Class Actions

Weil has a long track record of successfully defending high-stakes class actions across jurisdictions, industries and substantive areas of law – including antitrust, consumer financial services, consumer fraud, employment and labor, ERISA, insurance, product liability/mass torts, and securities. Many of these cases have been bet-the-company litigations that threatened the accepted business practices of an entire industry.

Weil Named Class Action Practice Group of the Year
Law360, 2019

Our competitive advantages are our ability to understand our clients’ business objectives, readiness to mobilize teams across offices and practices to respond to pre-trial challenges, and a trial-ready approach that effectively addresses all of the risks raised by this kind of litigation, including potential regulatory and criminal liability, and the reputational risks that are frequently more important than the monetary exposure.

› Our class action litigation practice has an impressive record in defending against some of the most complex class actions in the country, including numerous nationwide and multidistrict litigations in some of the largest, bet-the-company class actions to date.

› We have achieved successful results for clients at every phase of the class action litigation process in both trial and appellate courts, in jurisdictions across the country. These successes include obtaining dismissals of class action complaints, defeating class certification, winning summary judgment motions, prevailing at trial or on appeal, and obtaining highly favorable settlements.

› Our Firm also has the capability to handle regulatory investigations that often lead to class action litigations. With regard to these complex legal challenges, we have achieved successful, comprehensive settlements of both the regulatory matters and the related litigations.

› We have litigators throughout the United States and Europe, but rather than being compartmentalized by area or geography, our practices operate as an integrated practice group comprising lawyers with various areas of expertise. This cross-practice and cross-office approach allows us to undertake a coordinated analysis and readily manage complex class actions by bringing to bear the full breadth and strength of the Firm to address our clients’ needs.

› Our lawyers publish frequent newsletters focusing on class action developments, contribute articles to leading reviews and journals, and appear as speakers and panelists at, among others, national, state and local bar conferences and conventions, and industry meetings.

Antitrust

Our experience with class actions in the antitrust arena – as well as in the allied area of consumer protection – is decades’ long.

Key Contacts:

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View Weil’s Litigation Trends 2019 Report

Weil’s group “maintains particular expertise in class action and multidistrict litigation and possesses broad-ranging sector experience, including energy, manufacturing and life sciences.”

—Chambers USA 2018
We represent clients defending against virtually every kind of antitrust/competition allegation, including monopolization, cartelization, and price fixing, and we also have experience representing class plaintiffs. Our trial lawyers work hand-in-glove with the group’s regulatory experts to minimize client risk and achieve the most efficient and cost-effective solution. Our lawyers have been intimately involved in the evolution of antitrust law and many served in government agencies during formative periods of modern antitrust regulation.

Key Contacts for Antitrust:

Eric Hochstadt and Carrie Mahan

Weil litigators “distinguish themselves by the sheer variety of class action categories they tackle…”

—Law360 2015

“Weil again proved its “class action prowess” through “strategic use of data” and other “standout legal maneuver[s]:”

—Law360 2015

Weil and its litigators have received extensive nationwide recognition from Law360 for our work in the class action arena:

› 2019 Class Action Practice Group of the Year
› 2018 Class Action Rising Star (Eric Hochstadt)
› 2017 Class Action MVP (Ed Soto)
› 2017 Class Action Rising Star (David Singh)
› 2015 Class Action Practice Group of the Year
› 2012 Class Action MVP (David Lender)

—Law360

C&S Wholesale Grocers

Weil secured a complete defense jury verdict for C&S Wholesale Grocers following nine days of trial in April 2018 in an antitrust class action in Minnesota federal court. The jury’s verdict erased several hundred million dollars sought in treble damages, plus attorneys’ fees, and brought nine years of litigation to a close. Plaintiffs alleged that New England-based C&S and Supervalu, another leading wholesaler based in the Midwest, entered into a conspiracy to allocate the New England and Midwest territories between themselves for a period of five years, resulting in inflated grocery prices. The other defendant settled before trial. Weil partners David Lender and Eric Hochstadt, who led the trial team, were recognized as The American Lawyer’s “Litigators of the Week,” in which the publication characterized the rare, high-stakes case as “An Antitrust Unicorn – With $800M on the Line.” The team also won Global Competition Review’s “Litigators of the Week” accolades for its role in securing this win.

