

## → Securities Litigation

Securities litigation is a multifaceted, highly specialized area of practice. The securities laws are complex, and securities cases typically involve high stakes and sensitive matters. Securities claims present the risk of substantial damage awards and adverse publicity, as well as other serious risks and exposure. Often the threatened exposure bears little relation to the true merits of the claims.

Sheppard Mullin has a long history of successfully defending clients in securities class action and shareholder derivative litigation. We have tried several of these cases, and defended many of them by way of motions to dismiss, motions for judgment on the pleadings, motions for summary judgment and appeals, including to the United States Supreme Court.

Our litigators have successfully defended large and small public and private companies, directors and officers, investment banks, underwriters and analysts, accountants, attorneys, venture funds, majority shareholders, broker/dealers and lenders, as well as the California Department of Corporations, in a wide variety of securities matters. Our clients represent a broad range of industries, from manufacturing, technology, aerospace, healthcare, retail and entertainment to accounting, banking and other areas of financial services. We have significant experience applying the heightened pleading standards imposed by the Private Securities Litigation Reform Act of 1995 and the removal rights established by the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"), and are well versed in all the recent leading Supreme Court decisions applying securities laws, such as *Dura Pharmaceuticals v. Broudo*, *Merrill Lynch v. Dabit*, *Tellabs v. Makor Issues & Rights*, *Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.*, *Morrison v. National Australia Bank Ltd.*, *Matrixx Initiatives, Inc. v. Siracusano* and *Janus Capital Group, Inc. v. First Derivative Traders*.

Listed below are typical events that often form the backdrop for a securities class action, a breach of fiduciary duty claim or a shareholder derivative lawsuit.

- Restating earnings or a change/resignation of auditors
- Failing to meet analyst estimates or some other event that surprises the markets
- Backdating stock options
- Bankruptcy
- IPOs, secondary offerings and private placements
- Transactions in securities or stock option plans
- Representations and projections concerning the company or the investment
- Mergers, acquisitions and other significant decisions by management
- Proxy solicitations and tender offers
- Trading by insiders or broker/dealers

Sheppard Mullin attorneys have a thorough knowledge of the substantive and procedural laws applicable to these claims, excellent litigation and trial skills, and the experience to effectively manage these types of engagements in state and federal courts throughout California and across the country. Our attorneys have

defended numerous securities fraud and shareholder derivative actions class actions filed by all of the well-known plaintiffs' securities class action attorneys. We are very familiar with their styles and strategies, and our track record in these matters is excellent. Our attorneys are recognized as "Super Lawyers" in Securities Litigation, and we are on the AIG list of class action approved panel counsel.

We have successfully defended claims under all of the applicable federal securities statutes, and many of the blue sky and state law statutes, including:

- Sections 11, 12 and 15 of the Securities Act of 1933
- Sections 10(b), 18, 20 and 20A of the Securities Exchange Act of 1934
- SEC Rule 10b-5
- Sections 25400/25500, 25401/25501, 25402/25502 and 800 of the California Corporations Code
- Sections 17200, *et seq.* of the California Business & Professions Code
- Sections 1709 and 1710 of the California Civil Code

We typically wage an aggressive defense to claims of securities violations. We defend all aspects of these claims, by, among other things, quickly investigating the facts, interviewing the witnesses and reviewing the documents, filing motions to dismiss and demurrers, motions to stay and/or stage discovery, motions for judgment on the pleadings and/or motions for summary judgment. Under certain circumstances, we vigorously oppose class certification and have done so successfully. Unique among securities defense firms, we have lawyers who know how to take cases to trial, if necessary, not just to settle them out. We also know how to work successfully with our clients' directors and officers insurance carriers to ensure that we are following billing guidelines and avoiding surprises.

Our firm also has significant expertise in going-private and mergers and acquisitions litigation. Such litigation is nearly a certainty in every announced public company going-private or merger transaction. We have represented merged companies, directors, officers, independent committees and independent advisors in actions seeking injunctive relief and damages. We have successfully opposed motions to enjoin the merger and obtained dismissals based on demurrers and motions to dismiss under Delaware, California and New York law. We are thoroughly familiar with the business judgment rule, the entire fairness doctrine, the two-step merger strategy, exculpatory provisions and fairness committees. We have litigated *Revlon* duties, challenges to defensive measures, *Unocal* duties, "fiduciary-outs," break-up fees, majority of minority provisions, as well as "lock up," "no-talk" and "no-shop" provisions. We have experience in Dodd-Frank Act "say on pay" cases, including recently defeating a proxy challenge at the pleadings stage through an aggressive assertion of SLUSA removal jurisdiction.

We have experienced securities litigators in our offices in Los Angeles, Century City, San Francisco, San Diego, Del Mar, Orange County, New York and Washington, D.C. Our lawyers have appeared in the federal and state courts throughout California, Delaware, New York and elsewhere. We have also been very active in the effort to reform the securities laws and curtail abusive securities litigation. A Sheppard Mullin team comprised of transactional securities lawyers, securities litigators and criminal law practitioners provided input and advice regarding the Sarbanes-Oxley Act and have conducted seminars and programs designed to educate our clients regarding recent developments in the securities laws and regulations. Our partners routinely chair or appear on panels discussing latest trends in securities litigation. Our Corporate & Securities Law Blog is recognized as a leader in the field.

## Government Enforcement

Often, private securities class action lawsuits are preceded or accompanied by parallel investigations and actions brought by the SEC, the FTC, the U.S. Attorneys' Office and/or the California Department of Corporations, Department of Real Estate or Attorney General. It is a great advantage to the defendant or target, as well as the carrier, if the same law firm can provide capable representation in the criminal and enforcement actions, as well as the securities litigation. Sheppard Mullin is uniquely positioned to provide that representation because we have one of the only truly statewide criminal practices in California. We have experienced former federal prosecutors in each of the major metropolitan areas of the state. These attorneys have conducted a total of over 100 jury trials and have a combined experience of over 80 years as criminal and civil law practitioners. Their varied experiences in working for the U.S. Attorneys' office, the SEC and other governmental agencies give them unique insights that benefit our clients.

Sheppard Mullin attorneys represent individuals and corporations in state, federal, SEC and FINRA investigations and trials, both civil and criminal. Matters handled by our attorneys include:

- Representing corporations, presidents, CEOs and other officers in criminal and civil investigations and prosecutions
- Representing brokerage firm personnel and corporate executives in SEC investigations into "insider trading"
- Representing hospitals and healthcare professionals in fraud investigations
- Representing financial institutions in connection with grand jury investigations into loan practices and credit card charges
- Representing corporate executives in investigations involving Customs' violations
- Representing corporate executives and elected officials in political corruption cases

Sheppard Mullin also provides clients with preventive counseling, and we perform internal compliance audits designed to discover and deter possible criminal or illegal activity.

## Broker/Dealer Regulatory, Litigation and Arbitration Matters

Sheppard Mullin has represented brokerage firms and personnel in a number of SEC and FINRA regulatory investigations and proceedings. These matters have included claims of securities fraud, insider trading, unauthorized trading and churning, as well as "failure to supervise" and "soft dollar" issues. In addition, we have represented both brokerage firms and employees in FINRA arbitrations. Two of our partners have served as FINRA Arbitrators.