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## LITIGATION REVIEW

Important decisions.  
Groundbreaking cases.

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Spotlights on some of Sidley's significant  
victories in litigation



**600+**

LITIGATORS ACROSS  
17 OFFICES



## A note from Carter Phillips

Chair of the firm's Executive Committee

In recent months, Sidley has redoubled its dedication to serving as first-choice litigation counsel to clients around the globe. Teamwork continues to be the bedrock of our success and permeates our approach to litigation. Lawyers from the firm's diverse practices are poised to come together from across four continents to assist our clients.

The cases described hereafter, many of which involve pioneering and remarkably complex matters, demonstrate the ability of our lawyers to succeed in virtually every legal arena in which a client might seek litigation counsel. From the United States Supreme Court to the World Trade Organization in Switzerland, Sidley's litigators have been widely recognized for their leadership in raising novel and often important questions of law, and, most of all, for delivering favorable results on behalf of our clients.

Colleagues in our profession have taken note of our efforts. Thus, based on peer and client evaluations of our lawyers, Sidley was named to the 2015 edition of the *U.S. News – Best Lawyers®* "Law Firm of the Year" Survey in the Litigation – Securities category. *Chambers USA* recognized Sidley's litigation talent with its 2014 Award for Excellence in the area of IP Including Patent, Copyright and Trademark. *Benchmark Litigation's* U.S. Awards named the firm "Appellate Firm of the Year" in 2014 and "Products Liability Firm of the Year" in 2015. Sidley was also recognized as a leading international litigation firm in *The Lawyer's* "The Global Litigation Top 50 2014." *The Legal 500 United Kingdom 2014* recognized Sidley in 17 of its practice areas, including in Commercial litigation, Banking litigation: investment and retail, and Insurance and reinsurance litigation. Numerous individual honors were bestowed upon our litigation lawyers in a variety of legal disciplines around the world.

What follows is a brief spotlight on our litigators and their work. We hope you enjoy this year's Litigation Review.

Warmest regards,

A handwritten signature in black ink that reads "Carter Phillips". The signature is written in a cursive, slightly slanted style.

Carter



PLAYED A KEY ROLE IN  
**5 OF THE 12**  
LARGEST MDL PROCEEDINGS  
OF ALL TIME

WE HELP OUR CLIENTS NAVIGATE THE  
CURRENT GLOBAL CLIMATE OF INTENSIFIED  
REGULATION AND ENFORCEMENT, AND  
HAVE HANDLED FCPA MATTERS INVOLVING  
CORPORATE ACTIVITIES IN MORE THAN  
100 COUNTRIES.



SINCE 2014, THE FIRM HAS  
PROVIDED LITIGATION SERVICES IN  
**43 OUT OF 50**  
U.S. STATES, PLUS WASHINGTON, D.C.

# A holistic approach that considers all the variables

When a client confronts litigation, an increasingly unpredictable and multifaceted experience for corporations worldwide, our strategy incorporates experience relevant to all business and legal issues.

- Accountants and Professional Liability
- Antitrust/Competition
- Complex Commercial Litigation
- Corporate Reorganization and Bankruptcy
- Energy
- Environmental
- ERISA Litigation
- FCPA/Anti-Corruption
- Financial Services/Consumer Class Actions
- Food, Drug and Medical Device Compliance and Enforcement
- Healthcare
- Insurance/Reinsurance Disputes
- Intellectual Property Litigation
- International Arbitration (Commercial and Treaty)
- Labor, Employment and Immigration
- Products Liability
- Securities and Shareholder Litigation
- Supreme Court and Appellate
- Tax Controversy
- White Collar: Government Litigation & Investigations



174 former U.S. Circuit Court of Appeals Clerks practicing at Sidley



## Sidley prevails in high court ruling on critical questions of privacy and airline security

When Donald Chance Mark, Jr. of Fafinski Mark & Johnson in Minnesota decided to petition the United States Supreme Court on the matter of whether airline employees may have broad flexibility to report potentially dangerous people to security officials, and to do so with immunity from being sued for reports that are materially true, he turned to partners Peter Keisler and Jonathan Cohn of Sidley's Supreme Court and Appellate practice.

"We recognized immediately that this was a vital matter involving national security," recalled Cohn, who argued the case before the U.S. Supreme Court.

