

How They Won It: Paul Hastings Saves Ex-Homestore CEO \$1.3B

By **Ian Thoms**

Law360, New York (October 19, 2011, 6:37 PM ET) -- Already serving more than four years in prison for his alleged role in a \$67 million accounting scandal, former Homestore.com Inc. CEO Stuart Wolff turned to Paul Hastings LLP earlier this year to defend him in a related securities fraud class action and shield him from a proposed \$1.25 billion judgment. He's glad he did.

Following a 10-day trial in February, a jury found Wolff liable for a handful of misstatements that contributed to shareholder losses. However, capitalizing on never-before-litigated provisions of the Private Securities Litigation Reform Act, Paul Hastings partner Howard Privette and associate Scott Carlton convinced a judge in August that the plaintiffs should "take nothing" from Wolff.

It was a landmark win for Paul Hastings and no small relief for Wolff.

"This is a guy who, when he gets out of prison is going to want to rebuild his life, and having a huge judgment hanging over him from the class action would have made that, frankly, impossible," Privette said. "That would have been a cloud hovering over him for the rest of his life."

Wolff had already spent the last decade with the class action looming over him. The plaintiffs, a certified class of investors who bought Homestore stock, and the California State Teachers' Retirement System, sued the ex-chief executive, his former company and a host of others in late 2001.

The plaintiffs claimed they suffered staggering losses when the real estate listing company's stock price tanked on the news that it had artificially inflated its ad revenues by overpaying certain vendors, including AOL Inc. and Cendant Corp., for their products in exchange for advertising purchases.

The plaintiffs set their top-end damages estimate at \$1.25 billion.

Privette and Carlton countered that Homestore's stock price plummeted because the dot-com bubble burst, not because Wolff allegedly made misstatements.

"Homestore was a dot-com and a darling of the Internet world," Privette said. "According to the plaintiffs, their claims began in the year 2000 and if you looked at the company's stock chart, it hit a sharp high that year and then fell off. But, of course, that was happening everywhere. That was the bursting of the dot-com bubble."

Before Privette and the plaintiffs could finish their fight, however, Wolff was indicted on criminal charges related to the accounting scandal, and the class action claims were stayed.

Following an overturned conviction that temporarily landed him a 15-year sentence, Wolff struck a plea agreement with prosecutors and copped to one count of conspiracy. In April 2010, he was sentenced to 54 months in prison.

Meanwhile, settlements were mounting in the class action. Homestore struck a \$71 million deal with the teachers' retirement system and a number of other co-defendants inked dismissal agreements, pushing the plaintiffs' total recovery to roughly \$130 million before Wolff, their prize target, got his day in court.

Those settlements, Privette quickly realized, could serve as Wolff's salvation, even if a jury eventually found him liable for investor losses.

"They were going to have, in my view, a hard time establishing loss causation," Privette said. "That was going to be an issue from the beginning. When we saw the settlements start to pile up, we also started to wonder whether this might be a case that could test the settlement reduction provisions of the PSLRA."

But before the PSLRA came into play, Privette and Carlton went to work defeating most of the plaintiffs' claims and lampooning their damage estimates. To that end, they employed economic consultants Stephen Schurman of Analysis Group Inc. and Professor Meir Statman of Santa Clara University. Schurman and Statman helped them establish a rational framework for assessing loss causation on a per-share and per-statement basis.

Privette hammered out jury instructions and a special jury verdict form that walked jurors through the plaintiffs' claims point-by-point, statement-by-statement, asking them whether each statement was true and attributable to Wolff. The form also questioned whether Wolff made an alleged misstatement or omission intentionally and whether that misstatement or omission contributed to a stock loss.

The plaintiffs had largely built their case based on Wolff's guilty plea, but, as Privette pointed out, his plea only concerned a handful of the alleged misstatements.

"By the end of the day, there were only five of those that the jury found could be legally attributable to Mr. Wolff. Right there, we cut them down from 22 to five," Privette said.

The case then became a battle over what Wolff actually owed. Plaintiffs maintained Wolff owed \$43 million for those five misstatements for which the jury found him liable. Based on the PSLRA, Privette and Carlton said he owed nothing.

"This was Howard's brainchild," Carlton said of the offset strategy. "These are forgotten or never really litigated provisions of the PSLRA because these cases never go to trial. But he understood from the very beginning that the offset could come into play."

Of course, to get to that point, Privette needed to convince the jury his client was only responsible for a handful of the misstatements, and then he had to hand them a verdict form that made it simple to reflect that conclusion, said Paul Hastings' litigation Chairman William Sullivan, who consulted on the case.

"That's the blocking and tackling stuff you really have to do as a trial attorney," Sullivan said. "Howard had to execute on that every step of the way. He's one of the smartest guys I know. He's a tough, dogged litigator."

Wolff is represented by Howard Privette, Scott Carlton and William Sullivan of Paul Hastings LLP.

The plaintiffs are represented by Cotchett Pitre & McCarthy LLP.

The civil is T. Jeffrey Simpson et al. v. Homestore.Com Inc. et al., case number 2:01-cv-11115, in the U.S. District Court for the Central District of California.

--Editing by John Quinn.

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