

## Securities Group Of The Year: Latham & Watkins

By **Max Stendahl**

*Law360, New York (January 14, 2014, 4:53 PM ET)* -- The securities practice group at Latham & Watkins LLP helped Dallas Mavericks owner Mark Cuban defeat a major insider trading suit and convinced a judge to toss claims against Lehman Brothers Holdings Inc. auditor Ernst & Young LLP, earning it a spot among Law360's Securities Practice Groups of the Year for 2013.

The firm's securities litigation and professional liability team features more than 70 lawyers, including several ex-prosecutors and former U.S. Securities and Exchange Commission officials. One of the former prosecutors, Christopher Clark, was a key part of Cuban's defense team in an SEC case alleging the Mavericks owner and reality television star sold stock in search engine company Mamma.com based on inside information from its then-CEO.

A turning point in the three-week trial came when Clark elicited testimony suggesting the allegedly confidential information was actually public. A Texas federal jury ultimately ruled in favor of Cuban on all essential elements of the SEC's claim on Oct. 16.

"There's always a boost that you get as a practice group from a big, high-profile win like that," practice group co-chair Patrick Gibbs said. "It's always good to be part of a winning team."

The verdict marked one of the SEC's biggest — and most public — losses. The SEC has since faced questions over its ability to win securities fraud trials consistently. Cuban, never one to mince words, sharply criticized the agency following the verdict, at one point accusing SEC Chair Mary Jo White of seeking to regulate through questionable litigation.

Another signature victory came in December 2012, when Latham defeated New York Attorney General Eric Schneiderman's disgorgement claim seeking more than \$150 million in fees from Ernst & Young that the audit firm earned for its work with bankrupt Lehman Brothers. The case, filed in 2010 under the state's powerful Martin Act, focused on Lehman's controversial "Repo 105" transactions in the years leading up to its September 2008 collapse.

In a bench ruling, the judge said Schneiderman had failed to prove that consumers had been defrauded or that the state had lost money. The same judge in April 2013 issued a terse order rejecting the attorney general's renewed disgorgement claim.

Latham's enviable client list includes each of the Big Four accounting firms: Ernst & Young, Deloitte & Touche LLP, KPMG LLP and PricewaterhouseCoopers LLP. The firm has represented audit companies both when they are named in shareholder litigation and in professional negligence cases.

Deloitte has turned to Latham for counsel in two related SEC matters stemming from its refusal to turn over documents from China-based audits. In one of the matters, the agency is seeking paperwork from each of the Big Four firms related to audits of Chinese companies suspected of defrauding U.S. investors.

Latham and other defense counsel have argued that such disclosures would violate Chinese secrecy laws. The cases could have major implications for the broader fraud investigation and for the audit companies' business operations in China.

According to Latham, the securities group spans eight offices in the U.S. In addition, there are securities litigators in seven offices in Europe and Asia.

Latham's roster of SEC alums includes two former associate directors at the agency's enforcement division. At the same time, though many top-tier securities practice groups have sought to expand through lateral hires, Latham has focused on developing its homegrown talent, according to Gibbs.

"We have been selective in hiring people whose government experience will help us to serve clients, but it's just one thing among many that may make lawyers attractive to the practice group," he said.

Securities attorneys at Latham also worked on litigation stemming from major bankruptcies in 2013. In one such case, the firm won the dismissal of a securities class action alleging private equity firm The Yucaipa Companies LLC and Chairman Ronald Burkle misled investors of The Great Atlantic & Pacific Tea Co. Inc. before the grocery store chain filed for bankruptcy.

Latham's securities group has set itself apart by tackling a wide array of matters, including SEC enforcement, private shareholder and derivative litigation and private company disputes, according to Gibbs.

"When you add all of that together, you come up with a broader array of expertise and depth in a wider range of different kinds of matters than just about anyone else out there," he said.

--Editing by Stephen Berg.