

Influential Women In Securities: Michele Johnson

By Carmen Germaine



Michele Johnson
Latham & Watkins LLP

Law360, New York (June 17, 2016, 10:54 PM ET) -- Latham & Watkins LLP's Michele Johnson has fought shareholder challenges to billions of dollars' worth of acquisitions, but her most significant success to date came in representing Allergan as it fought a hostile takeover from Valeant and Pershing Square, developing an argument that blazed new ground in securities law and landing her among Law360's Influential Women in Securities Law.

In the highly publicized case, Johnson and the Latham team were on the frontline defending Allergan Inc. from the hostile bid using a novel, untested theory — that Valeant Pharmaceuticals International Inc., billionaire activist investor Bill Ackman and his fund Pershing Square Capital Management LP had committed insider trading in developing their scheme.

"It was all-out war," Johnson recalled.

As Johnson explained, Valeant and Pershing publicly announced the takeover offer on April 22, 2014, a day after Pershing revealed that it had covertly amassed a 9.7 percent stake in Allergan. Allergan's board rebuffed the offer, concerned about the long-term viability of Valeant's strategy, which involved acquiring pharmaceutical rivals, slashing their research budgets and jacking up drug prices.

As Valeant and Pershing pushed forward with their hostile bid, the Botox manufacturer filed a lawsuit to halt the purchase. The suit, filed Aug. 1, made immediate waves.

"Our complaint was reported as a page-turner and a beach read, which I was very proud of," Johnson said.

But Johnson explained that the theory behind the litigation wasn't easy to develop. As she recalled, she and her Latham partner Peter Wald sat on speaker phone for hours on the Saturday before their preliminary injunction motion was due, developing the argument that would carry the day. That argument centered on a completely new theory that Valeant, Ackman and Pershing had committed insider trading by secretly planning a tender offer and concealing their steps.

While Ackman and Valeant CEO Mike Pearson both insisted that they hadn't colluded in planning a tender offer ahead of time when being deposed by Johnson, she argued in the injunction motion that what mattered was not whether they had actively planned the offer but whether they had taken substantial steps toward the tender. In fact, they had hired lawyers and bankers, bought up shares and even noted in emails that if the bid proceeded to a tender offer, they would call each other co-bidders.

Meanwhile, Johnson said, the litigation was above the fold in major media outlets every day, making an already "pressure cooker" situation even more intense as the media coverage began to affect both Allergan's and Valeant's share prices.

"You live and die by the press because what is reported can affect the relative stock prices," Johnson explained.

Ultimately, Johnson's hard work paid off in November, when U.S. District Judge David O. Carter largely granted Allergan's preliminary injunction motion, finding the company had raised "serious questions" about whether Valeant and Ackman had violated insider trading rules and ordered them to make a series of disclosures in a major decision.

"The injunction order has been billed as a landmark decision that changed history because never again will a would-be acquirer attempt to do this, it seems," Johnson explained.

It was a huge victory for Allergan and the Latham team and cleared the way for a white knight offer from Actavis PLC that provided better value for shareholders and, as it turned out, better long-term prospects for Allergan.

Wald explained that Johnson's role in the suit expanded beyond working with him on the legal theory to actually advising Allergan "on a daily basis about how to respond to what was going on in court."

Arnie Pinkston, who was general counsel of Allergan at the time and worked with Johnson on that suit and other cases, agreed from his experience that Johnson has a unique advantage in helping clients with their business, saying she's able to really understand a board's objectives in a way that escapes many lawyers.

"She's a strong business person ... she was very willing to understand what the company's true goals are," Pinkston said.

Johnson's business acumen isn't the only unique thing about the top litigator. Unusually for a BigLaw attorney, Johnson was homeschooled in high school and first went to community college, where she studied journalism. After working to pay her way through community college, Johnson transferred to Arizona State University, where she earned a bachelor's degree in business and economics.

The Georgetown University Law Center grad said law school wasn't initially the plan.

"I actually wandered into the law school [at Arizona State] to sign up for the LSAT without really having a plan, just looking for a challenge," Johnson said.

She moved to Latham's Orange County, California, office after earning her law degree, working as a commercial litigator on cases from copyright and trade secret trials to a series of groundwater contamination cases.

Wald recalled that Johnson stood out even as a young associate.

"It was obvious at the time that she was a uniquely gifted lawyer," Wald said.

Johnson remembered one particularly encouraging moment as the key associate in the team representing ConocoPhillips in a groundwater contamination case when she cross-examined a witness: the first time she spoke in the 11-month trial. Three jurors in the back started quietly clapping as soon as she stood up, excited to see her in action after seeing her prep witnesses for seven months.

