

# TRAILBLAZERS

## LITIGATION LAW



### ANDREW B. CLUBOK AND MICHELE D. JOHNSON LATHAM & WATKINS LLP

**PIONEER SPIRIT** Andrew Clubok decided to become a litigator in the sixth grade. “The class was split down the middle to debate whether we should boycott the 1980 Olympics. I was assigned the boycott side, which I wasn’t sure I really agreed with but made the arguments to convince the rest of the class. From then on, I knew that I wanted to be in litigation.” Michele Johnson, on the other hand, was home-schooled. “I grew up in a conservative gender-role culture. Going to law school to become a litigator was the most rebellious thing I could think to do.”



**TRAILS BLAZED** Clubok is now global co-chair of the firm’s Securities Litigation & Professional Liability practice, and he has served as lead counsel for clients such as Morgan Stanley in IPO cases brought in the wake of the dot-com collapse. Johnson is global chair of the firm’s Litigation & Trial department, with a particular focus on M&A litigation.

The two successfully defended Puma Biotechnology before the Central District of California in the first federal securities class action to reach a verdict in nearly 10 years. The lawsuit involved a drop in Puma’s stock price after it announced clinical trial results for a breast cancer drug. Said Johnson, “The lawsuit was filed the next day, while the drug was in the pre-FDA approval stages. Although the drug eventually received approval, the stock never fully recovered, leaving the plaintiffs’ lawyer with a big damages claim. But the drug is now being sold and saving breast cancer patients, which made us proud to defend the company.” Clubok added, “There are hundreds of these cases filed every year, but about 99.9 percent settle as they approach trial. We showed up for the final pretrial conference a week before the trial, and even the judge said he assumed we would settle. He had actually scheduled a criminal trial because he was so sure. We think this was one of only three trials involving securities class-action stock drop cases against a publicly traded company that have gone all the way to a verdict this century. The other two were billion-dollar verdicts for the plaintiffs.”

There is little data around private securities litigation to predict what a jury will do and how to present complex issues in a way that jurors can understand. “People have suspicions on whether juries can comprehend these issues, but I believe that you can trust a jury,” said Clubok. “They learn stuff very quickly. And among the eight jurors we talked to after the case, they got it.” Clubok had a personal interest in the case. “My dad had cancer 29 years ago and an experimental drug saved him. This drug works on the less than 10 percent of women who have a type of breast cancer where other drugs haven’t worked. We explained that and told the jury that every penny has gone back into research.”

While lawyers talk all the time about bet-the-company litigation, this case involved plaintiffs seeking classwide damages of more than \$1.2 billion when Puma had a market cap of about \$1 billion, said Clubok. “The damages being sought exceeded the value of the company. It was a true bet-the-company case.”

**FUTURE EXPLORATIONS** According to Johnson, the verdict affects every case in the space. “The plaintiffs’ lawyers wanted to take this one to trial because they were convinced they would get a giant jury award and it would impact settlement negotiations in other cases going forward. But it’s had the opposite effect. This verdict supports negotiating for smaller settlements now. In our pretrial motions, we won an important ruling on reliance which, along with the judgment, will impact these types of cases for the future.” Clubok said the settlement value of these types of cases is informed by a fairly small sample size. “So this case will have a big impact on how people view these types of cases pretrial.” He also expects to see more of such cases tried in state court. “There will be an explosion of securities class-action cases in all forums, especially states, all around the country in the coming years.”