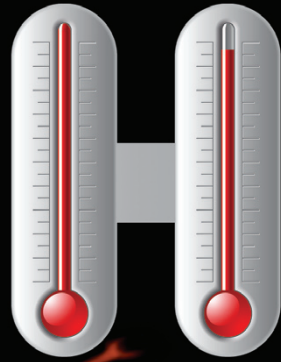


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# THE PLAINTIFFS' HOT LIST

*The National Law Journal's annual Plaintiffs' Hot List attempts to provide a snapshot of the most successful plaintiffs' practices of the moment. To identify them, we asked firms to provide us with a year's worth of representative cases, verdicts and settlements from June 2010 to June 2011. From there we sifted through dozens of potential firms, reporting on and researching each to come up with our list. In this special report, you'll find the results: We profile 20 firms that are at the cutting edge of plaintiffs' work—and that are giving defense players a run for their money.*

Baron & Budd | Berger & Montague | Bernstein Liebhard

| Bernstein Litowitz Berger & Grossman | Boies, Schiller & Flexner | Cohen Milstein Sellers & Toll

| Cotchett, Pitre & McCarthy | Dickstein Shapiro | Grant & Eisenhofer | Hagens Berman Sobol Shapiro

| Hare, Wynn, Newell & Newton | Kessler Topaz Meltzer & Check | Korein Tillery |

**Labaton Sucharow**

| Lief Cabraser Heiman & Bernstein | Milberg | Pomerantz Haudek Grossman & Gross

| Quinn Emanuel Urquhart & Sullivan | Stook & Stook & Lavan | Whatley Drake & Kallas

*Plaintiffs' Hot List for  
6 Consecutive Years*

**Labaton  
Sucharow**

# In NYSE case, Labaton created a bull market

Working for shareholders, the business litigation firm helped win a \$900 million settlement.

BY KAREN SLOAN

It was big news on Wall Street and around the world. On Feb. 15, German stock exchange Deutsche Börse A.G. and NYSE Euronext Inc., the operator of the New York Stock Exchange, announced their intention to merge through an all-stock deal valued at nearly \$10 billion. The newly formed Dutch holding company would become the largest futures exchange in the world.

Critics of the deal lamented the overseas migration of the New York Stock Exchange ownership—a symbol of American capitalism dating to 1792. But NYSE Euronext shareholders saw even bigger problems: namely, that they would be saddled with undervalued stock and would lack a majority stake in the newly formed company.

Among the unhappy shareholders was the Greater Pennsylvania Carpenters' Pension Fund, which quickly turned to its long-time legal counsel at business litigation firm Labaton Sucharow.

"It was quickly revealed that the ownership of this new holding company would be 60% the Deutsche Börse shareholders and 40% the New York Stock Exchange shareholders," said Christine Azar, a partner in Labaton's Delaware office and the head of its corporate governance and shareholders' rights practice. "One of the first questions that came up was, 'Was it really a merger of equals?'"

The Labaton attorneys and their clients didn't think so. Ten days after the merger announcement, Azar and Labaton partner Michael Stocker filed a class action in Delaware against NYSE Euronext, its board members and Deutsche Börse. The complaint alleged that Deutsche Börse's proposed stock purchase price of \$37.60 was "grossly inad-



**CHRISTINE AZAR:** Labaton Delaware partner said one of the first questions in the NYSE case was "was it really a merger of equals?"

TERENCE ROBERTS

**LABATON SUCHAROW**

equate." The suit also contended that the structure of the deal, which was designed to prevent offers from other bidders, was unfair to the shareholders and that the NYSE Euronext directors had negotiated "substantial benefits to themselves." (New York Stock Exchange Chief Executive Officer Duncan Niederauer was to become the head of the new company.)

"The New York Stock Exchange is an extremely important entity," Stocker said. "We and our clients felt that to not open it up to a bidding war was problematic."

