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Blake Lively's Case Highlights How Pre-Litigation Subpoenas Can Expose Harassment in Hollywood

By Effie Blassberger
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Blake Lively's recent lawsuit against her co-star Justin Baldoni for alleged sexual harassment on the set of *It Ends With Us* underscores the harsh reality that women in the entertainment industry continue to face pervasive abuse and harassment in the workplace. While the #MeToo movement has empowered many victims to speak out, Hollywood—the movement's birthplace—remains mired in contradictions.

Despite increased awareness and public support, many actresses are still hesitant to pursue legal action during the height of their careers, underscoring the entrenched power dynamics and fear of retaliation that persist in the industry.

Actresses like my client Julia Ormond, who is suing Harvey Weinstein, Disney, Miramax, and CAA for an assault that occurred in 1995, and now Blake Lively, are courageously paving the way for change. By taking these bold steps, they are sending a powerful message: this behavior is unacceptable and will no longer be tolerated.

I deeply respect Blake Lively for filing her lawsuit while at the peak of her career, which also allows her to retain access to witnesses, text messages, and other documentation to substantiate her claims.

Photo: Scott A Garfitt/Invision/AP

Blake Lively poses for photographers upon arrival at the UK Gala Screening for the film 'It 'Ends With Us' on Thursday, Aug, 8, 2024 in London.

Lively's lawsuit brings to light an often-overlooked but critical legal strategy: the use of pre-litigation subpoenas in sexual harassment cases. While subpoenas are commonly used to gather evidence that is material and necessary after a lawsuit has commenced, some states like California and New York allow parties to seek pre-litigation subpoenas even before formally filing a case.

In New York, for instance, parties may conduct pre-litigation discovery by court order to

aid in bringing an action, preserve information, or support arbitration. To secure a pre-litigation subpoena, a party must demonstrate a likely meritorious claim and show that the information sought is both material and necessary.

Traditionally, pre-litigation subpoenas are used to identify the proper party to sue, such as the manufacturer in a product liability case, the author of an anonymous defamatory blog post, or a perpetrator in a fraud scheme. Courts guard against their misuse by rejecting subpoenas deemed "fishing expeditions," ensuring that discovery is pursued only when truly warranted.

In Lively's case, her legal team's use of pre-litigation subpoenas in California allowed them to construct a formidable case before filing. By presenting a meticulously detailed 80-page complaint—complete with exhibits, a timeline of events, and text message excerpts—they showcased the strength of her claims.

Notably, through subpoenas, her team obtained text messages between Baldoni and his PR team, revealing their coordinated efforts to discredit Lively in a massive smear campaign that threatened both her acting career and her many business ventures. In one particularly damning exchange, the PR team discussed strategies to "bury" her claims and manipulate social media narratives to portray her as untrustworthy.

Moreover, the complaint presents damning evidence that Baldoni did not act alone. For PR professionals and others presenting themselves as "crisis communications" experts, Lively's filing should be a cautionary tale of the risks of written communications. For crisis PR teams working closely with law firms, it's crucial to note that simply copying lawyers on communications doesn't automatically make them privileged.

Messages sent to third parties may be discoverable, even before litigation begins, potentially exposing what were thought to be private exchanges. In New York, such communications are protected only if their primary purpose involves seeking legal advice—not merely advancing a public relations strategy. This distinction is especially critical in high-profile cases, where PR efforts often intersect with legal strategies.

Particularly troubling is Lively's detailed account of the absence of a formal HR department or any clear avenue to report harassment. For a large studio production to lack such fundamental workplace protections is not only unacceptable but emblematic of deeper systemic failures within the entertainment industry.

No employee—especially one working on a high-profile project—should face the daunting reality of having nowhere to report workplace misconduct. This glaring oversight underscores the urgent need for industry-wide reforms to ensure robust protections and reporting mechanisms are standard practice across all productions, regardless of their size or prominence.

Baldoni and his legal team have responded aggressively, filing a $250 million libel lawsuit against the NY Times this week. Baldoni's chief claim is that the *Times* relied on Lively's complaint as the primary source of their reporting without providing him adequate time to respond. In a statement to E! News, Baldoni's attorney Bryan Freeman challenged the *Times* "journalistic practices and ethics" by relying on "doctored and manipulated texts and intentionally omitting texts which dispute their chosen PR narrative."

Regardless of the outcome, the stakes are extremely high for Baldoni and Lively. Both actors have pursued actions that may profoundly affect their careers as well as their perception in the court of public opinion.

Lively's case demonstrates how pre-litigation subpoenas can shape the narrative of a case before it even reaches trial. Hopefully her actions will encourage other victims to come forward and demand long needed systematic change in Hollywood.

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