Wheeler Trigg
O'Donnell

James N. (Nick) Boeving

Partner

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Nick Boeving–a former federal prosecutor in the Southern District of New York–specializes in handling complex internal and government (state and federal) investigations and enforcement matters. He also represents clients in high exposure professional liability and commercial disputes. His clients include healthcare companies and health systems, Fortune 500 companies, technology and pharmaceutical companies, and insurance carriers.

Having extensive government experience, both as a former AUSA and a Trial Attorney in DOJ's Honors Program, Nick has deep insight that enables him to effectively guide and counsel clients facing potential legal liability to the government. While in the government, Nick was involved in multiple fraud investigations involving the FCA and FIRREA, investigated violations of national voting rights laws, and handled significant tax shelter litigation involving two large financial institutions.

Nick also has extensive experience advising and defending healthcare and behavioral health companies nationwide in high exposure professional liability matters. He has advised multiple national health care systems, including both publicly traded and privately held companies, and has managed complex litigation throughout the country.

Credentials

Education

Columbia Law School, J.D., 2005, James Kent Scholar, *Columbia Journal of Transnational Law*, Editor-in-Chief, Philip C. Jessup International Law Moot Court

University of Arkansas, B.A., *summa cum laude*, 2002; Political Science

CLERKSHIPS

Law Clerk to The Honorable Debra A. Livingston, United States Court of Appeals for the Second Circuit

Law Clerk to The Honorable Diana E. Murphy, United States Court of Appeals for the Eighth Circuit

OTHER GOVERNMENT SERVICE

Assistant United States Attorney, United States Attorney's Office for the Southern District of New York

Trial Attorney, United States Department of Justice, Civil Rights Division

BAR AND COURT ADMISSIONS

Colorado
New York
U.S. Court of Appeals, 10th Circuit
U.S. Court of Appeals, 8th Circuit
U.S. District Court, D. Colorado
U.S. District Court, E.D. Missouri
U.S. District Court, S.D. New York

ARTICLES AND PRESENTATIONS

Presenter: Responding to Level I & II Incidents: The Role of the Risk Manager, Client Presentation.

Presenter: What to Expect When You're Expecting . . . A Lawsuit, Client Presentation.

Presenter, "Civil Suits & DORA Investigations: Navigating Parallel Proceedings," Colorado Defense Lawyers Association.

Presenter, "High Times: Marijuana and the Changing Landscape for Healthcare Providers and Hospital Administrators," The Colorado Bar Association Health Law Section.

"The Right to Be Present Before Military Commissions and Federal Courts: Protecting National Security in an Age of Classified Information," 30 Harv. J. L. & Pub. Pol'y 463.

"Aggression, International Law and the ICC: An Argument for Withdrawal of Aggression from the Rome Statute," 43 Colum. J. Transnat'l L. 557.

"Half Full…or Completely Empty?," Environmental ATS Claims Post-Sosa v. Alvarez-Machain, 18 Geo.Int'l Envtl. L. Rev. 109.

Practices

Appellate
Catastrophic Injury
Commercial Litigation
Employment/Class Actions
Healthcare Litigation
Investigations

Cases

INVESTIGATIONS

Lead investigator for the Town of Mountain Village in a public corruption investigation that received substantial local and national media coverage.

Represented a neurosurgeon in federal civil fraud investigation by the U.S. Attorney's Office related to the use of neuromonitoring and billing issues related to the same. The United States declined to file suit against the provider.

Conducted internal investigations for a national healthcare company of allegations of staff-on-patient sexual abuse at facilities in Iowa, Washington, Montana, and Texas. These investigations included liaising with local and federal law enforcement, advising the company on its legal exposure, and recommending changes in policies and practices at the facilities.

Successfully represented a leading global chemical company in an investigation involving multiple federal agencies and international trade compliance issues. Voluntary self-disclosures were made to OFAC and BIS and neither agency elected to pursue civil penalties.

Successfully represented a Fortune 500 international electronics company in an investigation concerning international immigration compliance issues. A voluntary disclosure was made to the Department of Homeland Security and the agency opted not to pursue civil or criminal penalties.

Conducted an internal investigation for a multi-state healthcare system concerning billing fraud allegations under the False Claims Act by a former employee turned whistleblower.