The facts behind *Air Wisconsin Airlines Corp. v. Hoepfer* took place in 2004, when pilot William Hoepfer failed to

pass a simulator test to be certified to fly a particular type of aircraft. After failing on his fourth and final attempt, and knowing he was slated to be fired the following day, Hoepfer responded angrily at the test site, tossing his headset, using profanity, and accusing the instructor on site of "railroading the situation."

### A case of national significance

Unnerved by Hoepfer's behavior, Air Wisconsin officials reported him to the Transportation Security Administration (TSA). The move was in keeping with the mandate set in place after September 11, 2001 requiring airlines to report suspicious activity to the agency.

TSA moved quickly, halting Hoyer's flight to Denver and asking him to deplane. They searched him and his bags—concerned that he was a Federal Flight Deck Officer (FFDO) and therefore authorized to carry a weapon on an aircraft—but found him unarmed. Hoyer subsequently filed suit against Air Wisconsin for defamation, intentional infliction of emotional distress and false imprisonment.

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*“We recognized immediately that this was a vital matter involving national security.”*

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Mark, who has more than 35 years of experience in handling aviation litigation, began representing Air Wisconsin with local counsel in 2008. A key part of the airline's defense was based on a provision of the Aviation and Transportation Security Act (ATSA) that had been enacted in the wake of the September 11 attacks. It states that air carriers must report any suspicious activity to TSA, and that if they do so without actual knowledge of falsity or inaccuracy, or without reckless disregard for the truth, they will be immune from civil liability.

The stakes were high: a holding that airlines could be held liable for reporting true information about possible security threats or suspicious incidents might inhibit them from making reports at all, to the detriment of public safety.

### Quest for appellate talent

Mark took the matter through the Colorado court system, culminating with a split decision in the Colorado Supreme Court affirming a jury verdict on the issue of defamation for Hoyer. (The jury found for Air Wisconsin on the issue of false imprisonment and was hung on the issue of intentional infliction of emotional distress.) A strong dissent from Justice Allison Eid, however, confirmed Mark's argument that the case could have national repercussions and solidified his decision to seek certiorari.

“I then started the search to find outstanding counsel familiar with the U.S. Supreme Court,” he said. After a discussion with Peter Keisler, co-chair of Sidley's Supreme Court and Appellate practice, and Cohn, Mark was “very impressed” and hired Sidley.

Keisler and Cohn provided invaluable advice and suggestions in co-writing briefs and in seeking the Solicitor

General's support, Mark said. After the Court invited the Solicitor General's views on Air Wisconsin's cert petition, the team attended an in-person meeting with about 25 government officials, including representatives from TSA, the Solicitor General, the Federal Bureau of Investigation and Homeland Security. A few months after that meeting, the Solicitor General filed a brief supporting Air Wisconsin's cert petition, and the Court decided to take the case.

### Teamwork prevails

“It was remarkable,” Mark said of the experience. “It was fascinating and enlightening to watch Peter and Jon. They had great insight into the Court and how the argument should be presented. Both of them were just really, really good at presenting our case.”

The teamwork between Mark and Sidley's Supreme Court and Appellate team, which also included partner Eric McArthur, associate Josh Fougere and legal assistants John Meehan and Randy Luce, yielded a decisive victory for Air Wisconsin in an opinion by Justice Sonia Sotomayor. The Court held that immunity against civil liability for reporting suspicious behavior under the ATSA may not be denied to materially true statements, and that Air Wisconsin's report about Hoyer was materially true and thus entitled the airline to immunity as a matter of law.

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former U.S. Supreme Court Clerks  
practicing at Sidley

Cohn attributes the win to Sidley's ability to collaborate with the many players involved.

“We were very effective as a group in developing a strategy for *amicus* briefs and in convincing *amici* to support us,” said Cohn. “So much of what we do is about relationships and working effectively with trial counsel, co-counsel, and *amici*. That's what sets us apart from other firms,” he added. “We just want to win, and we know that the best way to win is to work effectively as a team. Egos are checked at the door.”

For Mark, the case was more than a bit personal. His father flew for an airline for 33 years. His mother also worked as a stewardess for the same airline at a time when stewardesses were required to be registered nurses.

“I think they'd be proud,” he said.

