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## New York Cases To Watch In 2020

By **Pete Brush**

Law360, New York (January 1, 2020, 12:04 PM EST) -- New York courts are no stranger to high-profile matters, and 2020 will be no different. In the coming year, big-ticket items will include a legal headache for Rudy Giuliani that could morph into something worse, an international insider trading bust and charges against attorney Michael Avenatti.

Here's a rundown of cases Empire State litigation attorneys will be keeping tabs on in 2020.

### Campaign Finance Probe Into Trump's Inner Circle

In October when Manhattan U.S. Attorney Geoffrey S. Berman announced the arrests of Lev Parnas and Igor Fruman, two associates of President Donald Trump's lawyer Rudy Giuliani, **prosecutors said** the probe was ongoing.

The feds have repeated that like a mantra at recent hearings before U.S. District Judge J. Paul Oetken, who is presiding over the criminal case. Recently a prosecutor added that additional charges are "likely" amid news that the former New York City mayor has received subpoenas.

"It certainly appears as if there is an investigation into Giuliani related to his consulting business or his legal practice," said Patterson Belknap Webb & Tyler LLP white collar defense partner Harry Sandick. "They don't issue subpoenas and take investigative steps if they don't think it's worth the time."

Parnas and Fruman already were being eyed by the U.S. House of Representatives related to claims that Giuliani pressured the Ukrainian government into aiding Trump in his bid for reelection. The indictment charging them, meanwhile, alleges violations of campaign finance laws.

Parnas has told Judge Oetken that he wants to testify before Congress. That also makes him a potential candidate to cooperate in the criminal probe, Sandick said.

For Giuliani the investigation may not be the kind of attention he has always craved.

"This has certainly brought him to center stage in what otherwise would be the winding down of a long career in public service and legal practice," Sandick said.

Parnas and Fruman are due back before Judge Oetken in February.

The case is U.S. v. Parnas et al., case number 1:19-cr-00725, in the U.S. District Court for the Southern District of New York.

### NY AG Joins Throng of Plaintiffs Taking On Juul

In November Attorney General Letitia James **targeted Juul Labs** with a potentially costly damages suit, claiming the vaping giant took "a page from Big Tobacco's playbook" in marketing nicotine to teenagers.

Juul, under new management since its September hiring of CEO K.C. Crosthwaite, an exec with experience in the tobacco sector, responded by saying its goal is only to target adults looking to get off cigarettes.

But the complaint specifically accuses Juul of doing market outreach inside at least one New York City school under the guise of "youth prevention."

Juul, which is due to answer the allegations in January, is unlikely to drag out the case, according to Azim Chowdhury, a Keller & Heckman LLP partner who advises vaping companies on compliance.

"There is no way, in my mind, that Juul is going to try and argue that they didn't cause a problem," Chowdhury said. A Juul settlement would likely involve monetary sanctions along with a deal to sharply limit marketing, he said.

That said, according to Chowdhury, Juul's alleged marketing sins pale in comparison to the days of "Joe Camel" and the "Marlboro Man," when Big Tobacco glamorized cigarettes.

The company faces similar allegations in four other states along with a raft of private claims, consolidated in California.

"I think that many plaintiffs' lawyers see this is the next big opportunity," Chowdhury said.

The case is the People of the State of New York v. Juul Labs Inc., case number 452168-2019, in the Supreme Court of the State of New York, County of New York.

### **Bitter Defamation Fight Tied to Jeffrey Epstein**

Jeffrey Epstein committed suicide in August, but the aberrant conduct that saw him admit to Florida prostitution charges in 2007 before being arrested and jailed in New York in July has left plenty of controversy in its wake.

Part of Epstein's sordid legacy is a **defamation suit** brought by Virginia Giuffre, a Florida woman Epstein allegedly preyed on. Giuffre claims retired Harvard professor Alan Dershowitz — who represented Epstein in the run-up to the 2007 plea — took part in Epstein's sex abuse ring and later defamed her by denying it and calling her a scam artist.

Giuffre's suit, pending before U.S. District Judge Loretta A. Preska, is a suitable vehicle for her to vindicate her reputation, according to trial lawyer Mariann Wang of Cuti Hecker Wang LLP, who has represented other high-profile defamation plaintiffs.

