

Class Action Group Of The Year: Labaton Sucharow

By **Aebra Coe**

Law360, New York (January 24, 2017, 1:56 PM EST) -- Leveraging its laser focus on class action litigation and a hard-hitting investigations unit, Labaton Sucharow LLP scored multiple influential and high-dollar awards in securities, antitrust and derivative shareholder lawsuits, earning the firm a place among Law360's Practice Groups of the Year.

The plaintiffs' law firm's high-profile victories between Oct. 1, 2015, and Oct. 1, 2016, include securing a \$300 million recovery for class members in litigation against State Street Corp. over an alleged decadelong scheme of overcharging customers for foreign exchange transactions, securing \$140 million in a case against Barrick Gold, one of the largest mining companies in the world, over alleged misrepresentations regarding an \$8.5 billion South American mining project, as well as securing more than \$1.2 billion in settlements for class members in an air cargo price-fixing case.



Labaton Sucharow's successes over the past year, according to Chairman Lawrence Sucharow, can be attributed to the firm's primary expertise in class action litigation, along with help from a robust investigations unit, which is made up of ex-law enforcement officials, including former members of the Federal Bureau of Investigation.

Sucharow explained that in his 40 years at the firm, class action litigation has changed drastically, with the advent of heightened, "extraordinarily high" pleading standards for cases, which means plaintiffs' attorneys have been forced to completely rethink the way they approach litigation.

One of the ways Labaton Sucharow has adapted, Sucharow explained, is by conducting much more thorough investigations leading up to the filing of a complaint.

"You used to have a Wall Street Journal investigative report on which you could base your complaint. Today, the court would throw you out if you did that," Sucharow said. "Now to sustain a complaint we have about seven investigators that help us get greater detail, documents, stories, whatever we need to flesh out a complaint."

And that intense scrutiny of the facts before a case is filed has led to a "relatively high" nondismissal rate for the law firm, close to 20 percent, versus the status quo, which is approximately 50 percent.

“Some firms file everything. They throw it against the wall like spaghetti. Not us,” Sucharow said.

One case in which the litigator says the firm’s investigations unit was especially helpful was in the case against Barrick Gold. The mining giant was accused by investors of misrepresenting its now-stalled \$8.5 billion South American mining project, Pascua-Lama.

The company allegedly misled investors by touting an infeasible and unachievable budget and timeline for the Pascua-Lama project, and failing to recognize environmental hurdles to its governmental approval.

Labaton Sucharow, which served as liaison counsel in the class action, unleashed its investigations team in South America early on in the process, gathering a good deal of information prior to filing the case, according to the lead attorney on the case, Labaton Sucharow partner Jonathan Gardner.

Gardner explained that the proposed mine straddles two countries, Argentina and Chile, and is located on a glacier, creating a slew of environmental and regulatory concerns.

“We invested the time and energy to track down as many former employees and other people that had knowledge of what was going on with respect to the mine as possible,” Gardner said. “We took that and we were able to get internal company documents and put together a case.”

One of the bits of information the law firm learned was that the mine operator had been using a chemical for dust mitigation as required by environmental regulation, but had stopped using it due to its cost, Gardner said.

“It’s a testament to our investigation department and how we really dig in on these investigations,” he said. “The conduct that took place was in South America. Tracking down former employees was complicated by the fact that it took place in a foreign country and the conduct was in the construction of a mine that was no longer operational. Figuring out who was in a position to know, tracking them down and getting past language barriers was challenging, but our investigation department did a great job.”

Another instance in which the team came in handy was when the law firm represented Arkansas Teacher Retirement System as lead plaintiff against Boston-based financial services company State Street Corp. in litigation over alleged overcharging of customers for foreign exchange transactions.

The law firm spearheaded the investigation into the company’s conduct.

“Months after we filed the complaint, which outlined the firm’s extensive investigative findings and damage calculations, we learned of the Securities and Exchange Commission and Department of Justice’s own investigations into State Street’s deceptive FX practices,” the firm said in a statement.

Ultimately, the groundwork the firm laid, along with 16 mediation sessions between the parties over four years, led to a \$300 million recovery for the class, as well as agreements with the DOJ, the SEC and the U.S. Department of Labor, totaling nearly \$530 million in private and government settlements.

“It was a win-win — State Street maintained its client relationships and its clients got big checks from the settlement,” Sucharow said. “It was one of those cases where rational counsel on both sides can reach an extraordinary agreement. And it was also a win for the court system because we didn’t have motion after motion before the court.”

--Editing by Stephen Berg. All Content © 2003-2017, Portfolio Media, Inc.