

## Litigation Powerhouse: Latham & Watkins

By Suevon Lee

*Law360, Los Angeles (August 5, 2016, 6:38 PM ET)* -- Its deft handling of complex litigation matters across a broad range of practice areas has primed Latham & Watkins LLP as the turn-to firm for the likes of such established names as Oracle Corp., Cox Communications and the United States Soccer Federation this past year, placing it among *Law360's* Litigation Powerhouses.

The firm's 681-attorney strong litigation practice, which counts 195 partners, has stacked up a notable number of wins throughout various stages of litigation over the past year, whether on a motion to dismiss, actual trial or argument on appeal — a testament to its ability to strategize effectively for clients and mobilize its best team to get the job done.

Its success hasn't come off the back of just one practice area, either. With its litigation practice diversified across such areas as antitrust, intellectual property, securities, white collar, appellate and general complex commercial litigation, Latham has proven its chops across a wide range.

"I look at the breadth of our litigation and trial practice and it's really unparalleled even among the big firms," said Jamie Wine, a New York-based partner and Latham's global chair of the litigation and trial department. "Many firms specialize in and have had some success in



## Latham & Watkins

Litigation Attorneys: 681

Litigation Partners: 195

### Big Wins:

**Fluor Corp. v. Superior Court of Orange County** - The California Supreme Court in August 2015 reversed its own 2003 *Henkel Corp. v. Hartford* decision to find in favor of Fluor Corporation in its dispute with Hartford Accident and Indemnity Co. over asbestos litigation coverage, holding that a state insurance code applies to third-party liability insurance.

**United States v. United Technologies** - The Sixth Circuit in July 2015 reversed a \$657 million damages award against UTC and remanded the case to the lower court on an appeal of a False Claims Act judgment over a contract offer to build fighter jet engines for the Air Force in 1983.

**Intellectual Ventures v. Symantec** - In a patent infringement case involving four Internet software-related patents, Symantec obtained a jury verdict of non-infringement for the principal patent, reducing a potential \$300 million claim to \$17 million, which was further reduced to \$8 million when the judge ruled that another of the patents was invalid.

**Donovan v. Philip Morris USA Inc.** - In a medical monitoring class action, a Massachusetts federal jury found that tobacco giant Philip Morris couldn't be held accountable to pay for a lung health screening program estimated to cost \$190 million after finding the company's cigarettes weren't defective.

**Lovallo v. Pacira Pharmaceuticals Inc.** - A New Jersey federal judge tossed a putative securities class action against Pacira after accepting the company's "truth on the market" defense that it had previously told investors through SEC filings and other materials that it planned to market the anesthetic, Exparel, for off-label uses.

### Trial Tip:

"What's going to win in the courtroom or whatever forum you're in at the end of the day ... is not going to be bluster and bravado." — Jamie Wine

certain practice areas, but we really have an impressive breadth of success across all of our practice areas."

In fact, the firm's ability to not only help clients navigate choppy legal waters but steer victory all the way through trial recently ushered in a name change for the litigation section. It was once simply the litigation department but now it's the litigation and trial department, accounting for a very active trial practice.



Jamie Wine

Take, for example, its representation of cable provider Cox Communications, which chose Latham to defend it in a high-profile antitrust case after the court denied its bid for summary judgment and certified a class of cable subscribers who alleged Cox unlawfully required them to lease a set-top box to obtain premium cable.

Though the jury found in favor of the plaintiffs, returning a verdict of \$6.3 million in damages, the final word came from U.S. District Judge Robin J. Cauthron, who overturned the verdict and granted Cox's post-verdict motion for judgment as a matter of law in November 2015. While the judge agreed that the plaintiffs were required to get the boxes for premium cable, "there simply is no evidence from which a reasonable jury could determine that that arrangement led to a foreclosure of commerce," she stated in her ruling leading to the stunning reversal.



Christopher Yates

Christopher Yates, a San Francisco-based partner and co-chair of the firm's antitrust and competition practice, called that outcome in Oklahoma federal court "a great win" for the firm, and also an example of an instance where Latham successfully took over from another firm as the case went to trial.

That's not an isolated incident. Latham has signed on to represent clients as stakes rise in other matters. The firm, substituted in as counsel for Arista Networks Inc. as it battled a high-profile trade secrets dispute brought by OptumSoft Inc., secured a key win for the ethernet switch maker against claims it breached a licensing agreement and misappropriated trade secrets.

There, a California Superior Court judge found in March 2016 after a two-and-a-half-week bench trial that Arista's reading of the parties' licensing agreement was the correct one and declared it the owner of all disputed files.

Referencing the background in that case as "not your normal fact pattern," Silicon Valley-based partner Douglas Lumish, who is vice chair of Latham's litigation & trial department and a former IP litigation practice co-chair, heralded the outcome.

