

## BOIES, SCHILLER &amp; FLEXNER LLP

## BSF Wins Historic Verdict in Antitrust Case against Chinese Vitamin C Cartel

In the first-ever antitrust trial against Chinese companies held in the United States, Boies, Schiller & Flexner won a \$54.1 million verdict – subject to trebling -- on March 14, 2013, in the Eastern District of New York. The eight-person jury deliberated for just half a day before finding the companies liable for fixing prices and limiting supply of vitamin C in the U.S. Later that day, Judge Cogan entered final judgment of \$162.3 million in damages for the class of American buyers and distributors represented by the Firm.

During opening arguments in this historic nine-day trial, BSF partner **William Isaacson** told the court that the Chinese vitamin C manufacturers “struck a blow at our free enterprise system” by colluding to fix prices and

limit production. The companies’ main defense was an unusual one: that the Chinese government mandated their conduct.

As Mr. Isaacson told *The Wall Street Journal*, “This verdict shows that companies in China are going to have to play by the same rules as everybody else.”

The landmark decision comes after BSF negotiated a settlement with one defendant, in May 2012, for \$10.5 million. This marked the first time a Chinese company was called to task for U.S. civil antitrust claims and the first settlement of its kind. Two more defendants settled on the tail end of the trial, shortly before closing arguments, for \$22.5



William Isaacson

million.

The trial team was led by William Isaacson and included partners **Tanya Chutkan** and counsel **Jennifer Milici**. Partner **Alanna Rutherford** and senior attorney **Melissa Willett** also contributed.

## Barclays Engages Boies, Schiller &amp; Flexner to Defend Against U.S. LIBOR Class Actions



Jonathan Schiller

is representing Barclays in multiple class action and direct action lawsuits brought in the United States against the British bank and other panel bank members in connection with their submissions to the bodies that set various interbank offered rates, such as LIBOR and the Euro Interbank Offered Rate

At the forefront of litigation relating to the London Interbank Offered Rate (LIBOR), Boies, Schiller & Flexner

(EURIBOR).

After settlements with British and U.S. authorities, Barclays engaged BSF to defend against follow-on lawsuits brought in the U.S., including among other actions the more than twelve outstanding class actions relating to USD LIBOR that have been consolidated into a Multi-District Litigation before Judge Buchwald of the Southern District of New York (*In re Libor-Based Financial Instruments Antitrust Litigation*, 11-MD-02262 (S.D.N.Y.)), an action regarding Yen LIBOR pending before Judge Daniels in the Southern District of New York (*Laydon v. Mizuho Bank,*

*Ltd.*, et al. 12-3419 (filed April 30, 2012)), and a securities fraud action pending before Judge Scheindlin in the Southern District of New York (*Gusinsky v. Barclays, PLC*, 12-CV-5329 (S.D.N.Y.) (filed July 10, 2012)).

The Firm previously handled a closely-watched \$13 billion case  
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# LITIGATION HIGHLIGHTS

## \$25 Billion Class Action and Derivative Action Allowed to Proceed Against U.S. Government for 2008 AIG Takeover



David Boies

On July 2, 2012, Judge Thomas C. Wheeler denied the motion to dismiss of defendant United States of America in an action brought on behalf of Starr International Company, Inc. by Boies, Schiller & Flexner in the United States Court of Federal Claims. The Court subsequently certified two classes of AIG common shareholders on March 11, 2013—an important step for shareholders whose property was taken and / or illegally exacted by the government as part of the 2008

bailout.

Starr brought the class action and derivative lawsuit seeking over \$25 billion in damages against the U.S. government resulting from its use of insurance giant AIG to bail out other financial institutions in 2008 without providing just compensation to AIG and its shareholders for the assets that were taken.

Judge Wheeler found that the Court had jurisdiction over those claims, that Starr had standing to bring those claims, and that Starr had adequately alleged its claims that the government had taken property (including equity interests, voting rights and other assets) from AIG and its shareholders (including Starr) either as an illegal exaction or as a taking

without just compensation.

In particular, Judge Wheeler found that the 79.9% of AIG's equity (then valued by the government at \$23 billion) that the government obtained for \$500,000 was not collateral for the government's loan to AIG and that the government did not have express authority or incidental powers justifying that acquisition.

