

New York Cases To Watch In 2018

By **Pete Brush**

Law360, New York (January 1, 2018, 3:04 PM EST) -- New York courts are no stranger to high-profile litigation, and some of the coming year's big-ticket items will include allegations of presidential sexual misconduct, a fight over pay for women lawyers, the sentencing of former pharma exec Martin Shkreli, and former banker Jennifer Sharkey's ongoing fight against JPMorgan Chase & Co.

Here's a rundown of Empire State litigation attorneys will be closely watching in 2018.

Claims of Workplace Sexual Misconduct

Summer Zervos, a former reality television contestant who sued President Donald Trump for defamation after he said her sexual misconduct claims were lies, is in Manhattan trial court pressing her claims. The president **has argued** that his work is more important than the litigation at hand. Questions over the viability of the lawsuit will be on the radar throughout 2018, as any decision made by Judge Jennifer G. Schechter will surely get appellate review.

Zervos' claims against the president will get heavy news coverage as they play out in New York City, but she is not alone, as 2017 became a watershed year for women fed up with workplace harassment and worse.

"The Trump case is very high-profile, but there are lots of others. Mario Batali has resigned from his culinary empire due to sexual harassment allegations, and the NFL Network has suspended many former players, including Hall of Famer Marshall Faulk, due to sexual harassment issues," said Fitapelli & Schaffer LLP partner Brian Schaffer.

Zervos is represented by Mariann Meier Wang of Cuti Hecker Wang LLP and Gloria Allred of Allred Maroko & Goldberg.

Trump is represented by Marc E. Kasowitz, Daniel R. Benson, Christine A. Montenegro and Paul J. Burgo of Kasowitz Benson Torres LLP.

The case is Zervos v. Trump, case number 150522/2017, in the Supreme Court of the State of New York, County of New York.

Women Lawyers' Equal-Pay Claims

If it does not settle, the case brought by former Chadbourne & Parke LLP female lawyers against six male partners will become a hot courtroom ticket in 2018. One reason is the possibility that private emails could end up being on display in court, if pretrial rulings are any indication.

Attorney Kerrie Campbell, who was later ousted from Chadbourne, filed suit in 2016 alleging the firm has a “boys’ club” culture and pays women less. Two other former partners later joined the suit. Meanwhile, Chadbourne was swallowed up by Norton Rose Fulbright LLP in June.

Electronic evidence will drive the case forward, according to Stowell & Friedman Ltd. partner Linda Friedman, especially if emails give color to any data that demonstrably shows Chadbourne women were paid less.

“Who hasn’t sent an email and regretted it?” Friedman said. “People can say dumb things in emails, but the distribution of profit tells the real story.”

No trial date has been set yet. The case is pending before U.S. District Judge J. Paul Oetken.

The plaintiffs are represented by David W. Sanford and Alexandra Harwin of Sanford Heisler Sharp LLP.

Chadbourne is represented by Evandro C. Gigante, Kathleen M. McKenna and Rachel S. Fischer of Proskauer Rose LLP.

Norton Rose Fulbright is represented by Steven M. Bierman of Sidley Austin LLP.

The case is Campbell v. Chadbourne & Parke, case number 1:16-cv-06832, in the U.S. District Court for the Southern District of New York.

A Sentence for the ‘Pharma Bro’

Martin Shkreli, the fallen pharma exec convicted of fraud and jailed after making comments about Hillary Clinton and a Teen Vogue journalist that were deemed threatening — among other bad behavior — is set to be sentenced Feb. 21 by Brooklyn U.S. District Judge Kiyo A. Matsumoto.

Much has been made of the fact that investors who were lied to by Shkreli didn’t lose money and about how prosecutors only managed to convict him on three of eight criminal counts.

Indeed, Shkreli may be able to convince the judge that his crimes do not merit a long prison term, but Pace University law professor Bennett L. Gershman pointed out that the judge is able to consider the entirety of Shkreli’s conduct in assessing his sentence.

“He’s a loathsome character,” Gershman said. “My sense is he’s going to get hit relatively hard.”

The government is represented by Alixandra E. Smith, Girish K. Srinivasan and Jacquelyn M. Kasulis of the U.S. Department of Justice.

Shkreli is represented by Benjamin Brafman, Marc A. Agnifilo, Andrea L. Zellan, Jacob Kaplan and Teny Geragos of Brafman & Associates PC.

The case is U.S. v. Shkreli, case number 1:15-cr-00637, in the U.S. District Court for the Eastern District of New York.

Securities Fraud on Cyber-Steroids

That is how former Manhattan U.S. Attorney Preet Bharara described the conduct of Joshua S. Aaron, Gery Shalon and Ziv Orenstein, who were charged in a 23-count indictment of stealing huge amounts of corporate data and parlaying the haul into lucrative stock-manipulation efforts.

“It’s a combination of two pre-existing forms of crime, identity theft and securities fraud, to create something that hadn’t been heard of — kind of like a Reese’s Peanut Butter Cup,” said Joe DeMarco, founder of DeVore & DeMarco LLP and former coordinator of cybercrime prosecutions at the Manhattan U.S. Attorney’s Office.

The sheer size of the alleged data theft was stunning. Prosecutors said the trio got information about 83 million JPMorgan Chase & Co. customers. They also are reported to have hit companies including Dow Jones & Co., TD Ameritrade and Fidelity Investments.

No trial date has been set for Aaron, Shalon and Orenstein. A Jan. 4 status conference is scheduled before U.S. District Judge Laura Taylor Swain.

The government is represented by Eun Y. Choi and Sarah Lai of the U.S. Department of Justice.

