Weil

2012/13 Litigation Wins Report

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 more than eight decades, we have partnered with our clients not only to address immediate concerns but also 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:

- Litigation
- Business Finance & Restructuring
- Corporate
- Tax, Benefits & Executive Compensation

Cover: A montage of some of the courthouses around the world where Weil has litigated on behalf of our clients, from Paris to New York, San Francisco to London, and Dallas to Washington, DC

Classic and Cutting-Edge

As we reach the milestone of our tenth annual *Litigation Wins Report*, we celebrate not only eight decades of excellence as a firm but also two decades of rapid growth beyond New York and other US cities into Silicon Valley, Europe, and now Asia and the Middle East. This year's client victories demonstrate the classic, time-tested strengths we bring to commercial, intellectual property, securities, banking, insurance, restructuring, antitrust, and a host of other US litigation areas in which we handle the most challenging matters. They also highlight our extensive experience litigating for clients whose innovative technologies or complex, far-reaching international transactions and disputes require unique perspectives. In short, our clients' wins in 2012 amply demonstrate both our deep experience in long-indispensable fields and our growth in new legal and geographic arenas. Behind each success is a unified Firm, whose global resources are marshaled wherever and whenever our clients need them.

Classic, too, are the methods we use to litigate our clients' matters. As we adapt to changed environments, new issues, and ever more varied jurisdictions, the core of our approach to litigation – and our formula for success – holds steady. We marry deep litigation experience with legal innovation and versatility while listening closely to our clients and understanding their business objectives. Our attorneys strive to craft a legal strategy that furthers our clients' fundamental business goals. At every stage, we look for the most efficient ways of prevailing in, or resolving, disputes. Our clients have recognized our thoroughness and energy, noting in the press that Weil is "the epitome of the 'bet the farm' litigation firm" (*The Legal 500*) that offers "zealous advocates with real trial experience and good judgment" (*Benchmark Litigation*).

We delivered successful outcomes to clients from CBS, with a sweeping victory against shareholders who claimed it improperly delayed taking a $14 billion goodwill impairment, to Seacor Holdings, for which we won dismissal of all claims relating to its emergency response to the incident aboard the Deepwater Horizon offshore rig. In a $152 million-plus contract dispute, Weil litigators prevailed on virtually all the claims brought against ESPN by a satellite-TV operator, and limited the jury's award to a small fraction of the amount sought. Certain matters involved new technologies: we secured two major victories for General Electric in a battle over wind-turbine patents and defeated lawsuits challenging StubHub's Internet resale platform.

In 2012 we won many accolades across an array of fields, but recognition of our role in innovation – helping to create more competitive markets in digital media – was a highlight.

In the international arena we helped Sir David and Sir Frederick Barclay retain control of a group of elite London hotels; worked to secure compensation for assets of The Williams Companies after Venezuela nationalized gas compression facilities; and persuaded the US Government to suspend Argentina's eligibility to participate in a developing country trade preference program after that nation failed to pay arbitration awards, including one held by our client Blue Ridge Investments, a subsidiary of Bank of America.

Among the wins were many class actions, a significant number of international cases, and the complex restructurings for which we have also won recognition over the years. 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 2012, our collective efforts again led to impressive results. These matters included using creative methods to win asylum for a persecuted Salvadoran; reversing improper termination of a housing subsidy for a disabled, chronically homeless senior citizen; and obtaining an earlier release for a young woman whose guilty plea was tainted by a state forensics scandal. Over the decade that we have been publishing this report, our attorneys have collectively performed more than 800,000 hours of pro bono work and had a profound effect on many thousands of lives.

This tenth annual report shows the breadth and complexity of the legal issues we handled for our clients and the victories we take pride in. We are grateful for the broad array of accolades we receive from the legal and business media. Still, the most meaningful recognition comes from our clients, who entrust us year after year with their most difficult, sensitive, and significant matters. Whether their challenge is classic or cutting-edge, we look forward to partnering with them over the next decade and beyond.

James W. Quinn
Global Co-Chair,
Litigation Department

David J. Lender
Global Co-Chair,
Litigation Department

Winning for Our Clients

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Ranked Tier 1 in "Litigation-Patent" in the US
U.S. News – Best Lawyers "Best Law Firms" Survey, 2013

General Electric

Client: General Electric Co.
Dates: March 8, 2012; July 5, 2012
Case & Venue: General Electric Co. v. Mitsubishi Heavy Industries, Ltd., et al., No. 3:10-cv-00276 (N.D. Tex.); Mitsubishi Heavy Industries, Ltd. v. General Electric Co., No. 6:10-cv-812 (M.D. Fla.)
Practice Groups: Complex Commercial Litigation, Patent Litigation
Weil Team: Partners David Lender in New York, Jason Kipnis in Silicon Valley, and T. Ray Guy in Dallas, and associates Carmen Bremer in Dallas and Anish Desai in Washington, DC

In a series of wind-turbine patent litigation matters between General Electric Co. and Mitsubishi Heavy Industries, Ltd., Weil won favorable rulings for General Electric in two that came before US district courts: a lawsuit filed by GE in Dallas, where Weil secured a $170 million jury verdict for GE, and a lawsuit brought in Orlando by Mitsubishi, which was dismissed on summary judgment.

In the first matter, on March 8, 2012 a federal jury awarded GE $170 million in lost profits and reasonable-royalty damages after finding that Mitsubishi Heavy Industries had infringed one of GE's wind-turbine technology patents. The case was tried in the US District Court for the Northern District of Texas, and Paul, Weiss, Rifkind, Wharton & Garrison LLP acted as co-counsel for GE.

GE had 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 after eight days of trial and one day of deliberation.

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

In the second matter, the US District Court for the Middle District of Florida granted GE's motion for summary judgment of noninfringement on July 5, 2012, and dismissed the case in December 2012. The lawsuit, alleging infringement of a Mitsubishi patent relating to blade pitch control in wind turbines, was filed in May 2010 by Mitsubishi Heavy Industries.

The Florida court determined that there was no issue of fact regarding the operation of GE's system. The court adopted GE's claim construction arguments in full and found that our client did not infringe Mitsubishi's patent. Mitsubishi sought more than $50 million in damages.

Recognized in Law360's monthly "How They Won It" feature for our trial victory on behalf of ESPN: "Weil Curbs Dish Win in ESPN Licensing Row"
Law360, March 25, 2013

ESPN

Client: ESPN, Inc.
Date: February 28, 2013
Case & Venue: Dish Network L.L.C. v. ESPN, Inc., et al., No. 09-cv-06875 (S.D.N.Y.)
Practice Group: Complex Commercial Litigation
Weil Team: Partners Diane Sullivan in Princeton and David Yohai in New York, and associates David Yolkut, John Gerba, Jennifer Oliver, Amanda Vrecenak, and David Singh in New York, Emily O'Hern in Houston, and Adam Tolin in Princeton. Partners James Quinn and Theodore Tsekerides assisted in the pretrial work.

Weil litigators achieved a significant victory on behalf of our client ESPN, Inc. in a lawsuit involving the terms of distribution agreements the sports programming provider had negotiated with satellite-TV operator Dish Network L.L.C. and its competitors. A jury in the US District for the Southern District of New York returned a verdict rejecting all but one of the breach-of-contract claims Dish had asserted in its complaint and the vast majority of the monetary damages it had requested. ESPN completely prevailed on Dish's largest claim of more than $130 million. Indeed, in total Dish had claimed damages of more than $152 million, but was awarded a small fraction of that amount, $4.86 million.

Filed in 2009, the suit claimed that, among other things, ESPN had violated a most-favored-nation (MFN) provision of its 2005 licensing agreement with Dish that required ESPN to offer the satellite-TV operator the same licensing rates and program packaging opportunities offered to competitors. Dish claimed that ESPN had instead offered competitors better terms for the ESPN Classic channel, which telecasts older sports events, and the Spanish-language ESPN Deportes channel and had offered other operators the opportunity to distribute channels on an "a la carte" basis, an arrangement that Dish claimed it had not been offered. Dish later amended its complaint to include, among other things, an allegation that ESPN violated a separate provision of the parties' contract by allowing Time Warner Cable to distribute the ESPN Network over the Internet via the popular "WatchESPN" app without charging a separate fee.

After a three-week jury trial in the Southern District of New York, Weil litigators prevailed on virtually every claim brought by Dish. The jury rejected Dish's largest claims, including the one for $130 million where Dish alleged that ESPN owed Dish an MFN offer with respect to the ESPN Classic channel based on ESPN's 2006 deal with Comcast; found in ESPN's favor with respect to Internet streaming rights; and rejected Dish's claims that ESPN violated the MFN by providing other distributors "a la carte" offerings.

As to one smaller claim, concerning the ESPN Deportes channel, the jury awarded Dish a mere $4.86 million, a fraction of the total amount sought. Weil had previously won a related jury trial and counterclaim in New York State Court for ESPN and other affiliates of The Walt Disney Company totaling more than a hundred million dollars, which Dish has now paid to ESPN and Disney, the majority owner of ESPN.

Named a "Leading Firm" for Dispute Resolution: Litigation in the UK
Chambers UK, 2013

Sir David and Sir Frederick Barclay

Clients: Sir David and Sir Frederick Barclay, et al.
Date: August 10, 2012
Case & Venue: McKillen v. Sir David and Sir Frederick Barclay and others, No. [2012] EWHC 2343 (Ch) (England, High Court of Justice, Chancery Division)
Practice Groups: Complex Commercial Litigation, Private Equity, Banking & Finance
Weil Team: Partners Matthew Shankland, Jamie Maples, Marco Compagnoni, and James Hogben and associates Hannah Field-Lowes, Victoria Burton, and James Harvey in London

In one of the most significant and complex cases in the English High Court last year, Weil successfully represented Sir David Barclay and Sir Frederick Barclay and their associated companies against allegations of conspiracy, breaches of director duties, de facto and shadow director issues, various breaches of a shareholders' agreement and articles of association, and an unfair prejudice petition. The Weil team secured this hard-fought victory against Irish property developer Patrick McKillen. The case concerned assets worth in the region of £1 billion and related to the control of the Maybourne Hotels Group, which owns three iconic London hotels: Claridges, the Berkeley, and the Connaught. The case was heard on an expedited basis, and what normally would have taken around two years of trial preparation had to be prepared in less than six months. The trial lasted for 30 full days, and prior to it there were multiple days of hearings dealing with preliminary applications (two of which went to the Court of Appeal), interim applications, and a lengthy pretrial review.

The High Court judgment, handed down on August 10, 2012, dismissed all of the McKillen claims as being without basis in fact or law, giving the Barclays a comprehensive victory. Sir David and Sir Frederick Barclay are long-standing clients of the Firm. Senior private equity partner Marco Compagnoni, who has worked with the Barclays throughout the past 20 years on a wide range of deals and other high-profile matters, acted for Sir David and Sir Frederick and their associated companies on all the transactions that formed the basis of Patrick McKillen's unsuccessful litigation. Matthew Shankland led the Weil team that secured the High Court ruling and the two Court of Appeal decisions in favor of the Barclays on key preliminary issues in the case.

A number of legal issues arose in this case, resulting in judgments that are now the leading authorities on issues such as preemption rights, the obligations of directors, open justice when dealing with commercially sensitive issues, and a variety of litigation procedural matters.

Sanofi

Client: Sanofi-Aventis U.S. LLC
Date: September 18, 2012
Case & Venue: Sanofi-Aventis U.S. LLC, et al. v. Sandoz, Inc., No. 07-cv-2762 (D.N.J.); No. 2012-1028 (Fed. Cir.)
Practice Group: Complex Commercial Litigation
Weil Team: Partners John P. Mastando III and Eric Hochstadt and associates David Singh and Eric Wolfish in New York

Weil, along with patent co-counsel Fitzpatrick Cella Harper & Scinto, secured a major victory for Sanofi, a leading global branded pharmaceutical company, in a contractual dispute with Sun Pharmaceutical Industries, a generic drug company. The dispute arose out of a settlement in a Hatch-Waxman patent infringement litigation involving Eloxatin®, Sanofi's branded colorectal cancer drug treatment product with annual sales in excess of $1 billion. In a ruling issued on September 15, 2011, the US District Court for the District of New Jersey agreed with Sanofi's interpretation of the parties' settlement agreement and held that Sun was enjoined from selling its generic version of Eloxatin® until August 2012.

The licensing dispute grew out of a patent infringement suit Sanofi brought against Sun and several other generic drug manufacturers in 2007 for infringing certain patents for Eloxatin®. Following a noninfringement ruling (that was reversed on appeal), certain defendants including Sun launched their generic versions of Eloxatin® "at risk" before a final decision in their favor. Sanofi subsequently reached settlements with each of the defendants that had launched "at risk," and these settlements contained injunctions in consent judgments agreed to by those defendants. In them, each defendant agreed that it would not sell generic Eloxatin® until August 2012 but that it could sell "at risk" if one of the other defendants launched "at risk" before that date.

Because every other defendant was enjoined from selling generic Eloxatin®, Sanofi asserted that Sun must cease selling its product. Sun disagreed and argued that the settlement only required it to stop selling following a "decision(s) enjoining" those other generic manufacturers, which Sun claimed meant an injunction ordered by a court following a "decision on the merits," not as part of a settlement.

The District of New Jersey agreed with Sanofi's interpretation in April 2010. Sun appealed, and the US Court of Appeals for the Federal Circuit concluded that the disputed provision was ambiguous and remanded the matter in December 2010. Following expedited discovery, an evidentiary hearing with testimony by four witnesses, and pre- and posttrial briefing, the district court ruled in September 2011 that Sanofi's interpretation of the agreement – that "'decision enjoining(s)' means a judicial act, including entry of a consent judgment" – was the correct one. The court concluded that Sun's position was "something of a moving target," which was "contradicted by a plain, logical reading of the sentences as well as the negotiation history and purposes of the agreement," which establish that the term "'decision(s) enjoining' was intended to be interpreted broadly and 'is not limited to decisions on the merits.'"

