

Litigation Department of the Year — General Litigation

The Best Blend of Best Practices

Greenberg Traurig puts its collective brainpower to work in New Jersey

In gauging the relative strengths of legal departments at New Jersey firms this year, the best yardstick we found was each firm's success in applying best practices to its work — not just in management of resources and technology, but also in strategic and logistic decision-making. By those measures, Greenberg Traurig led the field.

Based in Florham Park, the firm's New Jersey branch is, by the numbers, a sliver of its national and international presence: 75 lawyers out of a total 1,750 in 33 offices. Yet, it is closely integrated with larger practice groups. New Jersey managing partner Philip Sellinger is chair of Greenberg Traurig's Global Litigation Practice and in that position helps determine and develop broad firm litigation initiatives.

Greenberg Traurig exemplifies best practices in its use of technology and maintenance of infrastructure. New Jersey litigators are equipped to work with other litigators throughout the firm

regardless of physical location, which allows local clients to take full advantage of the firm's broad geographic reach and depth of subject area expertise.

This interaction works particularly well in litigation. New Jersey lawyers are able to use the firm's in-house teams of creative professionals to produce demonstrative exhibits and other presentation-related materials for trial efficiently and economically. New Jersey litigators also have access to the firm's centralized document center, fully staffed 24 hours a day, seven days a week. The ability to rely on the litigation support services and infrastructure of one of the country's largest law firms enables New Jersey litigators to handle massive document reviews and productions in-house.

Particularly helpful in the discovery phase of litigation is Greenberg Traurig's 40-lawyer eDiscovery & eRetention Group, formed as part of the firm's best practices program to ensure

compliance with the law and reduce litigation risk. The group's specially trained attorneys consult on all major litigation, including litigation handled out of the New Jersey office, and they advise clients on how to manage, retain and produce documents. New Jersey clients also benefit from the firm's quality control and risk management program, which is designed to ensure high-caliber service and promote accountability.

Another quality-control measure is the firm's in-house continuing legal education program — the Hoffman Professionalism Center — which conducts 200 CLE programs annually. These and other programs offered through the Practicing Law Institute are made available to all the firm's lawyers and externally to firm clients at no cost.

Litigators are also able to take advantage of the firm's rigorous in-house training and workshop program, which offers extended seminars in



Left to Right: Marc Groves, Kerry Jean Moore, Michael Nicodema, Eric Aronson, Kristine Feher, Theodore McEvoy, Robert Epstein, Todd Schleifstein, Jason Kislin, Jacqueline Greenberg Vogt, James Manning, Helen Kleiner, Michael Slocum, Philip R. Sellinger, Geoffrey Berman, David Sellinger, Aaron Van Nostrand, Cory Mitchell Gray, Eric Wong, Rodman Law, Michael Glanzman, Micala Robinson, Louis Smith, Shevani Jaisingh, Ian Marx, Colleen Giusto, David Jay

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specialized litigation areas, including taking and defending depositions, motion practice techniques and strategies, conducting direct and cross-examination, handling expert witnesses, brief-writing and the like.

Another indicia of best practices is the firm's innovation of alternative billing methods. Depending on the nature of the case, these methods may include fixed-fee arrangements whereby the client pays a sum certain for specified tasks, success premiums, volume discounts, shared-risk arrangements or some combination of these.

This well-tuned litigation machine is also adept at devoting its resources to pro bono work. In the last year, Greenberg Traurig New Jersey litigators appeared in numerous matters, including cases involving prisoners' rights, criminal appeals, domestic violence and immigrants' rights.

Major Litigators:

- Philip Sellinger, managing partner for New Jersey — co-chairs Greenberg Traurig's 600-plus member Litigation Practice and serves on the firm's Executive Committee. A former assistant U.S. attorney and New Jersey federal clerk, he has more than 30 years of trial experience in a wide variety of class actions and complex cases around the country. Sellinger serves on, and is a former chair of, the Lawyers Advisory Committee to the New Jersey federal court. He founded and is the former co-chairman of the N.J. State Bar Association's Class Action Committee.

- Geoffrey S. Berman, co-managing partner for New Jersey — has more than 25 years of legal experience in the public and private sector. A former Third Circuit law clerk, he was associate counsel in the Office of Independent Counsel Iran-Contra and was an assistant U.S. attorney in the Southern District of New

York. He focuses his practice on commercial litigation and white-collar criminal defense and recently represented a major U.S. financial institution in all of its auction rate securities litigation. He also successfully represented that entity in a New Jersey trial involving the sale of over \$100 million of distressed debt in the WorldCom bankruptcy.

