

Meet The Attys Suiting Up For Brady, Other Celebs In FTX Row

By Jack Karp

Law360 (February 7, 2023, 11:53 AM EST) -- The Latham & Watkins LLP team playing defense for NFL star quarterback Tom Brady, supermodel Gisele Bündchen and comedian Larry David in class actions over the celebrities' promotion of FTX will be relying on wide-ranging expertise in areas including securities cases, entertainment law and cryptocurrency.

The attorneys are also adept at handling novel and complicated cases that draw media attention. And some of them have previously faced the high-profile lawyer representing the plaintiffs in the case, the Latham team told Law360 Pulse.

But what really makes them well-suited to take the field for Brady, Bündchen and David is that they're almost all experienced trial attorneys who can make those complex cases seem simple, they said.

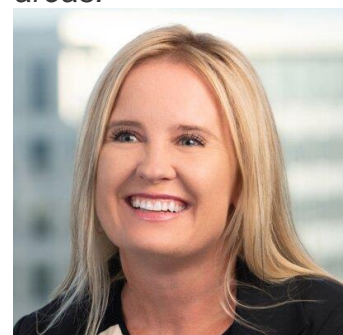
Bündchen and her ex-husband Brady, David and a host of other celebrities were sued late last year in Florida federal court by investors in the now-bankrupt cryptocurrency exchange FTX who accuse them of using their fame to "aggressively market" what was essentially a Ponzi scheme.

Despite the media attention stirred up by the prominent defendants, however, the cases' multifaceted nature is really what makes them unique, according to Latham partner Marvin S. Putnam, a member of the team handling the suits who chairs the firm's entertainment, sports and media group.

The class actions are traditional advertising cases as well as securities disputes. But they also incorporate elements of cryptocurrency and cyber, insurance and bankruptcy law, Putnam explained. They also intersect with related cases in California federal court as well as administrative actions and investigations.

"There's not another firm who could field top experts in that many areas," said partner Michele D. Johnson, another team member and global chair of the firm's litigation and trial department.

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MICHELE D. JOHNSON
Latham & Watkins LLP

In fact, the attorneys have handled a lot of these "mixed cases," according to Latham partner Jessica Stebbins Bina, a trial lawyer also working on the FTX cases who often represents entertainment and

technology companies in disputes that could damage their reputations.

"Particularly in celebrity cases, it's not uncommon that someone would come in with the kitchen sink in the hopes that something will stick," Bina said.

One of the elements of that kitchen sink is, of course, the securities claims, with investors accusing the celebrities of hawking unregistered securities and violating Florida's Securities and Investor Protection Act.

So the crew of attorneys includes seasoned securities litigators Andrew Clubok and Susan E. Engel, in addition to Johnson. The three are part of "the best securities team in the country," according to Putnam.

Among their courtroom victories, Clubok, who is global chair of Latham's securities litigation and professional liability practice, and Engel, a partner in that practice, helped score an over-\$1 billion judgment on behalf of UBS AG against affiliates of bankrupt Highland Capital Management LP in a long-running dispute over securities that dropped in value during the 2008 financial crisis.

A New York state judge ruled that the terms of the bank's deals with Highland CDO Opportunity Master Fund LP and Highland Special Opportunities Holding Co. entitled UBS to recover losses on a failed securitization of collateralized loan obligations and credit default swaps.

That judge also called the case one of the most complex she'd ever presided over, according to Clubok. "And she handled most of the Lehman Brothers matters," he added.

Clubok, a 2020 Law360 MVP, and Engel have also represented Facebook and its parent company Meta in a wide range of disputes, including a U.S. Supreme Court victory over the reach of the Telephone Consumer Protection Act; Chipotle Mexican Grill Inc. in a shareholder class action over foodborne illness outbreaks; and, along with Johnson, Twitter in a proposed investor class action over allegedly misleading statements about its targeted advertising feature.

Engel is also one of the best cryptocurrency attorneys there is, according to Putnam, and has handled matters involving Coinbase and Andreesen Horowitz, also known as a16z.

Johnson is a 2022 Law360 MVP who has had many of her own successes, including scoring a complete defense verdict after a 14-day trial for NextGen Healthcare in a case Clubok called "incredibly novel."

