

# Litigation Practice 2018 Highlights

To Our Clients and Friends:

In 2018, Seward & Kissel's Litigation Group achieved substantial results in high stakes cases.

Over the past year, we represented a broad range of clients in every aspect of litigation, enforcement and investigations, and dispute resolution. Our representations included investor and public shareholder disputes, complex multi-district litigation, DOJ and SEC investigations of critical importance to our corporate and individual clients and other significant commercial, maritime, securities and pro bono matters as set forth below.

We would like to congratulate Dale Christensen and Bill Munno on their retirement as litigation partners from the firm. Dale and Bill will continue to serve our clients as Senior Counsel.

We are also pleased to announce the promotion of Mike Weitman to Counsel. Mike represents banks, broker-dealers, publicly-traded companies, investment managers, and other clients in complex securities, contract, employment, and general business disputes before courts and arbitrators. Mike also regularly advises clients in connection with criminal investigations and prosecutions, SEC and other regulatory inquiries.

We also welcome Philip Moustakis to the firm as Counsel. Prior to joining the firm, Philip was Senior Counsel in the Division of Enforcement at the Securities and Exchange Commission and previously served as an Assistant Attorney General in the Investor Protection Bureau of the New York Attorney General's Office. Philip will work with the Government Enforcement and Internal Investigations Group, the Investment Management Group, and the Blockchain and Cryptocurrency Group.

We look forward to working with our clients in 2019 and beyond.

## Commercial Litigation

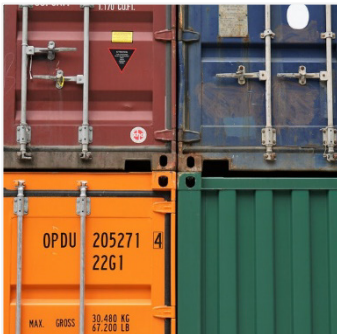


Represented **Commodities & Minerals Enterprise, Ltd.** in two arbitrations against a Venezuelan government-related iron ore company. After 25 days of hearings, the arbitrators issued final awards in our client's favor for over \$200 million – the largest award ever issued by a panel of the Society of Maritime Arbitrators.

Represented the **largest secured lender** of offshore supply vessel operator Harvey Gulf International Marine in connection with an objection to key corporate governance and related provisions in Harvey Gulf's Chapter 11 plan of reorganization. Over a two-week period, we conducted expedited discovery and assembled our client's case for the contested confirmation hearing. The objection was resolved at the hearing by entry of an agreed confirmation order that addressed our client's concerns.

Represented an **international charity** in a federal action brought by organizers of a cultural festival in Bhutan. Plaintiffs' sole theory against our client was that it was affiliated with a similarly named entity with which plaintiffs had a contractual relationship and, thus, bore responsibility for that entity's actions. The district court granted our client's motion to dismiss with prejudice, finding that our client was not a party to any contract with the plaintiffs and that our client was neither an agent nor an alter ego of the actual entity with which plaintiffs had contractual relations.

## Maritime Litigation



Represented **ING Bank N.V.**, as security agent for a syndicate of lenders, in over 50 proceedings across the United States arising out of the global collapse of the O.W. Bunker group, a multinational provider of marine fuels. At the outset of 2018, over a dozen O.W. Bunker-related matters were pending on appeal in the Second, Fifth, Ninth, and Eleventh Circuits, which were resolved in our client's favor (as party or amicus curiae) in virtually all respects.

Successfully defended **Marshall Island-registered shipping companies** in shareholder derivative and fraudulent conveyance actions involving one of the world's largest shipping companies. We obtained decisions of first impression on the application of Marshall Islands law and obtained dismissal at the pleading stage in both cases.

## Government Enforcement and Internal Investigations



Represented over 50 clients in various SEC, DOJ, FINRA and other white collar & regulatory matters.

Acted as monitor for multi-manager investment adviser pursuant to SEC order.

Assisted our client in obtaining a de minimis settlement with the SEC relating to the collapse of the law firm Dewey & LeBoeuf after previously obtaining non-guilty verdicts in a criminal case brought by the Manhattan District Attorney's Office related to the same facts.

## Securities Litigation



Represented **investment advisor** and its president in obtaining dismissal with prejudice of short-swing profit claims brought by a shareholder of Sears Holdings Corp. under Section 16(b) of the Exchange Act. The court found that plaintiff failed to allege that our clients, which managed mutual funds holding shares in Sears Holdings Corp., had a pecuniary interest in Sears shares and that our clients could not be held responsible for the pecuniary interests of the mutual funds.