Discovery has commenced and is proceeding in that action, which is scheduled for trial in 2014.

The principal attorneys on the motion were Chairman **David Boies**; partners **Robert Dwyer, Nicholas Gravante, Jr., Hamish Hume, Samuel Kaplan, Duane Loft, Alanna Rutherford,** and **Robert Silver**; counsel **Eric Posner**; and associates **Julia Hamilton, Laura Harris, Ilana Miller, Joshua Libling,** and **Luke Thara.**

## SCOTUS Agrees to Hear Arguments in Historic Civil Rights Case for Same-Sex Marriage Equality

On March 26 2013, the United States Supreme Court will hear argument in the landmark civil rights case challenging California's Proposition 8, which stripped gays and lesbians of the right to marry. The case was brought by BSF Chairman **David Boies** and his one-time courtroom adversary, former Solicitor General Theodore B. Olson on behalf of the American Foundation for Equal Rights.

In a profound show of support for marriage equality, Solicitor Gen-

eral Donald B. Verrilli, Jr. filed an amicus brief on behalf of the U.S. government on February 28, 2013 in support of the case. The brief asserts that Proposition 8 violates the U.S. Constitution, a conclusion reached by judges at every level as this case has made its way through the courts.

In August 2010, Chief Judge Vaughn Walker of the Northern District of California held that the measure denied gays and lesbians in California their rights to equal



(L to R) David Boies and Theodore B. Olson

protection and due process. The ruling, which spanned 136 pages and included 80 separate findings of fact, followed a twelve-day trial in which Boies subjected

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# LITIGATION HIGHLIGHTS

## Boies, Schiller & Flexner Secures Dismissal of Complaint against BNP Paribas and Expands Case against Bank of America

Boies, Schiller & Flexner has scored another significant victory for BNP Paribas in its securities negligence suit against Bank of America.

BNP Paribas has alleged that Bank of America failed in its duty to safeguard more than \$480.7 million of cash and mortgages securing BNP Paribas's investment in Ocala Funding, LLC, a mortgage warehousing facility.

Bank of America attempted to shift blame for BNP Paribas's loss to the

securities unit of BNP Paribas; this complaint was dismissed in a 39-page opinion by Judge Robert W. Sweet of the U.S. District Court in Manhattan on June 5, 2012.

The Court also granted BNP Paribas permission to expand its existing lawsuit—already in discovery—to pursue additional claims against Bank of America for its role in the loss of collateral intended to secure BNP Paribas' investment.

This case is being handled by partners



**Robin Henry**

**Robin Henry, Motty Shulman and Jack Wilson** along with associates **Paul Fattaruso, Nathan Holcomb** and **James Ostaszewski**.

## \$80 Million Partial Settlement Negotiated by Boies, Schiller & Flexner for Madoff Feeder Fund Investors



**Stuart Singer**

On behalf of a class of investors in Fairfield Greenwich Group, the largest "feeder fund" group for the Madoff Ponzi scheme, Boies, Schiller & Flexner reached a settlement in which individual Fairfield partners, including founding partners Walter Noel, Jeffrey Tucker and Andres Piedrahita, will pay \$80 million.

The litigation is continuing against Citco Group, the world's largest

administrator and custodian for hedge funds; GlobeOp, also a fund administrator; and PricewaterhouseCoopers Netherlands and Canada, who were auditors of the funds. On February 25, 2013, the case took an important step forward when Judge Victor Marrero in New York federal court granted plaintiffs' motion for class certification.

BSF filed one of the first feeder fund suits over four years ago on behalf of over 100 Fairfield investors. By defeating motions to dismiss in significant part and undertaking extensive discovery as co-lead counsel, BSF created the opportunity for this settlement.

Subject to approval by Judge Marrero, damages of \$50 million (less attorneys' fees and expenses)

will be distributed to investors, with an additional \$30 million held in escrow and distributed if not used to resolve other claims against the defendants.

Led by partners **David Barrett** and **Stuart Singer**, this legal team includes partners **Sashi Bach Boruchow, Carlos Sires, Howard Vickery**; counsel **Eli Glasser** and **Olav Haazen**; associates **Adam Deckinger, Susan Klock**, and **Josh Sheptow**.



