

# Crisis Avoidance & Risk Management

In a crisis situation, our lawyers understand that companies can face difficulties on numerous fronts – government investigations, consumer litigation, employee relations, internal investigations, supplier relations, and public relations difficulties, to name just a few. We are well-equipped to counsel companies and their boards on all of these fronts seamlessly and with the goal of minimal interruption to business operations.

Drawing on capabilities from across the Firm, we help clients navigate the immediate issues and develop long-term solutions and exit strategies to complex, multi-faceted legal challenges. In short, we partner with our clients to integrate legal strategy into the wider framework of their current and future business objectives. We are well known for:

- **Our Cross-Practice Capabilities:** Drawing on the talents of lawyers around the world in our Restructuring, Public Company Advisory Group, White Collar Defense, Regulatory and Investigations, Privacy & Cybersecurity, and Product Liability & Mass Torts practices, among others, we offer our clients the "one-stop" service they need to efficiently mobilize in response to a crisis situation.
- **Seamless Coordination of Parallel Litigation and Regulatory Investigations:** We regularly manage and coordinate all aspects of legal proceedings arising out of crisis situations, including wide-ranging, multi-regulator investigations, multi-jurisdictional litigation, and sensitive internal reviews and investigations, often simultaneously.
- **Our Experience Representing Major Companies in First-of-their-Kind Crises:** We have occupied center stage during some of the highest profile crises over the last several decades, navigating clients from all over the world through complex regulatory and governmental investigations, internal investigations, restructurings, and attendant civil litigation. Recently, this has included, among many others:
  - Numerous data breach incidents
  - Sensitive allegations of workplace misconduct
  - The 2015 Clean Air Act/Emissions scandal
  - The 2015 Theranos Labs blood testing scandal
  - The 2013 Lac Mégantic rail disaster in Canada
  - The 2011 Earthquake and Tsunami in Japan
  - The 2010 Gulf of Mexico Oil Spill
  - The 2008 Financial Crisis
  - The Cleanup Efforts Following the 2001 World Trade Center Terrorist Attacks
  - The 1993 World Trade Center Terrorist Bombing
- **Expert Management of Media Relations and Strategic Communications:** Our attorneys have extensive experience coordinating media relations and strategic communications in the aftermath of large-scale crises. We regularly counsel on the legal implications of using public relations firms and managing communication with the media in the wake of a crisis. We also work with our clients to create a culture of brand management with respect to social media and all other forms of corporate communication, with the goal of preventing future crises.

## Selected Representations

### **Willis – Stanford Financial Fraud**

Weil has represented legacy Willis (pre-dating its 2016 “merger of equals” with Towers Watson) in connection with approximately 15 securities class and individual actions arising out of the heavily publicized, \$8 billion Ponzi scheme orchestrated by R. Allen Stanford and his Houston-based Stanford Financial Group. The complaints in these actions, originally filed in various state and federal courts across the country and centralized in the U.S. District Court for the Northern District of Texas by the Judicial Panel on Multi-District Litigation, generally allege that Willis and other defendants aided Stanford’s fraud.

In August 2017, following motion practice, limited discovery, and appellate proceedings before the Fifth Circuit Court of Appeals and the U.S. Supreme Court, a Texas federal judge approved a settlement by Willis that favorably resolved the litigation. In 2019, the U.S. Court of Appeals for the Fifth Circuit affirmed the settlement.

### **AIG**

Weil represented AIG in all manner of criminal and civil investigations relating to the Financial Crisis. No formal charges were brought.

### **Lehman Brothers**

Weil represented Lehman Brothers in criminal and civil investigations relating to the Financial Crisis. No formal charges were brought.

### **Washington Mutual**

Weil represented Washington Mutual in criminal and civil investigations relating to the Financial Crisis. No formal charges were brought.

### **CIT Group – Lac Mégantic rail disaster in Canada**

Weil represents CIT Group – a lessor of rail cars – in connection with multiple wrongful death claims, as well as claims of damages to property and businesses, including bankruptcy litigation in U.S. and Canadian courts arising out of the derailment of a train operated by Montreal, Maine & Atlantic Railroad (MMA) outside of Quebec, Canada. Weil recently succeeded in transferring more than a dozen personal injury claims to the bankruptcy court in Maine overseeing the liquidation of MMA’s parent company.

