

Mark Lebovitch



Partner
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Mark heads the firm's corporate governance litigation practice, focusing on derivative suits and transactional litigation. He is resident in the firm's New York office, but splits his time between New York and Wilmington, where he co-leads the firm's Delaware office. Working with his institutional investor clients, he fights to hold management accountable, pursuing meaningful and novel challenges to alleged corporate governance-related misconduct and anti-shareholder practices. A seasoned litigator, Mark also prosecutes securities fraud class actions and has been a senior or lead member of the trial teams on some of the most high-profile securities fraud class actions and corporate governance litigations in history. His cases have created key legal precedents while helping recoup billions of dollars for investors and improving corporate governance practices in numerous industries.

Most recently, Mark led the *Allergan Proxy Violation Litigation*, alleging an unprecedented insider trading scheme by billionaire hedge fund manager Bill Ackman, Ackman's Pershing Square Capital Management fund and Valeant Pharmaceuticals International, Inc. After a ferocious three-year legal battle over this attempt to circumvent the spirit of the U.S. securities laws, defendants accepted a \$250 million settlement for Allergan investors. In 2017, before the birth of the #metoo movement, he led the prosecution of an unprecedented shareholder derivative litigation against Fox News parent 21st Century Fox, Inc. arising from the systemic sexual and workplace harassment at the embattled network. The case resulted in one of the largest financial recoveries – \$90 million – ever obtained in a pure corporate board oversight dispute; and the creation of an independent council of experts – named the "Fox News Workplace Professionalism and Inclusion Council" – which is expected to serve as a model for public companies in all industries.

For these and other several other recent prosecutions, the *New York Law Journal* bestowed Mark with its most prestigious honor, naming him the 2019 "Attorney of the Year" at the New York Legal Awards. Among other industry leading recognitions, he has been named a "Leading Lawyer" by *Lawdragon*. He is also recognized by *Chambers USA* for what quoted sources describe as his "very smart" approach, along with his "particular strength in corporate governance litigation, focusing on shareholder derivative suits."

Other select current and past representations include:

- *In re DISH Corp. Shareholder Litigation*: derivative suit challenging misappropriation and front-running by a controlling shareholder, costing investors over \$800 million;
- *Insys Derivative Litigation*: challenging a board-approved illegal marketing scheme that actively encouraged off-label marketing of a deadly opioid fentanyl drug;
- *In re TIBCO Software Stockholder Litigation*: pursued novel and precedent-setting merger agreement reformation claims and received 33% of potential damages shortly before trial;
- *In re Freeport-McMoRan Derivative Litigation*: settled for a cash recovery of nearly \$154 million, plus corporate governance reforms;
- *In re Jefferies, Inc. Stockholder Litigation*: settled for a \$75 million net payment paid entirely to a class of former Jefferies investors through a first-of-its-kind dividend;
- *Safeway Appraisal Litigation*: provided clients with a nearly 30% increase in value above the negotiated merger consideration;

- *In re News Corp. Shareholder Derivative Litigation*: settled for a \$139 million cash recovery, and an unprecedented package of corporate governance and oversight enhancements;
- *In re El Paso Corp. Shareholder Litigation*: resulted in a \$110 million post-closing settlement and a ruling that materially improved the way M&A financial advisors address conflicts of interest;
- *In re Delphi Financial Group Shareholder Litigation*: challenged the controlling shareholder's unlawful demand for an additional \$55 million in connection with the sale of the company, resulting in the recovery of \$49 million;
- *In re Pfizer Derivative Litigation*: resulted in a \$75 million payment and creation of a new Healthcare Law Regulatory Committee, which sets an improved standard for regulatory compliance oversight by a public company board of directors; and
- *In re ACS Shareholder Litigation*: settled on the eve of trial for a \$69 million cash payment to ACS shareholders.

Mark pioneered challenges to the improper but widespread practice of using "Proxy Put" provisions in corporate debt agreements, obtaining pro-shareholder rulings in cases like *In re Amylin Shareholders Litigation*, *In re SandRidge Energy, Inc. Shareholder Litigation*, and *In re Healthways, Inc. Shareholder Litigation*, which have caused the industry to materially change its use of such provisions. He also prosecutes securities litigations, and in that capacity, was the lead litigation attorney in *In re Merrill Lynch Bondholders Litigation*, which settled for \$150 million; and a member of the team prosecuting *In re Bank of America Securities Litigation*, which settled for \$2.425 billion. Currently, he is the lead attorney prosecuting *In re Allergan Proxy Securities Litigation*.

