



## Arbitration

Arbitration has long been a significant part of Susman Godfrey's litigation practice. Our expertise as stand-up trial lawyers readily translates to successfully representing clients in domestic and overseas arbitration proceedings in a wide variety of disputes.

For plaintiffs, we have prevailed for executives wrongfully terminated by their employers; entertainment companies in disputes over copyright royalties; investors in FINRA arbitrations involving claims of breach of fiduciary duty, negligent misrepresentation, and fraud; and hedge funds that had gone into receivership against a prominent brokerage firm. For defendants, we regularly and successfully represent companies whose business reputation or commercial relationships are at risk. This includes, but is not limited to, homebuilders against claims of real estate fraud and deceptive trade practices; insurance companies in coverage disputes relating to settlements of product liability litigation; and energy companies against claims of breach of contract, fraud and conspiracy. No matter the subject area, we regularly secure victories for our clients via arbitration.

- ***FSG Services LLC v. Flutter Entertainment PLC***. Secured a favorable award for Flutter Entertainment when an arbitrator in New York nearly doubled the exercise price its opponent, FOX Corporation, sought for its option to acquire 18.6% of Flutter's portfolio company, FanDuel Group. This high stakes, high profile arbitration resulted from FOX's assertion that it should be entitled to the same price Flutter paid for its share of FanDuel two years before the arbitration took place – \$2.1 billion, with an implied company valuation of \$11.2 billion. The arbitrator, however, found that FOX's payment must be based on a substantially higher FanDuel valuation of \$20 billion it was hoping for, plus an additional 5% interest per year. At the time of the decision, this equated to a valuation for FanDuel of \$22 billion and an option exercise price of \$4.1 billion for FOX — nearly twice the amount that FOX argued it should be required to pay. The arbitrator also rejected FOX's claim that Flutter had not provided

commercially reasonable resources to the Fox Bet business. [Read more.](#)

- ***Personalized Media Communications v. Rovi Guides.*** Secured final judgment from the Eastern District of Texas for Personalized Media Communications (PMC) in its long-running licensing dispute with TiVo, formerly known as Gemstar-TV Guide International and Rovi Guides. In his ruling, Judge Payne adopted the arbitration order of retired US District Court Judge David Folsom who found that a licensing agreement between PMC and Rovi encompassed technology for invoking features from an Interactive Program Guide (IPG) but did not include technology for delivering programming content.
- ***Hussein v. UBS.*** Won \$2 million award (\$1.2 million net of fees and expenses) following an eight-day arbitration for Ahmed Hussein related to claims that UBS breached its contractual and fiduciary obligations in connection with its liquidation of 2.3 million shares of Hussein's stock in Quality Systems, Inc. pursuant to a margin call.
- ***Transparent Value v. Johnson.*** Achieved a total victory for client Wade Emory Johnson in a "David v. Goliath" breach of contract arbitration against Transparent Value, LLC, a subsidiary of global bank Guggenheim Partners. The AAA arbitration panel, after a four-day hearing, awarded Johnson damages and securities worth millions of dollars (net of attorneys' fees and expenses). The award was subsequently confirmed in full by the New York State Supreme Court.
- ***Kosmos Energy v. Turner.*** Won arbitration relating to the termination of, and stock award to, a former executive. The arbitration panel awarded our client, Kosmos Energy, complete relief by requiring the return of \$3.5 million in stock, plus attorney's fees and costs in the amount of \$1.1 million. In addition, the panel rejected claims in excess of \$5.3 million against Kosmos.
- ***Lincolnshire v. Kumble.*** Represented Steven Kumble in an arbitration brought by Lincolnshire for millions of dollars for Kumble's having violated a non-disparagement agreement. Kumble counterclaimed for millions of dollars that he had not been paid by the claimant. The arbitrator awarded our client the full amount we sought and rejected the claim against him.
- ***Morgan Stanley Smith Barney v. Carreras and Molina.*** Secured a unanimous ruling in a precedent-setting case by FINRA arbitrators in favor of two former Morgan Stanley brokers in a multi-million-dollar dispute against global bank Morgan Stanley. The case centered on nearly \$5 million in bonuses Morgan Stanley paid to the brokers, which the bank claimed were owed back to them when the brokers resigned from the firm to join another bank. We filed a plaintiffs' counterclaim on behalf of the brokers, and after a three-day arbitration and testimony from several witnesses, the panel rejected Morgan Stanley's claims in their entirety, and ordered that the bank pay nearly \$1.5 million to our clients on account of commissions lost as a result of the bank's actions.
- ***Jefferies & Co. v. The NASDAQ OMX Group et al.*** Successfully

