

LAWDRAGON

# AVI JOSEFSON IS SIFTING THROUGH THE NOISE OF SECURITIES CLAIMS

By Alison Preece | December 5, 2022 | Lawyer Limelights

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Photo by Michelle Nolan

Avi Josefson has a unique practice in the securities space: He and his team at Bernstein Litowitz Berger & Grossmann (BLB&G) monitor all potential claims for their vast and varied client base of institutional investors, and advise on whether to pursue an action. They sift through the noise and decide which cases have legs.

Josefson brings a perspective formed by his experience litigating securities claims to his leadership role in the firm's case development and client advisory group. He started as an associate at BLB&G just before a lot of the large accounting frauds broke in 2000 and 2001, including Enron and WorldCom and the blow up of Arthur Andersen.

"I joined the firm and immediately saw that a lot of our cases become front-page news," he says. He cut his teeth as a young securities lawyer, first working on those accounting frauds and later prosecuting cases arising from the subprime mortgage crisis and the fraudulent sale of mortgage-backed securities.

In his current role, he's touching all the cases that the firm chooses to prosecute. He's in regular contact with the firm's large client base, evaluating cases based on legal merit as well as what types of issues are important to the funds and their boards.

In addition to securities lawyers like himself, Josefson's group is made up of financial analysts and investigators. They use proprietary tools "to quickly and consistently review the trading of institutions with tens of billions of dollars of investment data," says Josefson, "to quickly identify not just the relevant securities, but the trading patterns across multiple accounts."

The group monitors many of the portfolios for the largest institutions in the U.S. and throughout Europe, including public entities and pension funds. Josefson and his team recently identified claims against Allianz Global Investors that were both meritorious and important for their clients, and pursued a set of cases that many other law firms had passed over. The result: nearly \$2B in recoveries.

Josefson is a member of the Lawdragon 500 Leading Lawyers in America.

**Lawdragon:** You're a leader of your firm's case development and client advisory group. Can you walk us through what that entails?

**Avi Josefson:** We have over 300 institutional investors, who have retained the firm to advise them on an ongoing basis about potential claims that arise from their investment activity. Those institutions range from Taft-Hartley funds for different trades, like plumbers, carpenters, electrical workers, to pension funds of all asset sizes and members, including teachers, police officers, firefighters, state and municipal employees and some very large U.S. and European pension funds, as well as private investment funds.

What we're charged to do through those retentions is to scrutinize their investment portfolios and monitor for potential claims through which the pension funds can take action to protect the investments of their pension holders. We let them know proactively when they've incurred a loss that may be the result of corporate misconduct, securities fraud or breaches of duty.

Our group is constantly analyzing market movements and new developments within companies and across industries. If we identify a situation where a company appears to have been engaged in misconduct, we're investigating those claims, developing potential causes of action, and checking which of our clients have invested in that company during the period of potential misconduct.

We identify whether they have a real financial interest and the potential size of their claim. Then we advise on their litigation options, which can include being involved in a class action, a direct individual action, or a governance claim such as a claim for a breach of duty. Our clients typically get involved if they're going to have a leadership role in the case, as lead plaintiff or co-lead plaintiff. So we advise on the merits of the case, whether it will benefit from their leadership and whether their institution would benefit from taking an active role in it.

***Many of our clients are public employees, school teachers and police officers or union workers. They're so committed to these assets they're managing for their members; it's not academic for them.***

**LD:** It sounds like a fun role, because you get to see so many different potential cases and decide which ones really have merit.

**AJ:** Exactly. Having started my practice at the firm litigating, I'd work on three or four cases and live with those cases for several years. Here, I delve into a half dozen different cases each week, often involving different companies and types of misconduct.

In some of them, it's apparent immediately if it's a potential case or not. Others we might investigate and look at for weeks or longer.

Our clients rely on us to review all the new cases that are filed. There's a lot of filtering that goes on to identify the high quality, meritorious cases that would be of interest to our clients.

**LD:** What does your team look like?

**AJ:** The senior partners on the team with me are Jerry Silk and Hannah Ross. I've been working with both of them for over 20 years now, and we are supported by a team of attorneys focused on this. We also have financial analysts who analyze the clients' trading, which can be quite complex.

We also have analysts who work with our attorneys in scrutinizing the markets and identifying relevant news. I'm constantly getting updates from them about what they're seeing in the markets, both macro and very specific, regarding the companies our clients are invested in that we are investigating.

We also have a team of in-house investigators who do two things. One is assisting us when we're initially looking at these cases, to help determine whether they are potentially meritorious. Then when we have a case that we're litigating, the investigators work with litigation teams to develop facts to buttress our pleadings.

We frequently work with outside experts as well. That could be accounting experts when we have a forensic accounting issue, or industry area experts when we're investigating a company that might be involved in some particular area that we want to better understand, like oil or commodities or a specific technology issue.

It's great to be able to work day-to-day with analysts, investigators and our financial team. It's a unique law practice, being able to work with so many great, smart, business professionals in addition to a stellar legal team.

**LD:** And you must be working closely with the clients, too.

**AJ:** Yes, that is the best part. We're in frequent contact, and we have a wide range of clients. Many of them are public employees, school teachers and police officers or union workers. They're so committed to these assets they're managing for their members; it's not academic for them. So when they hear about wrongdoing that impacts their pension plans, their beneficiaries, it's meaningful to them.

At the same time, we work with elected officials, such as state attorneys general or treasurers who have responsibility for state pension systems, as well as large, private institutions, including many outside the U.S. It's interesting and challenging, having that broad of a client base.

**LD:** Are certain types of cases of interest to some clients and not others?

**AJ:** Yes, especially since we have such a varied client base. Certain clients, when they're evaluating a potential claim, simply want to understand if they have a significant financial loss and whether the claims are meritorious

and there's a chance of recovering those losses. Others are driven by concerns for governance and other ESG issues.