Represented **prime broker** in an arbitration brought by a hedge fund and its principal asserting claims that the prime broker was responsible for claimants' trading losses of almost \$10 million. We successfully secured dismissal of all claims. We also obtained expungement of certain claimants' CRD records and certain attorneys' fees for our client after the Panel found that claimants' losses were due to their own risky trading strategy and that claimants' charges were false.

Represented **lead underwriter** of a bond issuance and the underwriter's executive in a FINRA arbitration brought by purchaser of bonds asserting claims for fraud, breach of fiduciary duty and violation of FINRA rules after the bond issuer filed for bankruptcy. Following a four-day hearing, the Panel rejected each of Claimant's claims, and the executive successfully petitioned the Panel for an expungement of the arbitration from his FINRA record.

Represented an **onshore feeder fund** of a Cayman Islands fund in a Florida state court action in which a foreign entity that purportedly invested in an affiliated offshore feeder fund asserted claims against the onshore feeder fund for fraud and breach of fiduciary duty. We moved to dismiss on the grounds that the court lacked personal jurisdiction over our client and that our client did not have a relationship with, or owe a duty to, alleged investors in the offshore fund. The court granted the motion to dismiss, and plaintiff thereafter voluntarily dismissed its claims with prejudice.

## Employment Litigation



Represented an **investment manager** in a JAMS arbitration in which a former employee sought over \$3 million for alleged breach of contract, quasi-contractual claims, violations of the Labor Law and breach of the covenant of good faith and fair dealing. We successfully obtained dismissal of the arbitration on a motion to dismiss before a hearing.

## Pro Bono Representation



Represented Ms. X in successfully appealing the Commissioner of Social Security's denial of her application for disability insurance benefits. We worked with Ms. X to prepare and submit new evidence and briefing opposing the Commissioner's position. After reviewing the new evidence, the district court remanded the case to the Commissioner for further consideration.

Successfully litigated a federal court action against the Social Security Administration (SSA). Our client was denied benefits through every stage of the disability benefits process and challenged the denial in federal court. We assisted our client in obtaining remand to the administrative law judge for further review of our client's disability claims.

Successfully won disability benefits from the Department of Veterans Affairs for a veteran whose claim originally filed in 2007 had been denied, appealed, and remanded to the New York Regional Office for review.

## Awards, Rankings & Recognitions

Recognized by the Legal 500 for Securities Litigation.

Our partners have been recognized by Chambers (USA) for maritime/transport litigation and the National Law Journal for white collar defense.

Eight litigation attorneys recognized as SuperLawyers, three attorneys recognized as Rising Stars, and two attorneys recognized as Best Lawyers in America.





## Contacts

*For more information, please contact our Partners and Counsel in the Litigation Group.*

### Partners

Michael G. Considine  
(212) 574-1334  
[considine@sewkis.com](mailto:considine@sewkis.com)

Rita M. Glavin  
(212) 574-1309  
[glavin@sewkis.com](mailto:glavin@sewkis.com)

Mark J. Hyland  
(212) 574-1541  
[hyland@sewkis.com](mailto:hyland@sewkis.com)

Mark D. Kotwick  
(212) 574-1545  
[kotwick@sewkis.com](mailto:kotwick@sewkis.com)

Michael J. McNamara  
(212) 574-1581  
[mcnamara@sewkis.com](mailto:mcnamara@sewkis.com)

Anne C. Patin  
(212) 574-1516  
[patin@sewkis.com](mailto:patin@sewkis.com)

Bruce G. Paulsen  
(212) 574-1533  
[paulsen@sewkis.com](mailto:paulsen@sewkis.com)

Jack Yoskowitz  
(212) 574-1215  
[yoskowitz@sewkis.com](mailto:yoskowitz@sewkis.com)

### Senior Counsel and Counsel

Dale C. Christensen, Jr.  
(212) 574-1589  
[christensen@sewkis.com](mailto:christensen@sewkis.com)

M. William Munno  
(212) 574-1587  
[munno@sewkis.com](mailto:munno@sewkis.com)

Ross Hooper  
(212) 574-1507  
[hooper@sewkis.com](mailto:hooper@sewkis.com)

Philip Moustakis  
(212) 574-1604  
[moustakis@sewkis.com](mailto:moustakis@sewkis.com)

Julia C. Spivack  
(212) 574-1373  
[spivack@sewkis.com](mailto:spivack@sewkis.com)

Michael B. Weitman  
(212) 574-1486  
[weitman@sewkis.com](mailto:weitman@sewkis.com)

### Offices

#### New York

One Battery Park Plaza  
New York, NY 10004  
Tel: 212-574-1200  
Fax: 212-480-8421

#### Washington

901 K Street, NW  
Washington, DC 20001  
Tel: 202-737-8833  
Fax: 202-737-5184