## Sidley's cross-disciplinary talent and novel approach to the law yield victory for client Beam

On the heels of advising Beam Inc. regarding its agreement to be acquired by Suntory Holdings Limited in one of the largest Japanese buyouts of an American corporation, Sidley represented the company in litigation arising out of that buyout for an unusually favorable resolution through a novel application of the law.



Litigation was filed in both the Delaware and Illinois state courts shortly after the merger agreement was announced. After Suntory's initial merger overture to Beam, Beam's board of directors adopted a forum selection bylaw, pursuant to which any litigation involving the internal affairs of the corporation was required to be brought in Delaware, where Beam is incorporated.

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*“We really were on the forefront of Delaware law in terms of obtaining dismissal on these particular grounds.”*

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“There had been a very important decision in Delaware court several months earlier that said forum selection bylaws were enforceable,” said Walter Carlson, a Practice Area Team Co-leader of the firm's Securities and Shareholder Litigation practice. “But that was in Delaware court. The question remained whether courts in other states would follow this decision,” Carlson added.

By applying this legal theory, Carlson and his team were victorious on behalf of Beam in Illinois state court. “We received a very thoughtful ruling from the trial court judge here in Illinois, who said she was going to enforce the bylaw as a matter of Delaware law and would require that any litigation go forward in Delaware,” said Carlson. The Illinois cases were dismissed,

which was the result Carlson and his team sought. They were then able to settle quickly with the Delaware plaintiffs.

“This was a first in Illinois cases of this type,” said Carlson, who worked with Jim Ducayet, Nilofer Umar and Elizabeth Austin to achieve the favorable outcome.

“We really were on the forefront of Delaware law in terms of obtaining dismissal on these particular grounds,” said Umar, a member of the firm's Securities and Shareholder Litigation practice.

For their work on behalf of Beam, Sidley earned first prize in the category “Global M&A Deal of the Year, Japan (Outbound)” in *American Lawyer's* second annual Global Legal Awards. A team of Sidley lawyers spanning North America, Europe and Asia advised on the transaction, valued at \$16 billion. Those who led the merger included Chicago corporate partners Tom Cole and Beth Flaming and corporate senior counsel Fred Lowinger. Lawyers across the firm's antitrust, environmental, employee benefits, finance, litigation, SEC, tax and Japanese law practices also provided significant advice.

Since the inception of the practice, Sidley's Supreme Court and Appellate team has briefed more than 200 cases on the merits and argued 115 cases before the Court.

## CASE STUDY / POM WONDERFUL LLC

### High-profile win in complex class action

**TALENT.** Leaders in defending clients against consumer fraud claims, Sidley's lawyers were called upon to represent POM Wonderful LLC in a false advertising class action brought in the Central District of California on behalf of a nationwide group of plaintiffs seeking hundreds of millions of dollars in damages for several years' worth of juice product purchases.

**TEAMWORK.** Building on the U.S. Supreme Court's landmark decision in *Comcast Corp. v. Behrend*, our team of lawyers moved to decertify the class on several grounds, including that the plaintiffs relied upon defective damages models; the class was unascertainable; the facts could not support a presumption of classwide exposure to allegedly false advertising; and variations in state law precluded certification of a nationwide consumer class.

**RESULTS.** The court granted Sidley's motion, agreeing that the plaintiffs had offered damages models that rested on an improper interpretation of the fraud-on-the-market theory and alleged entitlement to a full refund that ignored the benefits received by consumers. This decision has received significant attention as an example of how the law on class action damages models has evolved since *Comcast*.

“The outcome here underscores the importance of persistence when defending class actions, as well as the benefits of close collaboration between in-house and outside counsel,” said Sean A. Commons, a partner in the Financial Services/Consumer Class Actions Litigation practice and Professional Responsibility Chairman of Sidley's Los Angeles office.

# FAST TAKES ON IMPORTANT CASES

## THE NEIMAN MARCUS GROUP LLC

### **Dismissal of high-profile class action related to consumer data breaches**

As data breaches continue to impact businesses across the globe, our team of litigators has provided effective solutions to the complex legal problems that they cause. One such case involved our successful representation of The Neiman Marcus Group LLC, which suffered a highly-publicized cybersecurity incident involving customer payment card information. In the sole putative class action suit arising out of the incident to proceed to adjudication of a motion to dismiss, U.S. District Judge James B. Zagel (N.D. Illinois) dismissed the case, finding that plaintiffs who claimed that their payment cards were exposed in the incident failed to allege that they had suffered any cognizable injury, and that they therefore lacked standing to bring any claims against Neiman Marcus. Sidley also represented Neiman Marcus in connection with plaintiffs' appeal of Judge Zagel's decision, which is pending before the 7th Circuit Court of Appeals.

