



## Kenneth J. Kelly

Member of the Firm

### New York

250 Park Avenue  
New York, New York 10177  
Tel: 212-351-4606  
Fax: 212-878-8600

[kkelly@ebglaw.com](mailto:kkelly@ebglaw.com)

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**KENNETH J. KELLY** is a Member of the Firm and Co-Chair of the National Litigation Steering Committee. He has more than 40 years' law firm and corporate counsel experience, primarily in litigation of complex commercial disputes, banking disputes, defense of compensation disputes and employment discrimination claims in the financial industry, and representation of managed care organizations and health, life, and disability insurers in disputes between members/insureds and individual and corporate health care providers.

Mr. Kelly represents clients, as both plaintiff and defendant, in a wide range of industries, including financial services and banking, health care, insurance, and technology. His litigation experience is similarly diverse and includes:

- Contract disputes
- Finance and lending transactions
- Banking transactions and operations, including check collections, wire transfers, letter of credit, and lender liability litigation
- Disability and life insurance benefits claims litigation
- Health law matters, including the scope of coverage, provider malpractice, ERISA preemption and antitrust violations, coordination of benefits, contracts with participating physicians and institutions, privacy, subrogation, and regulatory issues
- Intellectual property issues, including trade secret protection and unfair competition claims
- Securities transactions
- Partnership and shareholder relations
- Asbestos liability defense
- Insurance brokerage and coverage disputes
- Employment discrimination, compensation, and benefits claims

Mr. Kelly has briefed and argued a number of leading cases in his practice areas, including:

- *Reddington v. Staten Island University Hospital*, 11 N.Y.3d 80 (2008) (New York's medical industry whistleblower statute protects only professionals who personally treat patients)
- *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Chemical Bank*, 57 N.Y.2d 439 (1982) (fictitious payee defense available despite negligence of drawee)
- *Danleigh Fabrics, Inc. v. Gaynor-Stafford Indus., Inc.*, 62 N.Y.2d 677 (1984) (factor's absolute right of charge-back)
- *Supreme Merchandise Co. v. Chemical Bank*, 70 N.Y.2d 344 (1987) (beneficiary's interest in executory letter of credit was non-attachable debt).
- *Patrowich v. Chemical Bank*, 63 N.Y.2d 541 (1984) (personnel manual not a contract in New York).
- *U.S. Healthcare, Inc. v. Curiale*, 162 Misc.2d 833, 615 N.Y.S.2d 238 (Sup. Ct. N.Y. County 1994) (injunction against premium rate rollback by Department of Insurance)
- *Troiano v. Aetna Life Ins. Co.*, 2015 U.S. Dist. LEXIS 132902 (D.R.I. 2015)(insurer not liable for disabled employee's tax payable on taxable Social Security disability benefits deducted from disability payments)
- *Nakahata v. New York-Presbyterian Healthcare Sys.*, 723 F. 3d 192 (2d Cir. 2011) (affirming dismissal of FLSA class action by nurses regarding lunch break pay claims)
- *Kalfus v. New York-Presbyterian Hosp.*, 476 Fed. Appx. 877 (2d Cir. 2013) (affirming dismissal of excessive force/battery claim by reporter against hospital and its security officers)
- *Unihealth v. U.S. Healthcare, Inc.*, 14 F. Supp. 2d 633 (D.N.J. 1998) (effect of repeal of DRG on New Jersey hospital contract)
- *Solla v. Aetna Health Plans of N.Y., Inc.*, 14 F. Supp. 2d 252 (E.D.N.Y. 1998) (chiropractors' antitrust case dismissed), *aff'd mem.*, 182 F.3d 901 (2d Cir. 1999)
- *Geller v. Prudential Insurance Co. of America*, 237 F. Supp. 210 (E.D.N.Y. 2002) (dividend declaration of board of directors of mutual insurance company entitled to absolute deference)
- *Dorf Overseas, Inc. v. Chemical Bank*, 91 A.D.2d 895, 457 N.Y.S.2d 513 (1st Dep't 1983) (beneficiary of letter of credit waives documentary discrepancies by accepting goods)

Prior to joining Epstein Becker Green in 1988, Mr. Kelly was Vice President and Assistant General Counsel and head of litigation at Chemical Bank in New York. He served as an arbitrator and mediator for the American Arbitration Association for 15 years.

Mr. Kelly is a speaker at business and professional conferences on such topics as strategies for the use of restrictive covenants in employment contracts and Sarbanes-Oxley issues.

Mr. Kelly has been selected to the *New York Metro Super Lawyers* list (2013 to 2018) in the area of Business Litigation. He was ranked by *Chambers USA* 2009, 2010, and 2011 as one of America's leading Litigation (General Commercial) lawyers. In the 2011 edition, clients described Mr. Kelly as "highly skilled, responsive and extremely easy to work with," adding that "he has the effective ability to explain complex technical matters clearly to non-legal professionals."

## **Education**

- Cornell University Law School (J.D., with distinction, 1971)
- Fordham University (B.A., highest honors, 1968)
- Institut d'Etudes Politiques, Paris, France

## **Court Admissions**

- Supreme Court of the United States
- New Jersey State Courts
- U.S. Court of Appeals for the Federal Circuit
- U.S. Court of Appeals for the Second Circuit
- U.S. Court of Appeals for the Third Circuit
- U.S. District Court, District of New Jersey
- U.S. District Court, Eastern District of New York
- U.S. District Court, Northern District of New York
- U.S. District Court, Southern District of New York
- U.S. District Court, Western District of New York

## **Bar Admissions**

- New Jersey
- New York

## **Practice Areas**

- Appellate
- Banking Litigation
- Business Litigation
- Class Actions
- Corporate and Securities Litigation
- Data Breach/Cybersecurity Litigation
- Employment Litigation
- ERISA and Benefit Plan Litigation
- Insurance Coverage and Reinsurance Disputes
- Intellectual Property Litigation
- Labor & Employment Litigation
- Trade Secrets & Employee Mobility

- Toxic Tort

### **Industries**

- Financial Services
- Health Care and Life Sciences Industry
- Technology, Media & Telecommunications

### **Memberships**

- American Bar Association, Litigation Section
- American Bar Association, Labor and Employment Law Section
- New York City Bar Association
- New York State Bar Association