Richard W. Mark

Partner

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New York



Richard W. Mark is a partner in the New York office of Gibson, Dunn & Crutcher and a member of Gibson Dunn's Litigation, Intellectual Property, Appellate and Constitutional Law, Environmental, FDA and Health Care, Life Sciences, and White Collar Defense and Investigations Practice Groups.

Richard has represented businesses and individuals in product liability, tort, contract, patent law, ERISA, employment law, constitutional, and commercial disputes, and in government civil and criminal investigations. Richard has tried more than a dozen jury and non-jury cases, and has argued more than 30 appeals in state and federal courts, including the United States Courts of Appeal for the Second, Third, Fifth and Federal Circuits; the Illinois Appellate Court; the New York State Court of Appeals; the New York State Appellate Division; the Oregon Court of Appeals; the Pennsylvania Superior Court; and the Wisconsin Supreme Court.

Richard is ranked nationally as a leading lawyer for Mass Tort Litigation and Class Actions in *Best Lawyers in America®.* The United States Court of Appeals for the Second Circuit appointed Richard to its *pro bono* panel of appellate advocates and has designated him as counsel for indigent appellants.

Richard has served as the Election Supervisor for the nationwide, multi-stage process of electing the officers of the 1.3-million member International Brotherhood of Teamsters. The United States District Court for the Southern District of New York appointed Richard to that position in 2005, under a court order entered to root out corruption in the union. The Court reappointed him to supervise the elections in 2011 and 2016, and the Union, making its own decision, appointed Richard to supervise the 2021 eleciton. As Election Supervisor, Richard issued more than 1,000 decisions interpreting and enforcing the *Election Rules*, including decisions on matters of campaign finance issues and integrity of the voting process. He also supervised the secure preparation, mailing, and tabulation of ballots, protecting each voter's right to ballot secrecy.

Richard was an Assistant United States Attorney in the Southern District of New York from 1984 through 1994, holding the position of Chief of the Civil Division for his final three years in the office. During the following three years, he was First Deputy Commissioner of the New York City Department of Investigation (DOI). The DOI investigates and refers for prosecution elected officials, City employees, and City contractors engaged in corrupt or fraudulent activities, or unethical conduct.

Richard received his Juris Doctor from Columbia Law School in 1980, where he was a Harlan Fiske Stone Scholar and graduated *magna cum laude* from Dartmouth College in 1977. He clerked for the Honorable Thomas P. Griesa of the United States District Court for the Southern District of New York. He is a member of the Federal Bar Council and The Association of the Bar of the City of New York.

Capabilities

Litigation
Accounting Firm Advisory and Defense
Anti-Corruption & FCPA
Appellate and Constitutional Law
Class Actions
Environmental
Intellectual Property
Law Firm Defense
White Collar Defense and Investigations

Credentials

Education

Columbia University - 1980 Juris Doctor
Dartmouth College - 1977 Bachelor of Arts

Admissions

New York Bar

Clerkships

USDC, Southern District of New York, Hon. Thomas P. Griesa, 1980 - 1981

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Immediately before joining Gibson Dunn, Richard was a partner at Orrick, Herrington & Sutcliffe LLP, where he was the firm's Litigation Practice Group leader.

Richard is admitted to practice in New York.

