

Banking Group Of The Year: Kasowitz

By **Carolina Bolado**

Law360, Miami (January 30, 2017, 11:10 PM EST) -- With a win at the Second Circuit for collateralized debt obligation investors and another at the Ninth Circuit defending European bank UniCredit against fraud claims over illegal tax shelters, Kasowitz Benson Torres & Friedman LLP has cemented its spot as a go-to litigation firm in the banking industry and earned a place among Law360's Practice Groups of the Year.

In 2016, the firm settled several CDO investor cases favorably on behalf of Loreley Financing after securing a big win at the Second Circuit, which established the standards for loss causation on purchased securities in a market-wide collapse. Loreley Financing had lost billions in the 2007 collapse of the residential mortgage market and had sued a number of banks, including Deutsche Bank, Wells Fargo, UBS and others. Some of the suits are still ongoing, according to the firm.



At the appeals court, the firm made the argument that even sophisticated investors like Loreley can be defrauded, according to partner Sheron Korpus.

"In those cases, the arguments made by the defendants were that they know better than anybody how the marketplace works," he said. "We argued that that doesn't protect you against falsehoods, and that boilerplate disclosures do not insulate them from responsibility for lies that could not be discovered with due diligence."

The firm also defended European bank UniCredit against racketeering and fraud claims over the bank's participation in financing illegal tax shelters that it had admitted to in a deferred prosecution agreement with the U.S. Department of Justice. The bank was doing poorly in about 20 such suits around the country when Kasowitz was brought in to turn it around.

Partner Mark Ressler called it "an all hands on deck situation" that worked out in UniCredit's favor; some suits were dismissed on summary judgment, while others were settled out on good terms after a favorable Ninth Circuit ruling.

"To UniCredit's credit, they really drew a line in the sand and said they didn't want to settle," Ressler said. "They gave us free rein to go fight these cases. It was a bold strategy, and we got a ton of these cases dismissed and some were settled for a fraction of the claims."

The more than 300 attorneys in the firm are all litigators, which means they're not constrained by the conflicts that come with a corporate practice.

"Because we don't have a traditional corporate transactional group, we don't represent the money center banks, so we can sue those banks, and we often do so on behalf of hedge fund and private equity clients," Ressler said. "I think we're one of the very few firms that can play in that space."

But they do still represent large international banks, such as UniCredit, which is the largest bank in Italy, Bavaria and Poland.

"What makes us unique in this field is we represent plaintiffs and defendants in banking litigation," Korpus said.

In October, the firm helped settle another dispute on behalf of ACA Financial Guaranty Corp., which had sued Goldman Sachs for fraud and unjust enrichment in connection with a synthetic CDO known as Abacus 2007-AC1. The \$120 million suit was dismissed at the intermediate appellate court in New York before being reinstated by a higher court, which put the company in a good position for settlement negotiations. The parties settled in a confidential deal in October.

"Last year we got a bunch of great settlements, not a bunch of trial wins, but that sometimes is a byproduct of doing a great job in discovery," partner Michael Hanin said. "For complex litigators, we do try cases a lot, more than most litigation firms, but in banking, those cases tend to settle."

For the attorneys at Kasowitz, the focus is litigation, and the attorneys are all proud that they are general litigators who can move from one industry to another, according to Korpus. They're just litigators who happen to do a lot of work in the banking industry.

"Whether we call ourselves banking litigators or trial lawyers, it's just a label," he said. "We have a lot of expertise in financial disputes simply by being where we are and the work we're involved in."

--Editing by Philip Shea.