

Litigator of the Week: Boies Schiller's Singer Wins One for the Legal Profession

Boies Schiller Flexner partner Stuart Singer represented Greenberg Traurig in a high-stakes putative class action by investors who lost billions in the R. Allen Stanford Ponzi scheme.

By Jenna Greene
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Our winner is Boies Schiller Flexner partner **Stuart Singer**, who represented **Greenberg Traurig** in a high-stakes putative class action by investors who lost billions in the **R. Allen Stanford** Ponzi scheme.

The investor plaintiffs sued Greenberg under a respondeat superior theory, arguing that a firm lawyer conspired with Stanford to further the fraud. Singer prevailed at the district court level, successfully arguing that an attorney is immune from civil suits brought by a non-client when the conduct at issue occurred within the scope of the attorney's representation of a client.

But on appeal before the **U.S. Court of Appeals for the Fifth Circuit**, the plaintiffs insisted that the scope of such immunity is limited to a litigation setting. Singer convinced the appellate panel that it is broader, and also applies to banking, corporate, regulatory and other work.

He discussed the case with Lit Daily.

Lit Daily: Who was your client and what was at stake?

Stuart Singer: We had the privilege of representing one of the preeminent law firms in the country, Greenberg Traurig. The putative investor class action sought several billion dollars—the monies that investors lost in the Allen Stanford Ponzi scheme. The investors had also sued a number of other law firms and many others who they had also blamed.



Boies Schiller partner Stuart Singer.

Set the stage—what were the events that led up to the suit?

In 2009, as a result of action by the SEC, Allen Stanford's Ponzi Scheme was disclosed. This led to appointment of a receiver, and, among many other cases, this lawsuit filed in 2012 by a putative class of investors who lost money by buying CDs from insolvent Stanford entities.

They, together with the receiver, claimed Greenberg Traurig had responsibility based on legal work Greenberg had done over a decade before the scheme was disclosed.

When and how did you become involved in the case? Have you handled similar litigation in the past?

I previously represented Greenberg Traurig in professional liability matters and was initially involved in 2012. We became more actively involved in 2017 when the litigation heated up. I have handled defense litigation arising from other Ponzi schemes, such as defense of a Fortune 500 corporate defendant in the 1990s.

What was the plaintiffs' primary theory? Also, who was plaintiffs' counsel?

Everyone, including the receiver and the government, acknowledged that Greenberg lawyers had no knowledge of the Ponzi scheme. Nonetheless, plaintiffs assert—in our view, without any valid basis—that Greenberg aided and abetted the Stanford Ponzi scheme through the legal work it performed over a decade earlier that consisted of banking, corporate, regulatory and other specific engagements. Greenberg was just one of many law firms who provided legal services to Stanford's entities.

Plaintiffs' primary counsel on the appeal were Michael Jung, who argued the case, Judith Blakeway, and David Kitner from Clark Hill Strasburger. Other plaintiffs' counsel were Edward Snyder and Jesse Castillo from Castillo Snyder, and Douglas Buncher from Neligan Foley.

Tell us about what happened at the district court level, when the case was before U.S. District Judge David Godbey of the Northern District of Texas.

In the aftermath of the Texas Supreme Court's *Cantey Hanger* decision broadly upholding attorney immunity, Greenberg filed a motion for judgment on the pleadings stating that all of the legal work at issue in the investors' case was covered by the attorney immunity doctrine. After briefing, Judge Godbey agreed and dismissed the investors'

case. The receiver's claims remain pending in the district court and are in discovery.

What's different about having a law firm as a client? In some ways is it more demanding? In other ways, is it easier?

There is a special responsibility—and privilege—when you represent a law firm as a client. You are dealing not only with substantial sums of money but also defending lawyers' work and reputation.

It is easier when, as here, you have a legally sophisticated client who not only understands but can actively contribute to defense of the case. It has been one of the best experiences in my career over the past decade to defend professional liability matters.

No one wins a case alone. Who was on your team and what were their contributions?

This was definitely a team effort. Greenberg's general counsel, Marty Kaminsky, and deputy general counsel, Susan Tarbe, directed our team's efforts. Our Boies Schiller team included my partner Sashi Bach, who works with me on all aspects of the Greenberg representation, Pascual Oliu, an outstanding associate who drafted much of our appellate brief, and also James Grippando, Jonathan Lott, and Brendon Olson.

We worked closely with two great Texas lawyers, Jim Cowles and Murray Fogler, and their teams: Sim Israeloff, Mike Northrup, and Chuck Green at Cowles and Thompson, which did much of the district court work on the motion, and Robin O'Neil and Michelle Gray at Fogler, Brar, Ford, O'Neil, and Gray.

What's your personal process for preparing for an appellate argument? Any rituals or superstitions?

Preparation begins, of course, with review of the pertinent parts of the record, and re-reading all of the briefs and principal cases. I will spend time during the weeks leading up to the argument kicking around different issues with our team and identifying likely questions.

This leads up to at least one full scale moot court. I like to include lawyers not otherwise involved in the case. Here, my partner Bill Dzurilla, who clerked at the Fifth Circuit and the U.S. Supreme Court, participated as a moot court judge. I don't think I have any rituals, but the day before the argument I will create and memorize a final one-page summary identifying the critical points I want to make sure to cover, in order of priority.

What was the biggest challenge in litigating this case? How did you deal with it?

The appellants argued that the scope of attorney immunity should be certified to the Texas Supreme Court because four dissenting justices in the Cantey Hanger case would have limited the scope of attorney immunity to a litigation setting, and the five justices in the majority had left the question open. I focused on the fact that all of the intermediate appellate decisions which followed agreed that attorney immunity covered non-litigation work, and that the policy reasons for a broad attorney immunity did not support a limit to litigation work.

How did you feel about the appellate argument? Was it a hot bench? Any surprise questions?

I felt good about our chances after the argument before a definitely hot bench when one of the judges observed I had strong arguments on the first two of the appellants' points and to move on to the third.

Judge [Edith] Jones had asked why there had not been more suits against law firms in Enron and, fortunately, I recalled that this was because aiding and abetting suits involving exchange-traded companies were foreclosed by the **Central Bank** decision, and to then argue the logic of that federal decision supported broad immunity.

What did the Fifth Circuit panel have to say about immunity within the scope of representation? Other highlights from the decision?

The Fifth Circuit followed Texas law in holding that lawyers are immune from suits by non-clients provided that the claim is based on the work of lawyering within the scope of representation.

So a lawyer who punches an adversary in court, or participates in a fraudulent business deal, is not immune, but so long as a lawyer works within the scope of the representation, whether in or out of court, the lawyer enjoys an immunity from civil suits from non-clients.

The Fifth Circuit, like Judge Godbey, rejected plaintiffs' arguments that the immunity should be limited to litigation activities, should depend on the level of intent alleged, and should not apply to alleged violations of the Texas Securities law.

For me, a personal highlight from the opinion, which had never before happened, was the court's reference to the "cogent and sound arguments of counsel" as helping the court determine what the Texas Supreme Court would hold on these issues.

If the Fifth Circuit had gone the other way, what might it have meant for attorneys and law firms? (Should they all send you thank-you notes?)

The Fifth Circuit ruling recognizes that under Texas law the attorney immunity protection extends to "the multitude of attorneys that routinely practice and advise clients in non-litigation matters." A contrary decision could lead to a lot more litigation by non-clients against lawyers engaged in transactional work. The court of appeals recognized the important purpose of the immunity to "free attorneys 'to practice their profession' and 'advise their clients,'" without making themselves liable for damages.

