



Brian Whiteley

He | Him | His

Partner

Boston

P: 617.274.2903

bwhiteley@barclaydamon.com

Education

- St. John's University School of Law, *Cum Laude*; *St. John's Law Review*, Executive Notes and Comments Editor, JD
- Trinity College, BA

Practices & Industries

- Commercial Litigation
- Insurance & Reinsurance
- Intellectual Property Litigation
- Labor & Employment

Admitted to Practice

- Massachusetts
- New York

Court Admissions

- US Court of Appeals for the First Circuit
- US Court of Appeals for the Second Circuit
- US Court of Appeals for the Ninth Circuit
- US District Court for the District of Massachusetts

Biography

Brian is Barclay Damon's Commercial Litigation Practice Group leader. He also is a member of the firm's Compensation Committee and serves as chair of the firm's Alternative Fee Arrangement Committee.

Brian concentrates his practice on complex commercial litigation, representing corporate and individual clients in matters that include securities and ERISA class-action litigation, shareholder disputes, arbitrations, wage-and-hour class-action litigation, trade secret and noncompetition matters, software licensing and intellectual property disputes, contract actions, employment discrimination suits, and wrongful termination suits.

In addition to his litigation practice, Brian advises clients on labor and employment issues, executive compensation, and other business and commercial matters.

Bar Associations

- American Bar Association
- Boston Bar Association

Selected Memberships & Affiliations

- Massachusetts Board of Bar Overseers, Hearing Officer

Representative Experience

- Represented a national hospitality-services provider in wage-and-hour class action in California and negotiated the settlement of all claims.
- Defended an investment advisor and its principals in the Southern District of New York with respect to securities and

ERISA claims asserted in various class actions and related actions arising from the Madoff fraud in the Southern District of New York.

- Represented the trustees of a profit-sharing plan and successfully resolved a Department of Labor investigation under ERISA.
- Defended a health care company and sales executive in the Southern District of New York with respect to wide-ranging noncompetition and trade-secret issues.
- Obtained a summary judgment, which was affirmed on appeal, dismissing a multi-million breach-of-contract action on behalf of an international consumer-products company in Pennsylvania state court.
- Represented a group of ethics law professors and retired federal district court judges in filing an *amici* brief in the Second Circuit.
- Represented a privately held investment advisor with respect to investigations conducted by the Securities Exchange Commission, the US Department of Labor, the US Department of Justice, and the New York Attorney General.
- Represented a not-for-profit scientific and research foundation with respect to various issues.
- Represented a Fortune 500 company in a breach-of-contract action in the District of Massachusetts with respect to the manufacture of licensed products.
- Obtained injunctive relief and damages on behalf of a high-tech-services provider in a trade-secret action in Texas state court.
- Defended a Fortune 500 company in a trade-secret and unfair competition matter in the District of Massachusetts.
- Represented a privately held developer and manufacturer of pharmaceutical and consumer products with respect to the enforcement of intellectual property rights.
- Obtained permanent injunctive relief on behalf of a Florida-based company seeking to enforce noncompetition agreements in Alabama with respect to two former employees.
- Defended an international high-tech-services provider in a wage-and-hour class-action litigation in California state and federal courts.
- Represented a former chief financial officer of a publicly held company with respect to investigations and claims pursued by the Securities and Exchange Commission and US Department of Justice.
- Represented the purchasers of works of art and antique furniture in federal court litigation relating to the authenticity and value of the works.

- Represented an international provider of software development and consulting services in Massachusetts state court with respect to a breach-of-consulting agreement.
- Represented an international pharmaceutical manufacturer in a patent-infringement action in the District of Massachusetts.
- Defended former employees in a noncompetition and trade-secret action in Massachusetts state court.
- Defended the directors of a corporation in a matter arising from a potential acquisition.
- Served as an expert witness with respect to a legal-malpractice claim relating to an ERISA class-action matter.
- Prosecuted and defended trademark and unfair-competition claims on behalf of a Fortune 500 home-goods manufacturer and retailer.
- Represented defendants in a dispute over compensation regarding the plaintiff's work as CEO and investor.
- Represented an international electric company against agreement breach claims.
- Litigated discrimination claims resulting in case being dismissed.
- Litigated wage and hour claims and settled after mediation.
- Litigated workers' compensation claims and settled case.
- Litigated discrimination and wrongful termination claims and settled case.
- Litigated labor and employment claims resulting in case being dismissed.
- Representing nationwide hospital and health care provider and its entities in suit brought by former nurses and doctors regarding retirement and agreed-upon pension.
- Litigated securities class action and ERISA claims against investment advisor to pension and benefit funds arising out of the Madoff Ponzi scheme.
- Assisted in an internal, confidential investigation into a high-level executive and drafted a memorandum of findings.
- Mediated a claim against a multinational consumer goods company brought by a pharmaceutical company in the American Arbitration Association.
- Litigated EEOC practice group claims before the case was ultimately dismissed.
- Litigated a restrictive covenant case that resulted in the case being dismissed.
- Represented defendants in a dispute over millions of dollars recovered allegedly owed to plaintiffs.
- Litigated EEOC claims of discrimination resulting in the case being dismissed.
- Litigated EEOC claims of discrimination resulting in the case being withdrawn.

