

ATTORNEY BIOGRAPHY



James C. Donnelly, Jr.

Of Counsel

Tel: 508.860.1548 | **Fax:** 508.983.6250 | **Email:** jdonnelly@mirickoconnell.com

Worcester Office: 100 Front Street | Worcester | MA | 01608-1477

Legal Administrative Assistant

Christine A. Farmer

Tel: 508.860.1549 | Email: cfarmer@mirickoconnell.com

Practice Groups and Specialty Areas

Litigation
Business
Business and General Litigation
Intellectual Property Litigation
Securities and Shareholders Litigation
Alternative Dispute Resolution

Jim is a member of the litigation department whose practice focuses on civil litigation and business disputes with an emphasis on business torts, breach of fiduciary duty, corporate governance, unfair competition and intellectual property litigation. He advises clients on risk avoidance and dispute resolution, and serves as a mediator for business disputes. He also counsels clients on corporate governance in both the for-profit and non-profit sectors. He chaired the firm's Litigation Group from 1992 to 1996.

Jim has over 40 years of experience in trial and appellate courts in Massachusetts. He is admitted in several other jurisdictions, including the U.S. Courts of Appeals for the First, Second, Third and Seventh Circuits in Boston, New York, Philadelphia and Chicago, respectively; as well as the U.S. District Courts for the Districts of Massachusetts and the Northern District of Ohio; and the U.S. Tax Court. He has also been specially admitted for particular matters in state and/or federal courts in New Hampshire, Connecticut, Illinois, Texas and Washington State. He is an experienced negotiator and has served as a court-appointed master and mediator in complex business disputes.

Jim has been named a Massachusetts "Super Lawyer" by *Boston* magazine and *Law & Politics* every year since 2009. Jim has been selected by his peers for inclusion in *The Best Lawyers in America*® 2021 in the fields of Appellate Practice; Commercial Litigation; Corporate Governance Law; Corporate Law; and Litigation – Intellectual Property. First listed in 2012. Jim has received an AV® Preeminent Peer Review Rating by *Martindale-Hubbell*, the highest rating available for legal ability and professional ethics.

Jim holds leadership positions as an officer and trustee in cultural and education organizations including the Worcester Art Museum and the American Antiquarian Society an internationally renowned independent historical research library. In 2014, the Worcester Telegram & Gazette recognized Jim's service as president of the Higgin's Armory Museum with the Vision 2014 Cultural Enrichment Award.

Representative Matters

- Successfully defended officers of a Nevada corporation by securing trial court decisions that rejected a shareholder demand for books and records; dismissed claims for alleged breach of fiduciary duty and waste of corporate assets; and determined – as a matter of first impression – that Nevada does not recognize claims for minority shareholder oppression.
- Successfully represented a committee of independent directors of a private company in a special investigation that precluded a dissent shareholder from bringing derivative claims for breach of fiduciary duty and waste of corporate assets

Education

JD, *cum laude*, Boston College Law School (1973)

BA, Dartmouth College (1968)

U.S. Army, Lieutenant (1968-1970), *Army Commendation Medal for Meritorious Service*

Bar and Court Admissions

Massachusetts

U.S. Courts of Appeals for the First, Second, Third and Seventh Circuits

U.S. District Courts for the Districts of Massachusetts and the Northern District of Ohio

U.S. Tax Court

Professional/Community Affiliations

Business Litigation Session Advisory Committee of the Massachusetts Superior Court, chair

Massachusetts Bar Association, co-chair, Annual In-House Counsel Conference; Judicial Administration Section Council, past chair; House of Delegates, former member; Business Law Section Council and Appellate Bench Bar Committee

Worcester County Bar Association, former co-chair, Federal Court Committee

Worcester Art Museum, trustee

American Antiquarian Society, treasurer and counselor

Higgin's Armory Museum, former president and trustee

Worcester Center for Crafts, former trustee

Greater Worcester Community Foundation, corporator

Dartmouth Club of Central Massachusetts, former president

Dartmouth Alumni Council, former member

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Representative Matters (continued)