**Sashi Bach Boruchow**



# LITIGATION HIGHLIGHTS

## Argentine Bondholders See Early Success after Bringing Boies, Schiller & Flexner into Complex Debt Litigation



David Barrett

In a closely-watched international case, Boies, Schiller & Flexner Chairman **David Boies** argued on February 27, 2013 at a special sitting of the U.S. Court of Appeals for the Second Circuit on

behalf of holders of bonds issued by Argentina in exchange for \$80 billion in defaulted sovereign debt.

The group, led by Gramercy Funds Management, entered the litigation as an interested non-party after an October 26, 2012 ruling which approved in principle an injunction that could block Argentina from paying interest on the exchange bonds unless it also pays \$1.3 billion to holdout investors that have refused to accept the exchange offer. Shortly after being retained,

BSF successfully moved for a stay of the injunction pending decision by the Court of Appeals.

The Exchange Bondholders previously agreed to accept less than 30 cents on the dollar of face amount of their Argentine bonds, as part of an internationally-sanctioned restructuring of Argentina's debt. The Exchange Bondholders argue that the injunction improperly imposes a new condition on their right to receive interest payments solely for the purpose of coercing Argentina

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## Successful Settlement Reached Quickly for Clothing Magnate and BSF Client Tory Burch



William Ohlemeyer

Tory Burch LLC engaged Boies, Schiller & Flexner to represent the Company and designer Tory Burch in Delaware Chancery Court litigation initiated by Ms. Burch's former husband and Tory Burch LLC shareholder, J. Christopher Burch. BSF was retained in November, 2012, after a widely publicized court hearing at which the presiding

Judge, Chancellor, Leo E. Strine, Jr., raised questions about the counterclaims the company had filed in response to Chris Burch's complaint.

In the case, Ms. Burch alleged that Mr. Burch, a long-time Board member and a fiduciary of Tory Burch LLC, had breached his duties and violated his employment agreement by relying on the unique and well-known Tory Burch brand and aesthetic to launch a competing fashion and furnishings business. The case, which was scheduled for trial in April 2013, was settled by the parties on December 31, 2012.

Led by Managing Partner Jona-

than Schiller, the case's legal team was comprised of partners **William Ohlemeyer**, **Courtney Rockett** and **Jonathan Sherman**, as well as counsel **Rick Rohan**, and associates **Joseph Kroetsch**, **Daniel Bryan**, **Moshe Schwartz** and **Wells Harrell**.



Jonathan Sherman

# LITIGATION HIGHLIGHTS

## Global Nutrition Company Herbalife Advised by BSF on Libelous Accusations



Courtney Rockett

Herbalife has engaged Boies, Schiller & Flexner in one of the most closely watched disputes in the financial world this year. BSF represents Herbalife, Ltd., a leading global nutrition company, publicly traded on the New York Stock Exchange. Herbalife is a member of the Direct Selling Association, a group of companies that sell products directly to consumers through independent distributors.

On December 20, 2012, Herbal-

ife was the subject of a three-hour presentation by Bill Ackman, of Pershing Square Capital, a multi-billion dollar hedge fund. In the presentation, Ackman falsely accused Herbalife of being a pyramid scheme because Herbalife markets its products through direct sales and because it compensates its sales personnel (which Herbalife calls “distributors”) in part by paying them a percentage of the sales made by distributors they have previously recruited to sell Herbalife products. In leveling his accusations, Ackman admitted to the market that Pershing was a “short seller” of Herbalife stock. As a short seller, Ackman and Pershing Square benefit as the Herbalife share price drops.

Herbalife denies Ackman’s allegations and has hired the Firm to advise on a variety of issues related to Ackman’s statements. Herbalife has

repeatedly stated and demonstrated that it sells product not only to consumers unaffiliated with Herbalife, but also to its own distributors who themselves consume Herbalife products. It has reminded the market that it is a 32 year old, publicly traded company subject to a variety of regulation and oversight.

The engagement is led by Managing Partner **Jonathan Schiller**, assisted by partners **Bill Ohlemeyer**, **Jonathan Sherman** and **Courtney Rockett**. Other partners working on the matter are **Andrew Michaelson**, **David Zifkin**, **Richard Weill** and **Jeremy Vest**. Counsel **Laurie Josephs** and **Patrick Rohan** are also on the team, as are associates **Joseph Kroetsch**, **Daniel Bryan**, **Jenny Vatrengo**, **Moshe Schwartz**, **Jon-Michael Dougherty**, and **Wells Harrell**.

