



WEIL, GOTSHAL & MANGES LLP

2002-03 Litigation Wins Report

Highlights for the period ending June 30, 2003



Nothing says more about the strength and quality of a law firm's litigation practice than its track record—the results achieved in tough, high-stakes cases. This report highlights some of the significant recent wins that Weil Gotshal litigators have achieved in major cases.

At Weil Gotshal, winning means achieving successful outcomes for our clients—whether that is winning a multi-million-dollar jury verdict, securing the dismissal of a potentially crippling mega-case, or successfully resolving a bet-the-company class action. For decades, major corporations have turned to our litigators when they simply have to succeed in crucial, complex disputes that are in, or headed for, serious litigation. The firm's wins have come in courts, arbitrations, and other tribunals located across the country and around the globe, in cases involving the broad array of substantive areas in which the firm has deep expertise and premier litigation practices—including securities law, products liability and mass torts, patent law and intellectual property, antitrust, corporate governance, sports, art and entertainment law, white collar crime, employment law, insurance and bankruptcy to name just several.

Today, with over 400 litigating attorneys throughout the world, Weil Gotshal continues to be a litigation powerhouse with a record for winning that is difficult to match. As this report illustrates, a key to our success lies in our ability to quickly mobilize seamless teams of litigators that possess both the necessary substantive expertise and the vast litigation experience necessary to try and win complex, high-stakes cases anytime, anywhere. Equally important, one of the firm's traditions, repeatedly noted by our clients, is that when we represent a client we thoroughly learn its business, live and breathe its problems, and form a close-knit team with the inside lawyers and executives with whom we collaborate. We then work tirelessly to help our clients obtain creative and successful solutions to the difficult litigation and business problems they confront.

And now, a sampling of our wins from the last year . . .



EXXONMOBIL

Following a two-week jury trial that concluded with a verdict in March 2003, our client **ExxonMobil** was awarded over **\$416 million in damages** in a lawsuit against Saudi Basic Industries Corp. ExxonMobil brought claims for breach of contract and usurpation under Saudi Arabian law. The award is **among the largest compensatory damage awards ever given by a jury in U.S. history**. The Weil Gotshal trial team was led by partners Jim Quinn and David Lender, along with associates Sal Romanello, Alana Liveson, Brian Sung and Lisa Kurcias.

MATSUSHITA

Our litigators regularly win in state as well as federal courts, and in venues across the country. For example, we successfully defended Matsushita before a Louisiana state court jury. **Plaintiffs sought over \$750 million in damages and asserted 16 causes of action against Matsushita**, including claims for fraud, breach of fiduciary duty, product defamation and violations of the Louisiana unfair trade practices statutes. **We won a full defense verdict (zero liability) for Matsushita**. Thereafter, the firm successfully appealed the trial court's grant of a new trial to the Louisiana Supreme Court, which recently vacated that order and preserved the win. Our attorneys leading the defense team were partners Jeffrey Kessler and David Yohai, along with associates Allan Garcia and Pierre Armand.

AMERICAN AIRLINES

Many times, the best defense is a strong offense. We successfully implemented this strategy in defending our long-time litigation client American Airlines against tortious interference claims by Carl Icahn, who was threatening to seek hundreds of millions of dollars and an injunction against American, arising out of American's 2001 acquisition of TWA (handled by the firm's merger and acquisition and restructuring teams). **After we sought a declaratory judgment** in New York state court that Icahn's tortious interference claims were groundless, Icahn filed those claims as counterclaims. **We then made and won a motion to dismiss all of Icahn's claims**. Our team was led by partners Richard Rothman and Rob Berezin, along with associates Jonathan Forstadt and Suzanne Kim.

25 JAPANESE COMPANIES

Weil Gotshal also represented 25 Japanese companies against HSBC and its predecessor, Republic Bank, in connection with fraud claims asserted against Martin Armstrong involving securities known as Princeton Notes. **We successfully resolved the matter by obtaining \$250 million (over 90% of the damages sought) in settlement** of claims brought against HSBC. The attorneys involved in this action were partners Greg Danilow and Stephen Radin, along with counsel Seth Goodchild and associate Sofia Giatrakos.

