

Litigator of the Week: Michael Malone of King & Spalding and Martin Perschetz of Schulte, Roth & Zabel

By Andrew Longstreth

When a Manhattan federal jury handed down its verdict last Friday in the big securities class action against Vivendi, it found the French media company liable for all 57 of the statements at issue. But the jury assigned no liability to Vivendi's former CEO Jean-Marie Messier or its former CFO Guillaume Hannezo.

Since a good chunk of the plaintiffs' case was based on statements made by both Messier and Hannezo, we wondered how that could have happened. Neither Messier's attorney, Michael Malone of King & Spalding, nor Hannezo's attorney, Martin Perschetz of Schulte, Roth & Zabel, have spoken to jurors since the trial concluded, so it's impossible to know for sure what worked and what didn't. But Perschetz gave us his best guess.

"They viewed the individual defendants as credible," he said. "A large part of our defense was that...[Hannezo] acted honestly and in good faith throughout. Sometimes that's easier for the jury to translate when it comes to individuals as opposed to a company."

As a technical matter, Perschetz told us that some of the evidence was admissible against the company but not the individuals. That may have allowed the jury to find the company liable for statements made by the individuals.

Messier and Hannezo testified for nearly two weeks during the three-month trial. Throughout Messier's testimony, which was at times emotional, he admitted making mistakes but vehemently denied fraud.

"Jean-Marie was a compelling witness," Malone told us. "Mr. Messier had been waiting eight years to have the opportunity to tell his story."

During his closing, which can be read here, Malone emphasized Messier's character.

"You saw Mr. Messier for almost a week on the witness stand and you saw him not as CEO," he said. "You saw him as a man. He is many things. He is optimistic, he is amazingly energetic, he worked tirelessly at Vivendi. He freely admitted to you in public that he made errors and he made mistakes, made judgments that turned out to be wrong. But he made one thing very clear, and that is that he did not defraud Vivendi's investors, as the plaintiffs charge."

Perschetz, who also spoke about this client's character during his closing (available here), said that it was important that the individual defendants make an emotional connection to the jurors.

"I will say that where you have allegations that depend on a jury finding that someone acted with scienter, with an intent to defraud, obviously on a personal level it matters how the jury assesses an individual defendant when he or she testifies," he said.

