



## Gary M. Fellner

Principal

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Gary Fellner focuses his practice on a broad spectrum of litigation, encompassing employment and labor, trademark, intellectual property, business and commercial disputes, real estate, and corporate matters. He is an experienced trial lawyer, having litigated numerous disputes through verdict before arbitration panels, and federal and state courts throughout the United States. He has successfully handled a substantial number of contract and real estate-related disputes in NY, CT, NJ, and DE. In addition, he is experienced in federal trademark infringement litigation across the United States, having litigated claims on behalf of trademark registrants against others who have used trademarks or their likeness without the registrant's consent or permission. Gary approaches his practice with a passion for the law and a tenacity to cut through the delays that often persist in litigation. He combines his legal experience with a keen understanding of the clients' business and objectives.

Gary is known as an assertive and skilled trial lawyer, regularly representing private and public corporations and individuals in the real estate, energy, financial, telecommunications, restaurant, transportation, bonded warehousing, 3PL, and commercial signage industries.

### Recognitions

*No aspect of this or any advertisement has been approved by the Supreme Court of New Jersey. For ranking methodologies, please see [here](#).*

- New York Metro Super Lawyers® (2012 - 2024)
- Litigation Counsel of America - Fellow

### Memberships

- New York City Bar Association - Member, Moot Court Committee
- Federal Bar Council - Member, Connecticut Committee
- Order of Veritas - Barrister
- Order of Certus - Advocate

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## News

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- Porzio Attorneys Named to 2024 New York Metro Super Lawyers® and Rising Stars® Lists, 10/24/2024
- Porzio Attorneys Recognized by New York Metro Super Lawyers, 2022, 9/29/2022
- Porzio Secures a Pre-Answer Dismissal for Sprint and Nextel of NY, 3/08/2019
- Court Sides with NYC Medallion Owners, Dismissing Motion for Summary Judgment, 8/31/2018
- New York Metro Super Lawyers 2017 Recognizes Porzio Attorneys, 9/20/2017
- Porzio's Litigation Practice Profiled by New Jersey Law Journal, 11/15/2016
- Four Porzio Attorneys Recognized by New York Metro Super Lawyers and Rising Stars, 2016, 9/21/2016
- Gary Fellner Defeats Bid to Stop Auction of Rare Clemente Baseball Cards, 2/19/2016
- Five Porzio Attorneys Recognized by New York Metro Super Lawyers, 9/23/2014

## Articles

- Porzio Perspectives: Data Privacy & Cybersecurity - Part 1, 3/26/2024
- A Rearview Look at the Pandemic - *New York Law Journal*, 2/09/2024
- The Right of Indemnification May Be Broader Than You Think, 11/29/2021
- Viewpoint: The Rights of Telecom Companies Continue to be Recognized Under Federal Law, 4/19/2021
- The Spectrum Act: The Rights of Telecommunications Companies Continue to be Recognized Under Federal Law, 4/07/2021
- How Pandemic Is Affecting NY Court Receiver Appointments, 8/17/2020
- Going to Trial During the Pandemic, 8/07/2020
- Delaware Chancery Court Finds Porzio's Clients To Be The Prevailing Party In Complex Real Estate Dispute, 10/28/2015

## Practices

- Corporate
- Employment and Labor
- Intellectual Property
- Litigation
- Real Estate

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### Area of Focus

- Business Divorce
- Commercial Litigation
- Contracts, Governance & General Counsel Services
- Directors and Officers Liability
- Real Estate Litigation
- Restrictive Covenants
- Trademarks
- Trusts and Estates Litigation

### Industries

- Manufacturing
- Telecommunications
- Third-Party Logistics
- Transportation
- Warehousing and Storage

