

Ruling for Starr International Companies

Boies, Schiller & Flexner Chairman David Boies and a team of lawyers from the Firm won what many had considered an against-the-odds victory in a case against the U.S. government for illegally taking over insurer AIG at the height of the financial crisis of 2008. Judge Thomas Wheeler ruled on June 15, 2015, that the government violated the law when it took a controlling stake in AIG. “The government’s unduly harsh treatment of AIG in comparison to other institutions seemingly was misguided and had no legitimate purpose,” Judge Wheeler wrote in his ruling for Starr International Companies. Early in the case, many legal observers anticipated an easy win for the government, but Mr. Boies and his team overcame that during a trial before Judge Wheeler in the U.S. Court of Federal Claims last fall. Questioning former Fed Chairman Ben

Bernanke and former Treasury Secretary Timothy Geithner, the Boies, Schiller & Flexner team also shed light on the inner workings of the government in the financial crisis. Bloomberg News said “the ruling solidifies Mr. Boies’s reputation for winning long-shot cases,” while the *Wall Street Journal* described Mr. Boies as “one of the best trial lawyers in the country.” The court denied plaintiffs’ claims for damages, based on a legal ruling that is now on appeal. The trial team included Bob Silver, Alanna Rutherford, Amy Mauser, Bob Dwyer, Jeremy Vest, William Bloom, Abby Dennis, Julia Hamilton, Laura Harris, James Kraehenbuehl, Ilana Miller, John Nicolaou, Matthew Schmitt, Mat Schutzer, Matt Shahabian, David Simons, and Craig Wenner. Also Carl Goldfarb, Bill Dzurilla, Aaron Marcus, and Bret Vallacher.

Win for Barclays

Boies, Schiller & Flexner won a resounding victory for its client Barclays in a six-year battle over the bank’s purchase of the Lehman Brothers Inc. brokerage business at the height of the financial crisis. Lehman agreed on June 5, 2015, to pay Barclays an additional \$1.28 billion to end the dispute, and Barclays said it would book a \$750 million pre-tax gain as a result of the settlement. “Barclays fought hard and responsibly through six years of litigation to secure approximately \$8 billion of purchased yet disputed assets, and today’s settlement brings that effort to a successful conclusion,” Managing Partner Jonathan Schiller told the *Wall Street Journal*. Lehman’s bankruptcy trustee had claimed that the brokerage

business purchased by Barclays did not include more than \$4 billion in margin assets and a further \$1.9 billion in other so-called clearance box assets. The U.S. Court of Appeals for the Second Circuit issued two rulings last year, on August 5 and September 24, upholding lower court rulings in Barclays’ favor, and the U.S. Supreme Court in May declined to hear a petition by the trustee. The Firm’s work for Barclays was led by Mr. Schiller; along with partners Hamish Hume, Jonathan Shaw, Jack Stern, Tricia Bloomer, Todd Thomas, Bill Dzurilla, Chris Green, Heather King, and Amy Neuhardt; counsel Jon Davenport; and associates Camille Oberkamp and Randall Ewing.

Digital Music Trial

Major publications reported on one of the most impressive antitrust trial wins of the year in December 2014, when Apple Inc. fought off accusations that it had used an iTunes software update to create a monopoly in the digital music market. As noted by those publications, the jury verdict for the defense ended a decade-long dispute in which the plaintiffs sought more than \$1 billion in treble damages under the Sherman Act. Apple’s lawyers repeatedly pointed out the plaintiffs’ side lacked any actual iPod customers saying they were harmed, the *New York Times* reported. “There’s not one piece of evidence of a single individual who lost a single song, not even a complaint about it,” the *Times* quoted Boies, Schiller & Flexner partner Bill Isaacson as saying in closing arguments. Mr. Isaacson and co-counsel Karen Dunn were honored by *Litigation Daily* as Litigators of the Week.

