Complex Commercial Litigation

Weil's Complex Commercial Litigation practice marshals litigators around the U.S. and Europe who collectively possess comprehensive experience in successful high-stakes litigation on behalf of sophisticated clients around the world. Our priority is to assist our clients in obtaining the best results in litigation, managing risk, and capitalizing on strategic opportunities.

Weil's Complex Commercial Litigation practice comprises more than 130 attorneys in Boston, Dallas, Frankfurt, Houston, London, Miami, Munich, New York, Paris, Princeton, Silicon Valley, Warsaw, and Washington, DC. We have a reputation for defending, prosecuting, and coordinating some of the largest, most complex cases ever filed in courts, before arbitration panels, or in private mediations.

We have a long record of successfully resolving these proceedings on behalf of clients across industries, including retail and consumer products, energy, chemicals, media and entertainment, healthcare and life sciences, heavy manufacturing, insurance, technology, and financial services. Likewise, our experience covers a broad range of substantive areas of law, including fraud, bankruptcy, media and entertainment, trade secrets and restrictive covenants, unfair and deceptive trade practices, RICO, insurance and reinsurance, breach of contract, consumer protection, product liability, and antitrust, among many others.

The practice’s comprehensive offerings are supported by a number of foundational capabilities:

Trial Ready Approach
In today’s risk-averse legal environment, Weil differentiates itself from other firms by virtue of our trial resume and breadth of practice. Drawing on the robust experience of leading trial lawyers across all of our practices and offices, we possess the tools to take any matter to trial – and win. We always seek to find the most cost-effective, efficient and judicious solution from a business standpoint for our clients – but our clients and our adversaries always know we are prepared to advocate in the courtroom.

Class Action and Multi-District Litigation Experience
Weil has an excellent track record in defending complex, multi-plaintiff actions, including proceedings before the Judicial Panel on Multi-District Litigation (MDL) and under various state multi-district litigation statutes, as well as class and collective actions in state and federal courts around the United States. From multi-hundred-plaintiff MDLs regarding healthcare reimbursement rates and product defects to significant class actions asserting claims for treble damages under the antitrust laws and RICO statute, Weil’s commercial litigators have extensive experience litigating high-value claims, cases of first impression and other significant issues in these contexts for clients across the industry spectrum. In 2018, the New York Law Journal recognized the Firm as Class Action Litigation Department of the Year. Read more

View Weil’s Litigation Trends 2019 Report
Click here to read the May 2019 edition of Sidebar

In 2018, Weil was recognized as one of ten firms nationally that received an Honorable Mention in the General Litigation competition of The American Lawyer’s Litigation Department of the Year contest.

Weil is currently ranked as one of the Top 11 firms in New York for General Commercial Litigation: The Elite.

—Chambers USA 2019

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Selected Representations

**CBS**

For many years Weil has represented CBS in a number of complex disputes in state and federal courts around the country. Recently, Weil secured a favorable outcome for CBS in a dispute with an international cable conglomerate. CBS had entered into programming agreements with Cablevision and Suddenlink. Subsequently, Altice, a European company, acquired Suddenlink and then later separately acquired Cablevision. After the Cablevision acquisition, Altice tried to assign the Suddenlink Agreement to an Altice subsidiary, Neptune Holding US Corp. A few days later, Altice claimed that the Suddenlink Agreement now superseded the Cablevision Agreement and controlled CBS's rates for both the Cablevision and Suddenlink cable systems. CBS maintained that the assignment was invalid and that there was no language in either agreement that could terminate the Cablevision Agreement. Tens of millions of dollars were in dispute. In September 2016, CBS filed suit in the New York Commercial Division asking for a judgment declaring that the Cablevision Agreement controlled and asserting a claim for breach of the Cablevision Agreement. Almost immediately after CBS filed its suit, the defendants approached Weil, and all the parties settled their dispute amicably.

Earlier, in 2015 and 2016, Weil obtained victories for CBS and its affiliates that will redefine the contours of publicity and privacy law in the United States involving the use of student-athlete names, images, and likenesses in the media. In June 2015, Weil persuaded a Tennessee federal court to dismiss with prejudice a putative nationwide class action (Marshall) brought by NCAA Division I student-athletes alleging that CBS, other networks, college athletic conferences, and licensors, profited from the broadcast and use of student-athletes' names, images, and likenesses without permission, violating Tennessee's right of publicity statute and federal antitrust laws. In a landmark decision and judgment on the defendants' motions to dismiss, the court dismissed Plaintiffs' complaint in its entirety.

