

Michael J. Fortunato, Esq., *Shareholder*



Michael Fortunato chairs the Employment Practices Group. Mr. Fortunato represents clients nationwide with respect to the federal, state, and local laws that govern today's workplace. He has represented clients in trials and arbitrations under Sarbanes-Oxley, Title VII, the Age Discrimination in Employment Act, the Equal Pay Act, the Family and Medical Leave Act, the Fair Labor Standards Act, the Americans with Disabilities Act, and their state counterparts. He also has prosecuted and defended common law claims arising out of employment relationships, including wrongful termination, constructive discharge, retaliation, defamation, fraud, and breach of contract. In addition to his numerous appearances in arbitrations and in federal and state courts throughout the country, Mr. Fortunato has extensive experience mediating employment-related claims. In 2008, Mr. Fortunato successfully obtained a defense verdict and then a plaintiff's verdict in two unrelated jury trials under the Sarbanes-Oxley whistleblower protections.

Mr. Fortunato received his undergraduate and law degrees from The Catholic University of America in Washington, D.C., where he served as the *Senior Lead Article and Book Review Editor* of the *Catholic University Law Review*. Mr. Fortunato has received an "AV" rating from Martindale-Hubbell, and has been a featured speaker at Pennsylvania and ABA events regarding Sarbanes-Oxley, witness preparation, ethics, and mediation and arbitration advocacy.

Mr. Fortunato was named by other lawyers as one of Pennsylvania's top employment litigation lawyers in a survey conducted by the polling organization Law and Politics in 2008, 2009 and 2010. Details concerning the selection process and the overall results of the survey were published in the June 2010 edition of *Philadelphia Magazine* or at www.superlawyers.com. Mr. Fortunato was also named a "Rising Star" in 2005 based on a survey of peer recognition and professional achievement conducted by Law and Politics. Mr. Fortunato, his wife, Carol, and three daughters live in Garnet Valley, PA.

Contact

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Education

The Catholic University of America (B.A., 1987)
The Catholic University of America (J.D., 1990)

Practice Focus

Restrictive Covenants and Trade Secrets
Hiring from the Competition
Employment Litigation - Employers
Employment Litigation - Individuals
Employment Counseling - Employers
Employment Counseling - Individuals
Employment and Related Agreements

Admitted to Practice

Pennsylvania, 1990
US District Court, Eastern District of Pennsylvania, 1990
New York, 2007
US Court of Appeals, Sixth Circuit, 1994
US Court of Appeals, Third Circuit, 1995
US District Court, Central District of Illinois, 1995
US Court of Appeals, Seventh Circuit, 1997
US Supreme Court, 2000



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Speaking Engagements

- Pennsylvania Bar Institute, 17th Annual Employment Law Institute, “The Public Policy Exception to the At-Will Doctrine: Is PA the New California?” (2011)
- Pennsylvania Bar Institute, 16th Annual Employment Law Institute, “Legally Stealing Talent From Your Competitors” (2010)
- Pennsylvania Bar Institute, 15th Annual Employment Law Institute, “Whistleblower Retaliation Claims Under Sarbanes-Oxley” (2009)
- Pennsylvania Bar Institute, Employment Institute West, “The Care & Feeding of Witnesses” (2008)
- Pennsylvania Bar Institute, 14th Annual Employment Law Institute, “The Care & Feeding of Witnesses” (2008)
- 4th Annual Alternative Dispute Resolution Institute, “Effective Advocacy In Commercial Arbitration” (2008)
- American Bar Association, The Second Annual Arbitration Training Institute – A Comprehensive Training in Commercial Arbitrations, “Advocacy In Arbitration” (May 2005)
- American Bar Association, Section of Dispute Resolution & ABA Center for Continuing Legal Education, The 3rd Annual National Institute Advanced Mediation & Advocacy Skills Training, “Effective Advocacy In Mediation” (October 2004)

Practice Highlights

- Merrill Lynch, Pierce, Fenner & Smith Inc. v. Carl E. Choy, Lynne R. Kinney, and Ronald C. Wo, FINRA Dispute Resolution No. 09-06111, Honolulu, Hawaii (2011) (Obtained \$4.6 million in compensatory damages and successfully defended multiple claims by respondents, including breach of contract, wrongful termination, unfair and deceptive trade practices)
- Merrill Lynch, Pierce, Fenner & Smith Inc. v. Eric Matheson, FINRA Dispute Resolution No. 10-00008, Boca Raton, Florida (Obtained \$440,000 in compensatory damages and successfully defended respondent claims of breach of contract and fraudulent inducement)
- Sech v. Merrill Lynch, Pierce, Fenner & Smith Inc., Evelo, Singer, and Sullivan v. UBS, FINRA Dispute Resolution No. 09-01374, Cincinnati, Ohio (2010) (successful defense of \$17.5 million breach of contract, defamation, unfair competition claim)
- Robert Wood/Lloyd Dotson v. Merrill Lynch, Pierce, Fenner & Smith Inc., FINRA Dispute Resolution, No. 09-03629, New York, NY (2010) (successful defense verdict of employment claims)
- Robert Knight v. Merrill Lynch, Pierce, Fenner & Smith Inc., No. 08-16024 (9th Cir. 2009) (argued October 8, 2009) (affirmed lower court decision refusing to vacate successful arbitration award)
- H. Scott Scherr v. Merrill Lynch, Pierce, Fenner & Smith Inc., FINRA Dispute Resolution, No. 08-00928, Baltimore, Maryland (2009) (successful defense verdict of employment claims)
- Mattern & Associates, LLC v. John Seidel, United States District Court, District of Delaware, No. 06-36-SLR, Wilmington, DE; (2008) (Jury Verdict for over \$172,000 on breach of contract and trade secret claims)