Represented former employees of a Fortune 500 national pharmaceutical company in federal multidistrict civil investigation involving potential Controlled Substances Act and False Claims Act violations.

Represented a Fortune 500 international beverage company in investigations by the Bureau of Alcohol, Tobacco, Firearms, and Explosives concerning alleged improper market activities and kickbacks.

Represented a gastroenterologist in a criminal and civil health care fraud investigation. The United States declined to intervene in the civil *qui tam* action and no criminal charges were filed.

Conducted an internal investigation for a Southern Colorado hospital into claims of sexual assault by an employee and advised the hospital concerning the criminal indictment and subsequent prosecution of the employee.

Represented a large local manufacturer in a Colorado Consumer Protection Act investigation by the Colorado Attorney General's Office. The State declined to file suit.

Conducted an investigation of a major national bank's foreign exchange program. Brought a civil fraud action under FIRREA asserting claims of mail and wire fraud against the bank and an individual employee of the bank. Defeated the defendants' motions to dismiss the complaint. This was a case of first impression concerning the scope of FIRREA, and the court's opinion has since been followed by other judges.

Investigated a major FHA lender's mortgage lending and underwriting practices, and brought a civil fraud action under the FCA and FIRREA against the lender, its owner and CEO, and another senior employee. Defeated defendants' motions to dismiss the FCA and FIRREA claims.

LITIGATION

Won a complete defense verdict for a psychiatrist serving an Iowa county jail in a $34 million medical malpractice trial.

Served as co-counsel to a hospital system in one week jury trial in Pennsylvania. Prepared fact and expert witnesses for trial and briefed and argued numerous motions. The case settled favorably after the first week of trial.

Served as co-counsel to a healthcare provider in a two week jury trial in Colorado. Prepared witnesses to testify, examined witnesses at trial, and briefed and argued numerous motions in limine.

Represent healthcare providers before various licensing boards and regulatory agencies.

Represent prison healthcare professionals in multiple 42 U.S.C. § 1983 matters for multiple private prison staffing companies.

Hired by the Department of Justice to represent a prison guard in a 42 U.S.C. § 1983 case involving alleged inmate-on-inmate sexual assault.

Obtained a favorable ruling from the Colorado Department of Regulatory Agencies ("DORA") rejecting a complaint of discrimination against a healthcare provider.

Won a complete defense verdict following a week-long jury trial rejecting the plaintiff's claim of employment discrimination by a federal agency.

Successfully defended summary judgment wins before the U.S. Court of Appeals for the Second Circuit in multiple employment discrimination cases.

Won summary judgment in numerous cases in which plaintiffs alleged some form of employment discrimination or retaliation by a federal agency under Title VII or the Rehabilitation Act.

Won summary judgment in arbitration for a nation-leading telecom provider in an indemnification dispute with a former subcontractor whose employee filed a class action lawsuit in the Southern District of New York. Though the plaintiff was one class member among thousands, we demonstrated that the subcontractor was liable to indemnify our client for all of its attorneys' fees related to the class action and a pro rata share of the resulting settlement.

Obtained dismissal for an insurance company client facing a civil RICO lawsuit in federal court, with risk of treble damages, for issuing a surety bond to a marijuana business as required by state regulations. The judge granted our client's motion to dismiss because the plaintiffs failed to plausibly allege injury sufficient to establish RICO standing.

Served as trial counsel in a multimillion dollar tax shelter trial involving what was once one of the largest investment banks in the United States. Successfully moved in limine to preclude and limit the scope of the expert testimony proffered by the plaintiff. The case concerned the interpretation of a decades-old bilateral tax treaty and the interplay of that treaty with U.S. tax laws and regulations.

Defeated a summary judgment motion by a national insurance company in a multimillion dollar tax shelter case involving numerous cross-border structured finance transactions. Co-authored the appellate brief defending the denial of summary judgment in the U.S. Court of Appeals for the Second Circuit. The case involved overlap of the foreign tax credit regime established by Congress and common law doctrines, such as economic substance, as well as the underlying contours of the economic substance doctrine.

Won reversal of a TRO that had been issued *ex parte* at the close of business on a Friday, effectively shutting down operations for a major manufacturing and distribution client, and subsequently won rejection of the injunction against our client.

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