



**Mark S. Cohen**  
Partner, New York

+1 212 957 7601  
mcohen@cohengresser.com

#### Practice Areas

Litigation and Arbitration, Class Action Defense, Commercial Litigation, Securities Litigation, Directors and Officers Litigation, Aviation Litigation, Real Estate Litigation, Professional Liability, Products Liability, Mass Torts and Consumer Class Actions, White Collar Defense and Regulation, FCPA/Anti-Corruption, Internal Investigations, Regulatory Enforcement, Criminal Defense, Antitrust and Competition Litigation, Employment Law - U.S., Employment Law, U.S. Employment Investigations, Family Office Practice, Corporate, Antitrust and Competition, Antitrust and Competition Regulatory and Enforcement

#### Education

University of Michigan Law School (J.D., *magna cum laude*, 1987); Cornell University (B.A., Phi Beta Kappa, 1984)

Mark S. Cohen is a leading litigator and trial lawyer with a nationwide practice and a co-founder of Cohen & Gresser LLP. His practice is noteworthy for its scope and depth: he leads the firm's prominent and highly-ranked practices in civil litigation, arbitration, investigations, and white collar defense, and has successfully handled hundreds of matters for clients across the U.S., Europe, and Asia. Recognizing that every client faces different and often complex situations, Mark tailors strategies to the client and situation at hand - which may involve counseling and advice, negotiation, litigation, and, where necessary, taking cases to trial. He serves as the managing partner of C&G's New York office.

Mark is a Fellow of the American College of Trial Lawyers, with an active trial practice of civil, white collar, and regulatory cases. He has tried over 25 cases to verdict, many of which have been high-profile. Mark recently served as lead trial counsel for the defendant in *United States v. Samuel Bankman-Fried*, a five-week jury trial that was referred to as the "trial of the decade." The case was covered by more than 60 media outlets and was the subject of more than one million media stories, as well as a number of books. In another matter, Mark served as lead trial counsel in the two-week jury trial of a civil insider trading case brought by the SEC against a former hedge fund analyst, achieving a complete victory; in connection with that case, Mark was subsequently selected as a Litigator of the Week by *AmLaw Litigation Daily*. Clients and market commentators describe Mark as "an outstanding trial lawyer and strategist who has excellent judgment," and as someone who is "highly intelligent and strategic, great on his feet, has outstanding judgment and instincts, a calming and reassuring presence as a counselor, and is appropriately aggressive and tough when and as needed."

Mark's civil practice includes representing companies, board members and special committees, C-suite executives, senior employees, executors and trustees and law firm partners in a variety of complex matters. *Chambers USA* market commentary notes that "he is excellent at formulating strategies to deal with highly complex litigation." He represents both plaintiffs and defendants in complex commercial disputes, including cases involving financial services, securities, corporate control, fiduciary, trusts and estates, real estate and construction, employment, aviation, and antitrust issues.

*Chambers USA* ranks Mark in Band 1 for his white collar and regulatory practice, noting his "excellent reputation for his sophisticated practice" which includes the representation of companies, board committees, and individual clients in internal investigations, federal and state regulatory proceedings, and criminal investigations and trials. Over the past decade, he has represented more than two dozen public and private companies and individuals (including C-suite executives) in connection with DOJ and state criminal investigations in which the clients faced potential criminal exposure; none of these clients was criminally charged. And in circumstances where criminal charges have been brought, Mark has an excellent record of resolving such matters for non-custodial or minimal sentences, and limited financial penalties.

Mark has also been privileged to be selected for matters in the public sector. The U.S. District Court for the Eastern District of New York appointed Mark as the Court Monitor for the New York City Fire Department, the largest

## Bar Admissions

New York State; U.S. District Courts for the Southern and Eastern Districts of New York; U.S. Court of Appeals for the Second Circuit

fire department in the country. For the past decade, he has overseen implementation of the Court's remedial order following a lawsuit alleging racial discrimination in FDNY hiring.

Mark is committed to service and teaching in connection with many bar associations and educational organizations in New York and overseas. He has

participated in panels and taught on various substantive topics, legal ethics, and trial practice. For many years, he has been a visiting lecturer at the Sorbonne in Paris, teaching a course to French law students on U.S. white collar criminal law.

