

## Scott E. Early Partner/Retired

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Chicago



Scott E. Early, a retired partner with Foley & Lardner LLP, was a member of the firm's Securities, Commodities & Exchange Regulation and Transactional & Securities Practices. He was a former vice chair of the firm's Securities Litigation, Enforcement & Regulation Practice. Scott focused on futures and derivatives regulatory counseling, as well as financial litigation. He counseled on matters involving federal regulation of financial services and tried lawsuits involving a broad spectrum of business and financial concerns in all forums from state and federal court to arbitration and regulatory enforcement actions.

Currently, Scott is general counsel to the Kansas City Board of Trade and provides counsel to numerous other exchanges and clearing houses. Additionally, he represented other marketplaces in the energy, chemical, plastics and metals industry. He also represented major banks, futures commission merchants, and broker/dealers in a wide variety of counseling and litigation matters.

For 10 years prior to joining Foley, Scott was general counsel to the Board of Trade of the City of Chicago (CBOT), serving as legal advisor and counsel to the board of directors, as well as to all staff departments. He also served as an executive officer of the Board of Trade Clearing Corporation. Prior to joining the CBOT, he focused on counseling and litigation in derivatives, securities, and other commercial matters.

## Representative Experience

### Financial Markets:

- *Commodity Futures Trading Commission v. Michael Zelener, et al.*, (N.D. Ill., E. Div., Civ. No. 03 C 4346, J. Kennelly); Lead trial counsel for Defendant Alaron FX in civil enforcement action alleging fraud and illegal futures trading regarding foreign currency transactions. Obtained dismissal in full following three day preliminary injunction hearing. (Opinion at 2003 WL 22284295 N.D. Ill.). Successfully defended on appeal to the Seventh Circuit Court of Appeals (373 F.3d 861, 7th Cir., June 30, 2004).

Petition for Rehearing *en banc* was denied.

- *CFTC v. G. Bielfeldt, et al.*, Lead trial counsel in CFTC enforcement proceeding alleging violations of CFTC speculative position limits. Trial completed November, 1997 with \$200,000 fine verdict vs. \$4,000,000 claim. On appeal, the Commission dismissed all charges in their entirety.
- *Neptuno Treuhand-Und, et al. v. Patrick H. Arbor, et al.*, (No. 94 L 4024, Ill. Cir. Ct., Legal Division); Lead trial counsel for CBOT chairman in suit claiming in excess of \$3,500,000 damages for trading losses allegedly incurred as a result of alleged negligent misrepresentation concerning reputation of trader. Won complete dismissal of all counts. Affirmed on appeal. Reported at 295 Ill. App. 3d 567, 692 N.E.2d 812, 229 Ill. Dec. 823, 1st Dist., 6th Div. 1998.
- *Pedestal, Inc. v. Trading Technologies, Inc.*, (New York Superior Court, Index No. 603892/01/Part Calendar No. 17347, 2001); Lead trial counsel for defendant in \$30,000,000 alleged fraud claim regarding the provision of an electronic trade matching system for mortgage-backed securities. Won dismissal of four of five counts leading to nominal settlement.
- *Robert Cole, et al. v. Alaron Trading Corporation*, (Circ. Ct. Harford Co., Md., Case No. 12 C 02 2258, J. Carr); Lead trial counsel for defendant futures commission merchant in action by ninety-nine (99) named plaintiffs alleging eight (8) counts of fraud, negligence, etc. in connection with the trading of seven million dollars (\$7,000,000) of commodity futures contracts by the Windsor Capital Management Futures Fund. Obtained dismissal in full of all eight (8) counts per January 29, 2004 Order of the Court.
- *Chaparral Investments, et al. v. Wolcott & Lincoln, et al.*, (NFA Arbitration No. 00 L 2019, February 2002); Lead counsel for defendant FCM in \$3,000,000 claim for alleged fraud. Won dismissal with prejudice of entire claim.
- *Jackson National Life Insurance Co. v. Midwest Securities Trust Co., et al.*, (No. 93 C 1539 N.D. E.D. Ill., J. Aspen); Lead trial counsel to defendant, Chicago Stock Exchange Clearing House, regarding action by insurance company alleging negligence and breach of duty regarding notice of offering for various securities. Won motion to dismiss on all counts.
- *In Re Wayne Elliot, et al.*, (No. 95-1ALJ G. Painter); Lead trial counsel in CFTC enforcement proceeding for one of four respondent futures traders for alleged anti-competitive wash sale trades in the expiration of the March, 1992 Wheat Futures Contract at the Chicago Board of Trade. Won complete dismissal of all charges after trial before administrative law judge.
- *B. Richheimer v. Stifel Nicolaus and Co.*, (NASD Arb. No. 95-06072); Lead trial counsel for defendant, Stifel Nicolaus and Co., before NASD arbitration panel in action alleging unauthorized trading of municipal securities. Won dismissal of all claims in their entirety.
- *Lowell Harter, et al. v. Iowa Grain Co., et al.*, (No. 96 C 2936, N.D. E.D. Ill., J. Shadur); Lead trial counsel for defendant, The Andersons, an international grain processing corporation, regarding purported class action alleging the illegality of grain purchase contracts. Won dismissal and referral of representative plaintiff to arbitration. Won entire claim including attorney's fees in arbitration; won Seventh Circuit appeal with \$ 1927 sanctions. Reported at 220 F.3d 544, 2000.
- *KenRose Associates v. Dain Rauscher*, (NASD Arbitration No. 00-05731 002910h, February 2002); Lead trial counsel for Dain Rauscher with regard to \$3,900,000 equity security trade dispute. Won