UNITEDHEALTH GROUP

Our experience and resources also enable us to score wins quickly when time is of the essence. We represented Ovations, an operating unit of our client UnitedHealth Group, in an action against AdvancePCS, alleging that AdvancePCS was improperly diverting business away from Ovations. Weil Gotshal initiated the action in federal court in Minnesota, and **successfully obtained a preliminary injunction**. We then defended this injunction on appeal, and the Eighth Circuit upheld it. Our team was led by partner Mike Lyle, along with associates Tina Hsu, Maureen Testoni and George Hazel.

In another UnitedHealth Group case, last summer the firm defeated efforts by many of the country's top plaintiffs' class action lawyers to obtain certification of a class of tens of millions of patient-subscribers. **This early, critical procedural win on class certification led to the collapse of the entire litigation**, which sought tens of billions of dollars in RICO and ERISA damages. Our team was led by partners Jim Quinn, Jeff Klein and Lori Pines, along with associates Brian Kemper and Beth Lemberger.

The firm also successfully represented UnitedHealth Group—and wrote the briefs for all petitioners—before the United States Supreme Court in obtaining a unanimous decision vindicating the company's right to arbitrate claims under the RICO statute. In that multi-district litigation, the lower courts refused to compel arbitration of the plaintiff physicians' RICO claims because their arbitration agreements precluded the arbitrator from awarding "punitive damages," which the courts thought prevented the physicians from effectively pursuing their treble damage claims under RICO. The Supreme Court ruled that these issues were for the arbitrator to decide in the first instance and that the district court, therefore, should have compelled the plaintiffs to arbitrate these claims. **After the Supreme Court victory, the plaintiffs voluntarily dismissed many of their RICO claims against our client.** The firm's team before the Supreme Court were partners Edward Soto, Jeff Klein, and Greg Coleman, along with counsel Nicholas Pappas and associates Kathleen Mank, Kenneth Gavsie, Christopher Cano, Amy Bedell, Christine Deruelle, Beth Lemberger and Ardith Bronson.

VALUE PARTNERS

In a one-month jury trial in Boston, we successfully represented Value Partners in an action alleging unfair competition and tortious interference under Brazilian law. Value Partners asserted that in 1997, the managing partner and the two other partners of its office in Brazil secretly and unlawfully conspired with Bain & Company, a prominent Boston-based international management consulting firm, to start an operation for Bain in Brazil. In December 2002, **Weil Gotshal obtained an award of \$10 million in damages against Bain - every penny sought by our client** - from a jury in Bain's own hometown. Our trial team was led by partner Irwin Warren, along with associates Benjamin Marks and Josh Amsel.

ARTHRO CARE CORPORATION

In May 2002, following a two-week jury trial in Delaware, the firm secured a verdict in favor of ArthroCare Corporation, a pioneer in the development of electrosurgical products for use in arthroscopic surgery, in a patent infringement suit against one of its major rivals. ArthroCare brought suit in 2001, when the defendant entered ArthroCare's market with knowledge of ArthroCare's patents. **The jury returned a verdict in favor of our client on all counts**, finding all 16 asserted claims valid and infringed. ArthroCare will be seeking a permanent injunction and will also seek to recover damages in a subsequent damages trial. The firm's trial team was led by partners Jared Bobrow and Tim DeMasi, along with associate Perry Clark.

WAL-MART AND SAM'S CLUB

In January 2003, claims of numerous plaintiffs were tried in federal court in the Eastern District of New York in a case originally brought on behalf of over 200 automotive parts retailers, asserting hundreds of millions of dollars in damages resulting from alleged discriminatory pricing in favor of some of the country's leading automotive parts retail chains. Drawing upon various arguments set forth in summary judgment papers on behalf of our clients Wal-Mart and Sam's Club, our co-defendants were vindicated in a **complete defense verdict at trial**. (Plaintiffs had voluntarily dismissed Wal-Mart and Sam's Club, with prejudice, shortly after our summary judgment papers were filed.) Our attorneys involved in the matter were partners Irving Scher and Scott Martin, along with associates August Horvath, Benjamin Marks and Edwin Delaney.

