidity problems in 2007, AIG unilaterally carved TRH out of the pools so that it could provide funding to its wholly owned subsidiaries to the exclusion of TRH.

### News

- October 1, 2020 - Kessler Topaz Meltzer & Check, LLP Once Again Included in the Benchmark Litigation Guide to America's Leading Litigation Firms and Attorneys for 2021
- September 24, 2019 - Kessler Topaz Meltzer & Check, LLP Once Again Included in the Benchmark Litigation Guide to America's Leading Litigation Firms and Attorneys for 2020
- May 8, 2017 - Kessler Topaz Again Named Class Action Litigation Department of the Year by The Legal Intelligencer
- November 5, 2015 - BNYM Settles Forex Claims for \$504 Million In Restitution to its Domestic Custodial Clients

### Speaking Engagements

Sharan is a regular speaker at the Firm's annual conferences, the Rights & Responsibilities of Institutional Investors in Amsterdam and the Evolving Fiduciary Obligations of Pension Plans in Washington, D.C.

### Publications

Caught Off-Guard by Securities Lending Programs: How Supposedly Conservative Investments

Have Turned Into Unexpected Losses for Pension Funds, NAPPA Report, May 2009

Not All Foreign Plaintiffs Are Equal in U.S. Securities Class Actions, KTMC Client Update, <http://www.ktmc.com/pdf/fall08.pdf>

2<sup>nd</sup> Circuit's Dynex Decision, A Sensible Approach, Law 360, August 1, 2008. <http://www.law360.com/articles/64829/2nd-circuit-s->

[dynex-decision-a-sensible-approach?article\\_related\\_content=1](#)

Second Circuit Affirms "Corporate Scierter" Doctrine, KTMC Client Update, <http://www.ktmc.com/pdf/spring08.pdf>

### **Awards/Rankings**

Benchmark Litigation Stars, 2020

Lawdragon 500 Leading Plaintiff Financial Lawyer, 2019

Lewis Memorial Award, George Washington National Law Center, 2001, for excellence in clinical practice.