

2011/12 Litigation Wins Report



Time-Tested Approach

When crisis strikes, industry leaders turn to Weil to develop solutions to complex, multifaceted legal challenges, including business disputes, regulatory actions, financial distress, and other enterprise-changing circumstances in jurisdictions throughout the world. For over 80 years, we have partnered with our clients not just to address immediate concerns, but to integrate legal strategy into the wider framework of their current and future business objectives.				
With approximately 1,200 lawyers located in 21 offices around the world, Weil operates under a “One-Firm” principle that allows us to bring the best mix of firmwide skills and local market expertise to help clients manage risk and take advantage of opportunities in each of our major practice areas:				
<ul style="list-style-type: none">■ Litigation■ Business Finance & Restructuring■ Corporate■ Tax				

Our ninth annual *Litigation Wins Report* marks more than 80 years of serving our clients in their most important litigation matters. Although there has been a steady evolution of the ground rules and expectations governing litigation over that time, our approach to handling disputes remains unchanged. As the following pages illustrate, our litigators work with clients on all types of complex litigations and investigations, regardless of the practice area, jurisdiction, or scope of dispute. This deep experience reflects our department's innovation and versatility and allows us to provide our clients with winning litigation strategies that take into account a client's business objectives while resolving cases and disputes with a maximum of efficiency. That has been, and remains, our formula for success.

This past year, our clients continued to engage us on high-profile matters involving some of the major legal and business issues of the day, including, to name a few: the Deepwater Horizon oil spill in the Gulf of Mexico; alternative energy technology patents; rights to telecast HD television channels; collective bargaining disputes in major professional sports leagues; e-commerce disputes; and continuing liabilities arising out of the 2008 financial crisis. We succeeded in obtaining significant results at all stages of litigation in these matters, including several noteworthy jury trial verdicts.

Among the litigation wins detailed in this book are those for clients Schindler Elevator in a significant US Supreme Court victory in a case interpreting the public-disclosure bar of the False Claims Act; General Electric in a \$170 million damages award from a federal jury in a patent infringement litigation involving wind turbine technology; AIG in several matters, including a high-profile victory before the Second Circuit affirming the dismissal of a shareholder derivative action arising out of the company's subprime mortgage credit default swap portfolio; eBay and StubHub in winning the dismissal of a

putative class action relating to the resale of tickets on StubHub's website; ESPN and other affiliates of The Walt Disney Company in a complete defense verdict at trial on Dish Network's claim to telecasting rights for certain high-definition television networks; Seacor Holdings in the dismissal, with prejudice, of all claims brought against the company and its subsidiaries arising out of the Deepwater Horizon oil spill; and both the National Basketball Players Association and National Football League Players Association in the resolution of disputes that permitted the leagues' 2011 seasons to take place.

Indeed, the range of these successes demonstrates the diverse talents of our global litigation practice, across 14 offices worldwide, and highlights the benefits of our “One-Firm” approach. Yet our attorneys’ “finest hours” are those spent on pro bono and local community matters. Each Weil attorney is expected to perform 50 hours of pro bono work each year, and in 2011, our collective efforts – amounting to 88,000 hours, or roughly the equivalent of more than 45 full-time lawyers – again led to impressive results. These matters ranged from representing public housing tenants in actions seeking redress for racial discrimination and illegal displacement, to securing a \$100,000 settlement for journalists who were wrongfully arrested while covering a national political convention, to successfully representing a number of individuals in complex political asylum and deportation proceedings.

Our representations and results over the past year continue to garner acclaim for our practices and attorneys from across the business and legal media, accolades for which we are extremely grateful. Yet we measure our success by the long-term relationships we have with our clients and their trust and confidence in our abilities. We look forward to partnering and pioneering with them for years to come.


James W. Quinn
Global Co-Chair,
Litigation Department


David J. Lender
Global Co-Chair,
Litigation Department



ESPN Inc. and The Walt Disney Company

Clients: ESPN Inc. and The Walt Disney Company
Dates: October 21, 2011 (trial win); June 21, 2011 (affirming on appeal counterclaim judgment against Dish)
Case & Venue: EchoStar Satellite LLC v. ESPN Inc., et al., No. 600282-2008 (N.Y. Sup., N.Y. App. Div.)
Practice Group: Complex Commercial Litigation
Weil Team: Partners James Quinn, David Yohai, and Theodore Tsekerides, and associates David Singh, David Yolkut, John Gerba, and Jennifer Oliver in New York and Consuelo Kendall in Washington, DC

Weil secured a major trial victory for ESPN and other affiliates of The Walt Disney Company, including ABC Cable Networks Group and International Family Entertainment, when a New York State jury found in their favor in a dispute with Dish Network involving rights to high-definition (HD) channels that Dish claimed it was entitled to under existing agreements with our clients.

Dish Network (formerly known as EchoStar Satellite LLC), a provider of satellite TV programming, claimed that it was entitled to four new HD networks – ESPNNews-HD, Disney Channel-HD, Disney XD-HD, and ABC Family Channel-HD – at “no extra cost” under the existing 2005 licensing agreements with our clients. Disney and ESPN contended that the 2005 agreements did not grant Dish Network rights to those HD channels, which did not even exist in 2005, but only to the channels actually identified in the agreements.

Dish Network initially sought a preliminary injunction in an attempt to force Disney and ESPN to provide the new HD channels, which the New York Supreme Court rejected. Dish Network then paid our clients approximately \$56 million “under protest” in order to obtain rights to carry the four HD channels during the course of the litigation and sought to recover those fees at trial. Dish also added a claim seeking to recover an additional \$67 million in alleged damages. **Following a two-week trial, the jury found that Disney and ESPN did not breach the agreements and that Dish Network was not entitled to any of the four HD channels or any amounts in damages – a total victory for our clients.**

Disney and ESPN also brought a counterclaim against Dish Network for its continual late payments under the licensing agreements. They previously won summary judgment for approximately \$66 million for interest owed as a result of Dish Network’s untimely payments. The New York Supreme Court’s Appellate Division affirmed this judgment in a 5-0 decision and Dish’s motion for leave to appeal to the New York Court of Appeals has been dismissed.

The Port Authority of NY & NJ

Client: The Port Authority of NY & NJ
Date: September 22, 2011
Case & Venue: In the Matter of the World Trade Center Bombing Litig. v. Port Authority of NY & NJ (N.Y. Court of Appeals)
Practice Groups: Appellate, Complex Commercial Litigation
Weil Team: Partner Richard Rothman, counsel Gregory Silbert, and associates David Yolkut, Adam Banks, Shrutee Raina, and Kami Lizarraga in New York, working with the Port Authority Law Department

Weil won a major victory for The Port Authority of New York and New Jersey in September 2011, when the New York Court of Appeals held that it was entitled to immunity from tort liability in connection with the 1993 terrorist attack at the World Trade Center because its security-related decisions reflected the exercise of discretionary, governmental functions.

Nearly 650 plaintiffs originally filed suit against the Port Authority for negligence following the attack, alleging that it failed to provide adequate security in the parking garage where the terrorists’ bomb was detonated, killing six and injuring close to 1,000. In 2005, following a bifurcated trial solely on liability, a jury in state supreme court found the Port Authority negligent for failing to prevent the attack, exposing the Port Authority to hundreds of millions of dollars in potential damages. After the Appellate Division unanimously affirmed the jury’s verdict, the Port Authority retained Weil to seek leave to appeal to the Court of Appeals. Weil succeeded in persuading the court to hear the case.

In a 4-3 decision reversing the Appellate Division’s decision, the Court of Appeals found that the alleged failures upon which the plaintiffs’ claims were based centered on the Port Authority’s allocation of police and security resources, which is a government function that qualified the agency for immunity from liability. The court held that in “reach[ing] a reasoned discretionary conclusion to heighten security in sectors of the WTC considered more susceptible to harmful attack,” the Port Authority demonstrated “the type of assiduous behavior that governmental agencies should be encouraged to undertake in rendering informed decisions that involve the balancing of burdens and risks, competing interests, and allocation of resources.” The court added that “[g]overnmental entities cannot be expected to be absolute, infallible guarantors of public safety, but in order to encourage them to engage in the affirmative conduct of diligently investigating security vulnerabilities and implementing safeguards, they must be provided with the latitude to render those critical decisions without threat of legal repercussion.”

“In the fast-track Warner Chilcott arbitration, the support of the Weil litigation team in NY was indispensable.”

Karen Linehan
 Senior Vice President
 Legal Affairs and General Counsel of Sanofi

Sanofi-Aventis

Clients: Sanofi-Aventis US LLC and Sanofi Winthrop Industrie
Date: July 14, 2011
Case & Venue: Warner Chilcott v. Sanofi-Aventis US LLC (domestic arbitration)
Practice Group: Complex Commercial Litigation
Weil Team: Partners Richard Rothman, David Fertig, and Yehudah Buchweitz, and associates Sabrina Perelman, Rachel Sherman, and Shrutee Raina in New York

Weil won a complete victory for Sanofi-Aventis US LLC and Sanofi Winthrop Industrie in July 2011 in an arbitration involving a multi-hundred million dollar contract dispute with Warner Chilcott that was triggered by Warner Chilcott’s attempt to prematurely terminate a long-standing collaboration agreement under which both parties had promoted, marketed, distributed, and sold the billion-dollar osteoporosis medication Actonel for more than 14 years.

Warner Chilcott claimed that its termination of a tablet supply agreement (TSA) automatically resulted in the termination of the collaboration agreement. Sanofi maintained that Warner Chilcott had no right to unilaterally terminate the collaboration agreement, depriving Sanofi of its ability to market and sell Actonel after May 2012.

The Arbitral Panel, consisting of former Fordham Law Dean John D. Feerick, former Federal Judge John S. Martin, and former United States Attorney General and Federal Judge Michael B. Mukasey, rejected Warner Chilcott’s claim and concluded that there was “nothing in the negotiations of the TSA, or the operating history under the ... Collaboration Agreement, or in application of principles of commercial reasonableness that supports the position advanced by Warner Chilcott.” Thus, the panel found that “the Parties did not manifest in the TSA an intention to terminate the Collaboration Agreement when the TSA terminated.”

Pro Bono Spotlight: NYLPI Environmental Justice Program

Client: NYLPI Environmental Justice Program
Date: July 7, 2011
Case & Venue: In re Bronx Committee for Toxic Free Schools (N.Y. Sup. App. Div.)
Weil Team: Partner David Berz in Washington, DC, and associates Christopher Barraza and Adam Banks in New York

Weil served as co-counsel with the New York Lawyers for the Public Interest’s Environmental Justice Program in securing a complete win in the New York State Appellate Division in an Article 78 action, *In re Bronx Committee for Toxic Free Schools*, alleging that the New York City School Construction Authority (SCA) failed to consider the environmental mitigation issues identified at a contaminated former industrial site in the Mott Haven section of the Bronx where a new school campus site – including four new schools – was being constructed. Weil and NYLPI represented a coalition of parents, children, and community members concerned about soil and groundwater contamination at the Mott Haven campus, where contaminants such as heavy metals and volatile organic compounds at levels far in excess of regulations have been identified.

In a decision with potentially far-reaching ramifications for future new school construction in New York City, the Appellate Division, First Department, unanimously affirmed Weil’s complete victory in the trial court challenging New York City’s issuance of a Final Environmental Impact Statement (EIS) for the site. Weil had maintained that the State Environmental Quality Review Act imposes maintenance and monitoring obligations in addition to those included in the New York Brownfields Cleanup Program, and thus it was improper for the SCA to approve a Final EIS without thoroughly examining how it would maintain and monitor the engineering and institutional controls over the lifetime of the new Mott Haven campus.

