

Molly C. Stephens

Partner



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Education

J.D., Order of the Coif, University of Texas School of Law

M.S., Stanford University

B.S., Stanford University

Admissions

California

Texas

Biography

Molly Stephens has 20 years of experience litigating complex commercial cases, including disputes involving investment contracts and funds, corporate governance and fiduciary duties, structured finance, and securities law. She has represented both plaintiffs and defendants, which gives her a unique ability to anticipate strategies and techniques used by opposing counsel. Representing plaintiffs, Molly has achieved settlements and verdicts worth tens of millions to tens of billions of dollars. Representing defendants, she has obtained settlements before the plaintiffs ever filed a lawsuit, dismissals with prejudice at the pleading stage, and summary judgment disposing of all claims. Molly continues to develop practice areas related to new industries and financial practices, including cryptocurrency, esports, and special purpose acquisition companies (SPACs).

Molly has been named a “Recommended Lawyer” in securities litigation by *Legal 500 United States* (2013-2015, 2017, 2018), and was named an up and coming securities litigator by *Chambers USA* (2013, 2014), which acknowledged “praise for her ‘powerful and impressive’ securities litigation practice” and noted that she is “phenomenally bright, a critical thinker and great listener.”

Prior to joining Miller Barondess, Molly was a partner in a global litigation firm for 11 years and an associate at the same firm for approximately seven years. Before becoming a litigator, she worked as a transactional associate on mergers and acquisitions at a global New York-based law firm.

Molly was born and raised in Texas and received her Juris Doctorate, with honors, from the

University of Texas School of Law in 2002. Prior to attending law school, Molly graduated from Stanford University with a Master's degree in Engineering Economic Systems and Operations Research and a Bachelor's degree in Industrial Engineering. She also worked as a systems analyst at Andersen Consulting (now Accenture).

Notable Representations

- Currently representing a document recording services company as both a plaintiff and defendant in multiple actions relating to a lender liability dispute, including claims by the company alleging damages of at least \$100 million.
- Currently representing a member of a limited liability company (LLC) formed to own and operate a hotel in multiple disputes with other members and alleged creditors of the LLC asserting claims for breach of contract, breach of fiduciary duty, fraudulent transfer, and appointment of a receiver.
- Represented the University of Oklahoma in a dispute involving a “public-private partnership” to build a student housing facility with \$250 million in bonds. After the facility failed to generate enough revenue to satisfy the required bond payments, the private company and bond trustee blamed the University. The bond trustee undertook an aggressive media and lobbying campaign against the University, and the company sued the University for breach of contract, promissory estoppel, and unjust enrichment. Molly successfully defeated the media and lobbying campaign and filed counter-claims against the company for declaratory relief, injunctive relief, and breach of contract. The lawsuit settled in 2021.
- Represented a venture capital fund in cases brought by The We Company (WeWork) and Adam Neumann against the fund and a multinational investment management company arising from the company's termination of a \$3 billion tender offer to purchase shares of WeWork stock from existing stockholders. WeWork and Neumann asserted claims for breach of contract and breach of fiduciary duty. Molly obtained dismissal with prejudice of the breach of fiduciary duty claims on motions to dismiss. The breach of contract claims were scheduled for trial before Vice Chancellor Laster in the Delaware Chancery Court, and the parties reached a settlement before trial.
- Represented a private equity firm, with over \$11.5 billion in assets under management, in its defense of two lawsuits arising from a dividend recapitalization of a portfolio company. The lender took over the portfolio company and instituted actions against the firm seeking recovery of at least \$100 million, alleging claims for an unlawful dividend, breach of fiduciary duty, and fraudulent transfer. In addition to defending against the actions, Molly filed a separate indemnification and advancement action against the portfolio company, along with cross-claims against the lender and its affiliates for breach of fiduciary duty, breach of contract, violations of the Uniform Commercial Code, unjust enrichment, and unfair business practices. The cases settled in March 2020.
- Represented an individual sued by judgment creditors, alleging that the individual had hidden assets to avoid satisfying the judgment and claiming \$50 million in damages. Molly settled the case without the individual ever having to respond to the complaint.

