sifma
Invested in America

Amicus Program:
2016 year-in-review

SIFMA files amicus briefs in court cases that raise significant issues that impact the financial services industry. Our briefs educate courts about established industry and market practices, and highlight important policy concerns that transcend the particular case.

Our program focuses on cases where parties seek to expand legal theories, ease pleading standards, or tilt procedural rules in their favor. Our goal is to contribute to positive case outcomes and lasting legal precedents that help our members manage litigation risks and costs.

During fiscal year 2016, we filed a total of twenty briefs. We filed in: four U.S. Supreme Court cases; ten U.S. Circuit Court of Appeals cases; one bankruptcy case; and five state appellate court cases.

Most of our briefs addressed core securities litigation-related issues, and the remainder addressed more peripheral, but still significant, issues for our members. Here is the break-down by issue:

- Class action certification standards – 3
- Fraud-on-the-market theory – 2
- FDIC extender statute – 2
- Statute of limitations – 2
- Underwriter liability – 1
- Financial guaranty insurer liability – 1
- Securitization sponsor liability – 1
- Insider trading liability – 1
- State court class action jurisdiction – 1
- New York Martin Act – 1
- Holder claims – 1
- Enforceability of flip clauses – 1
- National bank preemption – 1
- ERISA liability – 1
- Bankruptcy issue – 1

In 2016, our briefs continued to contribute to tangible results. Noteworthy victories, where the court echoed SIFMA's amicus arguments, include:

- ***Tribune Company*** *(Second Cir., Mar. 2016):* Section 546(e) of the Bankruptcy Code, which protects swap transactions from state law claims, preempts state fraudulent conveyance claims.

- ***Best Buy*** *(Eighth Cir., Apr. 2016):* Evidence that a representation, when made, had no impact on the stock price could rebut a showing of price impact at the class certification stage.

- ***SEC v. Graham*** *(Eleventh Cir., May 2016):* The five-year statute of limitations applicable to punitive remedies applies to SEC claims for both disgorgement and declaratory relief.

- ***Lehman Brothers Special Financing*** *(Bankruptcy Court, Jun. 2016):* "Flip clauses" – which subordinated amounts payable to Lehman (in favor of CDO noteholders) on the termination of credit default swaps backing synthetic CDOs – are enforceable by their terms.

- ***Forest Capital v. Blackrock*** *(Fourth Circuit, Aug. 2016):* UCC provisions applicable to "account debtors" do not provide a private right of action.

SIFMA and its members value our partnership with the associate member law firms that support and contribute to our program each year. For more information, please contact Kevin Carroll at kcarroll@sifma.org or 202-962-7382. SIFMA briefs from 2003 – present are available here.