Mark has received national recognition for his work in securities and M&A litigation. *The National Law Journal* named Mark, as a "Plaintiffs' Lawyers Trailblazer," recognizing him among the top practitioners in the nation. He was selected 2016 national "Plaintiff Attorney of the Year" by *Benchmark Litigation* and is regularly honored as a New York "Litigation Star" by *Benchmark* in its exclusive annual list of top practitioners. Named a leading lawyer in M&A litigation by *Best Lawyers*[®], Mark was selected as its 2016 M&A Litigation "Lawyer of the Year" for New York City. He is one of *Lawdragon's* "500 Leading Lawyers in America," a New York *Super Lawyer*, and is recognized by *Chambers USA* and *Legal 500* as one of an elite group of notable practitioners in securities and M&A litigation. In 2013, *Law360* named him as one of its five "Rising Stars" nationally in the area of securities litigation – the only plaintiff-side attorney so selected, and in 2017 and 2018 honored him as a "Titan of the Plaintiffs Bar." In 2012, *The Deal* magazine prominently profiled Mark as one of the top three lawyers nationally representing shareholder plaintiffs in M&A litigation in its feature article, "[The Troika Atop the M&A Plaintiffs' Bar.](#)"

Mark serves as an Adviser on the prestigious American Law Institute's Restatement of the Law, Corporate Governance project. He is also a member of the Board of Advisors for both the Institute for Law and Economics and the NYU Institute for Corporate Governance and Finance, and is an author and a frequent speaker and commentator at industry events on a wide range of corporate governance and securities related issues. His publications include "[Of Babies and Bathwater: Detering Frivolous Stockholder Suits Without Closing the Courthouse Doors to Legitimate Claims](#)" (*Delaware Journal of Corporate Law*, Vol. 40, 2015), "Making Order Out of Chaos: A Proposal To Improve Organization and Coordination in Multi-Jurisdictional Merger-Related Litigation" (*ABA Journal*), "'Novel Issues' or a Return to Core Principles? Analyzing the Common Link Between the Delaware Chancery Court's Recent Rulings in Option Backdating and Transactional Cases" (*NYU Journal of Law & Business*, Volume 4, Number 2), "Calling a Duck a Duck: Determining the Validity of Deal Protection Provisions in Merger of Equals Transactions" (2001 *Columbia Business Law Review* 1) and "Practical Refinement" (*The Daily Deal*, January 2002), each of which discussed evolving developments in the law of directors' fiduciary duties.

Mark clerked for Vice Chancellor Stephen P. Lamb on the Court of Chancery of the State of Delaware, and was a litigation associate at Skadden, Arps, Slate, Meagher & Flom in New York, where he represented clients in a variety of corporate governance, commercial and federal securities matters.

Education

- New York University School of Law, J.D., 1999
- Binghamton University - State University of New York, B.A., 1996

Admissions

- New York
- U.S. District Court, Southern District of New York
- U.S. District Court, Eastern District of New York
- U.S. District Court, District of Colorado
- U.S. Court of Appeals, Second Circuit
- U.S. Court of Appeals, Ninth Circuit

