

## **Corporate Governance Litigation**

S&C has broad experience representing companies, boards, special committees and individual directors across multiple industries and jurisdictions on a spectrum of issues critical to their companies' successful business operations and corporate governance matters. Our lawyers' comprehensive understanding of current governance requirements and practices is accentuated by the Firm's world-class litigation capabilities. Our litigators' relevant experience includes advising on fiduciary duties, regulatory compliance issues, best practices, environmental liabilities, financial restatements, and mergers and acquisitions transactions.

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. 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.

[Subscribe to receive our insights](#)

### **Recent Podcasts & Publications**

- [Memo: Delaware Court of Chancery Holds 35.3% Stockholder Was Not a Controller](#)
- [Memo: Nevada Supreme Court Holds Statutory Business Judgment Rule Applies to All Claims Against Corporate Officers and Directors](#)
- [Memo: Delaware M&A Opinion Rejects MAE Claim of COVID-19 Effects](#)
- [Memo: Delaware Courts Issue Series of Pro-Policyholder D&O Insurance Decisions](#)

### **SELECTED REPRESENTATIONS**

#### ***Selected Representations***

---

#### PRACTICES & CAPABILITIES

**Litigation**

**Antitrust**

**Arbitration**

**Bankruptcy Litigation**

**Commodities, Futures & Derivatives**

**Congressional Investigations**

**Corporate Governance Litigation**

**Criminal Defense & Investigations**

**Environmental Litigation**

**European Competition**

**FCPA & Anti-Corruption**

**Financial Services Investigations & Litigation**

**Intellectual Property & Technology Litigation**

**Labor & Employment**

**M&A Litigation**

**Products Liability & Mass Torts**

**Securities & Commodities Investigations & Enforcement Practice**

**Securities Litigation**

**Supreme Court and Appellate**

**Whistleblower Litigation & Workplace Investigations**

---

#### PRACTICE CONTACTS

**Brian T. Frawley**

New York

T. +1-212-558-4000

Some of S&C's recent corporate governance litigation experience includes representations of:

- **1st Century Bancshares, Inc.** and former board members in obtaining the dismissal—upheld on appeal, ultimately to the California Supreme Court—of a putative class action stemming from 1st Century's acquisition by Midland Financial Co., the holding company of MidFirst Bank—one of the nation's largest privately-held banks. This was the first ruling validating a Delaware forum selection bylaw under California state law.
- **AMC Networks Inc.** and the board of RLJ Entertainment, Inc. (RLJE) in obtaining a dismissal of a stockholder derivative action challenging AMC's \$59 million acquisition of RLJE, which was completed in October 2018.
- **AT&T** in an appeal of a settlement in a shareholder class action stemming from AT&T's acquisition of Leap Wireless International, Inc., as well as in appraisal proceedings brought in connection with AT&T's acquisitions of DirecTV and Time Warner.
- **The Former Lead Director of Banc of California** in special committee and SEC investigations, and subsequent derivative litigation, relating to director conduct and public disclosures.
- **Cablevision's Compensation Committee** in securing a favorable resolution of a derivative action in the Chancery Court of Delaware concerning Cablevision's executive compensation practices. The decision was the first to rule that the business judgment rule applies to an independent committee's decision concerning executive compensation for a controlling stockholder.
- **Citigroup Inc.** and certain of its current and former executives in various shareholder lawsuits stemming from Citigroup's October 2020 settlements with banking regulators concerning its internal controls, including a putative class action asserting securities fraud claims and shareholder derivative actions in federal and state court. S&C is also representing Citigroup in responding to shareholder books and records requests.
- **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.
- **DS Smith** in litigation in the Southern District of New York relating to the acquisition of DS Smith's packaging business by Liqui-Box, an entity controlled by Olympus Partners. DS Smith claims that Olympus has breached its obligations relating to antitrust approval under the terms of the parties' stock purchase agreement, while Olympus makes contrary claims.
- **Special Litigation Committee of the Edison International Board** has turned to S&C to investigate and assess shareholder demands three different times in the past eight years:
  - In evaluating shareholder demands relating to the company's conduct in connection with the Thomas and Woolsey wildfires.
  - In addressing shareholder demands arising from the decommissioning of the San Onofre Nuclear Generating Station (SONGS).
  - In evaluating a shareholder challenge to dividend, tax-sharing payment and settlement of the Edison Mission Energy (EME) bankruptcy litigation
- Directors of **El Pollo Loco** in reaching a favorable settlement in derivative litigation in the Delaware Chancery Court. The remainder of the case was dismissed on a motion by the special litigation committee.
- **Enbridge Inc.**, its directors, and subsidiary Enbridge Pipelines (Alberta Clipper) L.L.C. as lead counsel in a class action litigation and derivative suit arising from Enbridge Energy Partners, L.P.'s

