

## MVP: Cravath's Richard Clary

*Law360 (November 27, 2018, 10:11 AM EST)* -- While he was trained as a generalist, Cravath Swaine & Moore LLP partner Richard Clary has been handling litigation for Credit Suisse for more than a decade and scored a big victory this year in fending off claims from New York's attorney general, narrowing the scope of the controversial Martin Act and landing him a spot among Law360's 2018 Securities MVPs.

### ***HIS BIGGEST ACCOMPLISHMENT THIS YEAR:***

While most banks opt to settle in similar cases, Clary took a case from the state's attorney general over residential mortgage-backed securities all the way to New York's highest court, which handed down the landmark decision that the Martin Act's statute of limitations runs for three years instead of six.

Credit Suisse had been charged under the Martin Act, a New York statute that provides the state AG with broad enforcement powers to combat securities fraud, over its issuance of RMBS in the lead-up to the 2008 financial crisis. After a state judge denied the bank's motion to drop the suit for being time-barred, finding that a six-year statute of limitations applied rather than a three-year statute, Clary appealed to New York's Appellate Division.

While the appellate court affirmed the lower court in a split decision, it unanimously granted the bank's motion to take the case to the New York Court of Appeals, where Clary argued that the Martin Act fits under the New York Civil Practice Law and Rules' section for cause of actions created by statute, rather than a section for common law fraud claims.

"The cause of action itself under the statute is much easier to prove than a common law or equitable fraud claim, because it deletes all sorts of elements that a normal plaintiff would have to prove in order to establish liability," Clary said. "So it's a much easier case to prove, and my argument was, because of that, although the Martin Act is frequently described as being a fraud statute, it is, in fact, this special

The MVP logo consists of the letters 'MVP' in a blue, serif font. A red circle is drawn around the 'V', and a red arrow points upwards from the top right of the circle.

**Richard Clary**  
Cravath

creature that was created by statute, and, therefore, only has a three-year statute of limitations.”

In a 4-to-1 decision, the panel sided with Clary and dismissed the claim — a great result for Credit Suisse and a defining moment for the New York AG’s ability to police the investment industry.

#### ***HIS OTHER NOTABLE CASES FROM THE PAST YEAR:***

Taking RMBS cases to trial is rare in the securities industry, where settlements are the norm, but Clary did just that last fall in a lawsuit from Massachusetts Mutual Life Insurance Co., which was seeking to rescind the purchases of approximately \$107 million in securities that had allegedly misleading offering documents.

Over the course of five weeks in a Massachusetts federal court, Clary and his counsel team had to be creative in tackling state law securities claims, which have very little precedent and are tacked to typically pro-plaintiff statutes. The sides settled before the trial was over, but Credit Suisse was confident in its position and its counsel was able to litigate where many others have not.

"Watching the whole case come together and finally being able to tell the full story through live witnesses of what happened in the RMBS industry from the perspective of Credit Suisse (and a lot of other banks) — that, in fact, their disclosures were accurate — and having our day in court, was a unique experience," Clary said.

#### ***HOW HE GOT INTO SECURITIES LITIGATION:***

While Clary has worked on cases in a wide array of practice areas, from antitrust claims to Anti-Terrorism Act suits to foreign arbitration, he says his strong emphasis on securities litigation was born directly from representing Credit Suisse in suits filed over the 2001 collapse of Enron.

Aside from raising his profile in the industry, working on the Enron cases gave Clary perspective on tackling lengthy, time-consuming litigation and reaching across the aisle to streamline the procedures involved in complex legal actions.

As a professor at Harvard Law School, Clary emphasizes to his students that need for cooperation with adversaries, drawing directly from his experience in the Enron cases.

“One of the things I use in that course are the techniques that both the plaintiffs and the defendants working together were able to create in Enron that allowed us, for instance, to take a deposition in 100 cases simultaneously, or allowed us to get all of the discovery done — literally hundreds and hundreds of depositions — in a reasonable window of time,” Clary said.

#### ***HIS ADVICE TO YOUNG SECURITIES ATTORNEYS:***

Cases he handles in the securities industry tend to have a long shelf life, Clary said, so he advises associates tackling similar actions to find a balance in their workload and take on litigation in a variety of industries.

And of course, to find balance outside of the office and the courtroom.

“It’s never too early to start developing the habit of having things you like to do that don’t involve practicing law, so that you have an avenue to escape litigation and regroup,” Clary said.

— *As told to Dean Seal*

*Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2018 MVP winners after reviewing nearly 1,000 submissions.*

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