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Recent Developments in International Arbitration

By Wendy Miles QC

The recent \$50 billion arbitration award against Russia in its dispute with Yukos shareholders has focused attention on international arbitration as a means of resolving major foreign investment disputes. It is the latest and largest in a number of billion-dollar arbitration awards that have been made public in the last few years. Many more remain confidential. Increasingly, multinational corporations and investors are looking to both international commercial arbitration and investment treaty arbitration to protect their overseas investments and positions.

The Yukos case began in 2005, when former shareholders of Yukos Oil Company started an investment arbitration before an arbitral tribunal administered by the Permanent Court of Arbitration (PCA) in The Hague, alleging that Russia had broken its obligations under the Energy Charter Treaty by expropriating the company's assets. The arbitral tribunal held unanimously that Yukos was the object of a series of politically motivated attacks by the Russian authorities, and awarded damages of \$50 billion to the former shareholders.

Other large quantum awards include *Dow Chemical Co. v. Kuwait* and *Occidental Petroleum Corp. v. Ecuador*, both in 2012. Dow Chemical brought an International Chamber of Commerce (ICC) arbitration claiming damages after Petrochemical Industries Co. of Kuwait backed out of a joint venture agreement during the global financial crisis. The tribunal awarded Dow, the foreign investor, \$2.2 billion in 2012. In the case of *Occidental*, the investor went to arbitration at the International Court for the Settlement of Investment Disputes (ICSID) after Ecuador terminated a contract and seized Occidental's wells and drilling equipment. The tribunal ruled that while Occidental was in breach of the agreement, Ecuador's response was disproportionate, and it awarded Occidental \$1.77 billion plus interest.

Meanwhile, a series of disputes over delays and cost overruns in the Panama Canal



expansion, reported to involve some \$1.6 billion, are being heard by the Miami International Arbitration Society.

Beyond the headline-grabbing public cases, there are other signs that arbitration is enjoying a surge in popularity. One is the rise in caseloads reported by the major international arbitration institutions, including the ICSID, which comes under the auspices of the World Bank; the ICC's International Court of Arbitration; the London Court of International Arbitration (LCIA); and the Singapore International Arbitration Centre (SIAC). Another sign was the opening of the ICC's New York office in 2013, where it now administers many of its North American and Latin American cases, as well as the opening of the International Arbitration Center facilities in New York the same year.

As the caseloads increase, arbitral institutions have taken a number of steps to streamline procedures. In October 2014, the LCIA issued new arbitration rules aimed at speeding up proceedings, such as the wider use of electronic submissions and a requirement that arbitrators declare that they are able to devote sufficient time to ensure an expeditious arbitration (a step put in place by the ICC Court of Arbitration some years earlier). In 2012, the ICC Court of Arbitration updated its case management procedures further to improve the speed, efficiency, and cost-effectiveness of arbitration.

A number of major arbitral seats have also recently taken steps to ensure that their national arbitration laws and judiciary

continue to provide relevant and up-to-date support to meet ever-evolving needs. In Asia, Hong Kong's 2011 Arbitration Ordinance requires arbitrators to avoid delays and expense, while Singapore has proposed to set up an International Commercial Court with wide jurisdiction over dispute resolution.

The increasing popularity of international arbitration to resolve cross-border disputes can be attributed to at least four factors. The first is that arbitration agreements and awards are enforceable under the New York Convention, which requires courts in signatory states to recognize valid private arbitral agreements and enforce valid arbitration awards made in other signatory states. The second is that arbitration is usually conducted in private, allowing participants to protect confidential business information from the public scrutiny that can accompany litigation in court. The third factor is the flexibility of arbitration, with a choice of seats and governing institutional rules to select from, depending on the particular situation. But perhaps the biggest reason to choose arbitration is its perceived neutrality. A corporation making a major investment in a foreign state may view the host state courts as potentially hostile. A private arbitral tribunal appointed by the parties, based in a neutral seat, and procedurally governed by a fair arbitration statute and institutional rules is more likely to be acceptable to both parties.

Clients who are about to engage in foreign investment or cross-border deals have many options when it comes to selecting the best forum to resolve disputes that may arise. Home courts may be the most advantageous jurisdiction to the investor but may be unacceptable to the foreign state or other counterparty. Under those circumstances, international arbitration is likely to be the way to go.