## DELOITTE

### **Global litigation talent assists with the successful resolution of U.S. securities litigation and enforcement matters**

We demonstrated the breadth of our global litigation and regulatory skills on behalf of Deloitte's member firm in mainland China, Deloitte Touche Tohmatsu CPA LLP, and its member firm in Hong Kong, Deloitte Touche Tohmatsu. We obtained dismissals with prejudice in two separate securities cases. The first case was brought by institutional investors in a Chinese distance learning company, ChinaCast Education. This win came on the heels of winning an alleged \$1 billion suit brought by a putative class of shareholders in China-based Longtop Financial Technologies. We also assisted the Hong Kong firm in resolving class action litigation regarding another China-based issuer, China MediaExpress. We also represented Deloitte China in a high-profile, three-week administrative proceeding before the SEC concerning production of audit workpapers from mainland China.

## KPMG

### **Precedent-setting appellate win in employee case**

Our unparalleled appellate experience contributed to a precedent-setting victory in a Second Circuit appeal involving our client KPMG LLP. A nationwide collective of plaintiffs, whom KPMG employed as "Audit Associates" (its entry-level auditor position), challenged the District Court's summary judgment ruling that KPMG correctly classified them as overtime-exempt professionals under the Fair Labor Standards Act (FLSA). A team of Sidley lawyers had prevailed in the trial court, achieving the first major legal ruling for the accounting profession on this issue, which had been hit with similar suits around the country. The Second Circuit affirmed, recognizing that the plaintiffs' claims rested on a "fundamental error" under the FLSA, "confus[ing] being an entry-level member of a profession with not being a professional at all." This decision addressed for the first time several considerations relevant to the often-litigated professional exemption to the FLSA.



# SCOTT ANDERSEN

We recently spoke with Scott Andersen, co-managing partner in Geneva, whose practice focuses on World Trade Organization (WTO) rules in international trade disputes. He discussed the business landscape in Switzerland and how the firm has cemented its reputation for excellence there.

## Can you remember a moment or event after opening the office in Geneva that really put us on the map?

Yes, definitely; it was when we got two pivotal matters. The first was when we secured and litigated the Cotton case for Brazil against the U.S. It is one of the most famous World Trade Organization cases and is a case study at the Harvard Business School. Todd Friedbacher, a partner in Sidley's Geneva office, and I, along with Christian Lau, an associate here, were the chief lawyers on what became the first successful challenge to highly trade-distorting, actionable, and prohibited agricultural subsidies under the WTO. It was the first time that a developing country had taken on a major subsidy program of a developed country to demonstrate that those subsidies were hurting developing country farmers. We won repeated rounds of that case, which just now ended with the U.S. paying the Brazilian Cotton producers \$750 million. So, yes, this case really helped put our WTO practice in Geneva on the international trade map.

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*“Sidley has been instrumental and at the forefront of creating a whole new legal practice area of WTO litigation.”*

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The other case that helped make us the leading practice in Geneva was our work for Airbus, Europe's aircraft manufacturer. The history of the subsidies fight between Airbus and Boeing is now in its second decade, with each manufacturer and their respective governments accusing the other of providing and receiving unfair trade subsidies. We have been very busy managing that litigation from Geneva, which has involved lawyers from our office, Washington, D.C. and Brussels.

## Sidley has been a trailblazer in many ways in Geneva. How does the firm distinguish itself on the landscape today?

This is going to sound like a cliché, but the reality is, we have an impeccable reputation for the quality of our work. There is literally a “Sidley-type” brief recognized by the WTO Secretariat and WTO Appellate Body. Clients know that we are the go-to firm in Geneva for difficult and complex cases. We have by far the largest WTO operation here in Geneva.

Over the years, we haven't just helped clients comply with the law or anticipate changes in the law—we have also been at the table shaping those laws.

