

LAWDRAGON

Laura Posner is Leading the Way in Investor Protection



Laura Posner takes on market giants. Having just helped settle the historic \$1B class action settlement against Wells Fargo for alleged securities fraud, she's engaged in a high-profile spoofing lawsuit against Citadel, one of the world's largest market makers.

Posner, a securities litigation partner at plaintiffs' firm Cohen Milstein, is the former Bureau Chief for New Jersey's Bureau of Securities – the top Securities Regulator in New Jersey. In that capacity, she was responsible for administrating and enforcing

the New Jersey Blue Sky law and regulations and expanding the office's enforcement prosecutions.

At just 44 years old, she is one of the most accomplished securities class action lawyers in the country. At the vanguard of spoofing and other market manipulation cases, she's just getting started.

Lawdragon: You've had quite a career so far. What inspired you to pursue plaintiffs' litigation?

Laura Posner: I went to law school planning to work for the government – specifically for the Department of Justice as a civil rights lawyer. I believe that working for the government is an important way to serve your country, and my motivation for entering the law was always to help others in need. But I temporarily shelved that idea to do plaintiff-side litigation after one of my professors at Harvard Law School clued me into the far-reaching social and economic impact of plaintiff-side class action work.

So, after summering at a plaintiffs' class action firm, I was hooked and became a plaintiffs' securities litigator.

LD: Why securities litigation?

LP: I strongly believe that fair and open financial markets lead to a more just society that can transform people's economic lives. The ability of Americans to become upwardly mobile, save for a home and college, survive health scares, and ultimately retire securely is largely dependent on being able to participate in a fair market. So, it's incredibly gratifying to me to help ensure markets are fair, honest and safe – and hopefully open to more investors.

LD: Tell us about your role as New Jersey's top securities regulator.

LP: For me, it was an opportunity to fulfill my lifelong desire to work for the government. When a former colleague suggested I meet with the New Jersey Attorney General about the recently vacated state Securities Regulator role, I jumped at the opportunity. I'm glad I did. It was a transformative experience.

The Bureau of Securities does everything that the Securities Exchange Commission does, only on a statewide scale – which, particularly in the case of New Jersey, isn't so small, including examinations, registration, investor education, enforcement, legislation and policy work. On the enforcement side, I had a lot of latitude and was able to push the office to take on more and bigger cases, resulting in hundreds of millions of dollars in recoveries for New Jersey residents and more than 20 criminal convictions during my time in office.

I also was able to do a lot of policy and legislative work through my roles with the North American Securities Administrators Association (NASAA), which represents state and provincial regulators in the United States, Canada and Mexico. As a result, I helped New Jersey become a leader in securities policy and regulation and take on large-scale enforcement work in collaboration with other states.

“ I strongly believe that fair and open financial markets lead to a more just society that can transform people’s economic lives.

LD: What are some take-aways from your regulatory experience?

LP: State regulators really have their finger on the pulse of the issues and often see real-world securities issues, frauds and impacts long before the feds do.

This is especially important now as investors are faced with a barrage of economic and investment inflection points, from unregulated cryptocurrencies to high-frequency trading market manipulation schemes to less market choice generally in the financial industry.

Enforcement action is a key component of what state regulators take on to ensure the health of global financial markets and that investors are safe. However, it became clear to me while in office that as big a role as regulators have in securities enforcement, the impact of private securities litigation, particularly class actions and shareholder derivative litigation, is absolutely critical for a whole host of reasons – but, most of all, because recouped losses always go back directly into the pockets of investors.

LD: Speaking of impact, tell us about your recent victory against Wells Fargo.

LP: I had the distinct honor of representing two state retirement systems as court-appointed co-lead counsel in a massive securities fraud class action against Wells Fargo. This past May, the court granted preliminary approval of a historic \$1B settlement.

Our clients alleged that Wells Fargo and its senior officers lied to investors, the public and even Congress about its compliance with consent orders that the Federal Reserve, the Office of the Comptroller of the Currency and the Consumer Financial Protection Bureau had imposed on the bank after the 2016 scandal involving the bank opening unauthorized customer accounts, as well its attempts to lift an asset cap, which regulators set to limited the bank’s growth due to poor customer care.

LD: What’s the impact on Wells Fargo and the banking sector?

LP: Well, for starters, Wells Fargo owes their investors \$1B. Not an insignificant amount of money. Also, Wells Fargo is currently still beholden to fulfilling the federal consent orders and abiding by the asset cap to limit their growth, which formed the basis of our case.

The case also highlights the need for banks to follow their regulatory obligations to ensure they have the proper apparatus, controls and leadership in place, so that these problems don’t happen again, and for Congress to ensure that the proper regulatory scheme is in place to prevent these scandals from occurring in the first place. Even before the recent bank failures, there’s been a steady consolidation of the industry, which means less market choice for customers and less oversight by executives and boards running banks. As a result, regulation is critical to ensuring proper compliance, and both governmental enforcement actions and private litigation will likely be necessary if and when banks fall short of their obligations.

Most critically, hopefully this settlement, as big as it is, serves as a deterrent and warning shot to other banks and companies that might engage in similar conduct and encourages them to be honest and forthright with their investors going forward.

LD: What’s the impact for your clients?

LP: This is a huge victory for our public pension fund clients who incurred significant losses. If the court grants final approval, this \$1B settlement will help compensate hundreds of thousands of investors – state employees, nurses, teachers, police, firefighters and others – whose retirement savings were impacted by Wells Fargo’s fraudulent business practices.

