

## 4 Traits Of The Top Litigation Firms

By **Y. Peter Kang**

*Law360, Los Angeles (July 26, 2016, 11:08 PM ET)* -- To become a litigation powerhouse, a deep bench of litigators and talented trial lawyers are par for the course, but what are the most important qualities that have enabled the top 20 Litigation Powerhouses to dominate the courtroom in bet-the-company cases?

“For the most successful litigation firms, I think you’ll find a culture where there is a lot of collaboration, where teamwork is rewarded,” said Michael Rynowecer, president of BTI Consulting Group Inc. “There aren’t a lot of silos, the powerhouses want to make sure they capture all the ideas and nuances they can and not only leave no stone unturned — they want to find new stones.”

Here, we ask leaders at the country’s top litigation firms what traits or characteristics are integral to becoming the litigation gold standard.

### **They Foster a Positive Firm Culture**

The notion of having a constructive firm culture, one that engenders a collaborative work environment, was cited by a number of top litigators who said teamwork and collegiality have played a big role in their firms’ success.

Al Pfeiffer, vice chair of No. 6 Latham & Watkins LLP’s 681-lawyer global litigation and trial department, said they hire and promote lawyers who fit in culturally at the firm, which he said places a great emphasis on teamwork.

“When we go to trial, which is a stressful environment, we want people who are working together and not having trouble getting along,” said Pfeiffer. “We actually like each other under the stress of trial, which makes a huge difference. That’s not accidental; we screen laterals or those coming up through the ranks — if they can’t make their personality fit the team they are not going to succeed here.”

David L. Yohai, the co-chair of No. 20 Weil Gotshal & Manges LLP’s complex commercial litigation practice, said “smart recruiting,” or keeping an eye out for attorneys that fit the firm’s culture, is an important factor for top litigation firms.

“The firms that stand still will always lose out,” Yohai said. “You have to look to update your talent to stay competitive, without sacrificing core firm values.”

Edward Kehoe, the managing partner of No. 10 King & Spalding LLP's New York office and co-head of the firm's international arbitration practice, said it's important to have a cohesive, collegial firm atmosphere and culture not only because it's simply healthier, but also because it shows clients that the firm is part of a well-oiled litigation machine.

"Clients can see it," he said. "They can tell when a law firm doesn't work cohesively within itself. When you're hired for a big case, you become a partner with a client and part of one fluid working machine and if the client perceives that the law firm is a difficult place to work and people are unhappy, they will be less trusting of the partnership they are entering."

In addition, lawyers who show respect to opposing counsel, Kehoe said, often make it easier to more quickly resolve disputes.

"The great litigators tend to have good relationships with their opposing counsel," said Kehoe. "It makes the case go more smoothly, there isn't bickering back and forth over small issues. Sometimes it's difficult depending on who the opposing counsel is, but the extraordinary litigators and arbitrators will work hard to keep a good relationship for the benefit of the overall case. And it simply makes life easier."

### **They've Developed a Strong Track Record**

Success begets success, and nothing draws in clients more than showing that you have emerged victorious in important cases. Chuck Klein, head of No. 8 Winston & Strawn LLP's complex commercial litigation practice, said that in order to prove your bona fides with both the client and your opponent, you can't just have one or two big wins under your belt.

"You need to have a significant track record of not just getting big cases but taking them all the way to trial with successful results," he said. "With a combination of luck and skill, any decent trial lawyer can achieve a good result in a case, but a firm with repeat wins in bet-the-company cases is the type of litigation powerhouse that clients can rely on to consistently achieve those types of results."

During the 12 months ending March 1, Winston's 531-attorney litigation group says it chalked up nearly 10 big wins at trial and more than half a dozen significant appellate victories. This record has not gone unnoticed, as the firm has nine substantial new matters on its plate.

A litigation partner for No. 11 Covington & Burling LLP said the firm's track record of positive results in 60 trials the firm handled in the past three years speaks for itself.

"We view every case and every trial as a way to reinforce our reputation," said Clara Shin, a first-chair trial attorney who focuses on intellectual property and complex commercial disputes. "People come to Covington because of our reputation for delivering a bespoke, tailored approach to victory for our client."

Shin said that at Covington, which has 550 litigation attorneys, developing a strong litigation practice starts with first-year associates, who are given opportunities that other firms may not be comfortable in assigning to junior attorneys, such as conducting depositions opposite an opposing firm's partner.

"We're basically training our associates to become future partners, getting them stand-up experience early so that they can gain confidence," she said.

## **They Get Creative**

Being creative in high-stakes cases can sometimes mean the difference between winning and losing, a number of top litigators said.

“For the real litigation powerhouses, the trial lawyer and key team members know the record cold,” said Klein. “When you go back through the record and find little nuggets of information, such as in deposition testimony, it can often spark new insights.”

Klein said he has seen numerous times where, shortly before trial, the team finds something that has been overlooked, allowing it to develop a novel theory that would have otherwise gone unnoticed.

“If your adversary can’t see you coming on a particular point and can’t react quickly, that’s just gold,” he said. “When you’re getting ready for a trial you have to think creatively, use some of the information in ways that it wasn’t used during the discovery phase, if possible. Sometimes that can lead to the element of surprise and can make a difference — I’ve seen it make a difference.”

Kehoe echoed that sentiment, saying he has often been brought into a difficult, ongoing matter where perhaps another firm or in-house counsel has already developed the case.

“Our job is to think outside of the box and to conceive of ways to get a good result, to win,” Kehoe said. “That’s a very important part of what separates the really good firms from the great, to be able to stand back and take a big-picture view of the ultimate goal and conceive of different ways to get there and evaluate all of them and map out a strategic road map from there, and that is creativity at its best.”

## **They Use Their Appellate Practice**

Preserving wins is equally important as winning trials, so having a top-notch appellate practice to draw from is one of the hallmarks of the most successful litigation firms, litigators said.

It’s no surprise then that four out of the five top appellate practices ranked by Law360 in December were also among the top 25 litigation firms, with three of them — No. 3 Quinn Emanuel Urquhart & Sullivan LLP, No. 7 Hogan Lovells and No. 16 WilmerHale — landing in the Litigation Powerhouse top 20. Ropes & Gray LLP came in at No. 25, and the fifth appellate honoree, Goodwin Procter LLP, did not ask to be considered for the Powerhouse list.

“Winning at trial is only half the battle,” said Jon Lindsey, New York founding partner of legal search firm Major Lindsey & Africa. “Some of the biggest awards in history have been overturned on appeal, so it’s extremely important to have appellate specialists who can counsel you along the way as a trial lawyer to avoid the landmines that will lead to a reversal in the appellate courts.”

Ella Foley Gannon, deputy chair of the 842-attorney global litigation practice for No. 9 Morgan Lewis & Bockius LLP, said the firm has benefited from having a successful appellate practice.

“It really brings in not only our ability in appeals, but to bring the appellate eye to the trial team,” she said. “In these bet-the-company cases, you’re going to have issues that you know are an appealable issue, such as issues of first impression. To have your appellate lawyer be active members of your trial team from the outset is a really significant advantage for our clients.”

Smart litigators involve the appellate team before trial to ensure that if things go south, a win on appeal remains within reach, according to King & Spalding's Kehoe.

"The appellate lawyers will have had input on the appellate issues that a nonappellate lawyer [wouldn't recognize]," he said. "If you don't involve them in the process, you're handing them an already cooked case as opposed to asking them to bake the cake."

--Editing by Mark Lebetkin and Brian Baresch.

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