When I graduated from law school, the WTO didn't even exist. In fact, after I had been a U.S. litigator for 15 years, the WTO still didn't exist! World trade law hardly existed. There were only a very few GATT cases. There was no binding dispute settlement for international trade disputes. It wasn't even a practice area. In many ways, Sidley lawyers have been instrumental and at the forefront of creating a whole new legal practice area of WTO litigation. There are now almost 500 WTO disputes and hundreds of thousands of pages of jurisprudence. No other firm can make the claim that it has contributed so much to developing that jurisprudence.

Our international lawyers have advised governments and companies in more than half of the WTO's nearly 500 disputes.

## Sidley achieves “exceptional” award of attorneys’ fees for client Universal Remote Control in patent lawsuit

After a successful verdict on all the patent issues involved in a jury trial in Santa Ana, California, the court recently granted Sidley a post-trial award of attorneys’ fees for client Universal Remote Control (URC). The firm filed the attorneys’ fees motion under the Patent Act provision, asking the court to declare the case “exceptional” and thus award fees to Sidley’s client as the prevailing party.

The court agreed, stating in its March 10, 2015 order, “[e]xceptional cases are, by definition, the exception. But since [the Supreme Court case] Octane’s change in the standard, the rule seems to be for prevailing parties to bring an exceptional case motion. This case is no exception. But it is exceptional.”

The case involving URC, which sells remote control devices to major cable companies, had been initiated by Universal Electronics Inc. (UEI) more than three years ago, asserting four patents against multiple products of URC. Sidley was brought in just months before trial to complete expert discovery, finalize pretrial motions and ultimately present the case to the jury.

On summary judgment, the court agreed with Sidley’s client that the claims of one of UEI’s patents should be dismissed because of UEI’s failure to properly mark its products with

the patent number. In the recent award of fees, the court agreed with Sidley that UEI’s assertion of this patent was exceptional due to the weakness of UEI’s claim and the “gamesmanship” manner in which the company litigated this issue.

The court found that “[s]ubstantively, information regarding Plaintiff’s marking policies, procedures, and practices was uniquely in Plaintiff’s possession, but Plaintiff either did not adequately review this material before filing suit, or filed suit knowing that it had not complied with the marking requirement. Plaintiff compounded this by engaging in gamesmanship that made it hard to discover and prove the marking failure.”

The jury found that the second UEI patent was invalid due to improper inventorship. At trial, UEI relied upon a “petition to correct” inventorship that it had filed with the United States Patent and Trademark Office, which the jury necessarily rejected. At trial, URC demonstrated that UEI tried to “correct” the inventorship in order add a new inventor (Darbee) and thus give this patent an earlier priority date and avoid damaging prior art. In the recent fee award, the court noted that it had previously expressed concern regarding the “troubling ten-year delay between the time the inventorship issue was raised and Plaintiff’s petition for correction,” yet Plaintiff never offered a justification for the delay.”



“Whatever the reason,” the court said, “twenty years of delay contributes to a finding that this case is exceptional, because it created – again, in the light most favorable to Plaintiff – a situation where Plaintiff could not provide any corroboration of Darbee’s purported inventive contribution, either from Plaintiff’s files, from Darbee, or from the named inventors.”

The court ruled after trial that UEI’s assertion of this patent was further barred by the equitable doctrine of laches. In the fee award, the court noted that “after hearing all of the evidence at trial, the Court held that Plaintiff had not justified its delay and that Plaintiff did not rebut the presumption of prejudice, and that laches thus blocked Plaintiff’s claim.” The court further ruled that UEI’s litigation conduct on both the inventorship issue and the laches issue contributed to a finding that this case is exceptional.

In a pre-trial ruling on patent claim interpretation for a third UEI patent, the court dismissed one of UEI’s patents as invalid. UEI filed a subsequent motion for reconsideration of that invalidity ruling. In the recent order on attorneys’ fees, the court agreed with Sidley’s client that this motion for reconsideration “adds somewhat to the pile” to the exceptional case finding.

“While only a small fraction of the thousands of patent suits filed annually ever get to trial, even fewer include post-trial requests for attorneys’ fees which are granted, as was done in this case, so this was a noteworthy victory,” explained Peter Kang, a partner in the firm’s Palo Alto office and member of its Intellectual Property Litigation group.

