THE NATIONAL LAW JOURNAL

FEBRUARY 13, 2012

An ALM Publication

LITIGATION BOUTIQUES HOT LIST

A Special Report

With this issue, *The National Law Journal* inaugurates our Litigation Boutiques Hot List, featuring 10 small firms that take second place to no one in courtroom skill. These are the firms important clients turn to for state-of-the-art advocacy in bet-the-company cases. They are carving out specializations in products liability, international trade, intellectual property and other areas of the law. They also represent an avenue to practice high-end law on a more human scale than perhaps is offered by larger firms.

Texas firm obtains big settlement for investors

Gibbs & Bruns' proposed $8.5 billion settlement with BoA put the firm on the national radar.

BY NATE RAYMOND

When Morgan Stanley released its third-quarter report in November, it chose to make an unusual disclosure to its investors: The bank had received a letter from Gibbs & Bruns.

The partners at the Houston-based boutique say they did not expect to find one of their letters cited by the company as a material event. Yet they also say the disclosure was justified given the circumstances. A similar letter had, after all, ultimately resulted in Bank of America Corp. agreeing to pay $8.5 billion to investors in troubled mortgage-backed securities issued by Countrywide Financial Corp.

"It's just a natural follow-on consequence of the fact that we represent under one roof a substantial block of investors," said Robin Gibbs, a founding partner at Gibbs & Bruns. "And they're committed to pursuing this to a resolution."

The proposed Bank of America settlement, announced in June 2011, instantly put the 33-lawyer firm on the national radar in a way few other suits have in its 19-year history. If approved, the settlement would mark a global resolution to so-called put-back claims by investors in private-label mortgage-backed securities issued by Countrywide, which Bank of America bought in 2008. Gibbs & Bruns represented a group of 22 institutional investors who claimed that Countrywide was required to repurchase thousands of loans that had breached representations and warranties contained in the securitizations' governing documents describing the characteristics of the mortgages.

Yet the deal's approval has come under attack by rival investors. Arguments before the U.S. Court of Appeals for the 2d Circuit on Feb. 15 could determine if the settlement ever gets a judge's stamp of approval. Those arguments could also affect the legacy of Gibbs & Bruns, although the settlement's architect, partner Kathy Patrick, said that is far from her mind. "I think of this not in terms of a legacy for the firm but a legacy for our clients and for borrowers," she said.

The firm has come a long way since Robin Gibbs co-founded it. After landing a job at Vinson & Elkins in 1971, Gibbs left three years later to start a new full-service firm, Wood, Campbell, Moody & Gibbs. In 1983, the trial group that Gibbs led broke off from the 40-lawyer firm to form Gibbs & Ratliff. After name partner Debora Ratliff retired, Gibbs' partner Phillip Bruns found

SCOTT DALTON

his name on the door. He has since also retired, despite being, like Ratliff, younger than Gibbs.

"Seems to be a trend where my younger partners all retire," Gibbs said.

The firm takes an admittedly old-fashioned view of partnership, with compensation based on a seniority-based lockstep system. Despite all of its big cases, Gibbs said the firm is committed to the "intimacy of a small firm" and has no plans to grow big. Within Texas, the firm has a reputation for its "high-dollar cases," said Charles Schwartz, the head of the Houston litigation practice at Skadden, Arps, Slate, Meagher & Flom.

"As long as I have known them, they've had a mixture of plaintiffs' work with defense work," said Schwartz, who has been on both sides of the table with Gibbs & Bruns. "Probably more defense work. But the plaintiff work they select from my vantage point is high-dollar stuff. As far as I can tell, they don't do volume contingency work."

Among the notable plaintiffs' wins last year was a $196 million judgment against Dallas billionaire Trevor Rees-Jones and Devon Energy Production Co. L.P. for the firm's client, Vinson & Elkins partner D. Bobbitt Noel. For years, the bankruptcy lawyer had been a minority partner in Rees-Jones' former company, Chief Holdings LLC, a gas producer. He sold his stake to Rees-Jones in 2004. Just two years later, though, Rees-Jones sold Chief to Devon for $2.6 billion—a valuation 20 times what Noel said Rees-Jones told him the company was worth.

Gibbs tried the case along with partners Grant Harvey and Brian Ross during a five-week trial in a state court in Houston that ended last March. The jury's finding that Rees-Jones committed fraud and breached his fiduciary duties to Noel is now on appeal.

> We represent under one roof a substantial block of [institutional] investors.
>
> —ROBIN GIBBS

Although the firm's defense work is often billed hourly, "most but not all of our plaintiff cases are on some form of pure contingency or at least structured fee," Gibbs said. The Bank of America settlement is a prime example: If approved, the firm stands to earn $85 million, according to court records.

The fate of that fee hinges on the 2d Circuit arguments. They are considered crucial despite what might in any other case sound like a procedural issue of whether to remand the case to state court.

After Bank of America agreed to the settlement, lawyers for the trustee for the mortgage-backed securities, Bank of New York Mellon, filed a petition in New York state court seeking judicial approval of the deal. BoNY's lawyers at Mayer Brown filed the papers under an obscure New York state statute that allowed a court to confirm the actions of a trustee, in the posture of a sole plaintiff.

Lawyers for other investors not at the table, particularly one set called Walnut Place, represented by Grais & Ellsworth, objected to the settlement, calling into question its size, among other factors. After a judge allowed them to intervene in state court, Walnut Place removed the case to federal court in New York. Although BoNY was the only named plaintiff in the state court case, Walnut Place contended the case was a "mass action" under the Class Action Fairness Act, given the number of trusts involved and the size of the settlement. Despite the trustee's and Gibbs & Bruns' efforts to remand the case, U.S. District Judge William Pauley in October sided with Walnut.

Patrick said if the 2d Circuit rules for Walnut Place, the decision could allow it or other objectors to go into other courts and challenge the deal on subject-matter grounds. Walnut Place has also said in court filings that it is seeking the ability to opt out of the settlement.

"We don't want years of collateral litigation over jurisdiction," she said.

If the Gibbs & Bruns lawyers are worried, though, they are not showing that publicly. In recent months, Gibbs & Bruns has begun issuing announcements signaling it is working to reach big deals with other banks, including Wells Fargo, JPMorgan Chase & Co. and Morgan Stanley, over the tens of billions of dollars in mortgage-backed products they issued before the financial crisis. And more clients have joined the investor group the firm represents, which includes BlackRock Financial Management Inc. and Pacific Investment Management Co. LLC. If Patrick has it her way, more settlements like Bank of America will be coming soon.

"That's why you've seen comments from us that it's a template for other banks to follow," Patrick said. "The group always had in mind that this wouldn't be a one-off."

Nate Raymond can be contacted at nraymond@alm.com.