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THE WINNER

**2014 LITIGATION DEPARTMENT OF THE YEAR
DEBEVOISE & PLIMPTON**

LITIGATORS OF THE YEAR ■ IP, SECURITIES AND ANTITRUST WINNERS ■ NEWSMAKERS OF THE YEAR



In the Arena

Famed for its revolving door, **DEBEVOISE & PLIMPTON** routinely gets clients off the hook with regulators. But in one of the biggest cases to spill from the financial crisis, the firm got regulators off the hook.

BY **MICHAEL D. GOLDHABER**

IT WAS A NARRATIVE that the judge called “worthy of an Oliver Stone movie.” In 2008 the Federal Reserve Board seized control of American International Group Inc. as “the global financial system teetered on the brink of collapse.” Then, “in an act of Napoleonic plunder, [it] stole AIG’s assets, redistributing some to shore up other flagging [banks] while keeping much of the residue for itself.”

Sinister as it may sound, this narrative was highly credible coming from superlawyer David Boies of Boies, Schiller & Flexner and his No. 1 client, former AIG chairman Maurice Greenberg. Greenberg’s Starr International Company Inc. tapped Boies to sue the Federal Reserve Bank of New York on theories of constitutional and fiduciary law in 2011, demanding \$25 billion in damages.

To counter Greenberg and Boies, the New York Fed relied on Debevoise & Plimpton litigation cochair John Kiernan, whose father served as a director of the bank over 30 years ago. Ultimately, Kiernan would win before both U.S. District Judge Paul Engel-

mayer—who called the lawyering “extraordinary”—and the U.S. Court of Appeals for the Second Circuit. In a unique court-like proceeding, Kiernan (alongside Davis Polk & Wardwell) also persuaded AIG’s directors not to join a parallel suit in Washington, D.C., which is still pending.

In an eclectic ruling dismissing the New York case in late 2012, Judge Engelmayer imagined the Fed bankers delivering a series of Hamlet-like soliloquies in modified iambic pentameter: “To act or not to act? Is it better to act decisively ... and thereby end the grave threat to the economy posed by AIG’s continuing CDS exposure?” Or is it better, as the judge put it in another passage, “to stand down ... lest a jury in Delaware ... someday sock us with an astronomical verdict?”

New York Fed general counsel Thomas Baxter Jr. was especially gratified that the judge cited Theodore Roosevelt’s 1910 speech, *The Man in the Arena*, a classic encomium of taking action in public life. “Policymakers in September 2008 faced a hard choice whether to rescue AIG or let it go bankrupt,” says

Department Size and Revenue

Partners: **43** Associates: **134** Other: **17**

Department as Percent of Firm: **34%**


Percent of Firm Revenue 2012: **36%**

Baxter. Kiernan explained to the court that “they stepped ‘in the arena’ and made a tough call.”

“In the arena” is not a bad catchphrase for Debevoise’s litigation department, which overflows with government officials both former and future. Even after last year’s departure of Mary Jo White and her lieutenant Andrew Ceresney to lead the U.S. Securities and Exchange Commission, the firm boasts two former attorneys general (Michael Mukasey in the United States and Lord Peter Goldsmith in the United Kingdom), eight former assistant U.S. attorneys, and alumni of a half-dozen other agencies.

It should come as no surprise that white-collar is Debevoise’s strongest brand, with Bruce Yannett and Mary Beth Hogan as the standard-bearers. Beyond their own importance, government investigations often spill over into general litigation or feed the firm’s

FROM LEFT:
Mark Goodman,
Mary Beth Hogan,
John Kiernan,
Maura Kathleen
Monaghan and
Bruce Yannett



Debevoise & Plimpton won the general litigation competition, which had a hefty 62 entries from The Am Law 200. The Debevoise litigators are like the Army Rangers—a small but elite group that works seamlessly and handles the most challenging cases. Over the contest time period, they produced two \$25 billion results, nailed two trial defense wins worth \$3.5 billion each and secured the biggest investor-state award in arbitration history (\$2.3 billion), as senior international correspondent Michael D. Goldhaber eloquently points out.

—Robin Sparkman,
EDITOR IN CHIEF



other recognized strengths: in intellectual property (led by David Bernstein and Bruce Keller) and international arbitration (led by American Society of International Law president Donald Donovan and International Bar Association vice president David W. Rivkin).

Over the past two years Debevoise showed stellar results in all these areas, despite fielding only 43 litigation partners—or fewer than a quarter of its predecessor as the grand prizewinner, Gibson, Dunn & Crutcher. No rival of any size could match the magnitude of Debevoise's recent litigation results. Few could boast of litigating matters that touched on more than 90 nations over the period. The Debevoise map of the world covers just about everywhere outside littoral Africa and the Fertile Crescent.

