

SULLIVAN & CROMWELL LLP

M&A Litigation

Since the explosion of M&A transactions in the late 1970s, Sullivan & Cromwell has represented clients in every type of litigation arising out of such transactions in federal and state courts all over the country, including frequently in the Delaware Chancery and Supreme state court, the most influential courts on corporate governance matters in the United States.

The Firm has handled hostile takeover litigation and shareholder class and derivative actions in every conceivable takeover-related setting, including actions related to disclosure, defensive-measure and going-private transactions.

S&C has also defended special committees and handled regulatory matters relating to M&A transactions involving antitrust, insider trading, and disclosure issues.

From advice on deal structure to victory at trial, the Firm's formidable litigation experience in M&A transactions provides essential support to its M&A clients.

SELECTED REPRESENTATIONS

Some of S&C's recent experience with M&A litigation includes representations of:

- **Activision**, in representing its chairman and chief executive officer and a partnership in which they were investors, in Delaware Chancery Court involving a transaction in which Vivendi disposed of its controlling stake in Activision. The transaction closed after the defendants' expedited appeal to the Delaware Supreme Court resulted in a reversal of the Chancery Court's preliminary injunction.
- **Amgen**, in litigation relating to numerous acquisitions, including its recent acquisitions of Onyx Pharmaceuticals and Micromet. In the Micromet litigation, S&C defeated plaintiffs' motion for a preliminary injunction, which was decided by the Delaware Chancery Court shortly before the transaction was scheduled to close.
- **Amylin**, in expedited litigation in Delaware Chancery Court, and later in an appeal to the Delaware Supreme Court, relating to a proxy contest.
- **Apollo (Mauritius) Holdings, Apollo Tyres and Apollo Acquisition**, in an expedited trial in Delaware Chancery Court regarding their proposed \$2.5 billion merger with Cooper Tire & Rubber Company. Cooper claimed that Apollo had breached the parties' merger agreement and, among other relief, sought specific performance to compel Apollo to

PRACTICES & CAPABILITIES

General Practice/Corporate Law

Mergers & Acquisitions

- Corporate Governance
- M&A Financial Advisory
- M&A Litigation
- Private Equity

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close the merger before Cooper was able to file its third-quarter financial statements and after a series of disruptions including Cooper's loss of control of its largest subsidiary. After a three-day trial—held about one month after Cooper filed its complaint—the court found that Apollo had not breached the merger agreement and, accordingly, that Cooper was not entitled to specific performance.

- **AT&T**, in class-action litigation in California Superior Court relating to its pending acquisition of Leap Wireless.
- **CIM REIT**, in litigation in Texas state court involving derivative and class claims challenging a merger with PMC Commercial Trust. The case was settled on terms that resulted in the plaintiffs' agreeing to vote in favor of the transaction.
- **Cole Holdings**, in shareholder derivative litigation relating to the purchase by a Maryland Real Estate Investment of its adviser. The Maryland Estate Court granted Cole's motion to dismiss.
- **Collective Brands**, the owners of Payless Shoesource and brands such as Keds, Sperry Topsider, Stride Rite and Saucony, in a stockholder class-action litigation brought in Delaware and Kansas by investors seeking to block Collective Brands' proposed sale to Wolverine World Wide. Collective Brands completed its sale in October 2012, and the litigation was successfully resolved with a settlement favorable to Collective Brands.
- **Columbia Pipeline Group, and its board** in shareholder class action litigations in Delaware Chancery Court and in Texas federal court challenging the \$13 billion acquisition of Columbia Pipeline by TransCanada, which closed in July 2016. The Delaware Chancery Court dismissed the action in March 2017. The deal closed on July 1, 2016.
- **Cytec Industries, and its board** in shareholder class action litigations in Delaware federal court and in New Jersey Chancery Court challenging the \$5.5 billion acquisition of Cytec Industries by Solvay, which was completed in December 2015. After defendants moved to dismiss the New Jersey action, plaintiffs voluntarily dismissed that action. S&C then successfully defeated a request to expedite the Delaware litigation, and that litigation was dismissed voluntarily in February 2016.
- **Dole**, as counsel to members of its board's special committee, in Delaware and California over David Murdock's buyout. S&C successfully persuaded the court in California to stay the litigation in favor of Delaware and persuaded the chancery court to deny plaintiffs' motion for expedition, which allowed the transaction to close following a stockholder vote.
- **Fox-Pitt Kelton and J.C. Flowers**, in derivative litigation that arose out of Bank of America's 2008 acquisition of Merrill Lynch. Fox-Pitt Kelton and J.C. Flowers, which acted as Bank of America's financial advisers, were charged with violating Section 14(a) of the Securities Exchange Act of 1934 and

state-law claims for breach of fiduciary duty, professional negligence, and aiding and abetting a breach of fiduciary duty. In August 2010, the court granted S&C's clients' motion to dismiss in its entirety.

- **Goldman Sachs** in obtaining dismissal of all claims in a class action in Delaware concerning the acquisition of Blount by a private equity consortium.
- **IntercontinentalExchange**, in class actions in Delaware and New York brought by NYSE stockholders arising out of the NYSE's acquisition by ICE for a total of approximately \$8.2 billion. S&C successfully obtained a stay of the New York litigation in favor of the Delaware action, and shortly thereafter the Delaware court denied a preliminary injunction motion. The plaintiffs thereafter voluntarily dismissed the cases.
- **Kynetic**, and its owner Michael Rubin, in Massachusetts state court over claims brought by former shareholders of Rue La La (a company purchased by Kynetic) for breach of contract.
- **Ruckus Wireless Inc., and its directors** in connection with litigation relating to the proposed acquisition of Ruckus by Brocade Communications Systems Inc. Prior to closing, litigation challenging the merger was filed in California Superior Court and in the United States District Court for the District of Delaware. The District of Delaware plaintiffs filed a motion for a preliminary injunction seeking to enjoin the closing of the tender offer, but withdrew their motion after S&C filed an opposition on behalf of Ruckus and its directors rather than file a reply brief. The District of Delaware litigation was later voluntarily dismissed. Following the closing of the tender offer, a separate action was filed in the United States District Court for the Northern District of California. S&C represents the individual defendants in that litigation.
- **Solera Holdings, Inc.** in obtaining the dismissal with prejudice of a complaint filed by a putative class of former Solera shareholders, which alleged the defendants breached their fiduciary duties in connection with the approval of Vista Equity Partners's \$6.5 billion acquisition of Solera.
- **Tokio Marine Holdings**, in a shareholder class-action litigation in the Delaware Chancery Court arising from Tokio Marine's acquisition of Delphi Financial Group, a leading financial services holding company conducting specialty life and property and casualty insurance and insurance-related businesses, for approximately \$2.7 billion. S&C successfully defeated a preliminary injunction motion and achieved a favorable settlement for Tokio Marine.
- **Volcano Corporation** in obtaining the dismissal of the Verified Consolidated Amended Class Action Complaint filed by Philips Holding USA Inc. former shareholders. The Delaware Court of Chancery held that a solid tender-off ratification was protected under the business judgment rule. S&C originally represented Philips, as the acquirer, as part of the same briefing. After the transaction closed, and with Philips' acquisition of Volcano, S&C became counsel to

Volcano, working with all of the other defendants (as indemnified parties) to focus the briefing.