News

- October 19, 2020 - Trends in Corporate Governance Litigation: A *Lawdragon* Discussion with BLB&G
- March 28, 2020 - Protecting Investors in a Time of Crisis: A Message from BLB&G on Access to Justice and COVID-19
- August 2019 - BLB&G Partner Mark Lebovitch Quoted in *Fortune* magazine on Business Roundtable's Repudiation of Shareholder Primacy
- September 2019 - *Lawdragon* Profiles Groundbreaking Workplace Protections Achieved by BLB&G in its Fox Derivative Litigation
- June 29, 2018 - *Forbes* Highlights Pivotal Role of Private Shareholder Litigation in Checking Corporate Misconduct
- October 8, 2015 - *Lawdragon* Profiles Mark Lebovitch in "Lawyer Limelight" Q&A
- April 10, 2015 - Mark Lebovitch Weighs in on Fee-Shifting Bylaw Debate with *The D&O Diary*
- September 3, 2013 - Mark Lebovitch Discusses Liberty Media/Sirius XM Shareholder Lawsuit on Market Playground Radio
- May 2013 - Corporate Secretary Magazine Features Mark Lebovitch Commentary on Disclosure-Only Shareholder Lawsuits
- February 22, 2013 - BLB&G and NYSCRF Prosecution of *Qualcomm* Litigation Improves Transparency of Corporate Political Spending
- October 10, 2012 - *The New York Times* Profiles Max Berger and BLB&G - "Investors' Billion-Dollar Fraud Fighter"
- May 14, 2012 - Pensions & Investments Publishes Commentary of El Paso/Kinder Morgan Deal by Mark Lebovitch and Jeremy Friedman
- May 2012 - *The Deal* Features Mark Lebovitch As Top M&A Plaintiffs' Attorney
- December 6, 2010 - Mark Lebovitch Featured in New York Times Coverage of Pfizer Litigation
- June 15, 2009 - BLB&G Files Shareholder Class Action on Behalf of Detroit Police & Fire Retirement System Against Members of the Board of Directors of Data Domain, Inc.
- May 21, 2009 - Delaware Chancery Court Agrees with BLB&G That 'Proxy Puts' Can Undermine Shareholder Rights; The Fight Must Go On
- April 14, 2009 - Mark Lebovitch Featured in Wall Street Journal Article Tracing Impact of 'Poison Puts' on Corporate Mergers - The Latest Effort To Undermine Shareholder Rights?
- December 10, 2008 - Yahoo Shareholder Litigation Settlement Presented to the Court of Chancery
- May 6, 2008 - Mark Lebovitch Featured on Fox Business News Discussing Lawsuit against Yahoo!, Inc.
- January 2008 - BLB&G Announces New Partners and Senior Counsel for 2008

Publications

- April 10, 2020 - "Protecting Investors in a Time of Crisis: A Response to Those Who Would Utilize COVID-19 to Eviscerate Investor Protection" by Mark Lebovitch, Jeroen van Kwawegen, and Greg Varallo published by *Harvard Law School Forum on Corporate Governance*
- April 10, 2020 - "Protecting Investors in a Time of Crisis: Access to Justice and COVID-19" by Mark Lebovitch, Jeroen van Kwawegen, and Greg Varallo published by *Lawdragon*
- February 6, 2019 - "In Corporations We Trust: Ongoing Deregulation and Government Protections" by Mark Lebovitch (published by the Harvard Law School Forum on Corporate Governance and Financial Regulation)
- May 2018 - "When One Share Does Not Mean One Vote: The Fight Against Dual-Class Capital Structures" by Mark Lebovitch and Jonathan Uslaner (as published by SACRS Magazine)
- March 9, 2018 - "The Shifting Meaning of 'Fair Value,' From Corwin to Dell: Recent Rulings and Reversals in Delaware's Courts May Spell Trouble for Investors" by Mark Lebovitch, C.J. Orrico, and Alla Zayenchik
- July 18, 2017 - "CalPERS v. IAC: Clear Win for Investors Protecting Shareholder Voting Rights" (published by the Harvard Law School Forum on Corporate Governance and Financial Regulation)
- April 1, 2015 - "Why Expanding Director Power Over Corporate Bylaws Could Undermine Core Stockholder Rights: Comments on Three Scary Predictions of the Future" by Mark Lebovitch
- March 16, 2015 - "Of Babies and Bathwater: Deterring Frivolous Stockholder Suits Without Closing the Courthouse Doors to Legitimate Claims" by Mark Lebovitch and Jeroen van Kwawegen
- April 1, 2013 - "Challenge & Opportunity for the SEC: A Conversation with Former SEC Chair Harvey Pitt" by Mark Lebovitch
- June 12, 2012 - "Coaches Should Stick to the Sidelines: Why the Federal Rules Should Track Delaware Rules Regarding Conferences Between Deponents and Counsel" by Mark Lebovitch
- June 2, 2012 - "Goldman Sachs and the Art of the Deal - Heads: We Win! Tails: You Lose!" by Mark Lebovitch
- February 2011 - "Improving Multi-Jurisdictional, Merger-Related Litigation" by Mark Lebovitch and Gerald Silk
- October 2009 - "The Wrong Prescription? Revisiting the Justification for Poison Pills" by Mark Lebovitch
- Spring 2008 - "'Novel Issues' or a Return to Core Principles? Analyzing the Common Link Between the Delaware Chancery Court's Recent Rulings in Option Backdating and Transactional Cases" by Mark Lebovitch (Published by *NYU Journal of Law & Busi*)
- Spring 2008 - *NYU Journal of Law & Business Publishes Article by Mark Lebovitch and Laura Gundersheim on Recent Delaware Court Rulings*