- Successfully challenged the decision of a public company's special litigation committee to terminate a shareholder action alleging executive misconduct, played a significant role in a proxy contest and forced a resolution that ultimately generated approximately \$64 million for shareholders. The case is the subject of a Harvard Business School Case Study and is featured in a recently published book on corporate governance
- Recovered on behalf of investors a \$4 million settlement from the CEO of a public company, paid by the CEO personally for breach of fiduciary duty
- Secured a judgment of more than \$6 million against a director who misappropriated funds that were intended for investment in a corporation
- Led the Higgins Armory Museum, as board president, in a highly acclaimed integration with the Worcester Art Museum
- Negotiated a \$1.5 million settlement of patent infringement claims against a large international business-news media company
- Secured a settlement of \$1 million during trial in a corporate opportunity case against officers of a private company
- Successfully represented the audit committee of a public company in an internal investigation that precluded shareholder litigation
- Successfully represented an officer of a public company in a joint securities fraud investigation by the Department of Justice and the SEC, who elected not to prosecute at the conclusion of the investigation.
- Successfully defended the chairman of the board of a public company in a special investigation that avoided SEC enforcement actions
- Successfully defended a former CEO from company allegations of improper conduct, and subsequently obtained an arbitration award compelling the company to fully reimburse the entire cost of the client's defense
- Obtained injunctions in trademark infringement cases and successfully defended them on appeal
- Defeated a motion for preliminary injunction and subsequently obtained an arbitration award in a complex trade secret case establishing that the client had legitimately acquired the right to use the plaintiff's allegedly secret manufacturing technology, valued at \$10 million, without royalty obligations
- Obtained a judgment for triple damages plus attorneys' fees exceeding \$1 million in a construction contract dispute that involved unfair trade practices
- Obtained an appellate decision that required an insurer to defend and indemnify its insured from all liability following a denial of coverage, and also ordered the insurer to reimburse insured's attorney fees
- Obtained a landmark appellate decision from the Supreme Judicial Court of Massachusetts ruling that newspapers are exempt from sales and use tax based on the proportion of space devoted to advertising
- Obtained a landmark appellate decision from the Supreme Judicial Court of Massachusetts exonerating senior hospital officials from claims that they wrongfully terminated hospital privileges and engaged in improper electronic eavesdropping on a medical staff physician
- Obtained a U.S. Court of Appeals decision that reversed a judgment for the defendants, directed judgment for the plaintiff on the issue of liability based on interpretation of complex insurance contracts, and remanded the case to the U.S. District Court for calculation of damages thereby precipitating a favorable settlement
- Obtained a decision from the Appellate Tax Board exempting the Hotel at University of Massachusetts from room occupancy tax
- Advised and represented the New England Association of Schools and Colleges (NEASC) in negotiating a separation and affiliation agreement with the New England Commission of Higher Education
- Litigated a broad range of disputes to final decisions at the trial and appellate levels
- Frequently negotiated private resolutions of such disputes
- Served as a court-appointed master supervising discovery and successfully mediating the settlement of a complex shareholder dispute
- Counseled and represented business organizations on a broad range of risk management strategies that do not include litigation

Publications/Presentations

- "The New (Not So) Normal," (Panel Moderator and Program Co-Chair), Massachusetts Bar Association In-House Counsel Conference, January 28, 2021
- "Serving Nonprofit Boards during COVID-19," *On Air with Mirick O'Connell* legal podcast, April 6, 2020
- "Addressing Cybersecurity Threats" (Panel Moderator and Program Co-Chair), Massachusetts Bar Association In-House Counsel Conference, Jan. 30, 2020
- "Case Management and Litigation Cost Containment; Managing Discovery in the Digital Age" (Panel Moderator and Program Co-Chair), Massachusetts Bar Association In-House Counsel Conference, Jan. 31, 2019
- "Litigation v. ADR: Be careful what you wish for!" (Panel Moderator and Program Co-Chair), Massachusetts Bar Association In-House Counsel Conference, Nov. 16, 2017

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Publications/Presentations (continued)

