

## Litigation

“The hallmark of Sullivan & Cromwell is truly a culture of



collaboration. We have people of widely different, diverse backgrounds, education, viewpoints, practice areas, in a room to debate and twist each

—Sharon Nelles  
Managing Partner, Litigation Group

Clients, such as those highlighted below, choose us for their most difficult matters that require the sharpest legal minds and the agility to craft and respond to novel legal theories.

- **Volkswagen Moves Ahead:** We are guiding auto giants Volkswagen and Fiat Chrysler Automobiles in their diesel emissions matters, including as national coordinating counsel for Volkswagen.
- **BP Strikes a Historic Settlement:** We negotiated the company's \$18.7 billion settlement with federal, state and local governments arising out of the 2010 Deepwater Horizon spill—the largest settlement involving a single entity.
- **BlackBerry Receives A Billion Dollar Award:** We obtained nearly \$1 billion for BlackBerry in a binding arbitration against Qualcomm—one of the biggest arbitration awards on record.
- **Microsoft's Landmark Cases:** We represented Microsoft in some of its most important litigation, including reaching an antitrust consent decree with the Department of Justice and defeating a private antitrust suit by Novell.
- **Guiding Financial Institutions Through Crises:** We have steered leading financial institutions through successive crises, from the dot-com crash of the 2000s, to the 2008 financial crisis, to the COVID-19 crisis today.



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## PRACTICES & CAPABILITIES

**Litigation**

**Antitrust**

**Bankruptcy Litigation**

**Commodities, Futures & Derivatives**

**Congressional Investigations**

**Corporate Culture, Workplace Investigations & Whistleblower Litigation**

**Corporate Governance Litigation**

**Criminal Defense & Investigations**

**Environmental Litigation**

**European Competition**

**FCPA & Anti-Corruption**

**Financial Services Investigations & Litigation**

**Intellectual Property & Technology Litigation**

**International Arbitration and Global Dispute Resolution**

**Labor & Employment**

**Products Liability & Mass Torts**

**Securities & Commodities Investigations Practice**

**Securities Litigation**

**Supreme Court and Appellate**

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“If I had a bet-the-company matter, they’re the firm I’d go to, hands down, no question.”

—Chambers USA

## Recent Client Highlights

- S&C Advises Cronos in SEC Settlement
- S&C Obtains Summary Judgment for Goldman Sachs in ERISA Class Action
- S&C Wins Sixth Circuit Appeal for FCA in RICO Suit by GM
- S&C Leads Centerra Gold to Successful Resolution of Dispute with Kyrgyz Republic
- S&C Wins ICC Arbitration Ruling for Bayer in BASF Dispute
- S&C Secures Summary Judgment for Volkswagen in Litigation Over Certified Pre-Owned Vehicles

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## Recent Publications

- *S&C Critical Insights* – Developing a Robust Multi-National Compliance Program
- *S&C Critical Insights* – An Overview of Section 8 of the Clayton Act
- *S&C Critical Insights* – *SEC v. Cochran* Supreme Court Argument Preview
- Melissa Sawyer, Jacob Croke and Sheeva Nesva Author Article on Privilege Waiver Risks for *Law360*
- *S&C Critical Insights* - A Discussion of In Re Grand Jury

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## SELECTED REPRESENTATIONS

Recent Sullivan & Cromwell litigation experience includes representing:

- BP, in its historic \$18.7 billion settlement with government authorities over the Deepwater Horizon oil spill. The settlement establishes the framework for global resolutions of all federal, state and local environmental and economic damage claims and marks the largest settlement ever involving a single entity. Moreover, S&C represents BP in related multidistrict litigation derivative and securities class actions. S&C secured a number of dismissals that have been affirmed on appeal, and significantly decreased the class, reducing BP’s exposure by 85 percent.
- Banco Central de la República Argentina (BCRA), as it prevailed before the Second Circuit in August 2015, when the court sided with BCRA against investment funds EM Ltd. and NML Capital, Ltd. after nine years of litigation. The Second Circuit held that plaintiffs had failed to adequately allege that BCRA is an alter ego of the government and that BCRA qualified for immunity from suit under the Foreign Sovereign Immunities Act. Weakening the immunity from suit or attachment traditionally enjoyed by foreign

instrumentalities, as plaintiffs urged, “could lead foreign central banks, in particular, to ‘withdraw their reserves from the United States and place them with other countries,’” which in turn could have “an immediate and adverse impact on the U.S. economy and the global financial system.”

