

## Securities MVP: Kasowitz's Marc Kasowitz

By **Eric Hornbeck**

*Law360, New York (November 15, 2013, 3:26 PM ET)* -- Kasowitz Benson Torres & Friedman LLP managing partner Marc E. Kasowitz has made a career out of beating big banks, and this year was no different as he fended off banks' challenges to troubled bond insurer MBIA Inc.'s restructuring and locked down settlements for the Federal Housing Finance Agency to earn him a space among Law360's MVPs.

Known for his signature white hair and dramatic courtroom presence — he famously blasted banks' "chutzpah" during the trial that led to MBIA's victory — Kasowitz's role at his eponymous law firm is more visible than most managing partners, shirking a behind-the-scenes administrative role in favor of serving as his clients' very effective courtroom advocate.

"Primarily my role is to act as the main sort of trial lawyer for the firm. It's a challenge but it's a challenge that I like," Kasowitz told Law360.

Kasowitz had his work cut out for him in MBIA's case. Working with New York's Department of Financial Services, he had to defend the insurer from a challenge by Bank of America Corp. and Societe Generale SA to MBIA's \$5 billion restructuring during the financial crisis, a move that had saved the insurer but cost the banks lots of money.

MBIA, long a municipal bond insurer, had branched out into insuring banks' complex structured finance bonds in the years before the financial crisis, including notorious mortgage-backed securities. When the housing market collapsed, so-called monoline insurers like MBIA faced staggering pressures as the payouts to policyholders under structured finance policies metastasized.

Some monolines, such as Ambac Financial Group Inc. and Financial Guaranty Insurance Co., were forced into bankruptcy or rehabilitation proceedings when the problems got to be too much. But MBIA had a different solution. The head of the state's insurance department at the time, Debevoise & Plimpton LLP's Eric R. Dinallo, approved a shuffling of the insurer's assets that insulated MBIA's viable municipal bond insurance business from its tanking structured finance business.

An army of some 18 banks cried foul, saying that the transaction was illegal. They sued MBIA directly and also attacked the state's blessing of the restructuring with what's known as an Article 78 proceeding, which allows challenges to state agency decisions. But most such cases involve things like a state employee challenging termination, not multibillion-dollar restructurings.

"It was a very unusual Article 78 proceeding in that most are relatively quick, and there's relatively little discovery," Kasowitz explained. "In this case there was very extensive discovery over three years starting from when the case began in June 2009 until the case went to this extended hearing in May and June of 2012."

Judge Barbara R. Kapnick, who oversaw that weeklong "glorified oral argument," often herself lamented the lack of precedent for such a huge Article 78 case. Although all the banks save Bank of America and Societe Generale had settled out by the time it reached the hearing, Kasowitz still had a tough fight as he faced the banks' attorney, fellow Law360 MVP Robert Giuffra of Sullivan & Cromwell LLP.

In March, Judge Kapnick handed Kasowitz a complete victory, finding that the state's insurance department had done nothing wrong by giving its blessing to MBIA's restructuring. The judge said that it didn't matter if the banks thought another way of overhauling MBIA would've been better since no state law prescribed how the insurance department reviewed such applications.

Within a month, the banks threw in the towel. Societe Generale reached a \$350 million settlement with the insurer while Bank of America inked a \$1.7 billion settlement that also ended another lawsuit MBIA had filed against Bank of America over alleged fraud in the securities it had insured. With Kasowitz's help, MBIA's municipal bond insurance business was able to emerge intact from the financial crisis.

"My greatest gratification as a lawyer is to find effective and creative and successful results for our clients. I think that's a reason our firm has grown so much and done so well," Kasowitz said.

That aggressive and creative attitude has helped another Kasowitz client in its own crusade against large banks: the FHFA, which oversees the government-backed housing giants Fannie Mae and Freddie Mac. The federal agency has leveled its guns at a host of banks, accusing them of lying to Fannie and Freddie about the quality of the mortgages it sold them.

The FHFA has now notched some important victories. First, Kasowitz fended off motions to dismiss the FHFA's cases from a Societe Generale SA unit and other big names, with a federal judge finding that the agency had backed up its claims that the banks had misrepresented various aspects of the mortgages that made up the loan pools.

Then, he helped the FHFA reach its first settlement of its bank cases, inking a deal with General Electric Co. in January. Since then, other big names have settled too, including UBS AG in July and JPMorgan Chase & Co. just a few weeks ago.

Kasowitz's docket is still full, with more FHFA cases pending and other notable cases, such as another monoline insurer's challenge to a notorious Goldman Sachs & Co. securities deal known as Abacus, still churning. They're battles Kasowitz no doubt relishes fighting for his clients.

--Editing by Katherine Rautenberg.