While the trial focused primarily on only one of UEI’s patents involving programming of cable remote controls to work with other devices like TVs and DVD players, UEI had originally claimed URC infringed four patents. In summary judgment and claim construction pre-trial rulings, the judge had ruled against UEI on three of the four patents. The case went to trial on UEI’s claim that URC infringed on the one remaining patent, and on URC’s counterclaims that another patent was invalid and unenforceable.

Following a two-week trial in Santa Ana, California, the jury found in URC’s favor on all claims and affirmative defenses, resulting in a decision of non-infringement, invalidity and unenforceability. The jury also found the second patent to be both invalid for improper inventorship and unenforceable. The jury further determined that UEI was guilty of patent misuse and unclean hands. In post-trial briefing, the Court ruled in URC’s favor on the equitable defense of laches.

After judgment for URC was entered, the company sought attorneys’ fees for UEI’s exceptional conduct in bringing suit in the first place. As noted in the fee award order, “[i]n reviewing the record, the Court is mindful that evidence at trial showed that this litigation was at least in part motivated by Plaintiff’s desire for ‘payback’ for Defendant’s successful competition in the marketplace.” Thus, the court granted URC its attorneys’ fees for the portions of the case attributable to two of UEI’s patents and for the motion for reconsideration regarding the third patent.

Such success hasn’t gone unnoticed by leading industry publications. Sidley’s Intellectual Property Litigation practice was recently honored as 2014 Intellectual Property Team of the Year by *Chambers USA*.

## Talent and teamwork

All three of Sidley’s West Coast offices have been working together on the case. Kang of the Palo Alto office argued the successful attorneys’ fee motion to the court. The team working on this fee award featured Teague Donahey from the firm’s San Francisco office; Ted Chandler and Clarence Rowland from the firm’s office in Los Angeles; and Cynthia Chi, now an alum.

For Kang, Chair of the Palo Alto office’s Diversity Committee, the latest URC victory holds special significance. “This winning Sidley trial team included two diverse attorneys, one of whom is a woman, and is testament to the firm’s strengths and commitments. As lead trial counsel, I am particularly gratified to achieve such an ‘exceptional’ result for this client, and of course proud of my team’s accomplishments,” he said.

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lawyers practicing at Sidley admitted to the American College of Trial Lawyers



# HENRY DING

Henry Ding, a Partner and Chief Representative of Sidley's Beijing office, discusses our litigation work on behalf of the Chinese government.

**There have likely been many cases in which Sidley's insider's perspective into government has been essential.**

Yes, definitely. For example, several years ago, two major lawsuits were brought before the Southern District of New York against the Central Government of China in connection with a sovereign bond issued in the year 1913. It's funny, we are talking about something from 101 years ago—a century-old bond issued by a previous, previous Chinese government. The then-Chinese government honored its obligation for that bond until 1939, until it ran into default with the escalation of the Japanese invasion of China. A large part of China's northern territory was taken away and occupied by the Japanese. So the central government's revenue was exhausted.

After 100 years, think about the statute of limitations [[laughs]]. Quite a few smart U.S. individuals who might have purchased the bond certificate from eBay.com claimed themselves as bond holders and brought a lawsuit against the current Central Chinese Government. This was utterly ridiculous.

Carter Phillips of the firm's Supreme Court and Appellate practice led a Sidley team that included such senior partners as Bob Pietrzak, co-head of the firm's Securities and Shareholder Litigation practice, and Brad Berenson, now an alum, and flew to Beijing to meet the Chinese Foreign Ministry, and we ultimately won the mandate to take on this landmark litigation. We won it due to our close working relationship with the Chinese government, combined with our prior professional background with the government, and also, of course, the firm's outstanding litigation experience and rich knowledge on sovereign immunity. Within less than two years, we won a dismissal of the complaint in both cases.

## How did the talent of our team achieve those victories?

A perfect example is the events leading up to the meeting Carter and the team had with the Chinese Foreign Ministry. I remember just before the team arrived in Beijing, it was a national holiday—Chinese New Year. We had received very short notice from the Chinese government that they wanted to meet with Sidley right after the holiday. There was tons of work to do before the meeting. We needed to produce an inch-thick pitch memo combining all the legal issues and history of the old sovereign bonds issued, including that from the Qing Dynasty. The government had no clue about any of the historical information. They told us very frankly, “We don’t know anything about this bond.”

