

Securities MVP: Goodwin Procter's Brian Pastuszanski

By **Carolina Bolado**

Law360, Miami (November 19, 2013, 9:05 PM ET) -- Goodwin Procter LLP partner Brian Pastuszanski scored a major victory for Bank of America Corp.'s Countrywide Financial Corp. this year when the Delaware Supreme Court ruled that the companies' merger barred an investor suit, earning him a spot on Law360's list of Securities MVPs.

In a September decision, the Delaware high court dismissed the 6-year-old derivative suit filed by former Countrywide investors, finding the Bank of America deal had divested them of their ownership interests. The decision could have ripple effects on other shareholder derivative suits being used to challenge transactions.

The Delaware win was just one in a string of victories Pastuszanski and his team achieved for Countrywide, however. Pastuszanski, the co-chair of Goodwin Procter's securities litigation and U.S. Securities and Exchange Commission enforcement practice, is the attorney leading the defense of nearly 50 class and individual suits filed by investors in Countrywide-issued mortgage-backed securities that are consolidated in multidistrict litigation in the Central District of California.

Pastuszanski, who has been with Goodwin Procter for almost 10 years, said the bulk of his recent practice has involved dealing with the fallout of the credit crisis, and he expects that to continue over the next year. What's helped keep his interest in securities over the years is the high-stakes nature of large-scale securities suits, which tend to attract the attention and focus of everyone at a company, from the general counsel to the board of directors, he said.

A graduate of Dartmouth College and of Cornell Law School, Pastuszanski said the complexity of the field had drawn him to securities law.

"I've been practicing now for 30-plus years, and I haven't run across an area, with the possible exception of patent law, where the issues are as challenging and complex as in this area," he said.

Indeed, Pastuszanski's work on the Countrywide cases has been a high-stakes challenge, spanning multiple courts and various defenses. Still, he's managed to secure a number of victories for his client.

In April, he managed to get the MDL judge to dismiss a suit filed by the Federal Deposit Insurance Corp., acting as a receiver for the failed Strategic Capital Bank, over allegedly faulty mortgage-backed securities certificates. In a win for Pastuszanski's client, the judge said the suit's claims were time-barred.

Pastuszenski and his team also won the dismissal with prejudice of all claims in another FDIC suit on behalf of Guaranty Bank over \$1.5 billion in mortgage-backed securities issued by Countrywide. In that case, a California federal judge said the FDIC's federal claims didn't fall within the three-year statute of repose provided under Section 13 of the Securities Exchange Act and instead were time-barred under state law. Pastuszenski and his team were the first to have successfully defended against MBS claims on the state-law preemption argument.

Last year, the MDL judge dismissed Western & Southern Life Insurance Co.'s suit against Countrywide challenging disclosures made in connection with various MBS offerings in which the plaintiffs had bought more almost \$400 million in securities. The case is currently on appeal in the Ninth Circuit.

In addition, after fighting two putative class actions representing purchasers of \$360 billion of securities issued between 2005 and 2007 for five years, Pastuszenski was able to remove one of the suits from state court to federal court and obtain several favorable rulings from the judge overseeing the MDL. A \$500 million settlement ending both cases has since been reached and was tentatively approved by a judge last month.

While the complexity of securities matters can make litigation difficult, Pastuszenski said the key is to be straightforward and distill the complicated issues into something that a judge or jury can easily understand.

“What's always important when a lawyer deals with nuanced issues like these is to be extremely clear about what it is you're saying,” he said. “The goal is to take a very complicated set of issues and identify what's really important and focus the court's attention on it.”

--Additional reporting by Kelly Knaub.