

MVP: Skadden's Jay Kasner

Law360, New York (December 14, 2017, 9:05 PM EST) -- Skadden Arps Slate Meagher & Flom LLP partner Jay Kasner's successes for a broad range of clients, from industrial giants and technology businesses to the global financial institutions that underwrite their securities, earned him a spot on this year's list of Law360 Securities MVPs.

HIS BIGGEST CASE OF THE YEAR:

Perhaps Kasner's highest-profile role was his advocacy before the Second Circuit for Citigroup, JPMorgan Chase & Co. and other underwriters of \$20 billion in Petrobras bonds in a pair of class actions brought by investors in the Brazilian energy giant. The global nature of the bond market makes it hard to determine where a transaction takes place, a vital question that raised too many questions for classes that had been certified to move forward, the court concluded.

While the decision didn't go as far as Petrobras and its underwriters would have liked, it could affect billions in transactions worldwide, Kasner said.

"What happens if you call your broker in the United States while you're in London [and tell him to buy securities]? Did you become irrevocably bound in London or New York? Where did title pass?" he said. "The Second Circuit has now ruled in this case that those kinds of inquiries raise individual issues. ...Then the question becomes: Do those individual issues predominate?

Are they more important [than] the common issues that would apply to everybody? That becomes very significant because the average investor has no clue where title passed."

OTHER NOTABLE WINS:

Working on securities has meant defending a wide variety of clients, and Kasner has scored victories across a number of industries. He helped Latin American airline Avianca Holdings SA fend off a shareholder's effort to obtain expedited discovery that could scuttle its talks to forge a strategic alliance

The logo consists of the letters 'MVP' in a bold, blue, sans-serif font. The letter 'V' is partially enclosed by a red circle with an arrow pointing upwards and to the right, suggesting a 'winner' or 'top performer'.

Jay Kasner
Skadden

with United Airlines, and the shareholder dropped its case earlier this month.

Over the past year, he helped biotech firm Amicus Therapeutics Inc., steelmaker Gerdau SA and the directors of Pacific Gas & Electric Co. negotiate settlements. And when shareholders sued Vivint Solar Inc., accusing the company of covering up a nasty surprise in its interim financials ahead of its initial public offering, Kasner not only beat the case in district court, but he also convinced the Second Circuit to affirm dismissal and reject the First Circuit's rule that companies must disclose "extreme departures" from shareholder expectations ahead of securities offerings.

"I don't know that I would have predicted ... whether the court would have been as forceful as it was in distinguishing the view of the Second Circuit from the view of the First Circuit," he said.

THE CASES THAT HAVE SHAPED HIS CAREER:

Kasner came to Skadden in 1980, and his first decade at the firm centered on litigation related to mergers and acquisitions, particularly hostile takeovers, he said. As the securities industry changed, so did his practice, and two waves of litigation stand out in his mind: his defense of Merrill Lynch from parties that sued the bank over its role in the dot-com bubble and its collapse, and his work on a group of cases involving fraud claims against a defunct securities firm.

"Those were really transformative," he said of the Merrill cases. "They involved huge numbers of cases. Organizing cases, litigating the legal issues. There were appeals, and the appeals led to some very significant decisions in the securities space."

HIS PROUDEST MOMENT AS AN ATTORNEY:

The Merrill litigation that followed the dot-com bust didn't just result in a bunch of settlements. The bank fought many cases through motions and on appeal, including *Merrill Lynch v. Dabit*, one of the first cases on the Securities Litigation Uniform Standards Act to go before the U.S. Supreme Court. Kasner argued that case and won, and he said he can still remember when Justice John Paul Stevens called him "an expert" on the law's legislative history during oral argument.

"I can still think of it vividly ... the feeling when the curtain goes up and nine rock stars walk out and take their seats," he said. "To have that recognition by one of the justices of the Supreme Court, with all the history — I know that sounds corny, but that was the most impactful thing among a lot of impactful aspects of a career. That really has stayed with me."

— *As told to Jack Newsham*

Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2017 MVP winners after reviewing more than 1,000 submissions.