General Electric

Client: General Electric Co.
Date: March 8, 2012
Case & Venue: General Electric Co. v. Mitsubishi Heavy Industries Ltd, et al., No. 3:10-cv-00276 (N.D. Tex.)
Practice Groups: Complex Commercial Litigation, Patent Litigation
Weil Team: Partners David Lender in New York and T. Ray Guy in Dallas, and associates Carmen Bremer in Dallas, and Anish Desai in Washington, DC

Following seven days of trial and one day of deliberation, a federal jury in Texas awarded General Electric Co. \$170 million in damages for lost profits and royalties after finding that Mitsubishi Heavy Industries Ltd. had infringed one of GE's wind turbine technology patents. Weil, Gotshal & Manges LLP and Paul, Weiss, Rifkind, Wharton & Garrison LLP represented GE in the matter.

GE filed suit in February 2010, accusing Mitsubishi of infringing US Patent Number 7,629,705, titled "Method and apparatus for operating electrical machines," which covers a technology that helps wind turbines stay connected to a power grid when the grid's voltage drops to zero. Mitsubishi had argued that the '705 patent was invalid because GE had offered to sell the covered technology more than a year before applying to the US Patent and Trademark Office, an argument rejected by the jury.

The next phase of the trial between the parties is anticipated to take place later in the year.

For his efforts in representing GE, David Lender was chosen as one of AmLaw's "Litigators of the Week" for the week of March 15, 2012.



Named National Tier 1 for Securities Litigation Practice
2011-12 US News – Best Lawyers
"Best Law Firms" Survey

Client: General Electric Co.
Dates: September 19, 2011; November 18, 2011
Cases & Venues: Inter-Local Pension Fund GCC/IBT v. General Electric Co., No. 08-cv-1135 (D. Conn.), *aff'd*, No. 10-3477 (2nd Cir.); GE Investors v. General Electric Co., No. 08-8484 (S.D.N.Y.), *aff'd*, No. 10-4284 (2nd Cir.)
Practice Groups: Securities Litigation, Appellate
Weil Team: Partners Greg Danilow and Paul Dutka, counsel Gregory Silbert, and associates Adam Banks and Mindy Wu in New York

Weil secured successive wins in the Second Circuit when the Court of Appeals summarily affirmed the dismissals with prejudice of two federal securities fraud class actions against longtime firm client General Electric.

In the first case, the district court had granted the motion to dismiss a complaint arising out of General Electric's "earnings miss" in the first quarter of 2008, holding that the plaintiffs had failed to allege any material misstatements or omissions during the class period and that the plaintiffs had failed to adequately allege scienter.

In the second case, the district court had granted the motion to dismiss a complaint that General Electric misled the public when, in September 2008, the company stated that General Electric was not considering an equity offering. In response to the deepening and increasingly volatile financial crisis, General Electric subsequently launched an equity offering in October 2008. The court dismissed the complaint, holding that the plaintiffs had failed to adequately allege loss causation.

Clients: General Electric Co., Jeffrey Immelt
Dates: May 3, 2011, September 13, 2011
Cases & Venues: Stein v. Immelt, et al., No. 10-1973 (S.D.N.Y.); Lerner v. Immelt, et al., No. 10-1807 (S.D.N.Y.); Bresalier v. Immelt, et al., No. 10-4200 (S.D.N.Y.)
Practice Group: Securities Litigation
Weil Team: Partners Greg Danilow and Stephen Radin and associate Evert Christensen in New York

Weil won dismissals of three shareholder derivative actions in 2011 filed against GE directors and officers, including GE's chief executive officer and chief financial officer. The actions alleged wrongdoing concerning GE earnings projections and GE's dividend; alleged unduly risky financial transactions involving GE's financial services subsidiaries; and alleged improper accounting practices and policies. The actions asserted claims for, among other things, breach of fiduciary duty, contribution and indemnification, abuse of control, gross mismanagement, waste, unjust enrichment, and insider trading.

In two of the actions – *Stein* and *Bresalier* – the court granted GE's motions to dismiss due to the plaintiff's failure to make a pre-suit demand on GE's board of directors. The plaintiff in *Stein* has appealed to the Second Circuit, where the appeal is fully briefed and awaiting disposition. In the third action – *Lerner* – the plaintiff made a pre-suit demand on GE's board of directors, which the board refused following an audit committee investigation and recommendation to the board. The court granted GE's motion to dismiss due to the plaintiff's failure to plead that the GE board wrongfully refused her pre-suit demand.



**Named “Leading” firm for
Products Liability in the US**
Benchmark Litigation 2012

Deutsche Bank, Barclays Bank, Commerzbank AG

Clients: Deutsche Bank, Barclays Bank, Commerzbank AG

Date: February 27, 2012

Case & Venue: MGA Entertainment Inc. v. Deutsche Bank AG, et al., No. 2:11-cv-04932 (C.D. Cal.)

Practice Group: Complex Commercial Litigation

Weil Team: Partners Christopher Cox in Silicon Valley, T. Ray Guy and Yvette Ostolaza in Dallas, and Didier Malka in Paris, and associates Margaret Allen in Dallas and Bambo Obaro in Silicon Valley

Weil achieved a significant victory for Deutsche Bank, Barclays Bank and Commerzbank AG by persuading a California federal court to stay a fraud action seeking \$429 million in damages against our clients and other banks while the plaintiff pursues its claims in France.

The action arose out of MGA Entertainment Inc.'s acquisition of a controlling interest in distressed French toymaker Smoby SA in May 2007. MGA alleged that, shortly after the transaction, it learned that Smoby's financial problems were worse than previously disclosed and that its CEO was embezzling company assets. The French court ordered Smoby's liquidation within one year of MGA's acquisition. In July 2008, Deutsche Bank, Barclays Bank, Commerzbank AG, Crédit Agricole Corporate & Investment Bank, and Société Générale sued MGA in France, seeking repayment of more than \$360 million in debt and a bridge loan they had extended to Smoby. The action in France is still ongoing.

MGA, maker of the Bratz line of dolls, filed suit in California state court in March 2011, accusing the banks of common law fraud for failing to disclose what they knew about the CEO's alleged embezzlement and violations of California securities laws, and claiming damages of

approximately \$429 million. The suit was later removed to the US District Court for the Central District of California. **The banks moved to dismiss or stay the action under several legal theories, including *forum non conveniens*, arguing that MGA should be required to pursue its claims in the pending French action. US District Judge George B. Wu agreed, granting the banks' motion to stay and ordering MGA to pursue its claims in France, holding that “this is not a US-centric case. This is a French case.”**

Seacor Holdings Inc.

Client: Seacor Holdings Inc.

Date: October 12, 2011

Case & Venue: In re Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, No. 10-md-2179 (E.D. La.)

Practice Group: Product Liability

Weil Team: Partners Michael Lyle and Eric Lyttle in Washington, DC, and Theodore Tsekerides in New York, and associates Jamie Kaplan in Washington, DC, and Jeremy Grabill and Sylvia Simson in New York

Weil won complete dismissal, with prejudice, of all claims brought against Seacor Holdings Inc. and various of its subsidiaries, which own and operate marine vessels that responded to the emergency following the April 2010 explosion of the Deepwater Horizon offshore drilling rig and resultant fire and oil spill in the Gulf of Mexico.

A group of Louisiana landowners, commercial fishermen, and oil and gas industry employees brought suit against the owners and operators of the response vessels, alleging that the water they directed toward the fire caused the Deepwater Horizon rig to flood and sink, which in turn caused the riser pipe connected to the wellhead to collapse, resulting in the ensuing oil spill into the Gulf of Mexico that would become the worst in US history. The plaintiffs asserted claims for property damage



**Prague Location – Czech Law
Firm of the Year 2011 in the
areas of Mergers & Acquisitions
and Arbitration and Dispute
Resolution**

EPRAVO.CZ in cooperation with
Czech Bar Association

and economic losses under general maritime law, the Oil Pollution Act of 1990, and Louisiana state law.

In his October 2011 ruling on the defendants' joint motion to dismiss, **Judge Carl Barbier rejected the plaintiffs' claims that defendants should have known that attempting to cool the fire on the offshore rig would cause it to sink and then leak oil, finding that “a reasonable person in Defendants' situation would not foresee that spraying water from one vessel onto another vessel in apparent hopes of extinguishing a fire would cause oil to discharge continuously from the latter vessel's drill pipe,** which would probably result in the economic and property damages allegedly incurred by onshore plaintiffs over fifty miles away.” Further, the court noted that its decision was consistent with the long-embraced public policy under maritime law that encourages seamen to render prompt service in future emergencies, generally unknown in land-based common law.

The matter is currently on appeal before the Fifth Circuit.

Povodí Odry

Client: Povodí Odry

Date: March 31, 2011

Case & Venue: Retise Enterprises Ltd. v. Povodí Odry, Ostrava District Court (court of first instance), Ostrava Regional Court in Ostrava (appellate court), Czech Republic
Practice Group: Corporate M&A
Weil Team: Partners Karel Muzikar and Martin Kramar, and associate Michael Granat in Prague

Weil successfully defended Povodí Odry against a claim by Retise Enterprises Ltd., a Cyprus-based company that is the legal successor of two previous plaintiffs, Czech companies Ostramo Vlček and Transkorekta. Retise alleged that Povodí Odry breached its obligation to maintain the

levees along the Odra River and failed to prevent the damage to industrial facilities (mineral oil refinery) owned and operated by Ostramo Vlček that was caused by floods in Ostrava in July 1997. The plaintiff was seeking actual damages and lost profits in the total amount of CZK 8.13 billion plus penalty interest (over CZK 16.4 billion including the penalty interest accrued until the date of the appellate decision – an equivalent of more than €640 million).

The claim for lost profits, in the amount of approximately CZK 7.01 billion plus interest was originally dismissed by the District Court in Ostrava (the court of first instance) in February 2010. The claim for actual damages, in the amount of approximately CZK 1.12 billion plus interest, was dismissed in the appellate proceedings by the Regional Court in Ostrava on March 31, 2011.

The Regional Court in Ostrava accepted arguments put forward by Weil in the proceedings, in particular the objection that the Retise Enterprises' claims were time-barred, and dismissed the claims in their entirety. The appellate decision also confirmed the dismissal of the claim for lost profits by the District Court in Ostrava, and awarded to Povodí Odry approximately CZK 16 million for the costs of the proceedings.

<p>“Schindler’s confidence in the Weil team was well placed. The firm’s cogent briefs, coupled with Steve Reiss’s compelling oral argument before the Court, were key to obtaining the favorable holding in Kirk. We also appreciate Steve and Greg [Silbert]’s responsiveness and professionalism throughout the course of this long and challenging matter.”</p>				
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John Karnash
 VP and General Counsel – Americas
 Stewart Gisser
 Associate General Counsel
 Schindler Elevator Corporation

Schindler Elevator Corporation

Client: Schindler Elevator Corporation
Date: May 16, 2011
Case & Venue: Schindler Elevator Corporation v. United States ex rel. Daniel Kirk (US Supreme Ct.)
Practice Groups: Appellate, Complex Commercial Litigation
Weil Team: Partner Steven Reiss in New York, counsel Gregory Silbert in New York and Lisa Eskow in Houston, and associates David Yolkut, Adam Banks, and Kami Lizarraga in New York

Weil won an important victory in the US Supreme Court for Schindler Elevator Corporation in a case interpreting the public-disclosure bar of the False Claims Act (FCA). The case was closely watched by the business community and was of considerable importance to companies that do business with and receive payments from the federal government.

