



## Mark Musico

Partner

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### Overview

Mark Musico is a trial and appellate lawyer in Susman Godfrey's New York Office. His clients include the country's leading lights in finance, technology, and industry, including international sports betting and gaming giant, Flutter Entertainment; Fortune 500 conglomerate, General Electric; pioneering satellite communications company, Loral Space & Communications; preeminent macro investor and hedge fund manager, Louis Bacon; and prominent hedge fund, Saba Capital.

Clients describe Musico as “**really sharp**,” “**having an excellent manner**,” and “**unflappable**.” Plaintiffs and defendants look to him for winning insights in high-stakes disputes involving intellectual property, defamation and the First Amendment, the False Claims Act, the Investment Company Act, antitrust, securities, insurance, breach of contract, breach of fiduciary duty, and fraud.

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***“Mark is super smart and an amazing storyteller. He has a brilliant mind.”***

**Client quote from Chambers 2024**

Musico's wins, which have generated billions in value for his clients, include:

- An award valued at **over \$2 billion** for Flutter Entertainment in a high-profile dispute with FOX Corporation, convincing an arbitrator in New York to nearly double the exercise price FOX sought for its option to acquire a portion of Flutter's portfolio company, FanDuel.
- A **\$203 million** award for Louis Bacon in a high-profile defamation case against Peter Nygard, the largest known award in a New York-based defamation lawsuit.

- A **\$307.5 million** settlement on behalf of a class of life insurance policyholders in connection with AXA Equitable's cost-of-insurance rate hike.

Musico has also secured several victories for hedge fund, Saba Capital, in disputes with entrenched and underperforming managers of funds in which Saba invested. He recently argued and won two precedent-setting appeals before the Second Circuit, successfully invalidating provisions that deprived fund shareholders of their equal voting rights under the Investment Company Act of 1940. Musico also won an injunction that allowed Saba to win the vote for board control of a \$701 million closed-end fund, as reported by the *Wall Street Journal*.

After graduating first in his class from Columbia Law, Musico started his legal career clerking at every level of the federal judiciary—for Justice Ruth Bader Ginsburg on the United States Supreme Court, Judge Michael Boudin on the U.S. Court of Appeals for the First Circuit, and Judge Douglas P. Woodlock on the U.S. District Court for the District of Massachusetts.

## Notable Representations

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### Representative Cases

- ***Saba Capital Master Fund, Ltd. BlackRock ESG Capital Allocation Trust (SDNY | CA2)*** As lead counsel for Saba Capital, convinced the Court that closed-end funds managed by BlackRock, Royce Investment Partners, Tortoise Capital Advisors, Adams Funds, and FS Investments violated the federal Investment Company Act by opting-in to Maryland's Control Share Acquisition Act. Musico successfully argued the summary judgment motions in the District Court, and the appeal to the Second Circuit. *Saba Capital Master Fund, Ltd. v. BlackRock Mun. Income Fund, Inc.*, 23-cv-5568 (JSR), 2024 WL 43344 (S.D.N.Y. Jan. 4, 2024), *aff'd*, 2024 WL 3174971 (2d Cir. June 26, 2024).
- ***In re AXA Equitable Life Insurance Litigation (SDNY)*** Secured a \$307.5 million settlement for a class of plaintiffs who challenged AXA's 2016 cost-of-insurance rate hike on hundreds of elderly insureds. Musico successfully led the team's efforts to obtain certification of the first-ever nationwide class of plaintiffs asserting claims under New York Insurance Law § 4226 based on materially misleading misrepresentations about the terms of the policies.
- ***Saba Capital CEF Opportunities 1, Ltd., et al. v. Nuveen Floating Rate Income Fund (SDNY | CA2)*** As lead counsel for Saba Capital, won a precedent-setting victory against closed-end funds managed by Nuveen. Musico convinced the Court that defensive measures known as "control share provisions," which strip shareholders of voting rights, violate the Investment Company Act of 1940. The Second Circuit affirmed, following a successful argument by Musico. *Saba Capital CEF Opportunities I, Ltd*

*v. Nuveen Floating Rate Income Fund*, 21-cv-327 (JPO), 2022 WL 493554 (S.D.N.Y. Feb. 17, 2022), *aff'd*, 88 F.4th 103 (2d Cir. 2023).

