Eben P. Colby

Partner, Boston

Litigation



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Education

J.D., University of Connecticut School of Law, 2001 (with honors)

B.A., Georgetown University, 1998

Bar Admissions

Massachusetts

Maine

U.S. District Courts for the Districts of Maine and Massachusetts

U.S. Courts of Appeals for the First, Second, Third and Fourth Circuits

Experience

Law Clerk, Hon. William J. Sullivan, Chief Justice, Connecticut Supreme Court (2001-02)

Associations

Former Co-Chair, Boston Bar Journal Board of Editors

Former Co-Chair, Boston Bar Association, Financial Services Section

Member, Boston Bar Association Amicus Committee

Eben Colby is Skadden's head of Asset Management Litigation. He advises on a wide range of complex securities, corporate and regulatory matters, with a particular focus on the asset management industry. He has secured landmark wins at the U.S. Supreme Court, as well as in appellate and trial courts around the U.S. — including jury and bench trials. He has also led teams through numerous high-profile regulatory investigations and enforcement proceedings.

Mr. Colby has counseled large and small firms, funds and boards in the asset management industry on their most significant issues for more than two decades.

His experience spans fiduciary duty matters of all types, as well as class actions under the 1933 and 1934 Acts, excessive fee claims under the Investment Company Act of 1940, direct and derivative governance and corporate control issues under the laws of Maryland, Delaware and Massachusetts. He has also advised clients on "proprietary funds" and other cases under the Employee Retirement Income Security Act (ERISA) and defended funds and their boards from attacks by activist investors in court and in proxy campaigns.

Mr. Colby's results include obtaining multiple precedent-setting decisions on behalf of clients and the asset management industry more broadly, securing successful outcomes on billions of dollars of claims after bench and jury trials, as well as at the summary judgment and pleading stages. He led the Skadden team that represented FS Credit Opportunities Corp. in its successful Supreme Court case, obtaining a holding that Section 47(b) of the Investment Company Act has no private right of action, a major win for the regulated fund industry that preserved the SEC's near-exclusive authority to enforce the Investment Company Act and precludes private plaintiffs from attempting to do so.

Mr. Colby has extensive experience defending against activist investors. This includes litigating and advising boards on proxy voting, governance, anti-takeover defenses, board elections and fiduciary duties. In this space, the FS Credit Opportunities Corp. decision neutralized a tool used by activist investors to attack funds' defensive measures.

Mr. Colby has been named a Winning Litigator by *The National Law Journal* and *The Best Lawyers in America* for his victories in high-stakes matters. Additionally, he has been honored as one of *Massachusetts Lawyers Weekly*'s Go To Commercial/Consumer Lawyers and one of *Boston Magazine*'s Top Lawyers, as well as an Asset Management Rising Star by *Law360*.

In the civil litigation area, Mr. Colby's notable asset management matters include:

- FS Credit Opportunities Corp. in the milestone case *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, in which the Supreme Court held that Section 47(b) of the Investment Company Act (ICA) does not create a private right of action
- Fidelity Management & Research LLC and certain Fidelity trustees and officers in a putative class action by shareholders in a $480 billion money market fund alleging breaches of fiduciary duty, a breach of the implied covenant of good faith, aiding and abetting, and unjust enrichment
- the independent trustees of Tortoise closed-end funds in securing the affirmance of the dismissal with prejudice of a $1 billion shareholder suit alleging breaches of fiduciary duty before the Appellate Court and Supreme Court of Maryland. The court's ruling further developed Maryland's strict pre-suit demand requirement, confirming that exceptions remain extraordinarily narrow and concluding that the rule is "near universal"

- MassMutual's brokerage subsidiary in a class action in the U.S. District Court for the District of Massachusetts involving alleged breaches of fiduciary duty and associated contractual claims arising from its cash sweep program
- ASA Gold and Precious Metals Ltd. and its board in successfully obtaining a decision from the Southern District of New York that the fund's adoption of a shareholder rights plan (poison pill) did not violate the Investment Company Act of 1940
- Eaton Vance Management and its CEO in securing a favorable, precedent-setting judgment on all remaining claims following a seven-day bench trial in the Business Litigation Session of the Massachusetts Superior Court. The case was brought by an activist investor and challenged defensive bylaw amendments adopted by certain Eaton Vance-sponsored closed-end funds, including a heightened voting threshold for contested director elections. The court's decision upheld the bylaws under both Massachusetts law and the Investment Company Act of 1940
- Templeton Global Income Fund and its directors in bringing offensive claims against an activist investor for failing to make required disclosures in a proxy control contest
- BlackRock in securing dismissal on all counts, after a bench trial in the District of New Jersey, in a $1.5 billion-plus excessive fee claim brought under Section 36(b) of the Investment Company Act
- Putnam Investments in securing a complete trial victory on claims it breached fiduciary duties under ERISA by including proprietary mutual funds in its $600 million 401(k) plan, the first decision on the merits in such cases (partially affirmed and partially reversed on appeal)
- BlackRock in obtaining the dismissal of a putative class action brought on behalf of shareholders in iShares ETFs under Sections 11 and 12 of the Securities Act of 1933 for alleged misstatements and omissions in offering documents related to the risks of so-called "flash crashes"
- Putnam Investments and Putnam Fiduciary Trust Company in obtaining a favorable jury verdict in Massachusetts business court in an action brought by a former executive involving deferred compensation and other claims, including successfully obtaining a jury finding on counterclaims that the former executive breached fiduciary duties
- Putnam Investments in securing summary judgment dismissal of a $440 million claim alleging Rule 10b-5 fraud claims in an MDL proceeding consolidating more than 80 putative class actions
- Invesco in obtaining a rare pleading-stage dismissal of claims that it violated ERISA by including proprietary funds in its $3 billion-plus 401(k) plan
- an institutional money manager in the successful defense of $360 million fraud, RICO, breach of contract and other claims brought by a corporate pension plan in a private arbitration
- an adviser in securing summary judgment dismissal, affirmed on appeal, of $180 million state court fraud, breach of fiduciary duty and other claims brought by the Employee Retirement System of Texas
- a large asset manager in defense of racketeering, racial discrimination and unfair competition claims involving an alternative investment mandate awarded to the manager by a pension fund
- investment advisers in more than $150 million in employment disputes involving fiduciary duty, wrongful termination, deferred compensation and contract claims

