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Securities Group Of The Year: Weil Gotshal & Manges

By **Dunstan Prial**

Law360 (February 9, 2018, 1:26 PM EST) -- Weil Gotshal & Manges LLP notched decisive victories in a string of high-profile securities cases over the last year, including the complete dismissal of a 10-year-old, $4 billion shareholder class action in one of the largest real estate investment trust leveraged buyouts ever and reversal of a $171 million trial verdict for energy giant Kinder Morgan, to earn a spot among Law360's 2017 Securities Groups of the Year.

The firm’s practice is based in New York and is comprised of more than 60 attorneys whose reach is nationwide, as evidenced by 2017 wins in Colorado, Texas and New York federal courts. The group includes several former federal prosecutors, a former senior in-house litigator at a leading financial institution, and a recognized leader and scholar in the area of shareholder derivative claims and the fiduciary duties of directors.

“We have three or four partners in the group that combined have been at Weil a total of over 100 years and there is a long history of collaboration and open door policy,” Joseph S. Allerhand, co-head of Weil’s securities litigation practice, said. “We don’t function like many firms do, where you have a case and it’s your case and it’s never discussed with others. It is very common here that we challenge each other in terms of the approach we’re taking on the case.”

In August, Jonathan D. Polkes, co-chair of Weil’s litigation department, led a group of lawyers who shut down a potentially lengthy and costly trial for more than 20 Weil clients in a sprawling class action that arose out of the $22 billion sale of the Archstone-Smith real estate investment trust in 2007.

Weil’s clients, a who’s who of real estate and financial giants, including Lehman Brothers, Tishman-Speyer, Equity Residential, the Archstone-Smith REIT and indemnifying parties Bank of America and Barclays, orchestrated the deal just ahead of the 2008 financial crisis. The suit, filed by a class of real estate investors that owned special tax preferred equity interests in Archstone, alleged the 2007 sale of Archstone to Tishman Speyer Development Corp. and Lehman Brothers Holdings Inc. wrongfully stripped them of their interests and caused them over $1 billion in damages.

But a federal court in Colorado handed Weil a complete summary judgment on the eve of trial, winding down a decade of litigation that included several federal court appeals, proceedings in New York and California state courts and numerous arbitrations.

“My takeaway from that is it shows the incredible commitment of that team in delivering an excellent result at the end of a long litigation,” John A. Neuwirth, co-head of Weil’s securities litigation practice, said.

In December 2016, Weil won reversal in Delaware Supreme Court on behalf of client Kinder Morgan, one of the largest U.S. oil and gas pipeline companies and a longtime Weil client, of a $171 million trial verdict issued against El Paso Pipeline. The financial liability had become Kinder Morgan’s in 2012 when it completed an acquisition of El Paso that occurred prior to the court’s verdict.

In agreeing with Weil’s arguments, the court ruled that the lawsuit presented a classic overpayment or dilution claim, which generally may be pursued only derivatively, and that to sue derivatively, a plaintiff must hold equity throughout the litigation. The court found further that the plaintiff lost his ownership interest in El Paso when El Paso was acquired in the merger with Kinder Morgan prior to the resolution of the lawsuit. Therefore, the plaintiff lacked standing to sue derivatively and the $171 million judgement was invalidated.

“It was a very innovative approach to focus on standing and tie it to long-term Delaware policies and not to try and fight it on some of the findings of fact on the merits,” Allerhand said. “It was important because it reaffirmed the doctrine that when a company is acquired all of the shareholders who had been pursuing derivative claims lose standing because they are no longer shareholders of the company that was acquired.”

Weil attorneys also won significant rulings for clients in two of the most high-profile financial scandals of the past decade — the massive Ponzi schemes operated by Bernard Madoff and R. Allen Stanford and the Stanford Financial Group. In June, Weil attorneys representing Fortress Investment Group and other institutional investors convinced the Second Circuit to uphold an allocation plan approved by a lower court of an expected $1.4 billion in Madoff feeder fund assets to the Weil clients.

And in August, Weil attorneys secured approval of a $132.5 million settlement in Texas federal court for insurance broker Willis Towers Watson Public Ltd. Co., which had been accused of facilitating Stanford’s fraud by falsely assuring investors that their funds were adequately protected. The settlement resolved more than $4 billion in securities claims in multidistrict litigation stemming from the Stanford fraud.

“What we’re most proud of are the tangible, successful results that we achieved for our clients in 2017,” Neuwirth said. “Our pipeline is full for 2018 and we look forward to delivering the same kind of exceptional results to our clients in 2018, as well.”

--Editing by Alyssa Miller.