Additional shareholder suits followed in Delaware and New York, and the cases were eventually consolidated. Labaton was named co-lead counsel along with attorneys from Grant & Eisenhofer and Robbins Geller Rudman & Dowd.

## DISCOVERY WHIRLWIND

The following months were a whirlwind of discovery and depositions. The plaintiffs' team knew that the size of the deal and the involvement of regulators in numerous countries would slow the pace somewhat, but they still had to push quickly. Azar traveled to London and Amsterdam to take depositions, and also deposed Niederauer. In the meantime, The Nasdaq OMX Group Inc. made an unsolicited \$11.3 million bid for the New York Stock Exchange, further complicating the discovery process.

"Our belief that the New York Stock Exchange really was favoring a transaction with Deutsche Börse over some other entities was confirmed," Azar said. "Once that deal was kind of nailed down, they just wanted it to go forward."

Structuring a settlement was no easy task either, considering that the attorneys had to devise a structure that would

pass muster with regulators in the United States, Germany and the Netherlands, as well as the various shareholders. They settled on a special dividends framework early on, but negotiating the details took time.

On June 24, a settlement was reached in which shareholders would receive a special dividend of 2 euros per share, equivalent to more than \$900 million, one of the largest such settlements to date.

"We were satisfied with the outcome," Azar said. "The primary factor [in the success of the suit] was pursuing this extremely hard. Insisting on every bit of discovery. Pushing, pushing, pushing. Wachtell, Lipton, [Rosen & Katz] represented the New York Stock Exchange board. They're an extremely good firm and they fight the hard fight. Never letting go and pushing really kept the litigation moving forward and going in the direction we wanted it to."

## ARRAY OF FINANCIAL INSTITUTIONS

The case was hardly the only high-profile litigation Labaton Sucharow has handled in recent years. The firm's clients include a wide array of pension funds and financial institutions including Amalgamated Bank, SunTrust Banks Inc. and Anglo Irish Bank Corp. Ltd., said Chairman Lawrence Sucharow. He sees the firm as the Whole Foods of the securities litigation world—meaning that it pays close attention to the size and quality of the cases it takes on. It's not Wal-Mart, focusing on the sheer volume of cases it brings, he said.

"I think our relationship with clients is what differentiates us," Sucharow said. "These are large, institutional clients, and we pay a lot of attention to them. We view our clients as our partners,

and we're not in it for a quick hit. Most of our clients have been with us for a long time."

The firm claimed more than \$2.2 billion in settlements in 2010. The sheer number of cases hasn't grown, Sucharow said, but their size has. The financial crisis of 2008 prompted some larger financial institutions to get off the litigation sidelines and sue to recover losses, he said.

In related class actions brought by investors in two mutual funds operated by OppenheimerFunds Inc., Labaton took the lead counsel role. Those cases settled in May for \$100 million after Labaton attorneys argued that the funds' recklessness resulted in investor losses.

Two months earlier, the 92-attorney firm helped to secure a \$150.5 million settlement on behalf of client the Mineworkers' Pension Scheme and other investors in a case that has become known as "India's Enron." Auditors and certain directors at Satyam Computer Services Ltd. overstated the company's earnings by as much as \$1.5 billion, artificially inflating the price of its securities.

Labaton helped to secure a series of antitrust settlements now totaling \$451 million on behalf of plaintiffs who purchased air freight shipping services. The plaintiffs alleged that a series of airlines unlawfully inflated air-shipping rates between 2000 and 2006. And it has pending litigation against some of the biggest players in the financial crisis, including the Goldman Sachs Group Inc., The Bear Stearns Cos., Morgan Stanley and the Federal National Mortgage Association, best known as Fannie Mae.