CISCO

With over 100 litigators dedicated to patent and intellectual property litigation, Weil Gotshal has one of the premier practices in the world. Over the last year, our patent litigation team has achieved a number of major victories, including **securing summary judgment on behalf of Cisco** in an infringement action based on two patents **in which the plaintiff claimed damages of over \$1 billion**. The firm's team was led by partners Matt Powers and Ed Reines.

GENUS

In another significant summary judgment victory in a patent case, **we successfully defended Genus against an infringement action** commenced by ASM. Genus was awarded a judgment of non-infringement of two patents covering Atomic Layer Deposition technology. Our attorneys involved in this action were partners Matt Powers and Ed Reines, along with associates Nick Brown and Matt Sarboraria.

MATSUSHITA


The firm also obtained summary judgment on behalf of Matsushita and JVC in a patent infringement case brought by Dynacore. **Our attorneys developed the non-infringement arguments that all defendants in the case were able to use to obtain summary judgment**. The attorneys involved in this action were partners Matt Powers, Jeffrey Kessler and David Lender, along with associates Doug Lumish and Sascha Rand.

AMERICA ONLINE, INC., MTV NETWORKS AND OTHERS

For years, Weil Gotshal has had the world's leading music licensing and litigation practice. Most recently, we represented a group of "webcasters" (including America Online, Inc., MTV Networks and others) in the **largest-ever Copyright Arbitration Royalty Panel proceedings in history**, under sections 112 and 114 of the Copyright Act, to determine the structure and amount of royalties for the "streaming" of sound recordings on the Internet. These proceedings involved hearings spanning three months and subsequent appellate proceedings before the Copyright Office, and **resulted in fees being set for our clients at a fraction of the amounts that had been sought** by the licensing collective of the sound recording owners. The firm's litigation team was led by partners Kenneth Steinthal, Bruce Rich and Adam Cohen, along with associates Janet Goldberg, Alana Liveson and Celia Cohen.

NEW YORK STOCK EXCHANGE

Weil Gotshal's strong appellate practice—including numerous former Supreme Court and other appellate court clerks—enables us to defend our wins all the way up the chain of any appeal. We successfully defended New York Stock Exchange, Inc. ("NYSE") against antitrust claims brought under Section One of the Sherman Act alleging a conspiracy to refrain from listing certain options for trading. **The firm obtained summary judgment on NYSE's behalf in the district court, and then prevailed on appeal in the Second Circuit**, which affirmed the grant of summary judgment in NYSE's favor. Our attorneys involved in this action included partners Jay Fastow and Adam Stochak, along with associate Theodore Allegaert.



Weil Gotshal defended its longtime
client American Airlines

AMERICAN AIRLINES

In a significant win for American Airlines in the United States Court of Appeals for the Third Circuit, we successfully represented the company against successor liability claims asserted by the EEOC, seeking to hold American liable for dozens of individual and group employment discrimination claims originally asserted against TWA throughout the country, including in a class action, prior to American's acquisition of TWA. In March 2003, the **Third Circuit rejected the EEOC's successor liability arguments and granted American a complete victory.** The firm's team was led by partners Richard Rothman and Greg Coleman, along with associate Anna Hong.

Weil Gotshal also represented American in the successful appeal to the Federal Circuit of a summary judgment decision against American in an employee wage-related tax refund case. Following the reversal of the summary judgment for the government, **American was able to achieve a settlement of 100 cents on the dollar** plus statutory interest on American's principal refund claim. The attorneys involved in this action were partners Peter Isakoff and David Hickerson.

INTEL

Drawing upon both our appellate and patent expertise, we successfully represented Intel in the Federal Circuit, which affirmed a decision granting summary judgment that the firm had previously obtained in a patent case asserting infringement of Intel's Pentium microprocessors. The damages claimed in the case were \$8.2 billion. **Weil Gotshal's win in the trial court, affirmed on appeal, was termed the "defense victory of the year"** in California. Our team was led by partners Matt Powers and Ed Reines.