Wendy Miles QC joined Boies, Schiller & Flexner in London in September 2014 and heads the Firm's International Arbitration practice.

Questions for Bill Isaacson

Mr. Isaacson was co-lead trial counsel for Ed O'Bannon and other former college athletes in a case challenging the NCAA's amateurism rules. Judge Claudia Wilken issued a historic ruling for the plaintiffs last August.

Before the O'Bannon trial, the judge said she wasn't much of a sports fan.

How did that affect your case?

We used a lot of illustrations and images. In an antitrust case involving a commodity, you would show the judge or jury the commodity, but that does not take long. We spent much more time showing Judge Wilken the business of college sports: photos of stadiums, players' special dorms and athletic facilities, and, most of all, players surrounded by objects showing commercial sponsorship. We also showed her tweets of colleges promoting the sale of player cards and jerseys, YouTube videos of NCAA speeches, and showed her player photos on sale at the websites of college bookstores.

What testimony did you elicit from witnesses?

Perhaps the most important testimony came from NCAA witnesses who conceded on cross examination that paying players as much as \$10,000 a year would not hurt the popularity of the sport or interfere unduly with the principle of amateurism. This was reflected in Judge Wilken's final order. She struck down NCAA rules prohibiting the sharing of revenues from the use of the names, images, and likenesses of college football and basketball players, and allowed colleges to put up to \$5,000 per player per year in a trust fund for athletes, along with any additional money for the full cost of attending school. (Remarkably college athletic scholarships fall short by as much as \$5,000 a year in covering the actual costs of education).

What do you think the future of college athletics will look like?

College football and basketball already look like the future: those sports look, feel, and act like commercial sports, except that the athletes also attend a college or university. I asked one of the NCAA's expert witnesses about this at trial, and I quoted Alabama coach Bear Bryant, who said he used to go

along with the idea that football players on scholarship were student athletes, but he didn't anymore because really they are athletes first and students second. The NCAA's expert told me that the University of Alabama was "the strongest possible school in terms of pro football" and their fans "follow their team win or lose, paying them or not."

O'Bannon wasn't the only high-profile trial you took part in last year.

Karen Dunn and I defended a client in the portable music industry in a billion-dollar class action antitrust litigation in December, with a defense verdict.

What are the other big antitrust trials you have been involved in?

In 2003, we won a \$49.5 million verdict (that was then trebled) in antitrust litigation involving one of the vitamins in the international vitamins cartel. Next was a \$34.5 million price-fixing judgment involving scrap metal companies, followed by the trial against Chinese Vitamin C makers in 2013.

In the Vitamin C case, what made you pursue the first private antitrust case against an international cartel?

When our Firm started in 1997, Jonathan Schiller uncovered the first worldwide vitamins cartel, and then prosecuted the civil action. So when a client pointed out that Vitamin C was controlled by four companies in China and prices were rising, I started investigating that situation and found the evidence of price fixing by those companies. Given the history of our Firm, of course we were going to prosecute a price-fixing case against a new vitamins cartel, wherever it was from.

The companies said they were compelled by their government to collude. How did you convince the jury that they had acted on their own?

That was an uphill struggle, because



people assume that the government tells businesses in China what to do, and our jury research indicated this would be an appealing argument for the defense. Our job was to show the jury the documents and teach them that their assumptions about this were wrong. We therefore focused our case on showing the evidence that the Chinese government did not actually compel the defendants' decisions to fix the price and limit the supply of Vitamin C—including evidence of voluntary agreements and voting at meetings. Many documents were shown to the jury with statements such as we have "communicated" with the other companies "hoping that they will maintain a similar pricing policy for our common interest."

What are you working on now?

I am scheduled for trial for a plaintiff this year, again with Karen Dunn, in litigation for a client in Silicon Valley.

You've been at Boies, Schiller & Flexner since the beginning. What made you decide to join a new firm?