A disgruntled former employee brought a *qui tam* action – a suit brought by a private plaintiff on behalf of the federal government – claiming that Schindler had failed to properly report to the government the number of veterans it employs, as is required of federal contractors, and that Schindler was therefore liable for all sums it had been paid by the federal government, trebled. The plaintiff based his claim on information he received through Freedom of Information Act (FOIA) requests he submitted to the Labor Department, asking for Schindler’s filings. Schindler moved to dismiss the complaint, arguing that the suit was based on publicly disclosed information and therefore precluded by the FCA’s public-disclosure bar. The district court agreed and dismissed the suit, but the Second Circuit reversed, holding that responses to FOIA requests do not trigger the public-disclosure bar.

The Supreme Court reversed the Second Circuit, holding that the public-disclosure bar – an important and frequently litigated shield against meritless FCA actions – applies to *qui tam* actions based on FOIA responses. Following the decision, the Second Circuit sent surviving claims in the case back to the trial court.

CBS Corporation

Client: CBS Corporation
Dates: May 24, 2011 (district court ruling); May 10, 2012 (appellate ruling)
Case & Venue: City of Omaha v. CBS Corp., No. 08-10816 (S.D.N.Y.), No. 11-2575 (2nd Cir.)
Practice Groups: Appellate, Complex Commercial Litigation, Securities Litigation
Weil Team: Partners James Quinn, Greg Danilow and Yehudah Buchweitz, counsel Gregory Silbert, and associate Kimberly Rosensteel in New York

Weil won complete dismissal of a federal securities class action against CBS Corp., Chief Executive Leslie Moonves, Chairman Sumner Redstone, and two former officers of the company in May 2011, when the Southern District of New York granted our motion to dismiss and noted that the plaintiffs, for a second time, had failed to allege a plausible securities fraud claim.

The original complaint, filed in 2008 by the City of Omaha and two retirement plans covering former city and Nebraska state employees purportedly on behalf of a class of CBS shareholders, alleged that CBS delayed taking a \$14 billion impairment charge in order to keep its stock price artificially inflated so as to not trigger certain alleged undisclosed loan covenants. The court dismissed the plaintiffs’ claims in March 2010, holding that they failed to plead scienter with sufficient particularity required by the Private Securities Litigation Reform Act (PSLRA) and that the plaintiffs failed to allege anything that would have required CBS to take an impairment earlier than it did under the relevant accounting rules. The court later granted the plaintiffs leave to amend their complaint, which CBS moved to dismiss.

In May 2011, Judge P. Kevin Castel found that the plaintiffs’ amended complaint suffered from the same core weaknesses as the original complaint. The plaintiffs appealed that decision to the Second Circuit, and in May 2012 the appellate court affirmed “for substantially the reasons stated in the district court’s thoughtful and thorough opinions.” The Second Circuit held that “the asserted basis for plaintiffs’ securities fraud claims is quite limited[]” and that the amended complaint “is devoid even of conclusory allegations that defendants did not believe in their statements of opinion regarding CBS’s goodwill at the time they made them.”



National Football League Players Association

Client: National Football League Players Association
Dates: April 25, 2011 (district court); July 8, 2011 (circuit court)
Case & Venue: Brady, et al. v. National Football League, et al. (D. Minn.; 8th Cir.)
Practice Group: Complex Commercial Litigation
Weil Team: Partners James Quinn and Bruce Meyer, and associates John Gerba and Lucia Maxwell in New York

Weil represented a putative class of football players in the antitrust case filed when, following the expiration of the collective bargaining agreement between the National Football League players and National Football League (NFL), the NFL implemented a “lockout” of NFL players.

Weil obtained a preliminary injunction against the NFL's lockout when the district court found that, among other things, the players were likely to prevail on the merits of their antitrust claims and that the NFL was not protected by the non-statutory labor exemption after the NFL Players Association had disclaimed its role as the collective bargaining representative of the players. James Quinn argued the preliminary injunction motion before the district court. The NFL persuaded the Eighth Circuit to stay the injunction order while it appealed the decision, which the appellate court ultimately overturned. On July 25, 2011, shortly after the Eighth Circuit issued its ruling, the case was settled as part of a global settlement between the NFL and its players. James Quinn was also the lead outside counsel at the bargaining table for these negotiations.

Marvel Entertainment, Inc. and The Walt Disney Company

Clients: Marvel Entertainment, Inc. and The Walt Disney Company
Date: July 28, 2011
Case & Venue: Marvel Worldwide Inc., et al. v. Lisa R. Kirby, et al., No. 10-CV-141 (S.D.N.Y.)
Practice Groups: Complex Commercial Litigation, Intellectual Property
Weil Team: Partners James Quinn, R. Bruce Rich, and Randi Singer, and associates Sabrina Perelman and Jessica Costa in New York

Weil won complete summary judgment for Marvel Entertainment and parent The Walt Disney Company in a widely followed and publicized copyright ownership dispute between Marvel and the heirs of Jack Kirby, a noted comic book artist who worked for Marvel during the late 1950s and early 1960s. Marvel created many of its iconic comic book superheroes during this period, including The Fantastic Four, Iron Man, Thor, The Incredible Hulk, and the X-Men.

Shortly after The Walt Disney Company announced a deal to purchase Marvel for \$4.2 billion in 2009, Kirby's heirs served copyright termination notices on Marvel, Disney, and various other entities, claiming that Kirby owned a copyright interest in several of Marvel's classic comic book characters and was therefore entitled to “reclaim” the copyrights. In early 2010, Weil filed suit on behalf of Marvel in federal district court in New York against Kirby's heirs, seeking a declaratory judgment that these termination notices were invalid because all of the comic book works at issue were works-made-for-hire. Copyright law allows authors of works created prior to 1976 to terminate licenses



Named Media & Entertainment Group of the Year
Law360, 2011

and assignments and reclaim the copyright at a certain point in time. However, if the work is a work-made-for-hire, the employer is the statutory “author” of the work and the termination provision does not apply because there are no licenses or assignments to terminate.

Kirby's heirs moved to dismiss on jurisdictional grounds, which Judge Colleen McMahon promptly denied. In November 2010, the court dismissed most of the Kirbys' counterclaims, which related to alleged breaches of contract concerning original artwork, conversion, and Lanham Act violations, finding each of them either long-ago time-barred or legally groundless.

In July 2011, the court granted Marvel's motion for summary judgment. Relying on first-hand testimony from Marvel's then-editor Stan Lee, who worked closely with Kirby and assigned him to draw many of the characters at issue, and on testimony from other Kirby contemporaries, including John Romita, Roy Thomas, and Larry Lieber, Judge McMahon found that “none of the evidence submitted by the Defendants makes so much as a dent in the ‘almost irrebuttable’ presumption that the Kirby Works were works for hire” because the undisputed facts demonstrated that the works had been created at Marvel's “instance and expense.” Thus, “Marvel acquired the federal statutory copyright in the Kirby Works by virtue of its status as their ‘author’ under the work-for-hire doctrine.” Accordingly, the court entered a declaratory judgment that Kirby's heirs' termination notices were invalid. The Kirbys have appealed the district court's ruling.

Pro Bono Spotlight: Gambian Couple/HIV Law Project

Client: Gambian couple/HIV Law Project
Date: March 7, 2011
Case & Venue: HIV Law Project immigration case on behalf of Gambian couple with AIDS (Board of Immigration Appeals)
Weil Team: Partner Adam Hemlock and associates Michael Firestone, Matthew Howatt, and Melanie Conroy in New York

In a matter referred to us by the HIV Law Project, Weil represented a Gambian couple with AIDS ordered deported from the US 13 years ago. The wife was a victim of female genital mutilation prior to her emigration from Gambia. Their ability to remain in the US is crucial, since it would not only allow them to receive necessary medical care, but would also protect their four US-born daughters from being subjected to female genital mutilation upon the family's return to Gambia. The Immigration and Customs Enforcement's Office of Chief Counsel agreed to join the motion to reopen the case so that the Immigration Court could hear the request for asylum based on the female genital mutilation claim. The Board of Immigration Appeals granted the joint motion to reopen and remanded the matter to Immigration Court. This represents a significant victory, given the US government's policy that it will join motions “only under exceptional and compelling circumstances.”



Specialized Technology Resources, Inc.

Client: Specialized Technology Resources, Inc.

Dates: January 14, 2011 (federal); January 27, 2011 (state relief phase; judgment aff'd November 23, 2011); July 18, 2011 (state contempt action)

Cases & Venues: Specialized Technology Resources, Inc. v. JPS Elastomerics Corp., et al., No. HSCV2007-200 (Mass. Super.); JPS Elastomerics Corp. v. Specialized Technology Resources, Inc., No. 1:2010cv11142 (D. Mass.)

Practice Groups: Complex Commercial Litigation, Antitrust/Competition

Weil Team: Partners Bruce Meyer and Adam Hemlock in New York and Patrick O'Toole Jr. in Boston, and associates Lisa Cloutier, Caroline Simons, Neil Vaishnav, Matthew Knowles, and Jaclyn Essinger in Boston and Jaime Kaplan in Washington, DC

Weil successfully represented solar technology company Specialized Technology Resources, Inc. (STR) in a protracted litigation in connection with statutory and common law misappropriation claims dating back to 2007. In October 2007, STR filed a complaint in Massachusetts Superior Court against James P. Galica, a former STR employee, and JPS Elastomerics Corp. (JPS), the company Galica joined after leaving STR, accusing Galica and JPS of misappropriating trade secrets involving STR's proprietary technology used in the manufacture of encapsulants that protect solar panels. A jury subsequently ruled that the technology at issue was, in fact, a trade secret and found that Galica had breached his confidentiality agreement with STR. After reviewing the evidence presented during the jury phase of the trial, the trial judge found that the defendants violated the Massachusetts Unfair and Deceptive Trade Practices Act, and ruled that STR was entitled to compensatory and punitive damages, attorneys' fees, and injunctive relief.

After the trial court ruling in the Massachusetts Superior Court, JPS filed an antitrust and unfair competition action in federal court in July 2010, claiming that the Massachusetts state court trade secret dispute between the litigants was a sham litigation initiated by STR in order to monopolize the domestic and international market for low shrink solar panel encapsulants. JPS sought \$60 million in compensatory damages, treble damages available under certain federal

laws, a permanent injunction against STR for various activities, reimbursement of legal fees for both the state and federal litigations, and disgorgement of proceeds. The US District Court for the District of Massachusetts granted Weil's motion to dismiss all claims, including antitrust, Lanham Act, and unfair trade practices claims.

Subsequently, after a three-day evidentiary hearing, the Massachusetts Superior Court finalized the relief phase of the state court litigation in January 2011 and awarded STR over \$8.25 million in treble damages, attorneys' fees, and costs, as well as prejudgment and postjudgment interest at the statutory rate of 12%. Additionally, the court entered against JPS a five-year production injunction as well as a permanent injunction from using STR's trade secret process. Weil then defeated numerous attempts by JPS seeking reconsideration and/or stay of the trial court's decision before the Massachusetts Appeals Court and the Supreme Judicial Court.

