

Securities Group Of The Year: Cleary

By **Dean Seal**

Law360 (January 15, 2019, 3:44 PM EST) -- Cleary Gottlieb Steen & Hamilton LLP earned victories in some of 2018's most high-profile cases, settling landmark securities litigation over the Petrobras scandal and defeating an attempt to strip voting control from CBS Corp.'s parent company, earning it a spot among Law360's Securities Practice Groups of the Year for the second year in a row.

The firm kicked off 2018 by delivering a preliminary settlement in New York federal court three days into the new year to resolve yearslong litigation between investors and Brazilian oil giant Petrobras over the corruption scandal that sent the prices of its securities tumbling.

The agreement would have Petrobras pay \$2.95 billion — the largest U.S. securities class action settlement in more than 10 years, but a far cry from the \$15 billion investors sought in damages and a deal that seemingly resulted in an uptick in the company's stock price.

The settlement, granted final approval in June, closed out what had been a headline-grabbing saga that garnered international attention.

But Cleary partner Meredith Kotler said it's not uncommon for the firm to take on "high profile, bet-the-company, unusual, thorny, novel cases."

In one such case in May, CBS Corp. and five directors asked the Delaware Chancery Court to keep Shari Redstone from interfering with their plan to deflate her voting power in response to fears that she would try to force the broadcast network into a merger with Viacom Inc.

On May 14, the board filed suit and requested an injunction barring Redstone, who is vice chair of both the CBS and Viacom boards and who controls the companies through National Amusements Inc., from interfering with a proposed dividend issuance that would dilute her 80 percent voting stake in the company down to 20 percent.

Kotler and her Cleary team got straight to work on Redstone and NAI's behalf, going before Chancellor Andre G. Bouchard two days later and ultimately defeating the restraining order. Less than two weeks later, NAI filed its own suit claiming the dividend was unjustified, should have required a supermajority



vote to have been approved and that CBS breached its fiduciary duties by attempting to strip Redstone's voting power.

The dueling complaints received an Oct. 3 expedited trial date, launching the parties into a summer of "full-on, aggressively contested" discovery, Kotler said.

"This was the kind of case where every issue, large and small, was contested — from the legality of the dividend to the privilege assertions over documents to the search terms we were using in discovery to the way people maintained documents," she said. "It was very talented, very aggressive lawyers on both sides. Given the novelty of this and the high stakes, nothing was left to chance."

The CBS case, brief as it was, again had the firm catching media attention. In addition to the business press following developments, celebrity news outlets had their eyes on the Redstones while the media industry press covered updates on CBS.

"You name it — whatever came up, whether it was a fight over privilege designation, a fight over evidence exclusions — everybody wanted to cover it," Kotler said.

"And everyone had an opinion about how things were going," Cleary partner Roger Cooper said.

Like in Petrobras, Cleary counsel were vigilant in engaging with the media attention, but kept their focus on preparing a case that would convince Chancellor Bouchard that CBS's actions were as unlawful as they were unprecedented.

Less than a month before trial, and closely following the resignation of CBS Chairman and CEO Leslie Moonves amid sexual misconduct allegations, the parties reached an agreement that rescinded the dividend, retained Redstone's voting control and replaced six members of the CBS board.

"We were obviously fighting aggressively and wanted to finish this in a way that was most advantageous to NAI," Kotler said of the settlement. "The fact that we were able to achieve those ends through the resolution is even better, and quicker, but you achieve that by doing the work: being very aggressive, pushing on issues and creating your record."

Less than a week after what would have been the CBS/NAI trial, Cleary scored another victory when the Delaware Supreme Court affirmed a February win in Chancery Court for baby formula maker Synutra International Inc.'s special committee in fending off litigation over a \$125 million buyout.

The case raised an issue of first impression over the interpretation of a 2014 Delaware Supreme Court ruling, known as the M&F Worldwide decision, that laid out conditions for establishing good faith in a take-private transaction. Cleary successfully argued that these conditions had to be met before any economic negotiations for the transaction take place, rather than at the initial offer, thus clarifying an otherwise unsettled area of law.

Working in unprecedented territory, whether in the public eye, a narrow time frame or both, has been a common theme for Cleary, especially in the past two years. According to Cooper, 2019 is set to bring its own spate of challenges and novel concepts, but Cleary's bench of more than 1,300 lawyers from over 50 countries is gearing up to take them on head first.

"The things we've been working on really reflect the diversity of our practice and the versatility of our lawyers here," Cooper said. "The profile of cases is different from last year, but if you look at them together you really see the broad reach of our practice."

--Editing by Nicole Bleier.

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