I was not going to miss the opportunity to work in a start-up litigation firm with Jonathan Schiller and David Boies. I believed that the Firm would attract interesting clients and challenging cases, but it has done so at levels I do not think anyone anticipated.

Litigation Daily named Mr. Isaacson and his co-counsel Litigators of the Week after the O'Bannon decision. Mr. Isaacson was assisted at the trial by associate Martha Goodman.

Litigation Update

HIGHWAY SAFETY

The Firm won the fourth-largest jury award of 2014 – and the biggest ever award for a whistleblower bringing a case without Justice Department intervention – in a trial that will make U.S. highways safer for drivers. Partners George Carpinello, Karen Dyer, Nicholas Gravante, Jr., and Chris Green conducted the case on behalf of a plaintiff who claimed that manufacturer Trinity Industries had modified the design of its highway guardrail end-terminals without government approval. The trial team, with local co-counsel, showed how the modified end-terminals, which are supposed to absorb energy in a crash, were instead rendered lethal. The jury found that Trinity had defrauded the government by making false statements about the end terminals, awarding \$525 million after trebling. ABC Television carried out a major investigation into deaths and injuries that occurred in accidents involving the modified end terminals, and the *New York Times* documented failures in the Federal Highway Administration's approval process. The day after the trial, the federal government asked Trinity to conduct crash tests on the terminals, which some 13 states have banned from their roads. Soon after the verdict, Trinity said it would stop selling the modified end terminals. U.S. District Judge Rodney Gilstrap, in Marshall, Texas, entered a judgment of \$663 million against Trinity Industries on June 9, 2015. Counsel George Coe, Theresa Monroe, and Jeff Shelley assisted at the trial. Mr. Gravante was named Litigator of the Week by the *American Lawyer's* Litigation Daily for his work on the case.

UNITED THERAPEUTICS

On August 29, 2014, Boies, Schiller & Flexner partner William Jackson scored a significant victory for the United Therapeutics Corporation as co-counsel in Hatch-Waxman litigation to protect its intellectual property rights associated with its blockbuster drug Remodulin®. Sandoz Inc., a generic drug manufacturer owned

by Novartis, challenged three of United Therapeutics' patents for Remodulin®, claiming that those patents were invalid or would not be infringed by Sandoz's proposed sale of a generic form of Remodulin®. After several years of litigation, Sandoz withdrew the challenge with respect to one patent, and the parties went to trial on the other two. After a trial spanning six weeks, the court found both patents at issue to be valid, and that one of the patents was infringed by Sandoz's proposed generic product. United Therapeutics stock rose more than 25 percent on the day the decision was announced. The Boies, Schiller & Flexner team working on the case included partner Richard Meyer and associates Bill Ward, Mike Mitchell, Evan North, Jon Knight, Joseph Lasher, James Kraehenbuehl, and Rocky Collis.

ARIZONA ICED TEA

A New York state trial court awarded the Firm's clients, the owners of 50 percent of the AriZona Iced Tea group of companies, in excess of \$1 billion for their stake in the enterprise, after they sued their co-owners for dissolution. The owners of the other 50 percent stake had alleged that the enterprise was worth only approximately \$400 million – 20 percent of the value determined by the Court. The ruling followed a six-week trial and nearly six years of litigation between members of the Ferolito family, which founded AriZona, and its co-owners, members of the Vultaggio family. On November 14, Justice Timothy Driscoll of Nassau County Supreme Court further ordered AriZona to make the first payment of \$125 million to the Firm's clients, the Ferolito family. The Boies Schiller & Flexner team was led by Nicholas Gravante, Jr. and partner Helen Maher, who had managed the case on a daily basis for the last four years. The team consisted of partners David Barrett, George Carpinello, Karen Dyer, Michael Merley, William Ohlemeyer, Jeremy Vest, and Richard Weill; counsel Rosanne Baxter and James Grippando; and associates Brooke Alexander, Daniel Boyle, Amy Donehower, Paul Fattaruso, Miguel Lopez, Paul Maslo, Sebastian "Sheb" Swett, and Jenny Vatrengo.