**ARGENTINE BONDHOLDERS,**  
*continued from page 4*

(through the threat of default on the exchange bonds) to pay the holdouts. This not only violates fundamental principles of equity, but violates Fifth Amendment due process rights by taking private property for a private purpose.

BSF attorneys representing the Exchange Bondholders include Chairman David Boies; partners **David Barrett**, **Steven Froot**, and **Nicholas Gravante, Jr.**;



Steven Froot

counsel **Brad Smith**; and associates **Bridget Brown**, **Karen Chesley**, **Juan Valdivieso**, **Gary Studen**, **David Ata**, and **Mathew Schutzer**.



## CORPORATE HIGHLIGHTS

### BSF Represents Yankees Entertainment & Sports Network in Sale of Equity Stake to News Corporation



**Richard Birns**

BSF's Corporate Group represented Yankees Entertainment & Sports Network, which televises New York Yankees baseball and Brooklyn Nets basketball, as well as other leading local and national sports-related programming, in connection with the sale of a 49% equity stake to News Corporation. The transaction was announced on November 20, 2012

and covered broadly by leading media outlets. As part of the transaction, the media rights agreement with the Yankees will be extended and will keep Yankees baseball on the YES Network through 2042. The media rights agreement was approved by Major League Baseball and the transaction closed in December 2012. After three years, News Corporation may acquire an additional stake in the Network that could bring its ownership to 80%, at which time Yankee Global Enterprises would retain a significant minority stake in the Network.

Partners **Richard Birns**, **Mike Huang**, **Robert Lia**, and **Ja-**

**son Hill**, as well as associates **Russell Franklin**, **Lidia Frenkel** and **Daniel Grossman** worked on this deal. Partners **Mike Kosnitzky** and **Ivan Mitev** of the Tax Group also contributed.



**Lidia Frenkel**

### BSF's Corporate Group Negotiates Joint Venture Deal on behalf of NuStar



**Robert Leung**

As reported by *The Deal* in June 2012, Boies, Schiller & Flexner's Corporate Group represented

NuStar Energy, an oil and gas pipeline and storage company, in connection with the formation of a joint venture with Lindsay Goldberg, a New York based private equity fund, relating to NuStar's asphalt refinery business located in New Jersey and Georgia. NuStar contributed the asphalt business into a new entity and transferred 50% of the equity to Lindsay Goldberg for \$175 million. The joint venture also obtained over \$500 million in

inventory based credit facilities from NuStar and a syndicate arranged by The Royal Bank of Canada. The deal, which closed in September, will allow NuStar to deleverage and focus on its core pipeline business.

Partners **Jason Hill** and **Robert Leung** worked on this deal, along with associates **Michael Anastasio** and **Sean McFarlane**.



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# HONORS & DISTINCTIONS

## BSF Chairman David Boies Presented with Highest Honors from Yale Law School and the American Bar Association



(L to R), BSF Partner Stephen Zack, BSF Chairman David Boies, and former Solicitor General Theodore B. Olson at the ABA Awards presentation

Boies, Schiller & Flexner Chairman **David Boies** received two highly distinguished awards in 2012: Yale Law School's top honor, the Award of Merit, and the American Bar Association's greatest tribute, the ABA Medal.

Yale Law School dean Robert Post presented Mr. Boies with the Award of Merit at a luncheon October 20, 2012, referring to Mr. Boies as a "trailblazing lawyer," "crystalline in his clarity and reasoning" and "a perfect model of integrity and tact."

Upon accepting the award, Mr. Boies spoke of the practice of law as facilitating justice, which, he asserted, includes "what we do in our communities [and] what we do in making justice truly available

to all of our citizens and ultimately to every citizen in the world." Mr. Boies received the ABA Medal along with Gibson Dunn's Theodore Olson at the association's annual meeting in Toronto, held August 4 – 9, 2011. The award, presented by outgoing ABA president and BSF partner **Steve Zack**, was presented to the pair for their ongoing battle against California's same-sex marriage ban, Proposition 8.

Upon receiving the award, Mr. Boies stated: "There is no greater honor that a lawyer can have but to accept this award from [the ABA] because not only is this the highest award that you give, but you are the best representatives of the profession that we all love."