In April 2011, STR filed a complaint for civil contempt in Massachusetts Superior Court against JPS and Galica, alleging that the defendants deliberately failed to comply with the trial court's final injunction in the state court trade secret litigation. After a trial on the contempt action, the court found in favor of STR and held that JPS and Galica "clearly and undoubtedly disobeyed several clear and unequivocal commands of the Court as contained in the injunctive portion of the Final Judgment in the underlying trade secret case." The trial court imposed a \$15,000 per day fine against the defendants and ordered the appointment of a temporary receiver to enforce the terms of the injunction. The trial court also awarded STR attorneys' fees.

Most recently, STR successfully defeated JPS's appeal of the state trial court's ruling to the Massachusetts Appeals Court. **After full appellate briefing and oral argument, the appeals court rejected JPS's appeal and affirmed the trial court's ruling in its entirety in November 2011. In its opinion, the appeals court held that "the defendants have shown no cause to disturb the judgment," that "the defendants' argument finds no support in Massachusetts law," and that the court "discern[ed] no error " nor "abuse of [the trial judge's] considerable discretion" in the trial court's award of monetary and injunctive relief to STR.**

American International Group

Client: American International Group, Inc.
Date: July 13, 2011
Case & Venue: Vidor v. American International Group, Inc., No. C 11-315 (N.D. Cal.)
Practice Group: Securities Litigation
Weil Team: Partners Joseph Allerhand and Robert Carangelo in New York and Christopher Cox in Silicon Valley, and associates Margarita Platkov and Evert Christensen in New York

Weil scored a win for AIG, the third victory in a litigation brought *pro se* by a purported holder of AIG Equity Units. The plaintiff filed a complaint for Declaratory and Preventive Relief against AIG and one of its directors, seeking to enjoin the mandatory settlement of his Equity Units for AIG common stock on each of three dates in 2011. In the alternative, the plaintiff sought damages he estimated to be in excess of \$13 million. The complaint contained claims for securities fraud, common law fraud, breach of fiduciary duty, and violations of the Trust Indenture Act of 1939 and the California Unfair Practices Act. The plaintiff additionally claimed that he did not read the prospectus supplement pursuant to which the Equity Units were issued, was misled into believing he was buying AIG preferred stock, and accordingly was not bound by the terms of the Equity Units.

Weil successfully defeated the plaintiff's motion for a temporary restraining order seeking to enjoin the mandatory settlement of his Equity Units and, later, obtained dismissal of the complaint for failure to state a claim. The plaintiff was given leave to file an amended complaint, which alleged substantially similar claims to the original complaint. **Weil filed a renewed motion to dismiss, again for failure to state a claim, and in July 2011 the court dismissed the plaintiff's claims with prejudice**

and entered judgment in favor of AIG on all counts, holding, as Weil argued in its motion papers, that the plaintiff could not, as a matter of law, allege any misrepresentation in AIG's prospectus.

The case has been appealed to the US Court of Appeals for the Ninth Circuit; briefing is complete.

Client: American International Group, Inc.
Dates: March 17, 2011 (appellate victory); April 8, 2010 (district court victory)
Case & Venue: In re American International Group, Inc. Derivative Litigation, Nos. 07-10464 (S.D.N.Y.), 10-1658 (2nd Cir.)
Practice Group: Securities Litigation
Weil Team: Partners Joseph Allerhand, Stephen Radin, and Robert Carangelo and associates Stacy Nettleton, Robert Spake, Jr. in New York, and Katie Brandes in Washington, DC

Weil prevailed on behalf of AIG in March 2011, when the US Court of Appeals for the Second Circuit affirmed a ruling by the Southern District of New York dismissing all claims asserted in a shareholder derivative action alleging mismanagement and breaches of fiduciary duty by 33 AIG directors and officers. The claims centered on AIG's subprime mortgage credit default swap portfolio exposure, related alleged wrongdoing leading to AIG's near collapse in September 2008, and AIG's subsequent unwinding of its credit default swap portfolio. The suit also targeted retention payments made to employees of AIG's Financial Products unit that were the subject of a national uproar in March 2009.



**Pro Bono Recognition Award –
New York office**
Legal Services NYC

Pro Bono Asylum Spotlight:

Bosnian Applicant

Client: Bosnian asylum applicant
Date: March 21, 2011
Case & Venue: Bosnia Asylum Case (Immigration Court)
Weil Team: Partner Theodore Tsekerides and associates Adam Banks and Natalie Blazer in New York


Weil successfully represented a Bosnian native who was seeking asylum based on his fear that, due to his homosexual status, he would be killed if forced to return to his country of origin. Through direct examination of our client we were able to establish a credible basis for his fear. Our psychiatric expert provided support for our client's explanation that he had not filed his asylum application in a timely manner because of the deep depression spurred by his coming-out to his family (by phone from here in the US) and their repeated threats over the phone and by text messages that they would kill him if he ever returned. The court found the testimony credible, excused any delay in the filing for asylum, and granted our client's application. The government waived its right to appeal.

El Salvadorian Immigrant

Client: El Salvadorian immigrant
Date: October 28, 2011
Case & Venue: El Salvadorian Immigrant Asylum Case (Arlington, VA Immigration Court)
Weil Team: Partners Ralph Miller and Eric Lyttle in Washington, DC, and associates Jonathan Carr in Washington, DC, and Christopher Bradley in Houston

Weil achieved a complete victory in a very difficult asylum case referred by Kids In Need of Defense (KIND) for a 19-year-old who fled El Salvador to avoid extremely abusive conditions. Despite a delay that made the application untimely and other negative facts that arose before our involvement, Weil's team assembled comprehensive affidavits, strong psychological testimony documenting the abuse, and a compelling brief that caused the government lawyer to agree on the eve of the hearing not to oppose asylum on humanitarian grounds. **On the record, the judge complimented the efforts of the Weil team on assembling and presenting a persuasive set of materials, and said he hopes to see our attorneys in his courtroom again.**

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Bovis Lend Lease

Client: Bovis Lend Lease

Date: January 2, 2011 (passage date of legislation)

Case & Venue: In re World Trade Center Disaster Site Litigation (S.D.N.Y.)

Practice Groups: Product Liability, White Collar Defense & Investigations

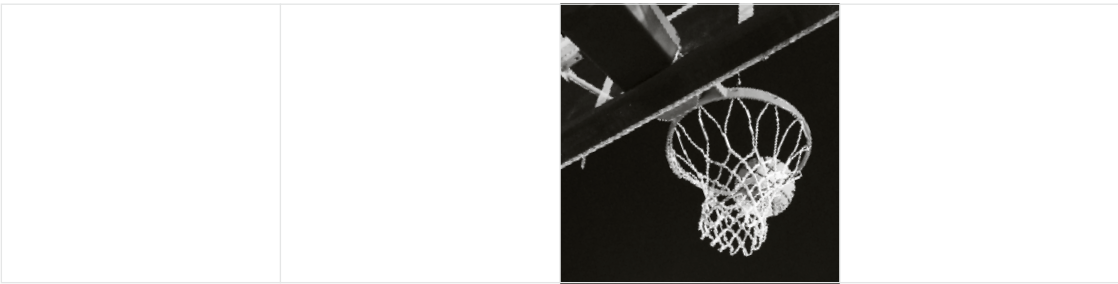
Weil Team: Partners Michael Lyle and Eric Lyttle in Washington, DC, and Steven Reiss and Theodore Tsekerides in New York, and associates Jonathan Carr and Meghan McCaffrey in Washington, DC, and Keith Gibson, Jed Winer, Jeremy Grabill, and Michael Bell in New York

Weil developed a novel and creative solution to help Bovis Lend Lease resolve the World Trade Center litigation, which involved thousands of claims by emergency workers in connection with debris removal operations following the terrorist attacks of September 11, 2001. Bovis was one of dozens of contractors that responded by quickly mobilizing the massive rescue and months-long recovery and clean-up effort at Ground Zero, providing heavy equipment, personnel, and logistical support. Bovis, the other contractors and the City of New York faced more than 10,000 lawsuits brought by rescue workers claiming to be injured from their work at the site. Under existing law those workers could only recover for their alleged injuries by suing the contractors and the City. Moreover, the lawsuits were the only way that the rescue workers could seek to recover from the \$1 billion liability insurance policy issued by the World Trade Center Captive Insurance Company, an entity created by Congress and funded by the Federal Emergency Management Agency to provide defense and insurance coverage for the City and its contractors for their efforts in the 9/11 clean-up.

Weil, working closely with attorneys from the Australian law firm Freehills representing Bovis' parent company, determined that the risks Bovis faced required a litigation strategy that involved not only the courts, but also Congress, and devised a legislative strategy designed to protect Bovis, the other contractors, and the City by eliminating the litigation that pitted the heroes of 9/11 against one another, while capping their liability.

Working with a coalition involving the City of New York, labor leaders, emergency responder representatives, and various contractor companies that it helped to create, Weil's strategy culminated in the enactment of the **James Zadroga 9/11 Health and Compensation Act, signed into law by President Barack Obama in January 2011. The Act allocates \$4.3 billion in aid to 9/11 survivors and first responders who claim to have become seriously ill following exposure to Ground Zero, and provides liability protections for the various contractor companies and the City.**

The case was recognized by the 2011 FT Innovative Lawyers Awards as being one of the most innovative litigation solutions of the year.



UnitedHealth Group, Inc.

Client: UnitedHealth Group, Inc.

Dates: May 3, 2011 (appellate victory); April 14, 2010 (lower court victory)

Case & Venue: State of New York ex rel. Jamaica Hospital Medical Center, Inc., et al. v. UnitedHealth Group, Inc., et al., No. 102740/08 (N.Y. Sup., App. Div., 1st Dep't)

Practice Groups: Appellate, Complex Commercial Litigation

Weil Team: Partner Lori Pines, counsel Gregory Silbert, and associates Adam Banks and Kevin Meade in New York

Weil prevailed on behalf of UnitedHealth Group and its subsidiaries in litigation in New York state court involving allegations that UnitedHealth had defrauded New York State of hundreds of millions of dollars in healthcare surcharges by fraudulently underpaying hospitals and other medical facilities for services. In separate litigations, the plaintiffs unsuccessfully alleged that, for over a decade, a “fraudulent” UnitedHealth database was responsible for underpaid reimbursements to hospitals and other medical facilities. Unable to prove liability against UnitedHealth in those cases, the plaintiffs, three New York hospitals, turned to New York's False Claims Act as a means to re-litigate the matter. The plaintiffs purported to act as “relators” (or *qui tam* whistleblowers) under the state's False Claims Act and alleged that UnitedHealth underpaid state “surcharges” based upon the allegedly insufficient reimbursements to the hospitals.

The New York Supreme Court rejected this theory, concluding that the allegations forming the basis for the complaint were part of the public record and that the court, therefore, lacked subject matter jurisdiction under the public-disclosure bar. Weil maintained – and the court agreed – that UnitedHealth had paid all surcharges it was obligated to pay and had

made no false statements to the state. In May 2011, **a four-judge panel unanimously affirmed the lower court's ruling, citing the lack of subject matter jurisdiction and noting that the “plaintiffs are not the original sources of the information on which their allegations are based,”** nor do the plaintiffs “allege that they had direct and independent knowledge of the information on which the allegations are based or that they voluntarily provided this information to the government before filing their suit.”

