

Capitalizing on a wealth of financial services industry experience, our litigators and regulatory lawyers have achieved outstanding results for the world's major financial institutions in their most complex disputes, while also providing compliance counseling to avoid litigation and regulatory risk.

Named in 2016 by *The American Lawyer* as one of the nation's top litigation departments, and the winner of numerous litigation practice group awards, our litigators on both the East and West coasts and in offices worldwide have established a winning record across a variety of forums for our financial institution clients.

A third of our global practice is dedicated to the financial services sector, enabling our litigators to draw on top-ranked transactional practices to understand the products and market practices underlying the claims. With this insight, we focus on developing creative solutions—in and out of court.



Clients benefit from our unrivaled experience and broad range of advice, covering:

- Securities
- Dodd-Frank
- High-profile discrimination claims
- Sarbanes-Oxley
- Bank Secrecy Act/Anti-Money Laundering (BSA/AML)
- White collar enforcement

Counseling and Compliance to Avoid Disputes

The last thing any financial institution wants is a major litigation or regulatory problem. Our first priority is to help our clients avoid the distraction of litigation and regulatory disputes through prevention and early detection of issues. We help our clients do this, and correct potential issues, by developing compliance programs that are tailored to their specific situations. We provide counsel on the many compliance areas affecting financial institutions, including regulations promulgated by the Securities and Exchange Commission (SEC), the Office of the Comptroller of the Currency (OCC), the

Financial Industry Regulatory Authority (FINRA), the Financial Crimes Enforcement Network (FinCEN) and the Consumer Finance Protection Bureau (CFPB).

We bring vast experience as former regulators and prosecutors to this advice. Three members of our team are former prosecutors from the DOJ's Fraud Section, the unit charged with enforcing the FCPA; one is a former Assistant Chief for FCPA Enforcement. The team also includes a former Deputy Chief for the DOJ's Money Laundering & Bank Integrity Unit, the unit charged with Bank Secrecy Act criminal enforcement, as well as a former key advisor on the DOJ's anti-money laundering policy, and former U.S. Attorneys for the Northern and Eastern Districts of California.

We work to help shape applicable laws and regulations through academic writing, public speaking and working with our Public Policy group to influence state or federal legislation. SIFMA and other financial market associations regularly call on us to write amicus briefs. And we authored the leading treatise on whistleblower defense, "Corporate Whistleblowing in the Sarbanes-Oxley/Dodd-Frank Era."

Integrated Solutions Deliver Litigation Wins

Even the best compliance programs cannot prevent all litigation. Our *Chambers*-ranked litigators defend private litigation, including major class action litigation, commercial disputes and securities litigation, and enforcement matters. Here are just a few of our recent engagements:

- Defending Credit Suisse against billions of dollars in exposure from numerous lawsuits brought by monoline insurers and trustees of several residential mortgage-backed securities (RMBS) trusts
- Securing a precedent-setting victory in the 9th Circuit for Morgan Stanley and Credit Suisse in a case that raised the pleading bar in Section 11 cases based on secondary offerings
- Achieving numerous victories for David Sambol, former President and COO of Countrywide Financial, including multiple dismissals and a

landmark settlement on the eve of trial in a case brought by the SEC

- Representing Fidelity Investments in an ongoing Lehman derivatives dispute in the U.S. District Court for the Southern District of New York

We are keenly aware of the challenging business and regulatory environment in which you operate. Our litigators will work with you to provide efficient delivery of legal services by ensuring that each matter is staffed leanly and appropriately and that fee arrangements offer optimal cost certainty and risk sharing. We offer sophisticated budgeting, monitoring and reporting tools to avoid surprises. We also offer a unique, cost-effective in-house Analytics operation based at our Global Operations Center in Wheeling, West Virginia.

A proven track record of success

Credit Suisse | Representing the client, and related entities, in connection with numerous lawsuits brought by monoline insurers and trustees of several residential mortgage backed securities (“RMBS”) trusts. We obtained the dismissal with prejudice of a complaint brought by three securitization trusts seeking damages related to \$2.8 billion of securitized mortgage loans on the grounds that the action had been filed by the Federal Housing Finance Agency in 2012, before the contractually-required time to evaluate repurchase demands had expired. We also secured dismissals in two of the monoline actions.

