FT WEEKEND

FINANCIAL TIMES | Saturday August 30 / Sunday August 31 2014 | USA

World Business Newspaper

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# The man who took on Wall Street

*Tom Braithwaite* and *Kara Scannell* on a lawyer who sued the banks for their part in the financial crisis

**Philippe Selendy in his New York office** Flora Hanitijo

The New York courtroom was packed in December 2011 for the start of what would be this century's biggest case against Wall Street. But the crowds were not spectators or reporters. Instead, jammed shoulder to shoulder, snaking out along the walls of the courtroom and even spilling into the jury box, were 110 lawyers. They represented 16 of the best-known banks in the world.

Against them, almost comically outgunned, stood a small team led by Philippe Selendy, a partner at Quinn Emanuel Urquhart & Sullivan, a scrappy plaintiff's law firm. Selendy and a handful of others were demanding tens of billions of dollars from the banks in compensation for wrongdoing in the financial crisis. "If there was anything we needed to underscore that we would face multiple armies of defence counsel against us, that first day made the point for us," says Selendy.

Not only was the opposition ferocious but the very demand seemed fanciful. Ever since markets tumbled and unemployment surged in 2008, Americans have wanted to see some sort of reckoning from the financial industry. But until now they had been disappointed. Selendy's attempt to deliver that reckoning in court – via claims that banks had knowingly stuffed hundreds of billions of dollars of dodgy mortgages into securities and sold them to US government-backed entities – faced extremely long odds.

Wearing shorts and a polo shirt – his preferred summer uniform – and looking younger than his 47 years, Selendy makes for an unlikely scourge of Wall Street. Leftwing by US standards, he has a soft, professorial way of speaking and peppers his conversation with references to Wittgenstein's *Philosophical Investigation*s, his favourite work from his favourite philosopher; Thomas Piketty's recent study on income inequality; and, most telling of all, George Packer's *The Unwinding*, a dissection of the fraying of the American safety net and the rise of organised money.

He is prone to starting sentences with phrases like, "As a macropessimist . . ." and venturing that, "It would be kind of cool if we could combine cloud computing with solar technology somehow."

Selendy wasn't even sure he wanted to be a lawyer. Long a seeker of calm, he chose boarding school to escape his parents' divorce: "My parents were suing each other and I wanted some neutral territory." His father is a (now retired) doctor who fought in the 1956 Hungarian revolution before studying in Belgium, giving Selendy his French first name and instilling a sense of public service. Even after graduating from Harvard Law School in 1993 and landing a plum associate position at prestigious firm Cravath, Swaine & Moore, Selendy carved out a deal that allowed him to take a year off to finish a dissertation on Wittgenstein (he never did). At Cravath he met his wife, Jennifer, who is also a lawyer. That path eventually led him to Quinn and the case of his career.

Quinn Emanuel is not one of the elite "white shoe" US law firms – and not just because Selendy dares to wear sandals in the office. Those firms, many of which defended the banks, have been around for decades and offer advice that ranges from regulation to mergers and acquisitions. Quinn Emanuel's mantra is "litigation only, all the time". Its lawyers boast publicly of one client's description of them as "hungry dogs" and do not brook condescension from elite rivals.

"I know they respect us," says John Quinn, a founding partner of the firm. "They pay our clients billions of dollars – they won't go to trial against us."

Selendy is methodical, with a track record of winning. "He's like an assassin that you would let babysit your kids," says Jonathan Harris, counsel at the bond insurer MBIA, which hired Quinn Emanuel in 2008 in a successful five-year battle against Bank of America – an outcome which Harris credits with saving his company from bankruptcy.

It has taken four years but Selendy has used his experience to do what US authorities failed to do: extract real money from the institutions whose misbehaviour lay at the heart of the financial crisis. So far this amounts to $20bn from more than a dozen institutions.

"It nearly killed us," Selendy says. "It was incredibly hard just to keep up with

**Selendy with (clockwise from bottom left) Maria Ginzburg, Sean Baldwin, Christine Chung, Manisha Sheth and Adam Abensohn**

Flora Hanitijo

the pressure of it, to perform at a very high level and validate what we were doing."

**The case was born under a clear blue** sky in the spring of 2010, when Selendy and his colleague Manisha Sheth, a former federal prosecutor, boarded a train to Washington DC, a journey that took in rows of boarded-up homes in Baltimore – the sort of urban blight exacerbated by the housing crash. "For a private lawyer to go down to DC, it's almost like you have a sense of mission with it," says Selendy. "It's very special because you know that you're in the midst of a disastrous time, this crisis, and the possibility of actually levelling the field a little bit, especially on such a scale, is just wonderful."

Selendy was there to pitch a plan to the Federal Housing Finance Agency (FHFA). He wanted it to sue more than a dozen banks – from JPMorgan Chase to Deutsche Bank to Barclays – over the $200bn of bad mortgage-backed securities they underwrote in the run-up to the crisis.

On the face of it, the pitch was unlikely to succeed. The FHFA is a government agency created in 2008 whose mission, in part, was to mop up after the housing market crashed.

It oversees Fannie Mae and Freddie Mac, two government-backed institutions, which collapsed under ballooning losses when the mortgage securities proved to be backed with home loans the borrowers could not repay.