- Barclays, in international, multiagency investigations into benchmark interest rates, including the London interbank offered rate (Libor) and the euro interbank offered rate (Euribor). S&C was engaged by Barclays to conduct an internal investigation regarding conduct relating to benchmark interest rates. In 2012, Barclays entered into settlements with the U.S. Commodity Futures Trading Commission, the U.S. Department of Justice Fraud Division and the U.K. Financial Services Authority. S&C also represented Barclays in obtaining conditional leniency from the Antitrust Division of the U.S. Department of Justice with respect to financial instruments referenced to Euribor. In addition, S&C represents Barclays in the related civil litigation. The litigation includes class action suits involving USD Libor, Yen Libor and Euribor alleging violations of federal antitrust laws and violations of the Commodity Exchange Act, as well as violations of the Racketeer Influenced and Corrupt Organizations Act and various state laws.
- Barclays, in obtaining full dismissals of separate class action complaints brought in the Southern District of New York and the Central District of California by investors in Barclays’ “dark pool” known as LX. The investors had alleged that Barclays made misrepresentations concerning the operations of, and high frequency trading in, LX. S&C also negotiated a settlement to resolve an SEC investigation and a related lawsuit by the New York Attorney General. After obtaining a favorable ruling dismissing certain of the NYAG’s claims against Barclays, S&C negotiated a joint resolution of the SEC’s investigation and NYAG’s investigation for \$70 million, an amount dramatically less than financial analysts predicted.
- Boeing, in a securities class action brought by a putative class of Boeing shareholders related to Boeing’s 787 Dreamliner.

*The Wall Street Journal* called the decision, which sheds additional light on the already controversial use of confidential informants in pleading *scienter* in private securities fraud litigation, “the biggest plaintiff smackdown of the year.”

- Eastman Kodak, as lead counsel in its global reorganization and Chapter 11 case in the United States.
- Enbridge, in achieving a unanimous defense verdict in favor of Enbridge after a five-week jury trial in Dallas, Texas, on a claim of civil conspiracy. Plaintiff Energy Transfer claimed in excess of \$1 billion plus punitive damages against Enbridge, arguing that Enbridge stole away Enterprise Products from Energy Transfer as part of an effort to create a competitively significant pipeline. The jury found liability against the other defendant, Enterprise Products, for \$319 million in damages and \$595 in disgorgement damages.
- Goldman Sachs, in a wave of antitrust actions arising from financial institutions’ warehousing of certain metals, alleging banks conspired to manipulate metals’ pricing through their ownership of the warehouses. In *In Re: Aluminum Warehousing Antitrust Litigation*, S&C persuaded the U.S. Court of Appeals for the Second Circuit that commercial and consumer end users plaintiffs lacked standing. The holding clarified the Supreme Court’s *Blue Shield of Virginia v. McCready* exception to the market-participation requirement and will likely affect an increasing number of antitrust

actions that allege a complex scheme affecting multiple different markets.

S&C recently secured a dismissal with prejudice of the claims asserted against Goldman Sachs in *In re: Zinc Antitrust Litigation*.

- Goldman Sachs & Co., in an important case involving the enforcement of arbitration agreements in employment discrimination actions. The U.S. Court of Appeals for the Second Circuit reversed a lower court order refusing to enforce an arbitration agreement between Goldman Sachs and a former employee who was seeking to bring a Title VII class action claim based on “pattern or practice” evidence, thereby requiring the employee to be bound by the terms of the arbitration agreement.
- Goldman Sachs, JPMorgan Chase, Barclays, Nomura and First Horizon, in separate actions brought by the Federal Housing Finance Agency (FHFA) on behalf of Fannie Mae and Freddie Mac. The cases are among 18 suits brought by FHFA alleging that the banks fraudulently issued or underwrote hundreds of mortgage-backed securities prior to the subprime collapse.

Together, these cases constitute one of the highest-profile securities litigations arising out of the financial crisis, with hundreds of billions of dollars in securities at stake. Barclays, First Horizon, Goldman Sachs and JPMorgan recently settled these claims.