### Relevant Experience

- Successfully filed claims for breach of fiduciary duty and breach of contract in the Kansas District Court and Delaware Chancery Court on behalf of a real estate investor concerning a multi-family apartment complex in Kansas. Following trial, the court ordered, as we requested, the property manager and managing member removed, and awarded money damages in favor of the investor, including attorneys fees and expenses incurred as the prevailing party.
- Defended against accounting, conversion, breach of fiduciary duty and breach of contract claims asserted against our client, a national money service agent, in New York State Supreme Court. We removed the action to the American Arbitration Association pursuant to the underlying contract, and after trial, at which accounting experts testified, the arbitrator agreed with us that all claims asserted against our client should be dismissed.
- Defended foreign corporation in the U.S. District Court for the Southern District of New York concerning a complex business agreement in which the purported finder asserted that his company was due a 10% finder's fee for bringing a \$20 million business opportunity to the foreign corporation. The case was dismissed prior to trial on summary judgment.
- Successfully tried a diversity action in the U.S. District Court for the Eastern District of New York on behalf of a well-known telecommunications carrier to secure injunctive and declaratory relief concerning the carrier's access rights to its telecommunications equipment and rights to improve its underground lines with fiber optics. Defeated the

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landowner's claims that it was owed rent escalations under the long-term lease in exchange for the carrier's right to enhance its equipment.

- Defended a Will contest in the California Superior Court involving a relative's claim that the decedent's Last Will should be rejected on grounds of fraud, undue influence, and forgery, and that the relative was owed 50% of the decedent's \$30 million gross estate. Following trial, argued the dispute before the California Court of Appeals, which affirmed the trial court's decision in all respects.
- Litigated claims before the American Arbitration Association in Manhattan concerning asserted rights to recover over \$450,000 in connection with the client's \$2.5 million investment in an upscale restaurant that had closed due to claims of the operator's mismanagement and breaches of fiduciary duty.
- Prosecuted claims in the U.S. District Court for the District of New Jersey involving fraud, breach of fiduciary duty, and RICO against nationwide co-conspirators due to conversion of \$1.2 million.
- Secured injunctive relief following a bench trial in federal court in the Eastern District of Pennsylvania on behalf of an energy service company to enjoin a competitor shown to be "slamming" the client's customers through unlawful misrepresentations.
- Defended monetary claims of over \$850,000 brought by a former executive against a New Jersey employer, prevailing in both defeating the monetary claims and proving the employer's contractual rights to enforce the non-compete and restrictive covenants contained in the executive's employment agreement.
- Obtained an injunction in New Jersey Chancery Division to enjoin a client's principal competitor from defaming and disparaging the client, which defamation could have caused immeasurable damages if it were not enjoined.
- Successfully tried action on behalf of a telecommunications carrier in Pennsylvania concerning real property lease termination issues, and defeated landowner's claim that it was owed \$650,000 under the lease and that the carrier had become a holdover tenant by not properly exercising its right to renew the lease.
- Uncovered assets to hasten a favorable settlement on behalf of a judgment-creditor owed \$500,000 from a major national restaurateur who had refused to satisfy any part of the judgment issued after trial in the New York Supreme Court, Westchester County. The judgment arose based upon the judgment-debtor's disputed payment guarantee for all rent and additional rent owed under a commercial lease with the judgment-creditor.
- Represented a large international energy producer based in Texas in defense of a contract claim filed in the New Jersey Superior Court in which a downstream natural gas supplier asserted that it was owed over \$775,000 in compensatory damages and legal fees. The supplier filed suit due to the producer's failure to deliver natural gas on the daily exchange. The defense invoked the force majeure clause contained in the NAESB industry contract based upon an unforeseen gas leak and disruption in the Tennessee pipeline.
- Evicted a commercial tenant on behalf of a well known hotel in midtown Manhattan after a twelve-day bench trial in New York Supreme Court, New York County. The tenant operated a famous restaurant and night club, falsely claiming it was due over \$600,000 in rent abatements and damages for breach of the lease due to the landlord's purported building code violations.
- Litigated claims in excess of \$1.5 million on behalf of a New York real estate developer against a neighboring co-op for nuisance and trespass. The claims arose from the neighbor's interference with the new development of a 200-unit Class A condominium project during excavation and construction.