Selected Representative Matters

- **American Cyanamid Company:** Serves as national counsel for American Cyanamid in its lead-pigment-in-paint litigation. The cases include personal injury and property damage actions brought on behalf of states, local governments, private classes and individuals. The plaintiffs' legal theories include public nuisance as well as product liability. Richard has won summary judgments in favor of Cyanamid in lead pigment cases in New York, Maryland and Wisconsin. He has successfully resolved other cases in California, Illinois, Mississippi, Missouri and Texas. Richard also represented Cyanamid in *State of Rhode Island* v. *Lead Industries Association*, in which the manufacturers convinced the Rhode Island Supreme Court to reject the State's novel attempt to hold product manufacturers liable for public nuisance. Richard argued for Cyanamid in the Wisconsin Supreme Court in *Godoy* v. *E.I. DuPont DeNemours & Co*., 2009 WI 78 (2009).
- **Wyeth:** Served as national counsel for Wyeth in hundreds of product liability cases involving claims that Wyeth's childhood vaccines containing thimerosal caused autism in some vaccinated children. Richard argued preemption motions in vaccine cases in federal and state trial and appellate courts in Alabama, Illinois, Louisiana, Maryland, Massachusetts, New Hampshire, Oregon and Pennsylvania. He argued, and won, the first federal appellate court ruling that the federal Vaccine Act pre-empts design defect claims for vaccine-related injuries. *Bruesewitz*v. *Wyeth, Inc*., 561 F.3d 233 (3d Cir. 2009), *aff'd* 562 U.S. 223 (2011).*
- **Chevron Corporation:** Member of the team that successfully represented Chevron on motion to dismiss the City of New York's claim for damages arising from global climate change. *City of New York v. BP P.L.C.*, 18-CV-182 (S.D.N.Y. July 19, 2018).
- **The Dow Chemical Company:** On behalf of Dow Chemical, Richard won dismissal of the civil RICO and other federal claims asserted in a nationwide class action alleging personal injury and property damage caused by exposure to pesticide containing Dursban®. *Williams* v. *The Dow Chemical Co.*, 255 F. Supp. 2d 219 (S.D.N.Y. 2003).*
- **The Port Authority of New York and New Jersey:** Won summary judgment dismissing Commerce Clause challenge to certain toll and fare increases approved by the Port Authority. *AAA Northeast v. The Port Authority of New York and New Jersey*, 221 F. Supp. 3d 374 (S.D.N.Y. 2016). Earlier in the same litigation, defeated plaintiffs' application for a preliminary injunction (*Automobile Club of New York, Inc. v. The Port Authority of New York and New Jersey*, Memorandum Opinion and Order, 11 Civ. 6746 (S.D.N.Y. Dec. 2, 2014)), and won ruling upholding exercise of the deliberative process privilege (*Automobile Club of New York, Inc. v. The Port Authority of New York and New Jersey*, Memorandum Opinion and Order, 11 Civ. 6746 (S.D.N.Y. May 27, 2015)).
- **Lawson Software:** Represented defendant at trial and on appeal in a civil contempt case following a plaintiff's verdict of patent infringement and the entry of a permanent injunction by the United States District Court for the Eastern District of Virginia. The case ended with a complete victory for defendant on the contempt charge, and a remand with instructions to vacate the injunction and dismiss the case. *ePlus, Inc. v. Lawson Software, Inc.*, 789 F.3d 1349, *reh. denied*, 790 F.3d 1307 (Fed. Cir. 2015).
- **PricewaterhouseCoopers, LLP:** obtained judgment on the pleadings for PwC, defeated two motions fro reconsideration, and successfully opposed Plaintiffs' motion for summary judgment in an ERISA class action, in which Plaintiffs sought to compel payment of "whipsaw claims" exceeding $1 billion. *Laurent v. PricewaterhouseCoopers LLP*, 06-CV-2280 Slip Op. (S.D.N.Y. July 24, 2017), *reh.*

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denied, Slip Op. (S.D.N.Y. Jan. 19, 2018), *reh. denied,* Slip Op. (S.D.N.Y. Apr. 24, 2018).