FCC NOTE HOLDERS

Boies, Schiller & Flexner's London office obtained a judgment from the English High Court on April 16, 2015, that an event of default had occurred under the terms of €450 million of notes issued by Spanish conglomerate Fomento de Construcciones y Contratas, S.A. (FCC). The judgment is an offshoot of an action the Firm is bringing, with local co-counsel, in the Spanish courts after FCC wrote off principal, reduced interest rates and extended the maturity of €1.35 billion in syndicated debt. Boies, Schiller & Flexner also obtained an order that FCC should pay the costs incurred by its clients, who are holders of both the notes and the syndicated loan, in bringing their claim in the English Courts. The case is being led by London Managing Partner Natasha Harrison, assisted by associates Fiona Huntriss, Melissa Kelley, and Ross McCartney.

GOLDMAN SACHS

The Firm prevailed in an appeal for its client Goldman Sachs & Co. in a highly publicized litigation brought by former Goldman Sachs computer programmer Sergey Aleynikov. Mr. Aleynikov, whose legal issues are the subject of a chapter in Michael Lewis's recent book *Flash Boys*, was convicted in 2010 of stealing computer code from Goldman Sachs and sentenced to eight years in prison. The Second Circuit later vacated that conviction, and he was then the defendant in a criminal prosecution by the New York County District Attorney. Mr. Aleynikov sued Goldman Sachs in 2012, seeking payment of legal fees he incurred in defending the criminal actions brought against him. The presiding judge held that Delaware law entitled Mr. Aleynikov to the advancement of his legal fees in the ongoing state court criminal litigation, a decision the Firm challenged via an interlocutory appeal on behalf of Goldman Sachs. In September 2014, the Third Circuit overturned the district court's advancement order by a 2-to-1 majority and returned the case to the trial court. The decision was covered in a front-page article in the *New York Times* Sunday Business section titled "At Goldman Sachs, Even the Legal Fees Are

Different,” and by Bloomberg News in a story titled “Flash Boys’ Programmer Loses in Goldman Fight Over Fees.” The Boies, Schiller & Flexner team includes Managing Partner Jonathan Schiller, partner Chris Duffy, and associates Karen Chesley, Steve Kyriacou, and Nathan Strauss.

EXPLORERS CLUB

Boies, Schiller & Flexner Partner Josh Schiller fought off multinational beverages company Diageo on behalf of his client The Explorers Club, after Diageo used the club’s name without permission on a line of whiskeys. Justice Charles Ramos of New York State Supreme Court ruled in August 2014 that Mr. Schiller’s case seeking a permanent injunction against Diageo was a “slam dunk.” The two parties reached a settlement six weeks later in which Diageo entered into a licensing agreement with the club for the use of its name. The petition for a permanent injunction against Diageo was filed under New York General Business Law Section 135, which bars the unauthorized use of the name of a “benevolent, humane or charitable organization” with intent to obtain a business advantage or benefit. Associates John Dema, who is an Explorers Club member, and Ben Margulis worked on the case.

FLORIDA MEDICAID

In a pro bono case brought by the Firm on behalf of children in Florida, a federal judge found that the 1.9 million children who depend on the state’s Medicaid program for their medical and dental care are not receiving the care required by federal law. Approximately “one-third of Florida children on Medicaid are not receiving the preventative medical care they are supposed to receive,” Judge Adalberto Jordan wrote in a 153-page decision on New Year’s Eve finding sweeping deficiencies in the program. The decision followed some 90 days of trial that took place over two years. Partners Stuart Singer and Carl Goldfarb in Fort Lauderdale are leading the case, along with partners Sashi Bach and Damien Marshall, counsel Lauren Fleischer Louis, associate Pascual Oliu, attorney Thomas McCawley, and other lawyers from the Firm’s Fort Lauderdale office.

