50 Year Retrospective

Ed Labaton is a senior partner at Labaton Sucharow & Rudoff LLP. Mr. Labaton graduated from Yale Law School in 1955 and has specialized in the areas of securities and corporate litigation since 1957. In addition to his prestigious litigation experience & legal background, Mr. Labaton has also, for more than 30 years, lectured in continuing legal education programs in the areas of federal civil litigation, securities litigation and corporate governance. Since its founding 10 years ago, Mr. Labaton has been President of the Institute for Law and Economic Policy ("ILEP"), a public policy institute dealing with issues relating to the civil justice system. He is also a member of the Advisory Committee of the Weinberg Center for Corporate Governance of the University of Delaware, a Director of the Lawyers' Committee for Civil Rights under Law, a member of the American Law Institute, and a life member of the ABA Foundation.

In 2005, Mr. Labaton reached another milestone in his life – his 50th law school reunion, in which he participated in a program on Entrepreneurism and the Law. The following is excerpted from his remarks in that program on the evolution of law in this country over the past 50 years.

In the 50 years since I graduated from law school, there have been incredible advances in the law and its effects on our society. Since my graduation, I've developed a deep appreciation for the uniqueness of the American legal system. Some may say that "unique" is an overstatement, but when you compare certain attributes of our system to the British system and from that of most, if not all, industrial countries in Europe and Asia, you can see the difference. Two of the attributes that I feel have positively affected our culture, as well as our legal policies, and given almost universal access to the courts are: the contingent fee system and what is known as the American Rule, under which each party is responsible for his or her fees whatever the outcome. This is a contradistinction to the English Rule, which is also known as "loser pays," where the loser has to pay the legal fees and expenses of the victorious party. Almost all of the world has adopted a variation of the English Rule.

The American Rule has given real access to the courts to not only private plaintiffs, but also to those litigating great social and political issues (which established a right of privacy). I doubt whether *Brown v. Board of Education*, *Griswold v. Connecticut* or *Baker v. Carr* ("one person – one vote") could have been litigated if we did not have the American Rule and I, for one, think that this decision and others like it were instrumental in preserving basic freedoms in this country. The American Rule is the underlying basis for full access to the courts. Without it, ordinary citizens or modest businesses could not seek redress against government or mega corporations without risking everything they owned.

There is also the contingent fee rule, which for a long time was considered unethical under British law, although recently there have been some inroads and contingent fees have been allowed to some extent in the U.K., as well as other industrialized countries.

The American Rule and the contingent fee rule permit persons with limited means to assert their claims in American courts without risking most, or all, of their assets. It also permits large institutions who are risk-averse to protect the interests of their constituency, free of the costs of litigation.

The burden of loss in these types of cases often falls upon the lawyer, but it has enabled those willing to bear the risk to effect great and, in my judgment, beneficial changes in this country. It was a direct result of litigation in thousands of cases (and plaintiffs lost most of the early cases) that the asbestos industry was finally held accountable for its conduct in the 1930's and 40's when it knowingly spread death and disease to thousands and thousands of workers. It was a direct result of litigation in the tobacco cases that the tobacco companies ultimately paid billions of dollars for their misconduct and were forced to change their marketing and sales practices which had resulted in the addiction of millions of young Americans to deadly carcinogens. And in class action securities litigation, the area in which I have practiced for most of my career, private litigation has developed a wide body of law to deal with civil claims for securities fraud in open market transactions.

As a plaintiffs' class action securities lawyer, the risks involved in being in this business along with the financial exposure to firms like ours have brought about real challenges. Nevertheless, regardless of the changes in the laws, particularly those developed in an effort to reduce the options available to individuals seeking redress for wrongs committed by large corporate entities, the securities laws have greatly benefited the market.

In fact, another tool which was unique when initially developed – the class action – has provided the vehicle for a single plaintiff to represent an entire class of injured investors. In securities fraud cases until 1996, this representative plaintiff more often than not had only a trivial loss compared to the loss of the class, sometimes a loss of only a few hundred dollars. And it was in that era that our opponents characterized the securities class action as "lawyer-driven litigation" or "strike suits." That changed with the adoption of the Private Securities Litigation Reform Act (the "PSLRA") which did at least one good thing: it empowered institutional investors to become Lead Plaintiffs and to closely monitor litigation. My Firm has represented, on a wholly contingent basis, the state pension funds of Ohio, Connecticut, Florida and New Mexico, as well as New York City, and other large institutional investors, in securities class actions which have resulted in the recovery of billions of dollars for investors.

The changes that I've seen take place in our practice have provided financial recovery to many investors, helped to provide a safe and effective marketplace, deterred serious corporate misconduct and made our markets more trustworthy.

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