

## Titan Of The Plaintiffs Bar: Miner Barnhill's Robert Libman

By Kevin Stawicki

*Law360 (June 2, 2020, 3:07 PM EDT)* -- It was 2005, and Robert S. Libman waited in a small, crowded courtroom in Cook County, Illinois, to make his first appearance in a lawsuit accusing more than four dozen of the world's most powerful drug companies of manipulating drug prices to rip off Illinois' Medicaid program by tens of millions of dollars.

When Circuit Court Judge Peter Flynn called the case, a sea of corporate lawyers representing the drug companies rose. Then the judge asked if there was anyone present from the state, Libman recalled.

Stepping forward as the lone representative of the state, Libman said Judge Flynn asked him whether there was anyone else on his side — to which the answer was no — and then suggested he may need to get some more lawyers.

"What I wish I had said was: Judge, I am from Miner Barnhill & Galland. *They* may need some more lawyers," Libman said.

Over the next 15 years, the Illinois case would come to occupy Libman's life, and the theory of the case would take on a life of its own.

With Libman leading the charge, seven state attorneys general along with Illinois pursued similar litigation accusing pharmaceutical giants like Abbott Laboratories, AbbVie Inc., GlaxoSmithKline PLC and Johnson & Johnson of reporting false average wholesale prices that were used to set the rates for Medicaid reimbursements to pharmacies. By 2019, the firm recovered about \$1.2 billion in settlements and judgments after trial.

The firm of about 17 lawyers, which had been expanding its original focus on civil rights to include fraud and consumer

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How He Pulls Off Big Wins:  
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protection among other areas, had to master the pharmaceutical industry, consumer protection statutes and Medicaid fraud to hold its own in the face of "literally every major firm you could imagine," Libman said.

"There were many many ways to lose this case, and we had to thread the needle many, many times to stay on the path toward a successful outcome," he said. "We did it by working harder than anyone. No one worked harder than we did."

As all of the cases except Illinois were going to be tried in front juries, Libman said one of the most daunting challenges was conducting discovery because the depositions were of witnesses who couldn't be subpoenaed to come to trial because the cases were in state court. So Libman and his team took all the depositions by video and played them for juries.

"We had to try these cases before we even stepped into the courtroom with a jury," he said. "When we took depositions, we were really trying the case, so we had to be thoughtful in how we took depositions to tell a complex story through witnesses on video tapes."

The first trial was in Frankfort, Kentucky, and during closing arguments, Miner Barnhill partner George Galland, who had never seen Libman at work in a courtroom, said his jaw dropped when he saw his colleague in front of a jury.

"I watched him talking to the jury in this quiet and conversational tone, and I was stunned," Galland said. "When I saw the jury eating out of his hand and the quiet way he was talking to them with no histrionics, and they were hanging on his every word, I said this guy is a natural jury trial lawyer and he's never tried a jury case before."

"There was so much riding on those cases and Libman was so calm, cool and collected every step of the way," said Miner Barnhill partner Deanna N. Pihos. "He is always prepared and never flustered."

As the cases continued going to trial, Libman and his team ran into further obstacles when the defendants, some of which were facing similar claims in multiple states, gained full access to their playbook.

"They knew how we tried the case, they knew our theory, what our strategy was and what our strategic decisions were, whereas we had to counter new strategies at trial that we hadn't seen before," Libman said. "They were trying to find the magic formula to win, so we had to adapt to how the defendant was trying their cases."

Settlements started to trickle in by 2009, with Amgen Inc. and subsidiary Immunex Corp. shelling out \$7.8 million and Baxter Healthcare Corp. paying \$6.8 million. By January 2019, Teva Pharmaceutical Industries Ltd. agreed to pay \$135 million to exit the suit. In October, GlaxoSmithKline paid just more than \$51 million, J&J paid \$46.5 million, and Pfizer Inc. paid \$38.6 million.

While average wholesale price litigation put Libman on the map and laid bare his ability to orchestrate complex commercial litigation, he says he ultimately stumbled into it.

Libman kicked off his legal career as a plaintiff himself, challenging what he believed to be an unconstitutional suspicionless drug testing policy for new attorneys at the U.S. Department of Justice. Although he lost the case — he "peed in the cup and passed the test," as he put it — he devoted the

next decade investigating and litigating sex and religious discrimination cases at the department's Civil Rights Division.

There, he learned the value of focused, dispassionate litigation that has become his defining characteristic in private practice.

"I'm not a table banger, screamer or voice-raiser," Libman said. "I try to achieve my clients goals by preparing my case but sometimes preparation is not enough. You have to show you can actually get the jury verdict and that's not done by being the loudest person in the room. It's done by being the most effective."

--Editing by Adam LoBelia.