Mr. Colby also has extensive experience in the regulatory arena. He has defended asset managers in dozens of investigations by the SEC, the DOJ and state and self-regulatory agencies relating to a wide range of business and compliance matters, including those involving conflicts of interest, sales and distribution, portfolio management, trading, code of ethics and back-office issues. Some examples of his representations include:

- a large adviser in the multiyear SEC, DOJ and CFTC investigations of an alleged $600 million trading fraud by its chief investment officer
- a large recordkeeper in investigations by state and federal regulators regarding revenue sharing agreements
- a special committee of the board of directors of a large custody bank in an independent investigation of pay-to-play allegations
- a large asset management firm and their employees in SEC insider trading investigations
- multiple advisers in the successful resolution of a SEC investigation into certain fixed-income trading practices, as well as in conducting several internal investigations into a range of other trading issues
- portfolio managers and others in conducting several independent investigations into potentially improper conduct by portfolio managers and others

Mr. Colby's practice reaches beyond the asset management industry. He has also represented high-tech, life sciences, accounting and other firms in matters involving alleged fraud and securities law violations; theft of confidential information and trade secrets; covenants not to compete and "employee raiding" litigation; SEC and other regulatory investigations; and litigation in Delaware arising from mergers and acquisitions. Notably, Mr. Colby led a team in three trial wins that obtained permanent and injunctive relief from the Delaware Chancery Court in a dispute over a developing technology, as well as in securing the related dismissals of two bankruptcy filings as bad-faith litigation tactics.

Mr. Colby is active in various *pro bono* matters and has been recognized for his work in domestic abuse prevention cases. In addition, his work obtaining significant recovery on behalf of victims of a labor trafficking scheme, as well as on behalf of workers who were unlawfully detained in a large-scale workplace immigration raid, were each recognized as part of *Bloomberg Law*'s Pro Bono Innovators accolade bestowed on Skadden in consecutive years. Mr. Colby also led a Skadden team as part of a consortium of firms in obtaining a historic settlement valued at over $20 million for Indian welders and pipefitters brought to the Gulf Coast after Hurricanes Katrina and Rita in the nation's largest-ever labor trafficking suit. In recognition of the firm's work on this matter, Skadden was among those honored with *The American Lawyer*'s Global Citizenship Award (Grand Prize) as part of its Global Legal Awards. Mr. Colby has also been named to the Massachusetts Supreme Judicial Court's Pro Bono Honor Roll.

Recent Publications

"Inside the Courts," *Skadden Publication*, Recurring publication

"Investment Management Update," *Skadden Publication*, Recurring publication

"How to Limit Trading Risk When AI Accesses Nonpublic Info," *Law360*, August 10, 2026

"When AI Models Access Nonpublic Information: MNPI Risks for Financial Firms," *Skadden Publication*, July 21, 2026

"Exploring the Significant Ramifications of the Supreme Court's FS Credit Ruling," *Skadden Publication*, July 2, 2026

"Skadden Secures Supreme Court Victory on Behalf of FS Credit Opportunities Corp.," *Skadden Publication*, June 11, 2026

"Skadden Argues Before Supreme Court Against Private Right of Action in ICA Disputes," *Skadden Publication*, December 16, 2025

"Court Upholds Legality of Poison Pills for Closed-End Funds but Limits Successive Plans," *Harvard Law School Forum on Corporate Governance*, April 16, 2025, and *Skadden Publication*, April 1, 2025

"Investment Trusts and Activist Funds: What UK Companies Need To Know," *Skadden Publication*, March 4, 2024

Speaking Engagements

"Insights From the Winning Team: A Debrief on the FS Credit Opportunities Corp. Ruling and Its Implications," Skadden webinar, June 16, 2026

Speaker, Investment Company Institute Closed End Funds Conference, November 12, 2024

"Investment Management Litigation and Regulatory Enforcement Update," Skadden webinar, May 2, 2023