

LAWDRAGON



LAWYER LIMELIGHT: MARK LEBOVITCH

By John Ryan | 2015 Magazine Limelights | www.lawdragon.com

It's been a rapid ascent for Mark Lebovitch in the world of corporate governance litigation, from a Delaware Court of Chancery clerkship and a stint at corporate giant Skadden to his current role at the plaintiff-side securities litigation powerhouse Bernstein Litowitz – where he chairs the firm's impressively active and influential corporate governance and shareholder rights group. His team specializes in derivative litigation and lawsuits over M&A and other transactions for institutional clients, earning recoveries while also achieving corporate governance reforms. A 1999 graduate of New York University School of Law, the 40-year-old Lebovitch credits his success to a willingness to be disruptive while also showing the judgment to know when to follow convention.

Lawdragon: Can you talk about how you developed an interest in corporate governance litigation? Did it start back in law school?

Mark Lebovitch: I was lucky enough to sign up for former Chancellor Bill Allen's first Corporations class after he left the court. The Internet boom was just getting started, and until that time, my only career goal was to work at a law firm long enough to figure out how

to start the next iVillage or eToys. But like Mick Jagger says, "You can't always get what you want..." In Professor Allen's class, I really enjoyed seeing how fiduciary duty law, for all of its standards of review and precedents that seem to say anything and everything, is really all about good faith and personal incentives. That class gave me what I needed; it completely changed my path.

LD: I assume that clerking for Vice Chancellor Stephen Lamb fueled your interest in Delaware law. Can you share an experience, insight or skill you developed from your time there that continues to benefit you to this day?

ML: Early in my clerkship, I saw that Vice Chancellor Lamb deeply respected the law as written, but also had a curiosity and sense of obligation to figure out what was really going on in each case. He wanted to be sure the application of the law also did justice. That sense of balance stays with me today: The purpose of the law is not simply to get a result in order to end a case and move on to the next one. It is to achieve a just result. If the law compels an unjust result, be intellectually honest about the need to improve the law.

LD: I also assume you picked up a few things at Skadden. What led you to want to switch to the plaintiffs' side? Was this something you knew you wanted to do earlier, or did it come about after starting to work on some cases?

ML: I went to Skadden to represent hostile bidders, which often means arguing for expanding shareholder power. So the pro-shareholder ideological seed was always there. At Skadden, I learned about the hostile and friendly merger processes from some of the best M&A advisors and litigators in history. But at a certain point, I felt I would get the most personal satisfaction if I took on the risk of the contingency practice and tried to actively find ways to move the law in a pro-shareholder way. Since fiduciary duty develops primarily through the common law, I see it as a tug of war between advisors looking to empower corporate insiders versus advocates for empowering investors. I made the move because I believed back then, and continue to believe, that by pulling on that rope towards the investor side, I can help achieve better balance in the law.

LD: You are among the very youngest lawyers to make our Lawdragon 500 guide. Do you attribute this to anything in particular? What advice would you give lawyers or students who wish to attain leadership positions within a practice rather quickly?

ML: Be disruptive, but show judgment. You need to know when to act out of the box, but also know when to put your head down and just do your work the same way people have done it before you for generations. Some long-ingrained practices are still followed for a reason. Practices sometimes become habit, however, because people get too lazy to question convention. I keep working on it every day. As time goes on, I am more comfortable deciding when to just stay within the lines and when to ignore or deviate from conventional practice.

LD: An important part of your practice, and for the firm generally, is to take steps to improve corporate governance and oversight to prevent a repeat of the underlying behavior. Can you share a few recent examples in which cases you led succeeded in doing this?

ML: I'm very proud of my role in challenging proxy puts in debt agreements. *[These provisions can trigger a corporate debt default in the event shareholders vote to change a company's board of directors.]* I remember when Joel Friedlander first called me to talk about a possible case involving proxy puts. We realized that these provisions contravene basic notions of stockholder voting rights. We also saw the opportunity for smart shareholder litigation to really become a force for positive change. After over six years of pressing these cases, I believe the corporate world has finally realized that these provisions cannot be treated as the ordinary, or acceptable, course of business.

LD: Some of your comments have acknowledged that the securities litigation bar has been hurt somewhat by frivolous litigation over public company M&As. What are some of your thoughts on how frivolous litigation can be stemmed without limiting shareholder rights?

ML: Every industry has its flaws, bad actors and structural problems. I think M&A litigation has received so much negative attention because of the sense that lawyers were getting money for nothing. However, that ceaseless public and media focus on the flaws and bad apples in the system has already caused a correction. I think the Delaware judges, in particular, have spent lots of time considering how to achieve a better balance, and I think they are doing so. They are not giving out money for nothing to lawyers who did not earn it. At the same time, I hope judges across the country remember that there are meaningful cases of corporate misconduct out there, being prosecuted by dedicated lawyers who are not looking for a handout, but actually want to fight for investors' rights, make good law, and earn compensation that recognizes the real risk they assume by pushing their cases aggressively and pursuing novel but important claims.

LD: You and many others had come out against the "loser pays" fee-shifting provisions following last year's Delaware Supreme Court decision in ATP Tour. Are you satisfied with the Delaware legislation passed in response?

ML: It was a compromise proposal, but overall, yes.

LD: Something we are asking some of our Lawdragon 500 members as part of our 10-year anniversary: Can you identify or discuss one area of your practice or personal life that has changed the most in the past 10 years?

ML: The most significant change in the way I practice is learning the importance of managing a team well. When I started prosecuting corporate governance cases at Bernstein Litowitz, I couldn't handle more than a few cases at a time. I was obsessed with making sure we always produced the best possible work product, but I did not know how to delegate or trust others fully. Right now, my department enjoys tremendous support from my partners, and we have an incredibly skilled and dedicated team of senior and junior lawyers. My team's drive and ability amazes me every day, and I can trust them to perform with just the right balance of high integrity and relentless aggression. That shift in how I allocate my time helps make our firm's corporate governance department function at ever-higher levels.

LD: What, if anything, did you do to celebrate turning 40?

ML: My amazing wife threw a series of dinners and parties to celebrate. It really was several weeks of "Lebopalooza." She has been amazingly supportive over the years. Dedicating so much time and energy towards work is a critical component of success, but it can be draining and hard on your family. My wife always reminds me that a life of hard work still requires balance, which means making time to enjoy family and friends as well.