

Litigation Leaders: Ropes & Gray's Gregg Weiner on Book Smarts, Street Smarts and Spotting Talent

'Adversaries know they won't outthink or outmaneuver us. Clients know we have the judgment, expertise, and experience to successfully resolve their major litigation and enforcement challenges. They also know that we don't follow a rote playbook.'

By Jenna Greene
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Welcome to another installment of *Litigation Leaders*, where we showcase the litigation practice heads of the country's biggest law firms.

Meet Gregg Weiner, who co-leads the litigation practice at 1,200-lawyer Ropes & Gray. Based in New York, Weiner represents clients including financial institutions, Fortune 500 companies, professional services organizations and hedge funds in a wide range of complex commercial disputes.

He shared his thoughts on the direction of the firm's litigation practice with *Lit Daily*.

Tell us a little about yourself—beyond what's in your law firm bio.

Gregg Weiner: I live in New York City with my wife of nearly 30 years and our three incredible daughters. We love to take advantage of all the culture, entertainment and food the city has to offer. My daughters all went to public school in New York City, graduating from The Bronx High School of Science, and then to the University of Michigan, my alma mater, for college. As much as we love New York City, there truly is nothing better than being in Ann Arbor on a football Saturday—Go Blue!

Besides spending time with family, my time outside of the office is mostly spent playing sports (basketball, golf and tennis), and musical instruments (piano and saxophone) and listening to music, with a heavy emphasis on jazz. I think sports and music provide great training for litigators, building competitive fire and tenacity, encouraging creativity, and teaching teamwork and the importance of staying calm under pressure.

I'm a trustee of the Anti-Defamation League. Their mission is especially important right now because of the rise in anti-Semitism around the globe, including in New York City.

How big is your litigation department and where are most of your litigators concentrated geographically?

Ropes & Gray has a team of more than 400 litigation attorneys with an incredibly broad range of business, legal, and

government backgrounds. This includes more than 100 enforcement attorneys—including former SEC attorneys and federal prosecutors from the DOJ and many U.S. Attorney's Offices.

We have litigators in 10 of Ropes' 11 offices. Many of them are based on the East Coast, but we also have team members in Washington, D.C., Chicago, San Francisco, Silicon Valley, London, Hong Kong, Shanghai and Tokyo. Our attorneys are constantly on the move between Ropes & Gray offices and many places in between in order to best serve our U.S. and international clients.

In what three areas of litigation do you have the deepest bench? (I know it's tempting to list more, but please just name three)

Our group is especially strong and active in the area of corporate and securities litigation. Our corporate and securities litigation practice is called on regularly by our broad client base, particularly our private equity, investment banking and health care clients.

This past year we successfully handled an array of corporate and securities litigations for Bain Capital, TPG, Fortress, Deutsche Bank, Emblem Health, Akcea Therapeutics, Surgery Partners, Stemline Pharmaceuticals, and Genocera Biosciences, to name a few. Also of note, in 2019, our team secured a complete victory for William Koch in the Delaware Supreme Court, successfully reversing a Chancery Court trial decision, in a battle for control of the company he owned, Oxbow Carbon.



Gregg L. Weiner partner with Ropes & Gray

Our white collar practice is a powerhouse. It was named a “White Collar Practice of the Year” by Law360 in 2019. Widely known for conducting sophisticated and complex cross-border investigations, the practice has more than 100 enforcement attorneys, many of whom excelled as federal prosecutors and government lawyers at the DOJ, SEC and U.S. Attorney’s Offices.

Asset managers, investment funds, investment banks and private equity firms turn to us to navigate complex investigations, especially when the SEC comes knocking. Our health care litigation practice is renowned for helping companies manage investigations and litigation, especially FCA, FCDA, off-label and fraud cases.

We’re also the only firm in the country representing three different defendants in the much talked about Varsity Blues college admissions matter. We also have an incredibly strong group of anti-corruption and international risk attorneys across three continents (North America, Europe and Asia) who form an integrated global network to guide U.S., foreign and multinational corporations through complex transactions, investigations and sensitive cross-border issues.