Daimler AG, Chrysler, Chrysler Canada, Mercedes-Benz and Mercedes-Benz Canada

Weil has represented Daimler AG, Mercedes-Benz, Mercedes-Benz Canada, as well as formerly related Chrysler and Chrysler Canada, in a series of antitrust class actions brought in dozens of state and federal courts over more than a decade. Plaintiffs alleged that defendant automakers illegally conspired to prevent new vehicles sold in Canada from entering the United States for resale. Weil successfully obtained the dismissal of Daimler AG from all cases. The federal cases were consolidated in the U.S. District Court for the District of Maine. The district court certified federal injunctive and state damages classes in 2007. However, in an important step toward the emerging consensus regarding the legal standard for class certification, the First Circuit Court of Appeals reversed the certification of damages classes and found that plaintiffs did not have standing to seek injunctive relief individually or as representatives of a class. In 2009, the Weil team achieved victory when the federal district court granted summary judgment in favor of all remaining and non-bankrupt defendants. Mercedes-Benz Canada and Chrysler Canada remained defendants in a series of state class actions, filed before the advent of the Class Action Fairness Act, which could not be removed to federal court. Following victory in the federal court, a series of res judicata motions were filed securing judgment for defendants in all but one state action, where an appeal of that judgment remains pending.
Antitrust Selected Representations

Farmers Insurance

Weil represents Farmers Insurance and various affiliates in In re Auto Body Shop Antitrust Litigation, a multidistrict litigation (MDL) in Florida federal court comprising dozens of cases across the country brought by auto repair shops, alleging that Farmers and dozens of other insurers artificially suppress reimbursement rates for auto body repairs, in violation of antitrust, RICO, and other statutes. In September 2015, Weil won the dismissal with prejudice of all claims in the lead case of the MDL, and over the course of the following year, Weil secured the dismissal of 13 related cases in the MDL. Plaintiffs in five of the dismissed cases appealed these decisions to the Eleventh Circuit, which in September 2017 issued a 2-1 panel decision, over a vigorous dissent, reversing the trial court rulings and remanding for further proceedings. After an exceedingly rare grant of an en banc petition prepared by Weil, in March 2019 the Eleventh Circuit affirmed the district court’s dismissal with prejudice in an en banc review of the consolidated appeal. In addition, Weil won a significant victory in May 2017 for Farmers Insurance and its affiliates when a Florida federal court granted the dismissal of all claims in a nationwide putative RICO class action, another component of the MDL.

Local Television Stations

Weil successfully represented a group of local television stations as plaintiffs in a putative class action lawsuit in the U.S. District Court for the Southern District of New York against the Society of European Stage Authors and Composers (SESAC) performance rights organization, challenging its licensing practices under the federal antitrust laws. Plaintiffs sought treble damages and injunctive relief on a proposed classwide basis. The named plaintiffs survived a motion to dismiss and a motion for summary judgment, thereby ensuring a jury trial, and recently entered into a very favorable settlement that provides substantial industry-wide relief. SESAC will be bound through 2035 by some of the core conduct restrictions that constrain ASCAP and BMI, the other two primary performance rights organizations, in their consent decrees with the Antitrust Division of the U.S. Department of Justice. The settlement also provides monetary relief — SESAC paid $58.5 million into a settlement fund, including attorneys’ fees and costs, which the Court remarked was a “very substantial hit to SESAC.”

Michael Foods

Weil serves as counsel for Michael Foods, Inc. in a federal multidistrict antitrust litigation pending in the U.S. District Court for the Eastern District of Pennsylvania encompassing two nationwide class actions and more than ten individual lawsuits, in which plaintiffs collectively seek in excess of $10 billion. Plaintiffs allege that Michael Foods, other egg producers, and several industry organizations, engaged in a vast conspiracy to reduce output and anticompetitively inflate the prices of shell eggs and egg products in the U.S. from 2000 to the present. In September 2015, Weil obtained a major victory when the Court denied indirect purchaser plaintiffs’ motion to certify a massive class of consumers that purchased eggs and egg products – seeking more than $7 billion in damages. Weil negotiated a favorable settlement in December 2016 that resolved all outstanding class claims from egg shell purchasers in the MDL. The settlement is subject to court approval.
Antitrust Selected Representations

Simon & Schuster

Weil has served as lead counsel to CBS Corporation’s publishing division, Simon & Schuster, in a series of investigations and private litigations regarding an alleged conspiracy in violation of federal antitrust laws concerning electronic books pricing. Plaintiffs include the Antitrust Division of the U.S. Department of Justice, the Attorneys General of 49 States, the District of Columbia, and five U.S. territories, and a putative nationwide class of electronic book consumers. In September 2012, the U.S. District Court for the Southern District of New York gave final approval to a settlement agreement and entered final judgment in the DOJ’s civil antitrust case against Simon & Schuster. In February 2013, the court gave final approval to a settlement agreement and entered final judgment in the Attorneys’ General parens patriae action against Simon & Schuster. Weil continues to represent Simon & Schuster as lead counsel in the remaining putative class claims.

Consumer Financial Services

Our litigators have compiled a proven record of winning financial services cases, often on the pleadings, and of attaining success in the appellate courts. We have particularly broad experience in handling matters involving specific federal and state financial services regulatory schemes (e.g., Truth In Lending Act, Equal Credit Opportunity Act, Fair Credit Reporting Act, Real Estate Settlement Procedure Act, and state usury and installment sale statutes), the use of federal and state antitrust, Unfair and Deceptive Acts and Practices laws, Racketeer Influenced and Corrupt Organizations Act, and other laws of general applicability to challenge practices involving financial services, and related litigation of class certification and arbitration clause issues. Our litigators also work closely with the firm’s Financial Institutions Regulatory group to monitor the latest regulatory developments impacting our clients’ businesses.

