

Plaintiffs Bar Prepares for Fallout From Trump Agenda

Scott Flaherty, The Am Law Daily

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Given his vows to roll back federal regulations and nominate conservative judges, Donald Trump's election win [has some wondering](#) whether the private plaintiffs bar can serve as a sort of backstop against consumer and investor fraud.

Then there's the practical question of whether plaintiffs lawyers will find it harder to earn their keep in a Trump era.

"Obviously Trump is going to put in very conservative judges, and that doesn't bode well for our practice," said Steve Berman, managing partner of Hagens Berman Sobol Shapiro. "I don't see how it can be good for people who are on the side of holding corporations accountable."

Some aren't so sure that Trump will reshape the judiciary in predictable ways, however.

"It all depends on what kinds of judges he appoints to the courts," said Stephen Susman of Susman Godfrey. "If it's a standard judge that conservative Republicans have been trying to put in the courts for years, it's not good for plaintiffs. ... On the other hand, Trump is not a standard Republican."

Several plaintiffs lawyers who focus on challenging investor fraud and corporate deals said their own practices aren't likely to suffer, at least in the short term.

They acknowledge that the Dodd-Frank Wall Street Reform Act and other regulatory regimes [may crumble under a Trump presidency](#), and tort reformers [have spotted an opening](#) under a Republican White House and Congress. But opposition to the kinds of corporate frauds that provide the grist for their practices is fairly bipartisan, some lawyers said.

"We're of the mind that not a whole lot will change," said Darren Check, a securities litigator at Kessler Topaz Meltzer & Check. "There will always remain some mechanism for holding people accountable."

Neil Getnick of Getnick & Getnick agreed. His firm specializes in False Claims Act cases and whistleblower actions involving securities and tax law, and he said there's little evidence those will dry up. Whistleblower cases, he said, have the bipartisan appeal of reducing taxpayer waste, he noted.

"I think we'll stay busy," he said. "The key is that these statutes fight fraud, waste and abuse of government dollars."

Antitrust practices may also be insulated to some extent, said Cohen Milstein partner Daniel Small. Cases alleging price-fixing or other unfair market manipulation concern issues that "no one out there likes," he said.

"Those kinds of cases every judge can get behind, if there's evidence of a conspiracy," said Small. "That, frankly, is a very large part of the kinds of cases we as private plaintiffs bring."

Berman sounded a note of caution about the private antitrust bar, however. If the administration scales back its antitrust enforcement, he said, there could be ripple effects for private firms that often piggyback on government investigations.

"Certainly the clear cases will still be brought," Berman said of the antitrust regulators. "But are the resources going to be devoted to uncover the things that are harder to uncover?"

Small acknowledged those concerns. But if the federal government retreats, he predicted, state attorneys general and private plaintiffs will redouble their efforts.

"I think that, whatever happens in the government, there will be vigorous enforcement among private plaintiffs," he said. "I don't believe that our approach will change at all."

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