

HOLWELL SHUSTER & GOLDBERG LLP



DANIEL M. SULLIVAN *PARTNER*

646.837.5132 | dsullivan@hsgllp.com

Daniel Sullivan's practice focuses on complex commercial litigation and appeals across various subject matters. Daniel has represented clients before the Second, Seventh, Ninth, Eleventh, and Federal Circuits, the New York Court of Appeals, and the Nevada and West Virginia Supreme Courts, among others, as well as before state and federal trial courts in Arkansas, California, Delaware, Florida, Illinois, Missouri,

Nevada, New York, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, and West Virginia.

Daniel was named a *New York Law Journal* Rising Star in 2015, has been named to *Benchmark Litigation's* 40 & Under Hot List since 2017 and its Future Star List since 2018, and was named to the *New York Law Journal's* inaugural Trailblazer list in 2019 and to the *National Law Journal's* Elite Boutique Trailblazer list in 2020. He is a member of the advisory board of the Institute of Judicial Administration at NYU School of Law.

Before joining Holwell Shuster & Goldberg in April of 2014, Daniel was a litigation associate in the New York office of Gibson, Dunn & Crutcher LLP.

Before entering private practice in November of 2010, Daniel served as a law clerk to the Honorable Antonin Scalia of the United States Supreme Court during October Term 2009, and before that to the Honorable Diarmuid F. O'Scannlain of the United States Court of Appeals for the Ninth Circuit during the 2008-2009 term.

NOTABLE CASES

- Clients in a variety of appeals in state and federal court, including:
 - Shareholders in appeal to Nevada Supreme Court in direct breach-of-fiduciary duty case raising several novel questions of corporate law.
 - Insurers in appeals before West Virginia Supreme Court, Ninth Circuit, and Arkansas appellate courts in appeals arising out of opioid coverage disputes.
 - TIG Insurance Company in a Second Circuit appeal that raised complex questions of interpretation of an ADR clause and, separately, the appropriate remedy for the district court judge's undisclosed equity interest in the winning party below. Second Circuit issued a split decision.
 - Insurers in novel appeals in New York's First Department and Court of Appeals regarding whether \$140 million in SEC disgorgement was an uninsured penalty.

- Individual in appeal in the Second Circuit from insider-trading conviction arising out of alleged tipping of Medicare reimbursement rules. After an initial adverse decision was GVR'd in light of the Supreme Court's decision in *Kelly v. United States*, 590 U.S. ____ (2020), the Second Circuit vacated the conviction against HSG's client.
- Caterpillar, Inc., in a successful appeal in New York's First Department from an adverse verdict in asbestos litigation. Vacating the verdict and dismissing the complaint against Caterpillar, the First Department refined the law of specific causation in asbestos cases.
- Senator Ted Cruz in ballot eligibility challenges in New York in connection with the 2016 Republican Presidential Primary. Daniel successfully defended dismissal of a challenge on appeal in New York State court and, subsequently, obtained dismissal of a second challenge and successfully defended that dismissal on appeal. Daniel represented the Senator in his individual capacity and not on behalf of HSG.
- Westchester County in proceedings in the Second Circuit and S.D.N.Y. regarding legal and constitutional issues arising out of the settlement of a qui tam action against the County.
- A variety of corporate and business divorce matters, including:
 - Shareholder in privately held company in dispute with company and shareholder acquiring control as a result of company failing to exercise anti-takeover defense.
 - Clients in both sides of earnout disputes, including: renewable power conglomerate in a \$275 million earnout dispute with founders of an acquired company; and founders of a ghost-kitchen startup in earnout dispute against acquiror. After initial victories in a JAMS arbitration, the latter case settled for approximately 70% of the total earnout.
 - Minority partners, and management of an auto-loan servicing business in Puerto Rico, in a contentious partnership dispute with the majority partner, a prominent New York hedge fund. Daniel led an HSG team that took over the case in the middle of discovery, promptly initiated new litigation in federal court in Puerto Rico, won several key motions in the pending New York action, and fought what became a sprawling litigation across five proceedings. The case ultimately settled favorably.
 - TerraForm Power, an owner and operator of solar and wind power sites, in various litigations, including a shareholder derivative lawsuit brought in Delaware Chancery Court regarding a private placement of stock with TerraForm's then-controlling shareholder, and a breach-of-contract arbitration in New Jersey against a counterparty over payments for solar projects. The shareholder derivative suit was dismissed and the arbitration was settled favorably.
- Chubb in nationwide litigation against manufacturers and distributors of opioids, and national pharmacy chains that sold opioids, over insurance coverage for over 3,000 lawsuits brought by governmental entities across the country. Have prevailed in forum disputes and at summary judgment in numerous cases.
- Former directors and an officer of a publicly traded technology services company in a putative securities fraud class action. After HSG filed a motion to dismiss, Plaintiffs ultimately dropped all claims against our clients. In a related proceeding in the company's bankruptcy case, in which breach-of-fiduciary-duty claims were alleged against the former directors, the bankruptcy court granted HSG's motion to dismiss.
- Liaison Counsel to mass tort plaintiffs in *In re Acetaminophen: ASD-ADHD Products Liability Litigation*, assisting the plaintiffs' team in all stages of the litigation.
- Individual in defamation action brought by adverse advocacy organization. Secured dismissal of action on grounds that complaint failed to plead falsity or actual malice.
- Trustees in RMBS putback litigation in New York state and federal court, handling motion practice, document and deposition discovery, expert discovery, trial preparation, and appellate. Four federal and two state-court cases Daniel was involved in settled favorably in the middle of discovery, and another two state-court cases settled favorably after summary judgment arguments.

