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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Securities Group Of The Year: Latham

By **Katryna Perera**

Law360 (January 24, 2023, 2:02 PM EST) -- In a rare complete defense victory in Delaware's Chancery Court, Latham & Watkins LLP beat a derivative challenge to the $875 million acquisition of Berkeley Point Financial by BGC Partners Inc., whose controlling shareholder is Cantor Fitzgerald CEO Howard Lutnick, earning Latham a spot as one of Law360's 2022 Securities Groups of the Year.

Roughly 80 attorneys staff Latham's securities litigation practice group, but Andy Clubok, global chair of Latham's securities litigation and professional liability practice, told Law360 that the firm has about 200 lawyers in total who devote time to securities litigation.

"We represent over 600 public companies, and public companies tend to — no matter what they do, just because the stock market goes up and down — they tend to be the target of securities litigation," Clubok said. "We are hired by many companies … because we are a destination to handle securities cases, particularly the most complex ones."

Clubok added that Latham doesn't think of itself as having a "deep bench" but rather "a large number of starting players who all can handle major matters individually but all work together collaboratively to share information across different teams, so that [clients] get Latham & Watkins-level work no matter what client you are and where you are."

Latham's vast securities group, that is also chaired by Colleen Smith and Blair Connelly who serve as global vice chairs, secured several significant achievements in 2022, starting with a major victory in March in the Ninth Circuit for Twitter Inc., which has since gone private.

The dispute between Twitter and investors stemmed from an announcement by the social media giant in August 2019 that it had located and fixed issues with its targeted advertising, but the fixes allegedly impacted the advertising function and caused a decline in advertising revenue, unbeknownst to investors. The investors alleged that Twitter's revenue decline contributed to a plunge in the company's stock after it disclosed its financial performance for the quarter.

Last March, the Ninth Circuit upheld a lower court's decision to toss the proposed class action, finding that the statements Twitter issued about the targeted advertising feature issue were, in fact, "qualified and factually true." The panel ruled that Twitter did not have a legal duty to continuously disclose setbacks or challenges to the investing public. Instead, Twitter only has an obligation to disclose a negative internal development if omitting it would make other statements materially misleading, the appeals court said.

Latham partner Susan Engel told Law360 that the narrative the firm pushed from the beginning was that Twitter came forward about the issue promptly and transparently. Companies should be encouraged to be transparent and disclose issues to investors and users, Engel said, but that doesn't mean there is a requirement for continuous, real-time updates, which the Ninth Circuit agreed with.

According to Engel, the plaintiffs attempted to argue that Twitter didn't give additional information about how advertisers would respond to the issue or how revenue would be affected rather than arguing that Twitter misled investors about the issue.

The Ninth Circuit made an important decision in ruling against the plaintiffs, Engel said, because it upheld the standard a plaintiff has to show in securities cases — whether material misrepresentations or omissions were made.

"It's not enough for a plaintiff to say this statement was incomplete. And that's just a critical ruling because otherwise, if incompleteness were the standard, companies would be discouraged from communicating to, not just investors, but all of its users and consumers and really the public about its services and products," Engel said.

Over the summer, Latham secured a complete 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 BGC Partners deal for Berkeley Point Financial LLC.

According to Latham, because Lutnick was on both sides of the transaction, the deal faced review under the exacting "entire fairness" standard, which requires defendants to prove that the transaction was entirely fair by showing both a fair price and process.

Eric Leon, global vice chair of Latham's complex commercial litigation practice, worked on the suit and told Law360 that the entire fairness standard has often been viewed as a "death sentence" to defendants, but Latham's win in Delaware showed that doesn't always have to be the case.

In August, Delaware Vice Chancellor Lori W. Will found in a 112-page post-trial opinion 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, and she tossed the suit.

"You have to trust the system," Leon said. We stayed laser-focused on telling our story, and at the end of the day, fortunately, the judge saw the facts exactly the way we did. … This case affirmed for me that if you take a case, and you do your job, you're going to get the right result."

--Additional reporting by Jeff Montgomery and Sarah Jarvis. Editing by Andrew Cohen.