- David Jay — handles a wide variety of complex, multiparty commercial cases from inception through settlement, trial and appeal. He has defended consumer fraud, health-care and computer class-action claims involving hundreds of millions of dollars and is a founding member of the Class Action Committee of the New Jersey State Bar Association.

- Eric Aronson — represents pharmaceutical companies, equity groups and other businesses in a broad range of complex litigation matters. He has more than 20 years of general trial, appellate and arbitration experience that includes breach-of-contract disputes, corporate shareholder disputes and derivative actions, trade secret and copyright, unfair competition and intellectual property licensing matters. He also advises corporate boards on litigation avoidance and strategy. He has handled matters in numerous jurisdictions, as well as before the U.S. International Trade Commission and numerous U.S. courts of appeals.

- Michael Nicodema — a commercial litigator and appellate lawyer with experience representing both plaintiffs and defendants in patent, trade secret, copyright, unfair competition and intellectual property licensing matters. His general trial practice includes subject matter areas such as breach-of-contract disputes, fraud claims, employment disputes and civil rights matters. He is a steering committee member of the firm's Trial Practice Group and is co-head of the firm's Federal Circuit practice initiative. He is also one of the

lead faculty members of Greenberg Traurig's in-house Litigation Academy.

- Robert C. Epstein, co-chair of the firm's National Construction Group — has over 35 years' experience litigating complex construction claims. He has litigated leading New Jersey cases involving construction law and is a frequent author on construction law topics.

- Roger B. Kaplan — focuses his practice on complex corporate and commercial litigation and arbitrations. His experience includes contract disputes and litigation, business torts, trade secret litigation, antitrust litigation and counseling, derivative actions, shareholder and partnership disputes, and Racketeer Influenced and Corrupt Organizations (RICO) litigation. He recently concluded a case in U. S. District Court for a generic pharmaceutical company that brought a recovery of more than \$22 million for the client.

- Louis Smith — represents banks, financial services companies, insurance companies and other businesses in a wide range of complex litigation matters, including consumer class actions, contract disputes and intellectual property claims. He has a national litigation practice and has handled matters in over 20 states. He has wide-ranging appellate experience, including arguments before the New Jersey Supreme Court, the New York Court of Appeals and U.S. Courts of Appeals throughout the country, and has broad experience with alternative dispute resolution proceedings.

- Cory Mitchell Gray — represents clients nationally in all aspects of commercial real estate and commercial lending litigation and counseling, including matters ranging from complex, multiparty commercial actions to commercial tenancy disputes and loan workouts. A former special assistant district attorney in Manhattan, he led a Greenberg Traurig team that obtained the dismissal of nearly \$200 million in claims in a suit brought by 235 plaintiffs against a real estate development company, and another team that obtained a highly favorable resolution of more than \$1 billion in claims after 5 years of litigation.

- Ian S. Marx — is a business litigator with varied and wide-ranging experience in the area of complex commercial litigation. He appears frequently in chancery court and is often involved in cases that require emergent relief. He provides institutional and entrepreneurial clients with representation and advice in courts, before arbitration tribunals and in mediation proceedings throughout the country. In addition, he is responsible for overseeing the office's pro bono efforts.

- Douglas Weider — a former Bell Labs software engineer, has litigated a wide variety of technology matters including patent disputes, software development contracts, licensing disputes and trade secret matters. Within the

Greenberg Traurig by the Numbers

| | Firm-wide | N.J. Office |
|--|------------|-------------|
| Department size | 545 | 27 |
| Department as percentage of firm (head-count) | 32% | 40% |
| Department as percentage of firm (revenue) | 36% | 50% |

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past year, he concluded a major international arbitration upholding the license rights to a \$100 million-a-year drug.

- **David Sellinger** — focuses his practice on complex litigation matters, including the representation of corporate clients in the defense of class actions, in federal and state courts in New Jersey and throughout the country. He has over 30 years of experience as a trial lawyer and litigator. A former assistant U.S. attorney for the District of Columbia and federal appellate law clerk, he also handles white collar criminal defense matters.

- **Jason Kislin** — focuses his practice on complex commercial litigation on behalf of clients in a broad array of industries. He has experience with class action defense, business litigation, shareholder litigation, restrictive covenants, employment litigation, real estate litigation and alternative dispute resolution. He is also actively involved in the firm's pro bono efforts.