This ruling permitted Sanofi to sell Eloxatin® exclusively until August 9, 2012, and thereby preserved Sanofi's settlements with each of the defendants, including Sun. The Federal Circuit dismissed Sun's appeal of the 2011 ruling as moot on September 18, 2012.

American Airlines

Client: American Airlines, Inc.
Date: December 28, 2012
Case & Venue: American Airlines, Inc. v. Sabre, Inc., et al., No. 067-249214-10 (Tex. Dist. Ct., Tarrant County); American Airlines, Inc. v. Travelport Ltd., et al., No. 11-0244 (N.D. Tex.)
Practice Group: Complex Commercial Litigation
Weil Team: Partners Richard Rothman, Robert Berezin, and Eric Hochstadt in New York, Yolanda Garcia, Michelle Hartmann, Vance Beagles, and Angela Zambrano in Dallas, Ralph Miller in Washington, DC, and Christopher Pace in Miami; associates Jennifer Oliver, Melissa Colon-Bosolet, Jennifer Larson, and Nadya Salcedo in New York, Robert Velevis, Margaret Allen, Daniel Klein, Sandra Fusco, Sarah Decker, Paul DeRousselle, Victoria Neave, and David Sillers in Dallas, Allison Brown in Princeton, Scott Dayton in Houston, and Marc Weinroth in Miami

Weil secured an outstanding outcome for longtime client American Airlines, Inc. in connection with an important antitrust suit brought by American against Sabre Holdings, Inc. Sabre is a global distribution system (GDS) used by thousands of travel agencies to obtain flight, fare, and other travel information for business travelers in the US and around the world.

The dispute with Sabre arose after American developed technology (called AA Direct Connect) that provided American with a competitive alternative to access travel agencies and the business travelers they serve. American alleged that Sabre, acting in concert with others, conspired to block AA Direct Connect to preserve Sabre's monopoly control over access to a critical segment of airline customers. American filed antitrust claims under Sections 1 and 2 of the Sherman Act in the US District Court for the Northern District of Texas, and brought parallel antitrust and other claims arising under state law in Texas state court. The Weil team then accelerated the state court case, and after nine days of trial, we were able to obtain a very favorable settlement for American. YetterColeman LLP, Harris, Finley & Bogle P.C., and Paul Hastings LLP were co-counsel on the case.

“In this important, high-stakes litigation, the Weil team exercised consistently sound strategic judgment and demonstrated a deep understanding of federal securities laws to develop winning arguments and achieve a great result for CBS. This is but the latest high-profile litigation victory Weil has achieved for CBS Corporation. I would not hesitate to recommend Weil for the most critical complex litigation involving any Fortune 500 company.”

Anthony M. Bongiorno

Senior Vice President & Associate General Counsel, Litigation
CBS Corporation

CBS

Client: CBS Corp.
Date: May 10, 2012
Case & Venue: City of Omaha, Nebraska Civilian Employees' Retirement System, et al. v. CBS Corp., et al., No. 1:08-cv-10816 (S.D.N.Y.); No. 11–2575–cv (2nd Cir.)
Practice Groups: Complex Commercial Litigation, Securities Litigation
Weil Team: Partners James Quinn, Greg Danilow, Yehudah Buchweitz, and Gregory Silbert and associate Kimberly Rosensteel in New York

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In another victory for CBS Corp. and certain current and former executives, Weil obtained a significant decision from the US Court of Appeals for the Second Circuit that affirmed the 2011 district court dismissal of a federal securities fraud class action against our clients. In its May 10, 2012 opinion, the Second Circuit affirmed "for substantially the reasons stated in the district court's thoughtful and thorough opinions" and expanded the application of the circuit court's 2011 decision in another case, *Fait v. Regions Fin. Corp.*, to encompass claims concerning statements about goodwill brought under the Securities Exchange Act of 1934.

The Second Circuit's decision marks the third ruling in favor of CBS, CEO Leslie Moonves, Chairman Sumner Redstone, and two former CBS officers in this case, which was originally brought in 2008 by the City of Omaha and two retirement plans purportedly on behalf of a class of CBS shareholders. The complaint alleged that CBS delayed taking a $14 billion impairment charge in order to keep its stock price artificially inflated so as not to trigger certain alleged undisclosed loan covenants.

In March 2010, the US District Court for the Southern District of New York dismissed the plaintiffs' claims, holding that they failed both to plead scienter with sufficient particularity as required by the Private Securities Litigation Reform Act (PSLRA) and to allege anything that would have required CBS to take an impairment earlier than it did under the relevant accounting rules. After granting the plaintiffs leave to amend their complaint, the district court found in May 2011 that the plaintiffs' amended complaint suffered from the same core weaknesses as the original. Granting the defendants' motion to dismiss, the court noted that the plaintiffs "failed to cite a point, factually or temporally, when the defendants' actions added up to something more than an exercise of real-time accounting judgment."

In affirming the dismissal of the plaintiffs' second amended complaint, the Second Circuit held that "the asserted basis for plaintiffs' securities fraud claims is quite limited[]" and "fails plausibly to allege any false or misleading statements or omissions by defendants."

Reinforcing its conclusions, the Second Circuit held that its ruling in *Fait v. Regions Fin. Corp.*, which had not yet been decided at the time of the district court's decision, should also apply to the plaintiffs' claims under Sections 10(b) and 20(a) of the Securities Act of 1934. In *Fait*, the Second Circuit concluded that claims concerning goodwill brought under Sections 11 and 12 of the Securities Act of 1933 must "plausibly allege that defendants did not believe their statements regarding goodwill at the time they made them…" The Second Circuit held that this same reasoning applied under Sections 10(b) and 20(a) of the Securities Act of 1934 because "these claims all share a material misstatement or omission element." The court held that the plaintiffs' allegations about CBS's decreasing market capitalization, declining ad revenues, and diminishing analyst expectations, among others, offered only "conclusory statements, not factual allegations" that the defendants knew or should have known that interim impairment testing would reveal overvaluation of goodwill. Even if they could plausibly plead such a scenario, the court concluded, the plaintiffs did not properly allege that the defendants did not believe their statements of opinion regarding CBS's goodwill at the time they made them.

Finally, the court held that the plaintiffs' two primary indicia as to why CBS should have known it needed to test for an impairment to goodwill earlier – a widening gap between CBS's book value and market capitalization and CBS's declining advertising revenues – "were matters of public knowledge." Accordingly, the court held that the plaintiffs failed to sufficiently allege reliance on a fraudulently inflated stock price, since all of the information that the plaintiffs cited as evidence of a need for interim impairment testing was publicly available and therefore already reflected in CBS's stock price.

"On June 13, DMX and its own big-gun litigator, Weil, Gotshal & Manges… persuaded the U.S. Court of Appeals for the Second Circuit to affirm the lower court decisions in the consolidated appeal," a ruling that "could serve as a signal to other users of copyrighted works, like television and radio broadcasters, that they might secure lower licensing rates through direct dealings with rights holders."

New York Law Journal
Law360

DMX

Client: DMX, Inc.
Date: June 13, 2012
Case & Venue: Broadcast Music, Inc. v. DMX, Inc., No. 10-3429, and American Society of Composers, Authors and Publishers v. THP Capstar Acquisition Corp., No. 11-127 (2nd Cir.)
Practice Groups: Complex Commercial Litigation, Intellectual Property/Media
Weil Team: Partners R. Bruce Rich, Benjamin Marks, and Gregory Silbert and associates Todd Larson, Jacob Ebin, and Vanessa Chandis in New York

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In a unanimous decision, the US Court of Appeals for the Second Circuit affirmed a pair of trial victories that Weil secured on behalf of DMX, Inc. (formerly known as THP Capstar Acquisition Corp.) against the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI). ASCAP and BMI are subject to antitrust consent decrees with the US Department of Justice that enable users to seek a determination of reasonable license fees in "rate court" proceedings in the District Court for the Southern District of New York in the event of a negotiating impasse. The rate court decisions affirmed by the Second Circuit dramatically reduced music performing rights fees paid by DMX in connection with the background and foreground music service that it offers to retailers, restaurants, and other businesses. The decisions also established a new fee structure to promote competitive market alternatives to licensing through performing rights organizations (PROs) such as ASCAP and BMI.

In 2006, frustrated with the high rates charged by ASCAP and BMI, DMX began a campaign to license music performance rights directly from the copyright owners affiliated with those organizations at much lower prices. At the same time, DMX requested blanket licenses from ASCAP and BMI with a fee structure that would reflect a credit for performances licensed directly from their respective affiliates. DMX was unable to reach agreement with either ASCAP or BMI on reasonable rates for such a license, or, in the case of ASCAP, whether ASCAP had to offer this type of license to DMX. The rate cases were tried in 2010. Each PRO asserted that its agreements with DMX's competitors provided the appropriate benchmark for determining a reasonable rate for DMX. For its part, DMX contended that fees should be determined on the basis of the hundreds of direct licenses it had secured. ASCAP and BMI each sought performance royalties of more than $41 per location. The district court judges rejected these proposals and instead set fees within the

Placed Sixth Overall and was named among the "Lawyers to the Innovators" for providing counsel on a series of digital-media IP cases
Financial Times, US Innovative Lawyers Report, 2012

much lower range proposed by DMX: $18.91 per location for BMI and $13.74 per location for ASCAP. Both judges awarded the adjustable-fee structure requested by DMX , and so, reflecting the success of its direct license initiative, actual payments to those PROs are only a fraction of those already lower rates.

The appeals were argued in tandem in 2011, and the Second Circuit affirmed the district court decisions in a single opinion rendered on June 13, 2012. The appellate court rejected the rates paid by DMX's competitors as the appropriate benchmark: "The ability of the users of music rights to avail themselves of a reasonable rate through the rate court mechanism when ASCAP and BMI's market power might otherwise subject them to unreasonably high fees would have little meaning if that court were obliged to set a 'reasonable' fee solely or even primarily on the basis of the fees a PRO had successfully obtained from other users." The appellate court also affirmed the district court's reliance on the direct license transactions as an appropriate benchmark for setting PRO license fees and the adjustments made to that benchmark.

This landmark decision has the potential to change the way music performance rights are licensed by a broad array of users. Other user groups, such as local broadcast television stations, are seeking similarly structured adjustable-fee blanket licenses that will provide fee credits to reflect their own emerging direct licensing activity.

For his role as lead counsel in this case, R. Bruce Rich was selected as Am Law "Litigator of the Week" for the week ending June 15, 2012.

Williams

Client: The Williams Companies, Inc.
Date: March 22, 2012
Case & Venue: The Williams Companies, International Holdings B.V., WilPro Energy Services (El Furrial) Limited and WilPro Energy Services (Pigap II) Limited v. Bolivarian Republic of Venezuela, ICSID Case No. ARB/11/10
Practice Group: International Arbitration & Trade
Weil Team: Partners Eric Ordway in New York, Chip Roh in Washington, DC, Vance Beagles in Dallas, and Juliet Blanch in London, and associate Patricia Saiz in Washington, DC

Weil represented The Williams Companies, Inc. and its affiliates International Holdings B.V., Wilpro Energy Services (El Furrial), and Wilpro Energy Services (PIGAP) in initiating an arbitration at the International Centre for Settlement of Investment Disputes (ICSID) seeking compensation for their assets. In March 2012, the case resulted in a settlement in which Venezuela agreed to pay the claimants $420 million.

This case involved a major nationalization that occurred on May 8, 2009, when Venezuela, purporting to exercise its rights under a retroactively enacted law reserving all gas compression facilities to the state, sent in the National Guard to assume control and ownership of the facilities. The 2009 nationalizations were part of a broader wave of state takeovers that targeted the assets of more than 70 smaller oilfield service companies, the majority of them Venezuelan.

Seacor Holdings

Client: Seacor Holdings Inc.
Date: December 13, 2012
Case & Venue: In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, No. 10-md-2179 (E.D. La.), *aff'd*, No. 11-31172 (5th Cir.)
Practice Group: Product Liability & Mass Torts
Weil Team: Partner Theodore Tsekerides and associate Sylvia Simson in New York

Weil obtained a significant victory on behalf of Seacor Holdings Inc. on December 13, 2012, when the US Court of Appeals for the Fifth Circuit affirmed the district court's dismissal of all claims against Seacor stemming from its emergency response to the Deepwater Horizon incident. Seacor owned and operated marine vessels that responded to the emergency following the April 2010 explosion on the Deepwater Horizon offshore drilling rig and the 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 emergency response vessels (including Seacor) in the US District Court for the Eastern District of Louisiana, alleging that the water the response vessels directed toward the fire caused the Deepwater Horizon rig to flood and sink. According to the plaintiffs, this 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 United States history. The plaintiffs sued for property damage and economic losses allegedly incurred as a result of the defendants' alleged negligence. In their complaint, the plaintiffs asserted claims under general maritime law, the Oil Pollution Act of 1990, and Louisiana state law.

In October 2011, the district court dismissed all claims against Seacor, finding that our client was not negligent. The court concluded 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."

