



ROB FLUSKEY

Partner, Leader of Business Litigation Practice and Co-Leader of False Claims Act & Whistleblower Representation Practice

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Rob is an experienced litigator who has represented clients in dozens of complex, high-stakes cases in federal and state courts. He currently serves as the Leader of the firm's Business Litigation Practice Group and Co-Leader of the firm's False Claims Act Practice Group.

While Rob's business litigation practice covers many areas, he focuses principally on intellectual property cases and employment cases. Rob also has substantial experience representing whistleblowers and corporate defendants in False Claims Act ("Qui Tam") lawsuits and investigations.

Rob is a summa cum laude, Phi Beta Kappa graduate of the University of Connecticut and a summa cum laude graduate of the University at Buffalo Law School. He served as an Articles Editor on the University at Buffalo Law Review and received the John N. Bennett Award for highest academic achievement in the graduating law school class.

Rob has been listed in *Best Lawyers in America* (Litigation - Intellectual Property) from 2020- 2024, (Commercial Litigation) 2024; *Upstate New York Super Lawyers* from 2013-2023; and *Buffalo Business First/ Buffalo Law Journal's* Legal Elite of Western New York for 2020.

Rob serves on the Board of Directors of the Erie County Bar Foundation and is a member of the firm's Finance Committee. He is a former Board Member of the Boys & Girls Clubs of Buffalo and the Music is Art Foundation.

Representative Engagements

Represented manufacturer of ballistic yarns in patent infringement lawsuit. Obtained summary judgment of non-infringement, dismissing all claims. Decision affirmed by Federal Circuit. *Barrday, Inc., et al v. Lincoln Fabrics Inc.*, 2023 WL 7871688 (Fed. Cir. Nov. 16, 2023).

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Practices & Industries

Business Litigation
Class Action Litigation
Employment Litigation
False Claims Act & Whistleblower Representation
Financial Services
Home Care
Intellectual Property Litigation
Non-Compete, Non-Solicit & Trade Secrets

Admissions

New York
U.S. District Court, Western District of New York
U.S. District Court, Eastern District of New York
U.S. District Court for the Northern

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Represented insurance brokerage arm of national bank as defendant in non-solicitation and trade secret litigation filed by national insurance brokerage firm. Obtained partial summary judgment for client, invalidating adversary's non-solicitation agreements.

Represented manufacturer of ballistic vest release system in patent infringement lawsuit. Obtained summary judgment of non-infringement, dismissing all claims.

Represented local developer in seven-figure federal tax refund litigation. Obtained post-trial judgment in favor of client for full refund, plus interest. *LP Ciminelli Interests, Inc. v. United States of America*, 2012 WL 5499444 (W.D.N.Y. Nov. 13, 2012).

Represented member of tissue biologics manufacturer as plaintiff in books and records action in Delaware Chancery Court. Obtained post-trial judgment in favor of client on all issues.

Represented national bank as defendant and counterclaim-plaintiff in civil fraud litigation. Obtained summary judgment dismissing all claims against client and awarding judgment on counterclaim.

Represented pharmaceutical compounding company in defense of Lanham Act false advertising litigation. Obtained complete dismissal for client and denial of preliminary injunction motion.

Represented national bank in several wage-and-hour collective action and class action litigations:

- Schaefer v. M&T Bank Corp., Southern District of New York
 - Lead counsel in putative class action and collective action under the Fair Labor Standards Act arising out of the alleged misclassification of information technology employees.
- Jillian Kennedy v. M&T Bank, Kings County Supreme Court
 - Lead counsel in putative collective action under the Fair Labor Standards Act arising out of alleged underpayments to relationship bankers.
- Hirst v. M&T Bank Corp., Kings County Supreme Court
 - Lead counsel in putative collective action under the Fair Labor Standards Act arising out of alleged underpayments to assistant branch managers.

District of New York

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

U. S. District Court, Eastern District of Michigan

U.S. Court of Appeals for the Federal Circuit

U.S. Court of Appeals for the First Circuit

U.S. Court of Federal Claims

Education

University of Connecticut, B.A.,
summa cum laude

University at Buffalo School of Law,
J.D., summa cum laude

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- *Munsey v. M&T Bank Corp.*, Monroe County Supreme Court
 - Lead counsel in putative class action arising out of the alleged misclassification of mortgage underwriters.
- *Gokhberg v. M&T Bank Corp.*, Southern District of New York
 - Lead counsel in putative class action and collective action under the Fair Labor Standards Act arising out of the alleged misclassification of mortgage loan officers.

Represented leading Greek yogurt manufacturer in defense of breach of contract and Consumer Protection Act claims and in support of counterclaims for trade secret misappropriation. Obtained summary judgment for our client, dismissing the Consumer Protection Act claim, and defeating plaintiff's summary judgment motion seeking dismissal of trade secret claims.