On the asset management side, we have a leading practice advising hedge funds, credit funds and other alternative asset management firms. We represent these clients in a range of matters, including excessive fee claims, securities claims and derivative cases. In the past six months alone, we have succeeded in defending claims against numerous asset managers such as MetWest Asset Management, ProShares ETFs and Sequoia Fund. Notably, we were the first firm ever to secure summary judgment in excessive fee cases, and we established the Supreme Court standard against which 36(b) liability is now measured in *Jones v. Harris Associates*.

As head of the department, what are some of your goals or priorities?

A top priority is to continue to grow and evolve our core areas of expertise. We want to be in a position to help our clients adapt to a changing world. The issues our clients litigated 10 years ago are not the same today, and will not be the same 10 years from now. Our teams are constantly and proactively identifying litigation issues and trends so we can anticipate client needs in the future.

Connecting the firm is another important priority. Attorneys across the firm are preeminent thought leaders in highly regulated and highly competitive cutting-edge industries. Health care and life sciences, asset management, technology, and private equity are all areas where the firm excels, and we have a competitive advantage when we leverage those resources in litigation. Given the size and scope of the firm, this requires constant focus and attention.

Litigation is a talent game. To succeed, you need the best

lawyers on your team. Thus, we are immensely focused on recruiting the most talented and diverse associates, and then training and empowering them. Identifying the best law school candidates is challenging. We do not rely strictly on grades at the most prestigious law schools.

Malcolm Gladwell recently spoke to our partners at a firm retreat. As he describes in his new book, *Talking to Strangers*, the market for talent is inefficient in law and other industries, meaning the standard systems of recruiting are often imperfect in identifying the candidates most likely to be successful. One of my priorities is to ensure that we overcome these inefficiencies and ensure that we are identifying, hiring and retaining the most talented people.

What do you see as hallmarks of your firm’s litigators? What makes you different?

Ropes & Gray is known for the smarts and sophistication of its litigators. What really sets us apart, though, is the uniquely collaborative culture we practice in which enables us to leverage the experience of our lawyers across geographies and practices.

Put simply, we combine subject matter expertise and industry knowledge with great legal advocacy. Adversaries know they won’t outthink or outmaneuver us. Clients know we have the judgment, expertise, and experience to successfully resolve their major litigation and enforcement challenges. They also know that we don’t follow a rote playbook—instead, we employ creative strategies and tactics tailored to the unique aspects of the matter.

In order to succeed at this, we invest heavily in an early case assessment, which we use to develop a clear strategy and game plan, always with an eye toward trial. We also have a great appellate team that gets involved early to help us craft our strategy to ultimately ensure a greater chance of success before an appellate court down the road, if necessary.

How many lateral litigation partners have you hired in the last 12 months? (Please mention names.) What do you look for in lateral hires?

We always keep an eye out for exceptional talent, both homegrown and top talent in the field, including from government agencies. We go through a lengthy vetting and recruiting process to make sure any lateral is the right fit culturally—we want A-level talent and technical expertise, but identifying great collaborators is equally important. As a lateral partner myself nearly five years ago, I believe that a combination of lateral recruitment and internal promotions is the most effective way to build the strongest team possible.

In early 2020, we welcomed partner Stephanie Webster, one of the top health care lawyers and appellate litigators in the country. Her impressive career includes leading a team in a recent landmark win before the U.S. Supreme Court in *Allina Health Services*. In a resounding 7-1 decision, handed

down in June 2019, the court invalidated substantive changes in Medicare Disproportionate Share payments.

In London in 2018, we recruited leading financial crimes lawyer Judith Seddon. Last year, we were able to continue to grow our London team by recruiting Rosemarie Paul, one of the U.K.'s leading financial services contentious regulatory lawyers.

