



Stuart M. Gerson

Member of the Firm

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STUART M. GERSON is a Member of the Firm in the Litigation and Health Care & Life Sciences practices, in the firm's Washington, DC, and New York offices. Much of Mr. Gerson's practice has been centered on providing representation to clients in the health care industry (including insurers, hospitals, pharmaceutical manufacturers, managed care providers, and private equity funds, among others). He has extensive experience litigating cases involving the cybersecurity of health care information, trade secrets, and other confidential data as well as civil and criminal fraud issues particularly under the federal False Claims Act. He also defends various antitrust and securities matters for clients in the health care and financial sectors.

Mr. Gerson was appointed Acting Attorney General of the United States during the early Clinton administration, after having served as President G.H.W. Bush's appointee as Assistant Attorney General for the Civil Division of the Department of Justice ("DOJ"). He has also served as an advisor to several Presidents.

Cybersecurity and Data Privacy

Mr. Gerson has been active in digital data security, compliance, breach enforcement, and litigation defense. For example, he:

- Advises health care and other clients with respect to data protection and affirmative conduct
- Counsels providers, investors, business associates, and others on compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the several iterations of the government's Standards for Privacy of Individually Identifiable Health Information as well as on larger cybersecurity issues, including the establishment of best practices as described in the President's Executive Order and the National Institute of

Standards and Technology (“NIST”) *Framework for Improving Critical Infrastructure Cybersecurity* and recently published “Excellence Frameworks” for compliance

- Defends clients through all aspects of government investigations that are triggered by high-profile privacy incidents and data breaches
- Defends complex litigation cases, particularly class actions, involving data breaches, cybersecurity, and privacy matters

Among his successes in litigating cybersecurity issues, Mr. Gerson won an emblematic case on behalf of two health plans, achieving the unusual result of getting a court to deny class certification in a mass-breach case. In addition, he has represented various entities in responding to federal and state enforcement challenges presented by data breaches.

Mr. Gerson also is involved in policy issues as a member of the privacy and security and government relations core groups of the ISAO Standards Organization, which was established pursuant to a Presidential Executive Order and is intended to harmonize government and private sector cyber interests. He is a frequent provider of analysis and comment on cybersecurity, data privacy, class action reform, health care, and Supreme Court issues to national print and broadcast media.

Civil and Criminal Fraud

A former federal prosecutor with extensive federal jury trial and appellate experience, Mr. Gerson has long been active in the defense of some of the largest civil and criminal fraud cases brought by the federal government and *qui tam* relators under the federal False Claims Act (“FCA”) and other antifraud statutes.

Mr. Gerson's fraud case experience includes:

- Serving as lead counsel in most of the largest defense, health care, and financial institution fraud actions brought by the U.S. government
- Defending cases under the FCA and anti-kickback laws, in matters related to trade secrets and the development of high technology
- Leading many internal corporate investigations on behalf of management and directors
- Winning numerous *qui tam* cases on dismissal or summary judgment motions

Antitrust and Securities

Mr. Gerson also has litigated many antitrust and securities cases on behalf of investment banks, broker-dealers, and insurance companies. His experience in these matters includes:

- Obtaining dismissal of a \$150 million antitrust claim against a regional hospital organization

- Achieving affirmance by the U.S. Court of Appeals for the Third Circuit in a complex antitrust matter involving an alleged price-fixing conspiracy in the bond industry
- Defending an international corporation against criminal antitrust claims in a massive governmental cartel case
- Representing the broker of the World Trade Center property insurance program in ongoing 9/11 cases in the U.S. District Court for the Southern District of New York
- Serving as a principal negotiator, on behalf of a large investment bank, to resolve with the Antitrust Division the Department of Justice's massive NASDAQ case

U.S. Government Experience

As head of the DOJ's Civil Division from 1989 to 1993, Mr. Gerson served as the federal government's chief litigator in all major matters, including those related to financial institution fraud, defense fraud, health care reimbursement, food and drug law, and health care fraud. He was involved in developing policies and procedures directed at protecting government and commercial data and detecting and prosecuting data thieves, oversaw the FBI's successful investigation into the first terrorist attack on the World Trade Center (in 1993), served as the government's principal counsel in the environmental and mass tort litigations involving Exxon-Valdez, and represented the United States in significant class actions.

