

Securities Group Of The Year: Latham

By Parker Quinlan

Law360 (February 29, 2024, 2:02 PM EST) -- Latham & Watkins successfully helped Oracle founder and Chief Technology Officer Lawrence J. Ellison, and CEO Safra Catz beat a derivative challenge to a \$9.4 billion acquisition deal, one of the largest challenges against a corporate deal to go to trial before the Delaware Court of Chancery, earning it a spot among Law360's 2023 Securities Groups of the Year.

Shareholders had alleged founder and Chief Technology Officer Larry Ellison used undue influence at the company to get it to pay nearly \$3 billion too much for NetSuite Inc. in 2016, while misleading a special board committee headed by Catz to oversee the purchase.

Global vice chair of Latham's securities practice Blair Connelly told Law360 in an interview the case was about more than money, however, and that his clients, particularly Ellison and Catz, saw the suit as a challenge to their reputations and legacy at Oracle.

"The court found that Safra Catz had acted at all times in Oracle's best interest, and that in fact everything she did was designed to ensure that Oracle paid the lowest price they possibly could," Connelly said. "Ultimately at trial, it was proven that neither of them had done anything wrong and that Mr. Ellison had completely and properly recused himself from the process."

Connelly said much of their defense strategy involved showing how the move to buy NetSuite made business sense for Oracle, demonstrating how software as a service, or SaaS, is structured — and why NetSuite's product was different from what Oracle already had.

Earlier this month, stockholders lost a bid to recover nearly \$5 million in legal fees after losing the suit, with the Chancery Court rejecting claims that shareholders deserved the award for compelling Oracle to appoint two new independent directors.

Latham also successfully defended social media company X, formerly known as Twitter, this year — securing dismissal of an investor class action challenging 34 statements made by the company that allegedly caused stock prices to tumble.

Global chair of the firm's securities practice, Andrew Clubok, described the X lawsuit as part of a larger trend of "puzzle pleading" suits in which plaintiffs point to a constellation of different corporate statements in an attempt to identify a violation of securities laws.



"What I think this firm has been particularly good at is simplifying an incredibly complex stuff-against-the-wall case so that you can put it into the right buckets, lay it out thematically for the court," Clubok said. "In the Twitter case, we used every single arrow in the quiver in the securities defense: We argued they had not properly pled false statements, so-called lost causation, and they hadn't pled scienter."

X shareholders were reprimanded by California U.S. District Court Judge Mark C. Scarsi last August for their use of a rambling 110-page complaint, which attempted to allege they were misled about potential security concerns on the platform.

Colleen Smith, who is also global vice chair with Latham's securities practice based in San Diego, told Law360 that in derivative suits such as the X case, plaintiffs often have a difficult time proving how the statements are connected to underlying fraud.

"Securities fraud requires intent and recklessness, and oftentimes, their allegations in terms of the motives and individuals involved are incredibly thin and don't make sense," Smith said. "Absent motive, or a reason to do it, it doesn't make sense, and in fact in most typical cases, people are motivated to do the opposite — and to keep their investors informed."

Clubok said part of Latham's success as a securities practice comes from opportunities given to younger attorneys and a push for greater diversity across the practice. Junior attorneys at Latham are often allowed to argue motions as part of high-stakes litigation, which facilitates their career growth while helping build a solid bench at the firm, Clubok said.

He also cited gender diversity as an asset for Latham, which he said has led to women comprising nearly half of all attorneys in the firm's securities practice group.

Latham's emphasis on both gender and age diversity in the last decade has allowed both the firm and securities practice to rely on attorneys who may not have been given the same opportunities at other firms, according to Clubok.

"We're not doing it to be 'woke' — it is the right thing to do, and it's also the smart thing to do," Clubok said. "You're way more effective if you're speaking with lots of different kinds of voices when you're talking to different kinds of judges or people in a jury."

--Editing by Goodwin Anim.