National Basketball Players Association

Client: National Basketball Players Association

Date: November 26, 2011

Case & Venue: N/A

Practice Group: Complex Commercial Litigation

Weil Team: Partners James Quinn and Bruce Meyer in New York

James Quinn and Bruce Meyer were brought in by the National Basketball Players Association (NBPA) to help restart talks between the NBA and players' representatives, in an attempt to end the 149-day lockout that was threatening this year's professional basketball season. The lockout followed the expiration of the most recent Collective Bargaining Agreement between the NBA and the NBPA, then the players' union.

Quinn and Meyer were involved in a series of “behind the scenes” meetings with NBA officials, culminating in a Friday-night-into-Saturday-morning session that resulted in the agreement ending the lockout and saving the NBA season. Meyer led the team for the final marathon negotiating session that resulted in the deal, announced from a conference room at Weil's New York office.



Client: eBay Inc.
Date: June 21, 2011
Case & Venue: Ruins & Genesta v. eBay Inc., No. 30-2009-00124542 (Cal. Super. Ct., Orange Cty.)
Practice Group: Complex Commercial Litigation
Weil Team: Partners Christopher Cox in Silicon Valley and Bruce Colbath in New York, and counsel Mark Fiore in New York and Gregory Hull in Silicon Valley

In a decisive victory for eBay, a California state court dismissed the last of nine claims asserted by a former eBay user whose account eBay had suspended following reports from third parties that the user was misrepresenting goods offered for sale on eBay. At issue was whether eBay could be held liable under various state-law theories for suspending the plaintiffs' user account. The claims included alleged violation of California antitrust laws, breach of contract, breach of the covenant of good faith and fair dealing, unfair competition, trade libel and disparagement, negligence, intentional infliction of emotional distress, intentional interference with contractual relations, and intentional interference with prospective business advantage. The court held that the plaintiffs, sellers of vintage textiles and fabrics, failed to state any cognizable claims against eBay, despite granting the plaintiffs five opportunities to amend their complaint over nearly three years of litigation. **The court found that the eBay User Agreement provided eBay the legal right to suspend the plaintiffs' account in light of the reports submitted against the plaintiffs, thus reinforcing eBay's ability to provide a safe marketplace for its users.** The court also rejected the plaintiffs' allegation that eBay violated California antitrust laws by prohibiting the plaintiffs from continuing to do business on eBay. The plaintiffs filed a notice of appeal in the California Court of Appeals in July 2011.

Client: Bill Me Later, Inc. (subsidiary of eBay Inc.)
Date: January 4, 2011; June 30, 2011
Case & Venue: Bill Me Later, Inc. v. MODASolutions Corp., No. 08-CV-897 (D. Md.)
Practice Group: Intellectual Property
Weil Team: Partners R. Bruce Rich and Randi Singer, and counsel Mark Fiore in New York

Weil secured several important victories at the summary judgment stage for Bill Me Later, Inc., a subsidiary of eBay Inc., in its trademark infringement action against MODASolutions in federal district court in Maryland, which were instrumental in a favorable resolution of the matter. Bill Me Later has offered online credit services that allow Internet shoppers to obtain real-time credit to make purchases on participating websites without a physical credit card since 2001 and owns several federal trademark registrations for "Bill Me Later."

Bill Me Later filed suit in 2008, alleging that MODASolution's name for its competing payment service, "eBillme," was confusingly similar and constituted trademark infringement. MODASolutions answered with a counterclaim for declaratory judgment, claiming that "bill me later" was a generic descriptive for bill payment services, and that Bill Me Later had failed to protect its trademarks.

In January 2011, the court issued several favorable rulings, granting Bill Me Later's summary judgment motion (and denying MODASolutions' motion) and holding that the "Bill Me Later" trademarks were not generic and had not been abandoned. The court also rejected the testimony of MODASolutions' proposed expert, holding that there was no evidence of third-party uses of the term "bill me later" in connection with online credit services, nor was there any evidence that Bill

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Me Later had failed to police its trademarks. The court also held that Bill Me Later could seek an accounting of MODASolutions' profits should the evidence establish a likelihood of confusion. Following the court's rulings, the parties settled the action, and on June 30, 2011, the parties' respective claims were dismissed.

Client: StubHub/eBay Inc.
Date: June 27, 2011
Client & Venue: Weinstein v. eBay Inc., et al., No. 10-cv-8310 (S.D.N.Y.)
Practice Group: Complex Commercial Litigation
Weil Team: Partner David Lender, counsel Mark Fiore, and associates Eric Hochstadt and Kristen Echemendia in New York

In another important win for eBay, Weil scored a complete dismissal, with prejudice, of a proposed class action alleging that StubHub, eBay (StubHub's parent), and the New York Yankees, deceived consumers into paying higher prices for tickets purchased on StubHub's website. In its June 2011 order dismissing the plaintiff's amended complaint, the court concluded that the "[p]laintiff has struck out" and there was "no need to embark on costly

and time intensive briefing of a motion to amend" because the plaintiff's proposed amendments would not overcome the complaint's "legal defects."

The plaintiff filed suit in late 2010, claiming that StubHub's practice of not disclosing the identity of the seller and the face value of the resold ticket violated New York's Arts and Cultural Affairs Law (ACAL), which regulates the resale of tickets, and General Business Law, which prohibits unfair or deceptive trade practices. The court dismissed eBay because the plaintiff alleged nothing more than a mere parent-subsidiary relationship between eBay and StubHub. As for StubHub, **the court held that the plaintiff could not circumvent the exemption in the ACAL for websites that merely facilitate ticket sales, like StubHub;** that the plaintiff's ACAL claims otherwise failed because StubHub is not an "operator" of a place of entertainment according to the language of the statute; and that the statute contains no requirement that ticket resale or auction websites, again, like StubHub, print face value information on such tickets. Because the court found no ACAL violations, and because the StubHub website included disclaimers that it was not the ticket seller and that ticket prices may differ from face value, the plaintiff's unfair and deceptive trade practices claim failed as well.





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A National Retailer

Client: A national retailer

Date: August 2011

Practice Group: Complex Commercial
Litigation

Weil Team: Partners Yvette Ostolaza, Yolanda
Garcia, and Michelle Hartmann, and associates
Margaret Allen and Ricardo Pellafone in Dallas

Weil secured dismissal, with prejudice, of a
purported shareholder's class action brought
against a national retailer and certain of its
officers and directors in federal court in Texas.
Filed in November 2009 and later consolidated,
the original class action complaint alleged that
the national retailer and the individual defen-
dants had failed to properly account for certain
advertising and other expenses.

In April 2011, the federal court dismissed all
claims in the original consolidated class action
complaint and granted the plaintiffs leave to
amend. The retailer and the individual defendants
then moved to dismiss the plaintiffs' amended
consolidated class action complaint. **In ruling
on the defendants' motion to dismiss in August
2011, the court found that the accounting
problems that led to the restatement were
more the result of the former executive trying
to meet a department budget rather than an
attempt to "initiate companywide fraud."** The
court agreed with the defendants that, because
the plaintiffs had failed to plead scienter with
respect to the action of the former executive,
who was later fined by the SEC over the alleged
accounting problems, scienter could not,
therefore, be imputed onto the corporation or
any of the individual defendants. In addition, a
derivative demand filed in state court related to
the same issues, was voluntarily dismissed by
the plaintiff.

Scott Kay, Inc.

Client: Scott Kay, Inc.

Date: October 3, 2011

Case & Venue: Tacori Enterprises v. Scott Kay,
Inc., No. CV 11 01565 DSF (VBKx) (C.D. Cal.)

Practice Group: Complex Commercial Litigation

Weil Team: Partner Christopher Cox in Silicon
Valley, counsel Mark Fiore in New York, and
associate Amy Reed in Silicon Valley

Weil obtained a complete victory for its client
Scott Kay, Inc., in a lawsuit brought by Tacori
Enterprises claiming that Scott Kay's "Heaven's
Gates" engagement ring collection allegedly
infringed the designs of Tacori's bridal jewelry.
The dispute, which was closely followed in the
jewelry industry, began in February 2011, when
Tacori filed a lawsuit against Scott Kay in federal
court in Los Angeles asserting claims for copyright,
trademark, and trade dress infringement, as
well as unfair competition. Each claim was
based on allegations that Scott Kay's guardian
angel's wings motif in its "Heaven's Gates"
engagement rings were supposedly copied from
the pattern of "crescent"-shaped openings in
Tacori's rings.

In a sweeping rejection of Tacori's allegations,
**the court denied Tacori's motion for a preliminary
injunction in its entirety, holding on July 1, 2011,
that, "after reviewing the rings in person, [the
court] does not believe a jury would consider
the rings to be substantially similar, let alone
virtually identical."** The July 1 ruling followed a
similar unequivocal ruling in Scott Kay's favor,
issued on March 3, 2011. In that ruling, in which
it denied Tacori's application for a temporary
restraining order, the court held that "there is
no evidence of actual confusion" between Scott
Kay's rings and Tacori's rings, "and no credible
evidence that [Scott Kay] intended to adopt
[Tacori's]" jewelry design.

As a result of the repeated rulings in Scott
Kay's favor, Tacori agreed to dismiss the suit in
its entirety and with prejudice, without receiving
anything from Scott Kay in return. The case
was formally dismissed on October 3, 2011.
Scott Kay continues to market, create, and offer
its "Heaven's Gates" collection.

C.R. Bard, Inc.

Client: C.R. Bard, Inc. & subsidiary Davol Inc.

Date: January 20, 2011

Case & Venue: Tyco Healthcare Group LP v.
C.R. Bard Inc., No. 09-264 (D. Del.)

Practice Group: Patent Litigation

Weil Team: Partners Jared Bobrow in Silicon
Valley and Timothy DeMasi in New York

Weil successfully represented C.R. Bard and its
subsidiary Davol Inc. in a patent litigation filed
by Tyco Healthcare Group LP, a subsidiary
of Covidien PLC, in the District of Delaware.
The patent-in-suit, US Patent No. 6,562,051,
concerns surgical fastening systems. Bard and
Tyco are competitors in the hernia mesh fixation
market, where Tyco had been the dominant
player in the market. Tyco's market dominance,
however, was challenged by the introduction of
Bard's products, particularly the Sorbafix mesh
fixation device. In its April 2009 complaint,
Tyco asked for an injunction preventing our client
from manufacturing or selling their Sorbafix
device and for compensatory damages. Bard
counterclaimed on the ground that Tyco
improperly marked its own fixation devices
with the Tyco patent. In January 2011, **the
court adopted Bard's claim construction of a
key term in the Tyco patent, and granted our
clients' motion for summary judgment** that
their products do not literally infringe Tyco's
patent. The court also granted our motion for
partial summary judgment that Tyco had
mismarked its products.

Pro Bono Spotlight:

Westchester Residential Opportunities, Inc.

Client: Westchester Residential Opportunities, Inc.