Key Contacts for Consumer Financial Services:

John Mastando

Consumer Financial Services Selected Representations

GE Money Bank

Weil achieved a victory on behalf of GE Money Bank (GEMB), obtaining dismissal on the pleadings by the U.S. District Court for the Eastern District of Missouri of a purported class action seeking statutory damages of $1,000 per alleged violation. Plaintiff claimed that a “prescreened” offer for a line of credit was not a “firm offer of credit” under the Fair Credit Reporting Act (FCRA) because it allegedly did not disclose certain terms of the offer. Weil successfully argued that the FCRA does not require disclosure of the terms at issue, and demonstrated that the client’s offer letter disclosed more than 20 key terms of the offer and had actual value to the consumer.

Weil also successfully represented GEMB in a purported nationwide class action alleging violations of the Fair Housing Act and the Equal Credit Opportunity Act based on, among other things, the plaintiffs’ claim that GEMB’s alleged “policy” of allowing mortgage brokers the “discretion” to impose charges in connection with mortgage loan origination led to minority borrowers being charged disproportionately higher interest rates and fees. The plaintiffs, a purported class of minority consumers, filed suit in the U.S. District Court for the Northern District of Illinois. The plaintiffs also sought to hold GEMB liable for subprime loans originated by another GE subsidiary, co-defendant WMC Mortgage, which originated billions of dollars in subprime loans and was one of the top ten subprime lenders in the country.
MovieTickets.com
Weil obtained the dismissal of a breakthrough Section 113 case for MovieTickets.com. Plaintiff argued that an email confirmation sent to customers following their online purchase of movie tickets from MovieTickets.com violated the Fair and Accurate Transactions Act (FACT) by including a credit card expiration date. The District Court's decision to dismiss was based on its conclusion that the FACT Act simply did not reach Internet communications such as those sent by MovieTickets.com. As the first decision granting a substantive final judgment holding that Section 113 does not apply to Internet communications, it received significant local and national attention and much favorable coverage in industry journals. The decision was not appealed.

Consumer Fraud
Weil's approach to defending consumer class actions is one that has been honed over many years of representing clients in a diverse array of industries in cases that range from large, bet-the-company litigations to smaller statewide class actions. Overall, our approach is to pursue the simultaneous goals of an early advantageous resolution of claims (minimizing litigation risk and cost) while maintaining a trial-ready posture focused on achieving a positive result should a trial on the merits be necessary.

Given the inevitable high stakes of consumer class actions, our initial focus is to explore whether an early resolution of the case is achievable - whether that is through a dismissal on the pleadings, defeating class certification, or prevailing on summary judgment. When our client is open to resolving a matter through a settlement, we explore ways to strategically and creatively devise acceptable settlement parameters in line with the client's business objectives. We have had considerable success negotiating with class counsel and obtaining court approvals for innovative settlements.

Key Contacts for Consumer Fraud:
David Lender and David Singh

Dave & Buster's
Weil secured the voluntary dismissal – without even having to file a motion to dismiss – through a favorable individual settlement of a putative class action alleging violation of NY General Business Law § 349 based on D&B's pricing arcade games in fractions of credits, allegedly leaving consumers with unusable remaining credits.

eBay and StubHub
Weil has successfully represented eBay in a number of class actions in jurisdictions around the country challenging ticket resale prices and allegedly invalid tickets purchased from third-party sellers on StubHub's website. In one matter, Weil was brought in on appeal following an adverse state trial court ruling, and obtained a victory for StubHub on an issue of critical importance to Internet websites and the growth of e-commerce. On an issue of first impression in North Carolina, the North Carolina Court of Appeals held that StubHub could not be held liable for the resale of allegedly overpriced Hannah Montana concert tickets by third-party sellers on its website based on federal immunity under Section 230 of the Communications Decency Act.
Consumer Fraud Selected Representations

**Exxon Mobil Corporation**

Weil secured a favorable settlement on behalf of Exxon Mobil resolving more than 30 putative class actions, consolidated in a multidistrict litigation in Kansas federal court with billions of dollars at issue, that have been filed against motor fuel retailers (MFRs) throughout warmer regions of the United States. Plaintiffs alleged MFRs failed to adjust the price or size of gasoline to account for the scientific phenomenon of thermal expansion.

**Sanofi**

Weil served as national counsel for Sanofi in a putative consumer class action relating to the company’s global recall of its epinephrine injection product, Auvi-Q. Plaintiffs alleges violations of the Illinois Consumer Fraud Act and unjust enrichment with respect to the recall. In July 2016, an Illinois federal judge granted, without prejudice, Weil’s motion to dismiss all claims.