Mark is a *magna cum laude* graduate of the University of Michigan Law School, where he was a Note Editor of the Law Review. Prior to co-founding the firm, he served as an Assistant United States Attorney for the Eastern District of New York and formerly practiced with Fried, Frank, Harris, Shriver & Jacobson.

## Presentations, Teaching, and Leadership

Mark has served on numerous panels sponsored by leading bar associations and educational organizations relating to substantive topics, legal ethics, and trial practice.

He recently gave the annual Justice Strong Lecture on Ethics and the Business Lawyer at Widener University Commonwealth Law School.

For many years, he has been a visiting lecturer at the Sorbonne in Paris, teaching a course to French law students on U.S. white collar criminal law.

Mark has been privileged to serve in leadership positions within the American College of Trial Lawyers. He has served as Vice Chair and then Chair of the Downstate New York Committee; and previously served as Vice Chair and Chair of the Evidence Committee.

Mark has been recognized in many legal publications. The *Chambers USA* guide recently ranked Mark in Band 1 for White Collar Crime & Government investigations and has ranked him as a Leading Individual in that category each year since 2013 and in its securities litigation category each year since 2016. *Chambers USA* also nominated Mark for its White Collar Crime & Government Investigations individual award in 2016. Clients refer to Mark as "a skilled litigator" who is "smart, practical, persuasive, and diplomatic." He is recognized in *The Legal 500's U.S.* guide in the categories of corporate investigations and general commercial disputes and is ranked as a Leading Lawyer in the securities litigation defense and white collar criminal defense categories. *The Legal 500* commentary describes him as "an outstanding trial lawyer and strategist who has excellent judgment," and "highly intelligent and strategic, great on his feet, has outstanding judgment and instincts, a calming and reassuring presence as a counselor, and is appropriately aggressive and tough when and as needed." The guide has further described Mark as a "formidable" trial lawyer within the securities litigation space. Both *Chambers* and *The Legal 500* commentary refer to Mark as an excellent trial attorney noting that "he stands out for his combination of skill, thoughtfulness and tenacity during investigations with seasoned trial expertise during litigation." In 2023, *Super Lawyers* recognized Mark as one of the top 10 lawyers in the entire New York Metropolitan area. It has recognized Mark on its annual New York Metro Super Lawyers list for business litigation each year since 2008, and named him one of the top 100 lawyers in the New York metropolitan area each year since 2014. Mark is regularly recognized by *The Best Lawyers in America* for white collar criminal defense and is a former member of *Law360's* editorial advisory board for its white collar coverage. He has also been named a Local Litigation Star in each edition of *Benchmark Litigation* since 2012. Mark has also been recognized by *Lawdragon* as one of the 500 Leading Litigators in America. Mark was recently named to the *Lawdragon* Hall of Fame, an honor recognizing attorneys who have demonstrated exceptional, skill, sustained excellence and lasting leadership in the legal profession.

## Civil Litigation

*Representative matters include:*

The trustee of a \$100 million trust in connection with a long running, highly-contested proceeding in New York's Surrogates Court. The case is through extensive discovery and motion practice and awaiting trial.

A leading marketing technology company in a high-stakes contractual and commercial dispute with a major customer relating to all aspects of our client's business and operations.

A major airline in numerous complex commercial litigations and arbitrations throughout the country, relating to the interpretation of years-long and sophisticated contracts pertaining to engine leases, components, and related issues.

The former CEO of a Fortune 50 multinational technology company, along with other former senior executives, in relation to hundreds of arbitrations and court proceedings across the country brought by former employees against the company alleging age discrimination. The matter raised novel and complicated issues relating to the use of non-party discovery in connection with arbitrations.

Serving as the court-appointed monitor for the largest fire department in the country. The monitorship involves implementing the U.S. District Court for the Eastern District of New York's remedial order following a lawsuit alleging racial discrimination. Overseen an extensive, multi-tier process involving the department's practices and procedures for recruiting, testing and screening candidates, and its EEO functions.

Individual restitution claimants in civil claims brought against one of the world's largest mining and natural resources companies, in connection with the company's guilty plea to FCPA and fraud related charges. Following a contested proceeding, the court awarded our clients nearly \$30 million in restitution.

