



Donald W. Hawthorne

Partner

New York

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PRACTICE AREAS

Antitrust

Litigation

EDUCATION

JD – Yale Law School (1991)

PhD – Balliol College, Oxford
University (1988) Rhodes Scholarship

BA, magna cum laude – Princeton
University (1982) Phi Beta Kappa

ADMISSIONS

New York

Massachusetts

District of Columbia

New York State Supreme Court

US Court of Appeals for the First
Circuit

US Court of Appeals for the Second
Circuit

US Court of Appeals for the Third
Circuit

US District Court Eastern District of
New York

US District Court Southern District of
New York

PROFILE

Don Hawthorne's practice focuses on cutting-edge litigation, often in the financial services industry and in litigation with international parties. His practice centers on financial services and structured products litigation, complex contract litigation, securities litigation defense and investigations, international litigation, often representing Japanese clients, and antitrust litigation and counseling.

Don has significant experience litigating a wide range of issues arising from distressed securitized debt, and is often adverse to major commercial banks. He is a go-to counsel for matters concerning complex financial instruments, including serving as the expert witness in jury and bench trials in 2019 and 2020 for the Rescap trustee, providing testimony about the rights of debt noteholders that has led to the recovery of billions of dollars for the Rescap estate. Don has been prominently engaged in litigation related to the US 2007-08 financial crisis, assisting clients in recovering hundreds of millions of dollars for RMBS investors and in trustee direction proceedings. He is currently engaged in potential litigation arising from the COVID downturn concerning contract non-performance and distressed opportunities, including in securitized debt and commercial real estate.

Don frequently represents foreign parties in US litigation. He has deep connections with Japanese clients, travels to Japan regularly, and also handles matters concerning offshore jurisdictions.

Don's practice encompasses the full range of complex contractual and securities litigation. Don represents parties before the SEC and has led many internal investigations. Much of his practice concerns litigation over the significant financial consequences of such basic contract terms as "indemnification," "warranty," "royalty," and "material adverse change" —

terms that contract parties often find are far more financially significant than was anticipated at the time of drafting.

PROFESSIONAL ACTIVITIES

- American Bar Association
- Association of the Bar of the City of New York

EXPERIENCE

Don's litigation experience focuses on:

- Financial Services and Structured Products Litigation
- Complex Contract Litigation
- Securities Litigation Defense and Internal Investigations
- International Litigation: Japan & Offshore
- Antitrust Litigation and Counseling

Financial Services and Structured Products Litigation

- Lead counsel for monoline insurer Syncora Guarantee Inc. in its suit against Countrywide Home Loans for fraud and breach of contract arising from financial insurance provided for over \$6 billion in residential mortgage-backed securities ("RMBS"). Obtained \$375 million dollar settlement.
- Lead counsel for multiple hedge funds and institutional investors in RMBS litigation including Article 77 proceedings and claims against Trustees and Servicers.
- Lead counsel for financial industry service provider in defense of multiple indemnification claims brought by major money center banks.
- Expert witness on the reasonableness of Rescap's RMBS settlements in action by RMBS trustee to recover \$9 billion in indemnification suits. Testimony at jury trial led to directed verdict on reasonableness of settlements. Testimony at subsequent bench trial contributed to judicial finding for Rescap. The Court described Mr. Hawthorne as "an experienced RMBS litigator and an expert in RMBS litigation."
- Counsel to multiple monoline insurers and association of financial guaranty insurers on suits and potential claims related to RMBS and other securitized asset classes.

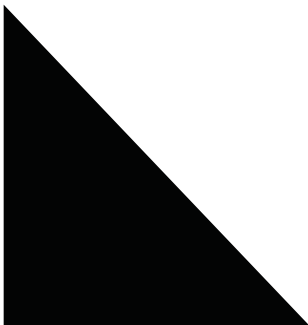
- Lead counsel for investment bank in defense of antitrust class action alleging conspiracy among auction managers for auction rate securities (“ARS”). Obtained dismissal on the pleadings.

