

## White Collar Group Of The Year: Goodwin Procter

By **Evan Weinberger**

Law360, New York (January 12, 2011) -- Goodwin Procter LLP has evinced an ability to face down even the most potentially explosive white collar cases, such as the first-ever insider trading case involving credit default swaps, earning the firm a spot among Law360's White Collar Groups of 2010.

Staffed with former high-powered government attorneys, Goodwin Procter's white collar crime and government investigations group won several of the most important white collar cases that were decided in 2010.

The list includes a win in U.S. Securities and Exchange Commission v. Rorech, the credit default swap insider trading case, as well as the successful defense in U.S. v. Schiff et al., a case involving allegations of so-called channel stuffing at Bristol-Myers Squibb Co.

"I think that we are tireless workers who are devoted to our clients," said Richard M. Strassberg, the group's chair. "We are very experienced in helping clients navigate the maze that can often be a white collar case. We are not afraid to go to trial."

Goodwin Procter's white collar team is made up of 26 partners and 30 associates in offices in Boston, New York, Washington, Los Angeles, San Francisco and Hong Kong. Along with Strassberg, who was the chief of the Major Crimes Unit at the U.S. Attorney's Office for the Southern District of New York, the practice group is staffed with former assistant U.S. attorneys and other former U.S. Department of Justice lawyers.

For example, senior counsel Wayne A. Budd was associate attorney general, the third-highest position in the DOJ, under President George H.W. Bush.

That combined experience gives Goodwin Procter attorneys an edge when they head to court, partner Roberto M. Braceras said.

"We have a large group of former government lawyers who have trial experience and who have experience in determining whether a case has merit and should be tried," Braceras said.

One case that was tried was the SEC's suit against Millennium Partners portfolio manager Renato Negrin and Deutsche Bank AGbond salesman Jon-Paul Rorech in May 2009, which marked the first time the commission had attempted to bring insider trading claims involving then-largely unregulated swap transactions.

Specifically, the SEC alleged that Rorech, Goodwin Procter's client, tipped off Negrin to sensitive information regarding a bond offering for Dutch publisher VNU NV, which was expected to increase the price of related swaps

The white collar and securities bars took a keen interest in the case because it could have opened up a whole new avenue for securities enforcement, said Strassberg, who led Rorech's defense alongside Braceras.

"It was filed in the aftermath of the credit crisis in 2008, when the SEC was looking to bring a case involving derivatives and credit default swaps," Strassberg said.

Although most clients settle when the SEC or federal prosecutors bring a case, Rorech wanted to fight back, according to Strassberg. With Goodwin Procter's help, he was able to do just that.

"This was a case where we actually refused any type of settlement. We fought back. We were able to show that you can fight the SEC, go to court and win," Braceras said.

In June, Judge John G. Koeltl of the U.S. District Court for the Southern District of New York ruled that the SEC had set forth no evidence that Rorech either received or shared with Negrin any allegedly confidential information.

The fact that Rorech and Negrin had two cell phone calls during the marketing period of the VNU bond offering is insufficient to establish scienter, the court ruled.

"While the SEC attempts to attribute nefarious content to those calls through circumstantial evidence, there is, in fact, no evidence to support this inference and ample evidence that undercuts the SEC's theory that the defendants engaged in insider trading," Judge Koeltl said.

The evidence confirms that the information Rorech could have shared with Negrin was not confidential and that Rorech did not breach any duty to Deutsche, according to Judge Koeltl.

"I think this case now is must-reading for anyone that has a case involving the credit markets," Strassberg said, adding that the 122-page decision clearly lays out the inner-workings of the credit market, information the Goodwin Procter team used as a key portion of Rorech's defense.

In its second major win, Goodwin Procter attorneys represented Richard Lane, the former president of Bristol-Myers's worldwide medicines division, in civil and criminal cases linked to allegations of channel stuffing at the drug giant.

Along with former Bristol-Myers Squibb Chief Financial Officer Frederick Schiff, Lane was accused of hiding from investors financial incentives Bristol-Myers had set up to increase drug sales to wholesalers. Known as channel-stuffing, the scheme helped Bristol-Myers meet its revenue projections by flooding the market with an excess of drugs, prosecutors said.

Had Bristol-Myers sold drugs at the level actually required by the market, the company would not have met revenue projections, they said. By the end of 2001, the channel-stuffing resulted in almost \$2 billion in excess inventory, according to prosecutors.

The U.S. Court of Appeals for the Third Circuit dealt a fatal blow to the case against Schiff and Lane in April, upholding a trial court ruling that prosecutors could not pursue a case over alleged omissions in quarterly regulatory filings.

The Third Circuit also faulted the federal government for playing "musical chairs" by shifting their legal theories for the case.

In the end, a new U.S. attorney for the District of New Jersey agreed to drop the case pursuant to a deferred prosecution agreement.

"It was an instance of the government overreaching in response to the public demand for action in a way that caused a real injustice to happen for the many years while the case was pending," Strassberg said.

Despite Goodwin Procter's success in the courtroom against the government, the firm is often sought out when the government needs help with sensitive cases.

On the recommendation of former New York Attorney General Andrew Cuomo's office, a Goodwin Procter partner was named the receiver for Ascot Partners LP, a major feeder fund for Ponzi scheme kingpin Bernard L. Madoff. Ascot lost approximately \$1.8 billion of investors' money.

Within six months, the Goodwin Procter team was able to get three cases against Ascot voluntarily dismissed. There are still several cases ongoing, however.

A team of Goodwin Procter attorneys is also representing Kenneth Feinberg as he handles claims stemming from the Deepwater Horizon explosion and resulting massive oil leak. And in May, the Massachusetts Supreme Judicial Court appointed Goodwin Procter partner Paul Ware to serve as independent counsel and conduct an investigation into widespread political patronage hiring within the state's Probation Department.

"We have a reputation because of the experience and success of the attorneys here of being able to produce great results for clients," Strassberg said. "The government is aware of this as well."

One other skill that a white collar attorney needs is the ability to make investigations go away quickly and quietly whenever possible. Strassberg said the group is known for achieving "terrific results by persuading prosecutors to not bring charges in the first place," although he could not speak specifically to those cases.

According to both Strassberg and Braceras, the secret to Goodwin Procter's white collar crime and government investigations group's success is a combination of toughness and teamwork.

While attorneys at other firms are tough on paper, they might not be as willing to take the cases to trial. That's not the case at Goodwin Procter, Braceras said.

"We are willing to fight, and we are willing to take cases to trial. We are willing to be tough in the courtrooms as well as being tough on the papers," he said.

He added that the attorneys in the group are extremely collegial and work well across offices.

*Methodology: In mid-November Law360 solicited submissions from over 300 law firms for its practice group of the year series. The more than 400 submissions received were reviewed by a committee of four editors. Winners were selected based on the number of significant wins the group had in litigation or the size, number and complexity of deals the group worked on in 2010.*