Several leading non-for-profit organizations in connection with defending hundreds of cases brought under New York's Child Victim Act ("CVA") and related statutes. Early in the litigation, Mark was asked by the Deputy Chief Administrative Judge for the New York City Courts to join the Steering Committee which helped shaped the approach and policy for thousands of CVA and related matters.

Former owners and investors in a medical technology company that was acquired by a multibillion dollar company in connection with their contractual claims for the recovery of a \$50 million milestone payment.

A manufacturer of aerostructures for commercial airplanes in contractual and employment matters.

A high-profile investor and fund in a dispute concerning its purchase of interests in a mining entity and interpretation of a shareholders agreement and related documents.

The independent board of an iconic ice cream company in a dispute with its corporate parent relating to scope of its shareholders agreement, corporate governance, and social mission.

Individual family members of prominent family, former employees, owners, and directors of a drug manufacturer, in connection with numerous cases brought by consumers and government authorities in multiple states.

Defended one of world's largest retailers in a consumer class action regarding alleged misrepresentations about the quality of product sold through our client's stores and channels.

Defending a former senior broker at a major financial services firm in complex, multi-faceted litigation involving sprawling claims relating to trust agreement, contract, and tort.

## **White Collar Criminal and Regulatory Matters**

*Representative matters include:*

### *Corporates*

A large, privately-held conglomerate with global operations in connection with a multi-year federal investigation relating to potential FCPA criminal and civil violations. The matter involved numerous complex and novel issues regarding the scope of the FCPA. No action was taken against our client.

A major publicly traded renewable energy development company in a DOJ and regulatory investigation into potential securities laws violations deriving from certain corporate acquisitions. The investigation had an added layer of complexity, as the company was also going through a corporate reorganization via the bankruptcy process. The company was not charged.

Leading global AI and technology company in connection with a DOJ investigation relating to the testing, marketing, and distribution of COVID test kits. The investigation was part of the government's broader review of COVID related matters. The company was not charged.

A SPAC, its sponsor, and its CEO in connection with an SEC investigation relating to a de-SPAC transaction through which the acquired company became a publicly traded company. The investigation further involved issues relating to technology, as the acquired company was an AI provider.

A company in connection with an industry-wide investigation conducted by states attorney generals into potential illegal conduct relating to the pricing of oil-based products.

Conducted an internal investigation on behalf of our client, a leading non-profit organization, with regard to potential issues relating to employment and workplace culture, as well as to corporate governance.

A leading art museum in connection with an inquiry regarding artwork alleged to have been improperly taken from the original owners during and in the aftermath of the Second World War.

A Swiss financial institution in connection with our client's participation in the complex DOJ program for Swiss banks relating to off-shore accounts and potential tax issues. Represented our client during a years-long process in which we navigated the requirements of the program, as well as cross-border rules and limitations, resulting in our client obtaining a non-prosecution agreement.

Multiple regular corporate clients in connection with responses to government-issued subpoenas.

### *Individuals*

The former CFO of a publicly traded biopharmaceutical company in a criminal investigation into alleged accounting fraud involving complex issues, in which the former CEO and COO were both indicted, went to trial and were convicted. Our client was not charged or otherwise involved in the criminal case and reached a successful settlement of a parallel regulatory investigation.

The former CFO of a multinational insurance provider in connection with an SEC investigation of the company relating to sophisticated accounting and internal controls issues. The representation spanned a lengthy investigation and we achieved a successful resolution for the client.

A former senior investment analyst with one of the world's largest publicly traded hedge funds in a multi-year high-profile FCPA investigation conducted by the DOJ and SEC. Our client was not charged in the criminal case. The SEC subsequently filed a lawsuit, which we successfully moved to dismiss - we thus achieved a complete victory for the client that resulted in C&G's nomination for *Global Investigation Review's* Most Important Court Case of the Year award.

The chief accounting officer of a multi-billion dollar real estate investment trust in connection with a long running government investigation. All charges against our client were ultimately dismissed.

A major real estate developer, owner, and manager of multi-family residential and commercial properties throughout the Northeast U.S. in connection with two federal civil forfeiture actions seeking \$100s of millions in forfeiture. Following vigorously contested litigation, the government agreed to third-party sales of many of the properties. After further litigation, the remaining portion of the case was resolved successfully.

