

Max Berger Discusses Securities Litigation Trends with *The D&O Diary*

January 26, 2011

As part of its series on trends in securities class action litigation, *The D&O Diary* - a widely respected insurance industry blog - published an extensive interview with BLB&G senior partner Max Berger, who provided a detailed analysis of the plaintiffs' perspective on recent developments in the field.

Mr. Berger identifies several significant trends in 2010 that have impacted the current legal landscape, including the increase in obstacles investors face in bringing and prosecuting securities case. According to Mr. Berger, "on virtually every element of our clients' claims, including scienter, loss causation, class certification and standing, we have seen the hurdles increase as a result of court decisions adverse to investors." He also cites the exponential growth of corporate wrongdoing as demonstrated by the "panoply of cases tied to high-risk lending, mortgage securitization and sales of mortgage backed securities in the last five or six years," as well as the increase in merger and acquisition activity that requires scrutiny to ensure shareholder interests are protected.

Mr. Berger also discusses the importance of the firm's work in the *Pfizer* derivative suit, and how it stands to set a precedent - both for improving corporate governance at public companies, and for future settlements in similar cases. In particular, Mr. Berger describes the historic \$75 million settlement payment, a dedicated fund to be used to support the activities of an unprecedented Regulatory and Compliance Committee created in the settlement, which not only materially enhances the Pfizer board's oversight but may set a new benchmark of good corporate governance for all highly regulated companies. In Mr. Berger's estimation, it is "one of the most remarkable aspects of this settlement, and it is one that we view as a critical element, if the committee is to be both independent and effective." (In September 2009, Pfizer paid the largest fine in United States history - \$2.3 billion - for its unlawful drug marketing activities.)

Among other topics, Mr. Berger also discusses the impact of the Dodd-Frank whistleblower provisions on current litigation and the potential repercussions of the U.S. Supreme Court's opinion in *Morrison v. National Australia Bank* on U.S. and foreign investors. He also probes other possible developments that might further shape the future of securities litigation in 2011, pending forthcoming decisions in cases currently being considered by the Supreme Court, such as *Matrixx Initiatives v. Siracusano* and *Janus Capital Group v. First Derivative Traders*.

As the senior founding partner of BLB&G, Mr. Berger supervises the firm's litigation practice and prosecutes class and individual actions on behalf of the firm's clients. He has litigated many of the firm's most high-profile and significant cases, including five of the largest securities fraud recoveries in history - the \$6.15 billion settlement of *In re WorldCom, Inc. Securities Litigation*, the \$3.3 billion settlement of *In re Cendant Corporation Securities Litigation*, the \$1.3 billion recovery in *In re Nortel Networks Corporation Securities Litigation*, the \$1.04 billion settlement of *In re McKesson HBOC, Inc. Securities Litigation*, and the over \$600 million investor recovery in *In re Lucent Technologies, Inc. Securities Litigation*.