

Nick DiCesare

Partner

Buffalo
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Education

- University at Buffalo School of Law, *magna cum laude*, JD
- Canisius College, *summa cum laude*, BA

Practices & Industries

- Commercial Litigation & Complex Trials
- Construction & Surety
- Labor & Employment
- Data Security & Technology

Admitted to Practice

- New York

Court Admissions

- US Court of Federal Claims
- US District Court for the Northern District of New York
- US District Court for the Western District of New York

Biography

Nick concentrates his practice on matters involving commercial litigation and construction and surety litigation, handling cases in state and federal courts at both the trial and appellate levels. Nick represents businesses, municipalities, and individuals in a wide variety of contractual and business disputes. He represents owners, contractors, and subcontractors in construction matters, from the contracting phase through litigation in both court and arbitration settings. He also represents businesses and government entities in class-action litigation and other complex commercial claims.

Nick also counsels on best practices to securely maintain electronically stored information and assists clients with the legal and business consequences of cybersecurity breaches. He has worked with businesses and clients in various industries in responding to data security incidents, including coordinating forensic investigations, addressing state and federal law notification requirements, public relations issues, responding to state and federal agency data breach investigations, and resulting lawsuits. Nick also assists clients in addressing and responding to cyber fraud and payment diversion matters.

Nick also has extensive experience litigating NY CPLR Article 78 proceedings involving municipalities and various government agencies. He routinely handles complex arbitrations, including matters involving the Federal Arbitration Act and NY CPLR Article 75.

Nick has significant experience litigating labor and employment matters involving employment contract disputes, including noncompetition and restrictive covenant enforcement, and he frequently represents employers in administrative proceedings and litigation involving discrimination, wage and hour, unemployment, and unfair labor practice claims. He also counsels employers on best practices in relation to potential employment and labor law-related issues.

Bar Associations

- Bar Association of Erie County
- New York State Bar Association

Representative Experience

- Represents a variety of entities, including health care organizations, manufacturing businesses, and service companies, in responding to data-security incidents, including with regard to legal notification requirements, responding to government investigations, and addressing potential litigation claims.
- Represents municipalities in class-action claims involving alleged constitutional violations.
- Represents owners, contractors, and subcontractors in relation to construction-contract disputes and lien issues in both court litigation and arbitrations.
- Defends employers in administrative hearings and litigation challenging the classification of individuals as independent contractors as opposed to employees.
- Represents companies and employers in administrative processes and litigation involving discrimination claims, including, on a number of occasions, obtaining summary judgment dismissing litigated claims.
- Represents and counsels individuals and businesses with respect to employment contracts, including restrictive covenants, non-competition covenants, and non-solicitation agreements.
- Represents retail establishments, businesses, and other property owners in defending against personal injury claims.
- Represents and counsels financial institutions concerning check fraud and online and mobile banking matters.
- Successfully negotiated significantly reduced penalties arising from government investigations of cybersecurity breaches.
- Successfully obtained summary judgment dismissing class action lawsuit against a county involving civil-rights claims under the Fourth Amendment.
- Represented financial institutions in class-action cases involving alleged violations of the Electronic Fund Transfer Act.
- Obtained a significant arbitration award on behalf of a client in a construction dispute between the contractor and owner.
- Obtained summary judgment on behalf of a service company in relation to claims of an oral indemnification agreement and successfully argued to have the decision upheld by the federal Court of Appeals.

- Defended municipalities in challenges to zoning ordinances and determinations of town and zoning boards.
- Represented a private energy company in litigation challenging tax assessments of property.
- Represented an investment group in arbitration and litigation involving breach-of-contract and breach-of-fiduciary-duty claims and company-control issues.
- Represented an industrial manufacturer in a breach-of-contract and collection matter.
- Represented a client in relation to a data breach caused by an unsecured website regulating in disclosure of private information, including social security numbers and health care details. Coordinated a forensic investigation of the incident. Addressed the legal notification requirements for individuals impacted as well as state and federal agencies. Responded to state and federal regulatory investigations of the incident, including the negotiation of fines and remediation requirements.
- Represented a client in relation to a data breach caused by malware.
- Represented a client in relation to creating data security and data breach response plans to comply with New York Shield Act requirements.
- Represented a client in relation to providing evaluation and assessment of cybersecurity obligations under various state laws, including the New York Shield Act.
- Represented a client in relation to a data breach arising out of the compromise of a third-party cloud service provider.
- Represented a client in relation to a data breach situation involving an employee who may have compromised the security of the system, resulting in PII being available on the internet. Coordinated with the forensic investigator to evaluate the disclosure of data and with law enforcement in relation to the investigation of the employee's potential criminal conduct.
- Represented a client in relation to a data breach caused by a phishing scam resulting in the compromise of several email accounts. Coordinated the initial response to the breach and its forensic investigation.

Prior Experience

- Hiscock & Barclay, LLP, Partner

Judicial Clerkships

- US District Court for the Western District of New York to Judge William Skretny, Student Law Clerk

Selected Community Activities

- University at Buffalo Law Alumni Association, Former Director

Selected Honors

- *The Best Lawyers in America*®: Commercial Litigation, 2023–2027; Construction Law, 2024–2027; Litigation – Labor and Employment, 2027

Selected Speaking Engagements

- Bar Association of Erie County, “What Businesses Should Be Considering in the Cyber Age”
- Barclay Damon Emerging Issues for Not-For-Profit Health Care and Human Services Providers Conference, “Hot Topics in Cybersecurity for the Health Care Provider: What We Have Learned and What It Means for My Organization (No Matter Its Size)”

Selected Media

- *Buffalo Business First*, “Be Careful What You Click on: Work Email Addresses Often Targets of Phishing Attempts”
- *Buffalo Business First*, “The ‘Internet of Things’: Litigation Explosion Ahead?”
- SHIEC Member Newsletter, “Cyber Liability Insurance: Pitfalls in Coverage”
- *Buffalo Business First*, “Attorneys Warn That All Companies Should Be Prepared for a Ransomware Attack”

Selected Alerts & Blog Posts

- Ransomware Remains a Booming Criminal Enterprise—Regulators Look to Slow It Down
- Practical Lessons From the Ongoing Marriott Data Breach Litigation
- Federal Authorities Issue Warning About Imminent Ransomware Threat to Health Care Sector
- The Potential Monetary Consequences of a Data Breach Serve as a Strong Reminder to Proactively Address Cybersecurity Concerns
- Unemployment Scams on the Uptick Across the United States

Selected Podcasts

- *Barclay Damon Live: Cyber Sip*—"Breach Response: What We've Learned, With Nick DiCesare"
- *Barclay Damon Live: Cyber Sip*—"Four Keys to Prepare for a Data Breach, With Nick DiCesare"