

Structured Finance Group Of The Year: Kasowitz

By **Sierra Jackson**

Law360 (December 17, 2020, 3:41 PM EST) -- Kasowitz Benson Torres LLP scored three major wins for holders of more than \$1.4 billion in notes issued by the National Collegiate Student Loan Trusts and played an innovative trump card in its representation of an investor who accused Valeant Pharmaceuticals of securities fraud, earning the firm a spot among Law360's 2020 Structured Finance Groups of the Year.

Partner and litigator Michael Hanin said Kasowitz' ability to cooperate with both sides of a structured finance deal — with investors on one side of the table and trustees, administrators and servicers on the other — was key to helping his team secure favorable rulings in the National Collegiate Student Loan Trusts cases.

The 800,000-student-loan venture has faced escalating court battles over how the collections of student loans that are used as collateral for the notes, or loan trusts, were managed.

Most of the interests in the venture were owned by Donald Uderitz's Vantage Capital Group. In 2016, the group's affiliates tried to install a new loan servicer by accusing the overarching administrator for National Collegiate's trust portfolio of mismanagement that left billions of dollars in assets uncollectible.

A Delaware federal court ruled in favor of Hanin's clients in May when it rejected a proposed settlement between the Consumer Financial Protection Bureau and Uderitz over the litigation.

The last two wins occurred back to back in August, when the Third Circuit decided that the trusts' owner failed to obtain the noteholders' approval before hiring a new loan servicer. A Delaware vice chancellor then found eight days later that noteholders were also owed fiduciary duties, which would have obligated the loan enterprise's founder and owner to protect the noteholders' interests.

The wins also earned Hanin recognition as one of Law360's 2020 Structured Finance MVPs.

Hanin said the rulings upheld the "sanctity of securitization collateral" by assuring noteholders that the assets collateralizing their investments have to be preserved for their benefit. He added that his firms' leading role in the cases was a testament to the confidence the market has in its work.



"Our deep connections and relationships in the hedge fund world allowed us to put together a group of four distinct investors, each of whom knew us and trusted us to take the lead on a case as important as this," Hanin said. "I think our reputation and the successes that we've had in the structured finance space led other investors to sit on the sidelines and allowed our group to do the heavy lifting."

The firm made waves in its co-counseling of pension fund Public Employees' Retirement System of Mississippi, or Mississippi PERS, in its shareholder suit accusing Valeant Pharmaceuticals of inflating drug prices and using secretly owned pharmacies to quiet pushback from physicians and patients. Those allegations also formed the basis of a multibillion-dollar securities class action and several other investor suits.

Partner Stephen Tountas said his team strayed from the playbook to differentiate the pension fund from the other disgruntled investors by bringing claims under the New Jersey Racketeer Influenced and Corrupt Organizations Act — positioning Mississippi PERS to potentially receive damages triple the compensatory damage amount. The New Jersey RICO Act is the only variant broad enough to cover securities fraud claims, Tountas said.

"When we filed that complaint, most folks in the industry thought we were crazy," Tountas said. "Not only did we get it passed the motion to dismiss, but the proof was in the pudding when days after us filing it and getting some successful results out of it, our key competitors ... started filing copycat complaints."

He added that when the class action settled for \$1.2 billion in December 2019, Mississippi PERS and some of the firm's other clients managed to secure their own confidential settlements in June, even as other cases against the pharmaceutical company continue.

And the input of other Kasowitz attorneys who had experience with New Jersey RICO cases, close relationships with funds that had faced substantial losses and bankruptcy knowledge — as Valeant was at risk of insolvency — was "critical" to shortening the litigation process, Tountas said.

Although the structured finance practice has roughly 20 lawyers, a Kasowitz representative said, many of its attorneys sharpened their skills in the aftermath of the 2008 financial crisis when the firm began to shift its focus to structured finance litigation. The practice is based out of the firm's New York office, though it's involved in ongoing litigation around the country. The firm counts more than 250 attorneys overall, according to its website.

Other cases the practice has worked on include its advising of U.K.-based Astra Asset Management in a multimillion-dollar proceeding against Goldman Sachs over allegations the financial services giant was trading the assets serving as collateral for a debt obligation in a way that benefited the company but put investors at increased risk. The case later settled for an undisclosed amount in October 2019, the day before the trial was slated to start.

The firm also successfully defended Howard Meyers — the founder and major investor behind lead production giant and battery recycler Eco-Bat — against investors' accusations of mismanagement and fraud over a loan Meyers' holding company had sold them. A settlement was later confirmed in October 2019.

Kasowitz partner Uri Itkin, who also worked on the student loan trusts and Astra Management cases, said that along with representing clients in litigation proceedings, the practice's members also advise

them on how to avoid or handle pitfalls they may face in pursuing new investments and deals.

"We have such strong relationships because we really do focus on getting clients results, not getting into drawn out litigation or any other kind of motives," Itkin said. "We value those types of matters and those types of assignments just as much as the things that we're able to accomplish in public in the courts, and I think our clients value that as well."

--Additional reporting by Jeff Montgomery, Dean Seal and Jeannie O'Sullivan. Editing by Nicole Bleier.