In August 2015, a California federal court granted Weil's motion for summary judgment on behalf of CBS Interactive Inc. (CBSI) in another landmark right of publicity case (Lightbourne) that dismissed all of plaintiff's claims. The plaintiff in this action alleged that CBSI had used student-athletes' names, images, and likenesses, without their consent, in connection with its provision of services to NCAA member institutions' sale of photographs of student-athletes through the schools' official athletic websites. The summary judgment ruling followed the court's July 30, 2015 denial of the plaintiff's motion for class certification, in which the court, among other things, rejected Plaintiff's attempt to apply California law to a nationwide class in this case, concluding that there were material differences in states' right of publicity laws, and that other states' interests in applying their own right of publicity laws outweighed California's. Weil also successfully obtained the dismissal of CBS from a multi-district antitrust class action consolidated in California federal court relating to the use of CBS's NFL broadcasts in the "Sunday Ticket" subscription package.

**Credit Suisse**

Weil represented Credit Suisse AG and certain of its affiliates in a series of real estate loan disputes in courts around the country, with billions of dollars at stake. We obtained a number of impressive outcomes. For example, in February 2017, Weil secured a major victory for our clients when the Tenth Circuit affirmed a Colorado federal court's dismissal in its entirety of a dispute arising out of the bankruptcy of the owners of a Montana resort, to which Credit Suisse had arranged a multi-hundred million dollar loan. Other highlights include securing a third consecutive victory for Credit Suisse in Idaho federal court in July 2016 that defeated all remaining claims in a $24 billion class action regarding loans made to developers of luxury resorts, which followed our successful defeat of class certification.

In another component case of this multi-faceted action, Weil recently secured an appellate victory on behalf of Credit Suisse AG before the Fifth Court of Appeals for the State of Texas. In this case, subsidiaries of hedge fund Highland Capital Management LP asserted claims for breach of a tolling agreement entered into with Credit Suisse that paused certain aspects of a dispute between the parties over Credit Suisse's marketing of real estate loans. On appeal to the Fifth Court of Appeals, Highland argued, among other things, that the trial court erred in applying the res judicata doctrine, as advocated by Credit Suisse. Following oral arguments, the appellate court affirmed the lower court judgment.

Weil is currently ranked as one of 10 top-ranked firms nationwide for General Commercial Disputes by Legal 500.

—Legal 500 US 2019

Weil is currently recognized as a top-ranked Tier 1 firm for General Commercial Litigation.

—Benchmark Litigation 2019

Clients note “There’s nothing they cannot do... They give you expertise from creative angles and create strong arguments.”

—Chambers USA 2016

Weil is currently ranked as a “Tier 1” Firm for Commercial Litigation nationally, as well as in Dallas, DC, Miami, New Jersey, and New York

Sources call our Complex Commercial Litigation practice the “go-to for bet-the-company cases” and note that “they partner with the client and are fully engaged in both strategy planning and providing practical solutions. They have some of the most creative ideas and approaches to each individual litigation matter.”

—Chambers USA 2016, 2018

Weil’s “fearless, smart, savvy, and experienced” Litigation department has “a very deep bench in which all lawyers are meticulous, smart, careful, practical, energetic and tenacious.”

—Legal 500 US 2015 - 2019
Selected Representations

Discovery Communications

In August 2016, Weil secured a complete bench trial victory for Discovery Communications and Animal Planet (together, Discovery) following a multi-week bench trial in Maryland federal court that took place in November 2015. Plaintiff Sky Angel U.S. LLC – a former satellite distributor – had alleged that Discovery breached the parties’ Affiliation Agreement when it terminated the Agreement in 2010 after becoming aware that Sky Angel was utilizing the public Internet to distribute Discovery’s programming. Sky Angel sought tens of millions of dollars in damages, and had initially sought specific performance of the Agreement as well. Weil took over the case from another major law firm after an adverse ruling on a motion to dismiss. Weil quickly developed and pressed several arguments as to why, in light of Sky Angel’s improper distribution methodology, Discovery’s termination was authorized under the Agreement, objectively and subjectively reasonable under governing Maryland law, and thus entirely lawful. In March 2018, following oral argument, the U.S. Court of Appeals for the Fourth Circuit affirmed the trial court’s ruling.

