



LITIGATION DEPARTMENT OF THE YEAR FINALISTS: LATHAM & WATKINS

'We Have That': Latham's Litigation Skill Set is Made for the Most Complex Matters

By Dan Packel

November 27, 2023

When Tom Brady, Gisele Bündchen, Larry David and Shaquille O'Neal were looking for representation to defend against a nationwide class action lawsuit alleging they ignored due diligence when they used their fame to promote now-bankrupt cryptocurrency exchange FTX, the celebrities had an unusual mix of needs.

"They are used to hiring entertainment, sports and media people. So we have that," says Michele Johnson, global chair of the litigation and trial department at Latham & Watkins, which ultimately landed the matter "But it was really a securities case, so we needed the top securities litigators in the world."

The list of necessary skills continued: restructuring, as FTX was going through a bankruptcy; criminal law, given the underlying prosecution of FTX founder Sam Bankman-Fried; corporate lawyers, to dig into the terms of the endorsement agreements; crypto experts; insurance experts; investigations lawyers; and trial lawyers.

"No one else in the world could do that," Johnson continues, "and have it be the top people in the world. And that's why we're handling the case."

That breadth helped land Latham among the nominees for this year's Litigation Department of the Year



From left to right: Mandy Reeves, Sean Berkowitz, Kevin Chambers, Michele Johnson, Terra Reynolds, Mike Morin.

Photo: Ryland West/ALM

award, as the firm's lawyers notched impressive trial victories in the antitrust, securities, white-collar and restructuring arenas, along with a U.S. Supreme Court



Photo: Diego M. Radzinski/ALM

Latham & Watkins offices in Washington, D.C.

win that pushed the Securities & Exchange Commission to jettison enforcement proceedings before its own administrative law judges. Latham's litigation department now counts over 1,100 litigators across the world.

"We want to be unmatched in each of the jurisdictions, each of the practice areas, each of the geographies, each of the industries that we practice in. It was a mindful decision," says Johnson. "Take IP as an example: Once we grew IP to be the absolute number one top group in the world, then others want to join that."

Antitrust, where the firm notched a 4-0 record against the government in 2022, also stands out as an illustration of this range, even if the firm's most significant win is now marked with an asterisk. Before the European Union recently ordered buyer Illumina to divest cancer detection test developer Grail, Latham attorneys representing the acquisition target helped persuade a Federal Trade Commission administrative law judge to OK the deal, the first time the agency's administrative law judge has ever ruled against the FTC in a merger case.

"Grail is an example of flat out-lawyering the government," Johnson says. "There was just that preparation and skill and persuasiveness of our lawyers—that has to come from their deep experience."

Johnson explained that Latham's recent prowess in antitrust stems in part from being able to supplement its existing group of West Coast litigators, where many tech and pharma deals get done, and D.C. litigators, working in proximity to the FTC and DOJ, with talent in Brussels and the U.K. In total, the antitrust group counts over 160 lawyers across over 15 offices. That scale, in turn, has made it an easy sell when other part-

ners in other areas pitch clients on the firm's antitrust capabilities.

"Mandy Reeves is an example," Mike Morin, global vice chair of Latham's litigation and trial department, says of the former FTC official who now leads the firm's global antitrust practice and serves as managing partner of its D.C. office. "My five biggest clients are in health care and life sciences. All of them are working with Mandy now."

Meanwhile, the firm's white-collar practice earned plaudits for successfully defending former Perkins Coie partner Michael Sussman against charges of making false statements to investigators and heading off SEC and DOJ investigations against former U.S. Sen. Richard Burr, R-North Carolina, over stock sales made during the pandemic.

Recent IP triumphs included a defense verdict for a Georgia manufacturer in a \$200 million trade-secrets case in Atlanta in July and a \$199 million settlement for J&J won on the courthouse steps in February in a case it brought against Alcon.

Litigators at Latham are increasingly open to representing clients as plaintiffs on a contingency basis, after launching a litigation investment committee 3½ years ago around the start of the pandemic.

"We don't call it a contingency committee because we structure things lots of ways. We'll do defense-side work by the way, also, with risk-sharing. But we're willing to bet on ourselves more and more," Morin says.

That's not to say that the firm shied away from these representations in the past. But now the strategy is more than just a fallback in the event that a client didn't have the resources or didn't want to allocate what was necessary to pursue a case.

"Now we're viewing it as a first approach, Morin says. "How about we throw some skin in the game with you all? How about we get aligned a little bit on the outcome and the results?" It's been a very positive outcome for us, in terms of being able to help our clients manage their budgets and then share in the results that we tend to get them."