"The implication for the future of who's going to own what for Arista Networks was significant," he said.

The firm has also demonstrated its ability to get suits tossed early and swiftly. It helped technology company Oracle Corp. twice defeat a putative class action in California's Northern District against antitrust claims regarding supposed no-poaching agreements, won dismissal of an antitrust case against Ticketmaster Inc. by StubHub Inc., which alleged the retailer conspired with the Golden State Warriors to prevent consumers from reselling Warriors tickets on StubHub, and also secured dismissal of a putative class action brought by youth soccer players against the U.S. Soccer Federation over concussion management guidelines.



Douglas Lumish

In another huge win, Latham seemingly defied expectation when it won dismissal of a putative securities class action on behalf of Pacira Pharmaceuticals Inc. regarding its alleged omissions concerning the anesthetic Exparel at a very early stage of litigation using the so-called truth-on-the-market defense.

While U.S. District Judge William H. Walls considered that defense "with caution," he concluded in his November

2015 ruling that Pacira had "adequately disclosed the actual terms of the FDA's Exparel approval so as to render their misstatements and omissions about Exparel's approval status immaterial."

According to Wine, a securities litigator who led the team on that case with Latham partner Kevin McDonough, a truth on the market defense is a strategy that "very rarely prevails" at the motion-to-dismiss stage because it's a very fact-intensive inquiry.

"We had a pretty novel argument," she said. "The case ended very early on for the client and they were very happy about that."

Latham's litigation successes over the past year reached into the appellate level as well. The firm led the defense team that won a dismissal with prejudice of a second amended complaint in multidistrict antitrust litigation against Guitar Center Inc. over allegations the musical instrument retailer conspired with guitar manufacturers to fix resale prices.

Additionally, Latham successfully argued the appeal before the Ninth Circuit, which affirmed the ruling and denied a request for rehearing in October 2015.

"That was a very big win, the first of its kind out here in the Ninth Circuit analyzing what's called the hub-and-spoke conspiracy," said Yates, referring to an alleged hybrid horizontal and vertical agreement that involves both direct competitors and actors up and down the supply chain.

In more recent months, Latham's appellate trial lawyers garnered a huge win when the U.S. Supreme Court ruled on June 23 that the University of Texas' race-conscious admissions policy is constitutional, in the second go-around of *Fisher v. University of Texas* before the nation's high court.

A Latham team led by former U.S. Solicitor General Gregory G. Garre represented the university in that landmark case, which tipped in favor of the institution by a 4-3 vote, minus Justice Elena Kagan, who had recused herself from the case.

The Latham partners that spoke with Law360 each referenced the collaborative spirit of the firm and the ability to think long-term on behalf of clients and expertise in crafting thoughtful, strategic arguments as the key to its successes not only this past year, but over the course of Latham building up its litigation practice over the last 10 to 15 years.

"One of the things Latham does extremely well is leverage the different palette it has across the firm, across the different groups," Lumish said. "You get people together who come from these different disciplines and different worlds and they'll just look at the same puzzle from a different perspective in a way that helps you get to an answer or at least to an agreed approach that you think will be your best one going forward."

Yates added that the firm's culture is built upon "working well together collegially and in teams."

"I can't tell you how many times I've had general counsel say that is what differentiates us," he said. "It sounds simple, but it's really hard, in my experience, to get right in practice."

For Wine, the key to Latham's litigation dominance also has to do with the firm's ability to see eye to eye with the client.

"We take on every case as though it's going to go to trial and set out strategizing and thinking, one day, we might

ultimately be in a courtroom trying it," she said. "At the same time, we are litigators, we are business-minded litigators. We are understanding and responsive to our clients' aims and strategies from their perspectives."

Founded in Los Angeles in 1934, Latham has since become a global force in the litigation space. Its largest office is in New York and its litigators are spread out across offices in New York, D.C., Chicago, Boston, California, London and elsewhere throughout Europe, and Asia.

The matters the firm is currently handling attest to its continuing involvement across an array of practice areas. It is representing Wal-Mart Inc. against two proposed securities class actions over the retailer giant's alleged failure to disclose an investigation into alleged bribery activities in Mexico. It's also representing the American Beverage Association in the group's First Amendment challenge to a San Francisco city and county ordinance over required warning labels on new soda ads, as well as Nvidia Corp. in a patent infringement suit brought by Samsung Electronics Co. Ltd. before the U.S. International Trade Commission.

"Our clients are very much global in nature and they demand global teams to cover them based on the venue of their matters or the breadth of their matters, which requires a lot of various expertise from different disciplines from people around the firm," Wine noted.

"We've really become expert in pulling together teams and having them work together in a way that's seamless to our client," she added. "I think our clients have come to appreciate that."

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