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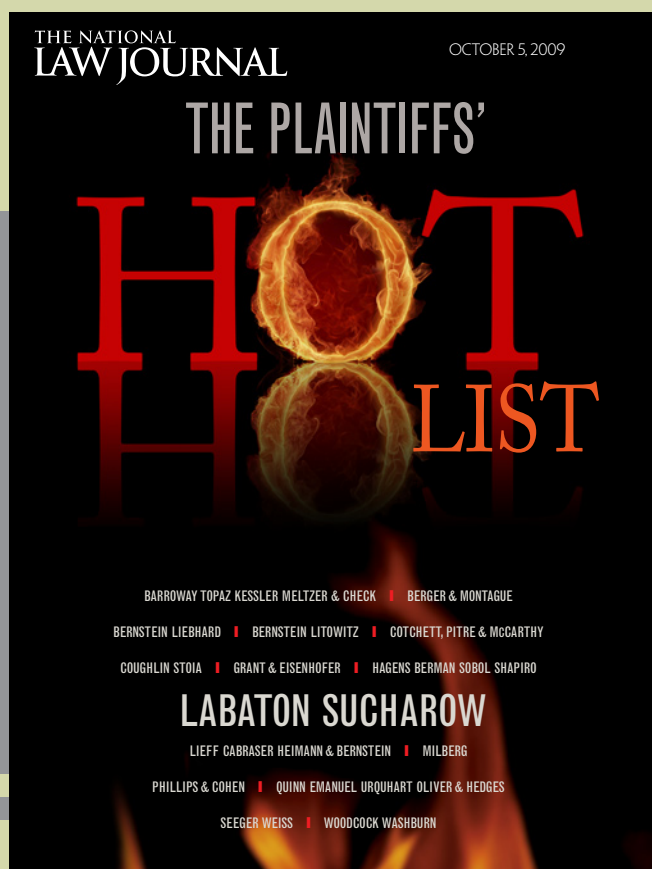


## Labaton Sucharow 2010

Labaton Sucharow of New York led the battle this year against corporate fraud and greed to the tune of \$1.8 billion in securities class action settlements. On behalf of institutional investors, the firm pursued claims against several of the financial monoliths responsible for the financial credit crisis, including The Goldman Sachs Group Inc., American International Group Inc., Bear Stearns and Morgan Stanley.

### NOTEWORTHY CASES

- *In re American International Group Inc. Sec. Litig.*, No. 04-8141 (S.D.N.Y.). Co-lead counsel **Thomas A. Dubbs** and **Louis Gottlieb**, with Hahn Loeser & Parks. The firm helped defeat 22 motions to dismiss in litigation over AIG's participation in a scheme involving improper commissions and illegal bid-rigging, as well as accounting fraud that obliterated \$2.7 billion in shareholder equity. The \$725 million proposed settlement was the largest of its type thus far in 2010, and also the highest amount involving a company receiving Troubled Asset Relief Program assistance.
- *In re Countrywide Financial Corp. Sec. Litig.*, No. 07-5295 (C.D. Calif.). Lead counsel **Joel H. Bernstein** and **Jonathan M. Plasse**. In the second-largest securities settlement of 2010, Labaton Sucharow's complaint against Countrywide resulted in a proposed recovery of \$624 million on behalf of New York City and New York state pension funds. The company allegedly depicted "liar" loans and other high-risk products as prime rather than subprime risks. It also permitted insiders to cash out \$867 million in artificially inflated stock. Pending final approval, the settlement will be the 13th largest of its type in the history of the Securities Litigation Reform Act.
- *Eastwood Enterprises LLC v. Farha ("WellCare")*, No. 8:07-01940 (M.D. Fla.). Co-lead counsel **Thomas A. Dubbs** and **James W. Johnson**, with Bernstein Litowitz Berger & Grossmann. Allegations that WellCare had inflated its profitability by overcharging state Medicaid programs led to a proposed \$200 million settlement. Labaton Sucharow negotiated the agreement, the fifth largest of 2010, following a discovery process involving millions of pages of documents.