### **SEACOR Holdings Inc. – BP Oil Spill Litigation**

Weil obtained a significant victory on behalf of client SEACOR Holdings Inc. when the U.S. Court of Appeals for the Fifth Circuit affirmed the lower court's dismissal, with prejudice, of all claims against SEACOR and its subsidiaries, who owned and operated marine vessels that responded to the emergency following the April 20, 2010 incident on the Deepwater Horizon offshore drilling rig in the Gulf of Mexico. A group of Louisiana landowners, commercial fishermen, and oil and gas industry employees brought suit against the owners and operators of the response vessels in the U.S. District Court for the Eastern District of Louisiana alleging that the water they directed toward the fire caused the Deepwater Horizon rig to flood and sink, which in turn caused the riser pipe connected to the wellhead to collapse, resulting in the ensuing oil spill into the Gulf of Mexico – the worst oil spill in U.S. history. Plaintiffs asserted claims for property damage and economic losses under general maritime law, the Oil Pollution Act of 1990, and Louisiana state law. The district court rejected plaintiffs' claims that defendants should have known that attempting to cool the fire on the offshore rig would cause it to sink and then leak oil, finding that "a reasonable person in Defendants' situation would not foresee" such a thing. The Court noted that its decision was consistent with the long-embraced public policy under maritime law that encourages seamen to render prompt service during emergencies, generally unknown in land-based common law.

### **Toyobo**

Weil served as lead counsel overseeing the defense of Toyobo, a major Japanese fiber manufacturer, in connection with False Claims Act litigation brought by the U.S. DOJ, class action litigation, multiple personal injury suits, and claims by multiple state attorneys general and foreign states, among others, relating to the performance of Toyobo's Zylon fiber in bullet-resistant vests used by thousands of law enforcement agencies worldwide. In 2018, Weil negotiated a settlement of all remaining claims after securing a number of successful outcomes in the various lawsuits.

### **Thermo King – Mont Blanc Tunnel Fire Disaster**

Weil defended Thermo King in several European forums relating to claims brought against it arising out of the Mont Blanc tunnel fire disaster in France, which claimed more than 40 lives. The dispute regarded whether the client's refrigeration equipment installed on a truck caused the fire. We obtained a complete victory for our client on causation grounds, and coordinated all of the crisis management and communications aspects of the matter throughout on a global scale amidst intense media scrutiny.

### **International Public Company**

Weil represented a publicly traded company following a cyber-incident that resulted in the loss of several months of corporate data. Weil worked with forensic investigators and investigated the root cause of the cyber-incident and advised on governance, disclosure, and auditor issues.

### **Johnson & Johnson**

Weil served as lead trial counsel for Johnson & Johnson in numerous components of the mass tort talc litigation in New Jersey state court. After a four-week trial, Weil secured a complete defense jury verdict in October 2018. The plaintiff alleged that J&J's baby powder contains asbestos and causes cancer. This lawsuit is one of many similar cases currently pending in courts around the United States, in which plaintiffs allege that the use of talcum powder caused lung cancer or ovarian cancer, but this is the first defense verdict for J&J in a talc case in New Jersey courts. The American Lawyer awarded Weil lead trial partner Diane Sullivan "Litigator of the Week" honors for securing the verdict. Law360 also highlighted the win as a landmark victory of 2018. CVN showcased the win as the most impressive defense verdict of the year.

Weil subsequently served as co-lead trial counsel for Johnson & Johnson in a similar case in New Jersey state court alleging that exposure to asbestos in J&J's baby powder contributed to him developing cancer. Following four weeks of trial, in March 2019, the jury returned a unanimous, 6-0 verdict after deliberating for less than 25 minutes. As a result of the victory, Weil was named a "Legal Lion" by Law360.

Following closely on the heels of this victory, in May 2019 Weil served as lead trial counsel in a separate lawsuit in the mass tort talc litigation in South Carolina state court alleging that exposure to asbestos in J&J's baby powder contributed to the plaintiff developing a rare form of cancer. Following one week of trial, the jury returned a unanimous, 12-0 verdict in favor of J&J on every question.

### **Special Committee of the Board of Massey Energy**

Weil achieved a decisive win in a shareholder lawsuit related to Massey Energy Co.'s deadly Upper Big Branch mine explosion in 2010, the worst mining disaster in the United States in 40 years. Shareholders pressed the Massey board to pursue damages on behalf of the company for expenses and losses it would bear because of the Board's alleged failure to ensure that Massey complied with mine safety regulations. In response, the Board created an Advisory Committee and retained Weil to guide it through the process of evaluating whether Massey should pursue those claims. Massey shareholders subsequently filed claims against Massey's former and current directors and officers in the Delaware Court of Chancery, which proceeded against the backdrop of a federal criminal investigation and the conviction of Massey's former CEO. On a motion to dismiss that Weil argued, the Court granted the dismissal of all claims against the directors and members of the Special Committee.