- Clients in constitutional litigation in New York courts, including Governor Andrew Cuomo in constitutional challenge, launched at the end of 2018, to New York statute establishing a commission on prosecutorial misconduct.
- Clients in a wide variety of industries and circumstances regarding appellate, constitutional, and other legal issues arising in potential or pending state and federal litigation. Recent examples include advising a heavy equipment manufacturer on a portfolio of contract and employment litigation, advising an owner and operator of renewable energy assets on contract matters, advising a State government considering potential challenges to prospective legislation, assisting a hedge fund regarding Supreme Court litigation related to the fund's interests, evaluating RICO claims arising out of the Flint water crisis, and advising a real estate developer regarding the constitutionality of state taxation laws.
- *Pro bono* clients in immigration. For example, Daniel represented a legal permanent resident under an order of removal in a Ninth Circuit appeal raising novel issues of the retroactive application of statutes. After Daniel filed his opening brief, the Government agreed to a favorable remand. Daniel also represented a legal permanent resident in an Eleventh Circuit appeal raising whether the BIA must defer to a state-court clarification of a prior sentencing record. Once again, after Daniel filed his opening brief, the Government agreed to a favorable remand. Daniel then successfully moved to dismiss the removal proceeding before the BIA.

WRITINGS

- "*Bristol-Myers Squibb v. Superior Court*: Practical Implications and Doctrinal Conundrums," *Bloomberg BNA Class Action Litigation Report* (August 14, 2017) (co-author)
- "Statutory Interpretation and the *Morrison* Presumption Against Extraterritoriality," *Bloomberg Law Week* (March 23, 2017) (co-author)
- "A Gentleman of the Law: A Tribute to Judge Diarmuid F. O'Scannlain" *National Review Online* (January 5, 2017) (co-author)
- "International Aspects of S. Litigation," *American Bar Association* (co-author of chapter on personal jurisdiction (2017))
- "*Microsoft United States* Addresses the Presumption Against Extraterritoriality in the Digital Context" *The Cross-Border Cut* (December 2016), Holwell Shuster & Goldberg LLP Transnational Litigation and Arbitration Briefing (co-author)
- "*BG Group PLC Republic Of Argentina*: The Supreme Court Applies Domestic and Commercial Arbitration Principles to the Review of Investment Treaty Arbitration Awards," *Mealey's International Arbitration Report* (2014)
- "U.S. Supreme Court Holds that Presumption Against Extraterritoriality Applies to the Alien Tort Statute," Gibson, Dunn & Crutcher LLP Client Alert (co-author, 2013)
- "U.S. Supreme Court Clarifies Limitations Period for Federal Enforcement Actions," Gibson, Dunn & Crutcher LLP Client Alert (co-author, 2013)
- "Truly Original," *The Daily* (2011), A Review of *Living Originalism*, by Jack Balkin
- "Big Boys and Chinese Walls," 175 *University of Chicago Law Review* 533 (2008)

CLERKSHIPS

- Hon. Antonin Scalia, Supreme Court of the United States, 2009-2010
- Hon. Diarmuid F. O'Scannlain, U.S. Court of Appeals for the Ninth Circuit, 2008-2009

EDUCATION

- The University of Chicago Law School (J.D., high honors, 2008; Order of the Coif; Appellate Advocacy Clinic, Representation in the U.S. Court of Appeals for the Seventh Circuit; Staff Member, *The University of Chicago Law Review*)

- The University of Chicago (B.A., History (honors) and Fundamentals (honors), 2004; John Olin Fellow; Student Marshall; Phi Beta Kappa; Karafiol Prize for best B.A. essay in European History)

BAR AND COURT ADMISSIONS

- New York
- Supreme Court of the United States
- U.S. Court of Appeals, Federal Circuit
- U.S. Court of Appeals, First Circuit
- U.S. Court of Appeals, Second Circuit
- U.S. Court of Appeals, Fifth Circuit
- U.S. Court of Appeals, Seventh Circuit
- U.S. Court of Appeals, Ninth Circuit
- U.S. Court of Appeals, Eleventh Circuit
- U.S. District Court, Eastern District of New York
- U.S. District Court, Southern District of New York