Date: September 2011

Cases & Venue: Westchester Residential
Opportunities, Inc. (WRO) v. Century 21 Grand;
WRO v. Better Homes & Gardens Rand Realty;
WRO v. Prudential Joyce, County of Rockland
Fair Housing Board

Weil Team: Partner Elizabeth Weiswasser and
associate Andrea Loh in New York

Acting on behalf of the non-profit fair housing
agency Westchester Residential Opportunities,
Inc. (WRO), Weil successfully resolved, following
litigation, three complaints that we filed on behalf
of WRO against rental agencies relating to
allegations of race-based housing discrimination
in the Lower Hudson Valley. These complaints
were filed following extensive paired-testing
that revealed discriminatory treatment by the
agencies toward potential housing clients based
on their race. Subsequent to the commencement
of these actions, Weil submitted reply papers
on behalf of WRO and engaged in extensive
discussions with the Human Rights Commissioner
for Rockland County as well as the adverse parties.
After placing pressure on each adversary and
demonstrating a clear willingness to take each
case to trial, Weil negotiated settlements on
behalf of WRO with all three agencies. As a part
of each settlement, Weil secured a recovery of
damages for WRO and the Rockland County
Commission on Human Rights, as well as an
agreement that each agency will provide ongoing
training and education relating to compliance
with fair housing laws. **In recognition of these
efforts, the WRO Board of Directors honored
Andrea Loh and the firm with the Harriett
Goldberg Fair Housing Award in November 2011.**



MOL Hungarian Oil & Gas PLC

Client: MOL Hungarian Oil & Gas PLC

Date: June 7, 2011

Case & Venue: OJSC Surgutneftegas v. MOL Hungarian Oil and Gas PLC (Metropolitan Court of Budapest; Metropolitan High Court of Appeal)

Practice Group: Corporate Litigation

Weil Team: Partner László Nagy and senior associate László Nanyista in Budapest

Weil secured a complete victory for MOL Hungarian Oil & Gas PLC (MOL), Hungary's largest energy company, in litigation relating to the hostile acquisition of a 21.2% stake in MOL by OJSC Surgutneftegas, a Russian oil company.

Surgutneftegas initiated lawsuits against MOL in 2009 and 2010, requesting that MOL's board of directors rescind its decisions to reject the registration of Surgutneftegas in MOL's shareholders' register (the 2009 Board Decision Case and the 2010 Board Decision Case). As a result of MOL's board decisions, Surgutneftegas could neither attend the 2009 and 2010 MOL annual general meetings nor exercise any shareholder rights at such general meetings. In an additional lawsuit also initiated in 2009, Surgutneftegas requested the repeal of the resolutions adopted at MOL's 2009 annual general meeting (the 2009 AGM Case). Surgutneftegas argued that the resolutions were invalid because Surgutneftegas was unlawfully prevented from attending MOL's respective general meetings and exercising its shareholder rights.

In the 2009 Board Decision Case and the 2009 AGM Case, Surgutneftegas' claims were fully rejected on the basis of Weil's defense in final and binding judgments at both the first and second instance. The Metropolitan High Court of Appeal delivered its final and binding judgment on June 7, 2011. In the 2010 Board Decision Case, the Metropolitan Court of Budapest also delivered a first instance judgment in favor of MOL on April 6, 2011. Surgutneftegas did not file an appeal in this latter case and, therefore, the judgment became final and binding on June 1, 2011.

Weil successfully argued that MOL was not obliged to register Surgutneftegas in its shareholders' register because Surgutneftegas failed to fulfill the statutory conditions for the registration, namely, Surgutneftegas failed to obtain the Hungarian Energy Office's acknowledgement of its acquisition of MOL's shares. **Weil persuaded both the first and second instance courts that, due to Surgutneftegas' failure to obtain such acknowledgement, the acquisition of MOL shares by Surgutneftegas did not become effective vis-à-vis MOL. Consequently, Surgutneftegas lacked standing in the lawsuits to claim the repeal of the 2009 and 2010 board decisions and the resolutions adopted at the 2009 annual general meeting.**

The successful outcome of the lawsuits largely contributed to Surgutneftegas not carrying out its hostile overtures against MOL.

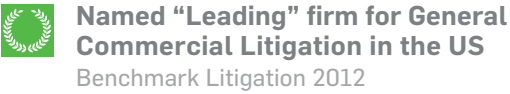
<h1>Washington Mutual</h1>			
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Client: Washington Mutual, Inc.
Date: January 3, 2012
Case & Venue: Nantahala Capital Partners, et al. v. Washington Mutual, Inc., et al., No. 08-12229 (MFW), Adv. Pro. No. 10-50911 (MFW) (Bankr. D. Del.)
Practice Groups: BFR, Complex Commercial Litigation
Weil Team: Partners Brian Rosen in New York and Adam Strochak and David Hird in Washington, DC, and associates Jennifer Wine, Sunny Thompson, and Will Hueske in Washington, DC, and Sujan Trivedi, Patricia Wencelblat, Gregory Kau, Marvin Mills, and Rachel Swartz in New York

Weil won a judgment after trial for Washington Mutual, Inc. (WMI) in an adversary proceeding arising from its chapter 11 filing in September 2008. In this adversary proceeding a group of investment funds claimed they were entitled to \$337 million dollars for their Litigation Tracking Warrants (LTWs), a security designed to track the value of a disputed claim against the federal government. Under the terms of the LTW agreements, the holders would be entitled to receive WMI common stock upon a successful resolution of the underlying lawsuit.

The investment funds alleged that the LTWs were debt instruments rather than rights to acquire stock, and sought a declaratory judgment entitling them to be treated as creditors in WMI's bankruptcy rather than holders of equity interests. They also argued that WMI had breached the warrant agreement (1) by not restructuring the LTWs to be redeemable for cash in connection with the merger of WMI and Dime Bancorp, the original issuer of the LTWs, and (2) by failing to ensure that LTW holders would receive cash payment after WMI filed for bankruptcy. Finally, the investment funds alleged that any future proceeds of the underlying lawsuit belonged to the LTW holders, not the debtors' estate.

Weil won a complete victory when the US Bankruptcy Court for the District of Delaware ruled that the LTWs were equity, not debt, after a three-day bench trial. Further, the bankruptcy court ruled that WMI and its board of directors did not breach the warrant agreement, and even if they had, any such claims would be subordinated under 11 U.S.C. § 510(b) to the level of common stock. The matter settled favorably for WMI after judgment, resolving a major obstacle to the confirmation of WMI's plan of reorganization.



Client: Washington Mutual, Inc.
Date: January 7, 2011
Case & Venue: Black Horse Capital, et al. v. JPMorgan Chase Bank, N.A., et al., No. 10-51387 (Bankr. D. Del.)
Practice Groups: BFR, Complex Commercial Litigation
Weil Team: Partners Brian Rosen in New York and Adam Strochak and David Hird in Washington, DC, and associates Jarrad Wright, Jennifer Wine, and Sunny Thompson in Washington, DC, and Diana Eng, Patricia Astorga, Rachel Swartz, and Eric Wolfish in New York

Weil won summary judgment for Washington Mutual, Inc. (WMI) in an adversary proceeding arising from its chapter 11 filing in September 2008 following the closure of Washington Mutual Bank (WaMu), the largest bank failure in US history, in which a group of investment funds claimed they were entitled to a declaratory judgment in connection with the status of \$4 billion of preferred securities.

These securities had been subject to a conditional exchange feature which allowed the Office of Thrift Supervision (OTS) to require, upon the occurrence of certain events, that the Trust Preferred Securities (TPS) be exchanged automatically for a related series of WMI preferred stock. OTS declared an exchange event and initiated this conditional exchange feature in September 2008, just before OTS closed the bank and the parent company declared bankruptcy. The Federal Deposit Insurance Corporation, as receiver for WaMu, sold substantially all of the bank's assets to

JPMorgan Chase and, after extensive litigation and negotiation, the parties reached a global settlement that resolved claims to disputed assets and liabilities worth billions of dollars, including ownership of the \$4 billion in hybrid TPS.

The investment funds alleged that the conditional exchange did not occur as contemplated and sought a judgment that they held TPS (rather than WMI preferred shares), which would entitle them to a structurally senior claim in the bankruptcy case. They also argued that the TPS assets were theirs on the theory that not all of the steps necessary for the conditional exchange had been completed before WMI filed for bankruptcy, and that WMI had defrauded the TPS holders because it had allegedly not disclosed that the OTS had the right to insist that the TPS assets be downstreamed from WMI, the parent company, to the bank after the occurrence of the conditional exchange.

In the expedited adversary proceeding that went from complaint to judgment in just five months, Weil litigated ownership of the trust preferred securities and won a complete victory when the US Bankruptcy Court for the District of Delaware ruled that the plaintiffs did not have any interest in the TPS, but were instead holders of preferred shares in WMI as a result of the automatic conversion of the securities in September 2008 at the direction of bank regulators. The plaintiffs appealed the judgment to the United States District Court for the District of Delaware. The matter was then settled before decision on the appeal as part of a compromise that facilitated confirmation of WMI's plan of reorganization in the bankruptcy court.

“The team led by Michael Lyle and Konrad Cailteux demonstrated superb legal acumen, mastery of the facts, and stamina.... The plaintiff’s decision to settle for nuisance value — before it had even finished its case in chief — speaks volumes about the ability and trial experience of the Weil team. This was a complete victory for Toyobo.”

Yukihiko Minamimura
General Manager
Toyobo Legal Department

Toyobo Co., Ltd.

Client: Toyobo Co., Ltd.
Date: June 20, 2011
Case & Venue: Second Chance Body Armor v. Toyobo Co., Ltd., No. 05-80019 (Bnkr. W.D. Mich.)
Practice Group: Product Liability
Weil Team: Partners Michael Lyle and Eric Lyttle in Washington, DC, and Arvin Maskin, Konrad Cailteux, and Debra Dandeneau in New York, and associates Stephen Gibbons in Washington, DC, and David Singh, Christopher Barazza, and Isabella Lacayo in New York

Weil obtained an extremely favorable settlement for Toyobo in the trial of *Second Chance Body Armor v. Toyobo Co., Ltd.* in US Bankruptcy Court for the Western District of Michigan. The debtor, the Trustee of the Estate of Second Chance Body Armor, alleged that the Zylon fiber manufactured by Toyobo was defective, had caused the mass recall of Second Chance’s soft body armor from both federal and state law enforcement agencies across the US and Europe, and eventually caused the destruction of Second Chance’s business. Asserting claims for RICO, fraud, breach of warranty, breach of contract, false advertising, unfair trade practices, and violations of the Lanham Act, the Trustee’s initial damages claim was almost \$1 billion.

During the pre-trial proceedings, Weil succeeded in knocking out a number of Second Chance’s claims, including those with treble damages provisions. Just before the trial started, the Trustee lowered its settlement demand to \$120 million. During the course of the trial, the Weil team’s cross-examination of the Trustee’s witnesses and evidentiary objections undercut the Trustee’s case, forcing the Trustee to further reduce his demand to \$80 million, then to \$65 million, and then \$45 million. The final catalyst to settlement was a cross-examination that precluded the plaintiff’s key expert witness from offering six of his eight opinions, and discredited the two remaining opinions. After 65 days of trial, 25 witnesses, and hundreds of admitted exhibits, the Trustee agreed to settle for much less than the \$6 million in expenses that the Trustee incurred in trying the case.

The nuisance settlement amount vindicated Toyobo’s decision to try the case, and was a complete victory for Toyobo.

Natixis

Client: Natixis
Date: September 13, 2011
Case & Venue: Belvedere (French Supreme Court and French Court of Appeals)
Practice Group: Complex Commercial Litigation
Weil Team: Partner Didier Malka in Paris

Weil prevailed for client Natixis, a major banking institution based in France, in a matter involving the status of “parallel debt” under French law.

In 2006, the Belvedere Group, an alcoholic beverages company based in Beaune, France, issued €375 million in floating rate notes arranged by Bank of New York and governed by US law. The bond documentation was entered into by Belvedere, Bank of New York Mellon as trustee, and, among others, Natixis as security agent for French interests. As part of the transaction, Belvedere entered into a collateral sharing agreement with Natixis that created “parallel debt” in the same amount of debt owed to the trustee. In France, which does not recognize the trust concept, this structure is sometimes used in cross-border transactions governed by UK or US law and allows, if necessary, a security agent to foreclose over the secured assets of a company for the benefit of the bondholders.

