

## Litigation Department

Jenner & Block's Litigation Department is comprised of 375 litigators in offices in Chicago, Los Angeles, New York and Washington DC. The Litigation Department is organized in the following practice groups:

[Antitrust Litigation](#)

[Appellate & Supreme Court Practice](#)

[Bankruptcy Litigation](#)

[Class Action](#)

[Communications](#)

[Complex Commercial Litigation](#)

[Creative Content](#)

[Election Law and Redistricting](#)

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[Reinsurance Practice](#)

[Securities Litigation](#)

[Technology Litigation](#)

[Trademark, Advertising and Unfair Competition](#)

[White Collar Criminal Defense & Investigations](#)

## Message from the Co-Chairs of the Litigation Department

In this issue of *The Spotlight* we discuss a number of recent U.S. Supreme Court decisions. Three of the four continue a trend in which the Court narrowed grounds for plaintiffs to bring suit under federal law; the fourth addresses a trustee's attorney-client privilege. In two commercial cases, the Court decided that plaintiffs failed to establish jurisdiction in state court based upon the distribution of products through the "stream of commerce" in that state. In the noted decision in *Wal-Mart Stores, Inc. v. Dukes*, the Court rejected certification of a class and held that a federal court could not enjoin a state court from certifying a parallel state class.

In *United States v. Jicarilla Apache Nation*, the Court upheld the government's privilege assertion against the Nation with respect to documents related to the government's actions as trustee for the Nation's property, because the Nation was not the government's "real client." In other developments, also addressing attorney-client privilege, the Third Circuit reversed a decision finding privilege waived, because the privilege had not attached due to a documentary crew's presence at attorney-client meetings.

Several important district court decisions addressed when a party waives its right to arbitrate. Finally, two district court decisions departed from a recent trend of imposing stiff penalties for failing to preserve electronically stored information ("ESI"). Judge Scheindlin of the Southern District of New York withdrew an opinion criticizing the government for producing ESI without metadata, and a second court, in Texas' Southern District, rejected default judgment as the appropriate penalty for the failure to preserve emails.

Regards,

[David J. Bradford](#) and [Craig C. Martin](#)

Co-Chairs Jenner & Block Litigation Department

## In This Issue

Senior Editor, [Barbara S. Steiner](#) and Issue Editor, [Craig A. Cowie](#)

## Antitrust Litigation

- *Ninth Circuit Rejects Claim That Multi-Channel TV Packages Are Illegal Tying Arrangements.* [more...](#)

## Arbitration

- *Previously Waived Right To Arbitrate Was Not Revived By Amended Complaint.* [more...](#)
- *Waiting For Supreme Court Ruling Did Not Amount To Waiver Of Right To Arbitrate.* [more...](#)
- *Defendants Did Not Waive Arbitration As To Non-Named Class Members.* [more...](#)

## Attorney-Client Privilege

- *Supreme Court Rejects Fiduciary Exception For Government As Trustee.* [more...](#)
- *Disclosure Of Documentary Outtakes Does Not Waive Privilege.* [more...](#)
- *No Jurisdiction In Interim Appeal Of Privilege Ruling Re Non-Party.* [more...](#)
- *Failure To File Privileged Documents Under Seal Waives Privilege.* [more...](#)

## Class Action

- *Supreme Court Holds Denial Of Certification Does Not Bind Absent Class Members.* [more...](#)
- *Supreme Court Reverses Wal-Mart Class Certification.* [more...](#)
- *Seventh Circuit Applies "Legally Impossible" Removal Standard.* [more...](#)
- *\$2 Billion Awarded For Undisclosed Discounts to Some Ford Truck Dealers.* [more...](#)

## Complex Commercial Litigation

- *Company Need Not Value Derivative Claims In Merger Negotiations.* [more...](#)
- *Supreme Court Issues Two "Stream-Of-Commerce" Jurisdiction Rulings.* [more...](#)
- *Supreme Court To Address Tolling Of Certain Securities Claims.* [more...](#)
- *Seventh Circuit Affirms "Unfortunately, Very High" Fee Award.* [more...](#)

## Electronic Discovery

- *No Requirement To Preserve Disaster Recovery Emails, But "Could Have Done More."* [more...](#)
- *Judge Scheindlin Pulls Opinion On Metadata And Government Productions.* [more...](#)

## Environmental Litigation

- *Seventh Circuit Holds Environmental Group Has Standing To Challenge Validity Of Permit To Destroy Wetlands.* [more...](#)
- *Supreme Court Holds EPA's Authority To Regulate Greenhouse Gases Displaces Federal Nuisance Suit.* [more...](#)

## International Arbitration

- *New York Court Issues Foreign Anti-Suit Injunction.* [more...](#)
- *Emergency Arbitrator's Interim Order Not Subject To Motion To Vacate.* [more...](#)
- *Defendant Did Not Waive Right To Arbitrate By Participation In Discovery.* [more...](#)

## Product Liability

- *Supreme Court Addresses Impossibility Preemption With Generic Drug Labeling.* [more...](#)
- *Supreme Court Issues Two "Stream-Of-Commerce" Jurisdiction Rulings.* [more...](#)

## White Collar Defense &amp; Investigations

- *First Enforcement Action Under Canada's Anti-Foreign Bribery Statute.* [more...](#)
- *11th Circuit Rejects Costa Rican Agency's Claim Of Victim Status In Bribery Scheme.* [more...](#)
- *County Hospital Must Release Internal Records Of Compliance Activities.* [more...](#)

## Litigation Department News

National Law Journal Names Partner Lorelie S. Masters a 2011 "Champion" [more...](#)

Reuters features story on 22-year qui tam case [more...](#)

## In The Firm

Jenner & Block Named a Law360 Top Pro Bono Firm for Second Year In a Row [more...](#)

## In The Spotlight: Attorney Profile



**Samuel L. Feder**

Partner

Samuel L. Feder is a partner in the Firm's Litigation Department. He is Chair of the Communications Practice and is a member of the Media and First Amendment Practice. Mr. Feder's clients include cable, telecom, media and technology companies, as well as investors in those companies. Mr. Feder was formerly the General Counsel of the Federal Communications Commission (FCC). At Jenner & Block, Mr. Feder has represented clients on numerous significant matters before the FCC, including net neutrality and broadband classification. He has also litigated a range of cases, including those involving the compensation telecom carriers pay to each other for carrying voice traffic, exclusive arrangements between cable providers and programmers, the regulatory classification of VoIP service and retention marketing. Additionally, Mr. Feder has worked on a number of significant transactions, including Comcast-NBCU and CenturyTel-Embarq, and, while at the FCC, SBC-AT&T, Verizon-MCI and AT&T-BellSouth. Mr. Feder has been recognized by *Chambers USA* in the Telecom, Broadcast & Satellite: Regulatory category and by *The Legal 500 - United States* in the Media, Technology, and Telecoms: Telecoms and Broadcast Regulatory category. He is a frequent speaker and author, most recently as a participant at the Milken Institute Global Conference, where Mr. Feder spoke on a panel discussion titled "The Next Internet Revolution," addressing the impact of broadband on the telecom, cable, consumer electronics and entertainment industries. Mr. Feder's most recent article – "The FCC Open Internet Order: Is Net Neutrality Itself Problematic for Free Speech?" – was published in *Communications Lawyer* in June 2011.