

## Daily Dicta: Latham's Billion Dollar Litigator

For many lawyers, litigating a billion-dollar case is a once-in-a-career opportunity. Latham & Watkins partner Andrew Clubok has won three in the last year alone.

By Jenna Greene  
February 9, 2020

For many lawyers, litigating a billion-dollar case is a once-in-a-career opportunity.

Latham & Watkins partner Andrew Clubok has won three in the last year alone.

On the heels of his most recent victory 10 days ago, when a New York state court judge awarded his client UBS \$1.04 billion in a breach of contract fight, Clubok was holed up over the weekend with Latham associates prepping for another trial. It kicks off Monday before U.S. District Judge Cathy Seibel in the Southern District of New York.

But this time, he won't be on his feet in court. Latham associates are running the show, teaming up with the New York Civil Liberties Union Foundation to work pro bono representing the Spring Valley, New York, NAACP chapter in a Voting Rights Act case.

"My only role is to work with the associates and help them strategize," said Clubok, who is the global co-chair of Latham's securities litigation and professional liability practice. "I'll just sit in court and occasionally pass a note."

The suit, which has received substantial media coverage, challenges the East Ramapo Central School District's at-large method of electing its members, claiming that black and Latino citizens



Andrew B. Clubok, with Latham & Watkins.

are being denied an equal opportunity to elect candidates of their choice. Morgan, Lewis & Bockius represents the school district.

I admit, I love it when lawyers who can presumably command eye-wateringly high hourly rates also make significant time for pro bono causes—the trial is slated to run through Feb. 20—and better yet, don't grab the limelight while doing it.

But if there's one refrain Clubok sounded when I reached him by phone on Friday evening it was teamwork—that any success he achieves comes from working with colleagues as a group.

When Latham lured him from Kirkland & Ellis just over two years ago, firm leaders at the time

predicted Clubok would “play a key role in further establishing the practice as the preeminent trial team for bet-the-company mandates.”

They were right.

His big bucks winning streak began a year ago, when a federal jury in Orange County, California, rejected a \$1.2 billion claim by investors against Clubok’s client Puma Biotechnology, which makes the breast cancer drug neratinib.

Securities fraud class actions almost never get tried to a verdict—and considering Puma had a market cap of \$1 billion, the company’s existence was on the line.

Clubok and Latham litigation chair Michele Johnson along with Colleen Smith and Sarah Tomkowiak led a team facing off for the two-week trial against plaintiffs’ counsel from Robbins Geller Rudman & Dowd. Unhappy investors claimed that Puma executives made four false or misleading statements about the results of a clinical trial for neratinib, which treats a particularly aggressive form of breast cancer, HER2-positive.

The jury found three of the four statements were not misleading. As for the fourth, the jurors sided with the plaintiffs but awarded tiny damages—Latham predicted the payout will total a mere \$9 million to \$18 million. (Post-trial motions remain pending, so a final number hasn’t been determined.)

Clubok, in recounting his role defending the company, admitted that the case hit home. His father is a cancer survivor who was given a terminal diagnosis 30 years ago. A new drug was developed in the nick of time and saved him.

“Everyone I know has a cancer story—whether it’s yourself, your family, your friends,” Clubok said—which made his work for Puma especially gratifying, given the drug’s success in improving outcomes for people with HER2-positive cancer. “The patients are the winners.”

Clubok was born in Detroit and raised in Athens, Ohio. He learned to be argumentative at a young age, he laughs, as a fan of the Michigan Wolverines over the Ohio State Buckeyes.

Athens is the poorest county in Ohio. Thirty percent of residents live below the poverty line. Clubok’s parents worked for Ohio University—his upbringing was solidly middle class—but he said that being raised in an environment where so many people struggle to get by “instills views about trying to make a difference.”

He went to Harvard as an undergrad, and earned his J.D. from the University of Michigan Law School in 1993. Clubok clerked for U.S. District Judge Frank Battisti in the Northern District of Ohio and then joined Kirkland & Ellis.

He stayed there until lateraling to Latham in December 2017—though he took a year off in 1998 to run Richard Cordray’s (unsuccessful) campaign for attorney general of Ohio. (Cordray in 2012 went on to become the first director of the Consumer Financial Protection Bureau.)

Although Clubok is best-known as a securities litigator, he has a wide-ranging practice that’s included First Amendment work and just about every variety of commercial dispute. That includes defending Facebook in a data breach class action—his second billion-dollar save of the year.

The last piece of the case settled on Friday, but the big win was in November, when U.S. District Judge William Alsup in San Francisco shot down the plaintiffs’ claims for monetary damages.

Clubok wasn’t able to comment on the litigation, but court records show Facebook was hit with a class action after hackers stole the personal information of 29 million users worldwide.

The plaintiffs wanted three nationwide classes certified, seeking up to \$6 billion in damages related to diminished value of personal information, time spent devoted to the data breach, as well

as for Facebook to provide cash for future credit monitoring.

But Alsup refused to certify the two classes seeking monetary damages. While he found the name plaintiff had standing, he ruled that having an increased risk of future identify theft as a result of the breach “does not rise to the level of appreciable harm to assert a negligence claim.” As for diminished value of personal information and loss of privacy, Alsup held that “this calculus is too speculative to assert a claim for negligence.” And claims for lost time were too individualized to litigate as a class action.

However, Alsup did agree to certify a class for the purpose of injunctive relief.

On Friday, the plaintiffs filed a motion seeking preliminary approval of a settlement. The deal calls for Facebook to make “concrete improvements to its security practices,” and to undergo annual independent third-party assessments to ensure its compliance.

Plaintiffs lawyers from Cohen Milstein Sellers & Toll; Morgan & Morgan; and Tadler Law said they’ll be asking the court to award them legal fees of up to \$16 million and expenses of \$1.7 million.

“Facebook is aware of, but has not agreed to, these requests,” they noted.

The Latham team also includes Elizabeth Deeley; Michael Rubin; Melanie Blunschi; Susan Engel and Serrin Turner.

Clubok’s third big win of the year came on the plaintiff’s side. He represented UBS in a breach of contract fight against hedge funds affiliated with Highland Capital Management.

It’s a convoluted dispute that arose from a failed securitization in 2008. According to Latham, Highland and its funds contracted to pay for losses arising out the securitization of collateralized loan obligations and credit default swaps, but then refused to pay those losses and fraudulently transferred assets to related parties.

New York Supreme Court Justice Marcy Friedman held a bench trial that ran from July 9, 2018, to July 27, 2018, followed by extensive post-trial briefing. The Latham team also included Elizabeth Deeley, Susan Engel and Kuan Huang.

In a decision made public on Jan. 29, Friedman found that the Highland funds breached their contracts with UBS when they refused to pay UBS for its losses. The contract loss provision entitles UBS to \$520 million, plus another \$520 million in statutory interest.

The judge also rejected Highland’s contract and unjust enrichment counterclaims, as well as its arguments attempting to offset damages.

To be a truly effective advocate, Clubok said, “You have to be able to credibly say to the other side, ‘If we have to, we can take this case to trial.’ But unless they believe and trust you can do it—that you’re really capable of litigating—you’re at a disadvantage.”

After the year he’s had, my guess is not many opposing counsel are likely to call his bluff.

*Jenna Greene is editor of The Litigation Daily and author of the “Daily Dicta” column. She is based in the San Francisco Bay Area and can be reached at [jgreene@alm.com](mailto:jgreene@alm.com)*