

Securities Group Of The Year: Cravath

By **Brian Mahoney**

Law360, New York (January 10, 2013) -- Cravath Swaine & Moore LLP's securities team showed why it's a go-to group for banks fending off suits related to residential mortgage-backed securities, winning a hard-fought \$26 million settlement for JPMorgan Chase & Co. and representing Credit Suisse Group AG in more than 36 shareholder actions, earning a spot on Law360's list of Securities Groups of the Year.

Cravath is a perennial favorite for clients facing bet-the-company litigation, and its securities litigation has helped maintain that reputation by helping some of the world's largest banks wade through dozens of costly cases arising from the 2008 financial crisis.

Perhaps most notably, a Cravath team led by securities partner Daniel Slifkin successfully negotiated a \$26 million settlement in September, settling investor class claims over Washington Mutual Bank Inc.'s allegedly shoddy mortgage-backed securities.

The settlement reached just before trial was far below the more than \$550 million that the class had originally sought from the bank, which was purchased by JPMorgan in 2008.

Key to reaching the settlement was Cravath's advancing the "tranche-level" theory of standing, which argued that class representatives can only represent investors who purchased the same tranche of mortgaged-backed securities as they did, the firm said.

"We took the position that, you really ought to dismiss all claims for the class where the class representatives don't have standing beyond the tranche they're in," Slifkin told Law360.

The argument was successful and limited class claims to only 13 out of 123 tranches of securities, eliminating bonds worth approximately \$8 billion from litigation.

Cravath's securities group continues to serve as national coordinating counsel for JPMorgan and its related entities in more than 30 similar RMBS suits across the country. The favorable WaMu settlement shows that Cravath's firmwide commitment to securities litigation is a winning model for securities defense.

"Over half of our litigation partners have considerable experience in securities litigation. We're covering clients with partners in various practice areas across the firm, all of whom know the clients' businesses," said Robert H. Baron, the managing partner of Cravath's litigation department.

Clients trust Cravath's firmwide approach so much that some are willing to place their entire RMBS litigation portfolios in the hands of the firm's securities group.

One example is Credit Suisse, for which Cravath serves as national coordinating counsel, leading courtroom litigation in more than 36 RMBS actions filed in 10 states by government agencies and other domestic and foreign investors, the firm said.

"Our relationship with Credit Suisse is very long-standing in this area and really begins with Enron work," Slifkin said, referring to the firm's representation of the bank in securities litigation stemming from the 2001 collapse of Enron Corp.

Leading the team is Cravath partner Richard W. Clary, who has been able to coordinate the firm's efforts over the variegated cases nationwide, which is no small task, according to Baron.

"Having a single firm offers significant efficiencies and benefits, and reduces the risk of different outside counsel taking inconsistent positions for the same client on the same issue in different cases," Baron told Law360. "From the client's standpoint, there is an elegance to the single firm approach. But it also poses challenges. Rich Clary and his team are handling about 40 cases now, and these are not small cases."

While representing banks from RMBS suits has been the securities group's bread and butter in 2012, the firm has also guided accounting firms through litigation arising from subprime assets and other matters arising from the credit crisis.

These include representing PricewaterhouseCoopers LLP in litigation arising from its audit of American International Group Inc. and representing Deloitte & Touche LLP in securities class action suits arising out of the collapse of Bear Stearns & Co. Inc. and its 2008 acquisition by JPMorgan, the firm said. In that latter case, the firm reached a favorable \$19.9 million settlement, which the court preliminarily approved in June.

The firm's successful representation of banks and auditing firms shows Cravath's ability to foresee and successfully respond to changes in legal trends. After all, Baron says, most of Cravath's work in the 1980s and '90s involved large shareholder cases filed against large corporate issuers.

Bank defendants were rarer, he said, and the firm responded to a new demand among banks for exceptional legal representation in securities matters.

"If you had told me five years ago that there would be virtually no blockbuster 10b-5 cases filed against corporate issuers, I would have said that would make for a very bleak time," Baron said. "But [the securities practice is] as robust as it ever has been."

Cravath's ability to shift focus based on market demands reveals both the securities group's legal savvy and its keen business sense.

"The reason for our success is that we take our skills and go to where the action is," Baron said.

--Editing by Katherine Rautenberg.

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