

## ***Supreme Court and Appellate***

Led by former Acting Solicitor General of the United States Jeff Wall—who has argued more than 30 times before the U.S. Supreme Court—and drawing on the experience of 13 former U.S. Supreme Court clerks and more than 75 former federal circuit court clerks, S&C's Supreme Court and Appellate Practice adeptly handles challenging and high-profile appeals around the country. Our [Supreme Court and Appellate lawyers](#) collectively have significant experience before the Supreme Court and scores of other federal and state courts of appeals.

A distinctive feature of our practice is that S&C's appellate lawyers have handled every phase of litigation. They have tried and arbitrated cases, conducted internal investigations, and represented clients in governmental investigations. This broad experience gives them a valuable perspective from which to develop more effective arguments based on their experience in those other contexts, and enables them to work collaboratively with trial teams to frame those arguments persuasively at every stage of a case. Clients appreciate that this structure allows the same teams to handle motions, trials and appeals. Even in matters that S&C has not handled in the initial stages, clients also often seek out our team's tailored appellate expertise, skilled advocacy and strategic advice.

Our appellate experience covers virtually all of our litigation practices, including antitrust, bankruptcy, criminal defense, intellectual property, labor and employment, M&A litigation, products liability and securities litigation.

### **Representative Clients**

- BP, in multiple appeals before the U.S. Court of Appeals for the Fifth Circuit stemming from the Deepwater Horizon oil spill
- [Goldman Sachs](#), including before the Supreme Court and the Second Circuit, in one of the most closely watched securities class actions in recent years. The Supreme Court recently ruled 8-1 in favor of Goldman Sachs and remanded a case testing the standards for rebutting the “fraud-on-the-market” presumption of class-wide reliance;
- Stryker, in a U.S. Supreme Court case that addressed the standard to be used for awarding enhanced damages in patent infringement actions
- Volkswagen, as national coordinating counsel in the negotiation of landmark settlements of diesel emissions investigations and litigations, and in the successful defense of those settlements in four appeals to the U.S. Court of Appeals for the Ninth Circuit
- Volkswagen, in securing a reversal and remand from the U.S. Court of Appeals for the Ninth Circuit in a case that will sharply limit the ability of plaintiffs to use the Supreme Court's *Affiliated Ute* presumption of reliance in securities lawsuits

### **SELECTED REPRESENTATIONS**

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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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#### PRACTICE CONTACTS

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Recent appellate practice experience includes representations of:

- Goldman Sachs in a class action alleging securities fraud in connection with mortgage-related activities and alleged conflicts of interest, including securing a favorable U.S. Supreme Court decision after obtaining what Reuters described as “a highly unusual grant” of a second discretionary appeal of class certification by the U.S. Court of Appeals for the Second Circuit.
- Volkswagen and Audi in obtaining a ruling from the U.S. Court of Appeals for the Ninth Circuit that affirmed a decision dismissing with prejudice all claims brought on behalf of a putative class of former owners and former lessees of Volkswagen and Audi diesel vehicles who sold or returned their cars before the September 2015 public disclosure that a defeat device had been installed in their cars. Volkswagen and Audi had purposely excluded these individuals from the historic consumer class action settlements in 2016 and 2017. The Ninth Circuit panel concluded that the drivers had no standing to sue because they didn't come up with a viable damages theory.
- Volkswagen in winning an important ruling from a divided U.S. Court of Appeals for the Ninth Circuit that eliminated significant liability for the company in securities litigation involving \$8.3 billion of bonds.
- Volkswagen as national coordinating counsel for Volkswagen in multinational litigation and investigations stemming from “clean-diesel”-related developments, including negotiating Volkswagen's landmark settlements of claims with the Department of Justice, Environmental Protection Agency and other government authorities. S&C also resolved the consumer class action and consumer protection claims with 44 States. S&C successfully defended Volkswagen's settlements on appeal to the U.S. Court of Appeals for the Ninth Circuit four times.
- Volkswagen and Audi in obtaining a ruling from the Texas Court of Appeals holding that Texas courts lacked personal jurisdiction over Volkswagen AG and Audi AG, both of which are headquartered in Germany.
- AMC Networks Inc. and the board of RLJ Entertainment, Inc., in obtaining the dismissal—affirmed on appeal by the Nevada Supreme Court—of a class-action lawsuit alleging breach of fiduciary duty by RLJ Entertainment's board of directors in connection with AMC's purchase of RLJ.
- Barclays in winning summary judgment (after eight years of litigation), which was affirmed on appeal by the U.S. Court of Appeals for the Second Circuit in November 2018, in a securities class action arising from Barclays' April 2008 offering of \$2.5 billion of American Depositary Shares.
- Barclays Bank before the New York Appellate Division, First Department in its successful appeal of the lower court's denial of Barclays' motion to dismiss.
- BP in successfully defending on appeal to the U.S. Court of Appeals for the Second Circuit the dismissal of multi-district putative class action litigation alleging antitrust and Commodity Exchange Act claims relating to alleged overseas manipulation of Brent Crude Oil.

