

## Most Feared Plaintiffs Firm: Bernstein Litowitz

By **Matthew Bultman**

*Law360, New York (September 29, 2015, 3:49 PM ET)* -- Bernstein Litowitz Berger & Grossmann LLP has racked up hundreds of millions of dollars in recoveries this past year, including a \$500 million settlement over Bear Stearns' sale of mortgage-backed securities, earning it a place among Law360's Most Feared Plaintiffs Firms.

The firm is one of 11 named to Law360's 2015 Most Feared Plaintiffs Firms roster, marking the third consecutive year it has made the list. Salvatore Graziano, a managing partner, said although the firm takes pride in the strong reputation it has built, it's not what drives the results or outcomes it has been able to achieve.

"It's actually a deep dive into every case to make the most success out of any given case," he said. "It's the opposite of resting on past successes. It's actually being very humble and working incredibly hard to make the best outcomes possible."

Run out of offices in New York, San Diego, New Orleans and Chicago, Bernstein has brought home a number of eye-popping recoveries in recent months, particularly in securities fraud class actions and mortgage-backed securities litigation.

This string of recent successes is highlighted by the landmark \$500 million settlement with JPMorgan Chase & Co. over Bear Stearns' sale of mortgage-backed securities. Approved by a federal judge in May, it is the largest in a U.S. class action against a bank for its packaging and sale of mortgage securities at the center of the 2008 financial crisis.

Bernstein and Cohen Milstein Sellers & Toll PLLC, also a 2015 Law360 Most Feared Plaintiffs Firm, served as co-counsel for pension funds that accused Bear Stearns of issuing \$17.6 billion in faulty mortgage-backed securities. The plaintiffs claimed Bear Stearns, which was acquired by JPMorgan in 2008, made false and misleading

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FEARSOME  
FACTS

Bernstein  
Litowitz

\$28 billion  
recovered for clients

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\$6.5 billion  
recovered for investors in cases  
arising from the financial crisis

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4  
of the top 10 securities  
recoveries in history

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34  
of the top 100 securities  
recoveries in history

*Figures are totals since firm's 1983 inception*

statements about the securities.

Prior to winning final approval of that deal, Bernstein helped secure a \$280 million settlement of a long-running action alleging J.P. Morgan Acceptance Corp. violated the Securities Act in relation to offering documents for mortgage-backed securities.

And last December, a judge signed off on a \$95 million settlement in litigation alleging Morgan Stanley & Co. fudged the quality of mortgage loans that collateralized pass-through certificates.

Although the firm was able to achieve some significant results, the cases did not come without risk. In each, Bernstein at the outset faced a highly uncertain legal landscape, as little precedent existed for purchasers of residential mortgage-backed securities under federal securities laws. And no court had at the time certified a class of RMBS buyers.

“As we stand here today, we know about the widespread abuses and corruption during the housing boom, and we know the corners that were cut or completely disregarded because it was really lucrative for Wall Street banks,” said David R. Stickney, a Bernstein attorney who litigated and helped resolve the cases.

“Back at that time,” he said, “we knew investors had suffered substantial losses, and before we commenced any litigation we undertook a deep investigation of our own to satisfy ourselves that the losses were tied to wrongdoing.”

Bernstein scored another big settlement in July, when Jon Corzine, the former governor of New Jersey, and other one-time leaders of MF Global Holdings Ltd. agreed pay \$64.5 million to resolve an investor lawsuit stemming from MF Global’s 2011 bankruptcy.

It was the third blockbuster reached with parties closely involved with MF Global's affairs, bringing the total in proposed recoveries to more than \$204 million.

A group of underwriters of MF Global notes had previously agreed to pay \$74 million, while accounting firm PricewaterhouseCoopers LLP had settled for \$65 million. Commerz Markets LLC, which helped underwrite a stock offering in 2011, has also agreed to pay nearly \$1 million.

The litigation stemmed from the collapse of MF Global, after Moody's slashed its credit rating to nearly junk status based on catastrophic wrong-way bets on European sovereign debt. About \$1.6 billion in customer money vanished, sparking investigations by the U.S. Commodity Futures Trading Commission, U.S. Department of Justice and other federal regulators.

The shareholders’ attorneys said the case presented difficulties, particularly with respect to recovering on any judgment against Corzine and the other officers, as their insurance was being rapidly depleted by costs of defending numerous related matters.

“The remarkable thing is out of all those competing plaintiffs, we are the only ones to have settled,” Graziano said.

A small firm of roughly 100 or so attorneys, Bernstein has become known for choosing the strong cases and litigating them until the end. Graziano said it seeks to be selective about the cases its takes, so it can “maximize results.”

Mark Lebovitch, who heads the firm's corporate governance litigation practice, said the firm also prides itself on being an advocate for investors. That means bringing cases that will have an impact, whether it's recovering losses or enhancing shareholder rights.

"We try to be aggressive in a smart way in the sense of bringing meaningful lawsuits and within those lawsuits pushing the envelope in a way that makes sense," he said.

The approach taken by the firm and the way its attorneys handle themselves have earned it respect among defense lawyers as well.

"They represent their clients aggressively, as they should, but I find them to be very forthright and able adversaries," said Robert Sacks, a managing partner at Sullivan & Cromwell LLP. "When I litigate with them, I can argue and litigate the substance of the case, but I don't have to worry about inappropriate conduct or dirty tricks or things like that."

Bernstein's willingness to push for change was evident when it served as co-lead counsel in a rare securities fraud trial over a stock-for-stock merger. While nearly all cash mergers are challenged in court, it's rarer to attack stock-for-stock transactions, which are thought of as somewhat unassailable in shareholder circles.

The firm bucked the trend by challenging Jefferies Group Inc.'s 2012 sale to Leucadia National Corp., claiming that four directors on the eight-member board were vested in the deal and so had conflicts of interest that resulted in a flawed approval process.

Jefferies executives said the deal was proper and litigated the case for two years and through summary judgment briefing before settling on the eve of trial.

Given final approval in March, the \$70 million deal, one of the highest ever for merger-related fiduciary litigation, was unique in that all the settlement money will go to investors, with Bernstein on its own to argue for its fees.

"The court seemed to like the net fund approach; the shareholders definitely like it; and the practice is now catching on," said Lebovitch, noting similar settlements have since been used in other cases. "It's an example of being disruptive to traditional practice in a smart way."

In another Chancery case, Bernstein helped secure a \$153.7 million recovery in a derivative lawsuit against Freeport-McMoRan Copper & Gold Inc. It was the second-largest shareholder derivative class action settlement in Chancery history, but how the deal was structured also turned some heads.

Normally, any damages or benefit in a derivative action go directly to the company. This deal, which was approved in April, was set up so that Freeport shareholders saw consideration through a special dividend. It was the first-ever settlement in which shareholders receive direct payments to resolve their derivative claims.

"We believed this was a good way to handle this case," Lebovitch said. "I think because it was an out of the box idea, initially there was some skepticism from the corporate side. But they came around."

-- Additional reporting by Cara Salvatore, Jessica Corso and Ed Beeson.

Editing by Jeremy Barker and Kelly Duncan.

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