Awards

- October 7, 2020 - *Benchmark Litigation* Again Names BLB&G One of the Top Firms in the Nation in 2021 Guide
- September 2020 - Two BLB&G Partners Named to the *Lawdragon* 500 "Legends of 2020" List
- August 2020 - *Lawdragon* Names BLB&G Partners to The 2020 Edition of the "500 Leading Plaintiff Financial Lawyers" List
- August 2020 - BLB&G Partners Named to The 27th Edition of the *Best Lawyers in America*[®]
- April 23, 2020 - *Chambers* Again Ranks BLB&G Top Securities Litigation Firm With Band 1 Rankings In All Categories
- March 12, 2020 - *Lawdragon* Names BLB&G Attorneys to *500 Leading Lawyers in America List* and Inducts Founding Partner Max Berger into its "Hall of Fame"
- March 11, 2020 - BLB&G Tops List of ISS SCAS Top 50 Securities Fraud Settlements in 2019
- February 2020 - Bernstein Litowitz Dominates ISS SCAS List of Top 100 Securities Settlements of All Time
- January 2020 - BLB&G Named A Top Securities Practice by *Law360*
- October 23, 2019 - *The New York Law Journal* Names Mark Lebovitch Its 2019 "Attorney of the Year"
- September 2019 - *Lawdragon* Names 20 BLB&G Attorneys Among its "500 Leading Plaintiff Financial Lawyers" list
- September 2019 - 20 BLB&G Attorneys Named by *Super Lawyers* to its 2019 New York Metro Edition

- August 2019 - BLB&G Partners Named *2020 Best Lawyers*®
- July 2019 - Seven BLB&G Partners Named Among the “500 Leading Lawyers in America” by *Lawdragon*
- April 25, 2019 - *Chambers* Again Ranks BLB&G Nation’s Top Securities Litigation Firm
- April 1, 2019 - BLB&G’s Mark Lebovitch Selected an Adviser on ALI’s “Restatement of the Law, Corporate Governance” Project
- October 2018 - *Benchmark* Names Seven BLB&G Partners as Litigation Stars
- October 2018 - *Benchmark* Again Names BLB&G One of the Top Firms in the Nation
- October 2018 - 20 BLB&G Attorneys Named by *Super Lawyers* to its 2018 New York Metro Edition
- August 2018 - BLB&G Partners Named *2019 Best Lawyers*®

