

Litigator of the Week: Theodore Wells Jr. of Paul, Weiss, Rifkind, Wharton & Garrison LLP

By David Bario

The cat fight is over.

On Monday, when he ruled out punitive damages in Terra Firma's multibillion-dollar fraud case against Citigroup, Manhattan federal district court judge Jed Rakoff called the trial "a cat fight between two rich companies." Rakoff reduced Citigroup's exposure by some \$6 billion in the days before the case went to the jury, rejecting Terra Firma's lost profits theory as well as punitive damages. Then on Thursday, Terra Firm used up the last of its nine lives.

It took the eight-person jury just four-and-a-half hours to side with Citigroup and its lead lawyer, Theodore Wells Jr. of Paul, Weiss, Rifkind, Wharton & Garrison. Instead of the \$8.3 billion Terra Firma once sought for Citi's alleged manipulation of the 2007 auction for the recording company EMI, the private equity company got nothing.

And for at least one juror, Wells's summation clinched the deal. The juror saw Wells walk by during a post-trial interview and told a Bloomberg reporter, "He showed me that the proof just wasn't there."

Terra Firma had pinned its hopes on David Boies of Boies, Schiller & Flexner, who did his best to persuade the jury that Citi banker David "The Worm" Wormsley deceived Terra chairman Guy Hands into thinking that the rival private equity firm Cerberus Capital was also bidding for EMI. In Terra's closing argument Boies told jurors that testimony from Hands and several other Terra Firma witnesses proved that Terra's \$6.4 billion bid for EMI was the result of Wormsley's alleged deception.

But Wells had already damaged Hands' credibility in a withering cross examination last week. And in Citi's closing argument Wednesday, the Paul Weiss lawyer told the jury that Hands was just trying to shift the blame for his own mistake. (Terra reportedly lost about \$2.5 billion on the EMI deal.) "Hundreds of millions of dollars were on the line," Wells said, according to the transcript of his closing argument. "And what he did was somewhat consistent with his philosophy. Mr. Hands always said he saw potential where others saw problems. So

he had a problem, the business was in the tank, so he just made up this lawsuit and brought us in here to try to get in the bank's pocket."

In a statement, Terra said it was "disappointed" in the ruling and vowed to continue to try to restructure its debt with Citi, its lender on the EMI deal. Boies declined to comment.

When we talked to Wells Thursday afternoon, after the verdict was delivered, he told us his side won because Citi had better facts. But he also said the trial could well have ended in a mistrial if not for "divine intervention" in the form of a dismissed juror.

As we've previously reported, Paul Weiss happened upon a connection between juror Donna Gianell and Michael Moore's documentary about the financial crisis. On Tuesday, the firm asked Judge Rakoff to dismiss the juror. Rakoff then questioned Gianell and, the day before deliberations began, decided to remove her from the jury. (According to Dealbook, the judge made the decision not because of Gianell's tenuous connection to the Moore film, but because he didn't trust her answers to questions about her attempts to talk with other jurors about the case.)

Wells, who said a Paul Weiss "tech guy" discovered Gianell was listed in the credits of Moore's film when he Googled her name Monday night, was relieved to see the juror go. "She took notes like a woman obsessed" while Terra made its case, he told us, but sat idle during his arguments for Citi. "She would have hung this jury," Wells said. "I believe we had a sleeper."

In addition to curing a multibillion-dollar headache for Citi, Thursday's win evens the score between Wells and Boies. Last year, in the first trial in which they've opposed one another, Boies successfully defended Hank Greenberg's Starr International Company against breach of trust and conversion claims by Wells's Client, American International Group. (That trial, coincidentally, was also before Judge Rakoff.)

"Now I guess we're one and one," Wells told us. "Maybe we'll get back together next year and play best two out of three."

In some jurisdictions, this reprint may be considered attorney advertising. Past representations are no guarantee of future outcomes.