

5 Small(er) But Mighty Litigation Shops

By **Aebra Coe**

Law360, New York (July 26, 2016, 11:07 PM ET) -- Five relatively small but fearsome law firms landed a spot on Law360's 2016 list of 50 Litigation Powerhouses after they laced up their gloves and brought the pain in their fights for clients, winning some of the biggest cases over the past year.

The elite group of firms with fewer than 200 litigation attorneys that made it on this year's list of litigation heavyweights are, in order, Lief Cabraser Heimann & Bernstein LLP, Bracewell LLP, Kaye Scholer LLP, Cravath Swaine & Moore LLP and Kramer Levin Naftalis & Frankel LLP.

The firms represented both defendants and plaintiffs in fights at trial courts, intermediate appellate courts and the U.S. Supreme Court, with millions and even billions of dollars at stake for their clients.

Some examples of the victories this past year — which started March 1, 2015, and ran through March 1, 2016 — include a win at the U.S. Supreme Court by Bracewell for mining company Asarco LLC in a fight with Baker Botts LLP over attorneys' fees. In a blockbuster win at the Federal Circuit, Kaye Scholer secured a favorable decision for Acorda Therapeutics Inc. in a decision regarding personal jurisdiction in abbreviated new drug applications. And Lief Cabraser served as co-lead counsel in global litigation against the Bank of New York Mellon Corp. over foreign exchange fees, under which approximately \$504 million was awarded to the bank's customers.

The five firms clinched their wins this year with litigation departments ranging in size from 39 partners and 66 total attorneys to 32 partners and 197 attorneys, smaller than many of the firms they squared off against.

According to Bracewell litigation chair Stephen Crain, his firm managed to have a mighty year because of, rather than in spite of, its relatively small size.

He said that the firm's trial leadership sat down together several years ago and came up with a plan to re-form themselves around a new strategy, and the firm's successes this past year are a direct result of following through with that plan.

"We coalesced on a strategy of reshaping ourselves as a litigation boutique inside of a large law firm," Crain said. "Instead of having pods of trial lawyers doing different things in different locations, we decided to really work together as one unit."

He said that means that rather than viewing litigation simply as one element of each practice group in a

large firm, Bracewell has viewed its litigation department as a team in and of itself, where lawyers communicate across offices, cross-specialize within offices and share work seamlessly.

"We went from being somewhat siloed to being completely unsiloed," he said.

It is that litigation boutique atmosphere that allows Bracewell to hang with the big dogs, Crain said, as attorneys work together in a "relatively selfless" manner, asking for each other's help and offering a helping hand where needed.

In addition to the Asarco case, this past year was a big one for Bracewell both in the appellate courts and at the trial court level.

Partner Sean Gorman successfully defended Italian energy giant Eni SpA in a \$6.4 billion dispute with Brenham Oil & Gas Corp. over an oil concession from the government of the African nation of Togo. Brenham Oil appealed the trial court's dismissal of the case, and last July, a state appellate court affirmed the dismissal.

And last May, the Ninth Circuit reversed an \$81 million judgment against Bracewell client KBR Inc. over hazardous chemicals at an Iraqi water facility, ruling that in light of a recent U.S. Supreme Court decision, the trial court did not have jurisdiction in the case.

At the trial court level, the law firm secured complete dismissal for Waste Management Inc. on summary judgment in a \$3 billion environmental enforcement suit and then represented Waste Management of Texas Inc. as co-counsel in an ensuing five-week trial. Immediately before closing arguments, the government settled with Waste Management of Texas for less than 1 percent of the amount of penalty it had requested during trial.

Another law firm among this year's small and mighty litigation shops, Lieff Cabraser, has a slightly different story as a plaintiffs firm, often coming up against some of the largest and strongest defense law firms in the world.

Lieff Cabraser managing partner Steve Fineman explained that his firm has been able to come out on top because of its laser focus: All 66 of the firm's attorneys focus on litigation, and all represent plaintiffs.

"I think that makes a difference," Fineman said. "We're able to excel because we only represent plaintiffs and almost entirely on a contingent fee basis."

He said that the firm has a practice group model that mimics those found at larger law firms, which he says has allowed the firm to find a niche in a few key areas such as securities, financial fraud, consumer fraud, mass tort environmental and whistleblower cases.

"By having our lawyers focus on these different substantive areas, we're able to develop expertise and become leaders in all of those fields," Fineman said.