There was a wave of cases in the last few years since the #MeToo movement gained traction, for instance, where public companies were exposed for having policies that fostered harassment or for covering up mistreatment of certain employees, particularly women. Certain clients started saying, yes, we want to use our position as shareholders to address that misconduct.

**LD:** Are there other trends you're seeing in securities litigation these days?

*The other real challenge is, because the federal securities laws don't permit discovery at the outset of these cases, you're really working to complete a jigsaw puzzle without all the pieces, or even knowing how many pieces there are.*

**AJ:** ESG has been overlapping with the SPAC [Special Purpose Acquisition Company] trend, which we've seen a lot in the last year and a half. SPACs were very popular vehicles for a time, and we are now seeing many instances of apparent fraud in companies that went public through a SPAC transaction.

Perhaps the greatest confluence between SPACs and ESG has been in some of the environmental startups, especially electric vehicles. Many EV companies went public in the last couple of years through SPACs. And several of those EV companies subsequently became embroiled in securities litigation, for over-promising and under-delivering to their shareholders.

There's an interesting inflection point, where you have institutional investors, many of which are charged with ESG mandates, looking for opportunities to satisfy their ESG investment obligations. So to the extent that institutional money is chasing ESG compliant dollars, there's certainly a market for people who can get a public company out there that is environmentally conscious.

And while there certainly is demand for electric vehicles, when you look at the recent performance of some of those public companies, it's potentially a warning sign to investors to be somewhat cautious with the ESG mandates, especially with some of these new companies that have gone public through SPACs.

**LD:** Interesting. What else are you seeing in the market?

**AJ:** We had a period with a long bull market, where stocks were going up, sometimes irrespective of negative news the companies might put out. What we're seeing now, with a lot more volatility, is that when companies do release negative news, the market might be more realistic and reactionary to the news being announced.

The market volatility keeps our group busy, because of course that creates more potential investment losses that our clients need us to look at, to analyze and identify situations that may be the result of misconduct, as opposed to just market forces.

**LD:** So, once you've done the initial evaluation of the case, do you pass it off to your partners? Or do you ever stay on and help litigate it?

**AJ:** It depends. We typically stay on in a client advisory role, but our group can't litigate every case we analyze for our clients, so a litigation team usually steps in. But there are exceptions. Recently, Hannah and I were involved in starting a group of cases involving Allianz, which are just now wrapping up. Allianz had a number of investment funds that blew up in the first quarter of the pandemic. Those were very interesting, complicated cases. We ended up filing seven lawsuits, but represented several dozen other investors. The total recoveries, all in direct actions or negotiated settlements, were close to \$2B.

**LD:** And that was a case you identified early on?

**AJ:** Yes, we were the first firm to develop and file those cases. We filed the first case for the Arkansas Teacher Retirement System. Some other law firms tried to file as a class action, which we believed from the outset wouldn't work. That class action was ultimately voluntarily dropped.

What we learned as we pursued the Allianz cases was that other law firms in our bar had looked at these claims and advised clients not to pursue them, because they didn't think they were going to pan out and be meritorious.

Some of the losses were at the level where, early in the case, it wasn't clear if that would be effective or efficient for them to begin litigating. But the losses were very material to certain of our clients, which included nonprofit foundations and small college endowments. We were really motivated to find a way to help them recover what we could, and were ultimately able to get them the same pro rata recovery as larger institutions, by helping to coordinate a large group of investors and really buttress their efforts.

It was very gratifying and meaningful to be able to secure those recoveries for our clients.

**LD:** How did you make the move from a typical securities litigation practice into this role?

**AJ:** I was a fourth or fifth year associate when I was asked to join this group. At first I resisted it, because I was getting to the point of having more of a hands-on, leadership role in my cases, and I was worried that focusing instead on analyzing new cases would take me away from that. But that was completely wrong. I got plenty of litigation experience, depositions and arguments, and it's an excellent education in securities litigation. We see so many cases and analyze so many different situations, that it really forces you to be smart about the different types of cases, identifying all the risks at the outset and carefully assessing the likelihood of success.

**LD:** What would you say is uniquely challenging about this role?

**AJ:** The challenging aspects are also what makes it all so interesting. You're always juggling multiple cases at once. When there is breaking news about a major company and the stock goes down, that abruptly changes your to-do list for the day.

The other real challenge is, because the federal securities laws don't permit discovery at the outset of these cases, you're really working to complete a jigsaw puzzle without all the pieces, or even knowing how many pieces there are. The pleading standards in these cases are quite high. So without a lot of information, you're trying to determine whether there was fraud, whether there was intentional misrepresentations and misconduct, and also trying to understand, what's a likely path for discovery? Do we think we're going to be able to find more sources of information in these cases?

**LD:** Did you ever imagine you'd have this kind of practice when you were back in law school?

**AJ:** I can't say that I did, but I did know back then that I wanted to do something meaningful with my law degree. I had a great time at Northwestern. It was a great school, very collegial. They have a robust clinic practice, and I really dove into that.

It was a juvenile delinquency and juvenile rights clinic, and I got to have a lot of time in court and working directly with kids in Chicago who had been impacted with gang violence and drugs, exposed to a lot of horrific experiences and put into difficult situations.

That was completely foreign to me, from my upbringing. It was a formative experience, being able to work on some of those cases.

It was also relatively soon after Columbine. Schools, including Chicago Public Schools, were imposing zero tolerance policies. We did a lot of work with kids, not only on criminal matters and delinquency matters, but fighting to keep them in schools and give them some basic representation when they made mistakes that were threatening to lead to expulsion. That early experience cemented in me the notion that lawyers have the ability to really make a difference in people's lives.