award for Dain Rauscher of entire \$3.9 million.

- *The Chicago Corporation v. ING Derivatives Inc. and Mark Thompson*, (No. 95 CH 6636, Ill. Chancery Court); Lead trial counsel to plaintiff, Chicago Corporation, regarding breach of fiduciary duty claim versus former officer and subsequent employer corporation. Won arbitration verdict for \$500,000 damages after referral to arbitration.
- *Minpeco, S.A. v. Conticommodity Services, Inc., et al.*, (S.D. N.Y., J. Lasker); Trial counsel for Chicago Board of Trade in numerous civil purported class actions alleging losses in silver futures trading as a consequence of market activities of various members of the Hunt family. Won dismissal of all counts in all cases. Decisions reported at 558 F. Supp. 1348 (1983); 552 F. Supp. 327; 332 (1982).
- *Damato, et al. v. Merrill Lynch, et al.*, No. 94 C 3143 and *Vildaver, et al. v. Merrill Lynch, et al.*, No. 94 C 3041 (J. Holderman, N.D. Ill.); Lead trial counsel for futures commission merchant in purported class action alleging fraud and “ponzi scheme” in connection with in excess of \$2,000,000 of alleged lost pool investments. Won dismissal of all counts including Commodity Exchange Act, fraud and RICO counts. Decisions reported at 878 F. Supp. 1156 and 153 F3d 464 (1998).
- *First Options of Chicago, Inc. v. Lewiston Feed and Produce, et al.*, No. 94 CH 0119 (Cir. Ct., Cook County); Lead trial counsel for the Board of Trade of the City of Chicago in an appeal of an arbitration award wherein arbitration respondent sought to set the award aside. Obtained dismissal of appeal on all counts. (Companion case in federal court, N.D. Ill., No. 94 C 0069 also won on merits.)

### **Shareholder/Director Representation:**

- *In Re The Yacktmán Fund*, General counsel and lead trial counsel for proxy contest and associated litigation regarding fund founder Donald Yacktmán’s efforts to challenge and replace directors of prominent mutual fund. Achieved success in both proxy contest and related litigation.
- *In Re Damen Saving & Loan*, Represented substantial investor in proxy contest regarding director’s election for savings and loan holding company. Achieved successful board action.
- *In Re (Confidential Public Company)*, Independent counsel to director regarding internal and SEC investigation of CEO/Chairman/CFO conduct and disclosure.
- *In Re Norris*, Represented Chicago Mercantile Exchange Director regarding CME Board of Directors charges of breach of fiduciary duty. Won total dismissal of all charges.