REUTERS

The firm won another appellate victory in the Seventh Circuit on behalf of regular litigation client Reuters in a decision reversing an extraordinary preliminary injunction arising from tortious interference claims asserted by FutureSource LLC. The injunction would have required Reuters to provide valuable licensed software, real-time computerized data and services to FutureSource LLC on a permanent basis and without remuneration. In a powerful decision written by Judge Richard Posner, the Seventh Circuit issued **a complete reversal of the injunction**, stating that FutureSource LLC had "no claim" against Reuters. The firm's team was led by partners Richard Rothman, Greg Coleman and Adam Cohen, along with associate Todd Ommen.



EMI MUSIC DISTRIBUTION

Some of the results we achieve have significant positive impacts in the business and financial sectors. In a widely-reported, crucial resolution of a massive litigation against the recorded music industry, we represented EMI Music Distribution in class actions involving claims that EMI, the other four major recorded music companies and three major retail chains fixed the prices charged to consumers of pre-recorded compact discs (“CDs”), in violation of federal and state antitrust and consumer protection laws. **We led the way in structuring a successful comprehensive settlement of claims brought by 42 state attorneys general as well as private class action attorneys** (in both federal and state court actions), on behalf of all U.S. consumers of CDs, by negotiating a cash payment of less than ten percent of the amount originally sought and providing CDs for use by government agencies and institutions. Weil Gotshal attorneys involved in this action were partners Irving Scher and Scott Martin, along with associates August Horvath, Lorin Fine and James Lawrence.

CISCO

With offices worldwide and litigators working together across borders, the firm’s wins also come from overseas. For example, we successfully represented Cisco in a major patent litigation brought by Alcatel in the Hague, Netherlands in which Alcatel sought an injunction against the sale of a large number of Cisco products throughout Europe. After a trial in front of a three-judge panel, **Weil Gotshal was successful in obtaining a verdict in Cisco’s favor on liability, holding there was no infringement.** The trial team consisted of partners Matt Powers and Ed Reines, along with associates Doug Lumish, Bao Nguyen and Matt Sarboraria.

REPUBLIC OF AUSTRIA AND VARIOUS AUSTRIAN INDUSTRIES

In a case that was both international and historic in scope, our mass tort litigation specialists represented a broad base of clients, including the Republic of Austria and various Austrian industries, in dozens of class action suits brought by victims of World War II German slave labor camps. **We helped negotiate the establishment of an historic foundation that will compensate victims of World War II slave labor camps.** The negotiation included top-ranking representatives from numerous governments, including the United States and the Republic of Austria. In exchange for the establishment of the foundation, all the lawsuits were dismissed against the defendants represented by Weil Gotshal. Our attorneys involved in negotiating this precedent-setting resolution included partners Arvin Maskin and Konrad Cailteux, along with associate Nina Nagler.

HICKS MUSE TATE AND FURST

Hicks Muse Tate and Furst turned to our London office to break a logjam in connection with a \$30 million dispute arising out of the sale of a champagne business to Allied Domecq. Allied Domecq refused to release funds in escrow in connection with the sale, and sued Hicks Muse, seeking declaratory relief in connection with certain liabilities. Following painstaking negotiations guided by our legal analysis of the dispute, Allied Domecq **dropped its claim, and all the funds due to Hicks Muse are now being paid.** Our team was led by associate Natasha Demetriou.

COOPER TIRE & RUBBER

Wins also come in working with our clients to conceptualize, structure and negotiate creative settlements that make business sense. **Weil Gotshal negotiated a settlement—achieved only after intense landmark litigation—on behalf of Cooper Tire & Rubber to resolve an array of state consumer fraud class actions—filed in 33 states—and a federal multidistrict litigation arising from alleged defective tires.** Under the settlement, Cooper made no cash payment to the plaintiffs. Instead, based on its confidence in the quality of its products, Cooper provided its customers an enhanced product warranty. **In order to achieve the settlement, our team created a quasi—“multi-state” coordinated proceeding, which may have been unprecedented, as judges from five different states heard arguments on various motions at once, with the assistance of a special master.** At the same time, other state courts and the federal multidistrict judge agreed to hold their cases in abeyance in deference to the coordinated state proceedings. Finally, critical to achieving the resolution from Cooper’s standpoint was the express finding by the presiding judge in the coordinated state proceedings that plaintiffs had produced no proof of any product defects. Ultimately, we secured court approval in the national class action for the novel settlement—which covered some 40 million consumers—and received a rare endorsement from the National Highway Transportation Safety Administration. We then successfully moved to dismiss all the remaining pending cases. Our team was led by partners Arvin Maskin, Konrad Cailteux, Michael Lyle and Greg Coleman, along with associates Joanne McLaren and Tina Hsu.

