

Trials Group Of The Year: Latham

By **Ivan Moreno**

Law360 (February 2, 2023, 2:02 PM EST) -- Latham & Watkins LLP secured the acquittal of former Perkins Coie LLP partner and Hillary Clinton campaign lawyer Michael Sussmann on a felony charge of lying to the FBI and notched a historic victory against the Federal Trade Commission, earning the firm a spot among Law360's 2022 Trials Groups of the Year.

Nearly 1,000 attorneys are in Latham's litigation and trial department, comprising a substantial part of the firm's 3,200-plus lawyers in 14 countries.

The trials where the firm prevailed during the past year highlight its depth of talent across many different disciplines — such as white collar, intellectual property and antitrust litigation — with a first-chair trial lawyer in each area, said Sean Berkowitz, global chair of Latham's complex commercial litigation practice.

"To have people who in each of those areas is able to get market-leading wins and be a first-chair trial lawyer is really unusual," Berkowitz said.

Sussmann's case originated from his decision to go to the FBI with a tip in the run-up to the 2016 election about possible ties between then-candidate Donald Trump and a Russian bank. Prosecutors alleged that Sussmann's failure to disclose his ties to the Clinton campaign and a technology executive constituted a materially false statement.

Berkowitz said special counsel John Durham put forward "a much broader narrative about Hillary Clinton interfering with Donald Trump's election rather than focusing on what we thought was the real issue, which is whether our client had lied to the FBI."

Berkowitz said the first battle in the case was to exclude evidence that prosecutors wanted included but that Latham's lawyers thought was irrelevant to Sussmann's charge.

"So once we were faced with the more limited nature of what we felt was appropriate based on our pretrial skirmishing with the government, we were able to successfully cross-examine virtually all of their witnesses who had either credibility issues or didn't have the full story or were only being called for things that weren't relevant to the case," Berkowitz said.



Sussmann was acquitted in May.

In September, following a four-week trial, Latham antitrust lawyers persuaded FTC Chief Administrative Law Judge D. Michael Chappell to rule in favor of the firm's client, Grail Inc., and its acquirer, Illumina Inc. — the first time an FTC judge did not side with the agency in a merger case, according to the firm.

The FTC was challenging Illumina's \$8 billion reacquisition of Grail, a cancer-detection company, arguing that reuniting Illumina with a business it spun off in 2016 would hurt potential Grail rivals that also use Illumina's DNA-sequencing technology to develop similar cancer tests.

Grail's innovation, Galleri, is a diagnostic blood test that can detect more than 50 different cancer types early, according to Latham. The firm said Judge Chappell's decision enables the companies to get Galleri to market faster.

Also in September, Latham's antitrust litigators beat a U.S. Department of Justice challenge to U.S. Sugar Corp.'s \$315 million acquisition of Imperial Sugar Co. in what was the first merger lawsuit from Assistant Attorney General Jonathan Kanter, who became the DOJ's antitrust chief in November 2021.

"You never know what somebody new coming in is going to do," Berkowitz said. "But our hope would be that the fact that they took an aggressive position on this and were shut down would cause them to think twice about challenging pro-competitive mergers in the future."

Latham's lawyers were ready to take the case to trial less than five months after the complaint was filed, the firm said.

"The speed with which the case went to trial illustrates the work and preparation that both the acquirer, which is our team, and the target did in the lead-up to the transaction and the thoughtfulness that goes into these types of things," Berkowitz said.

The DOJ argued the merger would lead to higher prices because the companies are two of the three largest suppliers of refined sugar to grocery stores, distributors and food and beverage manufacturers in a region stretching from Mississippi to Delaware.

U.S. Sugar and Imperial countered that their merger would help consumers by expanding domestic sugar supplies, and a U.S. Department of Agriculture economist testified under subpoena that she believed the merger could lead to lower sugar prices.

Another notable achievement for Latham's attorneys came in August when they got a win for Cantor Fitzgerald and its CEO Howard Lutnick and CF Group Management in a derivative suit that claimed the defendants lined up an overpriced, \$875 million deal for BGC Partners Inc. to buy Berkeley Point Financial LLC.

Lutnick was on both sides of the transaction, so the deal faced review under the "entire fairness" standard, meaning defendants have to show the transaction was fair in both price and process.

BGC Partners investors who filed suit were seeking \$400 million in damages.

Vice Chancellor Lori W. Will of the Delaware Court of Chancery ruled that, despite class claims and an "imperfect" process that included Lutnick's large presence in working up the deal, the transaction closed

at a fair price after fair dealing; she tossed the suit.

Berkowitz said the case highlights the strength of Latham's securities litigation team. They presented compelling witness testimony showing that the acquisition offered value for BGC Partners because it allowed the company to create a one-stop shop commercial real estate platform, he said.

"Our folks work seamlessly together," Berkowitz said. "Everybody is rooting for each other and wants the team to be successful."

--Editing by Dave Trumbore.

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