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Litigation Department OF THE Year

**SPECIAL
REPORT**



LIBOR, MASSIVE SECURITIES CLASS actions against the big banks, billion-dollar patent wins, eye-popping arbitration awards. While the U.S. economy was struggling to return to health over the last two years, big-ticket litigation was clearly a countercyclical buffer. As the financial meltdown turned from headlines in the press to captions on docket sheets, the litigators at The Am Law 200 were front and center. In their lengthy, detailed submissions to us for 2014 Litigation Department of the Year and our three practice areas honors, we were delighted to see how diverse and cutting-edge the firms' results were over our time frame (August 2011 through July 2013).

To draw attention to these efforts, we changed our practice group competitions: We added securities and antitrust along with our traditional, highly competitive IP category. After months of reading the submissions, vetting the firms, and interviewing the finalists at our New York office, we arrived at four winners, 13 runners-up, 10 honorable mentions and six Litigators of the Year. Congratulations to everyone who won, and our sincere thanks to every firm that participated in our contest.

—Robin Sparkman





Small Department, **Big Results**

SIMPSON THACHER doesn't have the nation's biggest antitrust group. It just seems that way.

BY JAN WOLFE

ANTITRUST LITIGATION IS A remarkably broad category, encompassing everything from class action defense to internal investigations to closed-door negotiations with regulators. Simpson Thacher & Bartlett excels across the whole spectrum, despite having a relatively modest roster of 42 antitrust lawyers.

Because of its size, the group doesn't handle as many cases as larger firms like White & Case and Skadden, Arps, Slate, Meagher & Flom. But the cases Simpson Thacher does handle usually involve high stakes and the potential to set precedent. That's been particularly true in the wake of the financial crisis, which has prompted plaintiffs-side antitrust lawyers to closely scrutinize Simpson Thacher's portfolio clients in the financial services and private equity industries.

Judging by Simpson Thacher's recent win-loss record, that steady stream of high-profile representations isn't going to dry up anytime soon. The firm has dismantled or significantly chipped away at troublesome antitrust class actions against the likes of JPMorgan Chase & Co, Fidelity National Financial, the Blackstone Group LP and KKR & Co.

(formerly Kohlberg Kravis Roberts & Co).

Some of Simpson Thacher's most impressive work has come on behalf of Fidelity, the nation's leading title insurance company, which homebuyers accused of conspiring to inflate the price of title insurance. In the summer of 2012, Simpson Thacher partners Kevin Arquit and Barry Ostrager convinced two different federal appeals courts that the antitrust claims against Fidelity were barred under long-standing principles of antitrust law.

The firm delivered a similar knockout blow to antitrust litigation over the collapse of the \$300 billion market for auction-rate securities. In the span of a few days in 2008, a dozen leading financial institutions decided to stop propping up the ARS market, which they had been doing by underwriting the securities and then buying them when supply exceeded demand. Siding with arguments made by Simpson Thacher and its client JPMorgan, the U.S. Court of Appeals for the Second Circuit rejected arguments by ARS investors that the banks engaged in an illegal joint boycott of the ARS market. It made "perfect business sense," the court wrote, for the banks to independently pull out of the market.

Simpson Thacher pulled off a similar feat for JPMorgan in multidefendant antitrust litigation over LIBOR, a global benchmark interest rate underlying trillions of dollars in securities. To the surprise of many investors, U.S. District Judge Naomi Reice Buchwald in Manhattan adopted arguments advanced by JPMorgan and its codefendants and

dismissed the antitrust claims in March 2013. Buchwald admitted that her ruling might seem "incongruous," since one defendant in the case, UBS AG, had already paid a \$1.5 billion LIBOR-related fine to authorities in the United States and Europe ["Cartel Leaders," page 76].

By their nature, joint boycott and price-fixing cases involve multiple defendants and, therefore, several tables worth of defense lawyers. When it comes time to pick a single voice that will argue on behalf of all the defendants in court, a Simpson Thacher partner tends to be on the short list. When the ARS class action wound up at the Second Circuit, Simpson Thacher partner Jonathan Youngwood argued on behalf of not just his client JPMorgan, but also the bank's nine codefendants. And Thomas Rice, the cochair of the firm's litigation department, helped lead the defense in the LIBOR litigation, along with Robert Wise Jr. of Davis Polk & Wardwell and others.

One of Simpson Thacher's not-so-secret weapons is Arquit, a seasoned partner who inspires admiration and loyalty among colleagues, clients and peers. As the former general counsel of the Federal Trade Commission, Arquit specializes in obtaining regulatory approval for mergers and acquisitions (one of his recent successes was getting the FTC to sign off on Virgin Atlantic Airways's partial acquisition by Delta Airlines). "Kevin can really break things down for you in a simple way," says Peter Millones Jr., the general counsel of

Practice Group Size and Revenue

Partners: 9 Associates: 28 Other: 5

Practice Group as Percent of Firm: 5%
Percent of Firm Revenue 2012: 5%

FROM LEFT:
Sara Razi,
Matthew Reilly,
Joseph Tringali,
Kevin Arquit and
Jennifer Rie



Priceline Inc. “He’s just got a wonderful knowledge of antitrust law. And he can give you both the client perspective and the government perspective.”

It’s not unusual for clients to initially retain Simpson Thacher for regulatory advice and then hire the firm for high-stakes litigation. “There are firms that are strong in court on the contentious side of antitrust, and firms that are strong in gaining [regulatory] approvals,” Arquit says. “What sets us apart is that we are both.” After advising Priceline

for years on its merger and acquisition deals, for instance, Arquit stepped in to defend the company against a class action alleging an industry-wide conspiracy to fix hotel room rates (the suit is pending).

Similarly, after years of handing their merger and acquisition work over to Simpson Thacher, KKR and Blackstone hired separate teams of Simpson Thacher litigators to defend them against an investor suit alleging that the world’s leading private equity firms conspired to fix the price of leveraged

buyouts. Arquit represents Blackstone along with partner Peter Thomas, while Joseph Tringali and Paul Gluckow represent KKR. A judge has whittled down that massive litigation in pretrial rulings. “They do a great job melding the antitrust practice,” says David Sorkin, general counsel and secretary of KKR and a former Simpson Thacher partner. “At some firms, the antitrust guys are up in a ivory tower. But at Simpson Thacher, they really work hand in glove with the corporate team.”



Litigation *Department* OF THE *Year*

SIMPSON THACHER & BARTLETT