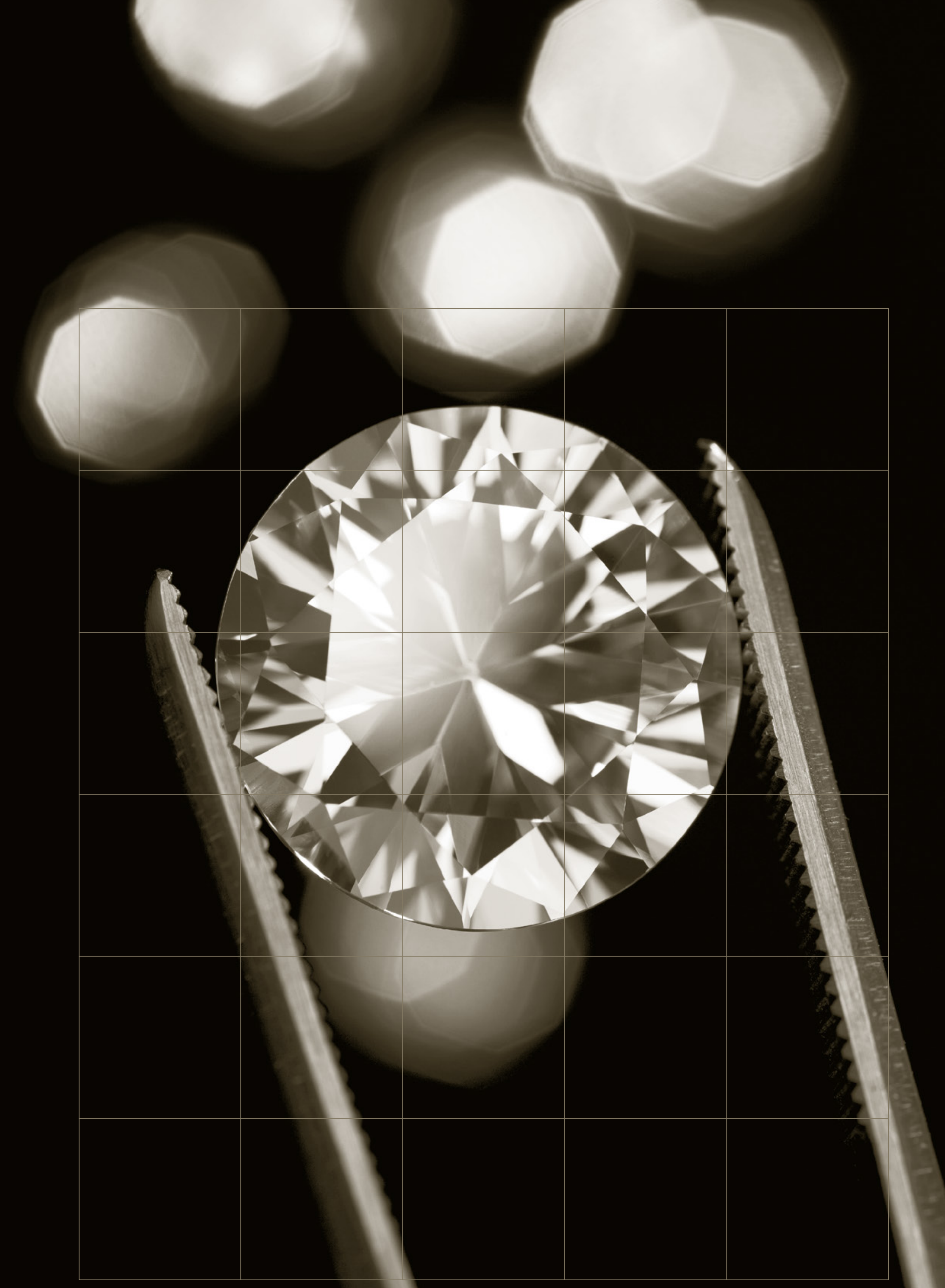
The Fifth Circuit agreed, and affirmed the district court's decision, holding that "damages alleged by the Remaining Plaintiffs are too attenuated and distant from the alleged negligence of the Defendants to state a plausible claim of foreseeability, as required for proximate cause."

Zale

Client: Zale Corp.
Date: November 30, 2012
Case & Venue: Pipefitters Local No. 636 Defined Benefit Plan v. Zale Corp. et al., No. 11-10936 (N.D. Tex.), *aff'd* (5th Cir.)
Practice Group: Complex Commercial Litigation
Weil Team: Partners Yvette Ostolaza, Yolanda Garcia, and Michelle Hartmann in Dallas, Ralph Miller in Washington, DC, and Gregory Silbert in New York, and associates Margaret Allen in Dallas and Adam Banks in New York

Weil won a major victory for Zale Corp. when the US Court of Appeals for the Fifth Circuit affirmed a Texas district court's dismissal, with prejudice, of a purported shareholder's class action brought against the national retailer and certain of its officers and directors. Filed in November 2009 and later consolidated, the original class action complaint alleged that Zale and the individual defendants had failed to properly account for certain advertising and other expenses.

In April 2011, the US District Court for the Northern District of Texas dismissed all claims in the original consolidated class action complaint and granted the plaintiffs leave to amend. Zale 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 a former executive trying to meet a department budget rather than an attempt to "initiate companywide fraud." The district 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 be imputed to the corporation or any of the individual defendants. The Fifth Circuit upheld that decision on November 30, 2012. In addition, a derivative demand filed in state court related to the same issues was voluntarily dismissed by the plaintiff.



Ranked Tier 1 in "Litigation – M&A" in the US
U.S. News – Best Lawyers "Best Law Firms" Survey, 2013

Providence Equity Partners

Client: Providence Equity Partners L.L.C.
Date: May 23, 2012
Case & Venue: In re Blackboard Shareholder Litigation (DC Superior Court)
Practice Group: Securities Litigation
Weil Team: Partners John Neuwirth and Joshua Amsel in New York and Ralph Miller in Washington, DC, and associates Christine DiGuglielmo in Wilmington, Evert Christensen in New York, and M. Jarrad Wright in Washington, DC

On May 23, 2012, Weil secured a significant victory on behalf of Providence Equity Partners L.L.C. in a putative shareholder class action arising out of Providence's $1.64 billion acquisition of Blackboard Inc. Blackboard provides enterprise software applications and related services to the education industry in the United States and Canada. In a 66-page decision, the Superior Court of the District of Columbia dismissed all of the plaintiffs' claims in their entirety and with prejudice.

On July 1, 2011, Blackboard announced that affiliates of Providence had agreed to acquire it for $45 per share in cash. On July 7, 2011, a purported Blackboard shareholder filed a putative shareholder class action complaint on behalf of the holders of Blackboard common stock in the Court of Chancery of the State of Delaware, seeking to enjoin the transaction and alleging, among other things, that the members of the Blackboard board of directors breached their fiduciary duties to Blackboard's shareholders by agreeing to sell Blackboard for inadequate and unfair consideration and pursuant to an inadequate and unfair process, and that Blackboard and Providence aided and abetted such breaches. On July 8 and July 19, 2011, two additional purported Blackboard shareholders filed putative class action complaints on behalf of holders of Blackboard common stock in the Superior Court of the District of Columbia, also seeking to enjoin the transaction based on allegations similar to the Delaware action.

On August 2, 2011, the plaintiffs in the Superior Court actions filed a motion to consolidate their actions and to appoint lead counsel. Also on that date, the same plaintiffs filed (1) an amended complaint, which, among other things, added allegations regarding purported disclosure violations based on a preliminary proxy that Blackboard filed with the US Securities and Exchange Commission on July 22, 2011, and (2) a motion for expedited discovery, which requested the entry of an order permitting discovery to proceed on an expedited basis in support of the plaintiffs' impending motion for a preliminary injunction. After briefing and oral argument, the Superior Court denied the plaintiffs' motion for expedited discovery, effectively ending the plaintiffs' efforts to enjoin the transaction. Blackboard's shareholders later voted to approve the transaction, and it closed in October 2011.

The Superior Court plaintiffs then filed another amended complaint in November 2011 based on the same alleged misconduct, but seeking post-closing money damages instead of injunctive relief. In December 2011, the defendants, including Providence, moved to dismiss that complaint for failure to state a claim. On March 22, 2012, the Superior Court heard oral argument on the motions to dismiss, and, in a May 23, 2012 decision, dismissed the amended complaint in its entirety and with prejudice. Thereafter, on June 5, 2012, the parties to the Delaware action filed a stipulation of dismissal with the Court of Chancery, and that stipulation was "so ordered" by the court on June 6, 2012.

Forest Laboratories and Forest Pharmaceuticals

Clients: Forest Laboratories, Inc. and Forest Pharmaceuticals, Inc.
Date: June 7, 2012
Case & Venue: Elmaria Martinez, et al. v. Forest Laboratories, Inc., et al., No. 1:10-cv-06032 (S.D.N.Y.)
Practice Group: Employment Litigation
Weil Team: Partner Gary Friedman and associates Jonathan Sokotch, Patricia Wencelblat, and Celine Chan in New York

Weil defended Forest Laboratories, Inc., a global pharmaceutical company, and its subsidiary Forest Pharmaceuticals, Inc. in a nationwide Fair Labor Standards Act collective action and New York putative class action involving an issue of central importance to the pharmaceutical industry as a whole: whether pharmaceutical sales representatives are exempt from the overtime requirements of the Fair Labor Standards Act and comparable state labor laws. In the US District Court for the Southern District of New York, Weil's defense team deployed various strategies to substantially limit the size of the collective and putative classes, and then, arguing that the US Supreme Court's June 2012 ruling in *Christopher v. SmithKline Beecham Corp., dba GlaxoSmithKline* was dispositive on all issues in the case, Weil obtained a complete dismissal of the action with prejudice on June 7, 2012. Forest made no payment whatever in the case.

Newegg

Client: Newegg Inc.
Date: January 22, 2013
Case & Venue: Soverain Software LLC v. Newegg Inc., No. 2011-1009 (Fed. Cir.)
Practice Group: Patent Litigation
Weil Team: Partners Ed Reines and associates Zac Cox and Chris Geyer in Silicon Valley

Weil helped obtain a significant appellate victory on behalf of Newegg Inc. on January 22, 2013, when the US Court of Appeals for the Federal Circuit vacated a $2.5 million verdict against Newegg and invalidated all three of Soverain Software LLC's e-commerce patents that had been asserted.

This dispute centered on the validity of three US patents – numbers 5,715,314, 5,909,492, and 7,272,639 – that cover concepts including online shopping carts, Internet receipts, and product identifiers, among others. Soverain brought

patent infringement lawsuits against seven online retailers, including Newegg. All the online retailer-defendants except Newegg settled out of the patent infringement suits, taking paid-up licenses to the patents at issue.

Soverain's patent infringement suit against Newegg proceeded in the US District Court for the Eastern District of Texas, where a jury found that Newegg had infringed upon two of the three patents at issue ('314 and '492) and awarded damages in the amount of $2.5 million. The district court granted Soverain's motion for judgment as a matter of law with regard to the remaining patent ('639). Significantly, the court determined that Newegg had not presented sufficient evidence during trial on whether the patented online sales tools in question were obvious and hence did not instruct the jury on the issue of obviousness. Following the verdict, Newegg filed a motion for judgment as matter of law or a new trial arguing that removal of the obviousness issue constituted reversible error. That motion was denied.

After the Eastern District's decision, Newegg retained Weil to join its legal team and appealed the decision to the Federal Circuit. In a unanimous decision, the Federal Circuit found that all three patents at issue were invalid based on their obviousness. The court explained: "The district court's conclusion that a *prima facie* case of obviousness was not met is not explained by the court or by Soverain, and does not accord with the record."

This decision will likely have far-reaching implications, as Soverain has been awarded significant damages in other patent infringement cases concerning patents '314, '492, and '639, including an $18 million verdict against Avon Products, Inc. and Victoria's Secret Stores, LLC.

Washington Mutual, Inc.

Client: Washington Mutual, Inc.
Date: November 20, 2012
Case & Venue: Cassese v. Washington Mutual, Inc., et al., No. 11-4333 (E.D.N.Y.), *aff'd* (2nd Cir.)
Practice Group: Complex Commercial Litigation
Weil Team: Partners Brian Rosen, John P. Mastando III, and Gregory Silbert and associates Vanessa Chandis, Rachel Barish Swartz, and Luna Ngan in New York

Weil won a significant victory for Washington Mutual, Inc. (WMI) on November 20, 2012 before the US Court of Appeals for the Second Circuit. Following oral argument on certain objectors' appeals of the final approval of a nationwide class action settlement by the US District Court for the Eastern District of New York and the US Bankruptcy Court for the District of Delaware, the Second Circuit affirmed the final approval of the settlement. The appellate court agreed with our arguments and rejected the objectors' challenges to the timing, form, and content of the class notice in the approved settlement. The court held, among other things, that the class notice mailed to more than 5.7 million class members nationwide satisfied both Fed. R. Civ. P. 23(h) and due process. The court further agreed that a Ninth Circuit decision regarding Fed. R. Civ. P. 23(h) and due process, which objectors relied on heavily and argued mandated a contrary result, was distinguishable based on the facts of this case (*Cassese*).

In the district court, Weil had achieved a very favorable nationwide settlement for WMI of numerous claims alleging that WMI was directly and indirectly liable for the acts of its former subsidiaries, including Washington Mutual Bank (WMB), for charging certain fees prior to the satisfaction and settlement of class members' home, mortgage, co-op, or home equity loans, or their home equity lines of credit. Nationwide class actions had been certified against WMB and WMI (prior counsel had handled the class certification motions). After being retained as counsel for WMI, Weil engaged in extensive dispositive motion practice and ultimately filed a Rule 23(f) petition with the Second Circuit seeking to decertify the nationwide class against WMI in October 2010. While the petition was pending, Weil negotiated a very favorable

PRO BONO SPOTLIGHT

Salvadoran Immigrant

Client: Salvadoran immigrant
Date: August 10, 2012
Case & Venue: Salvadoran Immigrant Asylum Case (Arlington, VA Immigration Court)
Weil Team: Partner Ronald Pabis and associates Katie Brandes and Cariza Arnedo in Washington, DC

In one of our longest-running pro bono matters, Weil won asylum for a client from El Salvador, bringing a decade-long representation to a notably successful conclusion.