Complex Contract Litigation

- Defense of financial services provider against indemnification claims by multiple money center banks.
- Defense and settlement of multi-million dollar construction delay claim against architect of major convention center construction project.
- Resolution of litigation concerning business interruption coverage payments to principal World Trade Center retail leaseholder.

Securities Litigation Defense and Internal Investigations

- Resolved securities claims in federal and state courts and derivative claims brought by trustee against former directors and officers of company bankrupted within a year of its IPO. While SEC brought enforcement actions against outside accountants, no SEC action was brought against client CFO.
- Lead counsel for investment bank in successful defense of securities claims arising from its role as auction manager for auction rate securities (“ARS”). Obtained dismissal on the pleadings.
- Lead counsel for private equity investor in successful defense of \$108 million short swing profit derivative claim. Obtained dismissal on the pleadings.
- Lead counsel for private equity investor in successful defense of breach of fiduciary duty action challenging \$4.5B acquisition and related appraisal proceeding in Delaware Chancery Court.
- Lead counsel for insurer in internal and SEC investigation of insurer’s sales of “finite insurance” policies.
- Lead counsel for mutual fund in internal investigation of allegations of “market timing.”
- Lead counsel for private equity investor in successful motion to dismiss Section 10(b) and controlling person securities class action claims against private equity investor and its appointed directors. Obtained dismissal on the pleadings.



International Litigation: Japan and Offshore

- Representation of Japanese corporation in dispute with American joint venture partner over operations in China and India involving US, Japanese and Indian jurisdictions.
- Advised multiple Japanese corporations on plaintiff's side claims and potential liability in US litigation.
- Lead counsel for insurer in multi-jurisdictional coverage and collection dispute involving insolvency proceedings, contempt actions, corporate governance issues, and claims of sovereign immunity in federal court, Delaware Chancery Court, and off-shore jurisdictions. Obtained dismissal of all claims against insurer. Pursuing fee claims and sanctions against plaintiffs.
- Lead counsel for private equity investor seeking to hold parent Austrian bank liable for payment of arbitral award obtained against Russian subsidiary through litigation in US, European and off-shore jurisdictions.
- Selected Insights:
 - *Keeping Japanese Companies Out of U.S. Courts: Contesting U.S. Jurisdiction and Dealing with U.S. Subsidiary Litigation*
 - *When Japanese Witnesses Testify in U.S. Courts: Answers to Nine Common Concerns*
 - *Can the COVID Experience with Remote Litigation Lead to More Cost-Effective U.S. Litigation for Japanese Companies?*
 - *Practical Advice for Japanese Businesses When Coronavirus Prevents Performance of Contracts Governed by U.S. Law*
 - *The 2020 Axinn Survey of U.S. Litigation Involving Japanese Companies*
 - *The 2019 Axinn Survey of U.S. Litigation Involving Japanese Companies*
 - *Liability for Japanese Companies Under U.S. Securities Laws: The Risks in Un-sponsored ADRs*
 - *Axinn Insights on U.S. Litigation for Japanese Companies: The Duty to Preserve Documents and Implement Litigation Holds in U.S. Civil Litigation*

Antitrust Litigation and Counseling

- Lead counsel for investment bank in defense of antitrust class action alleging conspiracy among auction managers for auction rate securities (“ARS”). Responsible for portion of joint defense brief addressing “Billing” preclusion that was basis for dismissal on the pleadings.
- Lead counsel for defendant manufacturer of copying machines in class action suit involving “Kodak” claims alleging tying and monopolization of parts and services after-markets. Obtained dismissal on the pleadings.
- Representation of major insurer in internal and New York Attorney General’s investigation of bid-rigging allegations relating to insurer’s brokerage compensation arrangements. Lead attorney coordinating response to related state regulatory investigations and private class action litigation.
- Lead antitrust counsel for Domtar in its \$6 billion combination with Weyerhaeuser’s fine paper business. Merger of second and third largest competitors in homogenous products industry resulted in DOJ resolution within initial waiting period with no divestitures.
- Individual representation of US and Asian executives in DOJ criminal investigations of alleged international air freight and passenger cartels.
- Successful representations of parties in billion dollar mergers in commodity, differentiated product, software and distribution industries before the DOJ and FTC.