Credit Suisse and Morgan Stanley | Secured a victory in the Ninth Circuit for the clients in a precedent-setting case that has significantly raised the pleading bar in Section 11 cases under the 1933 Securities Act. The Ninth Circuit affirmed the dismissal of a putative class action in which plaintiffs alleged that Century Aluminum, and its underwriters Credit Suisse and Morgan Stanley, issued false and misleading statements in connection with a secondary offering. The crux of the court's decision dramatically raised the bar for pleading the tracing element in Section 11 cases alleging aftermarket purchases. This decision will likely set in motion a sea change in the Ninth Circuit that will make it virtually impossible in most instances for a plaintiff alleging Section 11 violations based solely on aftermarket purchases to survive beyond the pleading stage.

KBC Bank N.V. | Successfully defended the client and its affiliates in a suit brought by a Cayman Islands hedge fund. The complaint alleged nine claims, including breaches of contract and tortious interference, in connection with two transactions. The fund sought to enjoin KBC and its affiliates from selling a portfolio of fund assets with a net asset value of US\$343 million. We

defeated the injunction, allowing the sale to proceed, and thereafter secured the dismissal of the fund's complaint in its entirety after a separate hearing

KBC | Our litigators won an important early victory on behalf of the client in a US\$1.5 billion RICO lawsuit. Also, on behalf of a KBC Financial Products subsidiary, our team obtained an US\$86 million-plus arbitration award in an insurance coverage dispute against an AIG affiliate, based on the latter's breach of a complex credit insurance agreement in connection with a life settlement portfolio.

Bank of the West | Recently represented the client in a putative wage-and-hour class action asserting meal and rest break violations. The case had more than 5,000 putative class members, and the damages analysis put potential liability in the eight-figure range. Our team obtained a victory for the client, defeating class certification.

Bank of Utah | Secured an important cross-practice victory for the client. The United States Court of Appeals for the Eighth Circuit issued a landmark ruling in March 2015 that makes it much more difficult for life insurance companies to void policies under the so-called “insurable interest” doctrine. The court reversed the district court's decision and declared the life insurance policy at issue valid - a huge win for our client. Addressing a question of first impression under Minnesota law, the court articulated a broad principle that an insurer cannot use the insurable interest defense to declare a policy void if that policy was purchased by the insured on his own life, regardless of whether the policy is subsequently transferred to an entity that lacks an insurable interest in the insured's life.

Rabobank | Represented the client, which faced six claims brought by a current employee. We obtained summary judgment on five claims, including claims of age discrimination, misrepresentation, and retaliation. We tried the remaining public policy claim-essentially a whistleblower cause of action-in a jury trial. After only 40 minutes of deliberation, the jury returned a complete defense verdict for Rabobank.

UBS | The Second Circuit ruled for our client in a case brought by a putative class of Genesco Inc. shareholders claiming that UBS tortiously interfered with the merger between Finish Line and Genesco. The action sought more than US\$800 million in damages, representing the merger premium that Genesco shareholders allegedly lost as a result of the termination of the merger.

PricewaterhouseCoopers (“PwC”) | Represented the client with regard to the following matters:

- Against a complaint filed by a founding board member of Skype, alleging that PwC negligently

advised him regarding the tax consequences of the sale of his shares in the company. After convincing the court to exclude the plaintiff's expert witness as being unqualified to opine on the appropriate standard of care, a California jury returned a complete defense verdict after just two hours of deliberation.

- Secured the dismissal of all claims in consolidated securities fraud class actions brought in U.S. District Court in Maryland alleging misstatements in financial statements audited by PwC. Among other grounds for the dismissal, this case was one of the first to apply the Supreme Court's decision in *Dura Pharmaceuticals, Inc. v. Broudo*, holding that securities fraud plaintiffs cannot satisfactorily establish loss causation simply by alleging that they purchased securities at an inflated price.

Ernst & Young | Secured dismissal of three consolidated class actions on forum non conveniens grounds. The cases were filed by shareholders in funds that invested with convicted Ponzi schemer Bernard Madoff and sought recovery of more than \$1 billion that the funds had invested with Madoff. Our team convinced the court that the claims should be heard in Luxembourg, where both investor claims and liquidation proceedings are pending. The decision was rendered nearly three years after Madoff's fraud was exposed, during which time our team worked closely with counsel in Luxembourg and France to develop the arguments that formed the basis of the court's ruling.

