

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, Richter & Hampton LLP has a long history of successfully defending clients against securities claims. We have tried several of these cases, and defended many of them by way of motions to dismiss, motions for judgment on the pleadings and motions for summary judgment. In cases that have settled, our clients have paid significantly less than the average settlement.

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 wide range of industries, from low tech to high tech, manufacturing, aerospace, healthcare and commercial lending, to banking, entertainment and retail. We have significant experience applying the heightened standards provided by the Private Securities Litigation Reform Act of 1995 and the removal rights established under the Securities Litigation Uniform Standards Act of 1998, as well as recent Supreme Court decisions applying these statutes, such as *Dura Pharmaceuticals v. Broudo*, *Merrill Lynch v. Dabit* and *Tellabs v. Makor Issues & Rights*.

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

Securities claims are often filed after a restatement of earnings, a sudden drop in stock price, or other negative publicity. Accounting irregularities and financial fraud have become the primary theories used by the plaintiffs' bar to attempt to satisfy the pleading requirements under the PSLRA. The announcement of a merger or acquisition is another event that typically results in a lawsuit. The disclosure of suspiciously dated stock options likewise can trigger a suit.

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. Sheppard Mullin has defended numerous securities fraud and shareholder derivative actions class actions filed by 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. 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 and 20 of the Securities Exchange Act of 1934
- SEC Rule 10b-5
- California Corporations Code Sections 25400/25500, 25401/25501, 25402/25502 and 800

- California Business & Professions Code Sections 17200, *et seq.*
- California Civil Code Sections 1709 and 1710

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 on a number of occasions. Unique among securities defense firms, we have lawyers who know how to take cases to trial, if necessary, not just to settle them out.

Our firm also has significant expertise in going private and merger and acquisition litigation. We have represented merged companies, directors, officers, independent committees, and independent advisors in class 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 and California 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, *Unocal* duties, "fiduciary-outs", break-up fees, majority of minority provisions, as well as "lock up", "no-talk", and "no-shop" provisions. We have successfully asserted the exclusive appraisal remedy under California law.

Often, our clients are covered by insurance that provides for the payment of defense costs as well as indemnity against securities claims. Insurance plays an important role. Sheppard Mullin attorneys have been approved by numerous insurance carriers to defend securities claims, including AIG/National Union, Zurich, Chubb/Executive Risk, St. Paul, Lloyd's, Reliance National and others.

We have experienced securities litigators in our offices in Los Angeles, New York, San Francisco, San Diego, Orange County and Washinton, D.C. Our lawyers have appeared in the federal and state courts in California and New York, and are familiar with most of the judges in these courts. We have also been very active in the effort to reform the securities laws and curtail abusive securities litigation. Our attorneys contributed significant time, effort and money in support of the Private Securities Litigation Reform Act of 1995, and against California's Proposition 211, which was soundly defeated by the voters in November of 1996. A Sheppard Mullin team comprised of transactional securities lawyers, securities litigators and criminal law practitioners provided input and advice regarding the recent Sarbanes-Oxley Act and has conducted seminars and programs designed to educate our clients regarding Sarbanes-Oxley and its subsequent regulations. Our partners routinely chair or appear on panels discussing latest trends in securities litigation.

Government Enforcement

Often, the private securities class action lawsuit is 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.