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defended NASDAQ OMX against fraud and breach of contract claims brought by Jefferies & Co. Jefferies sought more than \$30 million in damages and was awarded nothing.

- **Marathon v. Enterprise.** Defended Enterprise Products against Marathon's claims of breach of contract, fraud, and conspiracy concerning the dedication of natural gas processing rights in the deep-water Gulf of Mexico. The arbitrator dismissed nearly all of Marathon's claims on summary judgment, including Marathon's \$45 million consequential damages claim, and numerous breach of contract and fraud claims. The matter was settled on highly favorable terms within days of receiving the arbitrator's summary judgment order and filing a motion to strike Marathon's damages expert.
- **FMC International v. ABB Lummus Global et al.** Successfully defended ABB Lummus Global, Inc. and its joint venture with Heerema Zwindrecht, which built and delivered a \$700 million offshore exploration and development platform, in a multi-million-dollar construction dispute with one of the project's subcontractors. Susman Godfrey fully prevailed for its client in arbitration pursuant to the UNCITRAL rules.
- **Positive Software Solutions v. New Century Mortgage, et al.** Defeated claims seeking \$500 million in damages against our clients under the Digital Millennium Copyright Act, due to alleged infringed copyrights and committed fraud in connection with the use of a software program. In addition to defeating the claim, we were bestowed an award of \$2 million in damages and attorneys' fees, which was later upheld by the Fifth Circuit.
- **Eni Petroleum v. Large Energy Companies.** Won \$19.4 million award (100% of damages sought, plus interest) after a final hearing for client Eni Petroleum US in a confidential energy industry arbitration regarding cost allocation among working-interest owners in deepwater Gulf of Mexico oil exploration and production activities under joint operating agreement..
- **Sazerac Company v. Tequila Herradura;** and **Tequila Herradura v. Sazerac Company.** Represented Tequila Herradura, the largest tequila producer and distributor in Mexico, in an international arbitration concerning distribution rights in the United States. We prevailed, and Herradura was liberated from a long-term distribution contract, which permitted it to seek buyers for the company in a lucrative purchase.
- **LyondellBasell Industries**
  - **Lyondell Chemical Company v. Atlantic Richfield Company.** Won an arbitration on behalf of Lyondell Chemical Company against Atlantic Richfield Company relating to the breach of a long-term agreement to supply MTBE.
  - **LyondellBasell v. Allianz Insurance.** Secured confidential recovery (ultimately disclosed in SEC filing as more than \$100 million) for LyondellBassell Industries in international (London) arbitration over business interruption losses arising from Hurricane Ike. The case

settled on the eve of the final evidentiary hearing after we won key disputes regarding certain insurance coverage and claim quantification issues.

- **Confidential Energy (Oil & Gas Drilling) Arbitration.** Represented former operator of prolific Rocky Mountain natural gas field in an arbitration (International Institute for Conflict Prevention & Resolution) brought by non-operating party that funded large drilling program under an earning and development agreement. The non-operating party asserted various representation and warranty claims related to pressure depletion and drilling costs, and numerous complaints regarding drilling and completion strategies and techniques. The case settled after extensive fact and expert discovery and pre-hearing briefing and on the eve of the final hearing for a single-digit percentage of the amount sought by the claimant.
- **Confidential International Banking Arbitration.** Represented US-based financial services firm in arbitration before the Center of the Chamber of Commerce Brazil-Canada (CCBC) related to alleged joint venture to launch Brazilian equities exchange. Obtained favorable resolution after asserting preliminary defenses to the claims.