

Crisis Management

In advising boards and companies dealing with complex, high-profile problems, Sullivan & Cromwell draws on its unparalleled experience from across its practices, providing comprehensive advice to help clients anticipate, manage and resolve corporate crises in all of their dimensions. Potential crisis situations, investigations and litigation with potentially devastating consequences routinely implicate legal issues beyond the initial subject matter and require multidisciplinary expertise to resolve effectively and efficiently. S&C lawyers' business acumen, expertise in developing transactional and litigation strategies and history of working effectively with the full range of government authorities have made S&C the pre-eminent law firm for companies facing franchise-threatening crises.

S&C's approach in these circumstances is to be fully engaged on behalf of the client, providing advice that addresses and manages all aspects of the situation, including:

- identifying key strategic and tactical issues,
- managing the important public relations and disclosure dimensions,
- anticipating and assessing litigation risks and regulatory and legislative developments, and
- assisting with management changes.

S&C's broad, commercially sensitive perspective, based on deep experience, helps clients under stress process and prioritize complicated legal, business, legislative, public relations and shareholder relations issues to resolve these problems as quickly and cost-effectively as possible.

SELECTED REPRESENTATIONS

The Firm has an extensive track record of handling troubled companies' matters, many of which are resolved without public attention. The public matters include the following:

- **Financial Crisis:** During the financial crisis, "the firm's high profile client list [read] like a who's who of the financial sector," with institutions including AIG, Barclays, Bear Stearns, Goldman Sachs, JPMorgan Chase and Lehman Brothers turning to S&C for guidance through crisis-related merger and financing advice and then through the defense of the aggressive investigation and enforcement actions by international, federal and state regulators and law enforcers, and sprawling civil litigation, that ensued.
- **AIG:** S&C advised in the Federal Reserve Board's "unprecedented" \$85 billion rescue financing, which ultimately increased to \$182.3 billion in authorized support, in the successful sale of the U.S. government's 77 percent interest in AIG and in the eventual return of \$205 billion to the U.S. Treasury. Numerous public and private investigations resulted in **no successful claims** against AIG directors or executive officers.
- **Moody's:** Numerous crisis-era investigations were resolved without formal action. High-profile consolidated shareholder securities class actions seeking several billion dollars ended in victory for the client in 2013 after S&C first defeated

PRACTICES & CAPABILITIES

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plaintiffs' efforts to obtain class certification and then fought on to obtain a full dismissal on the merits at the summary judgment stage. S&C also was able to resolve a series of related shareholder derivative actions in 2012 with **no monetary payment at all**.

S&C secured a favorable FIRREA settlement with the U.S. Department of Justice and 21 states regarding Moody's financial crisis-era ratings of residential mortgage-backed securities (RMBS) and collateralized debt obligations, ending a multi-year government investigation. *Bloomberg* noted that the settlement helped "clear the way for the firm to move beyond its crisis-era litigation."

- **JPMorgan:** S&C represented JPMorgan in securing a precedent-setting U.S. global RMBS settlement with the U.S. Department of Justice, the Attorney General of New York, several other states, the Federal Housing Finance Agency, the National Credit Union Administration and the Federal Deposit Insurance Corporation. Beyond bringing all parties with different interests to agreement, the settlement was also finalized without requiring court approval. The settlement created the framework for other banks settling their RMBS claims.

S&C was also retained to coordinate the defense of dozens of RMBS lawsuits and act as a national coordinating counsel for JPMorgan's RMBS litigation.

- **UBS AG:** S&C represented UBS in a variety of regulatory inquiries, investigations, tax matters and private litigation arising from the financial crisis and losses related to mortgage-backed securities. S&C obtained the dismissal of all federal securities claims by UBS shareholders that arose out of a \$114 billion stock drop. *The American Lawyer* wrote that "[j]udging by past settlements, UBS would likely have had to pay well over \$500 million – and possibly much more – to make [the case] go away."
- **Fiat S.p.A.:** S&C represented Fiat and new Chrysler in the U.S. and Canadian government-sponsored restructuring of the U.S. auto industry, including the purchase of old Chrysler assets through a 39-day bankruptcy process and successful defense of related litigation including through appeals and briefing to the U.S. Supreme Court.

- **Diesel-Emissions Crisis:**

- **Volkswagen:** S&C serves as National Coordinating Counsel to Volkswagen AG in the investigations, multidistrict litigation and crisis management matters arising from the revelations of its diesel emissions-related compliance issues in September 2015. Since the beginning of 2016, S&C has worked to eliminate VW's exposure through settlements related to its 2.0L and 3.0L diesel vehicles with 44 states and the District of Columbia; federal regulators including the DOJ, EPA, FTC and California Air Resources Board; private plaintiffs; a class of Volkswagen dealers; and various state attorneys general not part of the global settlement.
- **Fiat Chrysler Automobiles:** S&C represents FCA in responding to class actions and regulatory investigations related to alleged discrepancies in diesel emissions disclosures and strategies.

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- **BHP:** S&C is advising BHP Billiton on matters relating to a dam break in the Samarco iron mine in Brazil, in which BHP Brasil is a 50 percent shareholder, including in securities litigation in the United States, which was settled in August 2018.
- **BNP Paribas (BNPP):** One of the largest banks in the world, BNPP, turned to S&C in a high-profile, complex, ongoing sanctions investigation involving its core business. S&C represented BNPP in a complex negotiation, quickly structuring a settlement that minimized the fallout and permitted BNPP to return its focus to its core business. *The Financial Times* noted “the limited fallout.”
- **BP plc:** S&C represented BP in negotiating a global settlement with government authorities in the United States over the Deepwater Horizon oil spill in the Gulf of Mexico. The settlement structure provided BP with liquidity and the ability to return its focus to its core business. It further established a framework for U.S. global resolutions of all federal, state and local government environmental and economic damage claims. *The Wall Street Journal* noted that “the agreement would avert years of litigation” and that investors “celebrated the deal, sending BP’s shares up 5.1% in U.S. trading.”
- **CA Technology (formerly known as Computer Associates):** S&C represented CA’s audit committee of the Board of Directors in an internal investigation, resulting in the dismissal of the company’s senior management for accounting fraud and obstruction of justice. Following that investigation, S&C represented CA in the settlement of U.S. Department of Justice and U.S. Securities and Exchange Commission investigations, including the entry of a deferred prosecution agreement (one of the first). *The American Lawyer* referred to it as “Sullivan’s Big Save.”
- **CSR Ltd.:** For nearly two decades, S&C has advised and represented CSR in asbestos-related matters, including acting as senior lead counsel in U.S. asbestos litigation as well as developing and spearheading a defense strategy resulting in the removal of CSR from tens of thousands of actions.
- **Kenmare Moma Titanium:** The Firm advised Kenmare with respect to the project’s communication strategy to the project finance lenders in connection with a dam burst in 2010.
- **Microsoft:** S&C served as counsel on hundreds of high-profile consumer class actions brought in state and federal courts following Microsoft’s negotiation of a landmark antitrust settlement with the U.S. Department of Justice, including as trial counsel in the only two private indirect purchaser class actions that have been tried to a jury, both producing highly favorable settlements for Microsoft. *The American Lawyer* noted that in one of the settlements, “Microsoft agreed to pay \$180 million—substantially less than plaintiffs’ damages claims, which, according to Microsoft, might have amounted to more than \$1 billion.”