**Showtime Networks Inc.**

Weil successfully represented Showtime Networks Inc. (SNI) in multi-district class action litigation consolidated in the C.D. Cal. relating to the 2015 Manny Pacquiao-Floyd Mayweather boxing match, which was billed as the “Fight of the Century.” In February 2016, Weil secured a strategic early dismissal on behalf of SNI during the MDL consolidation process, avoiding costly additional phases of litigation. Plaintiffs in these cases, including 13 class actions involving SNI, alleged that SNI, along with other media networks, the boxers, and their respective promotion companies, deceptively and fraudulently promoted the match as one between two healthy fighters, while allegedly knowing that one of the fighters was injured prior to the start of the fight. Weil obtained the early resolution of all 13 cases by negotiating with plaintiffs a stipulated dismissal of all claims against SNI without prejudice, based in part upon factual representations by SNI regarding its knowledge of the fighter’s injury.

Weil subsequently was chosen by SNI to defend a suite of putative class actions arising out of the latest “Fight of The Century” between Floyd Mayweather and UFC star Conor McGregor that took place in August 2017. Plaintiffs in these cases claim they purchased the pay-per-view match and planned to view it through Showtime’s digital application, but were unable to do so due to Showtime’s alleged insufficient bandwidth and server systems. In November 2017, Weil secured a critical early victory in one of the component cases when a New York federal judge granted SNI’s Motion to Compel Arbitration of plaintiff’s claims, precluding him from pursuing his claims on behalf of a class. In the subsequent weeks, Weil succeeded in extracting SNI from every other pending case in which it was named as a defendant.

Employment & Labor

Weil has deep experience litigating class actions in both trial and appellate courts involving virtually all employment-related claims, including claims asserted under federal anti-discrimination laws, wage and hour laws, Worker Adjustment and Retraining Notification Act, and Uniformed Services Employment and Reemployment Rights Act. Litigators from our nationally recognized Employment Litigation practice frequently partner with other practices across the Firm. They have extensive experience in, among other practice areas, bankruptcy, securities, and tax, to secure clients' objectives.

**Key Contacts for Employment & Labor:**

Jeffrey Klein and Gary Friedman
Elite Model Management

Weil represented Elite Model Management, one of the world’s most renowned modeling agencies, in a putative collective/class action brought under the Fair Labor Standards Act (FLSA) and New York Labor Law (NYLL) alleging that Elite improperly classified its interns as “non-employees.” Initially, the Plaintiff alleged seven causes of action: (1) failure to pay minimum wages as required by the FLSA; (2) failure to pay overtime wages as required by the FLSA; (3) failure to make, keep and preserve accurate records as required by the FLSA; (4) failure to pay minimum wage as required by the NYLL; (5) failure to pay overtime wages as required by the NYLL; (6) failure to pay spread-of-hours pay as required by the NYLL; and (7) failure to make, keep and preserve accurate records as required by the NYLL. Shortly after the Plaintiff filed her complaint, we convinced Plaintiff to drop various causes of action through a strong deficiency letter, thus meaningfully narrowing the scope of the case. We then negotiated a very favorable settlement.

Weil currently represents Elite in a massive putative class action that aims to take on the entire New York modeling industry by challenging the classification of models as independent contractors. The action, which also includes claims for conversion, breach of the covenant of good faith and fair dealing, breach of contract, and unjust enrichment, is brought against some of the leading model management firms in the world. The case is the first of its kind of New York state, and has the potential to alter the landscape of the entire modeling industry.

Forest Laboratories, Inc.

Weil represented Forest Laboratories, Inc. and Forest Pharmaceuticals, Inc. (together, “Forest”), in a putative gender class and collective action brought on behalf of eleven former sales representatives. Weil successfully narrowed the scope of the case through a motion to dismiss and/or strike, which resulted in the dismissal of several individual claims and a significant narrowing of the putative Title VII class period, and subsequently won the denial of plaintiffs’ motion for equitable tolling of the statute of limitations for potential collective action members’ claims. The matter is a bellwether case due to, among other reasons, the more nuanced gender claims it alleges including family responsibility discrimination, “sex plus” discrimination, “sex stereotyping,” pregnancy-related issues, and compensation disparities based on neutral pay practices.

Sterling Jewelers

Weil represents Sterling Jewelers in Jock v. Sterling, a class arbitration widely recognized as the largest private Title VII class action in the country, and a corresponding gender bias EEOC suit. In Jock, which is being litigated by the well-known plaintiffs’ firm Cohen Milstein, Weil successfully defeated class certification of all of the disparate treatment gender discrimination claims, substantially narrowing the scope of the remaining claims against Sterling. In late July 2017, Weil obtained a victory for Sterling when the Second Circuit vacated an earlier decision of the U.S. District Court for the Southern District of New York and remanded the case to Judge Rakoff to address whether the arbitrator in fact had the power to bind tens of thousands of absent class members who had never opted into the litigation.

