

# Law360 Profiles Max Berger and Salvatore Graziano as Legal “MVPs”

November 1, 2013

*Law360* has named two BLB&G partners, Max Berger and Salvatore Graziano, to its 2013 list of legal MVPs, in recognition of their “exceptional work on critical litigation” matters.

As part of its MVP series on elite law firm partners nationally, *Law360* has profiled both Mr. Berger and Mr. Graziano, discussing their involvement in recent landmark cases that warranted their selection as MVPs from among hundreds of nominations.

## Max Berger

Mr. Berger’s profile highlights his role as lead negotiator in the cases against Bank of America Corp. and Citigroup, Inc., where he obtained \$2.4 billion and \$730 million for investors respectively, the two largest class action settlements related to the financial crisis. According to *Law360*, these two recoveries “cemented his status as a dean of the securities bar in 2013.”

In commenting about his long successful career, which included other record-breaking recoveries such as the \$6.2 billion settlement with WorldCom Inc. and a \$3.3 billion settlement with Cendant Corp., Mr. Berger explains, “I’ve had the privilege of prosecuting some of the most important and successful securities cases in history. I went into this field because I felt I could both do good and earn a living. Nothing has changed for me.”

Regarding the important role that private litigation has played in addressing investor losses arising out of the financial crisis in light of the inadequate performance of the federal government, Mr. Berger stresses that “greed is a growth industry. Left to their own devices, lots of folks on Wall Street will perpetrate fraud. You need to have strong regulation, strong enforcement and strong private enforcement, which is what we do.”

## Salvatore Graziano

In profiling Mr. Graziano, *Law360* focused primarily on his role in leading the prosecution in a pair of high-profile, related securities class actions against Merck & Co., Inc. and Schering-Plough Corporation, in which he obtained \$688 million for investors – the largest securities recovery ever from the pharmaceutical industry. The settlement resolves claims that Merck and Schering (which merged in November 2009) artificially inflated their securities by concealing material information and making false and misleading statements regarding the blockbuster anti-cholesterol drugs Zetia and Vytorin.

According to *Law360*, Mr. Graziano’s efforts and skill in successfully prosecuting the highly technical case and overcoming the significant legal obstacles warranted his recognition as a national MVP.

As lead partner in the case against Merck and its subsidiary, Schering-Plough, Mr. Graziano managed a rigorous discovery process inside and outside the U.S. which involved more than 90 depositions, the review of 12 million pages of documents and 24 expert reports, and even deposed key scientists who oversaw the “Enhance” trial. This was a high-risk move, explains *Law360*, since adverse testimony from the scientists “could have been detrimental to the litigation. ‘We’re talking about Merck and Schering here. These are very large and serious companies that

employ experts every day,' Graziano said. 'We were litigating in their backyard, they offered a very strong defense and didn't acknowledge any wrongdoing whatsoever.'"

However, by succeeding in certifying the class and overcoming the defendants' summary judgment motion and an interlocutory appeal, the path was paved for a settlement agreement considered the second-largest securities class action settlement ever in the Third Circuit, and among the largest class action settlements of all time. *Law360* notes that the "special master in the case was even impressed, saying the deal was 'obtained through co-lead counsel's hard work, persistence and skill, overcoming numerous difficult and novel legal and factual challenges, which were litigated to the hilt by highly experienced and first-rate defense counsel to the eve of trial.'"