



WASHINGTON LITIGATION DEPARTMENTS OF THE YEAR

A SPECIAL REPORT

In this special report, The National Law Journal takes the measure of litigation shops in our nation's capital. We asked top litigation practices to tell us about their operations—headcounts and revenues, biggest wins and, yes, even their losses. Our staff in Washington and elsewhere in the country scrutinized the data and selected the nine firms you'll read about in these pages. Latham & Watkins is the top honoree, but it was a close call, and we selected two runners-up: Hogan Lovells and Sidley Austin. We also recognize firms with distinguished practices in intellectual property, general civil litigation, white-collar defense, insurance, mass torts and labor and employment. —BETH FRERKING, EDITOR IN CHIEF

LATHAM & WATKINS

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EVERETT "KIP" JOHNSON

BY JENNA GREENE

Whether arguing before the U.S. Supreme Court or a municipal judge, litigators from Latham & Watkins last year came out on top in high-stakes fights across the board.

The 143 litigators in the firm's Washington office prevailed in cases that raised novel issues or dominated headlines, including a challenge to New York City's "soda ban," defending the National Collegiate Athletic Association's sanctions against Pennsylvania State University and upholding the University of Texas' affirmative action plan, as well as winning a billion-dollar fight over a hospital.

"What we do best is bring the right people to the problem," said Everett "Kip" Johnson, co-chairman of the Washington litigation department. "We don't have much of a star-centered system. We recognize and reward team players."

KEYS TO SUCCESS

▶ "Listen first—develop the best case strategy based on a client's business objectives. When winning patent litigation is the objective, identify the earliest paths to victory and always be trial ready."

—MATTHEW MOORE, GLOBAL CO-CHAIRMAN OF THE INTELLECTUAL PROPERTY LITIGATION PRACTICE

▶ "At trial, you have to be a passionate and articulate advocate for your client. In antitrust cases that means a deep understanding of the client's business and turning complex concepts and economic theory into a story

that will allow the judge or jury to grasp the critical issues."

—PEGGY ZWISLER, LITIGATION PARTNER

▶ "Our cases typically are so complex that simplifying the case and mastering the record for appeal is critical. We want to know the case as if we tried it, but with a unique eye for what is going to stand out to the appellate court—and win on appeal."

GREGORY GARRE, GLOBAL CHAIRMAN OF THE SUPREME COURT AND APPELLATE PRACTICE GROUP

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It helps to have a first-string bench of litigators, including former U.S. Solicitor General Gregory Garre and former U.S. Department of Justice Criminal Division head Alice Fisher. Kathryn Ruemmler, who recently stepped down as White House counsel, will re-join the firm in July.

Fisher, managing partner of Latham's Washington office, said her lawyers focus on "very close communication with our clients, so we understand their business goals. It's a practical approach." Clients agree. Donald Remy, general counsel of the NCAA, described Latham's lawyers as strategic partners who are "committed to litigating with a focus on both winning the specific case and obtaining the outcome that best serves the broader mission and goals of our association."

Latham attorneys represent the NCAA in fending off challenges to sanctions imposed on Penn State stemming from the sexual abuse of children by former assistant football coach Jerry Sandusky.

Pennsylvania Gov. Tom Corbett sued, alleging that the sanctions, which included a cap on the number of athletic scholarships the school could offer, a \$60 million fine and postseason ban until 2015, were an unlawful restraint of trade that harmed Pennsylvania citizens.

Latham and co-counsel from Killian & Gephart and Schiff Hardin convinced U.S. District Judge Yvette Kane of the Middle District of Pennsylvania that the sanctions were not "commercial activity" so they couldn't violate antitrust laws. Kane dismissed the case in June 2013. Latham continues to represent the NCAA in pending suits by state Sen. Jake Corman and the family of former head football coach Joe Paterno.

Longtime client Monsanto Co. sings Latham's praises as well. "Latham is top notch. Responsive, expert and thoughtful lawyers," said Kyle McClain, Monsanto's senior general counsel for litigation. In 2013, firm lawyers, building on an earlier Supreme Court win, beat back a challenge by environmental groups to Monsanto's Roundup Ready Alfalfa, winning a key injunction in the U.S. Court of Appeals for the Ninth Circuit.

Regardless of the subject matter, Latham litigators put a premium on maintaining professional courtesy, Johnson said. "Litigation is not a blood sport. If, at the end of the day, you hate your opponent or your opponent hates you, it's not a sign of a job well done," he said.

Latham's litigation team relies on meticulous preparation and tactical smarts. Both were in evidence in another win on behalf of the American Beverage Association, which challenged the New York City Board of Health's proposal to ban most venues from selling sodas and other sugary drinks larger than 16 ounces. As comedian Jon Stewart put it, the ban "combines the draconian government overreach people love with the probable lack of results they expect."

Washington Latham partners Richard Bress and William Rawson spearheaded the strategy of attacking the ban as arbitrary and capricious (New York partner James Brandt handled the oral argument). In July 2013, an intermediate state appellate court affirmed the lower court decision, ruling that the board overstepped its authority. New York's highest court last week ruled against the ban.

Another key victory, one that few onlookers predicted, came before the U.S. Supreme Court in *Fisher v. University of Texas*. Defending the school's use of race as a consideration in admissions, Garre faced tough questions from the justices. In the end, the court in a 7-1 decision declined to strike down the school's program or upset prior case law, instead remanding the case for further consideration.

The court "essentially reaffirmed the constitutionality of considering race in higher education admissions," Mexican American Legal Defense and Educational Fund general counsel Thomas Saenz said when the decision came down in June 2013.

Latham litigators represented Hospital Corp. of America, hit with an unexpected claim by the Foundation for Seacoast Health. The foundation argued it had the right to repurchase a hospital for \$600 million below its market value. The foundation said it had the right to buy back the hospital, which it sold in 1983, after HCA reorganized. In July 2013, the New Hampshire Supreme Court said no.

"It didn't feel like we were winning every day," said Johnson of the six-year battle. But HCA had "faith and perseverance—and I'd like to think some faith in their lawyers."



EVERETT "KIP" JOHNSON AND DOUG GREENBURG

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