ALM | LAW.COM

THE AM LAW LITIGATION DAILY

Litigators of the Week: A Trial Win for CME Group in Class Action Brought by Pit Traders

By Ross Todd
August 1, 2025

Our Litigators of the Week are **Albert Hogan**, **Marcella Lape** and **Manuel Cachán** of **Skadden, Arps, Slate, Meagher & Flom**, who represented exchange operators CME Group Inc. and The Board of Trade of the City of Chicago Inc. in a class action brought on behalf of pit traders who claim they were inappropriately cut out of the profits from the shift toward electronic trading.

Traders sued in 2014 soon after CME opened a data center for electronic trading in the Chicago suburb Aurora, Illinois, that they contended acted as the exchange's new trading floor. They were seeking about $2 billion in damages.

After three weeks of trial and less than a day of deliberations, jurors in Cook County Circuit Court found that the plaintiffs hadn't shown that CME breached the charter agreement that transformed the exchanges.

Lit Daily: Who were your clients and what was at stake?

Marcie Lape: Our clients in this case were CME Group, Inc. and the Board of Trade of the City of Chicago Inc. Practically, the entities at issue were the two derivatives exchanges: the Chicago Mercantile Exchange and the Chicago Board of Trade. Both of those institutions are iconic fixtures in Chicago, around since the 1800s. Historically, they were competitor exchanges but today are part of the CME Group.

Courtesy photos

(l-r) Albert Hogan, Marcella Lape, and Manuel Cachán of Skadden, Arps, Slate, Meagher & Flom.

Al Hogan: The case was brought by a class of individual "Members" of both exchanges. Historically (and even today) Members had exclusive access to the open outcry trading floors. If you think about open outcry trading and the image of people standing on a floor engaged in a process of barely controlled chaos to trade futures contracts, that was the essence of the exchanges in the last century. But this century has seen a dramatic shift to electronic trading. In this case, the Members claimed

that their exclusive trading floor access rights extended to a co-location center opened by the exchanges in 2012.

Manuel Cachán: At a fundamental level, it was a challenge to the way that CME and CBOT have structured themselves in the modern world of futures exchanges. Rather than a level playing field for all market participants, the plaintiffs were claiming that they alone as Members had access to the low-latency connection point for trading on the exchanges.

Lape: That is right. The CME Group today strives to provide markets defined by a level-playing field with equal access for any market participant who wants it. The plaintiffs in this case wanted Members to control a critically important point of access to the CME and CBOT marketplace.

How did this matter come to you and the firm?

Hogan: Skadden has been fortunate to work with CME for more than 20 years. I was lucky enough to become involved with them fairly early in that relationship. In the year before this case was filed, Marcie and I handled another case brought by certain Members that involved the transition from open outcry trading to electronic trading. So we had a good understanding of the business and the structure of the exchanges, as well as the Members' rights in the electronic world.

Lape: We had worked so closely with the lawyers at CME and the top executives on that prior case that we really were a natural fit for this case. We are exceptionally grateful they asked us to take this one on as well.

Who all was on your team and how did you divide the work?

Hogan: This case was filed in 2014, so over 11 years the team has transitioned quite a bit. Marcie was there with me from the start and has been the field general directing things throughout. One of the big challenges was capturing the knowledge of team members who came and went, and Marcie managed that process wonderfully.

Lape: As we started gearing up for trial, in addition to the two of us we asked **Amanda Brown**, who had been on the team for several years and is now our partner as well, to get ready to be part of the presenting team for court. Manuel was the last piece of the puzzle, joining the team earlier this year with significant jury trial experience.

Cachán: I was excited to jump on board, even though I was just coming off a three-and-a-half month products-liability/mass tort trial in Seattle and could honestly have used the rest! The chance to try this case with this team, and to work with this client, were simply too compelling to pass up. From Al and Marcie's perspective, they were looking for someone with lots of jury-trial experience who could bring a fresh perspective and help frame the case for a jury.

Lape: The list of people who helped this effort is extremely long. A few, in no order of seniority, are Amanda Brown, **Brian O'Connor**, **Elizabeth Simon**, **Clare Lilek**, **Meg Grismer**, **Kristin Cobb**, **Allison Jenkins**, **Yana Kogan**, **Amy Van Gelder**, **Zachary Martin**, **Jordan Blain** and **Annaliese Thomas**. We also were fortunate to have veteran trial attorney **Matt Regan** join our partnership shortly before trial. He offered invaluable strategic guidance leading up to and throughout trial.

Describe the "demutualization" at the heart of this case. What were the key points of that deal from your clients' perspective?

Lape: CME and CBOT each transformed from not-for-profit entities governed by their Member-owners and operated for their collective benefit into for-profit companies controlled by management for the benefit of their shareholders—who, at the outset, were the Members themselves. The transactions were driven by the rapid rise of electronic trading in the late 1990s, which

introduced unprecedented competition. The old mutual company governance structure simply could not keep pace with the rapid changes reshaping the industry at that time.