The precedent-setting securities case was brought by an investor who claimed he was duped out of selling his shares — the first time a so-called securities holder's claim has ever been tried in California and the first time in 86 years that such a claim has gone to trial in the U.S., according to Latham.

The team's facility handling novel questions of law like that one is another strength these attorneys bring to the celebrities' defense in the FTX cases, which are also unique, these lawyers said.

For instance, it's unusual to see a securities case brought against a company's spokespersons, Putnam pointed out.

But the suit over FTX's collapse is more than just a securities case. It also involves novel issues around advertising and celebrity endorsement, areas where members of the team are more than comfortable,

they added.

Putnam and Bina, for instance, have handled lots of disputes in which plaintiffs have attempted to publicly embarrass well-known people and companies, according to Putnam, who added, "And we kind of know how to deal with that arena."

"Marvin is one of the best just all-around high-stakes litigators, but with special focus on and a lot of time on cases involving speech and advertising," Clubok said of Putnam.

In one particularly high-profile case, Putnam and Bina — who were at O'Melveny & Myers LLP at the time — successfully defended AEG Live against claims brought by pop superstar Michael Jackson's family that the concert promoter was negligent in hiring the doctor who gave Jackson a fatal overdose of the powerful anesthetic propofol.

The five-month jury trial was "a media circus," Putnam said. But it was also a good example of a case that was simple but was made complex by the other side, according to Bina.

"And the way we won that case was just keeping a simple, straightforward story throughline," Bina said.

In fact, making seemingly complicated cases easily understandable for a jury is another of these attorneys' strengths, according to Bina.

"One of the things that this team excels at, and I've seen Marvin, Michele, and Andy do it over and over again, is just telling a really good story and making something really clear and seemingly simple," Bina said.

While Putnam, Johnson, Engel, Clubok and Bina are all experienced trial attorneys, Latham partner Jonathan D. West brings a background handling deals and celebrities to the squad.

A partner in the firm's entertainment, sports and media practice, West has represented Brady before as well as Gwyneth Paltrow, Laura Dern, Beyoncé and others in matters involving intellectual property licenses, entertainment productions, advertising campaigns and signature product lines, according to his firm bio.

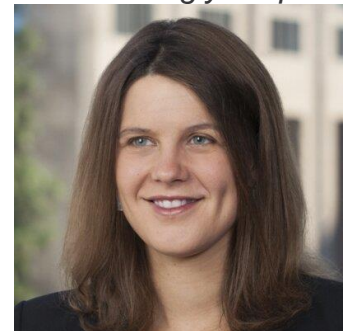
He's also been on the other side of those agreements, helping major pharmaceutical companies and restaurants ink deals with Oprah Winfrey, Serena Williams, Rihanna and Martha Stewart.

That kind of experience is important in a case like this that requires a press strategy as well as a litigation strategy, a dual approach these lawyers have had to take before, according to Johnson.

A perfect example is Johnson's representation of the U.S. Soccer Federation in litigation with the U.S. Women's National Soccer Team players.

That high-profile case over allegations the organization paid its female athletes significantly less than its male players required Latham to seamlessly fold a media strategy into its litigation plans, Johnson said.

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JESSICA STEBBINS BINA
Latham & Watkins LLP

A settlement in that dispute won final approval in December.

The Latham team brings one more strength to the celebrities' defense — several of them have faced off against renowned attorney David Boies, who is representing the investors in the FTX cases, before.

Putnam, for instance, has spent a good deal of time across the courtroom from Boies, who has a history of bringing novelty to the law, he said.

"It's also important to know who you're up against and who you're playing with," Putnam added.

Boies did not respond to a request for comment. But another attorney for the investors told Law360 Pulse in a statement, "These famous and rich celebrities will stop at nothing to prevent and delay justice. We will not allow all of the FTX victims to be further harmed."

It's too early to tell if the Latham lawyers' varied expertise will help them score a win for those celebrities in the FTX class actions.

But whatever happens, the attorneys' dexterity with complicated and novel disputes in such a wide array of practice areas makes them uniquely suited to handle the cases, these attorneys say.

"We really have all the bases covered, and plaintiffs can't point to an area of law that we don't know," said Bina. "And I think that, in a case where there are a lot of moving parts, can be very helpful."

--Additional reporting by Allison Grande, Dean Seal, Rachel Graf, Melissa Angell, Hailey Konnath and David Steele. Editing by Alyssa Miller.