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*“We won due to our close working relationship with the Chinese government ... and also of course, the firm’s outstanding litigation experience and rich knowledge on sovereign immunity.”*

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Everyone in the Beijing office canceled their holiday travel plans and without a word of complaint. With tremendous assistance from the U.S. marketing team, we produced a beautiful inch-thick pitch memo in both Chinese and English, which Carter and the team presented during the meeting with the foreign ministry. The government was very surprised and said how much they appreciated the in-depth analysis of our memo, which was very unusual for them to say.

During the case, we had searched, for example, and found in great detail the history of the sovereign bonds issues by the Republic government right after its revolution overthrowing the last imperial Qing dynasty in 1911. We found many important documents relating to the old bond, including President Woodrow Wilson’s declaration making a clear denunciation of the commercial terms of this 1913 bond.

It came as a surprise to everyone, including the Chinese government, that President Wilson was personally involved in reviewing the commercial terms and criticizing the unfair terms of this transaction, calling it an intrusion on China’s sovereignty. As a result of his declaration, all U.S. banks pulled out of the transaction. This important fact gave the U.S. district court strong evidence that no U.S. banks were involved, and thus no commercial activities were conducted by the then Chinese government in the U.S. Therefore, there was essentially no jurisdiction for the federal court to hear the case.

So without our excellent historical due diligence, we would not have been able to find President Wilson’s declaration. It convinced the court that it did not have any jurisdiction over the case.

# WHAT OUR LITIGATORS ARE DOING WHEN THEY AREN'T LITIGATING

## Sidley helps build legal infrastructure in Mongolia with new arbitration law

Lawyers at Sidley have frequently been seated at the table when laws that impact the way their clients do business are being drafted. So, too, is the case in Mongolia, where the firm's lawyers are currently meeting with government officials and business leaders there to effect dramatic changes in the country's arbitration law.

"The law will be helpful to the country and to international investors all over the world because it will create a more effective mechanism for dispute resolution in Mongolia," said Ayaz Shaikh, a Sidley partner in the firm's Washington, D.C. office with longstanding experience in Mongolia. Based on international best practices, the new law is expected to significantly improve the legal environment for domestic and international arbitration in the country.

Shaikh, a member of the Project Finance and Infrastructure practice, has been advising clients conducting business in Mongolia since 2009. In the process, he developed a strong working relationship with a Mongolian law firm, MDS & KhanLex LLP. Together with lawyers at that firm, David Roney of Sidley's International Arbitration team is currently working on a pro bono basis with the USAID/Mongolia

Business Plus Initiative to develop a state-of-the-art arbitration law and obtain legislative approval for it.

Roney worked on the concept paper for the law, which was received favorably, and has since been approved by the Ministry of Justice. He and Andrew Fox of the London office then led an open dialogue forum with members of the private and public sectors to ensure consensus on the new statutory framework. The team is now working on finalizing the law so that it may be brought to a vote before the country's parliament.

Roney, who expects that vote to take place within the next few months, said he jumped at the chance to take leadership of the project in June when Ayaz brought the matter to the International Arbitration team.

"I had previously been involved in another law reform project in Canada, which provided excellent background for this," said Roney, who is a member of the Advisory Board for the International Arbitration Project of the Uniform Law Conference of Canada, which seeks to harmonize the country's laws for its provinces and territories.



He was gratified by the opportunity to work with the people of Mongolia, whom he described as bright, warm and inviting. He was equally attracted to the opportunity to effect change. "It is wonderful to make a real contribution to the rule of law in a country that is working to put in place a modern and effective legal framework to achieve important economic objectives for the betterment of its people," Roney said.

He described the firm's work in Mongolia as the perfect example of Sidley's ability to harness the talent of lawyers across a variety of disciplines in its offices internationally. Others working on matters involving Mongolian clients include Prabhat Mehta in Singapore, who, early on, helped Shaikh further establish the Mongolia practice at Sidley, Tom Deegan in Hong Kong, Matt Shankland in London and Tao Lan in Beijing. The team has secured a number of significant victories, including a recent one led by Shankland, working in collaboration with the MDS & KhanLex firm: The representation of Ulaanbaatar Railways in its successful US\$55 million jurisdiction battle against Standard Bank Plc in London High Court, which yielded a landmark ruling for a Mongolian company.