"Finally I got to stand up and do something, and they were visibly encouraging. It was very cool," Johnson said.

She was soon acting as lead trial attorney, representing the Orange County Halfway House in a pro bono trial and working with a prominent Orange County developer who also asked her to become his media representative for the duration of the suit, among other cases.

But Johnson says what drew her into securities law was her work for CV Therapeutics Inc. as an associate, defending the biopharmaceutical company from a shareholder suit arising from a U.S. Food and Drug Administration letter. Around the same time, mergers and acquisitions litigation was starting to heat up, and Johnson joined fellow Latham attorneys in working to build the firm's M&A practice.

"We as a securities litigation practice group said Latham is one of the deal powerhouses in the world, so it's logical that we develop into an M&A litigation powerhouse," Johnson explained.

She made partner at Latham in January 2007 — less than a month before having a baby — and has continued to develop preeminence in M&A litigation ever since.

"Michele really takes her place, I think, with the great Delaware and New York lawyers," Wald said.

In the years since making partner, Johnson has served as lead counsel representing companies and their officers and directors in shareholder suits that challenged a number of multibillion-dollar deals. To name just a few, she guided Receptos in a suit over its \$7.2 billion acquisition by Celgene, Spirit Realty Capital in challenge to its \$7.1 billion merger with Cole Property Trust and Questcor in litigation over its \$5.6 billion acquisition by Mallinckrodt.

She's also represented investment banks in shareholder litigation, including in suits over AbbVie's \$54 billion buy of Shire Pharmaceuticals and its \$21 billion acquisition of Pharmacyclics, and Dell's \$24.9 billion management buyout, among others.

While the Allergan case is a crowning achievement, several other cases stand out. In early 2015, she represented Los Angeles-based real estate investment trust Hudson Pacific Properties in a shareholder suit over Hudson's buy of office properties from Blackstone.

"This was a [temporary restraining order] to enjoin a \$2.3 billion deal. It was this giant request," Johnson recalled.

Yet despite the size, the TRO motion somehow came before a research clerk rather than the judge. The research clerk quickly called in a judge, who reheard the motion and then asked the parties to come back the next day to finish the argument, the day before a shareholder vote on the deal.

"Here we are, 18 hours before the vote, and there is at least a theoretical chance that the vote could get enjoined," Johnson said.

But thanks to Johnson's work, the judge adopted Hudson's arguments in total and allowed the vote to go forward, a happy result to a high-pressure situation.

In another major win, Johnson worked with Wald as co-lead counsel defending Alphatec Holdings Inc. and its officers and directors against several shareholder and derivative suits accusing the company of exaggerating the benefits of a tie-up with a French medical firm.

Johnson explained that the case was particularly fun because it involved so many differently situated defendants, requiring her to work with counsel for a substantial shareholder, a special committee and other parties as they secured dismissal of the securities cases in a decision ultimately upheld by the Ninth Circuit.

Yet another victory came in 2014 when she represented health records software provider Quality Systems Inc. and its then-CEO in a securities fraud suit filed in California state court by the company's second-largest shareholder, who alleged that he had been led to hold onto his shares by false statements. The judge denied Quality Systems' demurrer, and the case was headed for trial in October 2015. But just three weeks before trial, it won complete summary judgment on all the claims.

"Once the court order came through, we were running around trying to find each other," Johnson recalled. "That was an exciting victory for us on the law."

Outside of her efforts in litigation, Johnson has also distinguished herself in leadership roles at Latham. She served as the chair of the litigation department in Latham's Orange County office from March 2012 until March 2015 and as managing partner of the entire OC office from 2014 to 2015, when she was elected to the firm's nine-member executive committee.

"They're all positions where my job is to serve our partners and our associates and help them make connections that benefit everyone, help us serve our clients better," Johnson explained.

Pinkston attested to Johnson's leadership skills, which he witnessed firsthand while sitting in on team meetings as Allergan's general counsel.

"She's a great team leader. ... That team was having so much fun," Pinkston recalled. "Everyone seemed empowered to bring their best ideas."

And she plays keyboard in two bands, including a Latham band that plays charity events in Southern California.

"She is a kick-ass keyboardist of the first rank in magnitude," Wald said.

Johnson explained that she particularly enjoys M&A litigation because she can be a "deal junkie and a litigator at the same time," helping clients deal with the business aspects of facing lawsuits when the increasingly inevitable suits arrive. As her colleagues on Latham's deals team advise clients on how to structure a deal, Johnson said, she can be particularly useful in helping companies anticipate and prepare for any future challenge.

"I have the additional credibility of being able to say that I've stared death in the face, I know what's coming and this is what they're going to say, and this is how we beat them," she said.

--Editing by Christine Chun and Catherine Sum.

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