In 2008, after an insolvency proceeding involving Belvedere was opened in French court, Natixis and two other parties filed proofs of claim for the full amount of Belvedere’s floating rate notes. Belvedere challenged Natixis’ claim, claiming that, because “parallel debt” does not exist under French law, Natixis could not have validly declared its own claim. However, the Court of Appeals of Dijon (on September 21, 2010) and the French Supreme Court (on September 13, 2011) both rejected Belvedere’s action. The courts concluded that the parallel debt concept did not contravene any mandatory rules under French law and, as a result, Natixis had a valid personal claim that it was entitled to pursue in the insolvency proceeding.

This is the first time the French Supreme Court rendered a decision acknowledging that “parallel debt” is not contrary to French mandatory laws. The decision received wide media coverage and has been widely reported in legal literature.

Lehman Brothers Holdings/ Lehman-Related Matters


Clients: Lehman Brothers Holdings Inc. and Lehman Brothers Special Financing, Inc.
Date: November 16, 2011 (appeal dismissed)
Case & Venue: Bank of America, N.A. v. Lehman Brothers Holdings, et al., 439 B.R. 811 (Bankr. S.D.N.Y. 2010); appealed to S.D.N.Y. June 10, 2011 (No. 11-3958)
Practice Group: Complex Commercial Litigation
Weil Team: Partners Richard Rothman in New York and Peter Isakoff in Washington, DC, counsel Gregory Silbert in New York, and associates Eleanor Gilbane in Houston, and Kevin Meade and Jennifer Larson in New York

In one of the most discussed cases of 2010, Weil represented Lehman Brothers Holdings Inc. and Lehman Brothers Special Financing, Inc. in a \$500 million lawsuit brought by Bank of America (BoA) in US Bankruptcy Court for the Southern District of New York. As was customary, BoA, Lehman's clearing bank, had for many years permitted Lehman to incur intra-day overdrafts in its accounts, which Lehman would clear at the end of each business day. In the summer of 2008, before the Lehman Brothers bankruptcy filing, BoA suddenly announced that it would stop allowing intra-day overdrafts unless Lehman deposited \$500 million in a special cash collateral account within a matter of days. Lehman complied, as it could not have continued its businesses without incurring intra-day overdrafts. But Lehman negotiated a security agreement with BoA providing that the pledged collateral was exclusively for debts in respect of overdrafts, not any other indebtedness. Shortly after Lehman entered bankruptcy, BoA seized the collateral to satisfy debts arising from swap transactions unrelated to overdrafts.

After Lehman objected, BoA filed an adversary proceeding, claiming that the setoff fell under one of the safe harbor provisions of the bankruptcy code for netting financial contracts, a question of first impression. BoA also argued that a boilerplate provision in the security agreement gave it a right to seize the collateral to set off any Lehman debt, and that seeking a declaratory judgment that the seizure was not in violation of the automatic chapter 11 stay.

After extensive discovery, the parties cross-moved for summary judgment, and, after oral argument, US Bankruptcy Court Judge James Peck conducted a three-day evidentiary hearing. **The bankruptcy court then granted Lehman's summary judgment motion in a decision that agreed with Weil on every issue – finding that BoA had no right to set off the collateral against debts unrelated to overdrafts, that the safe harbor provisions did not apply where the debts to be offset were not both related to the qualifying financial contract, and that BoA had violated the automatic stay by seizing the funds without first seeking relief from the bankruptcy court. Accordingly, Judge Peck ordered BoA to repay the \$500 million it had seized and nearly \$100 million in interest.** Judge Peck's decision is now leading law for this aspect of the financial netting safe harbors. Bank of America appealed the decision but withdrew its appeal after reaching a global settlement with Lehman that resolved several billion dollars of unrelated claims.

For his efforts in representing Lehman Brothers, Weil's Richard Rothman was chosen by American Lawyer Media's Litigation Daily blog as its "Litigator of the Week" for November 19, 2010.

 **Ranked Band 2 for Securities
Litigation – Nationwide**
Chambers USA 2011

Clients: Tishman Speyer Development Corp. and Archstone-Smith Trust
Date: August 29, 2011
Case & Venue: Katz, et al. v. Gerardi, et al., No. 10-1407 (10th Cir.)
Practice Groups: Appellate, Securities Litigation
Weil Team: Partner Jonathan Polkes in New York, counsel Lisa Eskow in Houston, and associates Ashish Gandhi, Caroline Zalka, and Jennifer Larson in New York

Weil secured a major victory for Tishman Speyer Development Corp., Archstone-Smith Operating Trust, Archstone-Smith Trust, and current and former officers and Trustees of Archstone-Smith Trust when the Tenth Circuit Court of Appeals upheld the dismissal of a securities fraud class action brought by investors in Archstone-Smith, a real estate investment trust (REIT) that affiliates of Tishman Speyer and Lehman Brothers purchased in 2007 in a \$22 billion leveraged buyout (LBO). The deal was one of the largest REIT LBOs in history and closed just prior to the onset of the financial crisis.

The plaintiffs brought suit in the wake of the 2008 financial crisis, alleging that Tishman Speyer and certain trust executives responsible for the LBO did not appropriately disclose the

deal's associated risks. In August 2010, the US District Court for the District of Colorado dismissed the case with prejudice, finding that certain of the named plaintiffs' securities claims should have been brought together with other causes of action alleged by the same plaintiffs in a prior action (which Weil also succeeded in getting dismissed); that certain plaintiffs' Securities Act claims were unfounded because those plaintiffs could not allege a purchase of securities; and that the plaintiffs' Exchange Act claims failed because they could not allege that any damages were caused by the alleged false statements (i.e., failure to plead loss causation).

The Tenth Circuit upheld the dismissal, confirming that the investors lacked standing to bring the case. The court ruled that the Securities Act claims brought by the plaintiffs “provide relief *only* for purchasers – *not* sellers – of securities,” and that without standing as a purchaser, the plaintiffs “lack[] standing to bring his claims under the 1933 Act.” The plaintiffs attempted to gain standing by citing the fundamental change doctrine, but the court denied such claims in multiple instances, concluding, **“To say the merger made Katz [the named plaintiff] a purchaser ... is verbal alchemy unsupported by the text of the 1933 Act or the case law.”**



<p>Lehman Brothers Holdings/ Lehman-Related Matters (continued)</p>			
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Client: Archstone-Smith Trust
Date: October 26, 2011
Case & Venue: Ruby v. Archstone-Smith Operating Trust, Nos. BC393671 and BC446736 (Cal. Super. Ct., Los Angeles Cty.)
Practice Groups: Securities Litigation, Tax
Weil Team: Partners Jonathan Polkes, Ashley Altschuler, and Scott Sontag, associates Ashish Gandhi, Mark Schwed, Caroline Zalka, Melanie Conroy, Jennifer Larson, and Raquel Kellert in New York

Weil represented Archstone-Smith Trust in a major victory in an arbitration involving claims of over \$100 million in tax payments and damages that investors in the company claimed they were owed in connection with the \$22 billion leveraged buyout of Archstone by Lehman Brothers Holdings Inc. and Tishman Speyer in 2007.

Investors who were hit with tax consequences from the 2007 deal have sued Archstone in courtrooms across the country, seeking billions of dollars in payments and damages. The arbitration panel's decision, issued in October 2011, is the first such case to reach a ruling and could have favorable repercussions in these other actions.

In the current case, filed in 2008, the investors accused Archstone of breaching tax-related covenants in tax-related agreements signed with the investors in connection with their \$1.6 billion property contribution to Archstone. The investors argued that the agreements could reasonably have been understood to protect investors against the taxes they could incur if Archstone entered into a leveraged buyout.

The arbitration panel rejected the investors' argument, finding that Archstone did not breach the tax-related covenants of the tax-related agreements and that the investors were therefore not owed any payments under these agreements. As a result, the panel said, there was no need to proceed to the damages phase of the arbitration.

GDF Suez

Client: GDF Suez
Date: September 8, 2011
Case & Venue: GDF Suez v. Soper (Commercial Court, Montpellier, France; Court of Appeals, Montpellier, France)
Practice Group: Complex Commercial Litigation
Weil Team: Partner Didier Malka in Paris

Weil represented GDF Suez SA, the Paris-based multinational energy utility and French-listed company, in connection with a dispute with its minority shareholder, Soper, in the Compagnie du Vent (LCV) venture. In a general shareholders meeting, Soper refused to vote on a cooperation agreement between LCV and GDF Suez in connection with a wind power development project.

In the resulting litigation, Weil secured a decision from the president of the Commercial Court (Tribunal de Commerce) of Montpellier approving a request from GDF Suez, acting as majority shareholder of LCV, to invalidate the Soper refusal, which was to be considered as an abuse of minority rights. The Court of Appeals subsequently examined the case, upholding our client's victory. The matter is pending before the French *Cour de Cassation*.



The Dow Chemical Company

Client: The Dow Chemical Company
Date: September 9, 2011
Case & Venue: Greenpeace, Inc. v. Dow Chemical Co., No. 10-CV-2037 (D.D.C.)
Practice Groups: Complex Commercial Litigation, White Collar Defense & Investigations
Weil Team: Partners James Quinn and David Lender in New York, Steven Tyrrell in Washington, DC, and associate Jennifer Oliver in New York

Weil secured dismissal of a civil RICO action brought by Greenpeace, Inc., the environmental advocacy group, against numerous defendants, including The Dow Chemical Company. Filed in November 2010, the suit alleged, among other things, that between 1998 and 2000, Dow and its public relations firm hired a now-defunct private security firm that used improper means to obtain information regarding Greenpeace's campaigns and other activities. In addition to state claims for trespass, invasion of privacy, and misappropriation of trade secrets, Greenpeace alleged federal RICO Act violations predicated on allegations that the private investigative firm had transported stolen documents from Washington, DC, to Maryland.

In the order dismissing the complaint in its entirety, the court found that Greenpeace had failed to adequately allege a connection, much less a direct link, between its alleged injuries and the predicate act of interstate transportation of stolen goods. Therefore, Greenpeace's RICO claims could not stand. Moreover, because the RICO claim provided the basis for subject matter jurisdiction, the court also dismissed Greenpeace's state law claims, declining to exercise pendent jurisdiction over them.

Pro Bono Spotlight: Highland Dwellings Together We Stand Legal Action Group

Clients: Highland Dwellings Together We Stand Legal Action Group and several individual tenants
Date: July 27, 2011
Case & Venue: Highland Dwellings Together We Stand Legal Action Group, et al. v. District of Columbia Housing Authority, No. 2011 CA 001349B (D.C. Super. Ct.)
Weil Team: Partner Ralph Miller, and associates Anish Desai, Sunny Thompson, and Lindsay Bourne in Washington, DC

Weil won an important victory for pro bono clients, the Highland Dwellings Together We Stand Legal Action Group and several individual tenants who are residents of a public housing project in Washington, DC, and are being displaced by the DC Housing Authority in violation of a number of DC and federal laws, allegedly to allow renovations. Weil was invited to help in this case by the Neighborhood Legal Services Program (NLSP), a pro bono law firm that originally filed suit in the DC Superior Court, where our clients obtained some favorable preliminary results. However, the DC Housing Authority removed to federal court, alleging that federal claims predominated. Because the DC courts are more familiar with issues facing public housing residents like our clients in DC, Weil, with client approval and authorization from NLSP, took responsibility for filing a motion for remand. Ruling in our clients' favor from the bench, the federal judge accepted Weil's argument that the original removal notice had technical defects that could not be cured, and that state-law (DC law) issues predominated.