"When a perpetrator attacks his victim a second time in an effort to silence or discredit her through lies, the result is an extension of the underlying abuse," Wang said.

Dershowitz continues to predict that Giuffre will be unable to prove her claims.

"I never met her and I never had sex with her," he told Law360 after a recent hearing.

The case is Giuffre v. Dershowitz, case number 1:19-cv-03377, in the U.S. District Court for the Southern District of New York.

### **Insider Trading Cases With Global Reach**

Telemaque Lavidas, the jailed son of businessman Athanase Lavidas, and Goldman Sachs investment banker Bryan Cohen, a French national on leave from the \$78 billion megabank, are on track to stand trial in what the Manhattan U.S. attorney's office **calls a long-running international insider trading scheme** that generated millions of illegal profits.

Lavidas, who allegedly passed insider tips, is set to stand trial before U.S. District Judge Denise L. Cote, who has refused to grant him bail, beginning Jan. 6. Cohen, another alleged tipper, has a

Feb. 4 trial date before U.S. District Judge William H. Pauley III.

Also under indictment are three defendants in Europe and Asia, who have not been arrested. A sixth suspect is in custody in England.

The case shows that prosecutors now have the tools to charge schemes rooted in “tech-wizardry” that reach beyond borders — and beyond the “close relationships” at the heart of traditional insider-trading busts — according to Columbia University professor Joshua Mitts, a securities law expert.

“This is not your classical, garden-variety insider-trading case,” Mitts said. “What we don’t know yet is how exactly they shared information.”

Prosecutors have now disclosed a cooperating witness, identified in court as Swiss trader Marc Demane-Debih, as a seventh defendant who may help paint that picture.

“These cases often rise and fall on those stories,” Mitts said.

The cases are U.S. v. Cohen, case number 1:19-cr-00741, and U.S. v. Lavidas, case number 1:19-cr-00716, in the U.S. District Court for the Southern District of New York.

### **Perdue Pharma Settlement Fund 'Free for All'**

An effort to arrive at a global settlement of claims against bankrupt OxyContin maker Purdue Pharma LP could morph into a “free-for-all” to collect settlement dollars next year.

Stakeholders are fortunate to have a “practiced, thoughtful” referee in White Plains-based U.S. Bankruptcy Judge Robert D. Drain at the helm of the chaotic case tied to the opioid crisis, according to Seward & Kissel LLP bankruptcy partner Robert Gayda.

Billions of dollars from Purdue Pharma and as much as \$4.5 billion -- or **potentially even more** -- on top of that from the company's formerly controlling Sackler family will be on the table for creditors, likely beginning sometime in 2020, according to Gayda.

“You’re going to have a real free-for-all when it comes to allocation,” he said.

U.S. states, some 2,000 civil plaintiffs and creditors including insurers, caregivers and pharmacy managers will be in the mix for a piece of the pie.

The bankruptcy is In re: Purdue Pharma LP et al., case number 7:19-bk-23649, in the U.S. Bankruptcy Court for the Southern District of New York.

### **Trouble for Trump Gadfly Michael Avenatti**

Michael Avenatti, the crusading attorney and critic of President Trump, faces two Manhattan criminal trials.

In January Avenatti is slated to go to trial before U.S. District Judge Paul G. Gardephe on charges of trying to extort \$20 million from Nike. Then, in April, he is set to stand trial before U.S. District Judge Deborah Batts on charges of stealing from adult film actress and former client Stormy Daniels.

Avenatti has vowed to fight the charges until the end. He links his criminal jeopardy to his criticism of the president, suggesting the charges are a form of retribution. But that kind of allegation is difficult to sustain, according to Pace University professor and white collar crime expert Bennett L. Gershman.

“There is really no way to ascertain what a prosecutor’s motive is in bringing charges,” Gershman said.

Avenatti may be able to impeach both Daniels and Nike at trial, Gershman said. But prosecutors will have impeachment material of their own.

"Avenatti, prosecutors will argue, lived lavishly, apparently owed huge debts, including \$15 million to a former law partner, and therefore was driven to steal money," Gershman said.

Avenatti also faces criminal charges in California.

The New York cases are U.S. v. Avenatti, case numbers 1:19-cr-00373 and 1:19-cr-00374, in the U.S. District Court for the Southern District of New York.

--Editing by Rebecca Flanagan and Jack Karp.

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