

## Banking Group Of The Year: Cravath

By **Dean Seal**

*Law360 (January 27, 2020, 4:17 PM EST)* -- Cravath Swaine & Moore LLP started off 2019 by closing out almost 17 years of Enron-related litigation for Credit Suisse, then locked down \$5 billion in financing for PG&E to maneuver through its bankruptcy, guided Occidental's \$57 billion Anadarko acquisition, and won major rulings for its bank clients, earning the firm back-to-back honors as one of Law360's 2019 Banking Practice Groups of the Year.

Coming off of its bicentennial in 2018, Cravath kicked off 2019 with the settlement of an action seeking to hold Credit Suisse and several other financial institutions responsible for losses on \$120 million of Enron Corp. debt purchased shortly before the energy giant's 2001 collapse.

In an order from Jan. 10, 2019, U.S. District Judge J. Paul Oetken dismissed the remaining claims asserted against Credit Suisse, Deutsche Bank and Merrill Lynch by Canadian investor Silvercreek Management Inc. and four fund affiliates, citing settlement agreements reached just before the new year.

The dollar amounts of the deals, which included no admissions of wrongdoing on the part of the banks, were not disclosed, but Cravath said it scored a favorable settlement that resolved the very final Enron-related case faced by Credit Suisse. Partner Richard Clary, who previously defeated class certification and secured summary judgment for Credit Suisse in the landmark Enron class action settlement, was able to pick off some fraud claims from the Silvercreek suit with dismissals and summary judgment rulings in 2017 and 2018.

With a trial scheduled for April 2019, Cravath's team resolved the case out of court and ended claims that followed Credit Suisse since 2002. According to partner Lauren Moskowitz, the firm had "generations of lawyers working" the case, which in many ways highlighted the efficacy of Cravath's associate rotation program.

"You could imagine, if you're starting at a firm and getting assigned to an Enron-type of case, that you are likely working on that Enron case for your entire career, whereas here we saw many rotations of associates through the Enron case," Moskowitz said. "The benefit is, you get new people in who get the right exposure and learn all about the law, the company and the legal issues, and then bring that experience to their next case."



The system utilizes a revolving door of fresh perspectives for the type of "epically big, bet-the-company" cases Cravath often tackles over lengthy time spans, Moskowitz said. In September, her team won summary judgment in what she called the "third installment of a saga" of cases stemming from fraud allegations against Deutsche Bank Securities and Credit Suisse Securities related to a failed 2008 acquisition of Huntsman Corp.

The suit, brought by former Huntsman shareholder Stark Master Fund Ltd., was the "grandchild" of similar and since-defeated suits brought against the banks more than a decade ago, Moskowitz said. Deutsche Bank was tossed from the suit in December 2016, and Moskowitz was ready to take the lead on the Credit Suisse claims at a scheduled February 2018 trial date, but a Wisconsin federal judge scrubbed the docket schedule roughly a month before trial pending resolution of Credit Suisse's motion for summary judgment.

It wasn't until 20 months later that the judge handed down a decision granting Credit Suisse summary judgment, finding insufficient evidence of a conspiracy between the bank and other firms to mislead Stark about the merger. A subsequent appeal by Stark was abandoned in January, according to the trial-ready Moskowitz.

"It was going to be my baby, so to speak, so I'm especially disappointed we didn't get to go to trial," she quipped. "But that's the life of a litigator, and winning is obviously better for everyone."

Credit Suisse wasn't the only bank to reap the benefit of Cravath's representation in 2019; in July and August, the firm scored back to back dismissals of litigation against Morgan Stanley alleging collusion to squash an upstart electronic stock loan trading platform. But the firm's triumphs in the banking realm last year went beyond courtroom victories.

After being blamed for starting two massive wildfires that devastated California, Pacific Gas and Electric filed for bankruptcy in January. While Paul Zumbro, head of Cravath's budding bankruptcy practice, was able to strike a pair of billion-dollar settlements with victims of the fires and more than a dozen California municipal agencies, he also advised the nation's largest power utility in arranging \$5.5 billion of debtor-in-possession financing.

It's one of the largest DIP financings ever done, according to Michael Goldman, a partner on Cravath's corporate side, and was completed in an unusually condensed time frame to help the company operate throughout its bankruptcy proceedings.

"It was essential to be able to show the world that we have lenders who believe in the viability of this company and who are willing to finance it, even through the bankruptcy proceeding and even with the overhang of all of the liabilities that resulted from the 2017 and 2018 wildfires in Northern California," Goldman said.

Cravath's success in locking down the financing was the result of Zumbro's efforts in expanding the firm's bankruptcy restructuring practice, Goldman said. But it was also due to collaboration between the restructuring team and Cravath's banking and credit group.

Interfirm cohesion was also at play when the firm helped Occidental Petroleum Corp. land its \$57 billion acquisition of Anadarko Petroleum Corp. last June following a bidding war with Chevron Corp.

Occidental's attempts to woo the Texas-based Anadarko seemed to be foiled when the company instead accepted an offer from Chevron in April. With Cravath's guidance, Occidental dramatically increased the cash component of its bid — with help from a \$10 billion side deal with Berkshire Hathaway — to make Anadarko an offer it could not refuse.

According to Goldman, the process required Cravath's banking and credit group to coordinate with both its capital markets and mergers and acquisitions teams to best Chevron's offer, while also making sure Occidental could finance its bid without impacting its investment grade rating.

"We were really leveraging our understanding of how all of these instruments, across various industries and markets, work together," Goldman said. "All the pieces had to work together and be structured in a way that threaded the needle and made everybody happy."

The company's financing commitments were secured concurrently with the announcement of the acquisition in May, marking another victory for Cravath's corporate team.

"Occidental is a great example of our various corporate groups working seamlessly, hand-in-hand to provide the best outcome for a client," Goldman said.

--Editing by Adam LoBelia.

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