UNISYS

In another mass tort case, this time representing Unisys Corp., the firm used a series of litigation victories in order to successfully settle a complex suit initiated by employees who had worked on the navigation and weapons control system for the Trident class of submarines. Over 30 plaintiffs alleged a range of maladies, including birth defects and cancers, and sought over \$500 million in damages. The case was widely reported in the media, and was featured in articles that appeared in U.S. News & World Report and Time Magazine. Weil Gotshal prevailed on critical motions which challenged the scientific evidence and demonstrated a total lack of causation. Then, **from a position of strength based upon the scientific evidence we adduced, Unisys resolved the entire matter for nuisance value.** Our team was led by partner Arvin Maskin and counsel Peter Antonucci.

LIVENT INC.

With a department of approximately 45 litigators specializing in securities litigation, we represented H. Garfield Emerson, the Chairman of the Audit Committee of Livent Inc., in class actions brought by shareholders and noteholders of Livent brought under Section 11 of the Securities Act of 1933 and Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5. **We won dismissal of claims under Sections 10(b) and 20(a) and Rule 10b-5** and then obtained a favorable settlement of the remaining claims. The firm’s team was led by partners Greg Danilow and Stephen Radin, along with counsel Seth Goodchild and associate Sofia Giatrakos.



GMAC

Our marriage of litigation experience and substantive expertise has repeatedly paid off in the firm's wins in a broad range of class-action cases. For example, we represented long-time client GMAC in the defense of a claim that GMAC violated the Equal Credit Opportunity Act in connection with its purchase of automobile retail installment sales contracts from car dealers. We successfully prosecuted an interlocutory appeal from a district court decision that certified a class under Fed. R. Civ. P. 23(b)(2) seeking both injunctive relief and actual damages. In a seminal decision concerning the circumstances under which monetary relief may be recovered by a class, **the Sixth Circuit agreed with our arguments and reversed the class certification order** entered by the district court, holding that "the district court abused its discretion in certifying the proposed class under Rule 23(b)(2) because compensatory damages under the ECOA are not recoverable by a Rule 23(b)(2) class." The firm's attorneys involved in this action were partners Joseph Gelb, Jay Fastow and Peter Cubita, along with associate Lisa Cantos.

We also successfully represented GMAC in a class action alleging violations of RICO, the Sherman Act, state and federal credit repair organization statutes, and state unfair and deceptive trade practice statutes.

We won a motion to dismiss the federal claim and convinced the court to refuse to exercise jurisdiction over the state law claims. The attorneys involved in these actions were partners Joseph Gelb, Jay Fastow and Peter Cubita, along with counsel Yoav Griver and associate Jennifer Rhodes.

THE TRAVELERS

With an active insurance litigation defense practice, one of our recent wins involved the **successful representation of The Travelers in a class action brought on behalf of over 220,000 policyholders** alleging breach of contract, failure to disclose and other causes of action in connection with The Travelers' "modal premium practices." After extensive litigation, we resolved the matter by negotiating a favorable settlement of this class action. Our attorneys involved in this action were partners Mindy Spector and David Yohai, along with associates Laura Lehman and Brian Kemper.

CONSECO

Weil Gotshal also successfully settled three nationwide class actions for Conseco which had been brought on behalf of 750,000 long-term care insurance policyholders. The class action involved claims of fraud, breach of fiduciary duty and violations of various unfair trade practice statutes in connection with the sale and marketing of these policies. **The settlement was widely recognized in the press as being advantageous to Conseco.** Policyholders were offered a variety of options, none of which involved any cash payments. The team was led by partners Mindy Spector and David Yohai, along with associates Adam Kaiser, John Mastando and Beth Lemberger.