Weil also represented Discovery Communications in a lawsuit filed in California federal court asserting breach of contract, copyright, and trademark infringement. Plaintiff, LMNO Cable Group, produced multiple television series for Discovery, including The Little Couple, Unusual Suspects, and 7 Little Johnstons. Discovery terminated the parties’ ten-year relationship in June 2016, after learning that LMNO had systematically defrauded Discovery by creating false, overinflated budgets, resulting in millions of dollars in overpayments by Discovery. As a result, Discovery claimed it had the sole right to continue producing additional episodes of The Little Couple and Unusual Suspects. LMNO, asserting that it had been the victim of fraud and embezzlement by its own accountant, sued Discovery, claiming breach of contract as well as copyright and trademark infringement. LMNO amended its Complaint to add additional copyright and trademark claims as well as to bring certain of these copyright claims against both Discovery and certain named cable and satellite distributors. Weil has recently negotiated a favorable settlement.

ESPN

Weil successfully represented ESPN, ABC Cable Networks and others obtaining a complete defense jury verdict at trial on a $130 million claim brought by DISH Network and then successfully defending that same win on appeal also achieving a unanimous appellate win.

Weil again represented ESPN successfully in a second and different matter obtaining a near-complete defense jury verdict following trial of more than $150 million in claims brought by DISH Network challenging certain provisions of distribution agreements ESPN had negotiated with DISH and several of DISH’s competitors.

ExxonMobil

Weil serves as lead trial counsel for ExxonMobil in a number of disputes in state and federal courts relating to the use of MTBE as an additive in gasoline. The actions have been brought by various States, including New Hampshire, Vermont and New Jersey, seeking to recover for alleged groundwater contamination at sites throughout those states. Most recently, we won a significant victory before the Vermont Supreme Court on an interlocutory appeal by the State of Vermont in a case it commenced in 2014, approximately seven years after the State prohibited the use of MTBE in gasoline. In the lower court, Weil secured a partial victory in January 2015 on a motion to dismiss based on Vermont’s six-year statute of limitations for civil litigation, and the Vermont Supreme Court affirmed in May 2016.
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.

Weil also served as lead counsel for 21st Century Casualty Company and Farmers Insurance affiliates in two False Claims Act suits in the Western District of New York relating to Medicare coverage. Weil won the dismissal of each case in 2016, and then secured affirmation by the Second Circuit in each case in early 2017.

Forbes Media LLC

Weil successfully represented Forbes Media in a $9 million international arbitration with Ukraine-based United Media Holding concerning trademark licensing rights to the Forbes trademark in Ukraine, in which the Ukraine-based Claimants – who were placed on the U.S. sanctions list during the course of the dispute – disputed the termination of the license agreement and sought significant damages. Weil secured a complete victory after a full hearing was conducted in February and March 2016. Forbes was not required to pay damages in any amount, and the final award declared the license terminated as of March 2014, thereby saving Forbes significant reputational harm from doing business with a sanctioned party. On August 9, 2017, the S.D.N.Y. sided with our client on all counts and denied UMH and Trilado's petition to vacate the Award, allowing Forbes to engage a reputable licensee to continue operation of Forbes Ukraine, and avoid the significant reputational harm from doing business with a sanctioned party.

Nuance Communications

Weil recently secured two victories for Nuance Communications.

In March 2016, Weil won a $6.5 million arbitration victory for Nuance arising out of SunGard Availability Services LP's breach of its agreement to pay minimum annual revenue commitments for Nuance's Profiles notification service. SunGard counterclaimed, alleging that its breach was justified due to Nuance's poor performance, delays in product development and resulting loss of SunGard customers. Weil thwarted SunGard's counterclaim, demonstrating to the Arbitrator that Nuance had no obligation to upgrade its service, that SunGard had no support for its poor performance allegations, and that SunGard had no basis for claiming that its alleged lost customers left for any reason related to Nuance. After five hearing days and post-hearing briefing, Weil obtained a complete victory as the Arbitrator held that SunGard breached its contract with Nuance and ordered SunGard to pay the remaining balances on their minimum annual revenue commitments.

Weil also represented Nuance in a dispute arising out of its acquisition of a start-up medical communications company, Vocada Inc. As part of the sale, Nuance agreed to pay Vocada's shareholders an earnout based on the performance of Vocada's products over a three-year time frame. After earnout thresholds were not met, Vocada's former shareholders filed an arbitration demand, which ultimately ended in the panel finding that the shareholders were not entitled to any damages. Subsequently, Vocada filed another complaint making the same underlying claims in Texas state court, this time under the Texas Security Act. Weil removed the case to federal court and won its motion to dismiss the case on grounds of res judicata. Vocada appealed this decision to the Fifth Circuit, which, following oral arguments, ruled in favor of Nuance in August 2015.
**Selected Representations**

