



Building and sustaining a top tier litigation practice

With consistent tier 1 placement within The Legal 500 rankings, US editor (content), Helen Donegan takes a closer look at Kirkland & Ellis' New York litigation team to find out what they attribute to this success, and what factors are involved in building a top tier litigation practice

Kirkland & Ellis benefits from a well-resourced and expert New York litigation team comprised of over 80 lawyers – including 25 partners and over 50 associates. These individuals are a key team within the overall figure of 700 Kirkland & Ellis litigators worldwide, and were described within *The Legal 500's* 2019 US guide as being 'widely regarded as leading players in the market'.

Helen Donegan spoke with three partners from the team – [Stefan Atkinson](#), [Aaron Marks](#), and [Matt Solum](#) – to find out what they attribute to the team's successes and consistent status within the top legal rankings.

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Strength of the NY team

With no fewer than eight partners from the team noted in the editorial for their 2019 tier 1 ranking (the highest number of partners noted in any 2019 editorial for tier 1 practices in this area), ‘the New York litigation team is a versatile group of hard-working, strategic, and skilful attorneys that has expertise in a number of key areas,’ confirms Marks.

Marks is one of a number of significant new hires for the New York team over the past couple of years, with the arrival of [Sandra Goldstein](#) and [Atkinson](#) from Cravath, [Josh Greenblatt](#) (along with Marks) from Kasowitz, [Zach Brez](#) from Ropes & Gray, and Bob Allen from the US Attorney’s Office. The newcomers have expanded the group’s focus and capabilities, building on pre-existing expertise within the team from partners such as Jay Lefkowitz, Lauren Casazza, Atif Khawaja, and Matt Solum, among others.

The team’s lawyers have expertise in M&A, securities, complex commercial, financial restructuring, and class action litigation, as well as in corporate governance and investigations. They

regularly litigate in the Delaware Chancery Courts, New York’s Commercial Division, and federal and state courts around the country. ‘Whether the case is to be tried before a jury in the Southern District, a NY Commercial Division judge, an arbitration panel, or a US Supreme Court special master, our lawyers are ready to take cases to trial and win. This trial focus is key in achieving outstanding results for clients in settlements as well,’ says Solum.

When queried on the strength of the New York litigation team, and asked how they see themselves in terms of differentiation from competitors, the straight-forward response from Marks is: ‘The team is unique in a couple of ways. First, given the areas of expertise for the group, the team is accustomed to regularly taking on fast-moving, intense matters representing the most sophisticated of commercial clients (private equity firms and hedge funds, investment banks and other financial institutions, pharmaceutical giants, multinational corporations) – often when such clients are in circumstances of critical transactional time pressure or under great public and/or political scrutiny. Being a team of experienced trial

lawyers who are accustomed to operating in pressured situations enables us to be the first call for clients in their hour of need.’

‘Second, the structure of the firm, with very large offices in DC, California, Chicago, Texas, London, Hong Kong, and several other major hubs, and the daily seamless work we do together, enables us to handle complicated cross-border and multi-jurisdictional matters in a highly coordinated and effective way.

Today, when so many major financial and other commercial disputes involve global interests, we readily tap other resources at the firm (both litigators and other practice area expertise) in order to provide clients with the best possible representation.’

Marks’ response leads on to two additional factors which are identified as key components in the team’s successes for their clients – two factors which are driven by firmwide capabilities: (i) scalability; and (ii) teamwork across Kirkland’s offices.

Scalability and the ability to staff effectively

With a large number of lawyers to call on, Kirkland prides itself on its ability to quickly assemble client teams, as well as the ability to scale teams effectively depending on the matter at hand.

As Atkinson illustrates: ‘Across its various offices, Kirkland operates as one firm, with lawyers in one city working closely with lawyers in others. This close collaboration and coordination among our attorneys allows the firm to staff its matters quickly and easily, on short notice and at any time, regardless of the size or complexity of the dispute. In a recent matter that arose over a holiday weekend, Kirkland quickly pulled together 30 of its lawyers (across multiple offices) to work on the case. Within hours, these attorneys were reviewing documents, researching the law, and preparing litigation materials. We are able to staff our matters with as many highly qualified attorneys as the circumstances require.’

With the mention of Kirkland’s various offices, the obvious next question was how the firm ensures effective collaboration across its offices, and how

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the New York team work with colleagues in different locations.

Diverse geographical expertise

Solum notes his team’s ability to ‘work seamlessly across offices and practices’ and their experience with international as well as domestic work.

‘In addition to handling matters throughout the US, our team has significant experience worldwide, including in international arbitration, securities, and complex commercial litigation. Given this, we have been asked to represent clients overseas in numerous foreign complicated securities cases. For example, one recent matter included lawsuits throughout Europe in the UK, France, Austria, Israel, and the Netherlands, among other places. We often work with experienced co-counsel to resolve the most complicated securities and commercial cases.’

Atkinson goes on to highlight an additional benefit of Kirkland’s geographic reach in their ability to have local presence and expertise in the jurisdictions in which their clients often find themselves in litigation throughout the US: ‘We are at home in California, Illinois, Massachusetts, New York, Texas and Washington, DC. So, when our

clients have cases before state courts in Texas or California, federal courts in New York or Chicago, or regulatory agencies in Washington, Kirkland comes armed with knowledge of the relevant norms, procedures, and decision-makers. As a result, we are able to apply our deep subject-matter expertise effectively wherever we find ourselves in a dispute.’