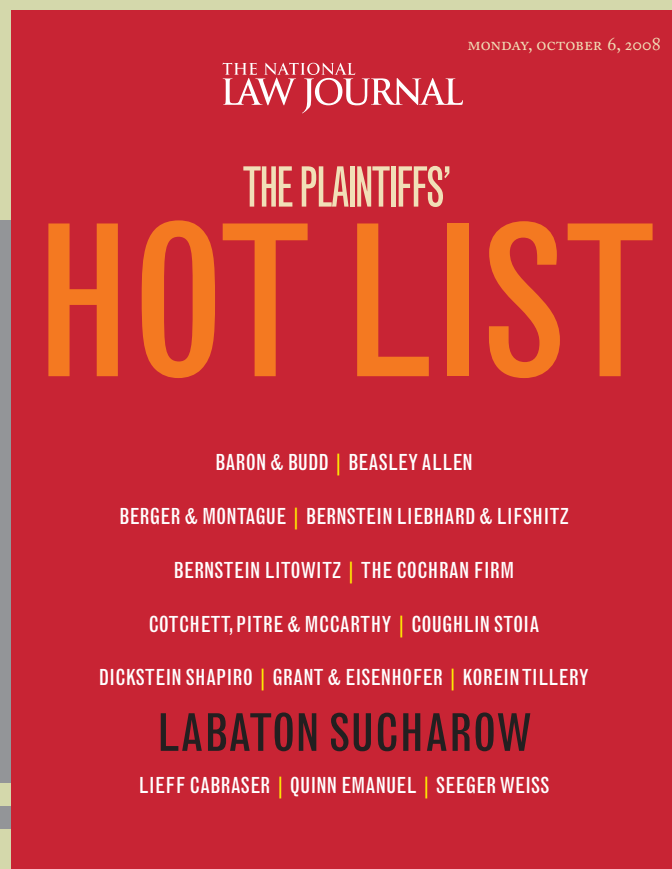


## Labaton Sucharow 2009

The firm's 60-plus attorneys responded to the economic meltdown via a series of high-profile securities class actions against corporate defendants. The New York firm, with four decades of achievements, is a founding member of the plaintiffs-friendly Institute for Law and Economic Policy.

### NOTEWORTHY CASES

- *In re American Int'l Group Inc. Sec. Litig.*, No. 04 Civ. 8141 (S.D.N.Y.). Co-lead counsel **Thomas A. Dubbs and Louis Gottlieb**. The plaintiffs obtained a \$97.5 million settlement with accounting firm PricewaterhouseCoopers International Ltd. for its role in the American International Group fraud. AIG Chief Executive Officer Hank Greenberg and three other executives allegedly were responsible for accounting irregularities that led to a \$3.9 billion restatement.
- *In re HealthSouth Corp. Sec. Litig.*, No. CV-03-BE-1500-S (N.D. Ala.). Co-lead counsel **Thomas A. Dubbs and James W. Johnson**. Accounting firm Ernst & Young Global Ltd.'s failure to conduct audits of HealthSouth Corp. and its now-imprisoned CEO Richard Scrushy culminated in a \$109 million settlement, the eighth largest with an outside auditor.
- *In re TriCor Indirect Purchasers Antitrust Litig.*, No. 05-360 (D. Del.). Co-lead counsel **Christopher J. McDonald**. The team secured a \$65.7 million settlement of its share of claims that individuals and insurers paid an inflated amount for TriCor, a leading cholesterol medication. Abbott Laboratories and Fournier Industrie et Sante were accused of "product hopping"—jiggering a brand-name drug's formula to illicitly extend the patent.

