

Securities Group Of The Year: Latham & Watkins

By **Emilie Ruscoe**

Law360 (January 15, 2020, 3:14 PM EST) -- Latham & Watkins LLP defended a biotech startup in a rare securities litigation jury trial, which ended with a jury verdict largely in favor of the firm's client. This accomplishment by Latham's securities practice group has earned the team a spot among Law360's 2019 Securities Groups of the Year.

In the action, which played out in federal court in Santa Ana, California, shareholders accused breast cancer drug manufacturer Puma Biotechnology Inc. of mischaracterizing the outcome of a clinical trial of its drug Neratinib.

Latham partner Sarah Tomkowiak, who put on Latham's damages expert and played a critical role in the firm's strategy and who called the case "one of the highlights, if not the highlight, of my entire career," recalled vividly the moment she heard the jury's verdict.

"My immediate reaction was to look over at my colleagues to make sure that I had heard correctly," she said.

The dollar amount claimed per share by Puma's shareholders was \$87.20. Ultimately, the verdict on that claim was only \$4.50 per share — less than 5% of the total claim.

Colleen Smith, another Latham securities partner who was a central part of the Puma trial team, emphasized that the action had been enterprise-threatening for Puma.

"The damages were so significant that the only choice the company had was to go to trial so that it could avoid those potential damages and stay in business," she explained, adding that it had been particularly meaningful to the trial team to know that their efforts had kept the company alive.

"Puma is now still in business, still producing, and doctors are prescribing its treatment that is particularly effective for a certain portion of breast cancer patients," she said.

Latham's success in illustrating to the jury exactly what the company does, and how it does it, had a major impact on the case's outcome, Smith said.



“We had to teach the jury, essentially, about Puma's drug, about the clinical trial that was at issue in the case, about how biotechnology companies disclose clinical trial results, and how they go about getting their drugs approved,” she said.

“We spent a lot of time working with our experts and with our witnesses to enable them to explain all of those things in terms that the jury could understand. That was one key piece of our strategy, becoming experts and then learning to translate all of that to the jury.”

Tomkowiak added that using carefully crafted visual aids helped the firm achieve that goal.

“People and jurors are so visual these days,” she said.

An example: One animated graphic showed how the jurors exactly how Neratinib works.

“Our graphics were the way that we were able to bring these concepts to life in pictures, which frankly, are worth a thousand words,” she said.

Several Latham securities partners involved in the case also said that the trial team, led largely by female attorneys and including associates who examined some of its witnesses, was unusually diverse and defied some orthodoxies of trial practice.

“There’s a lot of value in having multiple voices being heard by the jurors and having teams that have a wide range of experience and perspective, and I think that really came through in this trial,” Tomkowiak said.

The jury’s verdict reflected its appreciation of these characteristics, Smith added.

“That we had a diverse trial team with substantial expertise in the complicated technical matters that we were presenting, was very effective with the jury and allowed us to present the strongest possible case,” said Smith.

BJ Trach, a Latham partner and a member of the firm’s executive committee who chaired the firm’s diversity committee for several years, told Law360 that “having diverse teams that are fighting on behalf of our clients in these really big securities litigation cases just means that you're more likely to come up with the most creative solutions on behalf of your clients.”

“We're not the kind of place that has one partner at the top who's making all of the decisions, and a bunch of other people who are then just executing on those decisions. We put a team of people together, and we debate, and everybody’s ideas are valued,” he said.

Topher Turner, a Latham securities partner who played a major role in securing dismissal of a securities action for Impax Pharmaceuticals, also emphasized that the firm’s commitment to such inclusive teams augmented its success.

“Making sure that opportunities are shared...really gives us depth of expertise when we’re pitching for the next matter and we’re dealing with the next matter that comes in for another client,” Turner said.

With the major Puma trial behind it, Latham’s securities group— which is chaired by Andrew Clubok with co-chairs Jeff Hammel and Matthew Rawlinson — is navigating processes that few law firms have occasion to work on.

“Latham is one of the very few defense firms that has taken, in addition to Puma, a number of these cases to trial, so we have unique experience in that regard,” Smith noted.

Tomkowiak said that those tasks give the firm unusual perspective on securities litigation: in the post-trial phase, attorneys “think about some of the earlier stages of these cases a little bit differently.”

“For example, we are now going through a number of post-verdict procedures where we're in relatively uncharted territory, and in thinking about how you set up your case earlier to be prepared for some of those issues, not only at trial, but post-trial — it's really helped me in the way that I think about some of the earlier phases of the case,” including class certification and summary judgment, she said.

Given the rarity of this type of work, it's “really neat, to be at the forefront of coming up with the playbook for how these post-verdict procedures might play out in other types of cases,” she added.

—Edited by Peter Rozovsky.