Hogan: At the time, both exchanges viewed the competition from electronic exchanges as existential threats. Demutualization was key to allowing the exchanges to not only be able to compete, but to survive.

Cachán: We were able to bring that story to life for the jury. The evidence about the competitive challenges the exchanges were facing at that time, and how demutualization was the answer, was powerful. Keep in mind also that, unlike in most breach-of-contract cases, the contract terms had actually been presented to members not just in writing, but in a formal presentation that was captured on video. So jurors were able to metaphorically be "in the room" where the contract was presented and could see exactly what members had been told.

How did the nature of the class members here—former floor traders—help your defense? Mr. Hogan, I read where you said in closing: "Do you think they're the kind of people that would let management folks run them around?"

Hogan: It was actually not just the class members' status that mattered, but also the leaders of the CME Group today. Terry Duffy, the current chairman and CEO, and Charlie Carey, former CBOT chairman and current board member, are also both Members. They came from the floor, from the pits. I think when the jury saw them testify they understood that these guys were not part of some scheme to harm the Members. They were Members themselves, who had acted for the benefit of Members.

Cachán: The jury understood that this case involved sophisticated, savvy investment professionals on both sides. Most of the plaintiffs who took the stand had been traders for years. They knew finance and clearly understood contracts. This was not your typical "Little Guy v. Big Corporation" case.

The underlying deals date back to 2000. The complaint was filed in 2014. The case just now went to trial. What accounts for those gaps?

Lape: This case went through three different trial court judges and involved extensive motion practice, both at the outset and again during the class certification stage. The effort on discovery was substantial, encompassing the review and production of millions of pages of documents spanning nearly two decades, depositions of more than 50 fact witnesses and the engagement of nearly a dozen retained experts.

Hogan: The plaintiffs' counsel are exceptionally skilled and so it was just a hard fought case throughout. It was very professional and civil among us, but very hard fought. And, not to mention, in the middle of discovery COVID happened, which definitely added substantial time to the case as we all figured out how to do a case under those circumstances.

What were your key trial themes and how did you drive them home with the jury over the three weeks?

Cachán: Two powerful trial themes were, first, that demutualization was a deal created by Members themselves, for Members, and approved overwhelmingly by the Membership. A second simple, but powerful theme was that you have to live with the deals you make. The plaintiffs were floor traders who in their day-to-day jobs did good deals on the floor some days and bad deals on others. But they had to concede on cross-examination that you don't get to undo a deal because the outcome wasn't what you'd wanted. That theme dovetailed well with the broader idea that contracts freely entered into

must be honored.

Lape: It was also critical to explain that the demutualizations drew a deliberate and meaningful line between the old open outcry system and the new world of electronic trading systems. The transactions were prompted by the need to compete in the emerging electronic world. The plaintiffs' claims in this case essentially sought to take their rights and, really, their roles in the old system and impose it on the new system. It was exactly the opposite of what the demutualizations were designed to do.

Given the size of the plaintiffs' damages ask, did taking the position that there were zero damages feel like a risky position?

Hogan: I think, when representing a defendant, any time you choose to not put up an alternative damages model, you have some tough discussions about the risks of that strategy. In this case, the bottom line is that we felt that we needed to convey an absolute conviction in the correctness of our view of the merits. And because we did believe in our view, absolutely, it didn't feel as risky as it might seem.

Cachán: I agree with that. In some ways, to Al's point, it might have been more risky to present a damages number, inviting a compromise verdict, than it was to tell the jury that the correct measure of damages was zero because the plaintiffs' position on the contract was just dead wrong.

Something I learned reading about this case: Open-outcry trading is still ongoing today at the Board of Trade building. What's being traded that way and at what volumes? Did that point help you at all?

Lape: I think that point was very helpful. It was a fact that we waited to unveil until the middle of trial as something of a surprise twist for the jury. Today, more contracts are traded in the SOFR options pit (options on the Secured Overnight Financing Rate) than were traded on the entire floor of the CME at the time of demutualization, as a matter of average daily volume. It is an astounding fact, and after explaining it we were able to show the jury that the Members have truly lost nothing from the original deal of demutualization.

Hogan: Totally agree. It was a very powerful fact that planted our case on the high ground of the story. The CME and CBOT have lived up to their commitments all around, including by continuing to support a thriving open outcry market in an otherwise all-electronic world.

What will you remember about this matter?

Cachán: The team I was in the trenches with is what I'll remember most, including, especially, Amanda Brown, who examined several witnesses and who I was able to work with for the first time, and Kristin Cobb, who has worked alongside me for every trial I've been on since arriving at Skadden. This was a special group, who I'll miss.

Lape: This case will always be memorable to me, not just for the outcome, but for the journey shared with the client and the Skadden team along the way. Despite the long hours, intensity of trial and tough decisions we had to make, the entire team pulled together, supported each other and managed to share quite a few laughs along the way.

Hogan: I'll remember how so many Skadden lawyers took this case to heart as their own, and added value in so many ways to get us to a great result for our client. This team lived and died with this case, and it was the honor of a lifetime to be able to do it with them.