- ***Louis Bacon v. Peter Nygard et al. (New York Supreme Court, Commercial Division)*** Won a \$203 million award for Louis Bacon in a high-profile defamation case against Peter Nygard. This is the largest known award in a New York-based defamation lawsuit. For years, Musico spearheaded the team's hard-fought efforts, including in developing case strategy, briefing countless motions, and deposing a key whistleblower whose testimony featured prominently at the special damages inquest that resulted in this record-breaking win.
- ***Fox Sports Group v. Flutter Entertainment (SDNY)*** Alongside firm managing partner Vineet Bhatia and a lean team of SG attorneys, won a favorable award for Flutter Entertainment when an arbitrator in New York nearly doubled the exercise price its opponent, a subsidiary of FOX Corporation, sought for its option to acquire 18.6% of Flutter's portfolio company, FanDuel Group. This high-stakes, high-profile arbitration resulted from FOX's assertion that it should be entitled to the same price Flutter paid for its share of FanDuel two years before the arbitration took place—\$2.1 billion, with an implied company valuation of \$11.2 billion. The arbitrator, however, found that FOX's payment must be based on a substantially higher FanDuel valuation of \$20 billion it was hoping for, plus an additional 5% interest per year. At the time of the decision, this equated to a valuation for FanDuel of \$22 billion and an option exercise price of \$4.1 billion for FOX—nearly twice the amount that FOX argued it should be required to pay. Musico handled several witnesses at trial, including cross-examining FOX's in-house counsel, who negotiated the contract at issue, regarding the parties' intent with respect to key terms in dispute. Musico also spearheaded Flutter's pre- and post-trial briefing.
- ***Saba Capital CEF Opportunities 1 Ltd. v. Voya Prime Rate Trust (Arizona Superior Court)*** Alongside Jacob Buchdahl, secured a preliminary injunction that allowed his client, Saba Capital, to win the vote for board control of a \$701 million closed-end fund, as reported by the *Wall Street Journal*. The injunction prevented the fund from enforcing a bylaw that substantially raised the voting threshold required to elect board trustees. At a full-day evidentiary hearing, Musico presented the proxy solicitation expert whose testimony the Court called "persuasive, if not compelling" evidence in support of Saba's case. *Saba Capital CEF Opportunities 1 Ltd v. Voya Prime Rate Trust*, No. CV 2020-005293, 2020 WL 5087054 (Ariz. Super. June 26, 2020). Musico also beat back several rounds of emergency appeals seeking to stay the injunction.
- ***Wellstat Pharmaceuticals v. BTG (Delaware Chancery Court)*** Won a \$70 million verdict for Wellstat Pharmaceuticals (which received \$58 million net of fees) in a bet-the-company lawsuit against the distributor of its leading product. Musico tried the case in Delaware Chancery Court alongside firm founder, Steve Susman. He played an instrumental role in maximizing the client's recovery by presenting Wellstat's damages expert

at trial, convincing the court to exclude key testimony from defendant's damages expert, cross-examining defendant's expert who tried to understate the market for Wellstat's life-saving drug, and cross-examining a defense witness who tried to shift the blame to Wellstat. Musico then wrote the brief that convinced the Delaware Supreme Court to summarily affirm the judgment on appeal.

- **Public Sector Pension Investment Board v. Saba Capital (New York Supreme Court, Commercial Division)** Represented Saba Capital, and its founder, Boaz Weinstein, in an asset valuation dispute with its investor, PSP. Musico led the strategic effort to chip away at PSP's claims against Saba, and successfully briefed motions leading the court to dismiss three of the four claims at issue. The case settled while Saba's summary judgment motion to knock out PSP's one remaining claim was pending. Read more in *Forbes*.
- **ViaSat v. SpaceSystems/Loral (Southern District of California)** Defended Loral Space & Communications and its subsidiary, Space Systems/Loral, in a high-stakes patent infringement and breach of contract trial. Musico prepared and argued the jury instructions and presented a key defense witness. Musico also helped write the post-trial briefs that resulted in the court ordering a new trial on damages. The Court called the original damages award against the defendants a "miscarriage of justice."

## Honors & Distinctions

- Rising Star, New York Super Lawyers – an honor awarded to the top 2.5% of lawyers under the age of 40 in New York (2024, Thomson Reuters)
- Up and Coming Lawyer, Chambers USA (2024, 2023)
- *Lawdragon* 500X – The Next Generation of Leading Lawyers (2024, 2023)
- *Lawdragon* 500 Leading Litigators (2024, 2023)
- Rising Star of the Plaintiffs Bar, *National Law Journal's* Elite Trial Lawyers (2021, ALM)
- John Ordronaux Prize, Columbia Law School 2011 (First in Class)
- James Kent Scholar, Columbia Law School 2009-2011
- Articles Editor, *Columbia Law Review*

## Clerkships

Honorable Ruth Bader Ginsburg, Supreme Court of the United States

Honorable Michael Boudin, United States Court of Appeals for the First Circuit

Honorable Douglas P. Woodlock, United States District Court for the District of Massachusetts

## *Education*

**Columbia Law School** (J.D., , 2011)

**Harvard University** (B.A., magna cum laude, 2007)

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## *Admissions*

### **Bar Admissions**

- New York
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### **Court Admissions**

- United States Supreme Court
- U.S. Court of Appeals for the Second Circuit
- U.S. District Court for the Southern District of New York
- U.S. District Court for the Eastern District of New York

## *Leadership & Professional Memberships*

- LGBT Bar Association of Greater New York
- Fellow, American Bar Foundation