## BSF Managing Partner Jonathan Schiller Awarded Columbia's 2012 Alexander Hamilton Medal



Managing Partner Jonathan Schiller pictured at the podium giving his acceptance speech

At an awards dinner in New York City in November 2012, BSF Managing Partner **Jonathan D. Schiller**, CC '69, Law '73, was honored with Columbia College's 2012 Alexander Hamilton Medal. Mr. Schiller received the award—the highest given by the college—before an audience of nearly 350. As reported by the *Columbia Spectator*, University President Lee Bollinger told attendees that "every time you talk to Jonathan, you're impressed." "If you have to be a client in life—and nobody wants to be a client—you should have Jonathan Schiller as your lawyer, and as your friend." *Columbia Spectator* quoted Firm Chairman

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# HONORS & DISTINCTIONS

## BSF and David Boies in Top Ranks of American Lawyer's Litigation Department of the Year Award



Managing Partner Donald Flexner accepted the LDOY award on behalf of BSF

*The American Lawyer* named Boies, Schiller & Flexner one of five finalists in the publication's sixth biennial "Litigation Department of the Year" contest from a field of over 70 firms who competed. Firms were chosen based on litigation successes achieved between August 1, 2009 and July 31, 2011.

*The American Lawyer* expanded the competition to include a "Litigator of the Year" category. In its debut,

the magazine chose three attorneys as litigators of the year, including BSF Chairman **David Boies**.

The publication's feature story about the Firm, "A Galaxy of Bright Lights," examines the litigation strategies and verdicts that led to BSF's inclusion on this prestigious list. Highlighted matters include the \$1.3 billion jury verdict for Oracle Corp against SAP AG, the defeat of \$4.3 billion in charges



(L to R), Managing Partner Jonathan Schiller, Administrative Partner Stephen Zack and his wife Margarite



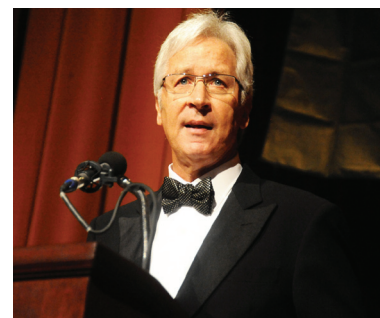
Mr. Flexner pictured at the LDOY awards dinner along with *American Lawyer* Reporter Susan Beck

brought by AIG against Starr International, and the civil rights fight for marriage equality in California. On April 18, 2012, *The American Lawyer* presented the awards to all winners and finalists at a dinner ceremony in New York City. **Donald L. Flexner** accepted the "Litigator of the Year" award on behalf of Mr. Boies and the "Litigation Department of the Year" finalist award on behalf of the Firm.

**JONATHAN SCHILLER - ALEXANDER HAMILTON AWARD,**  
*continued from page 7*

**David Boies**, also in attendance, is saying "Most of all, Mr. Schiller is...a great advocate for people who do not have other advocates." Upon receiving the award, Mr. Schiller stated, "Columbia—from the time I first walked through the gates, past the majestic architecture, and into my first Lit Hum class—has excited me and challenged me."

The Alexander Hamilton Award is presented by the Columbia College Alumni Association for distinguished service and accomplishment in any field of endeavor. It is considered the highest tribute that can be paid to a member of the Columbia College community.



Mr. Schiller at the podium during his acceptance speech



# HONORS & DISTINCTIONS

## Nicholas Gravante, Jr. appointed to Departmental Disciplinary Committee for First Judicial Department



Nicholas Gravante, Jr.

BSF Partner **Nicholas Gravante, Jr.** began a three year term on the Departmental Disciplinary Committee for the First Judicial De-

partment on January 18, 2013. He was appointed to the post by Presiding Justice Luis Gonzalez and the other Justices of the First Department. *The New York Law Journal* noted the appointment in a page 1 story.

Mr. Gravante, who serves as Administrative Partner of BSF's New York City office and also as General Counsel to the Firm, is a trial lawyer who specializes in complex commercial and white collar criminal defense litigation. Mr. Gravante has consistently been honored as one of the country's top litigators, including for many years

by *Lawdragon's* 500 Leading Lawyers in America and New York's *Best Lawyers*. In addition to his legal practice, Mr. Gravante serves as a member of the Second Department Judicial Screening Committee, as vice-chair of the Brooklyn Public Library, and as a member of the boards of trustees for the Community Service Society, Poly Prep Country Day School and ESS Sheltering Arms.