Weil also secured a victory for Sterling in the EEOC litigation by obtaining a complete dismissal on the basis that the EEOC had failed to produce any evidence demonstrating that it had complied with its Title VII pre-suit obligation of conducting a nationwide investigation of Sterling’s employment practices. This decision was subsequently overturned by the Second Circuit in September 2015, thereby reviving the EEOC’s nationwide gender bias suit. Weil petitioned the U.S. Supreme Court to undo this Second Circuit decision. Weil successfully negotiated a virtually unprecedented settlement of the EEOC’s largest matter with no payment to the government being required by our client.
Tuesday Morning, Inc.

Weil was retained by Tuesday Morning, Inc. (TMI), a leading national retailer, to replace another prominent law firm in a California state court wage and hour class action following a series of adverse rulings – including the granting of Plaintiffs’ motion for class certification and the denial of Defendant’s subsequent motions for decertification and summary judgment. Among other California wage and hour claims, plaintiffs challenged TMI’s practice of providing “on-duty” meal periods to its California Senior Sales Associates, an issue that is not frequently litigated and on which there is limited and ambiguous legal authority. The certified class included current and former employees of all 87 of TMI’s California-based stores. Following our retention as counsel, we negotiated an extremely favorable resolution for our client by, among other things, developing and marshalling the discovery record in a manner that evinced compliance on TMI’s part with the Division of Labor Standards and Enforcement’s standards for “on duty meal periods” and virtually eliminating any Private Attorneys General Act penalty exposure through a novel but substantiated interpretation of that statute.

Weil also obtained the dismissal, with prejudice, of a separate putative California wage and hour class action filed against TMI, in which plaintiffs asserted class claims for failure to pay wages without discount in violation of California Labor Code Section 212 on behalf of TMI’s entire California workforce based on TMI’s use of payroll debit cards, failure to provide meal and rest periods, and failure to pay hourly wages, as well as other derivative California wage-based claims.

ERISA

Weil has extensive experience handling high-profile ERISA class actions involving claims for breach of fiduciary duty and improper benefit denials and reductions. We routinely deal with complex issues that require coordination of multiple disciplines – including bankruptcy, tax, labor and foreign law – to align legal solutions with business objectives, and our Firm’s employment lawyers bring a broad expertise in all aspects of employee benefits and executive compensation law.

Our lawyers have achieved victories that established important precedents in the nation’s highest court and in cases affecting industry-wide practices, including health care, financial services, and professional services. We have represented numerous clients in crisis situations, including in early, precedent-setting “stock drop” litigations and in claims brought by the Pension Benefit Guaranty Corporation.

Key Contacts for ERISA:

Nicholas Pappas
ERISA Selected Representations

**AIG**

Weil defended AIG and certain current and former employees in a putative class action under ERISA on behalf of participants in certain 401(k) plans sponsored by AIG (the Plans) during the period August 7, 2007 through May 1, 2009 and whose participant accounts included shares of AIG’s Stock Fund. Plaintiffs alleged, among other things, that the defendants breached their fiduciary responsibilities to the Plans’ participants and their beneficiaries under ERISA by continuing to offer the AIG Stock Fund as an investment option in the Plans after it allegedly became imprudent to do so; they claim that the purported violations caused hundreds of millions of dollars in damages. The alleged ERISA violations related to, among other things, the defendants’ purported failure to monitor and/or disclose unrealized market valuation losses on AIG Financial Product’s super senior credit default swap portfolio. In light of the U.S. Supreme Court’s decision in *Fifth Third Bancorp v. Dudenhoeffer*, No. 12-751 (U.S. June 25, 2014), which rejected the presumption of prudence in favor of ERISA fiduciaries that many courts had previously applied, the Court denied defendants’ motion to dismiss without prejudice to renewal of defendants’ motions on other grounds besides the presumption of prudence. The Court’s order required the parties to meet and confer concerning the impact of the *Fifth Third Bancorp* case and the possibility of settlement. On January 6, 2015, the parties informed the Court that they had accepted a mediator’s proposal to settle the class action for $40 million – a fraction of the more than $300 million value that the plaintiffs ascribed to their claims. The Court approved the class settlement in September 2015.

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**UnitedHealth Group Inc. (UHG)**

Weil serves as lead counsel for UnitedHealth in a nationwide putative class action in Arizona federal court brought by a physical therapy provider who purported to have received an assignment of the rights and benefits of at least 60 plan participants and/or beneficiaries, two individuals treated by the plaintiff provider, and the Arizona Chiropractic Society. Weil also represents 35 of the 45 employer-sponsored health plans named as co-defendants. The Ninth Circuit, in its November 5, 2014 opinion reviewing the district court’s grant of summary judgment in defendants’ favor on all claims, expressed its views on several distinct issues likely to recur in ERISA lawsuits throughout the country, including assignments of benefits, constitutional standing, the enforceability of limitations periods stated in the plan, and whether a claims administrator of a self-funded ERISA plan may be sued for benefits. Following the Ninth Circuit’s decision – which affirmed in part, reversed in part, vacated in part, and remanded – defendants petitioned the U.S. Supreme Court for a writ of certiorari, which was denied on October 13, 2015. Defendants then again moved for partial summary judgment, raising several arguments including constitutional and statutory standing, Arizona’s statute of limitations for ERISA benefits claims, the enforceability of limitations periods stated in different plans, and anti-assignment provisions precluding a provider from filing a civil suit on behalf of a participant. In December 2017, the court granted in part and denied in part defendants’ motion, agreeing with the defendants’ arguments regarding the proper statute of limitations and the enforceability of anti-assignment provisions, and considerably narrowing the case. A settlement is pending.
ERISA Selected Representations

