



Portfolio Media, Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@portfoliomedia.com

Plaintiffs Securities Firms Of The Year

By **Nick Malinowski**

Law360, New York (January 01, 2010) -- While fluctuations in the economy don't generally either promote or deter securities frauds, a recessionary landscape can make it more difficult to litigate class actions on behalf of shareholders because loss causations are often less clear, according to attorneys in the practice area.

Nevertheless, in 2009 — the year in which Ponzi became a household term — several firms rose above the fray to pick up important wins for investors in cases stemming from Bank of America Corp.'s merger with Merrill Lynch & Co., the resolution of the tech bubble's initial public offering frauds and the advent of class action-like securities litigations in Europe, among others.

Law360's plaintiff-side securities firms of the year — Coughlin Stoia Geller Rudman & Robbins LLP, Milberg LLP, Bernstein Litowitz Berger & Grossmann LLP, Kaplan Fox & Kilsheimer LLP, Bernstein Liebhard LLP and Grant & Eisenhofer PA — were among the leaders in the practice area in 2009.

Bernstein Litowitz Berger & Grossmann LLP

BLB&G earned a spot on Law360's Securities Firms of the Year for its \$150 million settlement for bond-class securities holders of Merrill Lynch, for winning a \$125 million settlement in the Bristol-Myers Squibb Co. Plavix patent disclosure case and for litigating a class action accusing State Street Bank & Trust Co. of mismanaging its pension plan.

The firm also reached settlements with subprime lender Accredited Home Lenders Co. and electronic component manufacturer International Rectifier Corp. for a combined \$112 million.

Because it presents so many significant issues of corporate governance, disclosure to shareholders, boardroom actions and government intervention, Bank of America's acquisition of Merrill Lynch is likely to be the case of the decade, BLB&G senior founding partner Max Berger told Law360.

This year in securities litigation was defined by two major things: the downturn of the economy and the meltdown of the subprime market, Berger said.

It is unlikely that the recession scared corporations into good behavior or that a rebounding economy will lead to a shortage of cases for securities firms, he said.

"We are still not over the economic meltdown, and already you see banks moving back to business as usual, private equity firms out there making high-priced deals," he said.

"Greed is a growth industry, so the end of securities litigation, I was never worried about that," Berger said. "The truth of the matter is bad conduct just becomes continually worse over time ... I think there will be new scams and new ways to bilk investors as long as there is money out there to invest and as long as investors remain as trusting as they have been in the past."

Over the past 10 years, Congress and the courts have been letting the gatekeepers — auditors, investment bankers, boards of directors, ratings agencies — off the hook, and the return of aiding and abetting liability in the private sector would do as much as anything to curb these types of fraud, Berger said.

Milberg LLP

Law360 tabbed Milberg LLP as one of its top plaintiffs securities firms for the \$580 million settlement it won for shareholders against nearly 50 banks such as Credit Suisse Group AG and Goldman Sachs Corp. for rigging IPOs during the 1990s dot-com boom.

The firm also won a \$40 million settlement under the Employee Retirement Income Security Act for 318,000 current and former employees of General Electric Co. and represented the Ontario Teachers' Pension Plan Board and the Minneapolis Firefighters Relief Association in the Plavix case.

The IPO case was singular in that it included more than 300 separate securities class actions and involved 30 million pages of complex discovery documents dealing with new technologies, partner Ariana Tadler said. Tadler served as lead liaison counsel for the plaintiffs.

Bernard Madoff's \$65 billion Ponzi scheme prompted a great deal of consulting work for Milberg in 2009 as well as feeder fund litigations, partner Sanford Dumain said. The firm's in-house bankruptcy unit has been particularly valuable to the securities practice during the past couple of years, Dumain said.

The future of securities litigation is impossible to predict, but a renewed interest by shareholders in corporate governance is one trend that picked up steam in 2009, he said.

As the economy heats up, it will become easier to prevail in securities litigations, because in a recession it can be difficult to assess to what extent poor corporate management, rather than the overall ills of the wider financial landscape, is to blame, Dumain said.

Milberg's strong 2009 is perhaps uniquely impressive because of the criminal fraud convictions handed down on several of its partners in 2007 and 2008, but Dumain contends that the firm never broke stride or saw a decrease in clients despite the scandal.