Our client came to the US from El Salvador when he was just 16, fleeing abuse by the notorious Mara Salvatrucha (MS-13) gang. During asylum hearings in 2003-2004, Weil presented evidence that he had endured extortion, violence, and death threats following his bold defiance of the gang, which he refused to join, and demonstrated why returning would expose him to further persecution. The court found the evidence credible but denied asylum on the ground that fear of persecution due to the applicant's refusal to become a gang member did not fall within any category protected under immigration law. After the Board of Immigration Appeals (BIA) affirmed that decision and we filed a petition for review in the US Court of Appeals for the Fourth Circuit, the Office of Immigration Litigation of the Department of Justice consented to remand of the case in light of new precedent and the need to consider whether the proper "mixed-motive" analysis had been conducted. On remand to the immigration court, the Weil team demonstrated that the proper mixed-motive analysis and intervening precedent made asylum appropriate. In a 14-page opinion, the immigration judge reversed his prior decision and on August 10, 2012 granted asylum, finding that our client's opposition to gang membership, which had caused his well-founded fear of persecution, was based on religious beliefs, a protected asylum category.

Ranked Tier 1 in "International Trade and Finance Law" in Washington, DC
U.S. News – Best Lawyers "Best Law Firms" Survey, 2013

settlement of the class claims in December 2010. The bankruptcy court subsequently approved the nationwide class settlement on May 2, 2011 (after the district court granted preliminary approval on March 10, 2011), and the Eastern District of New York granted final approval of the settlement on September 21, 2011. Certain objectors appealed to the Second Circuit, which affirmed the district court's final approval order in its entirety. Certain objectors filed a petition for a writ of *certiorari* in the United States Supreme Court on February 19, 2013.

Bank of America and Blue Ridge Investments

Clients: Bank of America Corp. and its wholly owned subsidiary Blue Ridge Investments, L.L.C.
Date: March 26, 2012
Case & Venue: Petition for withdrawal or suspension of Argentina's eligibility to participate in Generalized System of Preferences (GSP Case No. 002-CP-09); Presidential Proclamation No. 8788 (Mar. 26, 2012)
Practice Group: International Arbitration & Trade
Weil Team: Partner Theodore R. Posner in Washington, DC

Weil has been representing Bank of America Corp. in the efforts of wholly owned subsidiary Blue Ridge Investments, L.L.C. to secure enforcement by the Republic of Argentina of a $133 million (plus interest) arbitration award by a tribunal of the International Centre for Settlement of Investment Disputes (ICSID). Blue Ridge acquired rights to the award from the CMS Gas Transmission Company, the claimant in the underlying dispute against Argentina under the US-Argentina Bilateral Investment Treaty, through an assignment in 2008.

In view of Argentina's refusal to voluntarily comply with the award, we successfully petitioned to have the US Government suspend Argentina's eligibility to participate in the principal US trade preference program (the Generalized System of Preferences). According to Reuters, this is the first time the US has imposed such a penalty for failing to pay an arbitration award and comes amid wider US pressure on Argentina to pay obligations relating to its sovereign debt default a decade ago.

The arbitration was initiated by CMS Gas Transmission Company against Argentina after the Argentinian government suspended a tariff adjustment formula for gas transportation that applied to a company in which CMS invested.

In May 2005, following the arbitration proceedings, the ICSID tribunal issued a $133.2 million final award to CMS, finding that Argentina breached its obligations under the US-Argentina Bilateral Investment Treaty, causing harm to CMS. Argentina's obligation survived an attempt by that nation to have the award annulled.

In 2008, following unsuccessful attempts to have the award enforced, CMS assigned the award to Blue Ridge. After repeated efforts to get Argentina to comply, Blue Ridge and another US company whose arbitration award had not been honored separately petitioned the Office of the US Trade Representative to suspend or withdraw Argentina's eligibility to participate in the trade preference program for its failure to recognize in good faith and enforce the award. President Obama in March 2012 issued a proclamation that, among other things, granted the relief Blue Ridge requested.

In a major win for Sotheby's, Weil persuaded a federal court to strike down the California Resale Royalties Act as unconstitutional, staving off a putative class action brought by a group of artists seeking royalties on artwork sold by auction houses. As Law360 noted, the defendants "fired back" against the artists' action, arguing that the law "violated the dormant commerce clause, which limits a state's ability to enact legislation that infringes other states' governing rights."

Law360

Sotheby's

Client: Sotheby's
Date: May 17, 2012
Case & Venue: Estate of Robert Graham, et al. v. Sotheby's Inc., and Sam Francis Foundation, et al. v. Christie's, Inc., Nos. 2:11-cv-08604 and 2:11-cv-08685 (C.D. Cal.)
Practice Groups: Antitrust/Competition, Complex Commercial Litigation
Weil Team: Partners Steven Reiss, Howard Comet, and Gregory Silbert and associates Adam Banks and Andrey Spektor in New York

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Weil and its co-counsel secured a major victory on behalf of Sotheby's by persuading a California federal district court to strike down the California Resale Royalties Act (CRRA) as unconstitutional.

A group of artists and their heirs brought a class action against Sotheby's, alleging that the auction house had failed to comply with the CRRA. That law provided that whenever a work of fine art was resold in California, or resold anywhere by a California resident, the seller or the seller's agent – often an auction house like Sotheby's – had to pay a 5 percent royalty to the artist if the resale price was higher than the original sale price. Sotheby's challenged the CRRA on constitutional grounds, arguing that the statute was barred by the Commerce Clause, effected an impermissible taking, and was preempted by the Copyright Act of 1976.

On May 17, 2012 the US District Court for the Central District of California (Judge Jacqueline H. Nguyen sitting by designation after her elevation to the Ninth Circuit) held that the CRRA violated the dormant Commerce Clause because it had the "'practical effect' of controlling commerce 'occurring wholly outside the boundaries' of California." Drawing on the legislative history submitted by Sotheby's, the court further ruled that despite the general rule of restraint in invalidating entire statutes, it could not sever the CRRA's extraterritorial provisions and had to strike down the act in its entirety. The complaint was, therefore, dismissed with prejudice.

Elite Model Management

Client: Elite Model Management Corp.
Date: February 22, 2012
Case & Venue: Men Women NY Model Management, Inc. v. Elite Model Management Corp., No. 11-110999 (N.Y. Sup. Ct.)
Practice Group: Employment Litigation
Weil Team: Partners Gary Friedman and Vernon Broderick and associates Emily Friedman and Emilie Adams in New York

Weil successfully defended Elite Model Management Corp., one of the world's most renowned modeling agencies, in a vigorously litigated restrictive covenant and trade-secret litigation brought by Men Women NY Model Management, Inc. (Women), a leading industry competitor, in New York Supreme Court. At four separate lengthy injunction hearings, we defeated two applications for temporary restraining orders and two applications for preliminary injunctions seeking to restrain four former senior executives of Women from commencing work with Elite, and Elite from engaging in various business activities involving the representation and development of fashion models. At these hearings, the court rejected Women's claims of, among other things, breach of a broad range of restrictive covenants, breach of fiduciary duties, and misappropriation of trade secrets. Following these repeated victories, the case was resolved on extremely favorable terms to our client with no business interruption.

PRO BONO SPOTLIGHT

Unfairly Sentenced Defendant

Client: Criminal defendant seeking a fair sentence
Date: May 29, 2012
Case & Venue: County Court and Appellate Division, brief arguing for vacated plea and sentence based on discovery of incompetent and fabricated fiber-evidence reports
Weil Team: Partners Corey Chivers and Vernon Broderick and associates Tashanna Golden and Karin Portlock in New York

Along with co-counsel Ben Ostrer and Saratoga County Public Defender John Ciulla, Weil represented a client whose plea a decade ago was illegally induced by the serious misconduct of a state forensics lab scientist.

Our client pleaded guilty to felony murder after she and her boyfriend were accused of robbing and killing her step-grandmother in 2000. She was in high school at the time and had just turned 18. She had consistently maintained – in a pre-arrest confession, a police confession, and testimony at the trial of the boyfriend – that she was outside the home when the boyfriend duct-taped the grandmother's mouth and then strangled her. However, there was forensic fiber evidence that contradicted our client's version of events. As a result, the public defender advised her to plead guilty to felony murder with the understanding that she would cooperate and testify against her boyfriend. She testified at the boyfriend's trial, during which she was cross-examined about the fiber evidence. The boyfriend was acquitted. Our client received a sentence of 20 years to life.

Almost a decade after her guilty plea, a probe of the state forensics lab by the New York Inspector General's office revealed that the scientist who had performed the tests on the fiber evidence leading our client to plead guilty was incompetent and routinely fabricated reports on such evidence. Weil and co-counsel Ben Ostrer filed a motion to vacate our client's plea and sentence. After a hearing before the county court judge, that motion was granted.

The district attorney appealed the decision to the Appellate Division, and Weil took the lead in writing the appellate brief. Vernon Broderick argued the case in the Third Department, which, on April 26, 2012, affirmed the decision of the county court. Our client entered an Alford plea to manslaughter and burglary. On May 29, 2012, she was sentenced to 14½ years, and she was released from prison in July 2012.

Weil's Washington, DC office ranked Tier 1 for "International Arbitration – Commercial"
US News – Best Lawyers "Best Law Firms" Survey, 2013

Employ Media

Client: Employ Media LLC
Date: December 11, 2012
Case & Venue: Employ Media LLC v. Internet Corporation for Assigned Names and Numbers (ICANN), International Court of Arbitration, International Chamber of Commerce, No. 17917/VRO
Practice Group: International Arbitration & Trade
Weil Team: Partners Arif Ali and Alexandre de Gramont and associates Lindsay Bourne and Timothy Welch in Washington, DC

In December 2012, Weil successfully concluded a bet-the-company arbitration for Employ Media LLC against the Internet Corporation for Assigned Names and Numbers (ICANN), the entity that regulates the Internet's Domain Name System (DNS) on an international basis. Under the resolution negotiated by Weil, ICANN has completely withdrawn a notice of breach issued against Employ Media, and allowed Employ Media to proceed with a major expansion of its business that ICANN previously wanted to stop.

In 2005, Employ Media introduced the .jobs top-level domain (TLD) on the Internet. The .jobs TLD is a human resource tool that is widely used by employers and jobseekers around the world. Pursuant to a long-term registry agreement with ICANN, which oversees most of the Internet's TLDs (including .com, .net, .org, and others), Employ Media serves as the registry for all the domain names in .jobs.

Following Employ Media's launch of a long-planned and critically important expansion of the .jobs TLD, ICANN served a notice of breach on Employ Media. Claiming that Employ Media's expansion of .jobs violated the registry agreement, ICANN threatened to cancel the agreement in its entirety unless Employ Media terminated the expansion. After its unsuccessful attempt to resolve the dispute amicably, Employ Media commenced an arbitration in the International Chamber of Commerce, seeking a declaration that the notice of breach was improper and should be withdrawn, and that Employ Media should be allowed to proceed with the expansion.

Weil prepared and submitted Employ Media's opening submission in the arbitration in August 2012. Based on its review of that submission, ICANN promptly informed Employ Media that it would withdraw its notice of breach and allow Employ Media to proceed with the expansion of the .jobs TLD as planned. On December 11, 2012, ICANN issued a withdrawal of the notice of breach, stating that based on "the materials that Employ Media has provided [in the arbitration]…, ICANN has concluded that Employ Media is not currently in breach, but is instead in good standing under the Registry Agreement…" Thus, Employ Media obtained the relief it sought after making its opening submission in the arbitration and is proceeding with the expansion of .jobs.

This case is one of the very few known arbitrations brought against ICANN by a registry operator. Weil partners Arif Ali and Alexandre de Gramont previously won a landmark arbitration against ICANN in the *ICM Registry* case, in which an international arbitration tribunal held that ICANN had violated the terms of its own articles of incorporation and bylaws when it refused to add the .xxx TLD to the Internet, and that ICANN's adherence to its articles and bylaws was properly considered under principles of public international law. Following that decision, ICANN permitted ICM to add the .xxx TLD to the Internet.

Office Metro

Client: Office Metro Ltd., Bankruptcy Trustee (Yann Baden)
Date: May 11, 2012
Case & Venue: Trillium (Nelson) Properties v. Office Metro Limited, No. [2011] EWHC 1191 (Ch) (High Court of Justice in England and Wales)
Practice Group: Business Finance & Restructuring
Weil Team: Partner Paul Bromfield and associates Andrew Fox and William Needham in London

Weil secured dismissal of secondary insolvency proceedings for our client, the bankruptcy trustee of Office Metro Ltd. Tried before the English High Court, this case not only resulted in a significant win for our client but also set forth guidance for establishing jurisdiction under the EC Insolvency Regulation (Council Regulation EC No. 1346/2000) (EIR) for the opening of secondary insolvency proceedings.

Our client, Yann Baden, a Luxembourg bankruptcy trustee (or *curateur*), opposed Trillium's attempt to open secondary insolvency proceedings against Office Metro on the ground that Office Metro's operations in England did not constitute an "establishment" satisfying jurisdiction under the EIR at the time the petition was filed. The additional proceedings would only duplicate expense, costs, and investigations to the detriment of the insolvent estate.

The High Court ruled in favor of the bankruptcy trustee and Office Metro. It concluded that because the scope of Office Metro's operations in the UK did not amount to economic activity, Office Metro was not an establishment within the meaning of the EIR and the English courts did not have jurisdiction to open a secondary insolvency proceeding.