‘As a general matter, when Kirkland opens an office in a new market, within a relatively short period of time that office will grow to be at the top of that market’ adds Marks. When asked what he attributes this to, Marks notes the high standards expected across all of the firm’s offices, which is also a key factor in his and other Kirkland teams’ ability to place trust in colleagues and collaborate effectively across teams.

‘Having standards of uniform excellence across the board makes collaboration among offices and among practices easy to facilitate, as the participants are all able to trust they are working with the best in the field. I have countless cases where I am working with individuals or groups in other offices and in other practice areas and it is always a good experience. For example, I am currently representing a private equity client that had bid to acquire a competitor. The deal

was not consummated, and the competitor has now sued the private equity client for purported trade secret misappropriation. I am working closely with the M&A team that represented the client in the bidding process and with our IP group on certain aspects of the trade secret case – all in different offices.’

When asked if they believe the culture of the firm has changed and if this has contributed to their ability to work so effectively across teams and offices, Solum confirms: ‘We have a culture of collaboration, and focus on working in teams in a collegial manner. We avoid sharp elbows and work together to achieve our clients’ goals.’

Attorney training and experience

An obvious area to ask about when reviewing the strength of the New York litigation team is attorney training. How does the New York team (and indeed the wider firm) ensure clients can rely on excellence from Kirkland attorneys at all levels? Solum notes the firm’s focus on extensive trial training for associates and the importance of trial-readiness. ‘Kirkland’s litigators are trial lawyers. For associates, we have extensive trial training programmes for first- to sixth-year associates. That prepares lawyers to be trial-ready. In New York this is a key focus

as we are routinely called on to step in to handle matters heading to trial.’

As featured in the July/August 2019 edition of *fivehundred*, the Kirkland Institute for Trial Advocacy (KITA) is a firm-wide trial advocacy and litigation attorney training programme that prepares Kirkland associates for all a courtroom can throw at them. As highlighted within that article, KITA is ‘the largest, most comprehensive litigation training programme at any firm. It emphasises core trial skills and becomes more complex as associates advance.’

KITA fulfils a Kirkland promise to clients that their teams will always be trial-ready and well-trained. As noted within the *fivehundred* article, KITA ‘gives our partners confidence to put associates in on-their-feet roles, and allows partners to advocate to clients with confidence that our associates are ready for those roles... Rather than young associates getting their first trial training raw, unprepared, and on the client’s dime, Kirkland associates are getting that experience every year at the firm’s expense, with our own partners doing the work, making them ready for trial.’

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Independence of the practice

A further strength of the New York litigation practice is the generation of work independent of the firm's wider corporate practice. The team does undertake client work referred from other practice areas, such as M&A, but are quick to note that they are not dependent on it.

‘Our M&A litigation practice is recognised as a best-in-class practice. Clients call on us frequently to litigate issues on deals that were handled by our firm, which has a leading M&A practice, as well as on deals that were negotiated by other law firms’ says Solum. ‘For example,’ he continues, ‘we are handling a substantial matter right now where another major law firm negotiated the underlying deal. We identified a series of additional claims that could be pursued that prior counsel overlooked and achieved great results for the client. Directors, officers, financial advisors, and others call our M&A litigators directly to represent them in matters given the depth and breadth of our experience.’

What lies ahead?

The final question for the partners concerns future challenges and where they see their team's expertise being applied. ‘With the anticipated volatility in the economy, we are already seeing

an uptick in commercial litigation and class actions,’ states Marks. ‘Companies, investment firms, and pension funds and insurers appear to have an increased willingness to take action to protect their rights and are viewing commercial litigation as an investment with a potential return. And, the courts appear to be more open to considering the possibility of class actions, and plaintiffs’ class action attorneys are accordingly filing more of these cases,’ he says.

Atkinson also weighs in on this. ‘Securities cases are on the rise,’ he says. ‘One example of this is the uptick in cases brought in state court under the federal Securities Act of 1933. Plaintiffs are allowed to bring these federal claims in state court as a result of the Supreme Court's March 2018 decision in *Cyan, Inc. v Beaver County Employees Retirement Fund*, which held that ‘33 Act claims may be brought in state court and are not removable to federal court.

‘Separately, we’re seeing (and have been seeing for years) securities cases arising from disclosures of “bad news” that have nothing to do with the securities laws. For example, government investigations, news reports of unfair business practices, and accusations made in litigation – all having no connection to the company's disclosures – have become harbingers

of securities litigation. The plaintiff's theory in these cases is that the company misled investors by not sufficiently informing them sooner of the bad news, thereby committing securities fraud. We're seeing companies become more and more vigilant about their level of risk under the securities laws.’

The team have been successful thus far (up to and including the 2019 US guide) in retaining a consistent tier 1

standing in *The Legal 500* rankings. From speaking with Atkinson, Marks, and Solum it is clear, in summary, that they attribute this (and anticipated future success) to the expertise within the team, collaboration, the firm's investment in preparing trial-ready lawyers, and their independent standing with clients. ●



Stefan Atkinson handles a range of complex litigation matters in the United States and abroad, including securities, M&A, and antitrust suits. He also regularly counsels companies and their directors on issues of corporate governance and litigation, often in connection with major strategic transactions.



Aaron Marks is an accomplished trial lawyer focusing on complex commercial litigation relating to securities, financial products, real estate, entertainment, mass torts and trade secrets. He routinely ranks among the best trial lawyers and commercial litigators in the country by industry surveys.



Matthew Solum is a senior litigation partner. Having tried more than twenty cases to decision, he is a go-to trial lawyer for high stakes disputes, including in the securities, M&A, and complex commercial arenas.