In Partnership

Dawn Smalls, a lawyer with experience across law, government, politics, and philanthropy, returned to the Firm as a partner in New York. International disputes attorney Kenneth Beale joined as a partner in the London office. Hampton Dellinger, Ian Dumain, John LaSalle, Michael Mitchell, Beko Reblitz-Richardson, Shani Rivaux, Josh Schiller, and Bill Ward became partners in January. Lisa Barclay, former Chief of Staff of the Food and Drug Administration, Stacey Grigsby, former Counsel to the Associate Attorney General, and Joshua Riley, former General Counsel to Senator Al Franken, joined the Firm as counsel in Washington. Partner Heather King left to become General Counsel at the Firm’s client Theranos. Partner Lee Wolosky was appointed Special Envoy for Guantanamo Closure at the U.S. Department of State.

Honors & Recognition

Wendy Miles, the head of the Firm’s International Arbitration practice, was appointed Queen’s Counsel, one of only five English solicitor-advocates to take silk this year. Steve Zack, the administrative partner of Boies, Schiller & Flexner’s Miami office, was awarded the David Dyer Professionalism Award, the highest award given by the Dade County Bar Association. Mr. Zack also won a lifetime achievement award from the *Daily Business Review*. Bill Isaacson’s work pursuing cartels in the vitamin industry was the subject of a profile in *Law360*, which named him a “Titan of the Plaintiffs Bar.” Anne Hinds received the President’s Pro Bono Service Award from the Florida State Bar Association for her work representing Florida teenagers in foster care. Two of the Firm’s partners, Ian Dumain and Karen Dunn, were named “Rising Stars” by *Law360*, which honored lawyers under 40 whose “legal accomplishments belie their age.” Mr. Dumain was named in the health category and Ms. Dunn in the competition category. Alanna Rutherford, a partner in New York, was named a “Rising Star” by the *New York Law Journal*; and Ms. Dunn was named a “Rising Star” by the *National Law Journal*.

Women Lawyers Receive Awards

London Managing Partner Natasha Harrison was named “Best in Litigation,” partner Wendy Miles QC was named “Best in International Arbitration,” and associate Fiona Huntriss was named “Rising Star – Litigation” in *Women in Business Law* awards sponsored by Euromoney in June. Ms. Harrison is currently leading the representation of note holders against Spanish conglomerate Fomento de Construcciones y Contratas, assisted by Ms. Huntriss, and recently won an important judgment for their client from the English High Court.

Washington partner Karen Dunn and New York partner Alanna Rutherford were named *Outstanding Women Lawyers* by the *National Law Journal*. The publication recognized 75 women lawyers from across the country for, among other things, leadership, performance in significant cases, development of successful practices, and efforts to improve diversity in the profession. Ms. Dunn served as co-lead counsel in a high-profile antitrust case in the portable music industry last year, winning a defense verdict from the jury in a class action that had sought \$1 billion in damages. She also represents the District of Columbia Council in its fight to gain autonomy over the city’s local spending. Ms. Rutherford played a leading role in one of the nation’s first derivatives litigations. She worked recently on the constitutional takings case brought by AIG shareholders against the U.S. Government.

Helen Maher, a partner in Armonk, was named to Benchmark Litigation’s list of *Top 250 Women in Litigation* for 2015. The publication noted that Ms. Maher’s practice is “taking off like a bullet.”



Alanna Rutherford and Karen Dunn

Corporate Update: When Is an Investment Manager Subject to Self-Employment Tax?

By Ansgar A. Simon

An internal advice memorandum from the IRS from last September should be of interest to our fund clients. The IRS memorandum, CCA 201436049 (Sept. 5, 2014), concluded that all of the management fees earned by an investment manager organized as a limited liability company (LLC) and treated as a partnership for U.S. federal tax purposes were subject to self employment tax. The memorandum has increased concern among tax lawyers about whether an exemption from employment tax for certain income derived by a “limited partner” applies to LLC members.

Traditionally, tax lawyers considered the use of a limited partnership rather than an LLC to strengthen the position that this exemption should apply. But in the memorandum the IRS focused on the services the members provide. This focus raises the risk that customary arrangements for earning management fees might be challenged by the IRS as subjecting the partners or members to self-employment tax, and, if not settled on audit, end up before a court.

