

Litigator of the Week: Mark Arisohn of Labaton Sucharow

By David Bario

Given the rarity of securities class action trials, we weren't sure what to expect when plaintiffs lawyers representing BankAtlantic Bancorp shareholders finally got to argue their case to a jury. We knew they'd tell jurors about internal BankAtlantic discussions about risky loans, which were allegedly hidden from investors. But would the jury buy the defense's argument that the bank adequately disclosed its exposure and was simply a victim of the financial meltdown?

As we reported Thursday, the trial ended with a huge victory for the plaintiffs, led by State-Boston Retirement System. It was also "a fabulous win" for lead plaintiffs' counsel Mark Arisohn of Labaton Sucharow, who told us he missed a granddaughter's birth during the seven weeks (and "a lot of days of high anxiety") he spent in Florida, before and during the four-week trial. The Miami federal district court jury found that BankAtlantic executives misled shareholders about the risks of the bank's loan portfolio, awarding \$2.41 in damages for every BankAtlantic share sold over six months in 2007. (The plaintiffs had originally sought \$2.93 per share for that period, as well as 37 cents per share for the previous six months.)

Transcripts of Arisohn's closing and rebuttal show that the Labaton partner did indeed build his case around specific internal BankAtlantic communications, especially e-mails in which CEO Alan Levan and others worried openly about credit and repayment problems before seemingly downplaying the risks in public filings and conference calls. Those internal e-mails, Arisohn told us, blew holes in BankAtlantic's assertions that it had a "culture" of disclosure.

"What juries really like to see in these types of cases is when the internal documents are so dramatically different from what they're putting out to the public," Arisohn said. "These documents are not at all consistent with a culture of

disclosure, and I really don't think the jury liked that."

But Arisohn also told us that the e-mails weren't the only important element of the plaintiffs case: Describing the case to the jury in "common sense language," he said, was

just as important. Arisohn proved adept at telling the story of BankAtlantic's alleged fraud in terms likely to strike a chord even with jurors who'd never heard of a 10-K filing or bought a single share.

In particular, Arisohn was a master analogist at trial. In his summation, for instance, he described e-mails between BankAtlantic officials as "videotape from the crime scene." Bad investments were "stinkers, time bombs kept secret." There was a growing "infection" in the bank's land loan portfolio, which was cracking apart like like a "leaky roof" with rainwater streaming in, while the bank was warning investors only that there were storms on the horizon.

In his final words to the jury, Arisohn appealed to jurors' sense of justice, attacking BankAtlantic lawyer Eugene Stearns of Stearns Weaver Miller Weissler Alhadeff & Sitterson for urging the jury to reject the plaintiffs' claims quickly in order to send a message that the case was frivolous.

"Mr. Stearns asked you to think about the message," Arisohn told the jury. "I'm going to ask you to think about the message, too....Think about whether you would like to send a message that banks and bank management cannot intentionally lie to their stockholders. That's the message."

In the end, the jury deliberated for almost four full days. And the message it sent was definitely not the one BankAtlantic wanted to hear.

