

## How They Won It

### Weil Draws On Team Dynamics For Win In Archstone Suit

By Jon Hill

*Law360, New York (September 5, 2017, 3:50 PM EDT)* -- The task that Weil Gotshal & Manges LLP faced in running the defense of some of the biggest names in real estate and finance in a dispute over the \$22 billion leveraged buyout of the Archstone-Smith real estate investment trust could hardly have been more complex, but with a partner-led core team of attorneys that stayed on the case for 10 years, the firm secured a complete victory last month.

That outcome, handed down in a ruling in Colorado federal court on Aug. 25, saw Tishman Speyer, Lehman Brothers and a slew of other defendants prevail in summary judgment on each of the six remaining counts in a \$4 billion class action brought by investors in the Archstone REIT, which Tishman Speyer and Lehman teamed up to buy in 2007 just as the housing market was beginning to tank.

The deal set off a marathon of litigation from investors who held tax-preferred equity interests in the Archstone REIT and alleged that those benefits had been unfairly stripped away in the buyout. Weil was on the case from day one, coordinating defense efforts for Lehman and others as the dispute blossomed into litigation in courts from California to New York before narrowing back down again into the class action that ended with U.S. District Judge William J. Martinez's ruling last month.

"Any way you slice it, this was as massive a piece of complex litigation as you can imagine," Jonathan D. Polkes, co-chair of Weil's global litigation department, told Law360. "It could be a case study for everything that can happen in litigation."

Polkes, along with Weil partner Caroline Zalka, led the team of attorneys that has been tackling the litigation for Weil. This core team of five to seven associates has worked on every aspect of the litigation over the past 10 years and was key to managing an undertaking of this magnitude.

The class action alone came to involve more than 20 defendants, taking detours into arbitration and federal appellate court while racking up a paper trail that grew to include dozens of depositions conducted in a dozen states, thousands of pages of court filings and more than 1 million documents produced in discovery.

The related actions that cropped up during that time were no less arduous.

When Lehman Brothers struck a deal to offload its Archstone assets in 2013 to other REITs as part of a strategic effort to maximize Archstone's value, for example, investors moved to block the sale out of concern the transaction would leave Archstone an empty shell. That put Weil in the position of battling two temporary restraining orders in two states over two consecutive days.

"This is not something you learn in law school," Polkes said. "The level of complexity and multi-dimensionality — it's not just writing legal briefs."

According to Polkes, Weil made a conscious effort from the beginning to assemble this core team of associates, which wound up more or less sticking together for the next 10 years. During this time, Polkes said these attorneys developed a deep sense of ownership over the case.

"They had relationships with the witnesses, they had relationships with the opposing counsel and they had relationships with other teams at other law firms, so they very much felt like this was their case, too," Polkes said.

Having a core team involved at all levels of the litigation — whether it was an arbitration in Pennsylvania or a state court proceeding in California — was crucial to ensuring consistency and clarity in their defense approach, according to Polkes, who credits the team with being a "key element" in keeping the massive litigation under control.

"It would be very easy to get tripped up on the multifaceted nature of this and start saying things that could be used against you in other cases just by accident because it's so complicated," Polkes said. "We really wanted to make sure we had an elevator pitch — an easy-to-understand 'here's why we're right, here's why we should win' — that cut across all the cases."

Digesting the volume of discovery material was also aided by the team structure, according to Polkes. Although the team had access to state-of-the-art discovery systems to sift through and analyze the tidal wave of incoming documentation, Polkes said the depth of collective knowledge that a core team can develop allowed team members to more effectively process the material and understand its relevance to the case.

"You can have a million pages of documents, but if people don't know what's important and what to look for and what might be of significance and what might cross-reference to something that was important in a different context, you're proceeding with your fingers crossed," Polkes said.

The team approach also fostered close ties among its members and has led to advancement for some of its members, many of whom got their start at the firm working on the Archstone case. Zalka, for example, began as an associate on the team but went on to make partner, becoming what Polkes described as the team's "day-to-day field marshal."

"There was an enormous amount of bonding," Polkes said, and morale was heavily emphasized on the team.

Polkes said the resulting sense of camaraderie and confidence proved to be a source of strength for the team when their workload or travel schedule turned grueling, or when morale threatened to take a hit.

Early on in the class action, for example, Polkes and his team got most of the investors' complaint tossed with prejudice, only to see a different judge take over the case and allow the investors to file an

amended complaint. The judge then tossed that complaint, too, but several years and one more new judge later, the investors were again allowed to file a second amended complaint.

Such twists and turns could have been remarkably frustrating, but Polkes said the team members' trust in each other and in their arguments helped to carry them through.

"It's sort of like a sporting event — you can have a bad quarter or a bad round, but you've got to keep your spirits up," Polkes said.

That team spirit never wavered, according to Polkes, even as Judge Martinez in May scheduled a trial date for the class action for early next year before ruling on summary judgment. That step could have been interpreted as a sign that the defendants would not get summary judgment and would instead have to go to trial with potentially billions of dollars at stake, but Polkes said his team remained confident in the rightness of their case.

"You certainly don't go into that expecting to win everything," Polkes said. "You hope for the best and plan for the worst, so we were delighted with the outcome. I don't think surprised is the right word, but we were delighted."

In addition to Polkes and Zalka, the Weil team included Adam Banks, Melanie Conroy, Justin D'Aloia, Ondrej Staviscak-Diaz, Raquel Kellert, Irisa Chen, Lauren Engelmeyer, Andrew Cauchi and Megan Richardson.

The investors are represented by Kenneth A. Wexler and Kara A. Elgersma of Wexler Wallace LLP, Lee Squitieri of Squitieri & Fearon LLP, Daniel C. Girard and Jordan Elias of Girard Gibbs LLP, and Rick D. Bailey of Burg Simpson Eldredge Hersh & Jardine PC.

The Tishman defendants are represented by Roger P. Thomasch, Leslie A. Eaton and Gregory P. Szweczyk of Ballard Spahr LLP.

Archstone, Lehman, the individual defendants, AvalonBay Communities Inc., Equity Residential and ERP Operating LP are represented by Jonathan D. Polkes and Caroline Hickey Zalka of Weil Gotshal & Manges LLP, and Frederick J. Baumann and Alex C. Myers of Lewis Roca Rothgerber Christie LLP.

The case is Stender et al. v. Archstone-Smith Operating Trust et al., case number 1:07-cv-02503, in the U.S. District Court for the District of Colorado.

--Editing by Brian Baresch and Aaron Pelc.