- **PricewaterhouseCoopers, LLP:** Represented PricewaterhouseCoopers in wage-and-hour class action litigation. In *Commisso* v. *PricewaterhouseCoopers*, *LLP*, 2012 WL 3070217 (S.D.N.Y. July 27, 2012), a proposed class action under New York Labor Law and the Fair Labor Standards Act on behalf of 3,800 putative class members, Richard secured dismissal of the state law claim for failure to satisfy the Class Action Fairness Act jurisdictional requirements, and denial of plaintiff's motion to create federal jurisdiction by amending the complaint to add an FLSA claim.
- **Chevron Corporation:** Member of the team that successfully represented Chevron in the action that won a judgment of civil RICO liability against defendants for using corrupt means to obtain a multi-billion dollar judgment against Chevron in an environmental case brought in the courts of Ecuador. *Chevron Corp. v. Donziger*, 974 F. Supp. 2d 362 (S.D.N.Y. 2014).
- **Mycogen Plant Science, Inc.:** Represented Mycogen in cases involving patents on making genes that confer insect-resistance, methods of making such genes, and methods of transforming plants with such genes. These cases, which focused on transgenic corn crops, were at the leading edge of applied molecular biology. He argued and briefed appeals before the Federal Circuit, including *Mycogen Plant Science, Inc.* v. *Monsanto Co*., 252 F.3d 1306 (Fed. Cir. 2001) and *Mycogen Plant Science, Inc.* v. *Monsanto Co*., 243 F.3d 1316 (Fed. Cir. 2001).*
- **American Cyanamid Company:** Represented American Cyanamid in a dispute relating to the invention of a particular formulation for a prenatal multivitamin / mineral supplement with iron. *The University of Colorado Foundation, Inc.* v. *American Cyanamid Company*, 342 F.3d 1298 (Fed. Cir. 2003).*
- **School Specialty, Inc.:** Won enforcement of an arbitration agreement to resolve a post-closing purchase price adjustment dispute. *McGraw-Hill Companies, Inc.* v. *School Specialty, Inc.*, 42 A.D.3d 360, 840 N.Y.S.2d 47 (1st Dep't 2007).*
- **Pro bono:** As pro bono counsel appointed by the U.S. Court of Appeals for the Second Circuit, Richard has represented petitioners under final orders of removal. In one matter, Richard argued that the petitioner had derived U.S. citizenship through the petitioner's naturalized father. The Second Circuit granted the petition and remanded the matter to the Board of Immigration Appeals (BIA) for further action. *Watson* v. *Holder*, 643 F.3d 367 (2d Cir. 2011). On remand, the BIA recognized Mr. Watson's entitlement to U.S. citizenship. In another matter, Richard argued that the BIA erred in classifying the petitioner's petit larceny conviction as a "crime involving moral turpitude," and the court remanded the case to the BIA for further consideration under that Board's own precedents. *Obeya v. Holder*, 572 Fed, App'x 34 (2d Cir. 2014). On remand, the BIA denied relief based on a newly-announced rule that overturned 70 years of precedents. Richard won reversal of the BIA's order on a second petition for review, with the Second Circuit holding that the new rule could not be applied retroactively. *Obeya v. Sessions*, 884 F.3d 442 (2d Cir. 2018). Richard submitted briefs *amicus curiae* on behalf of The Innocence Network in support of petitioners, both at the petition and merits briefing stages, in *Turner v. United States*, 137 S. Ct. 1885 (2017), a case that considered the Government's compliance with *Brady* disclosure obligations.
- **Investigations:** Represented businesses and individuals in investigations conducted by the New York State Attorney General's Office, the New York City Department of Investigation and the New York City Conflicts of Interest Board. He has also conducted internal investigations for professional services firms and for a labor union.
- **Government representations:** As an Assistant United States Attorney,* Richard's noteworthy representations of the government included *In re Chateaugay (United States v. LTV Corp.)*, 944 F.2d 997 (2d Cir. 1991) (dischargeability of contingent environmental liabilities); *Abrams v. Brady*, 77 N.Y.2d 741, 570 N.Y.S.2d 468 (1991) (upholding constitutionality of federal statute

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controlling disposition of unclaimed tax refunds); and *United States* v. *International Brotherhood of Teamsters*, 931 F.2d 177 (2d Cir. 1991) (consent decree binds non-party affiliates of signatory international union).

Selected Publications and Presentations

- Co-Author, "Don't Count On PREP Act To Defend Pandemic IP Infringement," *Law360* (July 2, 2020).
- Co-Author, *Exposure Torts*, in “A Practitioner’s Guide to Class Actions” [Second Ed.] (ABA 2017).
- Co-Author, *Exposure Torts*, in “A Practitioner’s Guide to Class Actions” (ABA 2010).
- Presenter, “Attorney-Client Privilege: Considerations for In-House Counsel” (Client Presentation).
- Presenter, “Document Retention: Considerations When Litigation Looms” (Client Presentation).
- Adjunct Professor of Law, Fordham University Law School from 1998-2004 (taught courses in Legal Research and Writing and a clinical seminar in civil litigation).
- Faculty, Attorney General’s Institute on Appellate Advocacy, United States Department of Justice (1992-1993).
- Speaker on Civil RICO, FBI Academy.

** Representations occurred prior to attorney’s affiliation with Gibson Dunn.*

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