SCOTUS / SAME-SEX MARRIAGE, *continued from page 2*



A group of men celebrate on the step of City Hall after learning a federal judge decision overturned California's same-sex marriage ban in San Francisco. (AP Photo/Eric Risberg)

experts called by the Proponents of Proposition 8 to devastating cross-examination. In its opinion, the district court found that the Proponents' experts lacked credibility and that their opinions were entitled to little or no weight.

The Ninth Circuit U.S. Court of Appeals upheld the district court's ruling in favor of the plaintiffs on February 7, 2012. The appellate opinion states that Proposition 8 "serves no purpose, and has no effect, other than to lessen the status and human dignity of gays and lesbians in California, and to officially reclassify their relationships and families as inferior to those of

opposite-sex couples."

BSF was a party to a brief filed with the Supreme Court on the merits of the plaintiffs' case on February 21, 2013. Oral arguments in the case are scheduled for March 26, and the Court is expected to issue a ruling by late June.

In addition to David Boies, the BSF team on the case includes partners **Jeremy Goldman**, **Steven Holtzman**, and **Theodore Uno**, counsel **Rosanne Baxter**, **Rick Bettan**, **Beko Reblitz-Richardson**, and **Jarrod Reich**, and associates **Meredith Dearborn**, **Randall Ewing**, **Darien Meyer**, and **Josh Schiller**.

# BSF IN BRIEF



(L to R) BSF client Maurice ‘Hank’ Greenberg of Starr International with wife Mrs. M.R. Greenberg, BSF Chairman David Boies, and client Ed Breen of Tyco with wife Lynn Breen at the Firm’s 15 year anniversary party.

**Boies, Schiller & Flexner** celebrated its **15th anniversary** in the fall of 2012 with an event at Cipriani’s in New York City.

The Florida Medical Association presented **Stuart**

**Singer** and **Carl Goldfarb** with a **Distinguished Layman Award** for their extensive pro bono case against the state for its mismanaged Medicaid program for children.

**Stephen Zack** was honored with the 2012 **Jurisprudence Award** from the Anti-Defamation League.

**David Boies** chaired the 2012 **Committee to Protect Journalists** awards dinner at the Waldorf Hotel in New York City.

**Boies, Schiller & Flexner** opened a Santa Monica office in May 2011, currently led by five attorneys: partners **Michael D. Jay**, **Kathleen Smalley** and **David Zifkin**; coun-

sel **Katherine Eskovitz** and associate **David Michaels**.

**The Caryl Louise Boies Memorial Foundation**, “Cary’s Kids,” held its first official fundraiser October 19, 2012. Nearly \$28,000 was raised for needy children in Florida.

BSF made its debut on **BTI Consulting Group’s “Fearsome Foursome”** list of litigation firms most feared by in-house counsel.

BSF’s **Miami office**, headed up by Administrative Partner and former ABA president **Stephen Zack**, celebrates its **ten year anniversary** in April 2013.

## BARCLAYS LIBOR, *continued from page 1*



(L to R), BSF attorneys Duane Loft, Camille Oberkampf, and Juan Valdivieso in London

against Barclays brought by Lehman Brothers over the purchase of bankrupt entity’s North American broker dealer unit at the height of the financial crisis. After a hard-fought trial in New York, the Bankruptcy Court rejected the



**David Boyd**



**James Meadows**

Lehman Estate’s \$13 billion fraud claim and the Estate elected not to pursue its appeal. In certain related contract disputes over assets transferred in the sale, Barclays has been awarded in excess of \$6 billion; that case is currently pending in the Second Circuit Court of Appeals.

Led by Managing Partner **Jonathan**

**Schiller** and Chairman **David Boies**, the attorneys working on LIBOR-related matters for Barclays include partners **David Boyd**, **Mike Brille**, **Duane Loft**, **James Meadows**, **Andrew Michaelson**, and **Robert Silver**; and associates **Amos Friedland**, **Wells Harrell**, **Ilana Miller**, **Leigh Nathanson**, and **Andrew Villacastin**.