A senior executive and founding participant in of one the world's leading video and audio communications platforms in connection with a high-profile DOJ and SEC investigation relating to the company's international relationships, disclosures, and customer interactions. Our client was not charged, nor pursued civilly by the regulators.

A business consultant in connection with one of the largest crypto currency investigations brought by the government, relating to the collapse of a multi-billion crypto company. Following a multi-year investigation, our client received a sentence of probation.

Pool counsel to senior executives of large financial firm in connection with parallel government and internal company investigations into alleged criminal misconduct of others.

Pool counsel to numerous executives in one of the largest recent FCPA investigations brought by the DOJ. None of our clients were charges or otherwise involved in the criminal case.

A former employee of a multinational banking and financial services corporation in a DOJ investigation into money laundering. Our client was not charged.

A leading law firm partner in connection with an investigation relating to alleged misconduct in connection with investments made by union pension fund. Our client was not charged.

## **Trials and Arbitrations**

*Representative civil and criminal trials include:*

Lead trial counsel for the defendant in *United States v Samuel Bankman-Fried*, a high-profile, five-week jury trial that was a leading case in the cryptocurrency sector. The case was covered by more than 60 media outlets and was the subject of more than 1 million media stories, as well as books, which referred to it as the “trial of the decade.” During pre-trial litigation, we successfully challenged six counts (nearly half the counts in the indictment) as having been brought in violation of the extradition treaty between the U.S. and Bahamas (where the client had resided), resulting in the government’s dismissal of those charges.

Lead trial counsel in the two-week jury trial of a civil insider trading case brought by the SEC against a former hedge fund analyst, in which our team achieved a complete victory; in connection with that case, Mark was subsequently selected as a Litigator of the Week by *AmLaw Litigation Daily*.

Lead trial counsel for a former investment advisor representative in an eight-week jury trial of complex federal white collar case involving allegations of conspiracy, fraud, money laundering, bank fraud and attempted obstruction of justice.

Part of the team representing the defendant in *United States v. Ghislaine Maxwell*, a leading jury trial, which was also covered extensively by multiple media outlets. Mark handled initial proceedings and served as strategic advisor to the trial team.

Lead counsel in one of the longest and most complex securities arbitrations coming out of the Lehman bankruptcy. The case involved claims for hundreds of millions of dollars relating to management of client accounts.

Co-lead counsel for a financial services company in arbitration relating to client’s purchase of hundreds of millions of dollars in complex securities.

Lead counsel in numerous securities arbitrations involving complex issues relating to suitability, contract and fraud based allegations.

Lead counsel to a major financial services company in five-week jury trial in state court relating to the sale of sophisticated financial products. The case had been in litigation for years, and Mark and our team were brought in to work with company counsel on the eve of trial.

Part of the defense team in a ten-week jury trial in state court relating to charges of securities fraud and perjury. The case presented an issue of first impression regarding whether alleged perjury before a regulatory entity could form the basis for state perjury charges.

Earlier in his career, Mark served as an Assistant United States Attorney for the Eastern District of New York where he handled numerous jury trials. He was part of the trial team in *United States v. Pitera*, one of the first federal death penalty cases to be tried in the federal courts in New York. While still a junior prosecutor, Mark served as one of the three trial attorneys in the seven-week jury trial.

## **Activities and Affiliations**

Fellow, American College of Trial Lawyers (Federal Rules of Evidence Committee, Chair, 2020-2022), (New York Downstate Committee, Chair, 2022-present)

Member, Federal Bar Council

Visiting Lecturer, Sorbonne University (Paris)

Member, Securities Industry and Financial Markets Association (Compliance and Legal Division)

Former Member, Law360 Editorial Advisory Board (for White Collar Coverage)

Member, American Bar Association (Section on Litigation)

Former Co-Chair, Securities Subcommittee of the Committee on Commercial and Business Litigation, American Bar Association

Member, New York City Bar Association

Board of Trustees, Supreme Court Historical Society

Board of Directors, New York Council of Defense Lawyers, 2008-2011

Member, UJA-Federation of New York (Lawyers Division, Criminal Law Group)