

Class Action Group Of The Year: Labaton Sucharow

By **Cara Salvatore**

Law360 (January 24, 2019, 3:50 PM EST) -- Labaton Sucharow LLP convinced a judge to offer a second chance at class certification in a closely watched suit against Goldman Sachs over financial-crisis-era securities, and brought home a \$96 million settlement in benchmark-rate litigation, making it one of Law360's Class Action Groups of the Year for 2018.

A large portion of the firm's work — some 90 to 95 percent — involves class actions, much of that in the securities area, with a secondary focus in antitrust, according to Greg Ascioffa, who was the lead Labaton lawyer on one of last year's big victories.

In June, a judge initially approved investors' \$96 million proposed deal with the last five financial institutions remaining in a proposed antitrust class action over alleged manipulation of the global swaps and options benchmark ISDAfix.

ISDAfix, which has since been overhauled and renamed the ICE Swap Rate, is a benchmark set of rates incorporated into trillions of dollars' worth of derivative contracts. The investors claimed the banks conspired with one another and with ICAP Capital Markets to influence the rates to enrich themselves, partly by submitting bids and offers designed to move the rate rather than as an honest indicator of what they would pay or accept for a derivative contract.

The deal was that BNP Paribas and Morgan Stanley & Co. LLC would pay \$33.5 million each, ICAP Capital Markets LLC would pay \$11.5 million, and Nomura Securities International Inc. and Wells Fargo Bank NA would pay \$8.75 million each.

"The most interesting thing was the timing of that settlement. It happened right before oral argument for class certification. And in many cases, class certification is a big hurdle for plaintiffs and more often than not defendants will wait for a class certification decision to consider whether or not they were going to resolve the case then," Ascioffa said.

"Settlements are always good things. And to have your final set of settlements, of course, is the best feeling," he added.

It certainly wasn't Labaton's only victory. Another one came in a closely watched case accusing Goldman of misleading shareholders before its Abacus collateralized debt obligation lost investors \$1 billion. The



case is far from over, but it was considered a big deal when, in August, U.S. District Judge Paul Crotty recertified an investor class after a Second Circuit decision had vacated the first certification win.

Judge Crotty sided with the plaintiffs and their expert, John Finnerty, ruling that the bank's experts, Paul Gompers and Stephen Choi, failed to take down the investors' theory.

"The Second Circuit directed the court to determine whether the defendants have demonstrated by a preponderance of the evidence that the alleged misstatements had no price impact," Judge Crotty said. "In view of Dr. Finnerty's opinion demonstrating the price impacts of the alleged misstatements and the deficiencies inherent in the opinions of Drs. Gompers and Choi, the court concludes that defendants have failed to rebut the basic presumption by a preponderance of evidence."

The investors had sued Goldman and some of its executives shortly after the U.S. Securities and Exchange Commission sued the company in 2010, court documents show. Both actions stemmed from the Abacus CDO that lost investors \$1 billion when Goldman helped a client short the CDO while simultaneously selling it elsewhere.

Goldman settled the SEC's suit for \$550 million later that year, and the shareholder action was consolidated in New York federal court in 2011.

Judge Crotty certified the class in 2015, finding Goldman hadn't shown that its alleged misstatements surrounding Abacus and its ethical compliance had not affected its stock. But the Second Circuit said the lower court may have held Goldman to too high a standard, reversing the certification in January and ordering Judge Crotty to consider evidence that was previously neglected.

In December, the Second Circuit granted Goldman's petition — for a second time — to appeal the certification.

"The SEC prevailed against the Goldman Sachs employee who was most involved in Abacus, and we believe that case is just a forerunner of what is going to happen here," said Labaton's Tom Dubbs. The firm will keep pursuing the case aggressively, "as we have for eight years, notwithstanding the tenacious defense of Goldman Sachs," Dubbs said. "It's completely a plaintiff contingency firm, and we're devoted day in and day out to protecting the rights of investors."

In the year under consideration, Labaton was also involved in getting the Second Circuit to revive a consolidated group of class actions accusing major U.S. stock exchanges of misleading investors about how they catered to high-frequency trading firms, bringing back to life claims inspired by the Michael Lewis best-seller "Flash Boys."

The exchanges' motion to dismiss is now pending, and has been since May, but the exchanges asked U.S. District Judge Jesse Furman in October to take note of the fact that the Supreme Court case *Lorenzo* could impact this case. *Lorenzo* saw oral arguments in December, and the case could test the limits of so-called scheme liability in securities fraud cases. It's awaiting a decision. Judge Furman has not yet replied to the October letter.

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