

Securities MVP: Cleary Gottlieb's Lewis Liman

By **Dietrich Knauth**

Law360, New York (November 18, 2013, 7:17 PM ET) -- Cleary Gottlieb Steen & Hamilton LLP's Lewis Liman handed the U.S. Securities and Exchange Commission its most significant legal defeat in 2013, winning a U.S. Supreme Court ruling that prevented the SEC and other federal regulators from extending the five-year time limit for enforcement actions, earning a place among Law360's MVPs for securities law.

In *Gabelli v. SEC*, Liman represented two Gabelli Funds LLC officials, Marc J. Gabelli and Bruce Alpert, accused of market timing violations that occurred more than five years before the SEC filed suit. In February, the U.S. Supreme Court unanimously ruled against the SEC and overturned an influential Second Circuit ruling, finding that the SEC's five-year window for filing civil enforcement actions seeking penalties begins not when the agency discovers an alleged fraud, but when the fraud itself occurs.

The 9-0 decision was a sharp rebuke to the SEC, as the court found that a federal agency with investigative authority did not deserve the kind of "discovery rule" used by private plaintiffs without the resources to investigate potential scams. But Liman said he never anticipated that kind of blockbuster appellate decision when he began working on the case during the SEC's investigation of Gabelli.

"My hope at that point was that the case would end with the investigation, and without any charges being brought," Liman said. "We won the issue of penalties and statute of limitations in district court, and I was hopeful it would have ended there, or that that ruling would have been affirmed by the Second Circuit."

Gabelli v. SEC was a good showcase for the creativity, persistence and sound judgment that characterize Liman's legal work, according to Michael R. Lazerwitz, Liman's fellow partner at Cleary Gottlieb.

"He thinks ahead very carefully and sees a case from all different angles, which is very helpful to a client in the long run," Lazerwitz said.

The case was Liman's first argument before the Supreme Court, and he made the most of the opportunity, winning a decision that has been celebrated by the defense bar and has already been cited in new case law that has thus far taken a narrow view of the types of fraudulent concealment that could extend the government's enforcement timetable. Liman handled the Supreme Court oral argument with aplomb, Lazerwitz said.

"You would never have guessed it was his first argument," Lazerwitz said. "He acted like a true veteran."

Getting the Supreme Court to take the case was a challenge, and Liman said he was grateful for the trust and support of his clients, who could have walked away after losing in the Second Circuit, rather than risk the delays and costs that could have come with a Supreme Court loss. He also said he was grateful for the opportunity to argue before the Supreme Court, which accepts only a tiny fraction of the cases presented to it each year.

“One thing that I think we did very well, in terms of trying to get the Supreme Court to hear the case, was to make clear the ramifications that the rule that the SEC was arguing for would have on really everybody who was regulated by a federal regulatory agency,” Liman said. “We had to make clear that what was at stake was something far more than the outcome of Mr. Gabelli's case, but a much broader principle.”

While Liman was always confident that the law was on his client's side, there was precedent in the Seventh Circuit that supported the SEC's argument for delaying its deadline, and the government presented a formidable foe in litigation.

“Whenever you have the government on the other side, you face something of an uphill battle,” Liman said. “While I was confident the law was on our side, I had to be realistic about the fact that the court might not accept the argument.”

The ruling will solidify the five-year statute of limitations in effect for government attempts to enforce civil penalties, and could shape the legal landscape for financial fraud cases for years. Over a third of SEC enforcement actions are not filed within the five-year window enforced by the Supreme Court decision, which will require the SEC to quickly address its backlog of existing investigations and likely result in the SEC focusing its attention on more current cases, according to Cleary Gottlieb.

While the Gabelli case has earned most of the attention for Liman, he worked a number of other high-stakes and high-profile cases in 2013, with clients including Sanofi-Aventis, Bank of America Corp., Goldman Sachs Group Inc., The Bank of New York Mellon Corp., IMAX Corp., The Bear Stearns Companies Inc. and Pall Corp. He successfully defended Bank of New York Mellon in a class action brought by investors in foreign investment funds that invested money with Bernard L. Madoff Securities LLP, and secured a Second Circuit decision affirming the dismissal of the case on Sept. 16.

Besides his successful securities work, Liman has also been active in pro bono litigation, and he serves as the chair of the Public Service Committee of the Federal Bar Council. He is also a director of the New York Legal Assistance Group, and is representing death row inmate Donald Fell in an ongoing effort to overturn Fell's 2005 death sentence on capital murder charges.

--Editing by Edrienne Su.