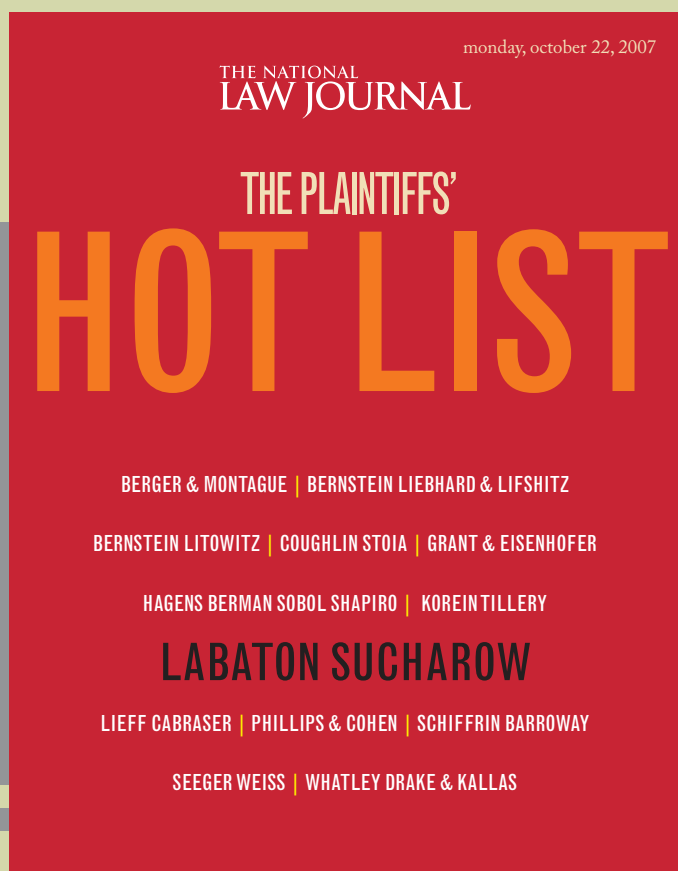


## Labaton Sucharow 2008

New York's Labaton Sucharow, with more than 60 attorneys, reports recovering more than \$700 million for plaintiffs in securities class action and antitrust cases during the past 12 months. The firm has had more than four decades of practice and has more than 60 attorneys.

### NOTEWORTHY CASES

- ***In re General Motors Corp. Sec. Litig.*, No. 06-1749 (E.D. Mich.). Co-counsel Jonathan M. Plasse and Eric J. Belfi.** Labaton Sucharow's contribution included helping to formulate major theories on the case, helping to kill a motion to dismiss. The outcome on July 21 was a record cash settlement of \$277 million from General Motors and \$25 million from GM's outside auditors, Deloitte & Touche, for a total of \$303 million. The case involved claims that GM issued false and misleading financial statements to investors.
- ***In re Monster Worldwide Inc. Sec. Litig.*, No. 07-CV-02237 (S.D.N.Y.). Lead counsel Lawrence A. Sucharow and Christopher J. Keller.** The firm entered into a \$47.5 million settlement agreement, believed to be the fifth-largest options backdating recovery.
- ***In re Abbott Labs. Norvir Antitrust Litig.*, No. 4:04-CV-01511-CW (N.D. Calif.). Co-counsel Hollis L. Salzman and Michael W. Stocker were involved in all stages of the case.** The conduct targeted in this suit was literally nauseating—the company was accused of stymying competition with its HIV drug Norvir by, among other things, making the pharmaceutical taste like vomit. The unusual \$27.5 million settlement would allow the appellate process to resolve certain legal questions. If Labaton wins the appeal, Abbott will pay \$27.5 million award to the class and to AIDS charitable organizations. If Abbott wins, it still would make an eight-figure donation to AIDS groups.

