

Influential Women In Securities Law: Susanna Buergel

By **Carmen Germaine**

Law360, New York (July 1, 2016, 10:30 PM ET) -- Paul Weiss Rifkind Wharton & Garrison LLP's Susanna Buergel fought at the Second Circuit to allow Citigroup to reach a settlement with the U.S. Securities and Exchange Commission without admitting or denying the SEC's allegations, winning a landmark decision that overturned New York's Judge Jed Rakoff and helped her snag a spot as one of Law360's Influential Women in Securities Law.

While Buergel has had remarkable success representing Citigroup Inc. in actions that span the breadth of securities litigation, she said that she's most proud of her work fighting to reinstate a \$285 million settlement between the bank and the SEC after U.S. District Judge Jed S. Rakoff refused to approve the no-admit, no-deny deal.

"I do think being a part of the team that was able to obtain that decision in the Second Circuit reaffirming the ability of corporate clients to resolve regulatory exposure on a no-admit, no-deny basis has to be one of the things I'm most proud of," Buergel said.

The bank faced significant liability after the SEC alleged that it had failed to disclose its heavy bets against a doomed \$1 billion collateralized debt obligation, saying in its complaint that the CDO eventually lost about \$700 million while Citigroup reaped \$160 million.

Buergel recalled that the Paul Weiss team felt that Citigroup had strong defenses that they raised in an extensive dialogue with SEC investigators, eventually reaching the deal on a no-admission basis that they felt was the best result considering the risks of litigating the case.

But Buergel soon realized that the settlement would be just the beginning of the legal battle when Judge Rakoff, who had expressed skepticism of the SEC's no-admit settlements in previous decisions, was assigned to the case.

On the day of the first hearing, Buergel said, the courtroom was packed, with press members squeezed into the jury box and everyone waiting for the judge.

"He walks in and he made a comment, you know, 'Of all the gin joints in all the world, I'm sure you feel very happy you're lucky to be walking into mine,'" Buergel said.

Several days after that first hearing, Judge Rakoff issued his decision, refusing to approve the settlement and blasting the SEC for its reliance on the no-fault deals.

Buergel and the Paul Weiss team then found itself in the unusual position of arguing a case on the same side as the regulators.

The SEC and the Citigroup team sought the same result from slightly different perspectives, as the agency wanted to preserve its ability to allocate resources, while Buergel and her partners argued that the no-admit settlements allow companies to reach a resolution in cases that involve legitimate questions about the merits of the allegations alongside significant litigation risks.

"The calculation of whether to go to trial is not a simple calculation of, am I right, did I do something wrong, do I have a defense — it's this much larger environment," Buergel said.

Given those important policy considerations, she said, the Second Circuit's decision in June 2014 to overturn Judge Rakoff's opinion was a victory not just for Citigroup but for the SEC, the financial industry and public companies at large.

It's part of work that Brad Karp, the chair of Paul Weiss and another attorney on the Citigroup case, said makes Buergel a "magnificent lawyer."

"Susanna has the entire package — she's brilliant, she's strategic, she has tremendous people skills, she has wonderful judgment," Karp said.

Buergel didn't always see herself as a practicing lawyer, however. Although she knew she wanted to go to law school, she had taken economics and political science in college and envisioned herself going into policymaking.

But after her father passed away during her first year in law school, Buergel took a job working with a federal judge in her hometown of Spokane, Washington, to be close to her sister and the rest of her family.

It was what was happening in the courtroom next door that interested her most, in a "bonkers" trial involving several anti-government separatists accused of bombing abortion clinics and tax fraud.

Every day in the trial, Buergel said, the defendants would come in and turn their back on the judge, answering any questions by saying they refused to acknowledge the authority of the court, and were frequently escorted out of the court for disturbing the proceedings.

"The subject matter alone made it fascinating, but I became really interested in the dynamic in the courtroom, watching the judge and the jury and the lawyers," Buergel said.

After finishing law school at Columbia, Buergel moved to Austin, Texas, where she clerked for Judge Fortunato P. Benavides on the Fifth Circuit, then went back to New York to clerk for Judge Alvin K. Hellerstein of the Southern District the next year.

Buergel then decided the "prudent" thing to do would be to enter private practice to pay off some of her law school debt. She immediately knew that Paul Weiss would be the right fit for her — even if she still wasn't sure about the legal profession itself.

"I'm not sure, if you talked to me the day I walked in, I would have said, 'Oh yeah, I see myself as a partner, that's what I want, I'm going to work really hard to accomplish that goal,'" Buergel said.