Washington Mutual Inc. (WMI)

Weil is defending WMI in a purported ERISA class action – part of a consolidated, multi-district litigation also involving securities and derivatives litigations – where plaintiffs claim that WMI and other fiduciaries failed to act solely in the interest of WaMu Savings Plan beneficiaries by allowing imprudent investment in WMI stock as part of the Plan.

Weil has negotiated favorable pending settlements that relate to the putative ERISA class action based on WMI’s “cash balance” pension plan, and WMI’s ownership rights to various “rabbi” trusts set aside in connection with certain ERISA “top-hat” plans.

Weil also defended the debtor’s estate in connection with various employment-related claims, including employment discrimination claims, as well as claims under retention agreements and severance and change of control plans.

Insurance

Weil has in-depth knowledge of the insurance and reinsurance business and the complex issues faced in the insurance industry. Our powerful blend of litigation and arbitration experience brings expertise to all sides of complex disputes, including successfully defending clients against private, government, and class action suits and representing plaintiffs in major cases of first impression.

Weil has a long track record of successfully defending insurers against the most complex class actions, including numerous nationwide and multidistrict litigations in jurisdictions across the country. We have achieved successful results for clients at every phase of the class action litigation process in both trial and appellate courts, including obtaining dismissals of class action complaints, defeating class certification, winning summary judgment motions, prevailing at trial or on appeal, and obtaining highly favorable settlements.

Weil also has significant experience in handling internal investigations and in dealing with insurance regulators, including assisting clients with investigations by Congressional committees and state attorneys general.

Key Contacts for Insurance:

David Yohai
Insurance Selected Representations

Farmers Insurance Exchange

Weil represents Farmers Insurance and various affiliates in In re Auto Body Shop Antitrust Litigation, a multidistrict litigation (MDL) in Florida federal court comprising dozens of cases across the country brought by auto repair shops, alleging that Farmers and dozens of other insurers artificially suppress reimbursement rates for auto body repairs, in violation of antitrust, RICO, and other statutes. Recently, Weil won the dismissal with prejudice of all claims in the lead case of the MDL. The Court’s decision marks the third consecutive time that Farmers and the other defendants have prevailed on a motion to dismiss for failure to state a claim in the lead case, and suggests that the remaining cases in the MDL may suffer a similar fate. In November 2015, Weil secured a significant victory for Farmers Insurance and its affiliates in another component of the MDL, when a Florida federal court granted the dismissal of all claims in a nationwide putative RICO class action relating to reimbursement for auto collision repairs. In the putative RICO class action, plaintiffs – operators of auto collision repair shops in Pennsylvania and North Carolina – allege that Farmers and more than seventy other insurers conspired with each other and other entities to artificially suppress the compensation to repair shops such as plaintiffs for auto collision repairs, in violation of the federal RICO statute and state laws. The RICO claim was subsequently dismissed with prejudice in May 2017.

Genworth Financial

Weil represented Genworth in a purported nationwide class action filed in the Northern District of Ohio related to the optional inflation rider on Genworth long-term care insurance policies. The named plaintiff, the estate of a deceased beneficiary, alleged it was due additional benefits under the beneficiary’s long-term care insurance policy. Weil filed a motion to transfer the action to Connecticut, as well as a motion to dismiss the complaint. Following the filing of these motions, the plaintiff agreed to voluntarily dismiss the complaint.

Weil obtained summary judgment for Genworth in a class action in federal court in New Jersey (following removal pursuant to the Class Action Fairness Act) asserting claims for breach of contract in connection with premium rates for long-term care insurance policies.

Weil also defended two nationwide insurance class actions in New Mexico state court asserting claims for breach of contract, failure to disclose and violations of state unfair and deceptive trade practices statutes.

Product Liability/Mass Torts

High-stakes products litigation typically requires our clients to mount their defense on multiple fronts, which may include class action litigation, multidistrict litigation, individual personal injury actions at the state and federal level, consumer fraud actions, actions by health care providers, False Claims Act litigation, actions by state attorneys general, government investigations, and internal reviews. We have played the role of national coordinating counsel in a variety of such matters and have worked seamlessly with teams of attorneys from other law firms in a cost-efficient manner to bring about successful outcomes for our clients.