Shaikh explained why he first became interested in working in Mongolia. "It is a country with substantial potential. They have a relatively small population of three million and are sitting on a vast expanse of territory replete with natural resources," he said, adding, "Mongolia has always been a promise that is one step away. It is exciting for us to be a part of its development by helping to improve its legal infrastructure."

## Capital Litigation Project

2015 marks 10 years since Sidley launched its first firmwide pro bono initiative, the Capital Litigation Project. The project is a long-term, resource-intensive undertaking that provides hope to inmates incarcerated on Alabama's death row. Since the project's inception, more than 100 Sidley partners, counsel and associates have volunteered more than 127,000 hours to these cases.

CASE STUDY / CITY OF GLENDALE, CALIFORNIA

## Victory in pro bono case involving infringement upon freedom of expression

**TALENT.** In two cases that generated significant media coverage, Sidley and the City Attorney's Office of Glendale, California, acting as co-counsel, represented the City against state and federal lawsuits that sought removal of the "Peace Monument" from Glendale's Central Park.

**TEAMWORK.** We represented the City on a pro bono basis due to the significance of the monument, which is dedicated to the more than 200,000 Asian and Dutch women who were forced into sexual slavery by the Japanese Imperial Army between 1932 and 1945.

"These cases were important not only for the City of Glendale and the Peace Monument, but for protecting the rights of all

state and local governments to speak and educate their citizens about matters of historical significance," said Brad Ellis, partner and co-head of Sidley's Los Angeles General Litigation group.

**RESULTS.** The lawsuits were filed by a Glendale resident and the so-called Global Alliance for Historical Truth, who claimed, among other things, that the monument injected the City into an international debate, thus usurping the U.S. government's foreign affairs power. Rejecting the plaintiffs' arguments in both cases, the courts granted the City's motion to dismiss and entered judgment in favor of the City.



## ORIGINAL SOURCE

### *The Sidley Austin False Claims Act Blog*

We bring our depth of experience and breadth of resources from the firm's myriad legal disciplines to comment on emerging issues within the dynamic area of FCA law on our industry-leading blog.

"The FCA blog allows us to connect with clients in a really new and powerful way. On a real-time basis, we can share information about the latest litigation developments that really matter. I have also been very gratified to see our readership increase dramatically since the blog's launch. When a client calls to discuss a topic that was just posted and we can provide advice about an issue that the client first learned about through the FCA blog, that is particularly satisfying."

– Scott Stein

Partner and editor of *Original Source: The Sidley Austin False Claims Act Blog*



Blog: [fcablog.sidley.com](http://fcablog.sidley.com)  
Twitter: [@FalseClaims\\_Act](https://twitter.com/FalseClaims_Act)

## Awards and Honors

- “Law Firm of the Year” in Litigation – Securities
  - 2015 *U.S. News – Best Lawyers® “Best Law Firms” Survey*
- Nationwide Band One ranking in Appellate Law
  - *Chambers USA 2015*
- National tier 1 rankings in the following categories: Appellate, Bankruptcy, Intellectual Property, International Arbitration and Product Liability
  - 2015 *Benchmark Litigation*
- 2014 Intellectual Property Team of the Year
  - *Chambers USA*
- 2014 Appellate Group of The Year
  - *Law360*
- Top-tier recommendations in the following litigation categories: Environment, International Trade, Product Liability and Mass Tort Defense, and Supreme Court and Appellate
  - 2014 *The Legal 500 US*
- Sidley was named in 2014 for a seventh time to the *National Law Journal’s “Appellate Hot List.”*
- Top 50 global litigation firms 2014
  - *The Lawyer*
- First-tier national rankings in the following categories: Appellate Practice; Commercial Litigation; Litigation – Antitrust, Bankruptcy, Environmental, First Amendment, Intellectual Property, Labor & Employment, Mergers & Acquisitions, Patent, Regulatory Enforcement (SEC, Telecom, Energy), and Securities; and Mass Tort Litigation/Class Actions – Defendants
  - 2015 *U.S. News – Best Lawyers® “Best Law Firms” Survey*
- 2014 Firm of the Year for Litigation & Dispute Resolution in Japan
  - *Asian-MENA Counsel*



PRODUCT LIABILITY FIRM  
OF THE YEAR

– 2015 *Benchmark Litigation  
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