Cases of Note:

- **American Express Prepaid Card Management Company v. Sidamon-Eristoff**, U.S. District Court, District of New Jersey, and U.S. Court of Appeals for the Third Circuit — Greenberg Traurig brought two related lawsuits on behalf of American Express entities to challenge recent changes to New Jersey's unclaimed property laws concerning travelers cheques and gift cards. The suits alleged that the legislation violates various provisions of the U.S. Constitution and other federal laws, and improperly uses the unclaimed property laws to generate revenue for the state to address budgetary shortfalls. The matters have received nationwide attention, as others states facing budgetary constraints could also use the unclaimed property laws to raise revenues. The matters moved on an expedited track before Judge Freda Wolfson, who conducted a preliminary injunction hearing and then, in a comprehensive opinion, granted a portion of the requested injunctive relief American Express sought. All parties appealed, and Greenberg Traurig successfully moved for and obtained a broader injunction pending disposition of the appeals. Several amici appeared and filed briefs, including the U.S. Chamber of Commerce. After the appeals had

been fully briefed and argued, on Jan. 5, 2012, the Third Circuit issued precedential opinions affirming the district court's decision. (Lead attorney, Philip Sellinger)

- **Kirsch and Jungels v. Delta Dental of New Jersey**, U.S. District Court for the District of New Jersey — Greenberg Traurig defended the largest dental plan in New Jersey in a putative national and statewide class action pending in New Jersey federal court arising from the company's payment to, and claims handling practices for, dentists. Plaintiff sought in excess of \$100 million in damages for the class, as well as sweeping business reforms that would have resulted in significant additional costs to the dental plan. The matter implicated complex statutory and regulatory issues and is one of several similar actions currently being litigated throughout the country against other insurance plans. The case settled on terms that included no cash payment of any kind, certain business reforms and modest attorney fees. (Lead attorneys, Philip Sellinger and Roger Kaplan)

- **Homa v. American Express**, U.S. District Court, District of New Jersey — Greenberg Traurig was lead trial and appellate counsel representing the American Express defendants in a putative class action alleging violations of New Jersey's Consumer Fraud Act in connection with advertisements and promotional materials addressing the rebate feature of the Blue Cash card product. The matter involved precedential and cutting-edge decisions addressing the enforceability of class-arbitration waivers in agreements to arbitrate. In 2007, Greenberg Traurig successfully moved to compel arbitration on an individual basis. The District Court rejected arguments that the class waiver was unconscionable and thus unenforceable. Plaintiff appealed, and in 2009 the Third Circuit reversed and remanded. The Third Circuit concluded that New Jersey law controlled, and that New Jersey Supreme Court decisional law precluding the enforcement of class arbitration waivers in certain circumstances was not preempted by the Federal Arbitration Act. After remand, the parties moved forward with class and fact discovery. However, in 2010, after the U.S. Supreme Court granted certiorari in a matter involving the enforceability of

class waivers, Greenberg Traurig successfully moved to have the matter stayed pending the Supreme Court's decision. Thereafter, in 2011, the firm successfully moved the district court to reinstate its earlier order enforcing the class waiver and compelling arbitration on an individual basis. On Aug. 22, 2012, the Third Circuit affirmed. (Lead attorney, Louis Smith)

- **Fairfax Financial Holdings Ltd. v. Morgan Keegan & Company, Inc.**, New Jersey Superior Court, New Jersey — In 2006, Greenberg Traurig client Morgan Keegan and others were sued in New Jersey Superior Court for \$8 billion, by Fairfax Financial Holdings Ltd. and Fairfax's New Jersey subsidiary, Crum & Forster Holdings Corp. Plaintiffs alleged tortious interference, state RICO violations, commercial disparagement and conspiracy in connection with a supposed scheme to drive down Fairfax's stock price for the benefit of short sellers. About four months away from trial, Morgan Keegan (which had, until then, been represented by out-of-state counsel) hired Greenberg Traurig to serve as co-trial counsel. On only the second day of trial, the judge dismissed all of plaintiffs' claims. (Lead attorney, Philip Sellinger)

- **NuWave Investment Corp. v. Hyman Beck & Company**, Superior Court of New Jersey, Morris County — Greenberg Traurig represented Hyman Beck & Company, a commodities trading advisor, and one of its principals in a case brought by a competing advisor, plaintiff NuWave Investment Corp. Plaintiff contended that Hyman Beck made defamatory statements that were published in confidential background reports prepared by and disseminated by a co-defendant, BackTrack Reports. Plaintiff demanded over \$100 million in lost profits arising from an alleged inability to raise assets commensurate with its peers. Greenberg Traurig successfully moved to dismiss several claims against its clients early in the case and then obtained, over plaintiff's strenuous objections, favorable discovery rulings that allowed deposition of a significant number of plaintiff's investors. Following completion of discovery, the firm won summary judgment on the remaining claims against its clients. An appeal is pending. (Lead attorney, Philip Sellinger) •