

Lawdragon Spotlights Andrew Dunlap in Lawyer Limelight

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Andrew Dunlap is no stranger to the legal ramifications of an economic crisis. He was — and continues to be — at the forefront of cases surrounding the sale of residential mortgage-backed securities (“RMBS”), widely understood to be a significant contributor to the Great Recession of 2008. Through his work representing the Federal Housing Finance Agency, he and other team members recovered a historic \$25B from the world’s largest banks over the sale of RMBS.

While this work, and his incredible results, continue, he has also turned his keen eye toward the economic consequences of the coronavirus pandemic, fielding questions from clients about insurance issues and keeping watch for fraud and other misdeeds that may become exposed as the crisis progresses.

Lawdragon: What’s keeping you busy these days, Andrew?

Andrew Dunlap: We are litigating several big cases involving residential mortgage-backed securities on behalf of trusts or monoline insurers against major money-center banks. We are going up against the banks as well in cases involving things like credit default swaps and defaulted Puerto Rico bonds. We do a fair amount of bankruptcy litigation too, and I’m working on a couple of cases flowing out of the Madoff fraud. And we were recently named interim co-lead plaintiffs’ counsel in a large matter involving crypto assets, which are fascinating and present a lot of novel legal questions.

LD: You’ll have to keep us posted on the crypto asset cases. How are the mortgage-backed securities cases coming along?

AD: A few weeks ago, the settlement became final in a case we handled for U.S. Bank against UBS over three residential mortgage-backed securities trusts. This was a so-called “put-back” suit, in which the sponsor of a RMBS trust — in this case, UBS — agreed in the trust contracts to repurchase loans that violated various representations and warranties. But when the trust found evidence of thousands of defective loans, and tried to put them back to UBS, UBS refused to repurchase.

My partners and I took the case to trial in the Southern District of New York against a very talented and aggressive defense team. After hearing several weeks of testimony, the court issued preliminary findings of fact and conclusions of law that it directed a special master to apply to thousands of individual loans. That ruling was very favorable for us, and it set up a months-long process of litigating loan by loan. During that process, UBS agreed to a settlement that would avoid a final judgment. That settlement of \$850M, which just cleared its final approvals, was the largest settlement of a put-back case to date.

LD: Congratulations, that’s fantastic. Sounds like it could set an important precedent in similar mortgage-backed securities cases.

AD: This was a big deal because it was the first RMBS put-back suit to go to trial. There had been a couple of other RMBS-related trials, including a high-profile securities trial that I worked on with my partner Philippe Selendy on behalf of the Federal Housing Finance Agency. But this was the first trial in which the judgment would be paid to the trust on behalf of investors, not to the government.

The industry was watching because there were scores of put-back cases pending against many different banks. If we had come up short for U.S. Bank, then the banks would have had little fear of taking these cases to trial, and trustees and securities administrators would have been under great pressure to settle them on the cheap. But we got a strong result. The results of that trial and our FHFA trial showed that banks could face major liability if they try a case to verdict.

Following the trial, some banks decided to settle their cases on favorable terms for investors.

Other banks decided to keep fighting. But they were fighting now with a renewed focus on legal arguments to reduce or eliminate their liability before getting to trial — arguments about notice provisions, statutes of limitations, and the like. These arguments have been bubbling up in the New York appellate courts. For example, we won a case for U.S. Bank last year in the New York Court of Appeals allowing the trustee to refile a claim that Credit Suisse argued was time-barred. The Court of Appeals should decide many of these outstanding legal issues over the next year or so. If those rulings go against the banks, it will be very interesting to see how they respond.

LD: Fascinating; we'll be keeping an eye on it. Now, how has your practice been impacted by the coronavirus pandemic thus far?

AD: The immediate developments are to be perhaps expected in an economic crisis — more bankruptcies, force majeure claims, margin call suits. Some of the most interesting questions involve insurance. Insurance contracts define or exclude risks like fire, flood, hurricanes, terrorism, war, etc. Few explicitly address pandemics or the steps governments might take to combat them. There will be a lot of litigating over how the facts of the Covid crisis fit into the contract language. Billions of dollars could ride on the outcome.

Economic crises also tend to expose wrongdoing that prosperity concealed. (Or as Warren Buffet put it: "It's only when the tide goes out that you learn who has been swimming naked.") As the Great Recession exposed bad behavior by many of the banks who bought and securitized mortgages, the Covid crisis may expose misdeeds in other areas that are not sustainable once the money runs out. We are keeping an eye out for situations like this.

LD: What message would you give to any potential new recruits? Most law school graduates get wooed by Big Law firms. How would their experiences differ if they were to come to your firm?

AD: If you invest a lot in us, we'll invest a lot in you.

To work at Selendy & Gay, you must really, truly love the law and litigation, down in your bones. You must be eager to turn that desire into experience. You must be genuinely collegial and team-oriented. And you must be ready to work hard. If diving into complicated cases to find winning arguments and strategies fills you with joy, then we might be right for you.

If you commit to that sort of career with us, you will get meaningful opportunities early on — our associates take and defend depositions, go to trial and arbitration, examine witnesses, run major briefs, interact with clients, and speak in court. You will get boatloads of training — litigation and trial skills, client relations and business development, and the vital but little-taught skills of communication, collaboration, and case management. You will work at a diverse firm, where a majority of the equity is owned by women, where a majority of the associates are women, people of color, and/or LGBT, and which does lots of pro bono and public interest work. And you will be well compensated — we paid year-end bonuses far above the Big Law market in our first two years and expect to do so again this year.

Read the full interview in [Lawdragon](#).

Attorney

- Andrew R. Dunlap

Practices

- Securities and Structured Finance
- Bankruptcy and Insolvency
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