Represented manufacturer of automated fastening systems for aircraft assembly as plaintiff in patent infringement lawsuit. Obtained consent judgment in favor of client.

Represented public authority in a multimillion dollar construction litigation filed by a contractor involving the rehabilitation of runways at the Buffalo International Airport. Obtained summary judgment on behalf of client. The summary judgment dismissal was affirmed by the Appellate Division.

Represented developer and marketer of pharmaceutical co-pay offset programs as a defendant in patent infringement litigation in U.S. District Court for the District of New Jersey. Placed the patent in re-examination before the U.S. Patent and Trademark Office and obtained rejections of all asserted claims.

In the News

Hodgson Russ Team Wins Dismissal of Patent Case

April 2023

Buffalo Business First - Thought Leaders: Food for Thought

Buffalo Business First, September 29, 2017

Hodgson Russ Announces New Partners

January 1, 2011

Press Releases

55 Hodgson Russ LLP Attorneys Named to 2023 *Upstate New York Super Lawyers* List

August 23, 2023

83 Hodgson Russ LLP Attorneys Ranked in 2024 Edition of *Best Lawyers in America*

August 17, 2023

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Fifty-Nine Hodgson Russ Attorneys Ranked in 2022 Edition of Upstate New York Super Lawyers
Hodgson Russ Press Release, August 23, 2022

71 Hodgson Russ Attorneys Ranked in 2023 Edition of *Best Lawyers in America*
Hodgson Russ Press Release, August 19, 2022

Fifty-Four Hodgson Russ Attorneys Ranked in 2021 Edition of Upstate New York Super Lawyers
Hodgson Russ Press Release, August 20, 2021

55 Hodgson Russ Attorneys Ranked in 2022 Edition of *Best Lawyers in America*
Hodgson Russ Press Release, August 19, 2021

Sixty-Two Hodgson Russ Attorneys Named to 2020 Upstate New York Super Lawyers
Hodgson Russ Press Release, September 8, 2020

55 Hodgson Russ Attorneys Ranked in 2021 *Best Lawyers in America*
Hodgson Russ Press Release, August 20, 2020

52 Hodgson Russ Attorneys Named to Various *Best Lawyers* Listings
Hodgson Russ Press Release, August 20, 2019

Sixty Hodgson Russ Attorneys Named to 2019 Upstate New York Super Lawyers
Press Release, August 12, 2019

Publications

The Battle After *Warhol*: Tattoos as Artwork or Infringement?
Hodgson Russ Intellectual Property Litigation Alert, April 24, 2024

FTC Adopts Rule Banning Most Non-Competes and the Legal Slugfest Begins
Hodgson Russ Non-Compete, Non-Solicit, and Trade Secrets Alert, April 24, 2024

AI Lawsuit May Eclipse Claims of Fair Use
Hodgson Russ Intellectual Property Litigation Alert, April 5, 2024

Taco Bell Throws Its Hat in the Ring to Free “Taco Tuesday” from Trademark Protection
Hodgson Russ Intellectual Property Litigation Alert, May 30, 2023

Final New York State Budget Imposes New Requirements for New York Home Care Providers and Significant Financial Investments for the Health Care Industry
Hodgson Russ Home Care and Healthcare Alert, May 16, 2023

Copyright Claims of Cosmetic Company Continue to Trial
Hodgson Russ Intellectual Property Litigation Alert, March 23, 2023

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Luxury Fashion Designer Earns Its Stripes In Trademark Victory Against adidas
Hodgson Russ Intellectual Property Litigation Alert, January 27, 2023

FTC Takes Direct Aim at Employee Non-Compete Agreements
Hodgson Russ Non-Compete, Non-Solicit, and Trade Secrets Alert, January 6, 2023

New Year, New Home Care Laws: Medicaid-Funded Home Health Care Services Must Implement EVV by January 1, 2023
Hodgson Russ Home Care Alert, December 20, 2022

Court Ruling Simplifies Service Upon Foreign Trademark Infringers
Hodgson Russ Intellectual Property Litigation Alert, December 20, 2022

Presentations & Events

Intellectual Property Protection & Enforcement Webinar Series
April 20, May 25, and June 22, 2023

Attorney-Client Privilege: What General Counsel Needs to Know
Niagara Frontier Corporate Counsel, February 18, 2022

Blog Posts

- Government Fraud Statistics Demonstrate the Enduring Utility of False Claims Act Litigation
The Whistleblower Blog, September 9, 2020
- Government Statistics Show Upward Trend in False Claims Act Settlements
The Whistleblower Blog, January 31, 2012
- Whistleblowers and the False Claims Act's Public Disclosure Bar
The Whistleblower Blog, January 20, 2011
- Medical Industry Whistleblower Settlements Increase
The Whistleblower Blog, August 16, 2010