- “Case offers lessons on executive employment terminations,” New England In-House Counsel, May 30, 2017 (co-author)
- “Federal Defend Trade Secret Act of 2016” (Presenter and Program Co-Chair), Massachusetts Bar Association In-House Counsel Conference, Dec. 1, 2016
- “Data Security: Managing cybersecurity risks in a changing environment” (Panel Moderator and Program Co-Chair), Massachusetts Bar Association In-House Counsel Conference, Nov. 19, 2015
- “The Higgins Armory Museum and Worcester Art Museum Integration: A Case Study in Combining and Transforming Mature Cultural Institutions,” *The Legal Guide for Museum Professionals* (Rowman & Littlefield 2015) (co-author)
- “Managing a culture of compliance” (Panel Moderator), Massachusetts Bar Association In-House Counsel Conference, Dec. 5, 2014
- “View from the Bench” (Panel Moderator) Massachusetts Bar Association In-House Counsel Conference, Dec. 6, 2013
- “Traps for the unwary in Independent Investigations” (Panel Moderator, presenter and Program Co-Chair Massachusetts Bar Association In-House Counsel Conference, Nov. 30, 2012
- “Comments from the Bench by the Superior Court Business Litigation Session” (Panel Moderator and Program Co-Chair), Massachusetts Bar Association In-House Counsel Conference, Dec. 9, 2011
- “Special Litigation Issues and the challenges Courts confront in keeping pace with Information Technology” (Panel Moderator and Program Co-Chair), Massachusetts Bar Association In-House Counsel Conference, Dec. 10, 2010
- “Best Practices: Internal controls over conflicts of interest and fraud, internal investigations, special committees and self-disclosures” (Panel Moderator, presenter and Program Co-Chair), Massachusetts Bar Association In-House Counsel Conference, Dec. 9, 2009
- Contributing author, Mirick O’Connell Business Law e-Report
- “Attorneys Fees in Insurance Coverage Litigation: A Partial Reaffirmation of the American Rule,” *Boston Bar Journal*, no. 1 (January/February 2007)(co-author)
- “Avoiding Class Action Law Suits Concerning Lease Insurance Programs,” *Journal of Equipment Leasing*, no. 3 (Fall 2006)
- “Guilty Until Proven Innocent? The Reverse Burden of Proof and ‘Strict Scrutiny’ vs. the Business Judgment Rule in Cases of Fiduciary Duty,” *Massachusetts Bar Association Section Review*, no. 3 (2006)(co-author)
- “A Short Summary of Massachusetts Law Concerning Rights & Obligations of Shareholders of Close Corporations,” Massachusetts Bar Association CLE Publications (co-author)
- “A Matter of Trust: The Impact of Fiduciary Duty on Private Companies,” *Worcester Business Journal* (May 2, 2005)(co-author)
- “The Right to Anonymous Speech: Cybersmear Suits and the First Amendment,” *Boston Business Journal* (February 1, 2002)
- “Trademarks, Domain Names and the World Wide Web: The Anticybersquatting Consumer Protection Act of 1999 and The ICANN Uniform Domain Name Dispute Resolution Policy,” Reprinted from MBA and included in course materials for seminar entitled, “How to Identify and Protect Trademarks” in October, 2001
- “Privacy and Security on the Internet: What Rights, What Remedies?” Reprinted and published as part of course materials for a seminar entitled “Data Privacy in the New Information Age”, MCLE, 2001, product #20011904430 on April 12, 2001
- “Setback for Internet Privacy Class Action Plaintiffs: Double Click Wins First Round,” Reprinted and published as part of course materials for a seminar entitled “Data Privacy in the New Information Age”, MCLE, 2001, product #20011904430 on April 12, 2001
- “Cyberpiracy Law Brings Trademark Protection Against Cybersquatters,” *Massachusetts Lawyers Weekly* (June 12, 2000)
- “Copyright Law Won’t Always Protect Your Software From Copycats,” *Mass High Tech* (February 1-7, 1999)
- “To Avoid Trademark Law Violations, Don’t Confuse The Consumer,” *Banker & Tradesman* (March 9, 1998)
- “In Business, Imitation Is Not Always Flattery,” *New England Real Estate Journal* (September 5, 1997)
- “Shareholder Disagreements In Closely Held Companies: Breaking Up Is Hard To Do,” *Boston Business Journal* (November 7-14, 1997)
- “Trade Secrets and the Renegade Entrepreneur: The Practical Art of Protecting Trade Secrets,” *The Best of MCLE Journal*, no.3 (May 1991)(co-author)
- Contributing author, Mirick O’Connell Business Law e-Report