María González Calvet, a former prosecutor and in-house counsel at a Fortune 100 company, also recently joined our market-leading anti-corruption and international risk practice in Washington, D.C., having led FCPA prosecutions at the DOJ and then been lead in house counsel for these matters at GE. Maria has already made a significant impact, particularly with respect to our Latin America-focused practice.

We also have a pipeline of very strong associates, and have had several internal promotions over the last couple of years, including two commercial litigation partners in New York in the past year: Marty Crisp and Adam Harris; Andrew O'Connor in Boston; Tim Farrell in Chicago and Jeremiah Williams in Washington, D.C. Lateral or homegrown, we want lawyers who have that rare combination of book smarts, street smarts and the highest ethical standards.

What were some of your firm's biggest in-court wins in the past year, and can you cite tactics that exemplify your firm's approach to success?

Deep Industry Knowledge. Our firm knows the asset management industry inside and out. I mentioned *Kennis v. MetWest*. Our team, led by Rob Skinner and Amy Roy, crafted a winning defense strategy for Metropolitan West Asset Management, the largest actively managed bond fund in the world.

Plaintiffs claimed excessive mutual fund fees and damages of over \$800 million. After a seven-day bench trial, the judge denied all of the plaintiffs' claims. The court's ruling in this case was the final nail in the coffin on a key fund fee issue often brought against asset managers, involving plaintiffs' efforts to compare advisory and subadvisory fees. Our unique industry knowledge enabled our litigators to make sure the court recognized important market factors and conditions undermining the merits of plaintiff's claims.

The Best Defense is a Good Offense. We secured a major victory in a highly watched case in Delaware Supreme Court on behalf of industrialist William Koch. The litigation arose from a multibillion-dollar dispute in which a New York City-based private equity firm sought to force a sale of Oxbow Carbon, an energy company that Koch had built from the ground up.

The team, led by David Hennes and Tom Brown, anticipated the coming dispute and strategically launched a first-strike complaint, so framing the case in the best possible

light. That led the court to quickly adopt our reading of the contract. The plaintiffs were left to argue for a breach of the implied duty of good faith. The trial judge ruled in their favor, but on appeal, the team secured a unanimous decision from the Delaware Supreme Court, setting an important precedent regarding the limited availability of the implied duty of good faith in contracts between sophisticated parties.

Marshalling our Vast Resources and Subject Matter Expertise. In a case with a tremendous number of moving parts, we represent a major pharmaceutical manufacturer in more than 2,800 lawsuits in state and federal court involving the manufacturer and sale of prescription medication. The judge presiding over the federal multidistrict litigation has called the litigation the most complex constellation of cases in American history, and the matter has garnered front-page coverage in the *Washington Post*, *New York Times* and *Wall Street Journal*.

In addition to litigating in the MDL and state courts around the country, we represent the company in numerous ongoing investigations by DOJ and state attorneys general related to its prescription medication business. As part of our defense strategy, we sought to invalidate a key law in New York state that would have imposed a penalty on manufacturers and distributors in the guise of a tax. The District Court for the Southern District of New York declared the law unconstitutional.

Where are you looking to build or expand in the next year?

We are always looking for opportunities to grow and build, particularly in the areas that are in demand by our current and target clients.

One area we'd like to continue to build, particularly in wake of the #MeToo movement, is handling independent investigations, similar to our work for a subcommittee of the board of directors of the United States Olympic Committee led by Joan McPhee and James Dowden. Our report provided important findings on the structural framework and cultural conditions at the U.S. Olympic Committee that allowed the abuse of gymnasts to persist. We have a dedicated website where you can read the report.

A related area is monitorships, such as my partner Alex Rene's longstanding role as an independent monitor for commercial aircraft manufacturer Embraer. Because of our experience and our credibility with boards, regulators and prosecutors, we are well positioned to continue growing our practice handling these high-profile and sensitive matters. To see the collection of past *Litigation Leader* profiles, [click here](#).

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