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Litigator of the Week: Record $625M Award against PwC Proves You Don't Need Big Law for Big Wins

Stephen Sorensen scored the biggest damages award ever against a global public accounting firm, and broke new legal ground along the way.

By Jenna Greene
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When Colonial Bank failed in 2009, it was—as the judge put it—the result of "one of the largest and longest-lasting bank frauds in American banking history."

But should the bank's auditor, PricewaterhouseCoopers, bear some of the blame for failing to detect the fraud?

For Stephen Sorensen, the answer was an emphatic yes. On behalf of the bank's receiver, the Federal Deposit Insurance Corp., Sorensen led a team in securing a $625.3 million award on Monday against the accounting giant for professional negligence.

Not only is it the biggest damages award ever against a global public accounting firm, the case also breaks new legal ground. "It's the first time a federal judge said it's an auditor's job to find fraud," Sorensen said. For this, we crown him our litigator of the week.

A partner at Thomas, Alexander, Forrester & Sorensen in Venice, California, Sorensen joined the elite, five-lawyer boutique of Big Law alums in 2013 from Williams & Connolly, where he was a partner. (The firm's four other lawyers hail from Sullivan & Cromwell.)

He was tapped by the FDIC a few months before trial, teaming up David Mullin of Mullin Hoard & Brown and Lawrence Heftman of Schiff Hardin to represent the banking regulator.

It's easy to see why the FDIC wanted him. Sorensen was trial counsel against PwC in a $5.5 billion case in

Stephen Sorensen of Thomas, Alexander, Forrester & Sorensen.

Florida that settled mid-trial in 2016. He also led a suit against PwC over its work for now-defunct brokerage MF Global. That case also settled mid-trial in January 2017 after Sorensen put on former chairman and ex-New Jersey Governor Jon Corzine as the main witness for the plaintiff.

The FDIC's four-week bench trial to establish PwC's liability kicked off on Sept. 18 before Senior U.S. District Judge Barbara Rothstein (who, somewhat confusingly, is based in Seattle but was assigned to hear the Middle District of Alabama case and conducted most of the trial in Washington, D.C.).

"It was a very complex case. The fraud went on for years and years," Sorensen said. "But the basic auditing issues were not complicated."

That is, PwC failed to confirm that assets—in this case, mortgages—actually existed.

Rothstein in her opinion establishing liability set the stage with a dramatic flair.

"On August 3, 2009 at approximately 9:30 am, special agents from the FBI and the Treasury Department simultaneously raided the offices of Colonial and Colonial's largest customer, TBW.

"And with that, the United States financial sector, which was already reeling from the subprime mortgage crisis, the collapse of Lehman Brothers, and a drop in the Dow Jones Industrial Average of more than 20 percent, was rocked by yet another financial crisis: Colonial, one of the 25 largest banks in the United States at the time of the FBI raid, had been the victim of a multi-year, multi-faceted, multi-billion dollar fraud."

And its auditor, PwC, was totally oblivious.

The misdeeds involved Colonial customer Taylor, Bean & Whitaker Mortgage Corporation, or TBW. Certain Colonial employees hid TBW's overdrafts "by making it appear on Colonial's books and records as if Colonial owned a 99 percent participation interest in mortgages that had value, when, in reality, the mortgages were valueless," Rothstein wrote.

Colonial also paid TBW for securities that were supposed to be backed by pools of mortgages, "but that in fact had no underlying mortgages backing them," the judge found.

By the time of the FBI raid, the fraud had grown to $2.3 billion.

Several TBW and Colonial employees received prison sentences, but one question remained: Should the auditor have figured out what was going on?

PwC—which was represented by Bartlit Beck Herman Palenchar & Scott lawyers including Philip Beck (whose prior cases include *Bush v. Gore* and *United States v. Microsoft*) and Meredith Moss of King & Spalding—argued it wasn't to blame.

The fraud was "particularly well-concealed," the auditor said in court papers, "Nor have they shown that the fraud would have been uncovered if PwC had performed its audits differently."

But Sorensen in his March 20 closing statement flatly disagreed. "Had PwC done its job in 2003, it would have found the fraud," he said, according to a transcript. "The fraud would have stopped. But because it didn't find the fraud, the fraud continued; and that was the foreseeable result of PwC's negligence. And that's why PwC is liable for $625 million, because the proposed damages have been established with reasonable certainty here."

On Monday, Rothstein agreed.

PwC argued that damages should not exceed $307 million, but Rothstein wrote, "This court rejects PWC's artificially narrow definition of what constitutes 'fraud-related losses.'"

Our runners-up

Karl Stern, Charles Eskridge and Tai-Heng Cheng of Quinn Emanuel Urquhart & Sullivan, who won a $622 million arbitration award against Petrobras on behalf of client Vantage Drilling—100 percent of what Vantage requested, which almost never happens in an arbitration. The breach of contract case included allegations of bribery and an offshore drill ship that costs more than $500,000 per day to lease.

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