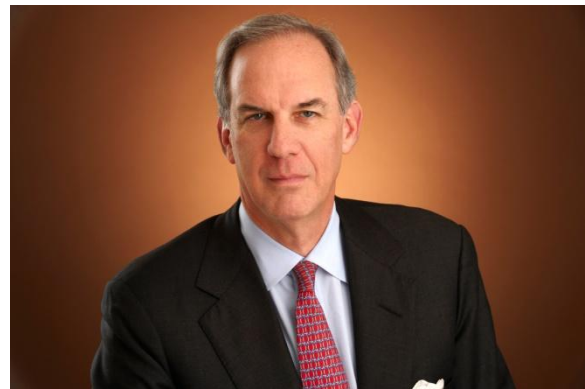


Most Admired Attys: Cravath's Richard Clary

By Allison Grande

Law360, New York (August 13, 2010) -- Whether defending Credit Suisse Group AG in the \$40 billion Enron securities class action litigation or working on pro bono cases, Cravath Swaine & Moore LLP partner and head of litigation Richard W. Clary has demonstrated a high level of intelligence, integrity and creativity that has impressed colleagues and opponents alike, landing him on Law360's list of the 10 Most Admired Securities Attorneys.



Richard W. Clary

Clary consistently impresses fellow lawyers inside and outside the courtroom with a litigation style that Cravath litigation department partner Paul Saunders calls "not professorial, not rhetorical, not flashy but almost always right."

"He is one of the most respected lawyers by judges, colleagues and opponents that I know," Saunders said. "He's very smart, he has intellectual integrity ... and he works very hard. You put those things together and that makes him a very successful lawyer."

Clary, who works in the firm's New York office, exemplified these traits in one of the most high-profile and proudest victories of his career, the successful appeal on behalf of Credit Suisse to the U.S. Court of Appeals for the Fifth Circuit of a class action brought by former Enron Corp. shareholders.

While Clary acted as lead counsel for Credit Suisse in all its Enron-related civil litigation in federal, state and bankruptcy courts, the Fifth Circuit's March 2007 decision to reverse class certification in the Southern District of Texas action especially stood out to Clary because of the appellate court's adoption of a legal stance that the financial institutions had been arguing for the past five years.

"It was very rewarding to see the case play out and have the court agree with our position that the plaintiffs' theory of scheme liability didn't exist under federal securities law," Clary said.

Clary added that the suit, which he argued in front of the Fifth Circuit, also held special importance because of his co-defendant counsel's decision for him to take on the role of the de facto courtroom lead for all nonsettling financial defendants.

"I was very flattered that the other counsel allowed me to be the principal spokesman for the defendants," Clary said.

That other attorneys place their trust in Clary's legal expertise is not surprising, according to his colleagues.

"It goes back to him always being prepared and doing his homework; he works really hard and can look at the big picture and the details at the same time," Cravath litigation partner Rachel Skaistis said. "The soundness of his legal reasoning and knowing you can rely on the correctness of his position and the strength of his arguments make him pretty terrific to work with."

Fellow Cravath litigation partner Bob Baron remembered watching Clary argue against a temporary restraining order in New York state court during their representation of Credit Suisse and Deutsche Bank AG in litigation over the failed merger between Hexion Specialty Chemicals Inc. and Huntsman Corp. He says he knew in the middle of Clary's 40-minute argument that he would prevail.

"Talking about people being smart is one of the most overused monikers in our business, but Rich Clary is just plain smart," Baron said. "He's a level-headed guy with excellent judgment ... and has the ability to speak with equal effectiveness to clients and juries and judges and experts."

Clary honed these skills at Harvard Law School, where he graduated magna cum laude in 1978 and was awarded the Sears Prize, but it was a one-year clerkship with U.S. Supreme Court Justice Thurgood Marshall that had the greatest impact on his career.

"During my clerkship, I got exposed to a vast array of complicated issues, which absolutely persuaded me that I wanted to do litigation and wanted to be able to do lots of different kinds of litigation and not be cubbyholed," Clary said.

Clary added that Justice Marshall would involve the clerks in debates within chambers about how cases should be resolved and encouraged all four clerks to be vocal.