This marked the first time the English High Court ruled on key aspects of the interpretation and application of the EIR with respect to secondary proceedings. The ruling is discussed in detail in a posting on Weil's Bankruptcy Blog and in the August 2012 issue of the journal *Corporate Rescue and Insolvency*.

Axiane Meunerie and Minoteries Cantin

Clients: Axiane Meunerie and Minoteries Cantin
Date: July 3, 2012
Case & Venue: Paris Court of Appeal, No. 19004-0003
Practice Group: Antitrust/Competition
Weil Team: Partners Claude Serra, Didier Malka, and Romain Ferla and associates Hélène de Villaine and Flora Pitti-Ferrandi in Paris

After France's Competition Authority (*Autorité de la Concurrence*) imposed heavy fines on a dozen French and German flour producers for their participation in two alleged market-sharing cartels, Weil represented two of those companies, Axiane Meunerie and Minoteries Cantin, in an appeal of the decision to the Paris Court of Appeal. Weil first asked the court to stay the execution of the authority's decision, a step that can only be ordered when the judgment would lead to "excessive consequences" for the companies concerned. In fact, the fine imposed on Axiane Meunerie and Minoteries Cantin totaled nearly €90 million, a sum that neither had the resources to pay.

On the immediate issue of the stay, the Competition Authority argued before the court that Axiane Meunerie and Minoteries Cantin belong to a larger commercial group that can afford to pay the fines on behalf of its subsidiaries. Noting that the appeal on the merits of the decision had not yet been pleaded, the Weil team was able to convince the court that it should look only at the resources of the subsidiaries – those directly fined by the Competition Authority, not those of their parent – to determine whether there would be "excessive consequences." On July 3, 2012, the court ordered a stay of execution on five-sixths of the fines imposed on Weil's clients.

This is an extremely positive result for Weil's clients. It also represents a landmark decision for French antitrust law that could, if confirmed, have major consequences in future cases.
The French Competition Authority is currently challenging the stay before the *Cour de Cassation*, or Supreme Court of Appeal.

UnitedHealth Group

Clients: UnitedHealth Group Inc. and 35 of the 45 employer-sponsored group health plan defendants, including those sponsored by Abbott Laboratories, ADP TotalSource, Citigroup, Discount Tire, General Motors, Genuine Parts, Home Depot, Insight Enterprises, Kodak, MetLife, Pfizer, Procter & Gamble, Qwest, Revlon, and Wells Fargo
Date: October 11, 2012
Case & Venue: Spinedex Physical Therapy, U.S.A., et al. v. United Healthcare of Arizona, Inc., et al., No. 2:08-cv-00457 (D. Ariz.)
Practice Groups: Employment Litigation, Complex Commercial Litigation
Weil Team: Partner Nicholas Pappas and associates Jared Friedmann and Reed Collins in New York

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Weil and co-counsel Brownstein Hyatt Farber Schreck, LLP secured a victory for UnitedHealth Group Inc. (UHG) and 45 employer-sponsored group health plans in a nationwide putative ERISA class action when the US District Court for the District of Arizona granted summary judgment dismissing all of the claims. In the action, which was brought by a physical therapy provider, two individuals treated by the plaintiff provider, and the Arizona Chiropractic Society, the provider purported to have received an assignment of the rights and benefits of some 60 participants or beneficiaries of various group health plans and sought additional reimbursements on their behalf and on behalf of similarly situated plan participants.

The plaintiffs challenged the determination that physical therapy provided on a device known as the VAX-D Table is experimental or unproven and therefore not covered under the terms of the plans; they also challenged the standards and resources used to calculate benefits for services provided by out-of-network physical therapy providers. The plaintiffs asserted claims under ERISA alleging breach of contract and breach of fiduciary duty.

The plaintiffs commenced this case in March 2008. Because the matter involved a large number of plans and participants, including more than 10,000 individual claims, Weil filed a motion for partial summary judgment in May 2010 using certain plans and participants as exemplars. The motion sought to dismiss the claims concerning the exemplar plans and participants on a number of "preliminary" grounds such as lack of standing, limitations in the scope of the participants' assignment of their claims, and failure to exhaust administrative remedies. Weil also sought to dismiss benefits claims against UHG and several of its affiliates because they were not the ERISA plan administrator for any of the plans.

The Weil team also succeeded in limiting discovery to the preliminary issues addressed in the motion for partial summary judgment, which the court granted in March 2011, dismissing the exemplar plans and participants from the case. Based on the court's favorable rulings as to certain defenses, Weil moved for summary judgment on all remaining claims in this action on January 20, 2012. The court granted summary judgment for all defendants on October 11, 2012. The court's opinions provide precedent regarding provider and associational standing that managed-care companies and employer-sponsored health plans are likely to cite in cases pending throughout the country.

Ralph Lauren Corp.

Client: Ralph Lauren Corp.
Date: June 13, 2012
Case & Venue: City Pension Fund for Firefighters and Police Officers in the City of Pembroke Pines v. Ralph Lauren et al. and Ralph Lauren Corp., No. 113265/2011 Commercial Part 41 (N.Y. Sup. Ct.)
Practice Group: Securities Litigation
Weil Team: Partner Stephen Radin and associate Evert Christensen in New York

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Weil obtained a major victory for Ralph Lauren Corp. on June 13, 2012, when the New York Supreme Court dismissed a shareholder derivative action challenging the compensation paid to Ralph Lauren and other executives. The suit was brought by the City Pension Fund for Firefighters and Police Officers in the City of Pembroke Pines, a Florida municipal fund.

Following oral argument, the court ruled that executive compensation decisions should be made by boards of directors elected by all shareholders, not single shareholders or judges. The plaintiff accordingly lacked standing to act for Ralph Lauren Corp., the court concluded, because it had failed to bring this issue before the company's board of directors in a pre-suit demand that would have allowed the board to make a business judgment concerning the wisdom of the suit. The court rejected the plaintiff's argument that it was not required to make the pre-suit demand because Ralph Lauren controls Ralph Lauren Corp. and elects a majority of its directors.

UnitedHealth Group and Ingenix

Clients: UnitedHealth Group Inc. and Ingenix, Inc.
Date: September 6, 2012
Case & Venue: In re WellPoint, Inc. Out-of-Network "UCR" Rates Litigation, Master Case No. 2:09-ml-2074, MDL No. 2074 (C.D. Cal.)
Practice Group: Complex Commercial Litigation
Weil Team: Partner Christopher Pace and associates Brian D'Amico and Marc Weinroth in Miami and Elizabeth Velez in New York

Weil obtained a dismissal of all claims against longtime clients UnitedHealth Group Inc. (UHG) and Ingenix, Inc. in a multidistrict litigation that has been pending in California federal court since 2009. The plaintiffs were various members of WellPoint, Inc. health plans (seeking to represent a class of all WellPoint health plan members), various doctors who provided out-of-network services to WellPoint plan members (seeking to represent all healthcare providers who provided out-of-network services to WellPoint plan members), and several medical associations. They alleged that WellPoint, UHG, and Ingenix participated in a long-running conspiracy in violation of the Sherman Act, RICO, and state law so that (1) Ingenix could control the market for providing databases to health insurers (including WellPoint) on what providers charge for out-of-network services and (2) WellPoint could under-reimburse its health plan members for out-of-network services.

In a comprehensive, 52-page decision, the US District Court for the Central District of California dismissed all claims against UHG and Ingenix. The district court accepted Weil's argument that the WellPoint health plan members failed to connect their alleged injury (being under-reimbursed for out-of-network services) to an alleged antitrust conspiracy to control the market for providing charges databases to health insurers – a market in which no plaintiff participated either as a competitor, supplier, or buyer. The court also agreed with Weil's argument that the plaintiffs had failed to allege that they or anyone else relied on false statements about the Ingenix databases in selecting their health plan or deciding to seek out-of-network services; to the contrary, the plaintiffs alleged that they did not even know at any relevant time that some WellPoint health plans used the Ingenix databases. Finally, the court held that the doctors' and medical associations' claims further failed to adequately allege an antitrust or RICO injury, and hence it dismissed their claims with prejudice.

PRO BONO SPOTLIGHT

Voter Rights Advocates

Clients: Mi Familia Vota Education Fund, Murat Limage, and Pamela Gomez
Date: September 18, 2012
Case & Venue: Mi Familia Vota Education Fund v. Detzner, No. 12-cv-1294 (M.D. Fla.)
Weil Team: Partner Edward Soto and associates Edward McCarthy, Lauren Alexander, and Lara Bach in Miami

In a significant voting rights litigation, Weil's Miami office, along with attorneys from the Lawyers' Committee for Civil Rights Under Law and the American Civil Liberties Union, helped stop the Florida Secretary of State from improperly purging alleged non-citizens from the state's voting rolls. Weil and the two civil liberties groups filed a lawsuit on behalf of Mi Familia Vota Education Fund and two registered Florida voters in June of this year claiming that the Secretary's new voter purge program violated Section 5 of the Voting Rights Act. On September 18, 2012, less than two months before the general election, the US District Court for the Middle District of Florida ruled in favor of Weil's clients by denying the Secretary's motion to dismiss the plaintiffs' amended complaint, thereby securing a major victory for the voters of Florida.

As a result of the litigation, Florida's Secretary of State and Division of Elections changed their voter purge program. As the court noted in its order denying the Secretary's motion to dismiss, after the filing of the original complaint the Florida Division of Elections discontinued its prior practices and modified its voter purge procedures to address the plaintiffs' concern that the voter purge procedures erroneously targeted a disproportionate share of racial and language minorities. The court's denial of the motion to dismiss, and subsequent motion to stay, also enabled the team to conduct discovery regarding these changes, which led the Secretary of State to extend his office's decision not to apply its prior voter purge procedures during the 2012 election process.

Ranked Tier 1 in "Litigation – Bankruptcy" in the US
U.S. News – Best Lawyers "Best Law Firms" Survey, 2013

Washington Mutual, Inc.

Client: Washington Mutual, Inc.
Date: February 17, 2012
Case & Venue: In re: Washington Mutual, Inc., et al., No. 08-12229 (Bankr. D. Del.)
Practice Groups: Complex Commercial Litigation, Business Finance & Restructuring
Weil Team: Partners Brian Rosen, John P. Mastando III, and Richard Slack in New York, and Adam Strochak and David Hird in Washington, DC, and associates Diana Eng, Patricia Astorga, Eric Wolfish, Rachel Barish Swartz, Arielle Gordon, and Michael Bell in New York, and M. Jarrad Wright, Sunny Thompson, and Jennifer Wine in Washington, DC

Weil represented Washington Mutual, Inc. (WMI) and WMI Investment Corp. (together with WMI, the Debtors) in connection with confirmation of the Debtors' seventh amended chapter 11 bankruptcy plan. WMI, a savings and loan holding company, was the direct parent of WMI Investment Corp., which served as an investment vehicle for WMI. WMI also owned Washington Mutual Bank (WMB) and, indirectly, WMB's subsidiaries.

The Debtors filed for bankruptcy on September 26, 2008, after the Office of Thrift Supervision appointed the Federal Deposit Insurance Company as receiver for WMB. As receiver, the FDIC sold substantially all of WMB's assets to JPMorgan Chase Bank, N.A. WMI's filing represented the second largest bankruptcy and the largest commercial bank restructuring in US history.

WMI's chapter 11 plan confirmation process was highly contested, with numerous disputes over the reorganization intensifying in the spring of 2010. Various constituencies, including the Official Committee of Equity Security Holders and several ad hoc groups of holders of securities, argued that the global settlement agreement, which underlies the chapter 11 plan and was agreed to by WMI, certain significant creditor constituents, the FDIC, and JPMorgan Chase, was not fair and reasonable. They also claimed that the Debtors' valuation of the reorganized company was artificially low, that certain creditors' claims should be equitably disallowed, and that a subsequent settlement incorporated into the chapter 11 plan in the fall of 2011 was also unreasonable under the US Bankruptcy Code.

Following a confirmation hearing beginning on February 16, 2012, the chapter 11 plan, which includes the previously court-approved global settlement agreement, was confirmed by the US Bankruptcy Court for the District of Delaware. The confirmed chapter 11 plan provides for reorganization around Washington Mutual Mortgage Reinsurance Company, a non-debtor subsidiary, incorporates modifications resulting from a mediation conducted in the fall of 2011, and provides for value to be distributed to a substantial portion of the Debtors' constituents, including WMI's equity security holders.

"David Lender and Eric Hochstadt from the Weil team exceeded all of our expectations in two incredibly important class actions for our company. They are both excellent legal strategists and writers, and a pleasure to work with. We always know we can count on Weil to bring their A game — they haven't got another one."

Michelle Fang

Associate General Counsel, Head of Global IP
eBay Inc. (parent company of StubHub, Inc.)

Named among the "Top Ten in Class Actions"
The Vault Guide to the Top 100 Law Firms, 2012

StubHub and The Phillies

Clients: StubHub, Inc. and The Phillies, L.P.
Date: February 15, 2012
Case & Venue: Fabozzi v. StubHub, Inc., et al., No. 11-cv-4385 (N.D. Cal.)
Practice Groups: Complex Commercial Litigation, Antitrust/Competition
Weil Team: Partners David Lender and Eric Hochstadt in New York and Christopher Cox in Silicon Valley, and associates Kristen Echemendia in Washington, DC and Liani Kotcher in Silicon Valley

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Weil scored a complete dismissal with prejudice at the pleading stage of a proposed class action alleging that clients StubHub, Inc. – an online marketplace for the resale of tickets by third-party buyers and sellers to entertainment events – and the Philadelphia Phillies baseball team deceived consumers into paying prices above face value for tickets purchased on StubHub's website.
In its opinion and order dismissing the plaintiff's complaint and denying leave to replead, the US District Court for the Northern District of California concluded that the plaintiff's claims were implausible given the exemption in Pennsylvania's ticket statute for Internet resales and StubHub's numerous disclosures throughout its site that it does not sell tickets and that prices are set by third-party sellers. The court issued its ruling on February 15, 2012, less than two weeks after oral argument.

