

Class Action Group Of The Year: Paul Weiss

By **Anna Sanders**

Law360 (February 9, 2022, 2:05 PM EST) -- Paul Weiss Rifkind Wharton & Garrison LLP notched a significant victory for Goldman Sachs by successfully arguing before the U.S. Supreme Court that class certification should be vacated in a decade-old investor suit against the bank, earning the firm a spot as one of Law360's 2021 Class Action Groups of the Year.

In the 8-1 decision siding with Paul Weiss attorneys this June, the justices also ordered lower courts to consider whether a company's alleged misrepresentations are too generic to be relied upon by an entire class of investors.

Paul Weiss securities litigation and enforcement group co-chair Audra Soloway said the court gave "really clear guidance" about what evidence in securities class actions are allowed to be taken into account.

"This case is going to have very significant consequences, and we're going to see the lower courts applying it and grappling with it for years to come," said Soloway, who was part of the team representing Goldman. "It's a really, really interesting decision that is really going to move the needle on class certification decisions."

The certification battle stems from a 2010 U.S. Securities and Exchange Commission action claiming Goldman helped a client short a collateralized debt obligation that the bank was simultaneously selling to customers, ultimately costing them \$1 billion. The Supreme Court remanded the certification challenge to the Second Circuit, where an appellate panel had split in 2020 over whether Goldman had proven that its corporate statements about avoiding conflicts of interest had no impact on its share price.

Retained specifically to appeal the panel's ruling against Goldman's decertification bid, Paul Weiss attorneys argued that the Second Circuit erred in refusing to consider the nature of the alleged misstatements.

"The court also concluded that the defendants ultimately bear the burden of persuasion," Soloway said.

Following the high court's decision, the Second Circuit issued a new order vacating certification for the



same class in August, giving final say to a New York federal judge. After a federal judge granted class certification for the third time in December, Goldman tried to reverse the certification and has asked for summary judgment in the 12-year-old case.

Paul Weiss also won the initial dismissal of an antitrust class action accusing client Apple Inc. of anti-competitive behavior.

The lawsuit alleged Apple monopolized the market for iOS subscription-based mobile gaming services, resulting in higher prices and fewer choices for gamers. Paul Weiss attorneys argued in Apple's motion to dismiss that the plaintiff failed to state a cause of action — and a California federal judge granted the bid in March 2021. Though suit could have been amended, the plaintiff voluntarily dismissed the case.

Litigation partner Bill Isaacson said the Apple suit was part of a broader reckoning at the intersection of antitrust and technology, where there's potential for enormous swaths of users to be certified as a class in monopolization cases.

"We're in an in-between period here in antitrust," he said. "How class action's going to apply for those types of cases is really hitting the courts now."

Paul Weiss also represents Amazon.com Inc. in an ongoing antitrust class action — brought by the largest-ever putative class — accusing the company of a "fair pricing" policy that forces third-party sellers to charge more.

"You've got everybody with a computer or a device in America in these class actions," said Isaacson, who is part of the team representing Amazon.

Paul Weiss also notched a win for Carnival Corp. in what the firm described as one of the first securities fraud class actions addressing the consequences of disclosures about the coronavirus pandemic.

A Florida federal judge in May 2021 dismissed a putative class action where shareholders accused Carnival of hiding COVID-19 infections on its ships and spreading the virus "at various ports throughout the world." That securities suit was one of several filed after the pandemic began in spring 2020.

And Paul Weiss attorneys represented telemedicine giant Teledoc Health Inc. in securities litigation alleging its former chief financial officer's workplace relationship with a subordinate violated company policy — and that ethics disclosures were fraudulent in not including the behavior. U.S. Magistrate Judge Barbara Moses recommended the case be dismissed in September 2020, and the following month U.S. District Judge Gregory Woods agreed and dismissed the case. This past September, Moses recommended dismissal of an amended complaint.

The lawsuit tested the theory in the wake of the #MeToo movement that indiscretions by senior managers can constitute securities fraud.

Paul Weiss attorneys who work on class actions aren't separated into a distinct entity because several of the firm's practice groups handle them. The firm estimates about half of its litigators regularly work on class actions, though Paul Weiss didn't know an exact number. The firm's litigation department is home to 503 attorneys who make up 47% of Paul Weiss lawyers across all offices, a spokesperson said.

"Because of the depth and breadth of the cases that we work on, for every sort of major issue that's unfolding, we have some real role in how that area of the law develops," Soloway said. "Whether it's COVID, #MeToo securities cases, classic accounting fraud or something new that's emerging in the world."

--Additional reporting by Deal Seal, Katryna Perera, Khorri Atkinson and Emilie Ruscoe. Editing by Andrew Cohen.

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