Nomura Credit & Capital | Broke new ground in residential mortgage-backed trustee putback cases when it obtained the complete dismissal with prejudice of a US\$259 million lawsuit on statute of limitations grounds. The decision was the first RMBS putback lawsuit dismissed by a New York court on statute of limitations grounds. The case alleged that Nomura had breached certain contractual representations and warranties about the characteristics of mortgage loans and sought to rescind a US\$259 million RMBS securitization as a result. However, the judge granted Nomura's motion to dismiss on both grounds and dismissed the entire action with prejudice. This victory paves the way for other banks to defeat untimely claims by hedge fund speculators.

NovaStar Mortgage Funding Corporation | Obtained a dismissal with prejudice of an action alleging that NovaStar, along with dozens of other defendants, had sold residential mortgage-backed securities to clients of plaintiff Cambridge Place Investment Management based on offering documents that misrepresented the quality of the underlying residential loans.

Portigon A.G. | Successfully defeated plaintiff's preliminary injunction motion, thereby allowing Portigon

to proceed with its foreclosure sale of a portfolio of life settlements it financed. The plaintiff claimed that it had been fraudulently induced to enter into a securitization warehouse financing arrangement for life settlements and that the assets in the LAT portfolio could not easily be valued. The Court denied the motion and before we could fully brief our motion for fees and costs, the plaintiff stipulated to paying Portigon the full amount of the undertaking that it posted in connection with the failed motion for a preliminary injunction and temporary restraining order.

Amaprop Limited | Obtained a US\$48.5 million award for hedge fund Amaprop in connection with a joint venture with a large, publicly traded Indian financial services company. The dispute moved from an arbitral tribunal to the High Court of Judicature of Bombay, to federal court in New York and finally, back to the arbitral tribunal before the matter was concluded in favor of our client.

Walton Street Fund VI | Successfully concluded a series of complex transactions and multi-state litigation in the foreclosure acquisition of Walton Street Fund VI's largest single investment.

Fortress Investment Group | Represent the client, a New York-based hedge fund, in several cases relating to life insurance settlements. Most recently, we filed a lawsuit in federal court in Los Angeles on behalf of a Fortress entity against Phoenix Variable Life Insurance Company alleging that Phoenix unlawfully increased the cost of insurance rates applied to a number of life insurance policies owned by the Fortress entity.

Capital Dynamics | Won a unique and complex anti-SLAPP motion to strike in California state court on behalf of its client, a "green" investment fund, CalPERS Clean Energy and Technology Fund, LLC in a dispute against its former investment manager. PCG Clean Tech, LLC and PCG Asset Management, LLC (collectively "PCG Entities."). The Fund sued the PCG Entities, alleging breach of fiduciary duty and other claims. We moved successfully on the Fund's behalf to have the PCG Entities' cross-claims stricken as an improper "SLAPP" suit. The PCG Entities attempted to evade the anti-SLAPP statute by characterizing their claim as one for contractual indemnity, and including in the same claim a request for reimbursement of legal fees under the agreement between them and the Fund. Our team was able to overcome this stratagem by demonstrating that the request for reimbursement of legal fees was premature as a matter of Delaware law. The Court's decision striking the claim is a significant one because it rejects an effort to further erode the scope of the anti-SLAPP protection.

Countrywide | Continuing to successfully defend our client, the former president of Countrywide Financial Corporation, against investor lawsuits and regulatory investigations and proceedings brought throughout the country. Two institutional plaintiffs sued our client and other Countrywide defendants in separate actions in Ohio and New York courts alleging violations of Ohio state, New York state, and federal securities laws. Each plaintiff alleged damages of US\$447 million, the amount of residential mortgage-backed securities they had purchased from subsidiaries of Countrywide. We achieved dismissal with prejudice as to all claims against our client in both actions and the Court denied plaintiffs' motions for reconsideration. Additionally, a class of purchasers of over 400 RMBS offerings totaling over US\$1 billion in value brought suit under the Securities Act of 1933 against our client and other Countrywide defendants. This case was successfully removed to federal court, where we subsequently moved to dismiss the claims against our client. Shortly before the hearing on the motion to dismiss, we were able to convince the plaintiffs to voluntarily dismiss all of their claims against our client with prejudice.

Contact us

For more information about our Financial Services Litigation practice, please contact:

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