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### Opinions, Decisions and Cases

- *Ultraflex Systems of FL, Inc., d/b/a Ultraflex Systems, Inc. v. Veritev Operating Co.*, 2019 WL 7207483, (D.N.J. 2019) (Hammer, M.J.) (defeated adversary's motion involving the purchase and sale of commercial substrate materials to transfer the case to another forum)
- *Affiliated FM Insurance Co. v. Kuehne + Nagel, Inc.*, 328 F.Supp.3d 329 (S.D.N.Y. 2018) (obtained an order from the District Court dismissing complaint against a container freight operation based on maritime bill of lading's terms)
- *GBForefront, L.P. v. Forefront Management Group, LLC*, 888 F.3d 29 (3rd Cir. 2018) (U.S. Court of Appeals remanded issues to determine whether state created trusts that were limited partners of a large real estate limited partnership were traditional trusts or business trusts for federal diversity purposes)
- *Mill-Run Tours, Inc. v. Windstream Services, LLC*, 2017 WL 2930932 (S.D.N.Y. 2017) (obtained order from District Court to have the complaint against telecommunications company dismissed pre-answer)
- *Taormina v. Thrifty Car Rental and The Hertz Corp.*, 2016 WL 7392214 (S.D.N.Y. 2016) (obtained an order from the District Court dismissing complaint against the corporate car rental companies for lack of personal jurisdiction)
- *2009 Caiola Family Trust and Louis Cortese v. Dunes Point West Associates LLC*, 2015 WL 6007596 (Del. Chancery Ct. 2015) (Del. Chancery Court held, post-trial, that managing member and owner of Kansas Real Estate Limited Liability Company violated operating agreement requirement that owner be actively involved in LLC's property manager's business and violated his fiduciary obligations by making improper payment of asset management fees to LLC's asset manager, amounting to legal cause for removal of managing member and award of attorneys' fees in plaintiff's favor)
- *Vassi v. The Salem House Condominium Board and T-Mobile Northeast LLC, f/k/a Omnipoint Communications, Inc.*, 2010 NY Slip Op 31802U; 2010 N.Y. Misc. LEXIS 3240 (New York Supreme Ct. 2010)
- *United Resource Recovery Corp. v. Ramko Venture Management, Inc.*, 07 Civ. 9452, 2009 U.S. Dist. LEXIS 77153 (S.D.N.Y. 2009)
- *JPS Capital Partners LLC v. Silo Point Holding LLC*, 2009 Slip Opinion 51747U, Lexis 2117 (Supreme Ct., New York Co. 2009)
- *Lexington Building Co. LLC v. Anthony Fortunato*, (Supreme Ct., New York Co. 2009)
- *United Resource Recovery Corp. v. Ramko Venture Management, Inc.*, 584 F. Supp. 2d 645, 2008 U.S. Dist. LEXIS 87437 (S.D.N.Y. 2008)
- *Estate of Robert C. Fortunato*, (CA Court of Appeals, 2nd App. District, 2006)
- *National Westminster Bank PLC v. Grant Prideco, Inc.*, 261 F. Supp. 2d 265 (S.D.N.Y. 2003)
- *Cabrera v. Quik Park Columbia Garage Corp.*, 2000 WL 1897348 (E.D.N.Y. 2000)
- *Credicom NV v. Colony Credicom, LP*, 2000 WL 282 968 (S.D.N.Y. 2000)
- *Padco Construction Corp. v. Long Island Construction Corp.*, 1999 Slip Opinion 06875 (App. Div. 2d Dep't 1999)
- *Monte Carlo Holdings, Inc. v. Manhattan International Realty Partners, L.P.*, New York Law Journal, Volume 220, Number 105 (New York State Supreme Court, New York County 1998)

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- *Sonnenfeldt v. Kyriakoudes*, 226 A.D.2d 286, 641 N.Y.S.2d 289 (App. Div. 1st Dep't 1996)
- *Brock v. Sitomer*, 212 A.D.2d 409, 622 N.Y.S.2d 271 (App. Div. 1st Dep't 1995)

## Media Mentions

- "A Rearview Look at the Pandemic," *New York Law Journal*, 2/09/2024

## Bar Admissions

- New Jersey, 1991
- New York, 1992
- Connecticut, 2019

## Court Admissions

- United States District Court, District of Connecticut, 2023
- United States District Court, District of New Jersey, 1991
- United States District Court, Eastern District of New York, 1992
- United States District Court, Southern District of New York, 1992
- United States Tax Court, 2007
- United States Supreme Court, 2009
- United States Court of Appeals, Second Circuit, 2010
- United States Court of Appeals, Third Circuit, 2016

## Education

- *New York Law School*  
J.D., 1991  
cum laude
- *Pace University*  
B.B.A., 1987  
cum laude
- *Fairleigh Dickinson University*  
A.A., 1983  
cum laude