In spotlighting Debevoise as one of the last remaining pure lockstep firms, The New York Times wrote that the firm's rhetoric evokes a "utopian socialist community." Nonpartners might beg to differ, yet Debevoise boasts a ratio of merely 3:1 between its highest- and lowest-paid partners. The same figure has been reported by The American Lawyer for New York's other endangered lockstep firms, but it's lower than any ratio (among the firms that disclosed this information to us in 2012), and it compares with an average of about 11:1 in 2012 for Am Law 100 firms that share this data. Hogan, who replaced White as cochair of the litigation department, relishes the time savings that come with a simple system of credit sharing. "What takes us 30 seconds takes other law firms three months," she says.

Apparently making good use of the time they save on infighting, the utopian socialists at Debevoise & Plimpton over two years produced two \$25 billion results, a pair of trial defense wins worth \$3.5 billion apiece, and the biggest investor-state award in arbitration history.

"The thing that impresses me about lawyers is when they come up with better answers to problems than I do. Every once in a while, you encounter a lawyer who has really created the better answers.

DAVID [W. RIVKIN] IS THAT LAWYER," says Occidental GC Donald de Brier.

In the largest-ever state-federal settlement, Ceresney took the lead for the banks in crafting the \$25 billion deal that resolved the mortgage "robo-signing" controversy in 2012. "There were 50 times when this historic and exceptionally complicated settlement could have broken down," says Thomas Perrelli, who sat across the table (as associate attorney general) from Ceresney and is now at Jenner & Block. "Debevoise deserves credit for bringing together multiple partners to resolve a significant problem in a sophisticated way that provided substantial benefit to consumers. Ceresney's central role reflects the great confidence people had in him."

As the lead trial counsel in litigation sparked by the Sept. 11 terror attacks, Debevoise persuaded a New York federal court that Larry Silverstein's World Trade Center Properties could not recover another \$3.5 billion against the airline industry. Silverstein was seeking compensa-

tion for losses already covered by \$5 billion in insurance proceeds, and that amount already exceeded the maximum recoverable tort damages based on the market value of the destroyed buildings, the court ruled.

Aviation defense cocounsel Desmond Barry of Condon & Forsyth

says he feels as if he's called Debevoise a few times a day every day since 2001. Far from being sick of his collaborators, he has nothing but superlative praise for them. "Maura Monaghan is the lawyer with the golden pen, and she's written so much. I'm going to need a library annex pretty soon," he says. "When the judge asks me a tricky point of law, Roger Podesta is the guy I point to. In 42 years he's the smartest lawyer I've ever met."

In Florida court, Debevoise beat back a \$3.5 billion claim by the generic drug maker Apotex Inc., which alleged that Bristol-Myers Squibb Co. hadn't tried hard enough to get a prior settlement approved by regulators. Trial counsel Mark Goodman and Sean Hecker overcame whatever hostility the Florida jury may have had for branded drugs with emails suggesting that it was Apotex that had undermined regulatory approval. "They just showed a level of personal involvement you don't ordinarily see,"



says BMS in-house counsel Jonathan Wasserman. "Law firm–client relations can be mercenary, and this was anything but."

(Debevoise had such a good run that its submission barely touched on two other victories by Goodman, who was the firm's nominee for our Litigator of the Year honors. In a make-or-break case for the monoline insurer Syncora Guarantee Inc., Goodman secured \$450 million from Countrywide Home Loans Inc. In fallout from the Bernard Madoff Ponzi scheme, Goodman convinced the SEC and the U.S. Department of Justice not to pursue charges against the chief risk officer of Fairfield Greenwich Group, which was the largest Madoff feeder fund.)

Rounding out Debevoise's hand of billion-dollar results was its historic investment arbitration win in *Occidental Petroleum Corporation v. Republic of Ecuador*. Rivkin won \$2.3 billion from a tribunal at the International Centre for the Settlement of Investment Disputes as compensation for Ecuador's seizure of an oil field that was operated by Oxy. (The seizure was allegedly an act of retaliation after Oxy and Rivkin won an earlier tax dispute.)

"David Rivkin is low-key and matter-of-fact" where other arbitration counsel are high and mighty, says Occidental general counsel Donald de Brier. "The thing that impresses me about lawyers is when they come up with better answers to problems than I do. Every once in a while, you encounter a lawyer who has really created the better answers. David is that lawyer."

Ecuador argued that its draconian move was justified because Occiden-

On the Docket

Debevoise's litigation group is currently working on a range of high-profile matters.

- As allegations surfaced that the News of the World "phone hacked" everyone from a murdered schoolgirl to the mayor of London, News Corp.'s independent directors picked up the phone and called Debevoise for legal advice.
- Fearful that gray will become the new black, the Prada Group is consulting with Debevoise on strategic options to prevent the sale of gray market luxury goods through discount stores and websites.
- JPMorgan's massive robo-signing and RMBS settlements still leave Debevoise busy helping to defend the bank from mortgage-related litigation in Massachusetts, Michigan, Ohio, and Oklahoma, not to mention the Fifth and Eighth Circuits.
- Barrick Gold Corporation has hired Debevoise to defend it against a securities class action that accuses Barrick of unrealistic projections for the opening of a massive open-pit gold and silver mine on the Argentina-Chile border.
- Debevoise and The Legal Aid Society are pushing a class action that seeks broad injunctive relief for New York state prison officials' alleged failure to prevent widespread sexual abuse of female prisoners. —M.G.

tal farmed out part of its stake without permission. Rivkin and cocounsel Gaëtan Verhoosel of Covington & Burling countered that Occidental acted in good faith and that Ecuador responded disproportionately. The panel majority agreed with Ecuador that Occidental was partially at fault and reduced damages by 25 percent—but it ruled that Ecuador's response was disproportionate, and a disproportionate action may be expropriatory. The sum awarded, pending an annulment petition by Ecuador, is over six times more than the next-largest treaty award, won by Debevoise's Kiernan for Ronald Lauder a decade ago ["Czech Mate," March 2002].