Under Ed DeMarco, who ran the agency from 2009 until January this year, the FHFA was loathed by Democrats for refusing to help homeowners by writing down the value of their outstanding mortgage debt. Supported by general counsel Alfred Pollard, a former bank lobbyist, DeMarco seemed unlikely to do something as radical as what Selendy proposed.

Selendy wanted to recoup the losses from the banks partly because he saw them as guilty of a "misuse of power". He worried about the social impact of the financial sector: "The truth is, I actually feel that the banks have gotten away with too much for too long and that regulation has been stymied by lack of resources [and] often by a revolving door, with people who become very knowledgeable and then . . . go back to industry."

Pollard saw the decisions quite differently. "We're not talking about penalising someone," he says. "The defendants are making somebody whole for losses they created. So, no, I don't think we look at this as punishment." But the FHFA decided Selendy's suggestion to sue was squarely in its mandate. It sent subpoenas to the companies in July 2010, demanding information on their mortgage business. Though legally obliged to respond to the letters, most banks used the same tactics as their own delinquent borrowers: they ignored them and hoped they would go away. So in August 2011, the FHFA sued.

> **'Trillions of dollars flowing into the very sector that led us into the crisis. I find that galling'**

**There was an initial flurry of excite**ment – but the bank lawyers soon became increasingly confident that the cases would either fail altogether or settle for a tiny fraction of the vague "billions" being claimed. "They were very belligerent at the beginning," says Selendy. "They told us that they expected to win on one ground or the other."

And so, in the Manhattan courtroom, the legal teams eventually fought it out. Did the securities plunge in value because they were stuffed full of loans that were worse than stated or would they have plunged in value anyway in the recession? Could the government rely on sampling loans or did it need to go through every single mortgage file to find underwriting errors, an impossibly huge task?

One by one, the rulings started to go the way of Selendy and the government. Bank lawyers continue to insist that the judge, Denise Cote, has erred in the rulings. Selendy has a different take: "Although we were representing the government, we're much nimbler, we can move much faster than this morass of defendants," he says. Either way, the repeated defeats caused mounting panic among the flanks of bank lawyers. In a desperate gamble, they tried and failed to get Judge Cote replaced.

Citigroup did not even wait for that result. In May 2013, under Mike Corbat, a new chief executive who wanted to get the bank's past problems out of the way as quickly as possible, Citi's lawyers settled, paying $250m. Then the dominoes started to fall. UBS of Switzerland settled and then came JPMorgan, whose chief executive, Jamie Dimon, is arguably the most famous banker in the world.

This time, after five years of being slammed for its failure to hold banks accountable, the US Department of Justice wanted in on the action. It hosted a showdown with Dimon in Washington. TV crews had been tipped off and showed him and his lawyers traipsing in for the settlement talks.

In November, the justice department announced it had extracted a $13bn payment from JPMorgan ("along with federal and state partners") to resolve the allegations of mortgage mis-selling. The press release stated that this was the "largest settlement with a single entity in American history". You had to read much further down to see any specific acknowledgment of the FHFA, the real instigator of the settlement, which took $4bn from the deal, the largest portion of cash.

**Banks around the world, supported** in some cases by politicians, have complained of bully-boy tactics from the justice department, which appears to have been mounting a grab for billions of dollars – and some favourable headlines – for the past two years. But they were built on the FHFA's settlements, which, as Selendy points out, were won after painstaking court battles. "This is not a threatening use of government authority to exact quick results," he says.

After the circus of the JPMorgan settlement, others paid up much more quietly. This year, Deutsche Bank paid $1.9bn. BofA, which had also protested its innocence and vowed to fight, paid $9.3bn – the biggest payment yet to the FHFA and more than twice the penalty paid by BP for the Gulf of Mexico oil disaster. Last week Goldman became the 14th company to settle, paying $1.2bn and leaving only Nomura, HSBC and Royal Bank of Scotland battling in the hearings. If they don't fold too, the first full trial will start next month.

But the recoveries are already the biggest to emerge from the financial crisis. Compared with the $20bn FHFA tally, which flows back to Fannie Mae and Freddie Mac but then into the coffers of the US Treasury, the Securities and Exchange Commission has recovered only $3bn in fines, improper profits and interest. Although the banks that settled avoided a court verdict, it is clear that on their own terms they lost – and lost badly. The strange bedfellows of the strait-laced government officials and the lawyer with the radical agenda beat the most expensive legal talent Wall Street could assemble.

From his office on Madison Avenue, behind a desk constructed out of reclaimed wood, Selendy views his role as that of a fighter against the machine. He hates the way the Obama administration bailed out the banks, even though it is widely judged a success (and even though the government is his client).

"Trillions of dollars, massive liquidity flowing into the very sector that led us into the crisis. I find that galling," he says. "I don't regard that as a triumph. We're going to allocate a huge portion of the nation's wealth to that sector and hope it trickles down. All kinds of wasted opportunity. It drives me crazy."

He is looking to get hired by other government agencies on future scandals. They might be in different sectors – he would love to find a way to get paid for fighting polluters – but he feels sure that finance will provide more work, despite the clean-up efforts of the last few years.

"The problems that led to these cases are, at the end of the day, the result of structural problems within the banks," he says. "No matter what they do for their compliance, no matter what the regulators do and the increased burdens of recent legislation, you have a situation where compensation is typically based around performance and performance is measured by marks to market or yearly returns. That creates incentives for traders and structurers and sales people to push the envelope. And I have every expectation that, just as they always have, they will continue to do it."

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