### **Walgreens Boots Alliance**

Weil served as lead trial counsel for Walgreens Boots Alliance, Inc., owner and operator of the nationwide drugstore chain, in several high-profile consumer class actions filed against it and Theranos, Inc. The complaints allege that Theranos' finger-stick blood tests, which used its proprietary "Edison" blood-testing device, were inaccurate, placing tens of thousands of customers at risk for incorrect medical diagnosis and/or testing. Walgreens and Theranos moved to dismiss Plaintiffs' complaint. On June 13, 2017, U.S. District Judge H. Russel Holland dismissed the majority of plaintiffs' claims, allowing plaintiffs to amend some, but not all, of the claims. Among the claims dismissed with prejudice were claims all claims asserting that Walgreens is jointly and severally liable with Theranos. Plaintiffs sought reconsideration of this ruling, which the court denied. Subsequently, Weil successfully secured a settlement for Walgreens from Theranos, including an agreement that Theranos would indemnify Walgreens for all liability relating to its blood tests technology.

### **3M**

Weil served as national class counsel on behalf of breast implant manufacturer 3M in connection with the global defense of class actions brought by recipients of silicone gel breast implants. Weil also was responsible for the coordination of Rule 706 expert scientific witness panels, which was instrumental in establishing a finding of no causation in jurisdictions around the country. Among the issues we managed on behalf of 3M was whether the silicone implant designs were deemed equivalent to designs that went through the premarket approval process and whether preemption would apply to those deemed equivalent regarding warning claims. Weil won more than 15 summary judgment motions in multiple jurisdictions, and also served as national settlement counsel to assist in the global resolution of thousands of claims.

### **Chr. Hansen, Inc.**

Weil represented Chr. Hansen, Inc. in the successful resolution of a toxic-tort product liability action in Indiana federal court. Chr. Hansen and 11 other food-flavoring manufacturers allegedly supplied food flavorings containing the substance diacetyl to the manufacturers of microwave popcorn. The plaintiffs – former employees of a popcorn manufacturer – claimed that they were exposed to diacetyl during the course of their employment and, as a result, suffered severe lung injuries.

### **Cooper Tire**

Weil defended the tire manufacturer in more than 30 nationwide class actions and a multidistrict litigation arising from product defect claims asserted under various state consumer protection laws. Weil resolved all actions in a negotiated nationwide class action settlement in New Jersey Superior Court on terms extremely favorable to Cooper Tire. Our representation also involved coordination with the National Highway Traffic Safety Administration, which endorsed significant aspects of the settlement that ultimately maintained the integrity of the entire product line. Our litigation team managed the intense media attention arising from the litigation and the request for government investigation.

### **General Motors**

Weil secured numerous victories for General Motors in litigation alleging automobile product defects. General Motors hired Weil as coordination counsel after being sued in at least 22 different states at once; the lawsuits included both class actions and wrongful death cases. Once Weil centrally coordinated the production of all of the client's documents and discovery activities, the team's strategy was to defend the cases based on the conduct of the individual drivers. The strategy proved extremely successful: we won more than 40 jury verdicts in high-stakes automotive design liability and product defect cases involving serious personal injuries in some of the most challenging jurisdictions in this country.

### **Philip Morris USA**

Weil secured a complete defense verdict for Philip Morris USA in a class action tried to a jury in Boston federal court. The plaintiffs brought a medical monitoring class action on behalf of allegedly over 30,000 Massachusetts smokers who smoked Marlboro cigarettes, seeking to have Philip Morris USA fund a screening program for the early detection of lung cancer. Plaintiffs sought a comprehensive program that would have included yearly low-dose CT scans, which are now the standard of care for the early detection of lung cancer for certain patients. Plaintiffs' legal theory was design defect, alleging that our client could have made a safer cigarette that would have decreased their risk of subcellular injuries caused by smoking. Originally filed in 2006, the case was certified as a class action in 2010. Weil was brought in as lead trial counsel in 2012. After 10 years of litigation and three-week jury trial, our client won a unanimous verdict on the first question on the verdict sheet – Marlboro cigarettes are not defective and unreasonably dangerous. Subsequently, based on the record at trial, the judge entered judgment in favor of Philip Morris on the remaining claim – an unfair trade practices claim which would have led to treble damages, or over \$600 million in damages plus attorney fees.

### **Repsol**

Weil serves as lead trial counsel for Repsol, a Spanish energy company, to defend against billions of dollars of environmental liabilities in connection with pollution of the Passaic River in New Jersey.

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**An undisputed legal services powerhouse...**

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**One source notes: “What Weil does very, very well is that they partner with the client and are fully engaged in both strategy planning and providing practical solutions.”**

— *Chambers USA 2018*

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