LORILLARD

In another significant win in high-stakes class-action litigation, we represented Lorillard in a set of antitrust class actions charging that the major cigarette manufacturers fixed the wholesale price of cigarettes in the years 1993 to 2000. **We obtained summary judgment on behalf of Lorillard, and our examination of plaintiffs' expert was singled out by the court as critical to many of its conclusions in granting summary judgment to all defendants** in the consolidated federal direct purchaser actions. Our team was led by partners Irving Scher and Peter Isakoff, along with counsel Holly Loiseau, and associates Peter Friedman, Jeffrey Cimbalo, George Hazel, Lisa Fine, Cleveland Lawrence and August Horvath.

MASTERCARD

In a critical test case win in a multidistrict putative class action in federal court in Louisiana, the firm obtained a dismissal on the pleadings of claims by a credit card holder that our client MasterCard International Incorporated had violated the RICO laws by allegedly allowing him to use his card to buy "credits" which he asserted he subsequently used for gambling with Internet casinos. The Fifth Circuit affirmed the dismissal, and all of the plaintiffs in the MDL subsequently voluntarily dismissed all of their remaining claims against MasterCard. The firm's team was led by partner Jay Fastow, along with counsel Yoav Griver.

CSFB

Wins also come through persistence and strategic planning in motion practice. Weil Gotshal has defended CSFB in an action alleging that CSFB violated claimed contractual and other asserted duties in connection with the plaintiffs' asserted effort to acquire Starrett Corporation. We obtained dismissal of a number of the plaintiffs' claims, and then, in October 2002, **obtained summary judgment in the trial court on all remaining claims** for lack of evidence of causal injury. Our team was led by partner Jay Fastow, along with counsel Jonathan Bloom and associates Anthony Albanese and Edwin Delaney.

In another action in which we represented CSFB, along with a group of secured lenders in a large Chapter 11 case involving a worldwide project construction company, Weil Gotshal, together with debtor's counsel, **obtained a trial victory on a contested confirmation of a plan of reorganization** in Bankruptcy Court in Reno, Nevada. The trial focused primarily on novel and complex valuation issues. Ultimately, the victory was affirmed by the Ninth Circuit. The attorneys involved in these actions were partners Peter Gruenberger and Marcia Goldstein, along with associates Michael Bresnick and Marshall Turner.

ENRON

Over the last year, we have represented Enron Corporation in a host of high stakes, complex litigations—each involving hundreds of millions of dollars—that have arisen in the wake of the company's bankruptcy (in which we have represented the Enron debtors). The firm has won virtually all of the Enron cases it has litigated to date, and the following are only a few of those wins.

The firm successfully defended Enron in a declaratory judgment action filed by Duke Energy, seeking to pierce the corporate veils of Enron and certain Enron subsidiaries and to impose a constructive trust to avoid paying claims in excess of \$150 million. Other companies have filed copycat actions, also seeking to avoid hundreds of millions of dollars in payment obligations to Enron based on the same veil-piercing theories. **We moved to dismiss Duke's complaint, which the Bankruptcy Court granted in its entirety.** The team was led by partners Richard Rothman, Melanie Gray and Peter Gruenberger, along with associates Sascha Rand, Meredith Parenti, David Wolnerman and Keith Gibson.

ENRON (CONT.)

Weil Gotshal also represented Enron and prevailed on a motion to dismiss all counts of a complaint seeking a \$220 million constructive trust brought by the Attorney General of Connecticut on behalf of the Connecticut Resources Recovery Administration. Connecticut's suit alleged that it was entitled to priority recovery of \$220 million on the ground that certain contracts it claimed to have entered into with Enron for the purchase and sale of power were allegedly invalid. **The Bankruptcy Court granted our motion to dismiss, holding that Connecticut had no legal interest in the \$220 million and dismissed all of Connecticut's claims.** Our team was led by partners David Berz, David Hickerson and Melanie Gray, along with associate Peter Friedman.

