

# SULLIVAN & CROMWELL LLP

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## Lawyers



### David M.J. Rein

Partner

#### New York

T. +1-212-558-4000

F. +1-212-558-3588

reind@sullcrom.com

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David Rein is Deputy Managing Partner of Sullivan & Cromwell's Litigation Group. He represents leading corporations and financial institutions in complex litigation and regulatory investigations in securities, shareholder derivative, class action, antitrust, accounting, tax controversy and other commercial matters. He is a coordinator of the Litigation Group's insurance practice.

Mr. Rein frequently represents clients in federal and state courts, both at trial and on appeal, and before arbitration panels. Mr. Rein represents clients in regulatory enforcement and other proceedings before the Department of Justice, Securities and Exchange Commission, Financial Industry Regulatory Authority, New York Stock Exchange, Internal Revenue Service and state regulators. Mr. Rein also advises corporate boards of directors, including in conducting special litigation committee investigations and on insurance coverage matters, including directors and officers insurance.

#### Government Service

Prior to joining S&C, Mr. Rein served as law clerk to the Honorable Paul R. Michel, U.S. Court of Appeals for the Federal Circuit.

#### Publications

- "Defending Parallel Securities Litigation in Federal and State Court," *Practical Law: The Journal*, August/September 2021 (co-authored)
- "Navigating the Securities Litigation Uniform Standards Act of 1998 (SLUSA)," *Practical Law: The Journal*, December 2020/January 2021 (co-authored)
- "Expert Q&A on Securities Act Claims and SLUSA After Cyan," *Practical Law: The Journal*, June/July 2018 (co-authored)
- "Securities Litigation Involving the Private Securities Litigation Reform Act," *Practical Law: The Journal*, October/November 2017 (co-authored)
- "Supreme Court Certiorari on Non-Disclosure of 'Known Trends or Uncertainties' in SEC Filings," *Harvard Law School Forum on*

#### PRACTICES & CAPABILITIES

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Litigation

Antitrust

Products Liability & Mass Torts

Securities Litigation

Supreme Court and Appellate

General Practice

Financial Services

Bank Regulatory

Broker-Dealer

Insurance

#### EDUCATION

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1997, Columbia Law School, J.D.

1994, The London School of Economics and Political Science, M.Sc.

1993, The London School of Economics and Political Science, B.Sc.

#### BAR ADMISSIONS

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New York

Connecticut

Florida (inactive)

#### CLERKSHIPS

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The Honorable Paul R. Michel, United States Court of Appeals, Federal Circuit, 1997-1999

*Corporate Governance and Financial Regulation*, April 2017

(co-authored)

- "Further Clarity on Duty to Disclose Wells Notices," *Law360*, January 2016 (co-authored)
- "New York Appeals Court Provides Guidance For Merger Parties Sharing Privileged Communications," *The M&A Lawyer*, January 2015 (co-authored)

## SELECTED REPRESENTATIONS

### Complex Commercial Litigation

- Representing Volkswagen and Audi in litigations and investigations brought by all 50 states concerning emissions "defeat devices" in new diesel vehicles.
  - Successfully argued motion to dismiss environmental claims brought by the State of Illinois, described by German press agency *Deutsche Presse Agentur* as a "crucial victory" terminating an action seeking penalties "exceeding 1 billion dollars." Named by *AmLaw Litigation Daily* as runner up for "Litigator of the Week."
  - Argued appeal in Minnesota Court of Appeals obtaining dismissal of all of Minnesota's claims. Days later, obtained victories in the Alabama Supreme Court and an Ohio trial court dismissing those states' similar claims. Recognized by *AmLaw Litigation Daily* as runner up for "Litigator of the Week" for these "significant victories."
  - Obtained dismissal of environmental claims brought by the State of Wyoming, which German press described as a "victory which could save the German automotive giant billions of dollars in payouts."
  - Obtained dismissals of penalty claims brought by Missouri and Tennessee under state and local laws.
  - Negotiated resolutions of consumer and environmental claims with states nationwide, which, together with related settlements, were described by *AmLaw Litigation Daily* as "without parallel in speed and scope."
- Representing Fiat Chrysler Automobiles in obtaining settlements with all 50 states for claims stemming from allegedly excess emissions from approximately 100,000 diesel vehicles.

### Securities Litigation

- Representing Citigroup in securities litigation related to internal controls and risk management.
- Representing 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 and rare third discretionary Rule 23(f) appeal, making

this only the second case in which a federal appeals court has granted interlocutory review of class certification three times.

