

## Litigator of the Week: James Rouhandeh of Davis Polk

By **Scott Flaherty**

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Persistence paid off this month for Davis Polk & Wardwell's James Rouhandeh, to the great relief of his law firm client, Proskauer Rose.

Despite a U.S. Supreme Court loss, Rouhandeh stayed the course for Proskauer, pushing a second line of defense that cleared away claims that the firm aided R. Allen Stanford's \$7 billion Ponzi scheme.

Just 10 days after oral arguments pitted Rouhandeh against P. Michael Jung of Dallas-based Strasburger & Price, the U.S. Court of Appeals for the Fifth Circuit held on March 10 that Proskauer and Chadbourne & Parke were immune from a multibillion-dollar class action brought by thousands of Stanford investors. Chadbourne, represented by Daniel Beller of Paul, Weiss, Rifkind, Wharton & Garrison, had agreed to settle a few days before the Feb. 29 oral arguments.

The appellate ruling caps nearly seven years of litigation that included two Fifth Circuit appeals and a trip to the Supreme Court, which in 2014 dealt the law firms a pivotal loss by reviving the case. (Bancroft's Paul Clement argued the appeal.) Rouhandeh served as Proskauer's lead outside counsel from the case's start.

Investors who suffered losses in Stanford's massive fraud filed the suit in 2009 against Proskauer, Chadbourne and Thomas Sjobloom, a former lawyer at the two firms who once represented the now defunct Stanford Financial Group.

Initially siding with the law firms, U.S. District Judge David Godbey in Dallas dismissed the case in 2011 on the ground that federal law precluded the plaintiffs' suit under Texas state securities law. But the Fifth Circuit later reversed, and the Supreme Court affirmed that reversal, kicking the case back down to district court.

In front of Godbey again, Rouhandeh and the law firms' other counsel pushed an alternate defense. Texas' attorney immunity doctrine, they argued, shielded the firms from securities fraud claims. Although Rouhandeh and others on the defense had made the immunity argument earlier in the case, Godbey never ruled on it, and the first round of appeals didn't consider the

issue. "We took the long view of the case and continued to press the attorney immunity argument that we made in our original motion to dismiss back in

2009," Rouhandeh said on Thursday.

Godbey, however, declined to dismiss the case a second time, finding in March 2015 that there was a fraud exception to Texas attorney immunity that applied in this case. The judge's ruling set the stage for what Rouhandeh described as a "critical strategic decision" that paved the way for the March 10 Fifth Circuit win.

Instead of continuing at the district court, Rouhandeh led the push for an immediate appeal under the rarely used collateral order doctrine, which provides an exception in certain circumstances to the general rule that only a final judgment can be appealed.

"We knew that to prevail, we would have to persuade the Fifth Circuit to hold—for the first time—that the Texas attorney immunity doctrine is a true immunity from suit, and not merely an affirmative defense," said Rouhandeh.

Despite opposition from the plaintiffs, the Fifth Circuit agreed that the collateral order doctrine applied and that it had the right to hear the immediate appeal.

But the appeals court also went a step further in cementing the win for Rouhandeh and Proskauer, overturning Godbey's finding of a fraud exception to the Texas attorney immunity doctrine. A recent Texas Supreme Court ruling made it clear that no such exception exists, U.S. Circuit Judge Edith Brown Clement wrote for the court.

"Defendants contend that, because ... the fraud exception does not exist, they should have been granted attorney immunity," Clement wrote. "We agree."



**James Rouhandeh**