

Litigator of the Week: Joel Bernstein of Labaton Sucharow

By Andrew Longstreth

With so many plaintiffs lawyers suing Countrywide Financial, there is concern about the former mortgage lender's ability to satisfy judgments in cases in which Countrywide's Bank of America parent is not a defendant. But that's no longer Joel Bernstein's problem. The Labaton Sucharow senior partner was able to squeeze \$600 million from the collapsed lender in the settlement of a securities class action led by his clients, a group of New York pension funds. As we reported this week, the settlement, which includes an additional \$24 million contribution from Countrywide auditor KPMG, is the largest to arise from the subprime crisis and the 13th-largest since the passage of the Private Securities Litigation Reform Act 15 years ago.

Bernstein told us Thursday that uncertainty about Countrywide's assets was one of the factors the plaintiffs considered as they negotiated a deal. If they went forward with a trial, he said, they risked not being able to enforce a judgment against the company, which has been swallowed by BofA. "It was an issue that was always out there, always in our minds," said Bernstein.

The settlement came together over a span of three days this spring. Mediator Eric Green, a professor at Boston University School of Law, had

been meeting occasionally with the parties in New York for about a year and a half, but to no avail. Green decided, according to Bernstein, that he needed to get Los Angeles federal district court judge Mariana Pfaelzer involved if Countrywide and the plaintiffs were going to make any progress. After she declined, the mediation job eventually went to retired Los Angeles federal district court judge A. Howard Matz.

With Judge Matz on board, Green summoned Countrywide and the plaintiffs to the Los Angeles federal courthouse on March 31. Two days later, on April 2--Good Friday--the parties had a deal. Bernstein gave a lot of credit to Judge Matz, who he said was able to predict how Judge Pfaelzer and a jury would react to each side's arguments.

"Judge Matz's role was to bring the perspective of an experienced judge in that district who has presided over numerous jury trials," said Bernstein.

The parties are expected to submit the finalized deal to Judge Pfaelzer on May 24. Bernstein told us he's confident she will approve it.

"I believe it's an excellent settlement for an exceptionally complicated case," said Bernstein.

The Legal Intelligencer

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