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# Securities Group Of The Year: Weil Gotshal

By **Cara Mannion**

*Law360, New York (January 25, 2017, 8:05 PM EST)* -- Weil Gotshal & Manges LLP's securities litigation team pulled off landmark victories this year both at trial and in appellate courts at the state and federal levels, including a Second Circuit win that broadened the U.S. Supreme Court's Omnicare decision, landing it among Law360's 2016 Securities Groups of the Year.

The firm's securities litigation practice tackled diverse topics underlying its cases this year, from Kinder Morgan Inc.'s $70 billion company consolidation to insider trading claims against Morgan Stanley, which culminated in a rare jury trial. Because the group is stacked with 65 lawyers who focus solely on securities matters, its attorneys amount to specialists in the field, according to the group's co-chair John Neuwirth.

"Our bench is incredibly deep, and our expertise is very specific," he said.

This focus helped land drugmaker Sanofi a class action victory in the Second Circuit, which signaled the first federal appellate case decided upon under the Supreme Court's Omnicare precedent.

The Second Circuit in March refused to revive a pair of securities class actions against Sanofi over the rollout of its multiple sclerosis treatment Lemtrada, finding the shareholders' case couldn't be rescued by the then-recent Omnicare decision, which established a new framework for determining when a public company can be held liable for statements of opinions that later turn out to be false.

Neuwirth, Sanofi's counsel, said this decision sets a high bar for plaintiffs to challenge such statements in court.

"When the Second Circuit set that bar, issuers should be fairly well-protected when making forward-looking statements of opinion," he said.

Neuwirth and his team helped Sanofi beat allegations in district and appellate courts that it misled investors by failing to disclose that the U.S. Food and Drug Administration, behind closed doors, had repeatedly expressed concern about the company's use of single-blind studies, as opposed to double-blind studies, during Lemtrada's clinical trials.

But Sanofi was not obligated under Omnicare to tell investors about its behind-the-scenes talks with the FDA simply because they conflicted with its projections, the appellate court ruled.

Weil Gotshal's appellate success continued in the Delaware Supreme Court this year with a suit centered on Kinder Morgan's $70 billion rollup merger of subsidiary companies. This decision laid out the duties owed by general partners of limited partnerships to their limited partners.

The court in March upheld the dismissal of a case filed by investors in Kinder Morgan Energy Partners LP, who alleged a panel for company conflict and audit review breached its duty of fairness when it described the merger plan as "fair and reasonable." These investors had no evidence that the committee members assumed a fairness duty, and the partnership agreement included a broad waiver of fiduciary protections, the court said.

Joseph Allerhand, co-chair of the firm's securities litigation group and counsel for Kinder Morgan, said he argued to the court that these investors shouldn't have the same protections and litigation rights as investors in a corporation, with directors bound by formal, outside fiduciary obligations.

"We don't want to muddy the waters when dealing with a limited partnership by importing traditional notions of fiduciary duty from general corporate law," he said.

Kinder Morgan is a longstanding client of Weil Gotshal that turned to the firm when reorganizing its corporate structure, Allerhand said. The complexity and size of this transaction, which Allerhand called "mammoth," added challenges to the suit, he said.

"When you have a $70 billion transaction involving one of the largest oil and energy companies in America, ... it's fair to say the ante is upped," he said.

Weil Gotshal also found success this year in Morgan Stanley's first jury trial in over a decade. After two days of deliberation, a New York federal jury in November 2015 found Morgan Stanley not liable for insider trading in the stock of an auto parts maker during the 2008 financial crisis, rejecting civil claims filed by a Russian billionaire who invested in the same company.

Jonathan Polkes, co-chair of Weil Gotshal's global litigation department and Morgan Stanley's counsel in the case, said the bank's decision to try the case in front of jury members, who may have perceived banks as making tons of cash during the financial crisis while people lost their money, could have been a risky move.

"Morgan Stanley had real conviction and passion about its position and simply refused to buckle under the normal pressures to settle," he said.

The suit accused Morgan Stanley of improperly short-selling shares of Magna International Inc. based on inside information obtained from the lender of Veleron Holding BV, a Dutch company created by the founder of aluminum giant United Company Rusal PLC.

Explaining these complex financial concepts to the jury in a way that provided enough details without getting lost in jargon proved to be challenging, Polkes said. But the attorney was able to break through to each member of the jury, who on the day of the verdict revealed its votes one-by-one, clearing Morgan Stanley of all liability.

This case was “priceless,” Polkes said, because of the decreasing amount of trials conducted nowadays.

“Having a high-profile case like this, which actually goes the distance to a jury verdict, it’s a really distinguishing factor for the firm and hard for other people to recreate,” he said.

--Editing by Christine Chun.

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