

Mark R.S. Foster

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Litigation



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Education

J.D., Santa Clara University School of Law, 2002 (Dean's Fellow; Order of the Coif)

B.A., University of California, Davis, 1996

Bar Admissions

California

Mark Foster represents public companies — and their officers and directors — in securities fraud class actions, shareholder derivative lawsuits, and shareholder demands and related investigations, among other matters.

Utilizing his extensive knowledge of both federal and state securities laws — including the Securities Act of 1933, the Securities Exchange Act of 1934, the Private Securities Litigation Reform Act, the Securities Litigation Uniform Standards Act, the California Compensation Code and Delaware corporate law — Mr. Foster frequently defends clients against investor lawsuits. He also represents companies and their directors and officers in defending against breach of fiduciary duty and insider trading allegations, and counsels on disclosure issues, including those related to adverse events and corporate governance issues. In recognition of his work, Mr. Foster has been selected for inclusion in *Chambers USA* and *Benchmark Litigation*, which recognizes him as a Litigation Star.

Mr. Foster has represented a wide variety of clients — ranging from *Fortune* 100 companies to startups — in numerous sectors, such as life sciences, retail, manufacturing and technology (including cleantech). He also has advised boards of directors in connection with demands for action and investigations, as well as books and records requests. Mr. Foster has successfully counseled clients across all stages of litigation, including securing victories at pretrial, prevailing on the merits at trial and preserving victories on appeal, often introducing arguments and obtaining successful rulings that have broken new legal ground, including:

- the incorporation condition adopted by the Delaware Court of Chancery, which allows parties that produce documents pursuant to inspection demands to use those documents in a motion to dismiss, as if incorporated by reference in the complaint
- the Ninth Circuit's rejection of an implied right of action for a violation of the Investment Company Act in connection with an alleged violation of an exemption
- a recent grant of *certiorari* by the U.S. Supreme Court to decide whether the Private Securities Litigation Reform Act's stay of discovery pending a motion to dismiss applies in state courts

Prior to rejoining Skadden, Mr. Foster served as co-chair of the securities litigation, enforcement and white collar defense practice of another global law firm, where his successful representations included:

Securities Class Actions

- Oracle and certain former directors and officers in securing an early dismissal of all but a "narrow omissions claim" in a securities class action, followed by a favorable settlement
- Solazyme and its directors and officers in winning the dismissal of a securities class action arising out of a secondary stock offering
- RH and certain of its current and former officers in defending against allegations of securities fraud relating to the launch of a new product line and inventory levels
- The Clorox Company and certain of its directors in defending against a shareholder class action that challenged the accuracy of proxy statement disclosures regarding say-on-pay executive compensation and a proposed increase to the number of authorized shares for a stock incentive plan

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- LeapFrog Enterprises in the defense of a shareholder class action arising out of the company's acquisition, as well as in a securities class action asserting securities fraud claims relating to a product launch and accounting-related issues
 - the directors and officers of one of the world's largest contact lens manufacturers in a securities class action

Shareholder Derivative Actions

- Banc of California in the dismissal of derivative claims asserted under Maryland law for alleged breach of fiduciary duty by the company's current and former directors and officers
- Yahoo!'s board of directors in the dismissal and the affirmance of the dismissal of allegations relating to alleged false statements and breaches of fiduciary duty
- a publicly traded technology company and its former chairman in a six-week jury trial defending against allegations of civil securities fraud in connection with an initial public offering