Despite that hesitation, Buergel hit the ground running as an associate by working with the Citigroup team on a host of matters connected to the WorldCom accounting scandal.

As Buergel explained, the WorldCom cases were a tangle of interrelated enforcement actions and civil litigation brought in jurisdictions across the country, giving her firsthand experience with a host of challenging issues in securities law.

"It was a huge mess. I think that's the formal term," Buergel joked.

Karp recalled working with Buergel on the WorldCom cases, saying she stood out even as a young associate.

"She was fantastic; I just kept giving her more and more work and she never disappointed," Karp recalled.

Buergel said her work fending off a class action against Citigroup brought by WorldCom investors stood out.

It was August 2003, and Buergel was working on a brief opposing class certification in the case that she said made some important and powerful arguments about whether statements of Citigroup research analysts could be considered market-moving for the purposes of class certification.

After a week of late nights working on the brief, Buergel was working hard on a Thursday to draft the final brief, due that Friday. But late that afternoon, her computer suddenly went dark.

"I was sitting there going, 'Are you kidding me?' And then I looked out the window, and I saw that the lights at Radio City had blinked and gone out," Buergel said.

As it turned out, power throughout the Northeast had been cut, in the second-biggest blackout in history.

The team received a brief extension from U.S. District Judge Denise Cote, after hand-delivering their request by bicycle messenger. So when the power came back that Saturday, Buergel and the team returned to the Paul Weiss offices.

"We came in and we managed to get power to one conference room, and about seven or eight of us came in, including the partners, and sat in this conference room to finish the brief, and we had one computer going," Buergel said. "It was an intense stretch."

Judge Cote ultimately denied their motion, but Citigroup appealed to the Second Circuit, reaching a major settlement just hours before a hearing in May 2004, a result Buergel said was made more favorable by their arguments.

Buergel said her career has in some senses mapped some of the major crises of the past 15 years — after working on the WorldCom cases, she was elected partner in December 2007. The thicket of regulatory issues and litigation from the financial crisis has allowed her to work on many of the most challenging problems of the day, she explained.

In one such case, in the spring of 2013, she guided Citigroup to a significant settlement with the Federal Housing Finance Authority in litigation over residential mortgage-backed securities that Citi and other banks had sold to Fannie Mae and Freddie Mac.

Although Citigroup paid \$250 million to end the FHFA's claims, it received a considerable "early mover" discount as one of the first of the 18 financial institutions sued by the FHFA to settle.

By contrast, Morgan Stanley paid \$1.25 billion, JPMorgan Chase & Co. paid \$4 billion, and Bank of America Corp. and Merrill Lynch & Co. paid \$5.83 billion, according to the FHFA, while Nomura Holding America Inc. litigated the claims and was hit with an \$806 million judgment last year.

Buergel said that she and the Paul Weiss team realized early on that the cases would move rapidly and that it was best to seek an early settlement, a strategy she says was ultimately the right move.

"One of the things that I've learned over the years from my partners is thinking strategically about these types of matters," Buergel said. "It's not simply the litigation strategy, but looking at the bigger picture and evaluating when are there opportune times to seek for your client a resolution, what are the leverage points."

In courtroom victories, Buergel has also had notable success in recent years beating back the Abu Dhabi Investment Authority's challenge to an arbitration award that tossed more than \$7 billion in damages claims against Citigroup.

She also won dismissal of a proposed \$9 billion class action claiming Citigroup misrepresented its euro notes offerings in February 2014, a decision the Second Circuit affirmed last August.

Outside of her work with Citigroup, Buergel successfully fended off a securities class action against Ericsson, and helped a hedge fund defeat a contract dispute brought by a former partner after a full trial before the Delaware Chancery Court.

Karp called Buergel a "once-in-a-generation talent," saying she's able to advocate fiercely for her clients despite often being the youngest partner in the room.

"Susanna does a magnificent job safeguarding our clients' interests at all times," Karp said.

Buergel has taken on leadership roles within Paul Weiss as well, acting as deputy co-chair of the firm's securities litigation practice group and helping the group stay on top of every development in the industry. She also teaches a class on trial practice at Columbia during the spring semester, an experience she particularly enjoys.

"It's an excellent opportunity to go back to school and meet with students who are still trying to figure it out for themselves what they want to do," Buergel said.

Buergel says she enjoys spending time with her two dogs, Bert and Ernie, and visiting family on the West Coast, but she's still happiest when delving in and exploring new issues in securities law.

"That's what makes the job interesting and makes you excited to come to work, when you have to solve novel issues and problems for clients," she said.

--Editing by Mark Lebetkin and Catherine Sum.