Mr. Gerson served as the observer-delegate of the United States to the Council of Europe Ministers of Justice. He also was a member of the George H.W. Bush administration's National Health Policy Working Group as head of its Medical Malpractice Reform Working Group and as its spokesman on matters of civil justice reform.

During the 1988 Presidential election, Mr. Gerson was a senior advisor to the campaign of George H.W. Bush on matters including debate preparation, comparative research, and surrogate speaking on criminal justice, judicial, health policy, and defense issues. He later was a Transition Team leader in the Office of the President-Elect with regard to international banking agencies. In addition, he served in the presidential transition of President George W. Bush.

Between 1972 and 1975, Mr. Gerson was an Assistant U.S. Attorney in Washington, DC, focusing on criminal prosecutions and appellate matters. Between 1967 and 1972, Mr. Gerson was a counter-intelligence officer in the U.S. Air Force.

Accolades

Mr. Gerson has received an "AV Preeminent" Peer Review Rating by Martindale-Hubbell for the past 30 years, signifying the highest level of professional excellence. In addition, he has been selected by his peers for inclusion in *The Best Lawyers in America*® (2014 to 2018) in the field of Health Care Law. He also was selected for inclusion in *The American Lawyer* and Martindale-Hubbell's *Top Rated Lawyers* 2014 list in Washington, DC, and the 2013 list in Health Care Law and was named to the *Washington, DC Super Lawyers* list (2013) in the areas of Civil Litigation: Defense, Social Security Disability, and Antitrust Litigation.

Education

- Georgetown University Law Center (J.D., 1967)
- Pennsylvania State University (B.A., 1964)

Court Admissions

- Supreme Court of the United States
- U.S. Court of Appeals for the District of Columbia Circuit
- U.S. Court of Appeals for the Federal Circuit
- U.S. Court of Appeals for the First Circuit
- U.S. Court of Appeals for the Second Circuit
- U.S. Court of Appeals for the Third Circuit
- U.S. Court of Appeals for the Fourth Circuit
- U.S. Court of Appeals for the Fifth Circuit
- U.S. Court of Appeals for the Sixth Circuit
- U.S. Court of Appeals for the Seventh Circuit
- U.S. Court of Appeals for the Eighth Circuit
- U.S. Court of Appeals for the Ninth Circuit
- U.S. Court of Appeals for the Tenth Circuit
- U.S. Court of Appeals for the Eleventh Circuit
- U.S. District Court, District of Arizona
- U.S. District Court, District of Columbia
- U.S. District Court, District of Maryland
- 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 Michigan

Bar Admissions

- District of Columbia
- New York

Practice Areas

- Data Breach/Cybersecurity Litigation
- Privacy and Security Law

- Federal & State False Claims Act
- White Collar Criminal Defense and Internal Investigations
- Antitrust Counseling and Defense
- Class Actions
- Compliance Counseling and Defense
- Corporate and Securities Litigation
- Appellate
- Foreign Multinational Counseling and Litigation

Industries

- Financial Services
- Health Care and Life Sciences Industry
- Health Plans and Other Insurers
- Hospitals and Health Systems
- Investment Banks & Private Equity
- Medical Devices and Combination Products
- Pharmaceuticals
- Suppliers & Distributors

Memberships

- American Bar Foundation, Fellow
- Constitution Project
- Federalist Society
- Heritage Foundation Center for Legal and Judicial Studies, Legal Advisory Board
- *Law360* Health Editorial Advisory Board
- Washington Legal Foundation, Legal Policy Advisory Board