

Litigators of the Week: Latham Duo Clear Clients Caught in Weinstein Scandal

By Jenna Greene
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Our winners this week are Latham & Watkins partners **Marvin Putnam** and **Laura Washington** for their work on behalf of Miramax and a former board member of The Weinstein Company (and current Deputy CEO of Technicolor), Tim Sarnoff, in the Harvey Weinstein-related litigation.

Allegations against Weinstein range from sexual harassment to rape, and launched the #metoo movement.

Both Miramax and Sarnoff have found themselves caught up in the ensuing legal morass, accused in essence of knowingly assisting and enabling Weinstein to commit sexual assault.

Putnam and Washington led a Latham team in winning dismissal of four separate cases against their clients, most recently on April 26.

They discussed the work with Lit Daily.

Lit Daily: Who are your clients?

Marvin Putnam and Laura Washington: Miramax, which Harvey Weinstein has not been affiliated with since 2005 when the two parted ways and he went on to start The Weinstein Company; and former board member of The Weinstein Company—current Deputy CEO of Technicolor, Tim Sarnoff.

When and how did you become involved in the representation?

Latham was brought on initially by Sarnoff to help him immediately after the Weinstein debacle broke in the New York Times on October 5, 2017 to assist



Latham partners Laura Washington and Marvin Putnam

with crisis management and deal with the assorted resulting government investigations, and this ultimately led to our representation of Sarnoff in all of the related actions.

Latham has had a longstanding relationship with Miramax, so when they were unfairly sued in the first class action, Miramax reached out for our assessment of the suit. Given our involvement with Sarnoff and knowledge of the various media articles and claims surrounding Harvey Weinstein, we were best positioned to assist Miramax.

Tell us a bit about the scope of the work and (in a big-picture sense) what's at stake.

While money is always at stake in a litigation, here our clients' reputations are at stake. The allegations against our clients, which boil down to knowingly assisting and enabling Harvey Weinstein to commit sexual assault, are hideous and offensive.

Our goal from the beginning of this was to imme-

diately change that narrative, and frankly clear our clients' names. We, of course, had a legal basis to do so, which was demonstrated in our successful motions to dismiss. But even when drafting those papers, which contain much legalese, we were mindful of the ultimate goal—vindication for our clients.

What's been your over-arching theme or strategy in defending these cases? Is this an instance where you need to think not just about the law, but also about crisis management?

In every case we defend, we always think about crisis management and the law. That is our jobs as litigators, and this case was no different.

In defending these cases, we had to walk a fine line between seeking the vindication for our clients, but also trying to keep the emotions and heartache of some of the plaintiffs' accounts of their interactions with Harvey Weinstein from influencing the correct legal outcome.

This was a difficult case for that reason. So, we tried to keep the focus on the law without minimizing the severity of the allegations, but still being very aggressive in arguing our legal points. We were adamant from the beginning that there were no viable claims against our clients, and made that point whenever we could.

Why did you seek to remove the suits to the Southern District of New York?

The first class action was filed in the Southern District of New York, and then several actions followed in California and in New York State court.

Because The Weinstein Company had filed for bankruptcy, that gave us a legal basis to have these suits removed to federal court. While this was certainly a novel idea, we believed that concentrating these cases in one federal court would allow for consistent decisions across the board.

Also, we believed that the SDNY would move

quicker than state courts in resolving these matters, and we were eager to get our motions to dismiss—because we believed we had strong arguments to prevail—heard by the very accomplished and well-regarded jurists.

You've racked up a series of wins—four cases in the SDNY, with the most recent on April 26. Can you give a brief description of each matter?

Case by case, Latham successfully convinced well-regarded SDNY jurists Judge Hellerstein, Judge Engelmayer, and Judge Abrams to grant motions to dismiss for Miramax and Sarnoff in the following four actions, which allege both federal and state law causes of action, including Racketeer Influenced and Corrupt Organizations Act (RICO), negligent supervision and retention, and vicarious liability for the alleged assault and battery committed by Harvey Weinstein:

Geiss, et al. v. The Weinstein Company LLC, et al. —dismissed April 18, 2019, without leave to amend—was the first action filed, and was a putative class action which alleged federal and state law causes of actions against Miramax and Sarnoff, including RICO, negligent supervision and retention, and vicarious liability for the alleged assault and battery committed by Harvey Weinstein.

Dulany, et al. v. Miramax, et al. —dismissed October 2018 with leave to amend and these plaintiffs joined the *Geiss* class action—was a putative class action which alleged federal and state law causes of actions against Miramax and Sarnoff, including RICO, negligent supervision and retention, and vicarious liability for the alleged assault and battery committed by Harvey Weinstein.

Canosa v. Dirk Ziff, et al. —dismissed January 28, 2019, without leave to amend—involved plaintiff Alexandra Canosa (a producer and former The Weinstein Company employee) originally filed in New York state court. Latham removed that case to federal court in the Southern District of New York.

Plaintiff alleged 22 claims in total, including 16 claims against Mr. Sarnoff and other former TWC board members. The theory of plaintiff's claims against Mr. Sarnoff was that as a TWC board member, he should have known of Harvey Weinstein's propensity to commit intentional torts, and that the TWC board's approval of Harvey Weinstein's 2015 employment agreement made the board members "aiders and abettors" in his misconduct.

Doe (now David) v. The Weinstein Company Holdings LLC et al. —dismissed April 26, 2019 with leave to amend—involves plaintiff Wedill Doe, who alleges that she was sexually assaulted by Harvey Weinstein at the Montage Hotel in California. She brought a negligence and negligent retention and supervision claim against Sarnoff and other former TWC board members. Her theory was nearly identical to the theory in Canosa, but she also alleged that the TWC board had a duty to protect her from Harvey Weinstein alleged predilections.

What have been some of the most significant holdings? High points of the litigation?

Easily when Judge Hellerstein dismissed the Geiss class action with prejudice, which was the first action brought against our clients.

These suits have involved multiple co-counsel representing other defendants. How have you handled coordination? In what ways have you taken the lead?

Laura took the lead on coordination with the various co-counsel on briefing and strategy. Marvin welcomed the opportunity to argue the dispositive motions in the various matters and did so successfully.

From the beginning, we took a very collegial approach with our co-counsel, as we knew that a

coordinated approach would be the best for everyone involved. We volunteered to coordinate the briefing in Geiss once the court ordered that all defendants file one brief. Since that time, it has been easy to coordinate with the other co-counsel in the various matters.

We have the utmost respect for all of our co-counsel, which has allowed us to work together seamlessly. It's been truly a pleasure to work with the brightest legal minds in the country.

Who are the other key members of your team?

Peter Durning, Elizabeth Greenman, Jimmy Rotstein, Miri Gold, and Alice Hoesterey.

These cases stem from widely publicized allegations against Harvey Weinstein. How have you navigated the media frenzy?

We've tried to stay above the media frenzy. As we mentioned, our clients had strong legal positions from the outset, and their names should have never been associated with the allegations asserted against Harvey Weinstein. We have tried to reinforce those ideas in every aspect of the litigation and with the media.

Are other matters ongoing? What's next?

There are still matters ongoing in the UK that we are involved with for both Miramax and Sarnoff. We hope to reach the same successful outcome there that we have reached here in the U.S.

Also, the same plaintiffs' firm that brought the Geiss class action that was dismissed with prejudice filed a new class action in SDNY. Miramax has not been named in the action, so we are only representing Sarnoff. We believe that action suffers from the same fatal defects as the previous action and we intend to fight it as vigorously as we have the other on behalf of our client.