The plaintiff, a New Jersey resident, chose to file this putative class action lawsuit in September 2011 in federal court in California, where StubHub is headquartered. He claimed principally that StubHub's failure to disclose the face value of resold tickets violated Pennsylvania's ticket statute, which regulates the sale and resale of tickets to Phillies baseball games, and California's unfair competition law (UCL), which prohibits unlawful, unfair, or deceptive trade practices.
In its decision, the court held that the plaintiff could not sue under the Pennsylvania ticket statute, because the statute contained no private right of action. The court held that the plaintiff's UCL claim was similarly deficient. First, there was no unlawful trade practice, because there was no underlying violation of the Pennsylvania ticket law, which contained an express exemption for Internet resales. Second, there was no deceptive trade practice, because a reasonable consumer would understand that some third-party ticket resellers may attempt to profit from resales, particularly given StubHub's extensive disclosures that it was not the ticket seller, that the seller was a third party, and that ticket prices may differ from face value. Third, there was no unfair trade practice, because the plaintiff willingly agreed to pay the resale price for his Phillies tickets and the alleged failure to print the face value information on the plaintiff's electronically reissued tickets *after* the transaction was final could not have harmed him or caused the plaintiff to pay more than face value. The court also denied the plaintiff's motion to amend his complaint on futility grounds.

Weil won dismissal in a similar action against StubHub, eBay, and the New York Yankees in June 2011. The plaintiff's claims in that case were also dismissed with prejudice at the pleading stage, and leave to amend was also denied as futile.

Named one of Law360's Securities Litigation Groups of the Year
Law360, 2012

American International Group

Client: American International Group, Inc.
Date: November 20, 2012
Case & Venue: Vidor v. American International Group, Inc., No. 11-cv-0315 (N.D. Cal.), No. 11-16828 (9th Cir.)
Practice Group: Securities Litigation
Weil Team: Partners Joseph Allerhand and Robert Carangelo in New York and Christopher Cox in Silicon Valley, and associates Evert Christensen and Jamie Hoxie in New York

Weil scored another win for American International Group, Inc., as the US Court of Appeals for the Ninth Circuit affirmed the dismissal of all the plaintiff's claims against AIG by the US District Court for the Northern District of California. On November 20, 2012, in a summary decision, the Ninth Circuit agreed with Weil's arguments that the plaintiff had failed to plead facts, much less with the requisite particularity, establishing essential elements of his claims for fraud, negligent misrepresentation, and promissory estoppel. The Ninth Circuit also agreed that the hybrid AIG securities purchased by the plaintiff did not create a fiduciary relationship between the plaintiff and AIG such that the plaintiff could assert claims for breach of fiduciary duty and that those securities were exempted from the Trust Indenture Act.

This was the fourth victory in a litigation brought *pro se* by a purported holder of AIG Equity Units. The plaintiff filed a complaint in district court for declaratory and injunctive 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, but rather 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, and Weil filed a renewed motion to dismiss, again for failure to state a claim. On July 13, 2011, the district 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 Ninth Circuit has now held that the district court's decision was correct.

Gentiva Health Services

Client: Gentiva Health Services, Inc.
Dates: October 10, 2012; February 11, 2013
Case & Venue: In re Gentiva Health Services, Inc. Derivative Litigation, No. 12-1-6174-40, Superior Court of Cobb County, Georgia; In re Gentiva Health Services, Inc. Derivative Litigation, No. 11-CV-3429 (N.D. Ga.)
Practice Group: Securities Litigation
Weil Team: Partners John Neuwirth and Joshua Amsel and associates Stefania Venezia, Matthew Howatt, Layne Behrens, Emily Katz, and Jamie Hoxie in New York

Weil's securities litigators achieved two significant victories on behalf of our client Gentiva Health Services, Inc. and the members of its board of directors in shareholder derivative actions filed in Georgia state court and the US District Court for the Northern District of Georgia.

In May and July 2010, the US Senate Finance Committee and the US Securities and Exchange Commission, respectively, launched investigations into the practices of healthcare companies, including Gentiva, that provide in-home therapy visits reimbursed by Medicare under its Home-Health Prospective Payment System (HH PPS). Multiple shareholder class and derivative actions were subsequently filed.

In February 2012, plaintiffs in the Georgia state court derivative action filed a consolidated complaint alleging that Gentiva's directors breached their fiduciary duties to Gentiva by (1) failing to implement adequate internal controls, which allowed Gentiva to engage in "systemic and systematic fraudulent Medicare in-home therapy billing," and (2) causing Gentiva to make false statements in press releases and public filings that artificially inflated the price of Gentiva's common stock.

In March 2012, plaintiffs in the Georgia federal court derivative action filed a consolidated complaint making similar allegations. That same month, the Weil team moved to dismiss the Georgia state court action. After briefing and oral argument, the Georgia state court granted the motion and dismissed the action in its entirety and with prejudice on October 10, 2012.

The Weil team moved to dismiss the Georgia federal court action in April 2012. On February 11, 2013, the Northern District of Georgia granted the motion and dismissed the action in its entirety and with prejudice.

As a result of the dismissal of both the Georgia state and federal court actions, all of the derivative suits against Gentiva arising from the alleged manipulation of the HH PPS have been completely dismissed.

West Publishing

Client: West Publishing Corp.
Date: February 8, 2013
Case & Venue: White v. West Publishing, et al., No. 12-cv-1340 (S.D.N.Y.)
Practice Group: Complex Commercial Litigation
Weil Team: Partners R. Bruce Rich and Benjamin Marks, counsel Jonathan Bloom, and associates John Gerba and John Sullivan in New York

Weil achieved a significant victory for West Publishing Corp. (West) in a copyright infringement suit brought by Edward L. White P.C. against legal research providers West and Reed Elsevier, Inc., owner of LexisNexis. The plaintiff alleged that West, through its unit Westlaw, and LexisNexis infringed purported copyrights in two legal briefs that the plaintiff claims to have authored by including those documents in their respective legal research databases. On February 8, 2013, a judge in the US District Court for the Southern District of New York issued an order denying the plaintiff's summary judgment motion, granting the defendants' summary judgment motions, and indicating that an opinion explaining the court's reasoning would follow "in due course."

In February 2012, the plaintiff, along with a co-plaintiff, Kenneth Elan, brought this case as a putative class action seeking to represent a class that included both lawyers that had and had not registered copyrights in their works. West moved to dismiss any claims brought on behalf of authors of unregistered works, because copyright registration is a statutory prerequisite to bringing an action for infringement. The court granted this motion and dismissed all claims premised on unregistered works, including those brought by Mr. Elan. LexisNexis brought a similar motion, which was also granted.

Subsequent to the court's decision on the motions to dismiss, the remaining plaintiff formally withdrew any remaining class claims and decided to proceed solely on an individual claim for infringement of two works. Following discovery, the parties cross-moved for summary judgment. The court heard oral argument in November 2012 and issued its decision in our client's favor in February 2013.

A similar copyright infringement case against West was brought by David A. Heinlein in the US District Court for the District of Connecticut in 2012. Following the decision in *White*, Mr. Heinlein decided not to pursue his action further, and the case was dismissed with prejudice on February 15, 2013.

Named a "Leading" Firm for International Arbitration: Nationwide in the US
Chambers USA, 2012

H&H Enterprises Investments

Client: H&H Enterprises Investments, Inc.
Date: June 7, 2012
Case & Venue: H&H Enterprises Investments, Inc. v. The Arab Republic of Egypt, ICSID Case No. ARB/09/15
Practice Group: International Arbitration & Trade
Weil Team: Partner Arif Ali and associate Marguerite Walter in Washington, DC

Weil represented H&H Enterprises Investments, Inc., a California-based firm, in connection with a pending bilateral investment treaty dispute before the International Centre for Settlement of Investment Disputes (ICSID) arising out of H&H's multimillion-dollar investment in the Egyptian tourism industry. H&H brought claims under the US-Egypt Bilateral Investment Treaty (BIT). These were based on the Egyptian government's failure, among other things, to grant an official license for the operation of a resort after H&H had already invested a sizable sum in the development of the hotel and surrounding land and entered into a long-term contract to manage and develop the resort with the Egyptian government. H&H claimed that the Egyptian government's refusal to issue the license violated a treaty clause prohibiting expropriation of investments. H&H also asserted that Egypt had wrongfully expropriated its option to buy the resort and had denied its investment fair and equitable treatment, in breach of its obligations under the BIT.

In an effort to halt the arbitration, the Egyptian government filed preliminary objections arguing that the tribunal did not have jurisdiction over the dispute. It argued that H&H did not have a valid option to buy the resort, which in any event could not qualify as an investment so as to provide a basis for the tribunal's jurisdiction; that the treaty did not apply, because the investment was made prior to its enactment and was not registered under Egypt's investment law; that H&H failed to exercise control over the investment during the relevant period due to a failure to observe California corporate formalities later rectified; and that H&H had waived its right to assert claims under the BIT because it had been involved in litigation in Egyptian courts. It also argued that H&H had waited too long to bring its claims and that the case was therefore time-barred.

In its June 2012 jurisdictional ruling, the ICSID tribunal unanimously rejected the majority of Egypt's jurisdictional objections. It joined the question of whether H&H had a valid option to buy the resort, and whether it had waived its right to arbitration by pursuing litigation in Egyptian courts, to the merits phase of the proceedings. Egypt now must respond in full to the merits of all of H&H's claims as well as address more fully the two remaining jurisdictional issues. The case will be heard by the tribunal in late 2013.

C-III Asset Management LLC and U.S. Bank National Association

Clients: C-III Asset Management LLC and U.S. Bank National Association, as trustee for the holders of certain Bear Stearns commercial mortgage securities
Date: April 2, 2012
Case & Venue: Mass Op, LLC, et al. v. U.S. Bank National Association, C-III Asset Management LLC, and Principal Global Investors, LLC; No. 15952/2011 (N.Y. Sup. Ct., Nassau Co.)
Practice Group: Complex Commercial Litigation
Weil Team: Partner John P. Mastando III and associates David Singh, Eric Wolfish, and Rachel Barish Swartz in New York

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Weil secured a significant victory for our clients C-III Asset Management LLC (C-III) and U.S. Bank National Association in an action filed by plaintiffs Mass Op, LLC and Mass One, LLC in New York Supreme Court seeking a preliminary injunction, declaratory relief, and damages.

C-III is the special servicer of a $65 million commercial mortgage secured against a property owned by the plaintiffs, and U.S. Bank is the trustee for the related commercial mortgage certificates. In connection with the commercial mortgage, the plaintiffs had entered into a certain lockbox and security agreement that required the plaintiffs to maintain a certain debt service coverage ratio (DSCR). In September 2011, co-defendant and master servicer Principal Global Investors, LLC notified the plaintiffs that the DSCR had fallen below this requisite ratio. The commercial mortgage was subsequently transferred to C-III, as special servicer.

On November 9, 2011, the plaintiffs filed a complaint and motion for preliminary injunction seeking to enjoin the defendants from declaring a default under the lockbox and security agreement. The plaintiffs argued that the DSCR had not fallen below the requisite threshold, that the defendants had "fabricated" the DSCR calculation for improper motives allegedly related to other dealings between the parties, that the defendants had breached the covenant of good faith and fair dealing, and that the defendants' actions constituted a *prima facie* tort.

On April 2, 2012, following a preliminary injunction hearing and supplemental briefing, the court denied the plaintiffs' motion for a preliminary injunction in full, agreeing with our argument that the plaintiffs had "wholly failed" to establish a likelihood of success on the merits of their claims.

WMI Liquidating Trust

Client: WMI Liquidating Trust
Date: December 19, 2012
Case & Venue: In re: Washington Mutual, Inc., et al., No. 08-12229 (Bankr. D. Del.)
Practice Groups: Complex Commercial Litigation, Business Finance & Restructuring
Weil Team: Associates Julio Gurdian in Miami and Diana Eng, Greg Kau, Rachel Barish Swartz, and Marvin Mills in New York, supervised by partners Brian Rosen and John P. Mastando III in New York

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In December 2012, Weil won a significant victory for WMI Liquidating Trust (WMILT), the successor-in-interest to Washington Mutual, Inc. (WMI), before the US Bankruptcy Court for the District of Delaware. Following a trial of the claim in late September 2012, the bankruptcy court sustained WMILT's objection to the Oregon Department of Revenue's (DOR) proof of claim. Prior to confirmation of WMI's chapter 11 plan, the Oregon DOR filed a proof of claim in the chapter 11 cases seeking payment of approximately $30 million for corporate excise taxes, interest, and penalties arising from an audit of WMI and certain of its banking subsidiaries for the tax years 1999 through 2006.

The bankruptcy court upheld WMILT's objection to the claim on the basis that the Oregon DOR sought payment for taxes owed by Washington Mutual Bank (WMB), a non-debtor subsidiary, and various banking subsidiaries of WMB that were separate and distinct entities from WMI. The court also found that WMI conducted no business activity within or directed toward Oregon during the relevant tax years and that the Due Process and Commerce Clauses of the US Constitution bar enforcement of Oregon's attempt to impose corporate excise taxes on WMI because WMI did not have a substantial nexus with Oregon.