Fortunately, a potential way to address this risk should remain available for a number of investment managers. The IRS has previously

acknowledged that not all of the income of an S corporation shareholder who provides services is subject to self-employment tax, and the September IRS memorandum does not affect this position. Therefore, the issue would not arise for an investment manager that elects to be treated as an S corporation for U.S. federal tax purposes. S corporations are subject to several restrictions, however, including a maximum of 100 shareholders – all of whom must be U.S. citizens, resident individuals, or certain limited types of trusts – and the requirement that only a single class of shares be issued. Also, shareholders who provide services for the S corporation investment manager would have to receive reasonable compensation, which would be subject to employment taxes.

In most cases, the new 3.8 percent “net investment income” tax also would not apply to the distributive share of the investment manager’s fee income, regardless of whether the manager is a limited partnership or an S corporation, even if the distributive share is exempt from self-employment taxes. For both limited partners and S corporation shareholders, net investment income tax applies to income derived from a trade or business only if it is (1) a “passive activity”



or (2) trading of financial instruments or commodities. A member who worked for the investment manager in excess of 500 hours annually, however, would not be engaged in a passive activity, and his or her share of the net fee income should not be subject to net investment income tax.

In light of the sweeping approach to self-employment taxes in the IRS Memorandum, investment managers should carefully review whether their current structure continues to serve them well for self-employment tax purposes. We can provide advice to help managers evaluate their current structure and to convert to an S corporation if they consider it advisable.

A more complete version of this article is available at www.bsfllp.com/news/professional_leadership.

Corporate Finance Expertise

Dev R. Sen, a highly experienced corporate attorney, has joined the Firm in New York, adding expertise in the area of corporate finance that complements the Firm’s existing mergers and acquisitions and private equity practices. Chris Boies, the head of the Firm’s Corporate Group, said the addition was part of a process of growing the group in a deliberative and selective manner. Mr. Sen has a general corporate practice with a particular focus on bank and capital markets debt finance, including project finance in the energy, oil and gas, and infrastructure areas,

and secured and unsecured bank and capital markets debt finance, including Rule 144A, public and institutional debt finance, such as representation of insurance companies in debt private placements. He also focuses on joint ventures and M&A, and private equity related matters. Mr. Sen also possesses considerable experience in alternative investment transactions, and with corporate reorganizations and restructurings. Mr. Sen is also well versed in investment management and securities lending and receivables purchase transactions.

Las Vegas

Boies, Schiller & Flexner represented the Las Vegas Convention and Visitors Authority in its recent acquisition of a strategic 26-acre parcel of property that will serve as the cornerstone for a planned \$2.3 billion convention center expansion and renovation project known as the Las Vegas Global Business District. Partners Paul Lal and Stefan dePozsgay; and associates Sean McFarlane, Joseph Eno, Katherine Gibson, and Gloria Ho worked on the transaction. Partners Ansgar Simon and Keith Blum assisted in various aspects of the transaction.

The Boies, Schiller & Flexner Associate

By Courtney Rockett

As newly appointed Co-chair of the Recruiting Committee, I consider it my charge both to attract, retain, and motivate the most skilled associates in the profession and to maintain our Firm's unique culture and ethos. Together with my Co-chair, Phil Korologos, I have been honored with the opportunity to help grow the Firm and continue to expand its diversity under the guidance and support of our three vibrant managing partners: David Boies, Jonathan Schiller, and Donald Flexner. Together they have created a highly successful law firm that endeavors to cultivate the best trial attorneys by using a model that is common-sense yet surprisingly unique.

As with most of our competitors, we start with an applicant pool of the highest-performing students from the top ten or so law schools. We then look for applicants whose resumes demonstrate a "go getter" drive and enthusiasm. We look for self-starters, hard workers, and team players with evidence of practical decision making and leadership from a wide range of backgrounds.