We also have particularly expansive experience in defending clients embroiled in parallel criminal and civil actions. The defense strategies employed in these cases can be quite complex, spanning multiple agencies and jurisdictions, where each proceeding may influence the outcome of others. Because many of our attorneys who handle governmental and internal investigations are former senior DOJ officials, federal prosecutors or regulatory officials, they have a keen understanding of the interplay between these simultaneous proceedings, thus enabling our clients to manage their legal risk more effectively.

Key Contacts for Product Liability:

Arvin Maskin and Diane Sullivan
Philip Morris USA

Weil secured a complete defense verdict for Philip Morris USA in a class action tried to a jury in Boston federal court. The plaintiffs brought a medical monitoring class action on behalf of allegedly over 30,000 Massachusetts smokers who smoked Marlboro cigarettes, seeking to have Philip Morris USA fund a screening program for the early detection of lung cancer. Plaintiffs sought a comprehensive program that would have included yearly low-dose CT scans, which are now the standard of care for the early detection of lung cancer for certain patients. Plaintiffs’ legal theory was design defect, alleging that our client could have made a safer cigarette that would have decreased their risk of subcellular injuries caused by smoking. Originally filed in 2006, the case was certified as a class action in 2010. Weil was brought in as lead trial counsel in 2012. After 10 years of litigation and three-week jury trial, our client won a unanimous verdict on the first question on the verdict sheet – Marlboro cigarettes are not defective and unreasonably dangerous.

Nortek

Weil represented Nortek Global HVAC LLC (NGHL), a subsidiary of Nortek and a leading manufacturer of heating, ventilation, and air conditioning (HVAC) systems, as lead counsel in defense of putative state and nationwide consumer class actions pending in Florida and Tennessee federal courts. Plaintiffs are purchasers of residential HVAC systems manufactured, distributed and sold by NGHL that allegedly contained defective copper evaporator coils. In 2016, Weil defeated plaintiffs’ motion to certify a class in the Florida case, as well as won a motion to dismiss with prejudice in the Tennessee case.

Dometic

Weil has successfully represented Dometic Corporation in a series of putative class actions in the Southern District of Florida alleging that the gas absorption refrigerators manufactured by Dometic for use in recreational vehicles and boats are defectively designed and manufactured. Plaintiffs in these cases have sought certification of a nationwide class of consumers, as well as a number of state sub-classes, consisting of all purchasers of the gas absorption refrigerators. In August 2017, the Court granted Dometic's motion for summary judgment and dismissed the lead case in its entirety, holding that, among other things, the Plaintiffs had failed to establish that there is any “inherent defect that is manifest in all Dometic cooling units.” Subsequently, in a related consolidated set of cases that Dometic successfully transferred to the same court, in July 2019, the Court denied plaintiffs’ motion for class certification and dismissed the case in its entirety.

Cooper Tire

Weil defended Cooper Tire in more than 30 nationwide class actions and a multi-district litigation arising from product defect claims asserted under various state consumer protection act statutes, resolving all actions in a negotiated nationwide class action settlement in New Jersey state court on terms extremely favorable to Cooper Tire. Our representation also involved coordination with the National Highway Traffic Safety Administration, which endorsed significant aspects of the settlement that ultimately maintained the integrity of the entire product line. The matter also involved managing the intense media attention arising from the litigation and request for government investigation.
**Product Liability Selected Representations**

**Toyobo**

Weil serves as lead counsel in the defense of Toyobo, a major Japanese fiber manufacturer, in class action suits, multiple personal injury suits, as well as claims by multiple state attorneys general, the U.S. Department of Justice, and foreign states relating to the performance of Toyobo’s Zylon fiber in bullet-resistant vests used by thousands of law enforcement agencies worldwide. In connection with class actions, the Weil litigation team aggressively defended Toyobo and positioned it to favorably settle the class claims brought on behalf of individuals, municipalities, and police agencies who wore or paid for the bullet-resistant vests.

**Securities Litigation**

Weil’s Securities Litigation practice has defended issuers, directors, and corporate executives against virtually every kind of securities claim brought as a class action. Our litigators have experience defending clients against alleged violations of the Securities and Exchange Act of 1934, the Securities Act of 1933, and state law fiduciary duties resulting from, among others, the recent financial crisis, changes in corporate control, allegedly misleading investor communications, stock and/or earnings manipulation, accounting irregularities, insider fraud and misappropriation, market timing, late trading, and stock options dating and granting processes.

Weil’s practice also has significant experience in class actions and derivative litigation in the context of mergers & acquisitions and other change-of-control transactions brought by shareholder and/or derivative plaintiffs seeking to block and/or recover damages for merger activity.