Lehman Brothers Real Estate Associates

Client: Lehman Brothers Real Estate Associates, et al.
Date: December 20, 2012
Case & Venue: Fried, et al. v. Lehman Brothers Real Estate Associates III LP, et al., No. 1:11-cv-04141 (S.D.N.Y.), No. 11-1774 (2nd Cir.)
Practice Group: Securities Litigation
Weil Team: Partner Jonathan D. Polkes and associates Adam Banks and Robert Spake, Jr. in New York

Weil secured a victory in the US Court of Appeals for the Second Circuit when, in December 2012, the appellate court affirmed the March 2011 dismissal of a securities fraud complaint against several real estate investment limited partnerships that were affiliates of Lehman Brothers Holdings Inc.

The plaintiffs were investors in the limited partnerships. They had alleged before the US District Court for the Southern District of New York that the partnerships knowingly or recklessly omitted material information in connection with their investments in violation of the federal securities laws. In affirming the dismissal of the complaint with prejudice, the Second Circuit held that the plaintiffs had failed to allege a strong inference of scienter and agreed with Lehman's argument that several of the documents the plaintiffs relied on in fact supported the inference that the partnerships had not acted with scienter.

PRO BONO SPOTLIGHT

Housing Subsidy Client

Clients: Section 8 Subsidy Housing client and The Legal Aid Society
Date: May 31, 2012
Case & Venue: [Client] v. The New York City Housing Authority and John B. Rhea, as Chairman and Member of the New York City Housing Authority, et al., No. 400810/2012; Article 78 Proceeding
Weil Team: Associates Kyle Ortiz, Valerie Wicks, and Meaghan Thomas-Kennedy in New York

The New York Supreme Court approved a settlement on May 31, 2012 in which the New York City Housing Authority (NYCHA) agreed to restore our client's Section 8 subsidy and his landlord agreed to dismiss its eviction proceedings against him.

Our client, a disabled, illiterate senior who was chronically homeless, was approved for a Section 8 subsidy in December 2009, and NYCHA approved his lease of an apartment owned by a third-party landlord in January 2010. Our client did not immediately move into the apartment, because he broke both his legs in an accident and underwent rehabilitation at a nursing home.

In June 2010, without providing any notice to our client, NYCHA terminated his Section 8 benefits and stopped paying its portion of the rent to our client's landlord. In March 2011, he completed his rehabilitation and moved into the apartment for the first time. The landlord began an eviction proceeding in June 2011 on the grounds that the loss of our client's Section 8 subsidy was a violation of the terms of his lease.

The Weil team, in partnership with The Legal Aid Society, responded by filing an Article 78 petition in which we demonstrated that NYCHA had failed to provide any notice of our client's Section 8 termination as required by both NYCHA's own internal rules and federal law.

Shortly after filing the petition, NYCHA's attorney contacted the Weil team seeking to resolve the matter. Weil negotiated an agreement with NYCHA and counsel for the landlord through which our client's Section 8 subsidy would be reinstated, NYCHA would make back payments on the Section 8 portions of his rent, and the landlord would drop the eviction proceeding and agree not to pursue our client's portion of the back rent. The result was that our client's Section 8 subsidy has been restored and he will be able to stay in his apartment.

"Without the Weil team's representation, our client would undoubtedly have been evicted from his home as a result of the improper termination of his housing subsidy. Today, as a result of Weil's work, he remains in his apartment with an affordable rent, his health is stable, and he is happy."

Lucy Newman

Staff Attorney
The Legal Aid Society

In the aftermath of what Bloomberg called "India's biggest corporate fraud probe," Weil successfully navigated the outside directors of Satyam Computer Services Ltd. through a securities fraud class action in federal court in New York, obtaining the dismissal of all claims after other defendants had settled more than a year earlier. Commenting on Weil's victory, The Am Law Litigation Daily noted, "The outside directors decided to fight on — and now they must be glad they did."

Bloomberg
The Am Law Litigation Daily
January 2013

Former independent directors of Satyam

Clients: Five former independent directors of Satyam Computer Services Ltd.
Date: January 2, 2013
Case & Venue: In re: Satyam Computer Services Ltd. Securities Litigation, No. 09-md-02027 (S.D.N.Y.)
Practice Group: Securities Litigation
Weil Team: Partners Irwin Warren and Miranda Schiller and associates Margarita Platkov, Evert Christensen, and Stacey Harkey in New York

On January 2, 2013, Weil obtained a significant victory on behalf of its clients, former independent directors of Satyam Computer Services Ltd., when the US District Court for the Southern District of New York dismissed all claims against them in a shareholder class action. Weil represents five of the seven former directors and acted as lead counsel for all the defendant directors named in the suit.

The shareholder class action arose out of a massive, multi-year fraud, known as "India's Enron," in which senior management at Satyam, India's fourth-largest outsourcing firm, inflated the company's revenue, income, and cash balances by more than $1 billion. In their complaint, the class plaintiffs alleged that the former independent directors recklessly failed to prevent or discover this securities fraud. In 2011, Satyam and its auditor, PricewaterhouseCoopers LLP, agreed to pay $125 million and $25.5 million, respectively, to settle all claims filed by the US shareholders. The 2011 settlements did not include claims against the former directors.

Weil moved to dismiss the claims against the directors for failure to state a claim and also moved to dismiss certain plaintiffs' claims based on the US Supreme Court decision in *Morrison v. National Australian Bank, Ltd.*, defining the territorial reach of the US securities laws.

The court dismissed all claims against the former independent directors, holding that the plaintiffs failed to plead fraud. To the contrary, the court stated that the assertions in the complaint "concern an intricate and well concealed fraud perpetrated by a very small group of insiders and only reinforce the inference" that the former board members "were themselves victims of the fraud."

In addition, claims against the former independent directors were dismissed pursuant to *Morrison*, which allows a claim under the US securities laws only if that claim arises out of the purchase of securities either on a US exchange or in another domestic transaction. Because Satyam's common stock was only traded in India, the court held, the plaintiffs could not bring claims based on the purchase of those securities. Likewise, the plaintiffs could not bring US securities claims based on the purchase of Satyam American Depository Shares (which are traded on the NYSE) under the Satyam stock option plan, because those purchases were directly from Satyam, and based on the terms of the option plan, employees should be deemed to have purchased these shares in India. The decision appears to be the first instance in which *Morrison* has been applied in connection with purchases made pursuant to foreign-issued employee stock plans.

StubHub

Client: StubHub, Inc.
Dates: March 6, 2012; January 25, 2013
Case & Venue: Hill, et al. v. StubHub, Inc., et al., No. COA11-685 (N.C. App.)
Practice Group: Complex Commercial Litigation
Weil Team: Partners David Lender, Gregory Silbert, and Eric Hochstadt and counsel Jonathan Bloom and Mark Fiore in New York, and associate Kristen Echemendia in Washington, DC

Weil, along with co-counsel Cooley Godward Kronish LLP and K&L Gates LLP, achieved a major victory for StubHub on an issue of critical importance to Internet websites and the growth of e-commerce. In a 39-page decision, the North Carolina Court of Appeals held on March 6, 2012 that StubHub was not liable – based on federal immunity under Section 230 of the Communications Decency Act – for resold tickets to a Hannah Montana concert whose resale price was in excess of the maximum allowed at the time by the state's "ticket scalping" statute.

The case involved an issue of first impression for North Carolina. The North Carolina Court of Appeals issued a writ of *certiorari* to hear this interlocutory appeal and determine the proper scope of Communications Decency Act immunity and its application to StubHub in this case. Reversing the decision of the trial court, the appeals court granted summary judgment for our client, concluding that StubHub did not "materially contribute" to the unlawful ticket prices in the transaction at issue and did not otherwise lose immunity for fees it charged for its services, because it was neither the ticket seller nor the ticket seller's agent.

Eleven *amici* supported StubHub on appeal, demonstrating that the trial court's decision narrowly construing the scope of Communications Decency Act immunity went against the weight of authority on this issue and would have created uncertainty. It would also have had a chilling effect on Internet businesses.

On January 25, 2013, the North Carolina Supreme Court denied the plaintiffs' petition for discretionary review, remanding the case to the trial court for entry of final judgment in favor of StubHub.

Nuance Communications

Client: Nuance Communications, Inc.
Date: October 5, 2012
Case & Venue: Purtell v. Nuance Communications, Inc.; Case No. 13 117 Y 3005 10, AAA arbitration in New York City
Practice Group: Complex Commercial Litigation
Weil Team: Partners David Lender and Salvatore Romanello in New York, and associates Ariane Newell and Nina Edelman in New York and Giana Ortiz in Dallas

Weil obtained a significant win on behalf of Nuance Communications, Inc. in a case arising from an M&A transaction, wherein Nuance purchased 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 three years. After earnout thresholds were not met, Vocada's former shareholders filed an arbitration demand, claiming fraudulent inducement and breach of contract, and seeking $21 million in damages, plus punitive damages and attorneys' fees. After an arbitration that lasted two weeks, the panel ruled in Nuance's favor, declining to award any damages.

Ranked Tier 1 in Employee Benefits (ERISA) Law
U.S. News – Best Lawyers "Best Law Firms" Survey, 2011-2013

The Lehman Brothers Savings Plan

Client: The Lehman Brothers Savings Plan
Date: December 3, 2012
Case & Venue: Loschiavo, et al., Derivatively on Behalf of The Lehman Brothers Savings Plan v. Fidelity Management & Trust Co. and Ernst & Young, Defendants, and The Lehman Brothers Savings Plan, Nominal Defendant, No. 1:10-cv-08631, and In re Lehman Brothers Securities and ERISA Litigation, No. 09 MDL 2017 (LAK) (S.D.N.Y.)
Practice Group: Employment Litigation
Weil Team: Partner Nicholas Pappas in New York

Weil secured a victory for The Lehman Brothers Savings Plan (the Plan) in an action against Fidelity Management & Trust Co. and Ernst & Young (E&Y), as well as the Plan as nominal defendant. The complaint asserted a professional malpractice claim under New York law against E&Y, which the plaintiffs, participants in the Plan, purported to bring "derivatively on behalf of the Plan," based on E&Y's alleged negligence in conducting the audits of Lehman Brothers Holdings Inc. from July 10, 2007 through September 15, 2008. The complaint also asserted a claim for breach of fiduciary duty under ERISA against Fidelity, as the Plan's trustee, for failing to pursue claims against E&Y based on the alleged negligent audits. The complaint asserted no claims directly against the Plan.

Originally filed in federal court in Massachusetts, the action was transferred to the US District Court for the Southern District of New York for coordinated or consolidated pretrial proceedings with 28 other pending matters that had been centralized in that court. In January 2012, Weil filed a motion to dismiss on behalf of the Plan, arguing that ERISA preempts any state law derivative cause of action and does not authorize plan participants to assert a plan's state law claims against third parties derivatively on a plan's behalf.

On December 3, 2012, the court granted the Plan's motion to dismiss in its entirety. In dismissing the purported derivative claim on the Plan's behalf, the court held that ERISA preempts any purported state law derivative cause of action, and even if the plaintiffs attempted to reassert their derivative claim under ERISA, that claim would still fail because ERISA does not allow plan participants to bring a derivative action when the cause of action is not one of the specifically enumerated ERISA remedies.

This action represented a novel attempt by plan participants to step into the shoes of a plan administrator and take actions on their plan's behalf. The court's opinion granting the Plan's motion to dismiss establishes important precedent, as it is one of the first cases to decide what rights, if any, plan participants have when they disagree with a plan fiduciary about whether to cause the plan to assert potential claims against third parties.

Great American Insurance Co. of New York

Client: Great American Insurance Co. of New York
Date: April 11, 2012
Case & Venue: US v. Great American Insurance Co. of New York and Washington International Insurance Co., No. 09-00187, US Court of International Trade
Practice Group: International Arbitration & Trade
Weil Team: Partner Theodore R. Posner in Washington, DC

Weil, along with co-counsel Crowell & Moring LLP and Sidley Austin LLP, has been successfully representing Great American Insurance Co. of New York (GAIC) in a dispute with the US Government before the US Court of International Trade (now on appeal to the US Court of Appeals for the Federal Circuit). The government alleges that GAIC owes about $8 million plus interest under bonds issued to secure payment of certain customs duties. In 2012, Weil won an order from the court denying the government's motion to amend an earlier judgment, which sought about $6 million in prejudgment interest, together with postjudgment interest.

The case concerns bonds issued by GAIC to secure payment of about $8 million in antidumping duties owed on imports of crawfish tail meat from China. When the US Government was unable to collect from the importer, it sought payment from our client, the surety.

In an August 2011 judgment, the court dismissed $2 million in claims on statute-of-limitations grounds and awarded the government $6 million. The government then filed a motion to amend the judgment, seeking about $6 million in prejudgment interest both as a matter of alleged statutory right, under an obscure statute dating back to 1799 that had never been applied before in the antidumping duty context, and as a matter of the equitable powers of the court.

In its April 2012 order, the court rejected the government's motion in its entirety, primarily, it reasoned, because the government should have raised its claims for prejudgment interest in its original motion for summary judgment rather than waiting to do so in a motion to amend judgment. The court's ruling raises an interesting question of law about the permissible scope of a motion to amend judgment under Rule 59(e) of the Federal Rules of Civil Procedure.

The government has appealed the denial of its motion for prejudgment interest, and GAIC has cross-appealed. The appeal and cross-appeal are now pending at the Federal Circuit.

Agnico-Eagle Mines

Client: Agnico-Eagle Mines Ltd.
Date: January 14, 2013
Case & Venue: In re: Agnico-Eagle Mines Ltd., No. 11-07968 (S.D.N.Y.)
Practice Group: Securities Litigation
Weil Team: Partners Irwin Warren and Miranda Schiller and associate Evert Christensen in New York

Weil obtained another important victory in a securities fraud class action on January 14, 2013, when the US District Court for the Southern District of New York granted Weil's motion to dismiss a securities fraud complaint filed by shareholders against clients Agnico-Eagle Mines Ltd. and two of its executives.