- Litigated multiple PTO and wage claims and settled the case.
- Defended a medical practitioner in an investigation brought by the Board of Registration in Medicine (BORM).
- Litigated fair labor dispute with the Office of the Attorney General Fair Labor Division and settled case.
- Represented a technology company in a dispute arising out of claims asserted against the company and a selection of its officers.
- Represented a former partner with a law firm in a dispute over contingency fees.
- Obtained summary judgment, which was affirmed on appeal, in favor of a multinational consumer goods company defending breach of contract and lost profit claims by the distributor for alleged failure to completely fill certain purchase orders.
- Litigated noncompete claims and won court injunction in favor of a client.
- Represented a defendant who was accused of making defamatory statements against the plaintiff.
- Litigated wrongful termination and whistleblower claims resulting in the case being dismissed.
- Litigated EEOC claims of sexual harassment resulting in the case being withdrawn.
- Litigated discrimination claims resulting in the case being dismissed.
- Litigated breach of contract and breach of implied covenant of good faith and fair dealing resulting in case being dismissed.
- Represented defendants during a contract dispute with a private equity firm involving breach of good faith and fair dealing, promissory estoppel, tortious interference, and tortious interference with actual and/or prospective economic advantage.
- Represented a defendant accused of a contract dispute and accused of making libel/defamatory statements against the plaintiff.
- Represented a top-tier law firm in an investigation brought forth by the Department of Labor.
- Litigated non-compete and restrictive covenant claims and settled the case.
- Represented an international gaming company in a dispute over licensing.
- Defended a doctor and his practice against a breach of fiduciary duty case arising from their self-dealing and misconduct with respect to the management of two of their businesses.
- Litigated tortious interference claims and settled the case.

- Litigated labor and employment claims on behalf of an office supply company.
- Litigated Equal Employment Opportunity Commission claims of discrimination.
- Represented a national, multifamily hospital company in an Equal Employment Opportunity Commission discrimination action.
- Litigated Equal Employment Opportunity Commission claims of discrimination, which resulted in the case being dismissed.

Prior Experience

- Hiscock & Barclay, LLP, Partner
- Scibelli, Whiteley, and Stanganelli, LLP, Founding Partner
- Hale and Dorr, LLP, Junior Partner
- Middlesex County, Special Assistant District Attorney
- *The New Milford Times*, Managing Editor

Judicial Clerkships

- US Court for International Trade, Judge Edward Re

Selected Community Activities

- Massachusetts Board of Bar Overseers, Hearing Officer
- Ashland Youth Baseball and Softball, Former President

Selected Honors

- *The Best Lawyers in America*®: Commercial Litigation, 2021–2024; Litigation – Labor & Employment, 2023–2024
- *Boston Magazine*, 2021 Top Lawyers List
- Selected to *Super Lawyers* Massachusetts: Business Litigation, 2010–2021; Employment & Labor, 2011–2014
- Boston Bar Association President's Award: Marathon Assistance Project, 2014

Selected Speaking Engagements

- Boston Bar Association Seminar, "Massachusetts Paid Family and Medical Leave Implementation."
- The Knowledge Group, "Best Trends and Practices in Avoiding Trade Secrets and Third-Parties Litigation"
- Boston Bar Association Seminar, "Best Practices for Working With Experts in the State and Federal Courts"
- Massachusetts Continuing Legal Education, "Expert Witnesses in State Court"

Selected Media

- *USLAW Magazine*, "Preserving Your Company's Confidential Business Information in the Age of Working Remotely and Cybersecurity Threats"
- *Boston Business Journal*, "Action Required: Protecting Confidential Business Information"

Selected Alerts & Blog Posts

- Massachusetts High Court Ruling Raises Standard of Care, Stakes for Broker-Dealers
- ADA Accessibility Lawsuits: Appellate Court Affirms Dismissal of Braille Gift Card Complaints
- Start Delayed for Required Massachusetts Paid Family and Medical Leave Contributions
- Massachusetts Paid Family Medical Leave Law: Employer Notification Obligations
- Massachusetts Paid Family and Medical Leave Law: Key Dates for Employers