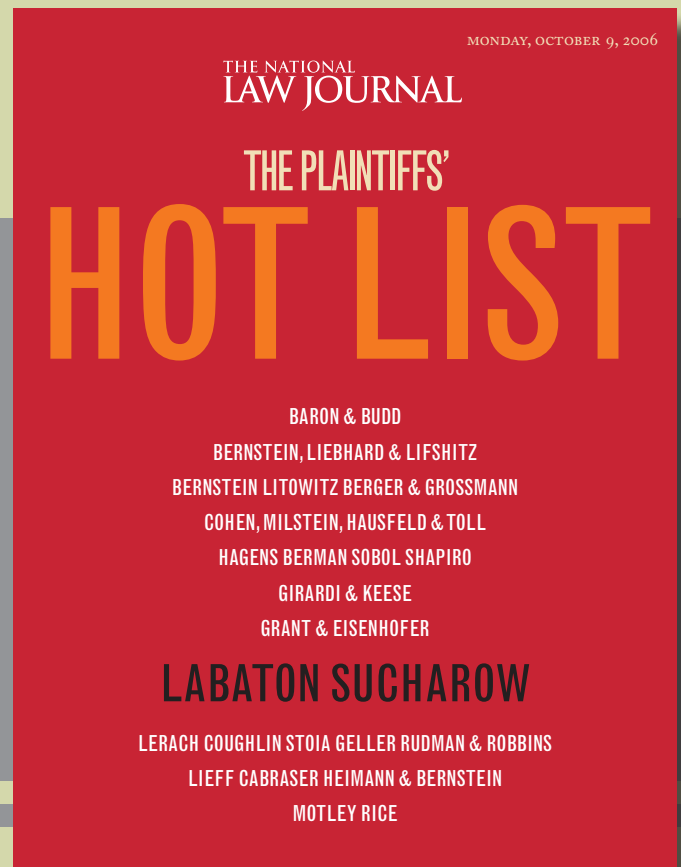


## Labaton Sucharow 2007

Labaton Sucharow, a 60-attorney New York firm, bills itself as “a champion of investor and consumer rights.” The firm certainly has distinguished itself in pursuing securities and antitrust class actions, and is helping to fill the void left by the fall of Melvyn Weiss and William Lerach. American International Group Inc. is in Labaton Sucharow’s sights because of alleged insurance bid rigging, with damages the firm estimates at more than \$15 billion.

### NOTEWORTHY CASES

- *In re Mercury Interactive Corp. Securities Litigation*, No. 5:05-CV-3395-JF (PVT) (N.D. Calif.). Co-lead counsel **Joel H. Bernstein and Christopher J. Keller**. At approximately \$117.5 million, this was the largest settlement agreement to date in an options-backdating case. Labaton Sucharow led the negotiations, drafted the amended complaint, handled the investigation and argued motions.
- *In re Natural Gas Commodity Litigation*, No. 03-CV-6186 (VM) (S.D.N.Y.). Co-lead counsel **Bernard Persky**. The \$101 million recovery here was the second-largest to date under the Commodity Exchange Act. Among the firm’s contributions was overcoming McGraw Hill’s constitutional objections to sharing information from its natural gas trading indices. The firm says that material helped prove its case and prompted the settlement.



## Labaton Sucharow 2006

A name change last fall to Labaton Sucharow & Rudoff accompanied this 43-year-old firm's emergence into the top flight of the plaintiffs' bar. The 50-lawyer New York firm captained or co-captained in some of the year's most significant class actions.

### NOTEWORTHY CASES

- *In re HealthSouth Corp. Securities Litig.*, No. CV-03-BE-1500-S (N.D. Ala.). Co-lead counsel **Thomas A. Dubbs and James W. Johnson**, with Lerach Coughlin Stoia Geller Rudman & Robbins, secured a partial settlement of \$445 million over the massive fraud that brought about the health care provider's collapse and convictions of 15 former employees.
- *In re Bristol-Myers Squibb Securities Litig.*, No. 00-1990 (SRC) (D.N.J.). Lead counsel **Thomas A. Dubbs and James W. Johnson**. Five years of effort produced a \$185 million settlement, the largest on record for securities fraud involving the development of a new drug (the hypertension drug Vanlev, ultimately rejected as unsafe by the Food and Drug Administration). The company also agreed to post on its Web site any information critical of any of its drugs.
- *In re DHB Industries Inc. Class Action Litig.*, No. CV 05-4296 (E.D.N.Y.). Co-lead counsel **Christopher J. Keller**, with Lerach Coughlin Stoia Geller Rudman & Robbins. The \$40 million settlement in this case seems modest compared to some of the others on this list, but involved a company whose high-flying chief executive, David Brooks, had thrown his daughter a \$10 million party while selling defective body armor to U.S. troops.