- *Oswaldo Feliciano and Innovative Media Machine, Inc. v. Parexel International and Barnett International*, United States District Court for the Eastern District of Pennsylvania, Civil Action No. 4-3798, Philadelphia, PA (2008) (Jury verdict of \$1.7 million under Sarbanes Oxley & PA public policy)
- *Richard Blagrave v. Nutrition Management Services Co., et al.*, 2008 U. S. Dist. LEXIS 52404, Philadelphia, Pennsylvania (2008) (successful jury defense verdict on Sarbanes Oxley claims)
- *Michael Owen v. Merrill Lynch, Pierce, Fenner & Smith*, American Arbitration Association, No. 71 160 M 0047107, Dallas, Texas (2008) (successful defense verdict on defamation, statutory defamation, slander per se, intentional interference with contracts, vicarious liability, conspiracy, and breach of agreement claims)
- *Michael J. Carey v. Merrill Lynch, Pierce, Fenner & Smith Inc. and John Offenberger*, JAMS, Reference No. 1340006294, Cleveland, Ohio (2008) (successful defense verdict of employment claims)
- *Samuel Albert Annitto v. Merrill Lynch, Pierce, Fenner & Smith Incorporated*, FINRA Dispute Resolution, Docket No. 2007-016728, New York, New York (2008) (successful defense verdict of employment claims)
- *Merrill Lynch, Pierce, Fenner & Smith Incorporated v. Gregory Elinsky v. Michael Botte and Charles Haraburda*, FINRA Dispute Resolution, Case No. 05-01212, Philadelphia, Pennsylvania (2008) (recovered over \$1.4 million for broker/dealer against former employee; successfully defended counterclaims; won confirmation of award in court)
- *Irving Becker v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, FINRA Dispute Resolution, Case No. 06-02824, Newark, New Jersey (2007) (successful defense verdict of employment claims)
- *Victor Divietro v. Merrill Lynch, Pierce, Fenner & Smith Incorporated*, FINRA Dispute Resolution, Case No. 06-03661 (consolidated with 06-03674), Tampa, Florida (2007) (successful defense verdict of employment claims)
- *Michael R. Harding v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, NASD Dispute Resolution, Case No. 05-05656, Cleveland, Ohio (2007) (successful defense verdict of employment claims)
- *Kevin B. Murphy v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, NASD Dispute Resolution, Case No. 05-02481, New York, New York (2007) (successful defense verdict of employment claims)
- *Mitchell Slater v. Merrill Lynch, Pierce, Fenner & Smith Inc. and Thomas Fickinger*, NASD Dispute Resolution, Case No. 05-04072, Newark, New Jersey (2006) (successful defense verdict of employment claims)
- *Kimberlyn Underwood v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and Riley O. Etheridge, Jr.*; NASD Dispute Resolution, Case No. 04-02774, San Francisco, California (2006) (successful defense verdict of employment claims)
- *David Frand v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, Case No. 04-04152, Boca Raton, Florida (2005) (successful defense verdict of employment claims)
- *James L. Purdy v. Merrill Lynch, Pierce, Fenner & Smith Incorporated*, NASD Dispute Resolution, Case No. 03-07997, Salt Lake City, Utah (2004) (successful defense verdict of employment claims)
- *Clarence S. Frisbee v. Merrill Lynch, Pierce, Fenner & Smith Incorporated*, American Arbitration Association, Case No. 12 M 160 00536 03, Missoula, Montana (2004) (successful defense verdict of employment claims)
- *Merrill Lynch, Pierce, Fenner & Smith Inc., v. Jeannette A. Adcock*, 176 F.R.D. 539; 1997 U. S. Dist. LEXIS 10010, Illinois (2004) (successful defense verdict of employment claims)



- Mary Kelly O'Connor v. Merrill Lynch, Pierce, Fenner & Smith Inc., NASD Dispute Resolution, Case No. 03-00001, Cincinnati, Ohio (2004) (successful defense verdict)
- Merrill Lynch, Pierce, Fenner & Smith Inc. v. Robert W. Berry and Diane L. Spencer, United States Court of Appeals for the Sixth Circuit, No. 02-4282 (2004) (successful defense verdict of employment claims)
- David Engel and Melissa Engel v. Merrill Lynch, Pierce, Fenner & Smith Inc. and Miriam Martin, NASD Dispute Resolution, Case No. 02-04260, New York, New York (2003) (successful defense verdict of employment claims)
- Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dain Rauscher, Inc. and Randolph S. Moore, NASD Dispute Resolution, Case No. 01-02012, Phoenix, Arizona (2003) (recovered damages for broker-dealer; employee's counterclaims denied, award confirmed by federal court)
- Martin J. Mazur v. Merrill Lynch & Co., Inc., Brian Sepe; Robert Graham, Tom Lydon and Joseph P. Gannotti, NASD Dispute Resolution, Case No. 01-01586, Chicago, Illinois (2003) (successful defense verdict of employment claims)
- Merrill Lynch, Pierce, Fenner & Smith Inc. v. Lucius G. Briggs, NASD Dispute Resolution, Case No. 01-03736, New York, New York (2002) (successful defense verdict of employment claims)
- Scott Carpenter v. Merrill Lynch, Pierce, Fenner & Smith Inc., Thomas A. Seiler, and Charles J. Haraburda, NASD Dispute Resolution, Inc., Case No. 00-44526, Philadelphia, Pennsylvania (2002) (successful defense verdict of employment claims)
- Michael C. Mullett v. Merrill Lynch, Pierce, Fenner & Smith Inc. and Merrill Lynch & Company, Inc., 2002 U. S. Dist. LEXIS 25763 (U.S.D.C., E.D. of PA) (successful jury verdict for defense on age discrimination claim)

