



LITIGATION DEPARTMENT OF THE YEAR: FINANCE

## KASOWITZ BENSON TORRES

**Q&A** **What are some of the department's most satisfying successes of the past year and why?** We obtained several significant wins—including two in the span of a week—on behalf of leading investment managers holding over \$1.4 billion in notes issued by the National Collegiate Student Loan Trusts in groundbreaking litigations concerning the management and control of the Trusts. In these cases, that we lead, the Trusts' owners have attempted to seize control of the Trusts in violation of the Trust Documents. Our successful rulings established protections that will help ensure the stability of the \$10 trillion securitization market for investors. Among other victories, on August 19, we prevailed on a key appeal when the Third Circuit, issued a precedent-setting opinion, in favor of our clients, by invalidating an attempt by the Trusts' owners to install their own affiliate to service and sell the Trusts' loans. And, then on August 27, the Delaware Chancery Court issued a groundbreaking decision clarifying that the Trusts' owners owed fiduciary duties to our clients and other investors when fulfilling any obligations concerning the student loan collateral.



From left to right: Stephen W. Tountas, Uri A. Itkin, Marc E. Kasowitz, Kenneth R. David, Michael A. Hanin, Sheron Korpus. Partners at Kasowitz Benson Torres

Our \$600 million win for MBIA, led by our partners Marc Kasowitz and Kenneth David, after 10 years of litigation capped by a two-week trial, in a put-back action against Credit Suisse, was also a tremendous achievement. The court found that MBIA had convincingly proved that Credit Suisse breached its representations and warranties, and that Credit Suisse was liable for over \$600 million in damages, one of the very few such actions to go to trial. Following the victory, Credit Suisse paid \$600 million to MBIA to resolve the matter.

Our opt-out practice, led by partner Stephen Tountas, has been booming. We filed a highly publicized case on behalf of Public Employees' Retirement System of the State

of Mississippi against Valeant Pharmaceuticals, where we developed a pioneering strategy to pursue opt-out claims under the New Jersey RICO act. We also serve as lead counsel to Catalyst Mutual Funds and as local counsel to Northwestern Mutual, Boeing, and Privet Capital. In 2020, Mississippi PERS and Catalyst Mutual Funds settled their lawsuits confidentially. Discovery is ongoing with respect to Northwestern Mutual, Boeing, and Privet Capital.

**A prospective client in crisis calls and asks why your team should be retained. What is your answer?**

While we have a reputation as aggressive litigators, we are also creative, commercial, and pragmatic problem solvers. We come up with strategies that others miss, either to resolve disputes before they see a courtroom or to frame them in a way that will position our client to win when we do get to court.

We also have a highly effective team. We staff our matters leanly with experienced lawyers who are steeped in the facts and the law. This approach engenders multiple levels of

scrutiny—from the most junior associate to the most senior partner. The value we add in the financial sector is second to none.

**What traits do you respect most in opposing firms and lawyers?** Not surprisingly, we respect opposing lawyers who are aggressive and push their clients' interests. But we are all seeking the best result for our clients, so we value cooperation, constructive dialogue, and the ability to understand that you do not need to win every battle to win the war.

**What is the firm doing to ensure that future generations of litigators are ready to take the helm?**

Our junior lawyers get extensive experience early on. Reaching senior associate level without taking a deposition, without appearing in court, without interacting with clients, and without meaningfully contributing to strategy discussions is an unfathomable experience at our firm.

*Responses prepared by **Michael A. Hanin** and **Uri A. Itkin**, partners at Kasowitz Benson Torres.*