



Bill Sushon

Partner

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Bill Sushon focuses on securities class actions, shareholder derivative lawsuits, hostile takeover litigation, partnership disputes, breach-of-contract actions, bankruptcy litigation and a host of other matters. He has appeared in state and federal courts throughout the country on behalf of Fortune 100 companies, their officers and directors, alternative-asset management entities, investment partnerships, underwriters, and other sophisticated commercial clients.

Over the years, Bill has also developed a significant practice advising clients on litigation avoidance strategies and disclosure issues, as well as litigation advice in complex mergers and acquisitions and other corporate transactions. For example, Bill has advised several potential acquirers in their efforts to terminate merger agreements under material adverse effect clauses. He has also given pre-litigation advice to several major financial institutions in disputes concerning securities-lending programs, collateralized debt obligations, mortgage-backed securities, and similar investments.

Experience

- Defending a large food company in an expedited Delaware Chancery Court trial of its famous "shotgun wedding" case concerning breach of a merger agreement and its material adverse change provision.

Admissions

Bar Admissions

New York

Court Admissions

US District Court, District of Colorado, Eastern and Southern Districts of New York

US Court of Appeals, Second, Third, Fifth, Ninth, and Eleventh Circuits

US Supreme Court

Education

Columbia University, J.D., 1995:
Stone Scholar

Dartmouth College, A.B.,
Government, 1992: *cum laude*;
Presidential Scholar

- Winning dismissal—and affirmance on appeal to the Second Circuit—of a securities class action against a major financial holding company alleging that the offering documents for its preferred stock issuances concealed write-downs of its mortgage-related assets.
- Obtaining dismissal of successor-liability claims (including de facto merger, implied assumption, and fraudulent conveyance claims) in numerous actions against a global financial institution arising from its acquisition of a leading mortgage-lending company.
- Defending a major mortgage servicing company in a multi-billion-dollar qui tam False Claims Act case concerning the client's certifications to the federal government of compliance with state and federal laws.
- Obtaining plaintiffs' voluntary dismissal (after fact discovery closed) of Section 11 claims against the underwriting syndicate in a case concerning a multi-billion-dollar e-commerce IP.
- Defending a global financial institution in class actions and expedited preliminary injunction proceedings seeking to enjoin its multi-billion dollar merger with a major home-mortgage lender, including winning dismissal with prejudice of an action in California state court and affirmance on appeal.
- Defending a large health insurance company and certain of its officers and directors in a multi-billion dollar action under the Securities Act of 1933 and the Securities Exchange Act of 1934 alleging that the company's employee stock-option grant measurement dates and other practices were materially false and misleading.
- On behalf of a hedge-fund client, winning a Cayman Islands court's appointment of a provisional liquidator to oversee the operations of a solvent Chinese education company.
- Representing a securities industry non-profit organization as an *amicus* in *Stoneridge*, in which the Supreme Court ruled that scheme liability under Rule 10b-5 did not extend to innocent commercial counterparties in transactions a securities issuer uses to falsify its financial statements. *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 128 S. Ct. 761 (2008).
- Representing a major investment bank in a US\$4 billion putative class action that received national attention in *The Wall Street Journal*, *The American Lawyer*, and elsewhere. The complaint alleged that our client and others manipulated the price of a drug manufacturing company's stock to allow hedge funds to reap billions in short-selling profits. Bill briefed and argued a successful motion for Rule 11 sanctions that resulted in the complaint's dismissal.
- Representing the independent board of directors of a major financial exchange in a putative class action and expedited preliminary injunction proceeding challenging the exchange's historic merger with an electronic exchange as a breach of the directors' fiduciary duties.
- Obtaining a permanent injunction forbidding a major medical-device manufacturer from terminating the co-CEOs of its wholly-owned subsidiary in violation of the manufacturer's implied duties of good faith and fair dealing under an acquisition agreement with the subsidiary's former owners.
- Securing dismissal of a shareholder lawsuit against one of the world's largest videogame producers seeking to compel the company to allow shareholders unfettered access to the company's proxy statement.
- Defeating a preliminary injunction motion in expedited proceedings seeking to enjoin a merger between two software companies.

- Winning dismissal on behalf of the underwriters in a putative class action lawsuit under Section 11 of the Securities Act alleging that a Chinese clothing retailer's IPO registration statement was materially false and misleading because it failed to disclose declining revenues.
- Defending a chemical corporation in a putative securities class action under the Securities Act of 1933 and the Securities Exchange Act of 1934 and a derivative action alleging that the company's public disclosures were misleading for failing to disclose certain alleged anti-competitive conduct.
- Defending underwriting syndicates in putative class actions under the Securities Act of 1933 concerning securities offerings by (i) a biopharmaceutical company, (ii) a large payday lender, (iii) a Chinese solar cell manufacturer, (iv) an online small business lender.
- Defending a major foreign bank in all its Madoff-related matters.
- Securing dismissal of US\$68 million breach of contract and other claims against a large foreign bank stemming from its disposition of a private equity portfolio.
- Defending the largest dedicated bulk tank truck network in North America in two securities class actions asserting claims under Section 11 of the Securities Act of 1933 and a derivative demand stemming from the company's financial restatement.
- Defending a prominent financial services company and certain of its analysts in (i) a flurry of securities class actions alleging that the analysts' opinions were materially misleading, and (ii) the New York Attorney General's action against the company.
- Representing one of New York's largest financial services companies and its research analysts in two Mississippi state court lawsuits and a NASD arbitration challenging the accuracy of their research reports concerning high technology companies thereby violating the Securities Act of 1933, the Mississippi Securities Act and common law.
- Defending a major manufacturer of household products in nationwide state and federal securities actions alleging violations of Sections 11 and 12 of the Securities Act and Section 10(b) of the Securities Exchange Act.
- Representing the former CEO of a foreign internet-based e-mail services company, in a Section 11 putative class action in the U.S. District Court for the Southern District of New York.
- Representing all defendants in a Rule 10b-5 class action pending in Denver, Colorado, arising out of the failure of a large telecommunications company.
- Defending private-equity investors in a fraudulent conveyance action stemming from their sale of a large internet promotional products merchant.
- Defending a large air conditioning systems manufacturer in a putative class action in Texas state court seeking to enjoin the company's sale to a private equity investor.
- Representing both acquirers and targets in expedited takeover litigation in Delaware Chancery Court and elsewhere.

Professional Activities

Co-Author

- "Shifting Sands: Practical Advice on Delaware Fee-Shifting Bylaws," *New York Law Journal*, with Samantha Brutlag and Edward N. Moss (August 11, 2014)
- "Taking A Stand," *New York Law Journal*, September 6, with Allen Burton (2011)

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- “The Securities Act, Underwriters and the Due Diligence Defense,” *New York Law Journal*, with Brad Butwin and Asher Rivner (February 15, 2010)
 - “New York Landscape Affected by Subtle Change,” *New York Law Journal*, with Jonathan Rosenberg (December 16, 2002)

Member

- Association of the Bar of the City of New York, Committee on Professional and Judicial Ethics (2002-2013); Secretary (1997-2002)

Honors & Awards

- Recommended by *Legal 500* for Dispute Resolution: Securities Litigation - Defense (2016-2017), Litigation - Securities: Shareholder Litigation (2010-2011, 2015), and Finance - Financial Services: Litigation (2012)