### **Federal Election Commission:**

- *In Re Board of Trade Clearing Corporation*, (1984); Lead civil trial counsel in one of first major civil/criminal cases brought by Federal Election Commission.
- *In Re John Doe Committee*, (2001); Lead trial counsel in civil injunction challenge to FEC investigation; representation resulted in favorable settlement of all investigations.

### **General Commercial:**

- *In Re Westinghouse Uranium Litigation*, (MDL 235, E.D. Richmond, J. Merhige); Trial team member in multidistrict litigation alleging over \$2 billion of losses from uranium supply contracts. All cases settled

after eight months of trial prior to verdict.

### **Environmental:**

- *Environmental Improvement Division, New Mexico v. Arizona Public Service Co., et al.*, (N.M. D.C. No. SF79-1003); Trial counsel to Sierra Club Legal Defense Fund and various environmental groups to enforce pollution controls on the Four Corners Power Plant, the world's largest coal-fuel power plant. Won settlement conceding all issues following preliminary injunction hearing.
- *LeClercq, et al. v. Lockformer*, (N.D. Ill., J. Leinenweber); Lead trial counsel in multi-million dollar toxic tort class action alleging TCE/PCE pollution of Downers Grove, Illinois water supply. Won dismissal of all counts.
- *A. Muniz, et al. v. Rexnord Corp., et al.*, (N.D. Ill. J. Darrah); Lead trial counsel in multi-million dollar class action alleging TCE/PCE pollution of Downers Grove, Illinois water supply.

### **Bankruptcy:**

- *Med Diversified v. Addus Healthcare*, (E.D. N.Y., Bk., J. Bernstein); Tried \$7.5 million fraudulent conveyance action to conclusion prior to settlement.
- *In Re Refco, Inc. et al.*, (E.D. N.Y., Bk., J. Drain); Represented mutual fund and hedge funds in adversary actions regarding claims exceeding \$125 million in the REFCO bankruptcy.
- *In Re Sentinel Management Group, Inc.*, (N.D. ILL., E.D.); Defended multiple clients with claims in \$500,000,000 bankruptcy of FCM/Investment Advisor firm.

Additionally, Scott has served as lead trial counsel in numerous cases for individual and institutional futures and options traders in self regulatory enforcement investigations and actions before the CFTC, NFA, Chicago Board of Trade, Chicago Mercantile Exchange, New York Stock Exchange, NASD and Winnipeg Commodity Exchange.

### **Awards and Recognition**

Scott has been Peer Review Rated as AV® Preeminent™, the highest performance rating in Martindale-Hubbell's peer review rating system. He has been selected by his peers for inclusion in *The Best Lawyers in America*® 2006-2011 in the field of derivatives law and also selected for inclusion in the 2005-2009 and 2011-2012 *Illinois Super Lawyers*® lists.\* This specific, dual recognition by his peers is unique.

### **Affiliations**

Scott is a member of the Chicago, the Illinois, and American Bar Associations, including the ABA's Business Law and Litigation Sections and the Executive Committee of its Futures Law Division

He also has been a member of the Futures Industry Association Law & Compliance Executive Committee.

### **Education**

- Vanderbilt University (1975)
  - Law
  - Articles editor, *Law Review*
- Princeton University (B.A., 1971)

## **Admissions**

- U.S. Supreme Court
- Illinois Supreme Court
- U.S. District Court, Northern District of Illinois (Trial Bar)
- U.S. Fifth and Seventh Circuit Courts of Appeal

\*The Illinois Supreme Court does not recognize certifications of specialties in the practice of law and no award or recognition is a requirement to practice law in Illinois.