- Represented the liquidating trust of a bankrupt residential mortgage-backed securities issuer in actions filed against the mortgage originators that sold the issuer defective mortgage loans. The trust sought to recover \$9 billion in bankruptcy liabilities against the originators under indemnification and breach of contract theories. Molly was part of the team that helped the trust reach settlements in excess of \$1 billion and tried another case to a jury in Minnesota, which returned a verdict of \$29 million in the trust's favor in one day. Molly also single-handedly strategized, briefed, and argued the motion for attorneys' fees, obtaining an unprecedented \$23.1 million fee award on top of the jury verdict.
- Represented shareholders in a dispute involving the sale of a private company that operates a people search website. After the board unanimously approved a sale process, two out of four directors rejected all offers received by the board. Molly was successful in pleading direct claims by shareholders for breach of fiduciary duty based on the rejected sale offers, and the case settled in early 2017.
- Represented an insurance company in 13 actions filed against banks and mortgage companies alleging misrepresentations in the sale of approximately \$1.5 billion in residential mortgage-backed securities. The actions involved securities originated and/or sold by Countrywide, Deutsche Bank, UBS, Credit Suisse, Bear Stearns, and JPMorgan Chase, among others. Molly won critical motions to dismiss, summary judgment motions, and Daubert motions, and all actions were settled.
- Represented the Federal Housing Finance Agency (FHFA), as conservator for Fannie Mae and Freddie Mac, in 16 actions against banks and mortgage companies alleging misrepresentations in the sale of residential mortgage-backed securities. The actions involved securities originated and or sold by Bank of America, JP Morgan, Goldman Sachs, Deutsche Bank, Credit Suisse, Merrill Lynch, UBS, Barclays, and others. FHFA recovered more than \$25 billion in settlements.
- Represented a former outside director of a software company in five different actions filed by shareholders in federal and state court seeking in excess of \$2 billion for alleged securities fraud, insider trading, and breach of fiduciary duty. Molly won dismissal with prejudice of one action, dismissal with prejudice of certain securities fraud claims in another action, and summary judgment of all claims in yet another action. The remaining claims and actions were settled.
- Won dismissal with prejudice of all claims asserted by investors in a real estate investment fund against the fund's managers. The claims included direct claims for violations of federal and California securities laws and derivative claims for breach of fiduciary duty. The dismissal resulted in the settlement of two related actions brought by investors in other real estate investment funds asserting similar federal and California securities claims.
- Defeated a motion for temporary restraining order filed by investors in a Madoff-feeder fund against the fund's managers, which resulted in the investors staying all litigation against the fund's managers.
- Successfully settled claims by investors in a private investment fund—before the investors ever filed a lawsuit—after the fund lost substantially all of its value.
- Won dismissal with prejudice of a breach of fiduciary duty claim asserted by an investor in a distressed opportunities fund against the fund's managers, which resulted in a settlement of the

remaining claim.

- Successfully asserted and maintained claims on behalf of an investor in two LLCs that held commercial real estate assets against the manager that had removed the investor from the LLCs without notice or compensation. The cases settled.
- Represented a trade organization in a patent infringement lawsuit filed by a file sharing company, alleging that the organization infringed the company's patents when it used the sharing service to identify copyright infringement. The parties reached a global settlement of their patent and copyright infringement claims.
- Represented the acquiring company in an arbitration with selling shareholders involving a dispute over the earn-out provision in a stock purchase agreement. After the selling shareholders' case was defeated in the first day of arbitration, the shareholders proposed a settlement that was approximately 5% of their demand to terminate the arbitration early.

Honors and Awards

- "Recommended Lawyer" in securities litigation, *Legal 500 United States*, 2013-2015, 2017, 2018
- "Up and coming securities litigator," *Chambers USA* (which acknowledged "praise for her 'powerful and impressive' securities litigation practice" and noted that she is "phenomenally bright, a critical thinker and great listener"), 2013-2014

Professional Activities

- Active member of the American Bankruptcy Institute, the nation's largest and most diverse community of bankruptcy professionals.

Publications and Lectures

- Article, Diane Cafferata, Manisha Sheth & Molly Stephens, Preventing Harassment & Discrimination in Esports, *THE ESPORTS OBSERVER*, Mar. 12, 2021.
- Webinar, Diane Cafferata, Manisha Sheth, Molly Stephens & Amanda Stevens, Diversity and Inclusion in the Esports Industry, Esports Bar Association, Jan. 14, 2021.
- Video, Fiduciary Duties Owed by Directors, Officers, & Shareholders (2019)
- Article, Empowering Plaintiffs: Recent Trends That Make It Easier for Securities Plaintiffs to Maintain Lawsuits, *INSIDE THE MINDS, NEW DEVELOPMENTS IN SECURITIES LITIGATION* (Aspatore 2016).
- Article, After the Financial Crisis: The Impact of RMBS Cases on Securities Litigation, *INSIDE THE MINDS, NEW DEVELOPMENTS IN SECURITIES LITIGATION* (Aspatore 2013).
- Note, Sales of In-Game Assets: An Illustration of the Continuing Failure of Intellectual Property

Law to Protect Digital-Content Creators, 80 TEX. L. REV. 1513 (2002).

- Contributing Writer, Frederick Hillier & Gerald J. Lieberman, INTRODUCTION TO OPERATIONS RESEARCH (7th ed. 2001).
- Karl Schmedders & Molly Stephens, Time to Update Teaching Cases, OR/MS TODAY, Feb. 2001.
- Contributing Writer, Frederick Hillier, et al., INTRODUCTION TO MANAGEMENT SCIENCE: A MODELING AND CASE STUDIES APPROACH WITH SPREADSHEETS (2000).