Kaplan Fox & Kilsheimer LLP

Kaplan Fox picked up a top spot in Law360's list for its representation of shareholders in two Merrill Lynch-related cases: Bank of America's failure to disclose material information about bonus arrangements during the banks' 2009 merger, and Merrill Lynch's previous undisclosed accumulation of \$40 billion in toxic assets that led to a \$475 million settlement. The firm also represented plaintiffs in the Plavix litigation.

The Merrill Lynch cases and others "signify a trend toward a demand for full disclosure required by the federal securities laws requiring compliance with transparency rules and shareholder rights regarding information used in making decisions," partner Frederic Fox said.

Fox said that wins in these types of litigations could lead to a higher level of mandated transparency during corporate takeovers, in particular disclosure of risks the company is taking on.

No matter the regulatory changes, however, shareholders will continue to have a need to fight for their rights, Fox said.

"It is like why there is always going to be someone who robs a bank or steals a car; unfortunately there is an ongoing level of corporate fraud," Fox said. "I think to some extent regulations can be tightened up to deter it more, and these cases help deter it, but I'm not sure why it always continues."

Grant & Eisenhofer PA

Grant & Eisenhofer was acknowledged by Law360 for its groundbreaking work on behalf of non-U.S. investors in European courts — the firm won a \$381 million settlement from Royal Dutch Shell PLC for a foundation representing more than 150 investors in an Amsterdam appeals court — and for its \$400 million settlement for

Marsh & McLennan Cos. Inc. shareholders over the insurance broker's alleged bid-rigging scheme.

In European courts, investors cannot bring securities fraud claims as an opt-in class, and the Shell case was significant because it was the first time shareholders were able to win a class-like settlement, managing director Jay Eisenhofer said.

"Foreign investors feel much more exposed in terms of their ability to protect themselves from fraud," he said. "U.S. investors take for granted just how our system benefits them."

The global marketplace has led to a great deal of international investment, and foreign investors have become so accustomed to obtaining compensation in U.S. courts that they feel entitled to recover for losses in other countries as well, despite a lack of legal class action protections, Eisenhofer said.

This type of litigation is a slow process, but Eisenhofer said he expected to see more of these types of cases in foreign courts in coming years.

"The Shell case showed people that it is possible to recover overseas, and people are looking at that and saying, 'Let's do it,'" he said.

Coughlin Stoia Geller Rudman & Robbins LLP

Coughlin Stoia made Law360's list of top securities firms of 2009 on the strength of its near \$1 billion settlement with UnitedHealth Group Inc. over stock options backdating, a \$109 million settlement with accounting giant Ernst & Young LLP, a \$50 million settlement with TD Banknorth Inc. over its going-private merger and several key pharmaceutical litigations.

The firm recently won reinstatement of a class action against Matrixx Initiatives Inc. over its troubled cold medication Zicam, prevented dismissal of a case against Gilead Sciences Inc. and picked up a \$30 million settlement for shareholders of Novartis Vaccines & Diagnostic Inc. over the company's failed flu vaccine.

A spokesman for the firm described the recent uptick in securities litigation as a "fraud wave" that is "hopefully" winding down.

"As long as greedy corporations continue to commit fraud, Coughlin Stoia will stay busy standing up for victimized investors," he said. "Unfortunately corporations can't bring themselves to do the one thing that would shut down the plaintiffs bar tomorrow, which is to simply stop committing so much corporate fraud."

The firm's strong 2009 also included a suit against Moody's Investors Service Inc. and Standard & Poor's, contesting the credit raters' claims that investors cannot sue over

deceptive ratings of private-placement notes because these represent opinions protected by the First Amendment.

Bernstein Liebhard LLP

Bernstein Liebhard has been named one of Law360's top securities firms for its leadership work on the tech IPO case and the \$400 million Marsh & McLennan Cos. Inc. settlement.

Partner Stanley Bernstein served as the chair of the plaintiffs' executive committee, leading counsel to a successful settlement in one of the largest securities class actions in history — one that took more than a decade to resolve.

In the Marsh case, Bernstein Liebhard represented the co-lead plaintiff, the New Jersey Division of Investment, Department of Treasury.

Most recently the firm has launched cases against ProShares Trust's Ultra Financials Fund.

"I would hope we would never see a massive manipulation of the markets ever again," Bernstein said. "Unfortunately, whenever we think that fraud is on the wane, we see another wave and often in another form. In the last 10 years, we saw Enron/Worldcom, then the mutual funds market timing cases and then, who would've imagined, the options backdating scandals."