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- Danske Bank as it prevailed before the U.S. Court of Appeals for the Second Circuit in securing the August 2021 affirmance of the Southern District of New York's dismissal with prejudice of a securities class action brought by a putative class of purchasers of American Depositary Receipts alleging that Danske Bank made materially false and misleading statements regarding alleged money laundering at its Baltic branches.
- Kohl's, its Chief Executive Officer Kevin Mansell, and its former Chief Financial Officer in securing the dismissal with prejudice, upheld on appeal to the U.S. Court of Appeals for the Seventh Circuit, of a putative shareholder securities class action.
- Royal Bank of Canada, RBC Capital Markets and RBC Europe Limited as it prevailed before the U.S. Court of Appeals for the Second Circuit in obtaining the July 2021 affirmance of the dismissal of a class action lawsuit brought by investors in supranational, sovereign and agency bonds alleging violations of U.S. antitrust laws and state law claims. The Second Circuit subsequently denied plaintiffs' petition for en banc review in September 2021.
- Stryker Corporation, a Fortune 500 medical technologies firm, as it prevailed before the U.S. Supreme Court in a case that addressed the standard to be used for awarding enhanced damages in patent infringement actions.
- State Farm Fire & Casualty Company as co-counsel in its case before the U.S. Supreme Court that was argued in November 2016 and clarified the standard for dismissal in False Claims Act cases where the seal requirement has been violated.
- UBS for over 15 years in multiple class action litigations alleging billions of dollars in losses stemming from Enron's 2001 collapse, including as it prevailed before the U.S. Court of Appeals for the Fifth Circuit which upheld two final dismissals in 2018 and 2019, bringing to a close what may be the last Enron-related litigation.
- JPMorgan Chase, as it prevailed before the U.S. Court of Appeals for the Second Circuit and achieved the dismissal of several derivative actions arising out of the so-called London Whale trading losses.
- Banco Central de la República Argentina (BCRA), as it prevailed before the U.S. Court of Appeals for 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 former president of a major U.S. university, in a win before the Superior Court of Pennsylvania, which reversed the trial court and quashed criminal charges of perjury, obstruction of justice, and conspiracy arising out of a scandal at the university.
- Cuzzo Speed Technologies LLC, before the U.S. Supreme Court, challenging the U.S. Patent and Trademark Office's implementation of the America Invents Act's new post-grant proceedings.
- Porsche, as it prevailed before the U.S. Court of Appeals for the Second Circuit in August 2014, 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.

- U.S. Chamber of Commerce, as it prevailed before the U.S. Court of Appeals for the Third Circuit in a case involving the Video Privacy Protection Act of 1988, which was passed to protect consumers' privacy in their rental records held by video stores. The Third Circuit agreed with S&C's arguments that the statute should not be interpreted to preclude online content and service providers from sharing anonymous user data with advertisers, a practice which undergirds much of the internet economy.
- Standard Chartered Bank, as it prevailed before the New York Court of Appeals in October 2014, when that court reaffirmed the continuing vitality of New York's separate-entity rule.
- UBS, as it prevailed before the U.S. Court of Appeals for the Second Circuit in May 2014, when the court affirmed the dismissal of what *The American Lawyer* called a "mammoth" securities class action by UBS shareholders that acquired shares outside the United States arising out of UBS's subprime losses and involvement in U.S. customer tax evasion. This decision eliminated billions of dollars of potential liability and established important precedent on the extraterritorial effect of U.S. securities laws.
- JPMorgan Chase, as it prevailed before the U.S. Court of Appeals for the Second Circuit in March 2014, when the court dismissed more than 40 putative class-action consolidated lawsuits alleging a conspiracy to manipulate the silver futures market in violation of the Sherman Act and the Commodity Exchange Act.
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