

Class Action Group Of The Year: Munger Tolles

By Jeremy Heallen

Law360, Houston (January 13, 2014, 9:37 PM ET) -- By developing customized solutions to unique problems, Munger, Tolles & Olson LLP beat back litigation in 2013 seeking billions from Philip Morris USA, Bank of America Corp. and Transocean Ltd., earning it a spot among Law360's Class Action Practice Groups of the Year.

The Ninth Circuit handed Munger Tolles clients Bank of America and Wells Fargo Investments LLC a big win in April, when it affirmed the dismissal of four class action suits accusing the banks of improperly blocking employees from trading securities using the services of other financial firms, saying the claims were preempted by federal law.

The plaintiffs alleged they were not only forced to trade in-house but also had to pay the standard retail fees when they filed their actions in the summer of 2010. Arguing that federal law requires brokerage firms to protect against trading abuses, Munger Tolles convinced the federal appeals court that the employees' state law claims alleging violations of the California Labor Code were preempted.

Munger Tolles partner Greg Stone said that the firm's successful defense of class actions often turns on putting plaintiffs on the defensive early and using unique arguments that fit the facts of a given case, as it did for the banks.

"We try to approach every case from a fresh perspective," he said. "We don't try to go in and say 'we've done it this way in the past so we can do it the same way again.'"

That strategy served Transocean Ltd. well in August, when it defeated shareholder derivative litigation on the grounds that the case should have been brought in Switzerland, where the company is headquartered.

The suits, which alleged the company's board of directors misled the public about serious dangers associated with the Deepwater Horizon rig before it exploded in 2010, asserted a loss to shareholders of \$13.7 billion in the aftermath of the accident.

By combining its knowledge of class action procedure with the substantive expertise of lawyers steeped in Swiss law, the firm prevailed on a rarely granted motion to dismiss on the grounds of "forum non conveniens," Stone said.

In September, Munger Tolles successfully deflected a class action seeking up to \$1 billion in damages

from Philip Morris USA for alleged violation of California state laws in the marketing of Marlboro Lights.

The massive proposed class, which comprised all California smokers of Marlboro Lights cigarettes over an eight-year period, had claimed that Philip Morris had falsely advertised the cigarettes as less addictive than Marlboro Reds.

Munger Tolles employed an innovated procedure to defeat the suit and “unmask” the voices of the majority of the plaintiffs, according to Stone.

By deposing a sample of 156 individual class members, the firm was able to prove that the plaintiffs were not misled and would have bought Marlboro Lights regardless of the advertising.

In his decision denying restitution to the class, California Superior Court Judge Ronald S. Prager described the results of a survey conducted by the plaintiffs’ expert as “nonsensical” in light of the plaintiffs’ testimony, among other things.

"The ability to present class evidence was an incredibly useful tool that helped win the case at the end of the day," Stone said.

And in November, Munger Tolles came through once more for Bank of America and its senior executives who were fighting a class action alleging the bank should have warned investors before American International Group filed a \$10.5 billion mortgage-backed securities fraud suit against the financial institution.

AIG sued Bank of America in August 2011, claiming the bank had lied about the viability of \$28 billion in residential mortgage-backed securities it purchased from the bank. BofA's stock plummeted about 20 percent after the lawsuit was announced.

Investors led by Camcorp Interests Ltd. then sued Bank of America, alleging the bank and its senior management had engaged in a fraudulent scheme to conceal the possibility that AIG might sue it by making general statements about the risks of MBS suits without naming the insurer directly.

In dismissing the complaint, U.S. District Judge John G. Koeltl ruled that Bank of America had provided sufficient notice of the potential litigation and enforcement actions related to mortgage-backed securities that the bank and two of its subsidiaries — Countrywide Financial Corp. and Merrill Lynch — had issued prior to the financial crisis.

There were also sufficient media reports about the potential size and scope of AIG's legal action against Bank of America for reasonable investors to know that the bank could be on the hook for as much as \$10 billion, the judge found.

--Additional reporting by David McAfee, Evan Weinberger and Matthew Heller. Editing by Philip Shea.