



## Nicholas J. Faso

### Partner

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Nicholas J. Faso is a partner of the firm and member of its Commercial Litigation and Higher Education practice groups. As a litigator, Nick represents businesses, municipalities, institutions, and individuals as plaintiffs and defendants in all phases of dispute resolution, including litigation avoidance, settlement negotiations, litigation in state and federal trial courts, appeals, and alternative dispute resolution (ADR). Nick's commercial litigation practice covers all manner of business disputes, including contract matters, shareholder claims, business divorces and other partnership disputes, labor and employment litigation, breach of non-compete and non-disclosure agreements, construction defect claims, and business torts such as misappropriation of trade secrets, breach of fiduciary duty, unfair business practices and fraud.

In addition to commercial litigation, Nick regularly represents fiduciaries and beneficiaries in estate and trust litigation, including will contests, reformation and construction proceedings, and contested accounting proceedings.

As part of his higher education practice, Nick has represented institutions in a range of matters including as general outside counsel, labor and employment, Title VII and Title IX compliance and investigations, and federal and state regulatory matters. Nick has also represented institutions in disputes involving claims of discrimination, negligence, defamation, and breach of contract.

## Practices

- Commercial Litigation
- Municipal, Zoning, Land Use and Permitting
- Construction Contract Dispute Resolution
- Wills, Trusts and Estate Litigation
- Higher Education

## Industries

- Real Estate
- Not-for-Profit and Religious Organizations
- Energy and Utilities
- Construction
- Higher Education

## Bar Admissions

- New York

## Education

- J.D., Albany Law School, *summa cum laude*
- B.A., Skidmore College, *cum laude*

## Representative Experience

### Commercial Litigation

- Prosecuted trade secret misappropriation and breach of contract litigation against rogue employee and obtained *ex parte* restraining order and preliminary injunction enjoining further breaches of employee's restrictive covenants and expedited forensic discovery of employee's cell phone, laptop, and email accounts
- Represented minority shareholder in connection with derivative action alleging RICO and fraud claims against majority member resulting in a highly favorable settlement allowing shareholder to force a sale of his interest for \$1 million and exit the company
- Prosecuted business divorce proceeding as lead trial counsel for minority shareholder of real estate holding company and, working with one of the nation's foremost experts on business valuations and discounts, successfully defeated claim by other shareholders that client's stake in the company was subject to a 35% "marketability discount" resulting in highly favorable buyout of client's shares
- Prosecuted fraud action by founding member of charitable foundation against other board members allowing client to regain control of the foundation and releasing client from a \$5 million irrevocable pledge agreement
- Defended prominent real estate developer in action brought by industrial development agency for breach of a grant agreement resulting in dismissal of the action and successful defense of appeal
- Defended network of private nursing homes in \$33 million RICO action by successfully opposing motions for expedited discovery and a preliminary injunction, and obtaining pre-answer dismissal of the action
- Prosecuted declaratory judgment action by seller in dispute arising out of \$6 million asset sale of an iconic Lake Champlain marina and obtained summary judgment permitting seller to avoid purported retained liabilities and successfully defended appeal
- Prosecuted breach of contract action by Canadian pharmaceutical supplier against global manufacturer of generic drugs forcing a substantial monetary settlement soon after commencement of the lawsuit and

without costly discovery

- Prosecuted declaratory judgment action against insurance carrier and agent on behalf of logistics company challenging denial of insurance coverage for claim arising from theft of a shipment, which resulted in an agreement by the carrier to pay the policy limit and an additional settlement payment by the agency

### **Estate Litigation**

- Represented charitable beneficiary in contested probate proceeding and successfully protected beneficiary's right to bequest over objections from decedent's children
- Represented beneficiaries in proceeding to reform trust resulting in favorable settlement that increased beneficiaries' share of trust assets
- Represented will proponent in contested probate proceeding involving sibling's objection that the proponent unduly influenced their mother to disinherit the sibling, resulting in a favorable settlement allowing the proponent to retain over 90% of the estate's assets
- Represented beneficiaries in contested accounting involving removal of executor for cause and successful defense of surcharges against beneficiaries

### **Higher Education**

- Defended college against claims of defamation brought by perpetrator of an alleged assault against a student resulting in voluntary dismissal of action
- Defended college against negligence action arising from student's injury sustained on campus
- Counsels college on day-to-day matters relating to labor and employment, student discipline, internal investigations, and policies
- Represented college in negotiations with food service provider and termination of long-term contract with prior vendor
- Counsels college on Title IX, Title VII, and compliance with federal and state regulations

## **Professional and Community Activities**

- Member, New York State Bar Association, 2012—Present
- Member, Albany County Bar Association, 2012—Present
- Board of Directors, Albany Symphony Orchestra, 2014—Present
- President, Albany Academy Alumni Association, 2018—Present
- Member, National Association of College and University Attorneys

## **Honors and Awards**

- Rising Star, Super Lawyers, 2018-2020
- Prisoners' Legal Services of New York Paul J. Curran Award, 2014
- Outstanding Young Alumnus, Albany Academy, 2014

## **Publications**

- *Civil Disobedience in the Supreme Court: Retroactivity and the Compromise Between Formal and Substantive Justice*, 75 Alb. L. Rev. 1613 (2012).
- *The Return to Article X: A New Paradigm for Approving Energy Projects in New York State*, New York Zoning Law and Practice Report (September/October 2011, coauthored with Terresa Bakner).