- Goldman Sachs, in obtaining a dismissal on summary judgment of a securities fraud class action filed by hedge fund Dodona on behalf of investors in two mortgage-related synthetic CDOs that Goldman Sachs structured and sold in late 2006 and early 2007. The holding found that “crucially absent from the summary judgment record is sufficient evidence supporting the sole claim in dispute.”
- ING Group, HSBC Group and Standard Chartered Bank, in the successful resolutions of multiagency criminal and regulatory investigations relating to their compliance with economic sanctions and/or anti-money-laundering regulations. After lengthy investigations spanning years and involving activities around the world, each of S&C’s clients avoided criminal prosecution by resolving these matters through the entry of deferred prosecution agreements and the payment of fines.
- JPMorgan Chase, as national coordinating counsel in the company’s residential mortgage-backed securities litigation, which includes litigation arising from securitizations issued by Washington Mutual and Bear Stearns. As such, the Firm has responsibility for developing the strategy and overseeing more than 70 cases pending in multiple state and federal jurisdictions, as well as various regulatory matters. S&C played a key role in leading JPMorgan through its recently announced \$13 billion settlement with the U.S. Department of Justice.
- JPMorgan Chase and its senior officers, in consolidated securities fraud, shareholder derivative and ERISA litigation arising out of the bank’s 2012 so-called “London Whale” trading losses. S&C secured the dismissal of seven derivative actions, all of which have been affirmed on appeal or not appealed. S&C also secured the dismissal with prejudice of the ERISA “stock drop” class action. The court held that the U.S. Supreme Court’s recent decision in *Fifth Third Bancorp v. Dudenhoeffer* was not intended to open the floodgate of “stock drop” cases involving 401(k) plans that offer company stock, but rather imposes significant hurdles on plaintiffs’ ability to proceed to discovery in these cases. The decision was affirmed on appeal.

- Microsoft, in a long-running antitrust lawsuit brought by Novell, which sought nearly \$4 billion in damages. In September 2013, the U.S. Court of Appeals for the Tenth Circuit unanimously affirmed the district court's dismissal of the case. The district court granted Microsoft's post-trial motion for judgment as a matter of law after an eight-week trial that ended in a deadlocked jury.

*The Am Law Litigation Daily* named partners David Tulchin and Steve Holley "Litigators of the Week" for their work on the case.

- Moody's, in a coordinated shareholder class action. After defeating class certification, S&C obtained full dismissal on summary judgment of the actions brought against Moody's that alleged that Moody's made false and misleading statements concerning its rating methodologies and its management of conflicts of interest in connection with ratings of subprime residential mortgage-backed securities and other structured finance products that suffered downgrades during the financial crisis. The plaintiffs sought recovery for a more than 50 percent decline in Moody's share price and the loss of more than \$7 billion in market capitalization.
- New York Bankers Association, in persuading the Southern District of New York to strike down as unconstitutional New York City's Responsible Banking Act (RBA), which sought to impose a municipal bank regulatory regime, as preempted by federal and New York State banking laws.

*The Wall Street Journal* noted that "A meteor headed straight for the world's financial center [was] knocked off course" when S&C obtained the order.

- Porsche, in a high-profile federal securities litigation brought against it by a group of hedge funds seeking more than \$2.5 billion in connection with Porsche's acquisition of a stake in Volkswagen. The hedge funds' claims were dismissed, and the United States Court of Appeals for the Second Circuit affirmed the dismissal.

*The New York Times* and *The Wall Street Journal* reported on this victory. *The American Lawyer* noted in its March 2011 "Big Suits" column that the win "removes a roadblock to the planned merger between Porsche and VW." *The American Lawyer* also recognized S&C as an honoree for "Global Dispute of the Year: U.S. Litigation" in its inaugural Global Legal Awards (2013) for representation of Porsche in these matters.