Drawing on our expertise in corporate governance—where our reputation as a leader is well-earned in the courtroom as well as the boardroom—the firm succeeded in enforcing the rights of two Enron affiliates, as preferred shareholders in Venoco, a privately owned oil and gas company, and in overturning efforts by Venoco's management to entrench themselves. **After expedited discovery and then an expedited trial, the Delaware Chancery Court granted our request for an injunction** mandating that Enron's designees be seated on the Venoco Board; granted our request that Venoco's corporate governance documents be amended in accordance with shareholder consents submitted by Enron; and granted our request that all Board and Executive Committee action subsequent to submission of the consents be declared null and void. The Chancery Court also threw out claims by Venoco against Enron. The Weil Gotshal team was led by partner Irwin Warren and counsel Seth Goodchild.

SAFETYKLEEN

In a win that utilized the combined talents of our litigators and our preeminent bankruptcy practice, we represented the secured lenders of SafetyKleen in claims against Laidlaw, Inc., the controlling shareholder of SafetyKleen, arising out of a massive accounting fraud. **The firm obtained a combined \$225 million settlement** from Laidlaw on the secured lenders' claim together with SafetyKleen's own fraud claims. The Weil Gotshal team securing this settlement included partners Peter Isakoff, David Berz and David Hickerson, along with counsel Joanne Guerrero and associates Peter Friedman and Kathryn Turner.

VIASYSTEMS, INC.

From a different perspective in a bankruptcy matter, **we successfully resisted a \$25 million constructive trust claim** filed by the French receiver of a subsidiary of Viasystems, Inc. in Viasystem's Chapter 11 proceeding in the Southern District of New York, following expedited briefing and an evidentiary hearing. Our attorneys involved in these actions were partners Peter Isakoff and Alan Miller, counsel Holly Loiseau and associates Peter Friedman and Kathryn Turner.

ORACLE

In a matter combining the talents of our litigators and tax attorneys, we represented Oracle in a high profile international tax case in the United States Tax Court. The IRS recently conceded the case in Oracle's favor. The concession came after five years of litigation, including our participation on behalf of Oracle as amicus curiae in the United States Court of Appeals for the Ninth Circuit in support of a similarly situated taxpayer, Microsoft, in a successful effort to overturn Microsoft's adverse decision from the Tax Court. By prevailing on the issue of whether Oracle's computer software qualified as export property for purposes of the Foreign Sales Corporation benefit of the Internal Revenue Code, **this victory will result in savings of tax and interest to Oracle of over \$150 million.** The firm's team was led by partners David Hickerson, Steve Reiss and David Bower.



NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION

Wins also come by defending principles important to our clients even when they are not parties to an action. With one of the premier sports law practices in the country, we have for decades represented clients including the players' associations in every major professional sport, as well as individual athletes, sports businesses and civic entities in jury trials, arbitrations and appeals throughout the country—often establishing landmark precedents. This past year, we represented the National Football League Players Association as an intervening party for the purpose of asserting a labor law preemption claim in *Steinberg Moorad & Dunn, Inc. v. Dunn, et al.* At issue was whether a claim by plaintiff to enjoin an NFLPA certified agent, David Dunn, from representing NFL players was preempted by the federal labor laws.

This action resulted in a significant ruling for all of the professional sports unions that regulate player agents. Our team in this matter was led by partner Jeffrey Kessler and counsel David Feher.

DISNEY, ABC AND ESPN

In one of the first cases to test the applicability of patents to the evolving convergence of television and the Internet, major media companies turned to Weil Gotshal to defend an infringement suit filed in federal court in Manhattan. In a hotly contested case, the plaintiffs sought both injunctive relief and treble damages relating to the airing of ABC's hit show "Who Wants to be a Millionaire," as well as the broadcasts of "Sunday Night Football" and "Monday Night Football" with related web pages. We obtained summary judgment of non-infringement of each of the three asserted patents for our clients Disney, ABC and ESPN, resulting in a complete dismissal of the case, after a successful series of hearings on the relevant technology and the patented systems. Our team was led by partners Jim Quinn, Steve Glazer and Steve Rizzi.