**Panasonic Corporation**

For almost a decade, Weil has represented Panasonic in connection with numerous governmental investigations and a related multi-district litigation comprising dozens of class and individual actions pertaining to alleged industry-wide price fixing in the market for cathode-ray tubes (CRTs) and finished products containing CRTs (e.g., CRT televisions and computer monitors) between 1995 and 2007. Of late, Weil has secured a number of very favorable outcomes for Panasonic, including a favorable settlement with the direct purchaser class, and then a settlement with certain classes of indirect purchasers by which Panasonic will pay far less than other defendants in the case. Weil continues to defend Panasonic, in both the federal multidistrict litigation and several state actions, against remaining claims by indirect purchasers, several large independent-action plaintiffs (e.g., Best Buy, Costco and Target), and several state attorneys general.

**Port Authority of New York and New Jersey**

Weil represented the Port Authority of New York and New Jersey in a high-profile appeal to the Court of Appeals of the State of New York that led to the reversal of an intermediate appellate court's decision finding the Port Authority liable for damages caused by the 1993 terrorist attack at New York's World Trade Center. Weil also secured another victory for the Port Authority in its six year, multi-forum litigation battle with Maher Terminals, in which Maher, the Port's largest marine terminal operator, alleged hundreds of millions of dollars in damages caused by its lease, which it claims is unfair and discriminatory. In July 2014, the District of New Jersey federal court dismissed in its entirety Maher's complaint, which had alleged that the fees and charges Maher pays pursuant to its lease violate the Tonnage Clause of the U.S. Constitution, as well as the Rivers and Harbors Appropriation Act of 1884 and the Water Resources Development Act.

**Procter & Gamble**

Weil successfully represented Procter & Gamble (P&G) as lead counsel in a high-profile MDL in U.S. District Court for the Southern District of Florida in which plaintiffs alleged that they were injured through their use of the popular denture cream, Fixodent. Specifically, plaintiffs alleged that zinc contained in the denture creams manufactured by P&G and others caused neurological problems. Plaintiffs filed numerous Florida state law claims, including strict product liability, negligence, intentional misrepresentation, breach of express warranty, implied warranty, and violation of Florida's Deceptive and Unfair Trade Practices Act. In 2014, Weil won a significant victory before the U.S. Court of Appeals for the Eleventh Circuit that affirmed the trial court's Daubert and summary judgment orders in the lead case, which excluded plaintiffs' expert testimony and reslutantly found that plaintiffs could not sustain their burden of proof. While the Chapman case was on appeal, the remaining plaintiffs in MDL 2051 were granted an opportunity to proffer new experts and any new science in support of their causation theory. P&G again challenged plaintiffs' new experts and purported new science through the submission of additional Daubert motions seeking to exclude those general causation experts. In January 2015, the trial court granted P&G's motion to exclude all of the plaintiffs' general causation experts, a decision that led to the dismissal with prejudice of 62 plaintiffs in April 2015; in June 2016, the Eleventh Circuit affirmed.

**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. Plaintiff 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.

Weil also successfully represented SNI in its high-profile, $10+ million dollar carriage dispute with Charter Communications relating to Charter’s acquisition of Time Warner Cable, which resulted in a favorable settlement in May 2017.

Univision

In July 2016, on behalf of Univision, the largest Spanish language channel in the world, Weil commenced litigation against Charter Communications and Time Warner Cable relating to the carriage rates owed to Univision following the $65 billion Charter/TWC merger in 2016. Univision asserts that Charter has attempted to utilize the acquisition as grounds to impose below-market fees for Univision content. The parties resolved the dispute in November 2017 after filing motions for summary judgment in late May 2017.

Walgreens Boots Alliance

Weil currently represents Walgreens Boots Alliance, Inc., operator of the nationwide drugstore chain, in several high-profile consumer class actions filed against it and Theranos, Inc. The complaints allege that Theranos’ finger-stick blood tests, which used its proprietary “Edison” blood-testing device, were inaccurate, placing tens of thousands of customers at risk for incorrect medical diagnosis and/or testing. Walgreens and Theranos moved to dismiss Plaintiffs’ complaint. On June 13, 2017, U.S. District Judge H. Russel Holland dismissed the majority of plaintiffs’ claims, allowing plaintiffs to amend some, but not all, of the claims. Among the claims dismissed with prejudice were claims all claims asserting that Walgreens is jointly and severally liable with Theranos. Plaintiffs sought reconsideration of this ruling, which the court denied. Subsequently, Weil secured a settlement for Walgreens from Theranos, including an agreement that Theranos would indemnify Walgreens for all liability relating to its blood tests technology.