

## Banking MVP: Venable's Greg Cross

By Daniel Wilson

*Law360, Washington (December 16, 2014, 5:58 PM ET) --*



Venable LLP partner Greg Cross' efforts to carve out a significant niche involving the rights and obligations of financial services companies and other participants in securitized debt structure deals, work Cross adds to an already bustling practice, has earned him a place on Law360's list of Banking MVPs.

As the aftermath of the financial crisis began to shake out, giving rise to a range of legal claims, there was little established law regarding the rights and obligations of subordinate lenders, borrowers, trusts, investors, and special and other servicers related to securitized debt structures.

But as this new area of law has developed and increased in importance since the financial crisis, the Baltimore-based Cross, partner-in-charge of Venable's bankruptcy group and head of its real estate servicing practice, has been solidly in the middle of the emerging area, building a strong reputation for his work.



Greg Cross

Cross, who joined Venable in 1988, has what he describes as a "very unique" practice. He works on a broad book of bankruptcy, restructuring and real estate-related work, including relevant litigation, and is trusted by financial services companies and other clients with billions of dollars in workouts and cases across the U.S. each year.

His introduction to the commercial mortgage-backed securities and special servicing space effectively came with the successful \$2 billion restructuring of real estate investment trust CRIIMI MAE Inc. in 1998 — a landmark in financial services restructuring, Cross noted, with the industry traditionally carving up companies in a way that left nothing to reorganize — which at the time was the largest purchaser of subordinate CMBS debt in the U.S., he said.

And with the explosion in legal claims related to mortgage-backed securities and other securitized debt, this sector has taken on increasing importance in his portfolio of work, Cross told Law360.

"[The work] grew naturally out of the CRIIMI MAE restructure, but over the course of time I developed an expertise and built an entire practice group that focuses on working with special servicers on a wide variety of issues they face," Cross said. "When the financial crisis hit things obviously got, and have remained, extremely busy."

In the past year, for instance, he has built on his extensive book of litigation with a range of CMBS disputes, such as helping to secure a victory for LNR Partners LLC and other clients in a CMBS suit in the Second Circuit — one of a number of federal appellate cases on his plate this year — winning the affirmation of an earlier dismissal in the investor case.

Cross also helped his clients to victories in the CMBS repurchase area, such as successfully representing CIII Asset Management as special servicer to Wells Fargo Bank NA in a New York federal court CMBS case against Bank of America NA, winning a \$40 million judgment.

That decision is notable for two firsts.

The April ruling was the first time BofA had been found liable for breach of representation and warranty regarding a commercial loan it had originated. And the ruling, with broader implications, saw the plaintiffs awarded significant prejudgment interest on nearly the entire loan amount, running back to the date of the trust's demand for repurchase — almost four years before the case was resolved.

Typically, loan originators have dragged out the resolution of breach of warranty demands, but the potential for significant interest payments may serve as a hefty disincentive to continue with the practice, Venable has noted.

Further, in what may be his most consequential victory in a commercial loan case this year, Cross managed to secure a \$19.6 million judgment for CW Capital Asset Management and U.S. Bank NA in its role as CMBS trustee, in a breach of warranty and representation dispute involving Dexia Real Estate Capital Markets Inc., with a New York federal court ruling that commercial loans were different from residential securitized loans for purposes of New York's six-year statute of limitations.

The ruling placed commercial loans outside the bounds of the New York state Appellate Division's landmark ACE Securities decision, handed down in late 2013, which found that the statute of limitations in breach of representation cases involving residential mortgage loans begins running on the date of the representation, not upon damage or discovery — effectively foreclosing nearly all pending claims regarding pre-financial-crisis loans in the most prominent U.S. jurisdiction for financial claims.

"The court said ACE doesn't apply — it recognized the arguments we made, that for purposes of limitations commercial mortgages are different than residential mortgages," Cross said.

These CMBS cases, however, are just a slice of the work done by the busy Cross, who has also served as lead lenders' counsel in the \$4.1 billion Extended Stay Hospitality hotel chain bankruptcy and related disputes, and in a similar role for a group of securitized trusts in a \$5.8 billion dispute involving a loan default related to the Stuyvesant Town project in New York City, the largest real estate transaction in U.S. history.

That case has the potential to significantly alter the landscape for lender disputes — the plaintiffs seek a ruling that certain junior lender actions should procedurally stop further action by a senior lender. The

suit follows the successful work of Cross and his team in two earlier Stuy Town disputes involving both junior lenders and investors, part of a broad body of real estate work for him and his team.

"That dispute is important because it, like an earlier litigation concerning the same asset, is focused on sorting out the rights of various lenders in a subordinated finance structure and is getting lots of attention," Cross noted.

--Editing by Edrienne Su.

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