WHITE COLLAR DEFENSE

Our white-collar criminal practice, featuring a former United States Attorney for the Southern District of New York, a former Chief of the Southern District's Securities Fraud Division, a former Watergate special prosecutor, and others, includes some of the most respected criminal litigators in the country. The firm's white-collar team recently scored a "win" of a different sort by **defying virtually every prognosticator** in a twelve-week jury trial against an individual in federal court in the Eastern District of New York, **and obtaining a hung jury** on an array of charges, including mail fraud, bribery, and conspiracy to commit mail fraud and money laundering. The trial team was led by partner John "Rusty" Wing, along with counsel Vernon Broderick and associate Martin Geagan.

MERRILL LYNCH

Our Business and Securities Litigation Department represents various Wall Street firms, such as Merrill Lynch, in venues across the country. For example, we secured dismissal of Merrill Lynch, as well as the other underwriters involved in the case, in a securities fraud action involving Stewart Enterprises filed in federal court in Louisiana. Our team was led by partners Joseph Allerhand and Stephen Radin. We also obtained dismissal of claims against Merrill Lynch in a complex purported shareholder derivative and class action in federal court in New Jersey, involving alleged violations of the 1934 Act and Rule 10b-5, as well as ERISA, for the alleged failure to disclose material information in connection with Merrill Lynch's acquisition of a leading NASDAQ market-maker. Joseph Allerhand also led the team in this matter, along with partners Mark Jacoby and Diane Harvey, and associate Catherine Ciarletta.

DAIWA SECURITIES OF AMERICA

And sometimes, wins bring a level of vindication to our clients, as well as multi-million-dollar results. The firm represented Daiwa Securities of America in a suit to enforce a personal guarantee. **We obtained summary judgment on all counts for the full amount sought**, some \$5.9 million plus interest, and Daiwa also was awarded attorneys' fees and costs in excess of \$1 million. Our attorneys involved in this action were partners Peter Isakoff and David Hird, along with associate Lisa Fine.

THOMAS H. LEE PARTNERS, LP

Finally, shortly before this report went to press, the firm scored a critical first strike in a major securities class action against Thomas H. Lee Partners, LP, one of the largest private equity investment firms in the world. In early 2003, Lee was named in a complaint alleging claims under various sections of the 1933 Act, 1934 Act and Rule 10b-5. The claims concern alleged misstatements and omissions in public disclosure documents, including in connection with a 2001 public offering of shares, of Rayovac. (Lee was the major shareholder of Rayovac, and sold \$61.5 million of stock in the public offering.) In May 2003, **the Court granted our motion to dismiss all 1933 Act claims against Lee, with prejudice**—notwithstanding that the Court denied the other defendants' motions to dismiss such claims—and on June 20, 2003, the Court denied plaintiffs' motion for reargument on the dismissal of the 1933 Act claims against Lee. The Court stayed (rather than granting at the time) our motion to dismiss the 1934 Act claims, so that plaintiffs could attempt to cure their pleading deficiencies, and we anticipate renewing our motion to dismiss 1934 Act and Rule 10b-5 claims in the amended pleading. The Weil Gotshal team was led by partner Irwin Warren, along with associates Ashley Altschuler and Jennifer Rosen.

...and the list goes on.

The victories summarized in this report give only a flavor of the diversity, depth and strength of the firm's litigation practice. The bottom line is that for decades major corporations have turned to Weil Gotshal when they have had to prevail in major disputes arising in virtually every area of commercial litigation—and the firm has delivered. That tradition endures today, as we continue to handle major cases for such regular litigation clients as General Electric, UnitedHealthcare, American Airlines, Matsushita, Cisco, Intel and the NFL Players Association, among others. At the same time, new clients, such as Bertelsmann, A.G., have turned to us to handle newly filed major actions—in the case of Bertelsmann, defending three major copyright infringement actions, including a proposed class action seeking \$17 billion in damages. Finally, one of the greatest keys to the success of Weil Gotshal's litigators, not reflected herein, comes in the major lawsuits we help our clients avoid—through counseling and finding solutions to complex disputes in advance of litigation—so that, when feasible, they never hit the media and explode into the types of cases highlighted in this Litigation Wins Report.



WEIL, GOTSHAL & MANGES LLP

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