The firm's success can also be attributed to careful case selection and the efficient and smart use of lawyers on a case, he said. Because the law firm fronts all costs for clients against any future recovery, it has to be — and is — especially careful about only picking the cases that have good prospects in court.

"Our interests are definitely aligned with those of our clients because we only get our costs back if we prevail," Fineman said.

Kaye Scholer managing partner Michael Solow says that like Bracewell and Lieff Cabraser, his firm has also placed a very strong emphasis on litigation, with its nearly 200 litigators making up almost half of the firm's total population.

But, rather than focusing on one area of litigation, Kaye Scholer aims to provide the gamut to its clients, Solow said.

"For each of our clients, we offer a one-stop shop to handle all the related elements of cases that now more than ever involve different and parallel civil, criminal and government investigations," he explained.

Some areas that he sees as the firm's specialties include the life sciences and financial service sectors.

"Our team has steadily built and long enjoyed a reputation as trial lawyers in heavyweight commercial disputes and as lead counsel on major product liability defense and IP cases," he said.

The firm's victories this past year include the Acorda Therapeutics win at the Federal Circuit, as well as a Seventh Circuit victory for Vintage Pharmaceuticals LLC dismissing a generic prescription product liability case on preemption grounds — the first time the court has considered the extent to which product liability claims against generic-prescription-drug manufacturers are preempted by federal law since the U.S. Supreme Court's decisions in *Pliva Inc. v. Mensing* and *Mutual Pharmaceutical Co. Inc. v. Bartlett*.

Additionally, Kaye Scholer won a unanimous defense verdict on behalf of Philip Morris after a three-week trial when an eight-person jury found that Philip Morris cigarettes did not cause a plaintiff's lung cancer.

The remaining two law firms on the list of five, Cravath and Kramer Levin, had no shortage of wins over the last year either.

Cravath attorneys last July secured a favorable ruling at the Second Circuit for IBM Corp., finding the company cannot be held liable in the U.S. for selling identification technology and military vehicles to South Africa that allegedly facilitated the country's human rights abuses while under apartheid because the alleged conduct was largely perpetrated outside the United States.

And in November, Cravath won dismissal for ABC and ESPN of a putative class action in Tennessee federal court brought by former NCAA football and basketball players against various broadcasters, athletic conferences and licensing entities, centered on the issue of whether student-athletes should receive compensation.

Additionally, last August, the firm secured summary judgment for Time Inc. in New York federal court of a \$1 billion antitrust lawsuit filed by a defunct magazine wholesaler.

In one of the year's most high-profile cases, Kramer Levin represented SAC Capital Advisors LP's Michael Steinberg, who faced insider trading charges in New York federal court. A Kramer Levin team led by partner Barry Berke handled the matter throughout the trial and appeals process, eventually securing outright dismissal of the suit after a favorable decision at the Second Circuit.

Last July, the First Circuit affirmed a district court's decision that Puerto Rico's Recovery Act is invalid because it is preempted by federal bankruptcy provisions in a win for Kramer Levin clients Franklin Mutual and OppenheimerFunds Inc., which hold over \$1.5 billion in the commonwealth's electric company bonds.

In statements provided to Law360 this week, the two firms' leaders described why they believe their firms have been able to accomplish what they have, with Cravath touting the broad and diverse experience of its attorneys and Kramer Levin pointing out its lawyers' laser focus on specific areas of practice.

"Cravath's litigation department packs a powerful punch in complex, bet-the-company litigation," firm head of litigation Sandra C. Goldstein said. "We recruit diverse and talented associates who are trained in a rigorous and unique rotational system, through which they work one-on-one with partners across practice areas at all stages of litigation."

"With this experience, associates are entrenched within the fabric of our firm and become invested in our work and clients. While many Cravath attorneys specialize in their practices over time, clients benefit from the broad-based background that every Cravath attorney brings to a case, enabling him or her to advocate credibly and persuasively regardless of subject matter, tribunal or party role," Goldstein said.

Kramer Levin litigation department co-chair Berke said that his colleagues' courtroom experience is what attracts clients to the firm.

"We are first and foremost a trial firm," Berke said.

He said the firm recognized a few years ago that it was being called in on a disproportionate number of cases where trial was likely or the threat of a trial would lead to a favorable resolution.

"In order to take advantage of these opportunities, we recruited several new lateral partners who we believed were among the best civil trial lawyers in the country to expand even further our capabilities and the breadth of our trial practice while continuing to recruit former federal prosecutors and federal defenders for our white collar criminal practice," Berke said.

--Editing by Katherine Rautenberg and Christine Chun.