The Occidental record might be shattered soon, but the possibility of any recovery in the booming field of investment arbitration owes a bit to some relatively low-stakes wins by

Rivkin's partner Lord Goldsmith. Arguing personally in the Caribbean Court of Justice—as he does in forums around the world—Lord Goldsmith persuaded the court to clear the way for a claim against Belize by British Caribbean Bank. Goldsmith also created a strong supranational precedent for judicial resistance to anti-arbitration injunctions. In a related victory for the rule of law, he persuaded (pending appeal) the Belize Court of Appeal to strike down part of a law that would have subjected those involved in an enjoined arbitration to up to 10 years in prison.

In the investigations world, it's possible for a big settlement to be regarded as a grand success, such as the record transatlantic corruption fines negotiated by Debevoise for Siemens AG in 2008 ["Cheap at the Price," May 2009]. Debevoise would place



in this category JPMorgan Chase & Co.'s November 2012 settlement with the SEC, which resolved an inquiry into residential mortgage-backed securities offerings by Bear Stearns Companies for \$297 million without admitting wrongdoing. (The massive \$13 billion follow-up settlement negotiated this November by Debevoise and Sullivan & Cromwell fell outside the contest period.)

But the results most worthy of celebration are quiet declinations. By this measure, Debevoise had recent marquee results on both sides of the pond.

The SEC and Justice declined to bring a Foreign Corrupt Practices Act against 3M Corp. after allegations were made of bid-rigging and bribery in Turkey and beyond. The firm's deputy presiding partner, Yannett, who cemented his credibility with regulators in the Siemens affair, was instrumental in highlighting the potential case's evidentiary weakness, persuading the agencies that the company had a culture and practice of compliance both before and after the allegations.

The U.K. Serious Fraud Office went further and actually apologized to the property tycoon Vincent Tchenguiz. Lord Goldsmith, who serves as the firm's European and Asian litigation chair, convinced the English courts that regulators crossed the line in conducting a baseless dawn raid to search for corruption in Icelandic bank loans that were made to Tchenguiz. "The errors made in this case have been admitted," the British government said in words that are music to any client's ears. "They are regretted."

Clients in Debevoise's highest-profile pending investigations—like the News Corp. board dealing with the fallout of phone hacking in Rupert Murdoch's empire—can only dream that they'll wake up to hear a similar melody.

In trademark disputes, the ultimate measure of success is protecting brand fundamentals. Well, marks don't get much more basic than a primary color and a day of the week.

For Yves Saint Laurent, Debevoise protected the use of a red shoe with red soles against a Second Circuit assault by the fashion designer Christian Louboutin. For Kate Spade, another team led by Bernstein protected the use of the brand name "Saturday" from a challenge by a trendy menswear line called Saturdays Surf NYC. Just to add a level of difficulty, it prevailed at the Saturday trial despite a fire that crippled the firm's computers on the eve of closing arguments.

In pro bono, the measure of success is effecting change in the public arena on behalf of the despised from every corner of society. Acting for terror suspects at Guantánamo Bay, Debevoise secured access to counsel for detainees who were no longer challenging their detention. Acting for a nonterrorist gang fighter named Edgar Morales, Debevoise inspired the New York Court of Appeals to rein in the use of New York's Anti-Terrorism Act to prosecute ordinary street crime. "The concept of terrorism ... risk[s] being trivialized," the court warned, "if the terminology is applied loosely in situations that do not match our collective understanding."

Debevoise began championing the rights of women prisoners long before "Orange Is the New Black" made the cause trendy. During this period, it helped to win damages against an abusive prison guard for an inmate named Lucy Amador, and to persuade a federal court in the Western District of New York that inappropriate touching can constitute cruel and unusual punishment.

Venturing well beyond upstate New York, Donald Donovan made Debevoise's name in global pro bono by defining the parameters of U.S. and international law through a series of landmark cases in the International Court of Justice over the past two decades that involved Paraguayan, German and Mexican nationals on U.S. death row. In a similar spirit, Lord Goldsmith is now challenging the constitutionality of antisodomy laws in the courts of Belize and Singapore—combining the firm's best traditions of public engagement and fearless internationalism.

Debevoise's 43 litigation partners are also doubtless working to add to their collection of \$25 billion trophies, break their own arbitration record, trademark the color blue, enjoin a second day of the week—and win groveling apologies from regulators to Rupert Murdoch. They're unlikely to succeed, but in the immortal words of Teddy Roosevelt: "The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly ..."