F. +1-212-558-3588  
frawleyb@sullcrom.com

**John L. Hardiman**

New York  
T. +1-212-558-4000  
F. +1-212-558-3588  
hardimanj@sullcrom.com

**Robert A. Sacks**

Los Angeles  
T. +1-310-712-6640  
F. +1-310-712-8800  
sacksr@sullcrom.com

purchase of a 66.67% interest in the American segment of the Alberta Clipper pipeline from its general partner in 2015, which included a ruling from the Delaware Supreme Court fundamentally changing the law on the application of the “entire fairness” doctrine. S&C also represented Enbridge in shareholder litigation arising from its \$43 billion acquisition of Spectra Energy Corp. in 2016.

- **First Horizon National Corporation** in defending against a class action and a separate appraisal proceeding in Delaware Chancery Court related to first Horizon’s \$2.13 billion acquisition of Capital Bank Financial Corp., which closed in November 2017.
- **Hudson City Bancorp, Inc. (HCB)** and its former directors in obtaining the dismissal of a putative class action shareholder suit stemming from the \$3.7 billion merger between HCB and M&T Bank, which was approved by shareholders in April 2013 but not completed until November 2015. The merger was subject to increased regulatory scrutiny because it made M&T one of the nation’s 25 largest banks.
- **Illinois Tool Works (ITW)** in successfully resolving litigation relating to ITW’s purchase in 2012 of Brooks Instrument, LLC from the defendant private equity firm. The case was resolved on the eve of trial following the court’s denial of the defendant’s motion for summary judgment and the defendant’s Daubert motion with respect to ITW’s damages expert.
- **JPMorgan Securities** in litigation in Delaware Chancery Court relating to the sale of The Fresh Market to an affiliate of Apollo Capital Management LLC. JPMorgan served as financial advisor to The Fresh Market.
- **Board of Directors of JPMorgan Chase & Co.** in achieving affirmance of the dismissal of a shareholder derivative action that alleged breach of fiduciary duty relating to Enron, Worldcom, IPO allocations, alleged research analyst conflicts of interest, mutual fund market timing and other regulatory investigations that resulted in monetary settlements.
- **Former directors of Ladenburg Thalman** in obtaining the dismissal of most of the claims in a class action alleging breaches of fiduciary duty in connection with the February 2020 sale of Ladenburg Thalman, including all claims challenging the price obtained in the transaction. The remaining claims were subsequently settled for less than the remaining costs of defense.
- **Lion Tree Holdings** in litigation in Delaware Chancery Court alleging that Lion Tree aided and abetted alleged breaches of fiduciary duty by its client the Presidio board of directors, and Presidio’s controlling shareholder in connection with Presidio’s acquisition by BCP Ventures.
- **Tiffany & Co.** as plaintiff in litigation against LVMH Moët Hennessy Louis Vuitton stemming from LVMH’s acquisition of Tiffany for approximately \$16 billion, which was completed in January 2021.
- **UBS Group AG**, certain affiliates, and individual director defendants in a civil shareholder derivative action filed by Ezra Cattan (a purported shareholder of UBS Group AG) in New York Supreme Court. Cattan alleges that UBS board members violated their duties under Swiss law to UBS Group AG.
- **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.