Events

- November 19, 2019 - Mark Lebovitch and Greg Varallo Address Delaware Landscape at Skytop Strategies’ “Shareholder Activism 2019”
- May 7, 2019 - Mark Lebovitch Discusses D&O Exposure in Transactional Contexts in New York City Bar Program
- January 23, 2019 - Salvatore Graziano and Mark Lebovitch Discuss Shareholder Litigation at NYU Law’s Corporate Governance Bootcamp
- September 17-18, 2015 - Mark Lebovitch Discusses Developments in Delaware Law at ACI Forum
- June 4, 2015 - Mark Lebovitch Discusses Section 220 Litigation at PLI Seminar
- November 4, 2014 - Master Limited Partnerships Crossroads and Conflicts - A Discussion about Past, Present and Future Legal and Financial Issues Facing Master
- January 27, 2014 - Mark Lebovitch Discusses Civil Litigation at the Securities Regulation Institute
- November 20, 2013 - Mark Lebovitch Discusses Judicial Developments and Private Litigation
- April 3, 2013 - Shareholder Efforts to Improve Transparency of Corporate Political Spending
- February 1, 2012 - Mark Lebovitch Discusses Impact on Securities Litigation in D&O Market at Advisen Webinar
- November 5, 2011 - BLB&G Participates in the Big Brothers Big Sisters of New York City 2011 Gridiron Games
- June 9, 2011 - Mark Lebovitch Discusses Future of Fiduciary Responsibility
- June 2, 2011 - Mark Lebovitch Moderates M&A Litigation Panel for ABA Webinar
- May 22-26, 2011 - Mark Lebovitch and Tony Gelderman Discuss M&A Trends and the Role of Institutional Investors at NCPERS Event
- May 10-11, 2011 - Mark Lebovitch and Hannah Ross Participate in the 7th Annual National Directors & Officers Liability Insurance ExecuSummit
- Thursday, April 28, 2011 - 2pm EDT - The Evolving Landscape of M&A Litigation
- April 11, 2011 - Mark Lebovitch Participates in the Delaware Journal of Corporate Law’s “Irreconcilable Differences”
- February 10, 2011 - Jerry Silk and Mark Lebovitch Provide Securities Litigation Update at MAPERS Seminar
- April 21 - 23, 2010 - Mark Lebovitch Participates in the ABA’s Section of Litigation Annual Conference
- October 7, 2009 - Mark Lebovitch Discusses Proxy Access at Harvard Law School Program on Corporate Governance’s Roundtable

Cases

- ACS (Xerox)
- Abercrombie & Fitch Co.
- Acacia Communications, Inc.
- Airgas, Inc.
- Alberto-Culver Co.
- Alcon, Inc.
- Allergan, Inc. (Proxy Violation)

- Amerigroup Corp.
- Amylin Pharmaceuticals, Inc.
- Ancestry.com
- Arena Resources, Inc.
- Athlon Energy, Inc.
- Atlas Energy Resources, LLC
- Atmel Corporation
- Bank of America/Merrill Lynch Merger Litigation
- CBOT Holdings, Inc.
- CVR Refining
- Caremark / CVS
- Celera Corporation Shareholder Litigation
- Ceridian Corporation
- Cheniere Energy, Inc.
- Chesapeake Energy Corporation
- Clear Channel Outdoor Holdings, Inc.
- Columbia Pipeline Group, Inc.
- Comverse Technology, Inc.
- Darden Restaurants, Inc.
- Data Domain Inc.
- Delphi Financial Group
- DirecTV Group, Inc.
- Dollar General Corporation Shareholder Litigation
- El Paso Corporation
- Emulex Corporation
- Freeport-McMoRan Copper & Gold Inc.
- GFI Group Inc.
- Globe Specialty Metals, Inc.
- HC2 Holdings
- Healthways, Inc. and SunTrust Bank
- IAC/InterActiveCorp
- Intuitive Surgical Inc.
- J. Crew Group
- Jefferies Group, Inc.
- Johnson & Johnson, Inc.
- Kinder Morgan Energy Partnership, L.P.
- LSI Corporation
- Landry's Restaurants, Inc.
- Longs Drug Stores Corporation Shareholder Litigation
- McKesson Corporation
- Medco Health Solutions, Inc.
- Merrill Lynch & Co., Inc. (Bond Action)
- Microsoft Corporation
- New Senior Investment Group, Inc.
- News Corp.
- Oracle Corporation
- Pepsi Bottling Group, Inc., PepsiAmericas, Inc.

- Pfizer, Inc.
- Pilgrim's Pride
- Qualcomm, Inc.
- Safeway, Inc.
- Safeway, Inc. (Appraisal Litigation)
- Sanchez Energy
- SandRidge Energy, Inc.
- Smurfit-Stone Container Corp.
- Straight Path Communications Inc.
- Suprema Specialties, Inc.
- Terremark Worldwide
- Ticketmaster Entertainment, Inc.
- Tile Shop
- Twenty-First Century Fox, Inc.
- United Therapeutics Corporation
- Virgin Media, Inc.
- Williams Companies
- Williams Companies
- Yahoo! Inc.
- Yahoo! Inc.