"Justice Marshall loved taking positions in our discussions contrary to what we thought he would take in order to force the law clerks to articulate as precisely as possible our side of the issue," Clary recalled.

As a mentor himself, Clary believes younger partners and associates should be given an opportunity to get their experience in the courtroom.

Skaistis, who worked with Clary in the early 2000s, said, "What I most appreciated as a young associate was that Rich encouraged me to think outside of the box."

"He really challenged me to be a better lawyer than I thought I could be. He expected me to be prepared, creative and right, and I pushed myself really hard when I worked with him," she added.

After completing his clerkship in 1980, Clary planned to take a position as a law professor. But Justice Marshall persuaded him to get practical experience first.

"So with that in mind, I went to Cravath for what was supposed to be a short-term training period. I loved the practice so much I never looked back," Clary said.

At Cravath, Clary — who became partner in 1985 and head of litigation in 2005 — is what Saunders called “the quintessential Cravath lawyer,” working on everything from securities fraud litigation to antitrust disputes to complex patent litigation.

Clary embraces his role as a generalist, saying it gives him an advantage in the courtroom because he has to educate himself about a new industry with every case, and that makes it easier for him to turn that around and try to teach it to the judge or jury.

“The most important thing a litigator can do is to find a way to present his or her case in a way that makes the factual context understandable while still being accurate and being completely faithful to the facts,” Clary said. “Most jurors are not familiar with complicated technology in patents, for example, but you have to find a way to communicate with them and make them understand.”

Saunders agreed, adding that Clary understands the importance of scrupulous honesty in the courtroom.

“The principal job of being a litigator is to persuade someone, and the way to do that is to have credibility,” Saunders said. “Rich has that. When he says the law is X, you can take that to the bank.”

Clary used his firm grasp of the law during his very first case at Cravath, when a partner approached him with a pro bono case involving a school teacher in New Jersey who had been arrested for criminal trespass for handing out pamphlets in support of a U.S. Senate candidate in a shopping mall parking lot in Paramus, N.J.

Using his experience with Justice Marshall, Clary argued that the New Jersey constitution had a broader interpretation of free speech rights than the First Amendment. Although he was unfamiliar with New Jersey law, he used his knowledge of parallel California law and ultimately got the case dropped on the grounds that a shopping mall parking lot is quasi-public property under New Jersey law.

“What I loved about that case is that it helped me to think outside the box very early on in my career,” Clary said.

It also helped him foster an interest in pro bono work. Clary is active in the Legal Aid Society and most notably helped the organization obtain a favorable result in the homeless families litigation in New York City.

“Rich is someone who's made enormous contributions in the public interest sector while maintaining an enviable private law practice,” Baron said. “He has proven that you can maintain the highest standards of ethics, integrity and civility while still being a ferocious advocate for clients.”

Baron added he also cannot ever recall seeing Clary shy away from attacking even the most difficult problems.

“Some people take a stack of 12 problems and put the hard ones to the side, but Rich goes through all 12 like a table saw,” Baron said.

And when faced with these obstacles, Clary summons another of his attributes: his creativity.

Saunders recalled that while litigating an antitrust case for Lucent Technologies in Texarkana, Texas, a decade ago — a suit that required his team to set up its office in an abandoned mental hospital — the opposition's attorney sprung a surprise witness on them: actor James Earl Jones.

“So in his argument that James Earl Jones shouldn't be allowed to testify, he listed all of the characters that he had played during his career — Darth Vader, Mufasa — and asked, “This man has played all these characters; how in the world is the jury ever going to decide which character is sitting on the witness stand testifying?”” Saunders said.

“It was very funny and ultimately successful in excluding him as a witness. I don't know anyone else who would have thought of that argument.”

In addressing this kind of praise that he has received from his colleagues and opponents, Clary said he hoped it was a reflection of his desire to always be honest and fair in his practice.

“One thing that I've been pleased with in my career is that I've been able to make pretty good friends out of the lawyers on the other side of the case,” Clary said. “My philosophy at the end of the day is that it's in everyone's interest to focus the case on what are the real issues, so I always try to be cooperative and a straight-shooter with my co-defendants and my opponents.”

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