Aaron is represented by Ben Brafman and Jacob Kaplan of Brafman & Associates PC. Shalon is represented by Arkady Bukh. Orenstein is represented by Alan Futerfas.

The case is U.S. v. Shalon et al., case number 1:15-cr-00333, in the U.S. District Court for the Southern District of New York.

A New Frontier for Fraud

A Quebecois man repeatedly accused of fraud by Canadian regulators is now in the sights of the U.S. Securities and Exchange Commission, which filed a suit in Brooklyn federal court alleging he and his girlfriend ripped off investors in a \$15 million fraudulent initial coin offering.

On Dec. 14, U.S. District Judge Carol Bagley Amon granted the SEC’s request for an order freezing the assets of Dominic Lacroix and Sabrina Paradis-Royer. Lacroix duped investors into buying into his PlexCoin offerings, the commission says.

The case may be a sign of things to come, according to Morrison Foerster LLP counsel Joshua A. Klayman, who closely follows the world of blockchain and online currencies — the best known of which is bitcoin.

“I anticipate that we will continue to see more token sale cases in New York courts that allege fraudulent behavior and an illegal sales of unregistered securities,” she said. “I also think that we will see a number of token sale cases ... where the principal claim is that the tokens in question were securities and that the token sale was a sale of unregistered securities.”

The SEC is represented by Robert A. Cohen, Valerie A. Szczepanik, Jorge G. Tenreiro, Daphna A. Waxman

and David H. Tutor.

The defendants are represented by Jean-Francois Hudon of Hudon Avocats.

The case is SEC v. PlexCorps et al., case number 1:17-cv-07007, in the U.S. District Court for the Eastern District of New York.

The Platinum Partners Hedge Fund

In late November U.S. District Judge Brian M. Cogan set an October 2018 date for the two-month Brooklyn trial of Mark Nordlicht, the co-founder of hedge fund Platinum Partners, and six others accused of a \$1 billion fraud.

Nordlicht and others were charged in December 2016 with deceiving investors in a Platinum-managed fund, in part by downplaying a downturn at portfolio company Black Elk Energy Offshore Operations LLC. A former Black Elk CEO is also accused of aiding a related scheme.

“The case has received a great deal of media attention in New York because the people charged have been prominent members of the Modern Orthodox Jewish community for many years. It’s a small community, and many in the community know the people at Platinum Partners,” said Eric M. Creizman of Creizman LLC. “What makes the case more intriguing is that the indictment reflects that there are a number of cooperating witnesses from Platinum, which means that people within the same community ... helped to indict the defendants and will testify against them at trial.”

Another case related to Platinum ended in a mistrial before U.S. District Judge Andrew L. Carter in Manhattan in mid-November. Acting U.S. Attorney Joon H. Kim said the government plans to retry Platinum co-founder Murray Huberfeld and New York City labor leader Norman Seabrook on corruption charges.

No date for a retrial has been set. On Dec. 11 the case was transferred without explanation from Judge Carter to U.S. District Judge Alvin K. Hellerstein.

“The charges against Mr. Huberfeld on their face have very little to do with the securities fraud charges against the Eastern District defendants,” Creizman said. Nevertheless, he said, the mistrial creates “additional pressure” on prosecutors in both districts.

The government is represented by Martin Bell, Kan M. Nawaday, Russell Capone, Alicyn Cooley, Lauren Elbert, Sarah Evans, Allon Lifshitz and Andrew Gilman of the U.S. Department of Justice.

Huberfeld is represented by Henry E. Mazurek and Evan L. Lipton of Mazurek Lipton LLP. Seabrook is represented by Paul L. Shechtman and Margaret E. Lynaugh of Bracewell LLP.

Nordlicht is represented by Alexander B. Spiro, William A. Burck and Daniel R. Koffmann of Quinn Emanuel Urquhart & Sullivan LLP.

The cases are U.S. v. Seabrook et al., case number 1:16-cr-00467, in the U.S. District Court for the Southern District of New York and U.S. v. Nordlicht et al., case number 1:16-cr-00640, in U.S. District Court for the Eastern District of New York.

Jennifer Sharkey's Quest for Justice

Two hours after former wealth manager Jennifer Sharkey won a \$1.13 million jury verdict against JPMorgan Chase & Co., U.S. District Judge Denise L. Cote mysteriously **blasted the jury** as “prejudiced against the bank” and suggested she would order a mistrial or dismiss the eight-year-old unlawful retaliation litigation.

Unless Judge Cote reverses course in coming weeks, the case looks bound for a third trip to the Second Circuit, which has twice revived Sharkey's Sarbanes-Oxley Act claims. In a recent filing Sharkey's counsel pointed out that the circuit court ordered the very trial that Judge Cote recently rejected.

Sharkey claims in her 2010 lawsuit that she flagged a wealthy, unnamed JPMorgan client for possible fraud and money laundering red flags in early 2009 and was unlawfully fired for her trouble. JPMorgan says Sharkey was fired for dishonesty.

“We are confident that 2018 will bring about final resolution of Ms. Sharkey's claims through the affirmance of the jury verdict in her favor,” said Sharkey's attorney Douglas Wigdor of Wigdor LLP.

Counsel for the bank had no comment

Sharkey is represented by Douglas H. Wigdor, Michael J. Willemin and Lawrence M. Pearson of Wigdor LLP.

JPMorgan is represented by Michael D. Schissel and Kathleen A. Reilly of Arnold & Porter Kaye Scholer LLP.

The case is Sharkey v. JPMorgan Chase & Co. et al., case number 1:10-cv-03824, in the U.S. District Court for the Southern District of New York.

--Editing by Brian Baresch and Rebecca Flanagan.