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Litigator of the Week: D. Jean Veta of Covington & Burling

By Jan Wolfe

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Michael Perry emerged from humble beginnings to become CEO of Pasadena, California-based IndyMac BanCorp Inc., once one of the largest regional banks in the country and a home mortgage powerhouse. Then, in 2008, he had a spectacular fall from grace. IndyMac collapsed, and Perry eventually got sued by both the U.S. Securities and Exchange Commission and the Federal Deposit Insurance Corporation. But thanks to Covington & Burling partner D. Jean Veta, Perry has now gone a long way toward clearing his name.

On Dec. 14, Perry reached a $12 million settlement with the FDIC, which accused him of causing $600 million in losses by mismanaging IndyMac's mortgage portfolio. Perry didn't have to admit any wrongdoing, and he'll only pay $1 million out of his own pocket.

Veta negotiated the end of the FDIC's case just days after a jury in Los Angeles sided with the agency and its lawyers at Nossaman in a separate case against three other IndyMac officers, awarding the FDIC a whopping $169 million. And the settlement comes on the heels of a remarkable victory for Veta against the SEC, which accused Perry of seven counts of securities fraud. Veta knocked out six of the SEC's claims on summary judgment earlier this year. With a trial nearing, Perry agreed to pay a $80,000 fine to exit the case.

"We just kept hammering away at weaknesses" in the FDIC and SEC cases, Veta told us.

The son of an auto mechanic and the graduate of a commuter college in Sacramento, Perry took the helm at IndyMac in 1990, when he was just 30 years old. He built the then-tiny trust into the seventh-largest mortgage originator in the U.S. But when the housing market collapsed, so did Perry's stature. Investors rushed to cash out their deposits, and IndyMac failed in July 2008. To this day, IndyMac counts as the fifth-largest bank failure in U.S. history. The FDIC had to pay $13 billion to cover the bank's losses.

The FDIC, as IndyMac's receiver, sued Perry in 2010, claiming that he negligently caused $600 million in losses by not reducing the bank's volume of mortgage loans. A year later, the SEC brought a civil case against Perry, accusing him and his CFO, Scott Keys (who was represented by Willkie Farr & Gallagher), of painting an overly rosy picture of IndyMac's finances.

Perry opted to fight back hard, and even launched a Web site, nottoobigtofail.org, to clear his name. With funds from IndyMac's directors & officers insurance policy, he hired Veta. Born and raised in Cheyenne, Wyoming, Veta is a success story in her own right. She ended up at Tulane University for college and law school, and in 1980 she became the second female editor of the *Tulane Law Review*. (The first took over during World War II, when most male students went off to fight.) Veta was the eighth female partner in Covington's history, and also served in the U.S. Department of Justice during the Clinton administration.

U.S. District Judge Manuel Real in Los Angeles dismissed the bulk of the SEC's case against Perry in May, and entirely absolved Keys. Then the judge whittled down the case against Perry even further in September, leaving just one claim pending for trial. Rather than go to trial, Perry agreed in October to settle the remaining count by paying a minor $80,000 penalty.

According to Veta, Perry wanted to sustain the fight through trial, but the insurance funds to pay for his defense had been exhausted. In the end, he got a pretty good deal. With the exception of $1 million that Perry has to cough up himself, the $12 million settlement will be covered by IndyMac's D&O insurance—and the FDIC's lawyers at Nossaman may have a very tough time wresting the funds from the company's dwindling policy. Moreover, the settlement must look pretty good to Perry compared to the $169 million verdict that Nossaman won earlier this month against three of his former colleagues, IndyMac officers who oversaw the bank's construction lending division.

"The government was looking for scapegoats, and Perry seemed perfect," said Veta. "He was the CEO of one of the most highly visible bank failures. But what the government forgot to focus on is that he did his absolute best to save the bank. Nobody saw the financial crisis coming—not the regulators, not the economists, and certainly not the bankers."

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