- Represented Diebold Nixdorf, the world's largest ATM manufacturer, and its former CEO, CFO and COO, in obtaining dismissal of all securities fraud claims concerning post-merger integration with Wincor Nixdorf AG.
- Representing Cronos Group Inc. and certain of its executive officers in securities litigation filed in the Eastern District of New York following an accounting restatement.
- Represented Mexican airline Volaris in securities litigation stemming from U.S. initial public offering. Obtained dismissal of all claims.
- Represented Jumia AG, the largest e-commerce company in Africa, in successfully resolving federal and state securities actions stemming from its 2019 initial public offering.
- Represented Goldman Sachs in securities actions filed in federal and state courts by U.S. and non-U.S. institutional investors in residential mortgage-backed securities.
- Represented Goldman Sachs in securities class action brought by investors in residential mortgage-backed securities, including obtaining grant of appellate petition to review class certification order.
- Represented Goldman Sachs in FINRA arbitrations brought by institutional investors in auction rate securities.
- Represented Goldman Sachs in litigations brought by publicly traded companies alleging stock price manipulation through prime brokerage activities.
- Represented Goldman Sachs and served as liaison counsel to the dozens of financial institutions named as defendants in hundreds of cases alleging securities fraud in connection with initial public offerings during the "dot com" era, including obtaining landmark appellate ruling vacating class certification order.
- Represented Goldman Sachs in securing dismissal and ultimate affirmance by the U.S. Supreme Court of 15 securities actions alleging improper "short swing" profits in connection with initial public offerings.
- Successfully prevailed at trial and on appeal in defending the Chairman and CEO of Vornado Realty Trust against federal securities claims.
- Counsel to the former CEO of Affiliated Computer Services in securities litigation and shareholder derivative litigation concerning grants of stock options.

#### **Shareholder Derivative Litigation**

- Representing Citigroup directors in shareholder derivative litigation related to oversight of internal controls and risk management.
- Representing The Boeing Company's board of directors in

resolving derivative claims in Delaware challenging oversight of design and development of 737 MAX aircraft.

- Represented the board of directors of The Boeing Company in successfully opposing shareholder derivative action seeking to enjoin annual shareholder meeting following 737 MAX crashes.
- Obtained dismissal of claims against Grupo México, S.A.B. de C.V. in Delaware shareholder derivative litigation concerning related-party transactions.
- Representing the board of directors of Goldman Sachs in Delaware shareholder derivative litigation challenging director compensation.
- Represented Goldman Sachs and its board in obtaining dismissal by the Delaware Court of Chancery of shareholder derivative action challenging compensation practices and mortgage-related activities, as well as affirmance on appeal by the Delaware Supreme Court.
- Represented Goldman Sachs and its board in obtaining dismissal, denial of plaintiffs' fee petition, and affirmance on appeal of shareholder derivative action in the New York Supreme Court, Commercial Division, challenging compensation practices.
- Obtained dismissal and affirmance on appeal of shareholder derivative action against Goldman Sachs and its board alleging proxy statement misstatements regarding stock option valuations.
- Represented Grupo México, S.A.B. de C.V. in successfully resolving Delaware derivative litigation challenging acquisition of power plants.
- Represented Goldman Sachs and its board in obtaining dismissal of shareholder derivative action alleging breaches of fiduciary duty in connection with mortgage servicing activities.
- Represented Goldman Sachs and its board in obtaining dismissal of shareholder derivative litigation asserting claims in connection with the market-wide disruptions affecting auction rate securities.

### **Antitrust Litigation**

- Represented Goldman Sachs in obtaining dismissal and affirmance on appeal of putative antitrust class actions brought on behalf of purchasers and issuers of auction rate securities.
- Represented Goldman Sachs in obtaining dismissal and ultimate affirmance by the United States Supreme Court of putative class action alleging violation of federal and state antitrust laws in connection with numerous initial public offerings of “dot com” companies.

### **Government Investigations and Tax Controversy**

- Represented the trustee of major collection of artworks in what Bloomberg described as a “major tax suit” with the IRS that was resolved “for a fraction of what the agency previously said” was owed.
- Represented a financial institution affiliate in connection with

allegations of corruption of local officials in municipal financing in Jefferson County, Alabama, including in government investigations and in obtaining dismissal of claims.

- Together with members of the Firm's Tax Group, represents U.S. and non-U.S. clients in tax controversy matters, including responding to IRS administrative proceedings and litigating in U.S. Tax Court.
- Represents corporations and financial institutions in SEC, FINRA and other regulatory inquiries on matters including insider trading and alleged violations of federal and state securities laws.

#### **RANKINGS & RECOGNITION**

- *Law360* MVP in Securities Litigation (2021)
- *Best Lawyers in America* – recognized in the area of Litigation – Insurance (2019-2020)
- *New York Super Lawyers* – recognized in the areas of Business Litigation and Securities Litigation (2011-2012, 2014-2022)
- *Law360*, Banking Editorial Advisory Board (2015-2018)