

Securities Group Of The Year: Labaton Sucharow

By Reenat Sinay

Law360 (January 17, 2019, 4:01 PM EST) -- The multifaceted securities team at Labaton Sucharow LLP scored impressive wins for clients in the past year in class action litigation, opt-out cases and in representing whistleblowers in a landmark U.S. Securities and Exchange Commission enforcement action, among other achievements, landing it on the list of Law360's 2018 Securities Groups of the Year.

Labaton's securities work included recovering \$3 billion for investors in the Petrobras class action following the biggest corporate scandal in Brazilian history, asserting novel claims to notch a significant victory in an opt-out action against Valeant Pharmaceuticals, and securing the largest-ever whistleblower award given by the SEC in the agency's case against Merrill Lynch Wealth Management.

While the firm takes pride in its breadth of securities experience, the ability to focus on niche areas is what allows it to go the extra mile for its clients, according to Jordan Thomas, who heads the whistleblower sub-group.

"I think what distinguishes us beyond the passion and the people and the commitment is specialization," Thomas said. "In the whistleblower practice, we exclusively focus on SEC matters, and that allowed us to go deep, and I believe that it's one of the keys to our continued success in that area."

There are several securities practices in the country that focus on whistleblowers, Thomas said, but Labaton has the first, and possibly still the only, practice that works only on SEC whistleblower matters.

That specialization served the firm well in March, when he led Labaton's whistleblower team to a major victory that landed him on the list of Law360's 2018 Securities MVPs. The SEC awarded more than \$83 million to a group of whistleblowers who tipped the commission off to misconduct at Merrill Lynch — the most ever awarded since the program's inception in 2011. The whistleblowers' actions led to a critical enforcement action in which the bank paid \$415 million to settle charges of misuse of funds and failure to safeguard customer assets.

Labaton's formidable securities practice makes up the bulk of the firm's overall work, and the majority of its 60 or so securities attorneys are based out of its New York headquarters, with others stationed in Delaware or its Washington, D.C., satellite office. In addition to its mainstay class actions group and its



uniquely SEC-focused whistleblower practice, its direct actions and Delaware groups set Labaton apart.

Direct actions, one of a handful of such groups among securities practices nationally, serves institutional investors in non-class action matters and focuses on opt-out cases, which group head Serena Hallowell says has become increasingly popular over the past few years.

"It's growing at a dramatic pace," she said. "We have seen more and more of our clients who are interested in pursuing opt-out litigation and want to understand what their options are before their rights are extinguished."

Labaton created the direct actions group about three years ago in response to the rising demand, and Hallowell said this type of litigation allows her team to be more creative and strategic in their arguments compared to the restrictions of class action litigation.

"Whereas we may be limited to federal securities claims in a class action, we look at different common law claims that we could potentially include, we look at state law claims, we look at foreign law claims and evaluate whether it would be useful to include them to maximize the recovery," she said.

That freedom to be more creative worked in Labaton's favor in July in its opt-out case against Valeant Pharmaceuticals. The team was the first to file New Jersey RICO claims against the pharma company for securities losses on behalf of its investor clients, and scored a rare victory in defeating a bid to toss those claims.

"RICO claims on the civil side are extraordinarily difficult to pursue," said Christopher Keller, co-chairman of the firm. "Judges typically have no interest in upholding civil RICO claims, but Serena did a masterful job in pushing those claims and they survived the motion to dismiss, which is pretty special."

Labaton intends to continue expanding both the direct actions group and the Delaware group, which Keller said is one of possibly two national plaintiff-side firms that maintains "active, real office and presence" in that state.

Labaton jumped on the opportunity to grow in Delaware when several other firms abandoned the market following *Corwin v. KKR Financial Holdings* in the state's Supreme Court, making it more difficult to bring frivolous M&A suits there.

While the firm has a knack for investing in very specific areas of its practice, it is ultimately the enthusiasm of its attorneys and seamless cooperation between the various moving parts that leads to successful outcomes, Keller said.

"Litigators are effectively paid mercenaries — you want them to get out and fight," Keller said.

"Managing to bring people like that in and also work together in a cooperative team effort without a lot of territorialism is really hard to pull off and I think we have here. That is our secret sauce, so to speak."

--Editing by Nicole Bleier.