**Key Contacts for Securities Litigation:**

Joseph Allerhand and John Neuwirth

**Securities Selected Representations**

**Willis**

Weil has represented legacy Willis (pre-dating its 2016 “merger of equals” with Towers Watson) in connection with approximately 15 securities class and individual actions arising out of the heavily publicized, $8 billion Ponzi scheme orchestrated by R. Allen Stanford and his Houston-based Stanford Financial Group. The complaints in these actions, originally filed in various state and federal courts across the country and centralized in the U.S. District Court for the Northern District of Texas by the Judicial Panel on Multi-District Litigation, generally allege that Willis and other defendants aided Stanford’s fraud.

In August 2017, following motion practice, limited discovery, and appellate proceedings before the Fifth Circuit Court of Appeals and the U.S. Supreme Court, a Texas federal judge approved a settlement by Willis that favorably resolved the litigation. In 2019, the U.S. Court of Appeals for the Fifth Circuit affirmed the settlement.
Securities Selected Representations

**AIG**
Weil is lead counsel nationwide for AIG in shareholder class, derivative and ERISA actions arising out of AIG’s billions of dollars of subprime-related losses and its financial rescue by the U.S. government. Among our victories, Weil secured the widely noted dismissal of a shareholder derivative action alleging mismanagement by AIG directors and officers, and more recently obtained the dismissal of all derivative claims asserted in the lawsuit brought by Hank Greenberg’s company Starr International against the United States for more than $50 billion arising out of AIG’s bailout during the financial crisis.

In 2015, Weil negotiated a favorable settlement of the shareholder class action, and we subsequently have litigated a number of “opt-out” suits.

**Sanofi**
Weil represented Sanofi, the global pharmaceutical company, and its former CEO in a consolidated securities fraud class action brought by a putative class of investors in Sanofi American Depositary Shares. Plaintiffs principally alleged that Sanofi’s public disclosures were materially misleading because they failed to disclose that growth in Sanofi’s diabetes franchise was boosted by alleged illicit promotional activities. In January 2016, the U.S. District Court for the Southern District of New York granted the defendants’ motion to dismiss the complaint in its entirety.

Weil also represented Sanofi, its wholly-owned subsidiary Genzyme Corporation and certain of their senior executives in federal securities class and individual actions brought by holders of contingent value rights issued in connection with Sanofi’s 2011 acquisition of Genzyme, relating to the development of Genzyme’s multiple sclerosis drug, Lemtrada™. In a January 2015 Opinion and Order, the U.S. District Court for the Southern District of New York granted the defendants’ motions to dismiss the cases in their entirety and disposed of all federal claims with prejudice. Subsequently, in March 2016, the Second Circuit affirmed the dismissal in a landmark opinion that is the first by the Second Circuit to address the U.S. Supreme Court’s seminal Omnicare decision, which articulated the standard for securities fraud liability for allegedly misleading statements of opinion.

**Vivendi**
In one of the few securities fraud cases to be tried to judgment, Weil successfully defeated a second round of claims against Vivendi by class members, resulting in over $70 million of claims (with interest) being rejected in post-trial proceedings. These claims represent over half the dollar value of the total claims that were filed against Vivendi following a jury trial in 2010. Summary judgment was based on testimony and other evidence demonstrating that two leading investment advisors pursued a strategy that entailed valuing each of the company’s assets and gaining a thorough understanding of the company’s debt structure, and that they were aware of the allegedly concealed liquidity risks. The two decisions rejecting these claims – in August 2015 and April 2016 – are significant because, as the court noted, securities fraud class actions in which reliance on share price can be disproved “are as rare as hens’ teeth.”
Securities Selected Representations

**lululemon athletica**
Weil successfully represented lululemon in obtaining the dismissal of a shareholder class action in the U.S. District Court for the Southern District of New York arising out of disclosures related to alleged defects in lululemon's popular yoga pants. The Court of Appeals for the Second Circuit summarily affirmed in May 2015.

**Elizabeth Arden, Inc.**
On behalf of the former directors of Elizabeth Arden, Inc., Weil secured the dismissal with prejudice of all claims in a putative shareholder class action in Florida state court arising from Arden's acquisition by Revlon, Inc.

**Archstone-Smith/Tishman Speyer**
For many years, Weil has lead the representation of Archstone in connection with nationwide securities litigation and arbitrations arising from one of the largest REIT deals in history, the 2007 $22 billion acquisition of Archstone-Smith Trust by affiliates of Lehman Brothers and Tishman Speyer Development Corporation. The $4 billion class action was originally filed in 2007 by investors in the REIT, who claimed that the structure of the acquisition diluted their interests and cost them billions of dollars in tax liability and/or inferior securities.

After more than a decade of litigation, Weil won a complete victory in August 2017 in the U.S. District Court for the District of Colorado when the Court granted summary judgment on every count as to each of the more than 20 defendants, including Lehman Brothers, Tishman-Speyer, Equity Residential, the Archstone-Smith REIT and the indemnifying parties. Weil represented all of the defendants. As a result of this decision, the trial that had been scheduled for January 2018 has been vacated, and all counts against all defendants have been dismissed. In December 2018, the Tenth Circuit affirmed the summary judgment decision in a thorough opinion.