Class actions were filed in New York and Canada after the company announced that it would cease mining at one of its Canadian gold mines because it had received expert advice indicating a risk of instability in the mine following two blasts that had been conducted there many months earlier. Production at the mine accounted for nearly one-third of the company's revenue, and the company announced that it would write off its $260 million investment in the mine. The plaintiffs alleged that during the class period the defendants fraudulently misrepresented or concealed the scope of the damage arising from the blasts and the failure of remediation efforts, and that the announcement caused the company's market cap to decline by $2.2 billion. In rejecting all of the plaintiffs' claims, the court held that the company's disclosures were neither fraudulent nor reckless. Emphasizing that the company was "entitled to devote a reasonable amount of time to investigation and remediation before disclosing an assessment of the…situation," the court stated: "The facts alleged in [this] case most strongly support the inference that defendants reasonably weighed the level of risk entailed by available information and believed that it did not rise to the level… they were obliged to disclose to the investing public" prior to the time that they made their disclosures.

MVM

Client: MVM Zrt.
Date: July 3, 2012
Case & Venue: MVM Zrt. – EMS Arbitration (64597.0007) Elektromreza Srbije Belgrade and Elektroprivreda Srbije as Claimants against MVM as Respondent, Permanent Court of Arbitration attached to the Hungarian Chamber of Commerce and Industry
Practice Group: International Arbitration & Trade
Weil Team: Partner László Nagy and associates László Nanyista and Ádám Benyőcs in Budapest and Dániel Dózsa in Washington, DC

Weil secured a major win on July 3, 2012 for MVM Zrt., the leading electricity company in Hungary, when the Permanent Court of Arbitration attached to the Hungarian Chamber of Commerce and Industry rejected claims for damages of more than €8.5 million plus interest against MVM. Serbian state electric-power companies Elektromreza Srbije J.P. Beograd and Elektroprivreda Srbije J.P. Beograd had brought the action.

The case related to compensation claims for an electricity transmission line built in 1988, before the fall of the Berlin Wall. At the time, barter contracts between state-owned companies from socialist countries were typical, and the one between the claimants and MVM provided compensation for the transfer line in electricity-transit-fee discounts over a period of 15 years. The tribunal considered, among other issues: the effects of UN sanctions against Yugoslavia on the trade of electricity with Yugoslavian companies, such as the claimants, during the Balkan wars; the period during which discounts were available for the claimants; and the possibility of converting in-kind compensation into a monetary claim under the barter agreements, which were governed by Swiss law.

After securing a full victory for MVM, the Weil team went on to successfully defend the arbitral award in the annulment proceedings brought by the claimants before the Hungarian Metropolitan Court in September 2012. The award is therefore now final and not subject to further challenge.

Micron Technology and Aptina

Clients: Micron Technology Inc. and Aptina LLC
Date: February 3, 2012
Case & Venue: Panavision Imaging LLC v. Omnivision Technologies Inc., et al., No. 2:09-cv-01577 (C.D. Cal.)
Practice Group: Patent Litigation
Weil Team: Partner Jared Bobrow and associates Jason Lang and Nathan Greenblatt in Silicon Valley

Weil obtained an important win for clients Micron Technology Inc. and Aptina LLC when a US district court in California granted summary judgment of noninfringement on claims by Panavision Imaging LLC that the two companies and Canon USA Inc. had infringed its patent on video-imaging technology.

PRO BONO SPOTLIGHT

A Father Defending Visitation Rights

Client: Father in a child relocation dispute
Date: August 24, 2012
Case & Venue: Family Court, County of Bronx; opposition to mother's out-of-state relocation request
Weil Team: Partner Miranda Schiller in New York and associates Lauren Hoelzer Helenek in New York and Matthew Baudler in Silicon Valley

In a case referred by MFY Legal Services, Weil represented the father of a 7-year-old boy whose mother sought a court order allowing her to relocate with the boy from New York to Florida, where she had family. The move would have ended the father-son relationship as (1) neither parent had the means to travel between Florida and New York and (2) the mother, who had legal custody of the boy, had a history of impeding the father's visitation. The attorney for the child supported the mother's position, arguing that relocation was in the boy's best interest. The court conducted a weeklong trial that was handled by two Weil associates. Following the trial, the court not only denied the mother's relocation petition, finding that it was in the boy's best interests to remain in New York, but also granted the father significantly greater visitation rights and indicated a willingness to consider awarding custody to the father should the mother continue to thwart his visitation with his son.

Received a “Silver” ranking for Patent Litigation in California
IAM Patent 1000 – The World’s Leading Patent Practitioners, 2012

The US District Court for the Central District of California ruled Panavision did not prove that either of our clients infringed its patent, which allegedly covered an invention that improves the speed of the image sensor. The court found that Panavision had failed “to identify any genuinely controverted facts regarding whether Micron [or] Aptina’s products infringe” the patent at issue, US Patent No. 6,818,877.

Panavision originally brought suit in 2009, alleging infringement of four of its imaging technology patents. The Weil team challenged all four patents through *inter partes* reexamination proceedings, and the US Patent Office found that the claims asserted in three of them were not patentable. In April 2011, the court dismissed claims on the three patents, narrowing the case to one. Weil succeeded in having Panavision’s claims of infringement on the fourth patent dismissed when the court granted summary judgment on February 3, 2012.

Intrepid Solutions and Services

Client: Intrepid Solutions and Services, Inc.
Date: June 21, 2012
Case & Venue: International Biometric Group, LLC v. Intrepid Solutions and Services, Inc., et al., No. 12-cv-4029 (S.D.N.Y.)
Practice Groups: Complex Commercial Litigation, Employment Litigation
Weil Team: Partners David Fertig and Gary Friedman in New York, and associates Jared Friedmann in New York and Adam Tolin in Princeton

As counsel for Intrepid Solutions and Services, Inc., a Virginia-based defense contractor to the US Government, Weil obtained the dismissal of restrictive covenant and trade-secret litigation brought against Intrepid by one of its competitors, New York-based International Biometric Group (IBG).

In an effort to block Intrepid’s bid on a $50 million biometrics project being solicited by the US Army’s Intelligence and Security Command (INSCOM) and National Ground Intelligence Center (NGIC), IBG brought suit in the US District Court for the Southern District of New York. IBG alleged that decorated US Army Colonel Stephen Hood, a current Intrepid employee and former IBG employee, was subject to a restrictive covenant agreement that prevented him from working on projects bid by INSCOM or NGIC. It further alleged that Intrepid had induced Hood’s breach of that agreement – and used confidential and proprietary information of IBG known to Hood – in connection with the preparation of its bid.

Asserting claims for tortious interference with contract, misappropriation of trade secrets, and unfair competition, IBG strategically commenced its lawsuit the day before the parties’ competing bids were to be submitted to INSCOM and was successful in obtaining an *ex parte* temporary restraining order that purported to enjoin Intrepid from submitting its bid. Weil quickly stepped in, however, and persuaded the court to dissolve the restraining order the very next day. Then, following expedited discovery, full briefing on the merits of IBG’s claims, and a series of court hearings, Weil obtained a complete dismissal of the action against Intrepid, ultimately persuading the court that it lacked jurisdiction over Intrepid.

Named a "Leading" Firm for Labor & Employment in the US
Chambers USA, 2012

Alliant Insurance Services

Client: Alliant Insurance Services, Inc.
Date: June 13, 2012
Case & Venue: Peter Arkley, et al. v. Aon Risk Services Companies, Inc., et al., No. 2:12-cv-01966 (C.D. Cal.)
Practice Groups: Employment Litigation, Complex Commercial Litigation
Weil Team: Partners Jeffrey Klein in New York and Christopher Cox in Silicon Valley, and counsel Gregory Hull and associates Liani Kotcher, Bambo Obaro, An Tran, and Amy Reed in Silicon Valley

A California federal court ruled in favor of Alliant Insurance Services, Inc., the nation's largest specialty insurance brokerage firm, granting partial summary judgment against Aon Corp. and two of its subsidiaries in an action involving the enforceability of non-compete provisions under California law. The action dates to June 2011, when Alliant and three former Aon employees filed suit against Aon seeking to void non-compete provisions contained in employment and other contracts between Aon and each of the former employees. Aon is also pursuing litigation on related claims in New York.

On June 13, 2012, the US District Court for the Central District of California held that the non-compete covenants in the agreements were void and unenforceable under Section 16600 of California's Business and Professions Code. In rejecting Aon's arguments that the covenants were governed by Illinois law, the court noted that it was "undisputed" that the former Aon employees "are California residents," had their "main offices" in the state as employees of Aon, and currently work for Alliant, a California-based employer. In finding that California law applied, despite an Illinois choice-of-law provision in the contracts, the court held that "California's ability to protect the employment interests of its residents would be significantly hampered if it could not enforce § 16600." The court also found that Aon's attempt to enforce these non-compete restrictions in its employment agreements and stock option plans constituted an unfair business practice under California Business and Professions Code Section 17200.

Sirius XM Radio

Client: Sirius XM Radio Inc.
Date: February 14, 2013
Case & Venue: In the Matter of Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services, before the Copyright Royalty Board, Washington, DC, No. 2011-1 CRB PSS/Satellite II
Practice Group: Intellectual Property/Media
Weil Team: Partners R. Bruce Rich, Miranda Schiller, and Randi Singer and associates Todd Larson, Sabrina Perelman, Jacob Ebin, Christine Doktor, Jessica Costa, Melissa Whitney, Elisabeth Sperle, Michael Jerry, Pooja Viswanath, Arielle Pankowski, and Damien Kieran in New York

In federal rate-setting litigation, Weil achieved a victory for client Sirius XM Radio Inc. (Sirius XM) in connection with satellite radio royalty rates for the public performance of sound recordings for the 2013-2017 license period. After a successful outcome in a similar proceeding five years ago, Sirius XM retained Weil to represent it before the Copyright Royalty Board (CRB), which sits in Washington, DC and operates under the aegis of the Librarian of Congress. CRB rate-determination hearings proceed according to a detailed set of statutorily prescribed procedures involving full-scale litigation and two trials (for direct and rebuttal phases of the case) between the interested parties – copyright owners on one side and copyright licensees, such as Sirius XM, on the other.

After a combined 19 days of trial, featuring live testimony from more than 20 witnesses, our team's advocacy helped secure a sound recording royalty rate ranging from 9 to 11 percent of Sirius XM's revenues over the course of the license period – only slightly higher than the rates initially sought by Sirius XM and dramatically lower than those argued for by SoundExchange, the agency that collects performance royalties from music services on behalf of the recording industry. Specifically, Sirius XM had proposed licensing fees in the range of 5 to 7 percent of revenues based primarily on benchmark agreements garnered from arm's-length market negotiations between Sirius XM and independent record labels. SoundExchange, for its part, proposed fees beginning at 12 percent of revenue and increasing each year to reach 20 percent in the last year of the licensing period. SoundExchange's proposal was based on benchmark agreements between major record labels and interactive subscription services. In its determination, the CRB rejected SoundExchange's interactive service benchmark and adopted a license fee that much more closely aligned with Sirius XM's presentation of evidence at trial. The determination of rates saved Sirius XM approximately $1.8 billion in royalty payments over the license term compared with the record industry's proposal.

UnitedHealth Group and Ingenix

Clients: UnitedHealth Group Inc. and Ingenix, Inc.
Date: January 24, 2012
Case & Venue: Franco v. Connecticut General Life Insurance Co., et al., No. 07-6039 (D.N.J.)
Practice Groups: Complex Commercial Litigation, Employment Litigation
Weil Team: Partners Christopher Pace in Miami and Nicholas Pappas in New York, and associates Daniel Venditti and Kevin Kramer in New York and Matthew Baudler in Silicon Valley

Weil scored a significant victory for UnitedHealth Group Inc. (UHG) and Ingenix, Inc. in January 2012, when the US District Court for the District of New Jersey dismissed a civil conspiracy claim against them by members of health plans administered by Connecticut General Life Insurance Co. (Cigna) affiliates. The plaintiffs sued Cigna and Weil clients UHG and Ingenix for, among other things, allegedly conspiring to reduce reimbursements for out-of-network services. They sought to represent a class of all Cigna health plan members nationwide who received out-of-network services only partially reimbursed by their health plans. The plaintiffs asserted a variety of federal and state law claims against UHG and Ingenix, including violation of the Sherman Act and RICO and civil conspiracy to defraud Cigna health plan members.

In September 2011, the district court dismissed all claims against UHG and Ingenix with the exception of the plaintiffs' civil conspiracy claim. After answering the plaintiffs' complaint, Weil moved on behalf of UHG and Ingenix for judgment on the pleadings as to the remaining claim. In a thorough opinion issued on January 24, 2012, the court agreed with Weil's argument that ERISA preempted the plaintiffs' conspiracy claim against UHG and Ingenix because the claim challenged ERISA plan benefits determinations, even though the determinations were made by Cigna rather than UHG or Ingenix. As the court recognized, the "question of liability on the civil conspiracy claim would necessarily require consideration of what [Cigna's] ERISA plans represented would be paid in [out-of-network] reimbursements." Allowing the civil conspiracy claim to go forward, therefore, would undermine the goals of the US Congress to create a uniform ERISA enforcement framework and to eliminate the threat of inconsistent or conflicting state law regulation of ERISA plans. Accordingly, the court granted judgment on the pleadings and dismissed the remaining claim against Weil clients UHG and Ingenix.

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