

Securities Group Of The Year: Latham

By **Dorothy Atkins**

Law360 (December 2, 2020, 4:13 PM EST) -- Latham & Watkins LLP beat multiple big-ticket securities actions against companies like Chipotle Mexican Grill, Funko and Ligand Pharmaceuticals and helped pave the way for new law on forum selection provisions in initial public offering documents, earning Latham's securities practice group a spot among Law360's Securities Groups of the Year.

Andy Clubok, the global chair of Latham's securities litigation and professional liability practice who was recently named Law360 Trials MVP, said Latham's securities group has been steadily growing since he joined the firm from Kirkland & Ellis LLP in December 2017.

Latham's securities practice currently includes roughly 200 attorneys, including those who split their time between practices, and approximately 70 attorneys who exclusively work within the practice, according to the firm.

Clubok expects the group to continue to grow, even though he quipped that the defense attorneys are "constantly trying to put ourselves out of business" by winning major precedent-setting cases on behalf of corporate clients.

On that front, Clubok said the firm has been combatting the "explosion" of securities suits that have been filed following the high court's 2018 ruling in *Cyan v. Beaver County Employees Retirement Fund*, which found that federal and state courts have concurrent jurisdiction over class actions based on Securities Act claims.

In September, Latham scored a major win on behalf of the medical technology company Restoration Robotics Inc. by convincing a California state judge that under Golden State law, corporations can use a forum selection provision in their governing documents to sidestep the *Cyan* decision.

Latham partner Hilary Mattis in Silicon Valley said the Restoration Robotics case is precedential and a major victory for all companies planning to go public. She added that it highlights Latham's collaborative approach to problem-solving.

Mattis explained that Brian J. Cuneo, who is the global chair of Latham's life sciences and healthcare



industry group and co-chair of the firm's Bay Area corporate department, initially advised Restoration Robotics to include the forum provision in its public offering documents. At the time, the provision was untested in courts, Mattis said.

Cuneo's advice ultimately allowed the firm's litigation team to be the first to land a win in California enforcing such a provision in favor of Restoration Robotics in securities litigation that was lobbed against the company after its IPO, Mattis said.

"I think the win highlights how [Latham's] litigation and corporate partners work together to provide stellar outcomes for our clients," she said.

Latham also helped land another post-Cyan win this year in Washington state court. In that case, the firm helped pop culture collectible maker Funko Inc. defeat a putative securities class action over the stock drop that followed Funko's IPO in 2017.

Latham partner Kevin McDonough in New York said that after multiple motions to dismiss and oral arguments, the firm persuaded the state judge to toss the suit for good in August, with the assistance of Latham's capital markets team who McDonough said helped "decode" esoteric financial reporting issues that were raised in the suit.

"Looking back on it, we think the work provides a nice roadmap for successfully defeating federal securities act cases in state court, because we focused on telling the story of the case and not making it too technical," McDonough said.

Other big-ticket wins this year include Latham's successful defense of Chipotle Mexican Grill against a putative securities class action over alleged food safety incidents that sought nearly \$1 billion in damages. In 2018, a New York federal judge tossed the case, and this year, Latham convinced the Second Circuit to affirm the dismissal in August.

In January, Latham also convinced the Delaware Supreme Court to affirm a Chancery Court ruling over a botched formula used in a bond indenture from Ligand Pharmaceuticals Inc. The state high court rejected certain traders' arguments that the decision disregarded investor protections by allowing Ligand to unilaterally fix its potential \$3.75 billion blunder.

In May, Latham also helped General Electric Co. secure the dismissal of a federal securities class action targeting an approximately \$90 billion decline in GE's market capitalization based on GE's alleged failure to disclose a defect impacting the blades in its H-class power plant turbines and purported accounting issues related to GE's goodwill balances for its power segment. Investors have since appealed that dismissal.

--Additional reporting by Dean Seal, Hailey Konnath and Rose Krebs. Editing by Nicole Bleier.