Then comes the interview. This is where self-selection starts. Rather than delivering a "sales pitch," we try to present a candid description of the realities of our practice so that candidates can make an informed decision and the interviewer can get a sense of whether a candidate would succeed at the Firm. We are not trying to find associates who will work here for a few years and then leave. We still consider ourselves to be a specialist Firm looking for

teammates who want to build a career with us, and whom we hope to make partners.

We have highly complex cases and expect the world from our associates in terms of quality of output. We also want attorneys who are eager to get into a courtroom or deposition as soon as possible rather than someone who would be more comfortable behind a desk. We look for candidates with an entrepreneurial spirit, charisma, creativity, and a passion for our profession. In return, we provide them with a work environment that will help them excel and a compensation structure that will reward them for their efforts.

We understand that our jobs can be stressful, so we remove the typical superficial stresses, such as face time and dress codes. As long as their work gets done in accordance with the high standards that our clients have come to enjoy and expect, we try to give our associates the flexibility to maintain a reasonable work/life balance and pursue outside interests. That said, when a trial or similarly consuming activity is upon them, we expect as much time and concentration as associates can reasonably offer in the performance of their professional responsibilities.

We expose associates to high-level work as soon as possible while providing proper supervision. As a result, our associates at every stage of their careers tend to have more meaningful practical experience than those at other firms. To ensure competence, we also help our associates understand not

just the facts and law pertinent to a case, but also the main drivers of the client's business or industry, the key players in the litigation, how to think around corners, and the psychological and practical effects of any action taken or strategy or position adopted. This horizontal, collaborative approach results in associates capable of providing a higher level of service to our clients with more comfort and confidence in their abilities than their vertically trained counterparts, who may spend years drafting research memos for other associates and performing document review walled off from the day-to-day richness of practice. This, in turn, is readily apparent to judges and adversaries alike.

We believe that the best way to litigate is to have only as many minds involved as is necessary to win the case, and to have the same associates working on a case from beginning to end. This ensures that the whole team understands even the small, preliminary events when a case gets to trial months or years down the road. This is more efficient for our clients and has the added benefit of maximizing the experience of our young attorneys.

Courtney Rockett is a partner in Armonk and a Co-chair of the Firm's Recruiting Committee.



Four SDNY Prosecutors Boost White Collar Capability

After handling many of the federal government's most prominent cases in recent years, Assistant U.S. Attorneys Matthew L. Schwartz, Peter M. Skinner, and John T. Zach from the Southern District of New York joined Boies, Schiller & Flexner in January to launch a Global Investigations and White Collar Defense practice, and bolster the Firm's existing white collar and

regulatory capabilities. They were joined in May by a fourth experienced Southern District of New York prosecutor, Randall Jackson. The four have worked together as federal prosecutors for nearly a decade on a wide range of national and international cases: the prosecutions of SAC Capital Advisors on insider trading charges, JPMorgan Chase for violations of the Bank

Secrecy Act, numerous individuals associated with Bernard L. Madoff Investment Securities (including the "Madoff Five"), and Javier Martin-Artajo and Julien Grout in connection with the "London Whale" trades. According to the *Wall Street Journal*, "Boies, Schiller & Flexner LLP has pulled off one of the larger—and more unusual—coups of the New Year hiring season."



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Boies, Schiller & Flexner is the law firm some of the world's biggest and most sophisticated companies turn to when the results matter most.

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FORT LAUDERDALE

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Fort Lauderdale, FL 33301
954 356 0011

HANOVER

26 South Main St
Hanover, NH 03755
603 643 9090

HOLLYWOOD

2345 Hollywood Blvd
Hollywood FL 33020
954 924 0300

LAS VEGAS

300 South 4th St
Las Vegas, NV 89101
702 382 7300

LOS ANGELES

401 Wilshire Blvd
Santa Monica, CA 90401
310 752 2400

MIAMI

100 Southeast 2nd St
Miami, FL 33131
305 539 8400

OAKLAND

1999 Harrison St
Oakland, CA 94612
510 874 1000

ORLANDO

121 South Orange Ave
Orlando, FL 32801
407 425 7118