Procter & Gamble

Client: Procter & Gamble

Dates: August 16, 2011 (motion to remand); June 13, 2011 (*Daubert* motion)

Case & Venue: In re Denture Cream Prods. Liab. Litig., No. 09-md-2051 (S.D. Fla.)

Practice Group: Complex Commercial Litigation

Weil Team: Partners Edward Soto and Christopher Pace, and associates Edward McCarthy, Diana Widjaya, Allen Blaustein, Erica Rutner, and Lara Bueso in Miami, and Allen Yancy in New York

Weil helped secure an important pre-trial ruling on behalf of clients Procter & Gamble Distributing LLC and Procter & Gamble Manufacturing Company (P&G) in a multidistrict litigation brought by users of its popular denture cream, Fixodent, who claimed to have developed neurological injuries as a result of her excessive use of the product. **In the first case in the MDL (pending in federal court in Florida) to reach the *Daubert* stage, P&G successfully moved to exclude all seven of the plaintiff's expert witnesses, including all of the plaintiff's purported causation experts.**

The court ruled that, while the plaintiff's experts "hypothesize" causation, "[h]ypotheses are verified by testing, not by submitting them to lay juries for a vote." Specifically, the court found that the plaintiff's causation experts failed to utilize any scientifically reliable methods to confirm their hypotheses and ruled that none of the plaintiff's experts would be permitted to testify that the plaintiff's alleged injuries were caused by using the product. As a result of the court's *Daubert* rulings, the court ultimately entered final judgment dismissing all of the plaintiff's claims against P&G.

The court's *Daubert* rulings could have a significant impact, not just for Procter & Gamble, but for all defendants confronted with expert witnesses offering causation opinions based on hypotheses or other scientifically unreliable methodologies.

Weil helped P&G secure another important pre-trial ruling in the Fixodent MDL when, in an order issued on August 16, 2011, the court denied the plaintiffs' motions to remand their suits against P&G to other federal courts, agreeing to retain the cases in the MDL for further pre-trial proceedings. The plaintiffs allege that zinc contained in the denture creams manufactured by P&G and others caused neurological problems. In 2009, these cases were consolidated into the MDL and referred to Miami US District Judge Cecilia Altonaga for pre-trial proceedings.

Shortly after the court issued an order in the first case in the MDL excluding the plaintiffs' expert witnesses on causation, and as more plaintiffs began to file motions for suggestion of remand, Judge Altonaga asked P&G and co-defendant GlaxoSmithKline to file their own motions on why the other MDL cases should be retained. Judge Altonaga agreed with arguments presented by Weil on P&G's behalf that remand would be inappropriate for a number of reasons. Notably, the court found that because it was already familiar with the issues involved, it was in the best position to decide pre-trial matters in the other MDL cases as well, including how its recent *Daubert* rulings would apply to other general causation experts tendered by the plaintiffs.



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Forex Capital Markets, LLC

Client: Forex Capital Markets, LLC

Date: November 29, 2011

Case & Venue: Sanders v. Forex Capital Markets, LLC, No. 11-cv-00864 (S.D.N.Y.)

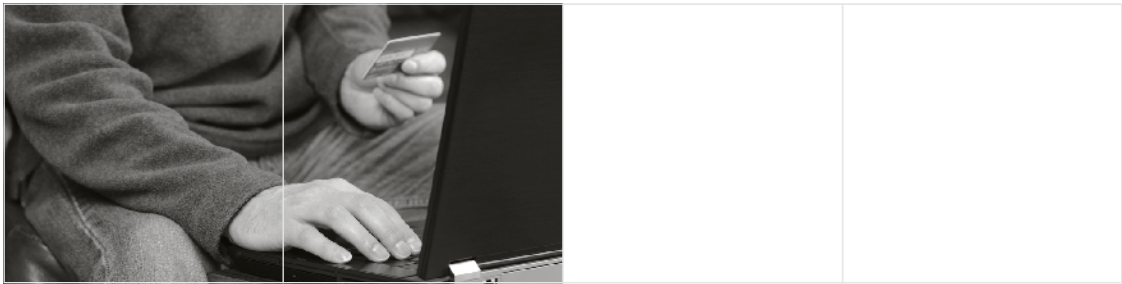
Practice Group: Securities Litigation

Weil Team: Partners Irwin Warren and Richard Slack and associates Eric Hawkins and David Byeff in New York

Weil represented Forex Capital Markets (FXCM) in a purported RICO class action challenging the operations of its foreign currency trading platform and seeking to recover losses the plaintiff allegedly suffered trading currencies on FXCM's online trading platform. The plaintiff also asserted claims for breach of contract and breach of implied covenant of good faith and fair dealing.

In ruling on multiple motions, **the court granted our motion to compel arbitration, over a challenge to the effectiveness under the Commodity Exchange Act of the arbitration clause;** held that the plaintiff could arbitrate only on an individual basis, and not on a class action basis; denied the plaintiff's motion to amend the complaint, which sought to add a new plaintiff who wanted to allege a different ground to challenge the arbitration clause; and dismissed the complaint in its entirety.





MovieTickets.com

Client: MovieTickets.com
Date: April 11, 2011
Case & Venue: Berry v. Webloyalty.com, No. 10-cv-1358 (S.D. Cal.)
Practice Group: Antitrust/Competition
Weil Team: Partners Carrie Anderson in Washington, DC, and Bruce Colbath in New York, and associate Jaime Kaplan in Washington, DC

In April 2011, Weil secured full dismissal of all claims against MovieTickets in a consumer class action filed against MovieTickets and Webloyalty.com, Inc. in 2010. The court had partially granted MovieTickets' and Webloyalty's motions to dismiss the original complaint in November 2010, but ordered limited discovery and allowed the plaintiff leave to amend.

The plaintiff alleged that MovieTickets and Webloyalty deceived him into enrolling in Webloyalty's Internet-based rewards discount program when he purchased tickets on MovieTickets.com, after which he alleged he unknowingly was billed a monthly membership fee. He principally based his claims on Webloyalty's advertisement offering coupons for future MovieTickets purchases.

Ruling on MovieTickets' and Webloyalty's motions to dismiss the amended complaint, the court found that "the explicit and repeated disclosures" present on the relevant enrollment page were sufficient to defeat the plaintiff's deception-based claims. As a result, the court dismissed all of the plaintiff's 20 claims, which included claims under the Electronic Funds Transfer Act, the Electronic Communications Privacy Act, and several California consumer protection laws, as well as claims of fraud, invasion of privacy, and violations of various common laws.

The case is currently on appeal in the Ninth Circuit.

Soler

Client: Mr. Bautista Soler, Mag Import Srl
Dates: April 14, 2011 (Commercial Court of Paris); November 15, 2011 (Court of Appeals)
Case & Venue: Soler v. Gecina (Commercial Court of Paris; Court of Appeals)
Practice Group: Complex Commercial Litigation
Weil Team: Partner Didier Malka in Paris

The matter involves a dispute between Gecina, a French-listed company and a major player in real estate activities (Gecina manages an €11.3 billion real estate portfolio), and our client, Mr. Bautista Soler, a minority shareholder in Gecina, in connection with the value of Bami, a Spanish real estate company that Gecina purchased from Mag Import Srl in June 2009. A few months after the acquisition, Gecina claimed that it had suffered a total depreciation of Bami's value. Gecina brought a claim before the Commercial Court of Paris and alleged an issue in the determination of Bami's acquisition price. Gecina asked the court to nominate an expert to assess the value of Bami at the time of the sale. The court rejected Gecina's request in April 2011. Gecina appealed, and in November 2011 the Court of Appeals confirmed the decision of the Commercial Court of Paris.



American Airlines

Client: American Airlines
Date: July 29, 2011
Case & Venue: Pinellas Park Retirement System v. Arpey, et al., No. 017-247999 (Tex. Dist. Ct., Tarrant County)
Practice Groups: Complex Commercial Litigation, Securities Litigation
Weil Team: Partners Richard Rothman, Greg Danilow, and Stephen Radin in New York and Yolanda Garcia in Dallas, and associate Nichole Hines in New York

Weil secured the dismissal of a shareholder derivative action alleging breaches of fiduciary duty by AMR Corporation's board of directors in connection with American Airlines' alleged failure to comply with FAA safety requirements. In July 2011, the Texas District Court agreed with our contention that Delaware law governs the conduct of directors of Delaware corporations, like AMR, and that Delaware law requires a pre-suit demand on AMR's board before the shareholders who brought the suit can proceed. Kelly Hart & Hallman LLP in Fort Worth, Texas, was our co-counsel on the case.

Authentidate Holding Corp.

Client: Authentidate Holding Corp.
Date: July 22, 2011 (date of Final Judgment approving settlement)
Case & Venue: In re Authentidate Holding Corp. Securities Litigation, No. 05-cv-5323 (S.D.N.Y.)
Practice Group: Securities Litigation
Weil Team: Partners Irwin Warren and Miranda Schiller, and associate Margarita Platkov in New York

After some six years of litigation, including prevailing on motions to dismiss both the original and amended complaints, and prevailing in part on the plaintiffs' appeal to the Second Circuit (after remand of which, we advised the plaintiffs' counsel that we intended to move to dismiss yet again), Weil secured a settlement agreement providing for the resolution and dismissal, with prejudice, of this purported securities fraud class action for a \$1.9 million payment, to be made by the company's insurance carrier, without any admission of liability by any defendants. A related shareholder derivative action was voluntarily dismissed after we briefed a motion to dismiss.



Pro Bono Spotlight: Democracy Now!

Clients: Amy Goodman, Democracy Now!, and Center for Constitutional Rights

Date: October 3, 2011

Case & Venue: Goodman, et al. v. City of St. Paul, et al., No. 10-cv-1966 (D. Minn.)

Weil Team: Partner Steven Reiss in New York, and associates Christine DiGuglielmo in Wilmington, and Jennifer Oliver, Alex Khachaturian, and Devin Cain in New York

Weil obtained a \$100,000 settlement for Democracy Now! journalists Amy Goodman, Nicole Salazar, and Sharif Abdel Kouddous in their case against municipal and federal law enforcement officers and agencies involved in the journalists' wrongful arrests while covering the 2008 Republican National Convention in Minneapolis-St. Paul.

Ms. Salazar and Mr. Abdel Kouddous were arrested while filming the police response to protests in downtown St. Paul on the first day of the convention. Upon hearing of her colleagues' arrests, Ms. Goodman went to the scene of the arrests hoping to secure their release. However, when she arrived and asked to speak to a commanding officer, police arrested her as well. Ms. Goodman, Ms. Salazar, and Mr. Abdel Kouddous were all injured while being arrested and held in jail for hours; their media equipment and press credentials were confiscated, thus preventing them from providing critical coverage of a national news event.

Partnering with the Center for Constitutional Rights, Weil pursued claims in the District of Minnesota for violations of the journalists' First and Fourth Amendment rights. **The September 29, 2011 settlement included a \$100,000 payment to the three plaintiffs and an agreement by the St. Paul Police Department to implement a training program aimed at educating officers regarding the First Amendment rights of the press and public with respect to police operations – including police handling of media coverage of mass demonstrations – and to pursue implementation of the training program in Minneapolis and statewide.**

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