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Securities Group Of The Year: Bernstein Litowitz

By **Dean Seal**

Law360 (November 30, 2020, 4:32 PM EST) -- Bernstein Litowitz Berger & Grossmann LLP didn't let the nationwide shift to teleworking in 2020 hinder its ability to secure nine-figure investor recoveries, including landmark securities settlements that addressed Equifax's 2017 data breach and allegations of sexual harassment at Signet Jewelers, landing it a spot among **Law360's Securities Practice Groups of the Year**.



The firm started the year off strong in January when a South Carolina federal judge signed off on a **\$192 million settlement** resolving allegations that SCANA Corp. misled investors about long delays and massive cost overruns in a \$9 billion nuclear reactor project.

Backed by Bernstein Litowitz attorneys, the investor class **had claimed** that the now-defunct utility company — which Dominion Energy Inc. acquired in 2019 — touted its progress on the project while simultaneously concealing reports of mismanagement that **forced the project past deadlines** and prevented it from taking advantage of a \$1.4 billion tax credit and other incentives.

The settlement, which received final approval in July, provided investors with \$160 million in cash and \$32.5 million in freely tradable common stock of Dominion Energy, making it the highest securities fraud recovery in South Carolina's history.

Then in February, a Georgia federal judge gave investors the go-ahead for a **\$149 million settlement** with Equifax over the credit reporting agency's massive 2017 data breach. An investor class claimed it was led to believe that Equifax's safeguards and compliance with data security laws were much better than they actually were, only for the data breach to reveal deficiencies in the company's cybersecurity.

Rather than focus on the **breach itself**, Bernstein Litowitz's team structured the investors' allegations to challenge statements related to systemic issues at Equifax. The \$149 million deal the parties reached in February represents the largest securities settlement tied to a data breach.

"These cases really turn on what was said to the investors," Bernstein Litowitz senior partner Hannah Ross told Law360. "So for future cases, [the Equifax case] demonstrates that you shouldn't only focus on the data breach, but really look and see what the company said about their cybersecurity, and what false assurances they were giving to the market."

Bernstein Litowitz's standout 2020 achievement came a month later, when firm partners Rebecca Boon and John Rizio-Hamilton — honored this year as a Law360 **Rising Star** and **MVP**, respectively — negotiated a \$240 million settlement resolving allegations that Signet Jewelers Ltd., the world's largest retailer of diamond jewelry, had falsely claimed in its code of conduct and code of ethics to be "committed to a workplace free from sexual harassment" and basing employment decisions on merit alone.

Those statements were part of the company's efforts to minimize fallout from a 2008 class action arbitration case filed by a group of female employees alleging discrimination by Signet's subsidiary, Sterling Jewelers Inc., based on their gender, **an investor class claimed**, and when the accounts of those employees' experiences went public in 2017, Signet's share price dropped 13%.

The settlement came only after the investors won a hard-fought battle for what appears to be the first **certification of securities class action claims** based on misrepresentations concerning sexual harassment.

Ross, who was named a Law360 **Titan Of The Plaintiffs Bar** in 2019, says the settlement that followed sends a powerful message to companies, boards and executives that systemic discrimination can be addressed through investor actions.

"The securities laws have always been there, but the materiality of this behavior is now rising to the forefront," Bernstein Litowitz co-managing partner Sal Graziano told Law360. "And it's not just sexual harassment, it's also racial discrimination and denied opportunities — these things are becoming more material out in the world and, therefore, in securities laws."

By the time the Signet deal **received preliminary approval** in late March, the U.S. was just weeks into the thrall of the COVID-19 pandemic, shocking the economy and hastening a sweeping cross-industry transition to working remotely. Fortunately, the nation's court system proved itself to be generally nimble in maintaining operations during the shift.

The transition was smooth for Bernstein Litowitz, as well, Graziano said, though not without "a major effort" to ensure the firm's cases were staying on track.

"We just had no idea [in March] if everything was going to come to a grinding halt, but we were very successful in coordinating and making sure all of our cases were moving forward," he said. "We weren't excited about it, but we learned to master depositions over Zoom, discovery over Zoom, major arguments over Zoom, both in the district court and the appellate courts."

The firm's ability to deftly navigate the work-from-home environment was borne out as the year progressed. In April, a Georgia federal judge finalized a **\$50 million settlement** Bernstein Litowitz helped reach on behalf of investors in FleetCor Technologies Inc., resolving claims that the fuel-card company was inflating its revenues with improperly charged fees.

The Equifax settlement **received final approval** in late June, as did the SCANA and Signet deals the following month. The plaintiff-side firm has kept its eye on moving cases forward and avoiding delays that would be relished by defendants, Graziano said, adding that the next major challenge will be tackling trials.

"I think that one is still something we're watching very carefully, but the name of the game for us was to just keep everything going," he said. "We've been pleasantly surprised by how effectively we're operating in a remote environment."

--Editing by Nicole Bleier.