““ *The Bureau of Securities does everything that the Securities Exchange Commission does, only on a statewide scale – which, particularly in the case of New Jersey, isn’t so small.*

LD: Do you think this case will embolden investors to pursue litigation?

LP: I hope so. I hope that public pension funds and other institutional investors will see the kind of results their involvement can bring about. There is a great deal of research that confirms that when large, sophisticated institutional investors serve as lead plaintiffs in securities class actions, the results are significantly better. You get higher settlement value and a higher percentage of recoverable damages. The numbers alone should be a big incentive, especially for public pension funds and unions which are fiduciaries responsible for overseeing the retirement savings of their hardworking pensioners.

LD: Tell us about the other cases you’re working on.

LP: I’m involved in a spoofing case we’ve brought on behalf of Northwest Biotherapeutics, a clinical stage biotech company developing lifesaving cancer vaccines, against a number of institutions, including Citadel, one of the world’s largest market makers.

The case is still in its early stages, but for context it’s a classic good guy vs. bad guy story.

Our client alleges that Citadel and the other defendants engaged in spoofing and manipulated the price of its shares, inducing other market participants to buy or sell at artificial prices. By repeatedly and brazenly manipulating the market through spoofing, Citadel and the other defendants directly impacted the price of Northwest Biotherapeutics’ shares, causing the company significant losses as it sold 49 million shares at artificially depressed prices.

Because of the defendants’ alleged spoofing, Northwest Bio, which has a proven, groundbreaking cancer vaccine awaiting FDA approval, has been unable to raise money at prices that should reflect its true value. Instead, its stock price has been gravely affected and the company has often struggled to survive, let alone bring its life extending drugs to market.

LD: Why is this case important?

LP: The facts that underpin the Northwest Biotherapeutics case are not limited to just one company or even one industry or one market. It’s much broader in scope and has a significant impact on market confidence more generally. It’s about markets not reflecting true supply and demand and what stock prices should be. It’s about high-frequency trading and algorithmic trading programs being used to manipulate markets in milliseconds.

LD: It sounds like this could be trailblazing case?

LP: Yes, high-frequency trading and algorithms are rapidly evolving and becoming more sophisticated, making manipulation easier, putting investors at greater risk and garnering the attention of law enforcement. Further, unlike most traditional securities class actions involving misstatements and omissions, these claims are brought under 10b-5(a) and (c), a relatively uncharted area of the law.

LD: Are you handling any other 10b-5(a) and (c) cases?

LP: Yes. We are representing a now partially certified class of investors against Credit Suisse in *Chahal v. Credit Suisse* for knowingly defrauding investors and causing hundreds of millions in losses through a manipulation

scheme involving the XIV Exchange Traded Note market.

Our complaint was originally dismissed. We appealed to the 2nd Circuit, which issued a precedential and important decision in 2021 about what is required to prove market manipulation and whether the manipulation has to be secret. This is an incredibly important and groundbreaking decision for the future of litigating market manipulation suits.

We also have a market manipulation case on appeal to the 10th Circuit regarding an admitted short squeeze scheme orchestrated by former Overstock CEO – and “Stop the Steal” proponent – Patrick Byrne, which similarly addresses the question of whether open market manipulation is actionable under the federal securities laws.

LD: Congratulations on such an exceptional victory in XIV.

“ *There is a great deal of research that confirms that when large, sophisticated institutional investors serve as lead plaintiffs in securities class actions, the results are significantly better.*

LP: Thank you. Yes. It’s a big victory for investors.

It’s interesting, coming full circle, because the claims in *Chahal v. Credit Suisse* are based, in part, on an amicus brief I wrote as counsel to NASAA, in support of the SEC in *Lorenzo v. SEC*, which was before the Supreme Court in 2019.

SCOTUS handed investors – and the SEC – an incredible decision in *Lorenzo* that not only described the difference between market manipulation claims under 10b5(a) and (c) and misstatement and omission claims under 10b5(b), holding that there was no requirement under 10b5(a) or (c) for there to be a false statement, but made clear that the securities laws are broad, noting that the securities laws were designed by Congress “to root out all manner of fraud in the securities industry” and that “it gave to the Commission the tools to accomplish that job.”

LD: It sounds like you’re working on big impact litigation. Anything else you’d like to share?

LP: The firm also does really critical work in the shareholder derivative space, where litigation helps transform companies from the inside out to ensure boards of directors live up to their fiduciary obligations. For instance, I was involved in a number of cases involving allegations of systemic sexual misconduct and/or race discrimination against the boards of Wynn Resorts, L Brands/Victoria’s Secret, and Pinterest, where we achieved sweeping corporate governance reforms and millions of dollars to fund various DEI initiatives to end sexual harassment and discrimination at these companies. In the end, these companies have become exemplars for their industries. So, it’s important and incredibly gratifying work.

LD: What’s professionally satisfying about your work?

LP: At the end of the day, for me it’s still about wanting to help those in need. My shareholder derivative cases have helped investors transform companies into safer environments for their employees. My securities fraud class action cases have helped investors – teachers, fireman, police, union workers and other state employees – recover the essential retirement money they lost due to a company’s fraud.

I went into law with an interest in civil rights work, and I think my work in securities class actions and shareholder derivative litigation tracks closely to my initial goal. My team and I are fighting for the underdog. We are helping people protect their investments and helping keep the marketplace fair.

I get to help public employees and unions – the critical backbone of this country – who are dependent on their pensions and return money back to their pockets so that they can have a secure retirement.

As the wife of an educator, the significance of my work hits close to home too. It’s incredibly gratifying to do what I do.