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THE PLAINTIFFS'
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Even global crises have a bright side

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ARE THESE THE plaintiffs' bar's salad days?

Hear us out. That the global economic system is teetering on the brink of a pit has not escaped our notice. The failure of financial monuments like Lehman Brothers Holdings Inc., American International Group Inc., Fannie Mae and Freddie Mac seem to have taken the wind out of stockholder lawsuits intended to recoup some of investors' staggering financial losses. Even if such suits succeed, the vaporization of hundreds of billions of dollars in assets might complicate collecting any money. On top of everything, the U.S. Supreme Court seems inclined, with rulings like *Stoneridge Inv. Partners v. Scientific Atlanta*, to make it harder for plaintiffs to make financial evildoers—and their henchmen—pay.

It's impossible to know how all of this will end, but we wouldn't count out this country's plaintiffs' lawyers. They've shown in the past that their capacity for innovation is at least a match for the corporate world's capacity for mischief.

More settlements

Events are moving way too fast, but it's worth remembering that notwithstanding tort reform, the number of settlements reached hit an all-time high in 2007, according to the Securities Class Action Services' annual survey of top plaintiffs' law firms. The number of cases in the pipeline was trending upward even then. The top five firms by settlement value brought in more than \$13.75 billion, up from \$12.8 billion in 2006.

"This is the time when as an investor—institutional or individual—you really appreciate that there are legal remedies in our country," said Gerald H. Silk of Bernstein Litowitz Berger & Grossmann in New York.

This is the seventh year for the NLJ's Plaintiffs' Hot List, our survey of the country's most impressive plaintiffs' firms. We asked our readers to nominate firms in the United States that did exemplary, cutting-edge work on the plaintiffs' side between the summer of 2007 and the summer of 2008. Firms needed at least one significant win and an impressive track record within the previous three to five years. A "significant" win meant prevailing in a bench or jury trial when the stakes were high, such as a substantial amount of money, or the case could affect the litigation strategy or outcome of similar cases nationally. Eligible firms needed to

devote at least 50% of their litigation resources to plaintiffs' work.

We don't pretend the results are scientific, and concede that some excellent firms don't appear here. We looked for firms that struck us as representing the best qualities of the plaintiffs' bar and that demonstrated unusual dedication and creativity.

Firms like San Francisco's Loeff Cabraser Heimann & Bernstein and St. Louis' Korein Tillery, to name two examples.

These were among the plaintiffs' firms that weren't afraid to take on one of the business world's great white whales. De Beers S.A. diamond merchants had flouted the authority of U.S. courts for years, simply declining to show up if any court had the temerity to assert jurisdiction over the self-avowed monopoly. The plaintiffs' firms' pluck, and some luck, resulted in a \$295 million settlement for De Beers' customers. If the agreement fell short of the billions of dollars the plaintiffs might have held out for, it nevertheless secured De Beers' pledge to abide by federal and state antitrust laws and accept court oversight to ensure compliance, as NLJ contributor Emily Heller explains inside. [*National Law Journal*, 10/6/08, "Global diamond cartel is cut down to size," Page S4.]

That case raises an important point about this list. Major class actions are the work of many plaintiffs firms—something like 10 in the De Beers case. We regret that space didn't allow us to list all of the co-counsel firms involved in some of the cases listed here, but it's worth remembering that many of the most important courtroom victories are the product of collaborations.

Elsewhere inside, Staff Reporter Peter Page brings us up to date on the Vioux litigation. He reports that a series of trial wins prompted Merck & Co. Inc. to settle after spending \$1.9 billion defending its anti-inflammatory drug—but that Merck might have done pretty well for all that. [*National Law Journal*, 10/6/08, "Persistence pays in Vioux litigation," Page S3.]

Additionally, contributor June D. Bell tells how a plaintiffs' firm found a way to place value on the ineffable. [*National Law Journal*, 10/6/08, "What price your pet, or peace of mind?," Page S16.]

—MICHAEL MOLINE

Dickstein Shapiro

Dickstein Shapiro bills itself as corporate America's plaintiffs' firm. The firm boasts a muscular, 90-lawyer insurance practice headed by Kirk A. Pasich, dubbed "an All-star lawyer" by *Chambers USA*. Dickstein Shapiro has cut a path in civil antitrust litigation, and since the mid-1990s has counseled corporate clients that were the primary purchasers from supplier cartels to opt out of class actions and file directly against the defendants.

NOTEWORTHY CASES:

■ *In re Linerboard Antitrust Litig.*, No. MDL-1261 (E.D. Pa.). Lead counsel R. Bruce Holcomb and Richard J. Leveridge. Dickstein Shapiro represented more than 60 corporate clients, including The Procter & Gamble Co., PepsiCo Inc. and The Clorox Co., that opted out of a class action alleging price-fixing by suppliers of corrugated paper products. The litigation spanned several years, with the last two cases decided in late 2007. Dickstein clients recovered more than five times what they would have secured as members of the class.

■ *Saffran v. Boston Scientific Corp.*, No. 2-05-cv-547 (E.D. Texas). Co-counsel Gary M. Hoffman, Paul R. Taskier and James W. Brady. The team convinced a Texas jury to award \$431.9 million—one of the largest patent infringement verdicts on record—to an inventor who claimed that stents manufactured by Boston Scientific Corp. infringed his patent. The judge awarded \$69 million in prejudgment interest and denied the defendant's post-trial motions.

■ *Gemstar-TV Guide Int'l Inc. v. National Union Fire Insurance of Pittsburgh*, No. CV 06-5183-GW (JTLx) (S.D. Calif.). Lead counsel Kirk A. Pasich and Linda D. Kornfeld. National Union Fire Insurance denied Gemstar coverage for its costs of defending securities charges by the U.S. Securities and Exchange Commission and related shareholder and derivative actions. The carrier argued that Gemstar's chief executive officer and chairman had been held liable for deliberate fraud in a separate lawsuit. Gemstar claimed breach of duty. On the third day of trial in February, National Union settled with Gemstar for \$30 million.

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