

Rising Star: Bernstein Litowitz's Scott R. Foglietta

By Sarah Jarvis

Law360 (May 31, 2022, 2:02 PM EDT) -- Scott R. Foglietta of Bernstein Litowitz Berger & Grossmann LLP has played a role in securing several large recoveries for investors, including \$480 million in a case against Wells Fargo and \$210 million against Salix Pharmaceuticals Ltd., earning him a spot among the securities law practitioners under age 40 honored by Law360 as **Rising Stars**.



Scott R. Foglietta
Bernstein Litowitz

Age: 37

Home base: New York

Position: Partner

Law school: Brooklyn Law School

First job after law school: Associate at Milberg LLP

HIS PROUDEST MOMENT AS AN ATTORNEY:

Foglietta said his role within the securities class action firm is generally figuring out which cases to pursue and petitioning court for lead counsel appointments, after which, the cases are usually passed on to a litigation team. In that case evaluation and development position, he said the biggest case he's worked on in terms of overall recovery was a securities class action over Wells Fargo's fake accounts scandal, which resulted in a **\$480 million settlement** in 2018.

But Foglietta will also sometimes stay on to litigate cases, and the first time he did that was as an associate in a case against Lumber Liquidators Holdings Inc. Foglietta represented investors in bringing claims the flooring retailer boasted record gross margins while its branded floors were emitting illegal amounts of formaldehyde.

And while most of the firm's clients are institutional investors, Foglietta said the plaintiff in this case put a lot of money into Lumber Liquidators for his personal trading account, as well as his wife's. Foglietta helped recover about \$45 million, including \$26 million in cash and 1 million shares of Lumber Liquidators common stock.

"The only reason Lumber Liquidators was doing so well and able to cut their margins is because they were cutting corners to the detriment of their own customers," Foglietta said. "So this gentleman who we ultimately represented lost a lot of money; it was his personal money. He was a great lead plaintiff, and we got the privilege to represent him and help recover some of that back."

THE MOST INTERESTING CASE HE'S WORKED ON LATELY:

Foglietta said the most interesting case he's worked on lately was against Luckin Coffee Inc., which admitted to faking about \$300 million in sales between the second and fourth quarters of 2019. A class action **settlement** for \$175 million is currently awaiting court approval, while an additional \$12.5 million in that deal was reserved for direct actions.

"They were using those fictitious sales to inflate their revenues," Foglietta said. "They were able to raise significant amounts of money from investors, including our clients, with those inflated revenues and numbers. And ultimately it all came crashing down when the company disclosed that these numbers are inflated by fraud."

After the company admitted to faking the sales, its share price fell more than 75%.

Among the reasons the case stood out, Foglietta said, is that "it's not often that we deal with admitted frauds." He said the Chinese company eventually disclosed what was one of the most egregious frauds he's seen in a long time after a market analyst watched hundreds of hours of store surveillance tapes to compare the company's reported sales to its sales traffic.

WHAT MOTIVATES HIM:

Foglietta said he's motivated by holding corporate wrongdoers accountable and helping people get their money back after they rely on companies' fraudulent conduct. He said he's part of a group of attorneys at Bernstein Litowitz who work on business development and talks with clients, many of whom are union pension funds.

"It's a group of folks that are near and dear to my heart because I have a lot of family members that were part of unions and relied on their well-earned pension funds to have a comfortable retirement," Foglietta said. "To see these folks getting taken advantage of and losing money — nothing to me is more motivating than the opportunity to try to help them recover that."

WHY HE'S A SECURITIES ATTORNEY:

A former capital markets analyst with an MBA in finance, Foglietta said he's always had an interest in business and finance, even though law school was on his mind before he ever went to college. He said he worked at a boutique investment banking company in Manhattan while attending Brooklyn Law School at night for a period, before eventually attending law school full-time.

"It's just the perfect intersection of those worlds," Foglietta said. "It's where high-level finance meets the law. It's dynamic, and it helps me pull together these two disciplines or areas that have always been of significant interest to me."

HOW HE THINKS HIS PRACTICE AREA WILL CHANGE IN THE NEXT 10 YEARS:

Foglietta said while fraud isn't going anywhere, he thinks the areas where fraudulent activity happens will change in the coming years. He said that shift has begun already with the rise and fall of SPACs, or special-purpose acquisition companies, saying there will likely be continued fallout over the next couple of years as regulators take stronger looks at such arrangements.

He also predicted that institutional investors will continue to focus on corporate governance reforms to try to protect shareholder value going forward, and that there will be more activity in the cryptocurrency space as decisions shake out regarding whether such assets are considered securities. He said there could be significant legal and regulatory ramifications for companies that create cryptocurrencies or the exchanges on which they trade.

"That's an area that's going to continue to develop quite rapidly, I'd say, given where we've come with cryptocurrencies over the last five years or so," he said. "It's something that we as a firm are taking a very close look at as well."

— As told to Sarah Jarvis

Law360's Rising Stars are attorneys under 40 whose legal accomplishments belie their age. A team of Law360 editors selected the 2022 Rising Stars winners after reviewing more than 1,350 submissions. Attorneys had to be under 40 as of April 30, 2022, to be eligible for this year's award. This interview has been edited and condensed.