

## Litigator of the Week: Susan Brune of Brune & Richard and Dane Butswinkas of Williams & Connolly

By Andrew Longstreth

The prosecution blew it. So stated author William Cohan on the op-ed page of *The New York Times* this week, opining on the not-guilty verdicts in the federal criminal trial of two former Bear Stearns hedge fund managers. (Cohan is the author of *House of Cards: A Tale of Hubris and Wretched Excess on Wall Street*.) Maybe so, but we suspect the lawyers for defendants Ralph Cioffi and Matthew Tannin had something to do with the outcome.

The case was the highest-profile prosecution that has emerged from the financial crisis. The hedge funds that Cioffi and Tannin managed, which were invested heavily in the subprime mortgage market, blew up in the summer of 2007. The government alleged that Cioffi and Tannin misled investors about the funds' prospects in the months before their demise. Prosecutors quoted parts of a note Tannin sent from his personal Gmail account in the spring of 2007, stating: "I think we should close the funds now...The entire subprime market is toast." They also pointed to an investor call in April 2007 in which Cioffi and Tannin expressed an overly optimistic outlook about the funds' prospects and in which Cioffi allegedly misstated the amount of redemptions.

Tannin's attorney, Susan Brune of the litigation boutique Brune & Richard, and Cioffi's lawyer, Dane Butswinkas of Williams & Connolly, weakened the government's best evidence with overwhelming amounts of context. Brune, for example, gave the jury more information about the "toast" e-mail, which showed Tannin wondering which direction the funds should take in the subprime market. "Matt is staking out those two very extreme positions—go aggressive or close the fund," she explained in her summation,

which can be read [here](#). "He's recognizing that he does not have all the answers."

To counter allegations that Cioffi lied about a pending \$57 million redemption from Concord Management during the April 2007 call, Butswinkas showed the jury a Bear Stearns document Cioffi received before the call detailing redemptions. The document didn't include the Concord redemption. During his summation, which can be read [here](#) and [here](#), Butswinkas argued that it would be weird for Cioffi to lie about the Concord redemption when a Concord executive was on the call. "That's a pretty brazen move, isn't it?" Butswinkas asked.

Brune and Butswinkas also benefited from an excellent weapon in expert witness R. Glenn Hubbard—dean of the Columbia Business School—who testified that it was reasonable for someone to be optimistic about the two funds' prospects in the spring of 2007. "His model assumed that the housing market was going to go down," said Brune about Hubbard's findings. "And he concluded, based on his work, that even so, from an objective economic point of view, it was reasonable to expect that the funds would make money for investors."

Butswinkas told us: "We felt extremely fortunate to have had a careful, attentive, and focused jury, which went to extra lengths to give Mr. Cioffi a fair trial. For that, Mr. Cioffi and his family are extremely grateful." Brune, who is a former federal prosecutor in the Southern District of New York, also praised the jury, and commented on the key role of e-mails in the trial: "E-mails can be taken out of context, but there are more e-mails that can be used to set the record straight and provide the context."