- MPEG LA, a patent licensing administrator, in bringing a breach-of-patent-license claim against Audiovox. Following a nine-day trial, the jury awarded MPEG LA damages on a portion of Audiovox's unpaid sales of products featuring MPEG-2 digital compression technology.
- Novo Nordisk, in securing a trial win on behalf of Novo Nordisk before the International Trade Commission. The ruling concluded that Novo Nordisk had not violated Section 337 of the Tariff Act, as had been alleged by the plaintiff, originally Baxter Healthcare and subsequently Baxalta (now part of Shire). Baxter/Baxalta claimed that Novo Nordisk infringed two Baxter patents in the manufacture of its hemophilia drug Novoeight<sup>®</sup>. After a bench trial at which 11 witnesses testified, Administrative Law Judge Lord found that Baxter had not established a "domestic industry" in the U.S. for its competing hemophilia drug (a requirement for a finding of a Section 337 violation) and that one of the two patents was invalid.
- NXP Semiconductors, in an \$80 million, multiform action brought

by Exatel Visual Systems that arose out of claimed breaches of various commercial agreements regarding a set-top box venture. Four days into an arbitration hearing, Exatel voluntarily dismissed its case and agreed to release NXP and its affiliates for zero consideration.

- Sonera Holding, in its arbitration against Cukurova Holding that found that Cukurova had breached a contract with Sonera and, as a result, owed it \$932 million in damages, plus interest, costs and attorneys' fees.

This is the fourth significant International Chamber of Commerce arbitration victory that S&C has won for TeliaSonera. The Firm's representation of Sonera was noted as one of the "Biggest Arbitration Awards" in *The American Lawyer's* annual "Arbitration Scorecard" in 2013.

- Stryker Corporation, a Fortune 500 medical technologies firm, as it prevailed before the Supreme Court in a case that addressed the standard to be used for awarding enhanced damages in patent infringement actions. The case arose from the lower court's finding that Stryker's competition infringed its patented invention. The lower court trebled Stryker's damages due to the flagrancy and scope of the infringement. Although the U.S. Court of Appeals for the Federal Circuit upheld the jury's liability ruling, it vacated the increase in damages. S&C persuaded the Supreme Court to set aside the Federal Circuit's strict standard as "unduly rigid." By striking down the standard used by the Federal Circuit, the holding provides greater discretion to district judges in determining when enhanced damages are appropriate. The Supreme Court also held that patent holders need only establish the appropriateness of enhanced damages by a "preponderance of the evidence" rather than "clear and convincing evidence." Lastly, the Court held that the Federal Circuit should review district courts' enhancement decisions for abuse of discretion.
- Tenaris (which entered into the first deferred prosecution agreement ever offered by the SEC), Eni, and Snamprogetti and Diageo, in resolving three notable Foreign Corrupt Practices Act investigations.
- UBS, in a variety of regulatory inquiries, investigations, tax matters and private litigation arising from the recent financial crisis and losses related to mortgage-backed securities. S&C advised UBS in obtaining the dismissal of all federal securities claims by UBS shareholders who acquired shares outside the United States arising out of UBS's subprime losses. This decision, affirmed by the U.S. Court of Appeals for the Second Circuit, eliminated billions of dollars of potential liability. The victory established important precedent on the extraterritorial effect of U.S. securities laws.
- Volkswagen AG, in its landmark \$14.7 billion settlement that solves civil claims related to 475,000 2.0-liter diesel engine vehicles in the United States. The resolution was achieved with multiple government agencies, 44 U.S. states and private plaintiffs.

*The AmLaw Litigation Daily* recognized Robert Giuffra as "Litigator of the Week" in what it called "[o]ne for the history books" and has described the settlement as a "win" for Volkswagen and Sullivan & Cromwell that is "without parallel in speed and scope." Citing Stanford Law School Professor and organizer of the Global Class Actions Exchange, Deborah R. Hensler, *The Daily Journal* wrote that "[g]etting a case this big and this complex involving international corporations from clerk's office to the brink of settlement in four months is 'stunning .... It really is the poster child for class action

lawsuits.”

S&C also represented VW in reaching a subsequent \$1 billion settlement related to 80,000 3.0-liter vehicles.

- Vornado Realty Trust, in a long-running contract dispute with Stop & Shop regarding the allocation of rental increases. After an eight-day trial, the court held that Stop & Shop was liable for the full amount of the rental increases, and entered a judgment of more than \$56 million for Vornado.

Vornado was also awarded \$11.1 million in legal fees and costs, including interest—an award, the court said, that was supported by the “very beneficial” results achieved by S&C.