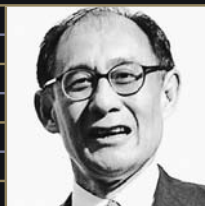


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SPECIAL ISSUE



LITIGATION DEPARTMENT *of the Year*



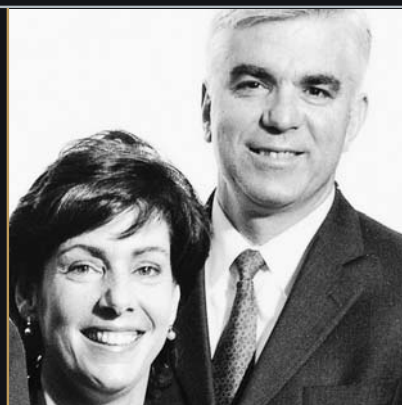
Winner
PAUL, WEISS





SPECIAL REPORT

LITIGATION DEPARTMENT of the Year



WE WERE CAREFUL WHAT WE ASKED FOR AND amazed by what we received. For the third time, we set out to pick the Litigation Department of the Year, and for the second time, the best specialty groups in Intellectual Property, Labor and Employment, and Product Liability.

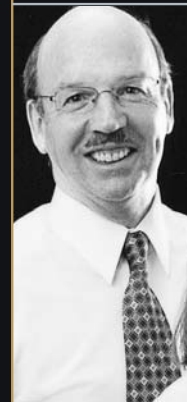
We invited Am Law 200 firms to report on their litigation records between January 1, 2004, and June 30, 2005. Specifically, we asked for no more than five examples of "significant achievements" in six categories, ranging from pretrial work to appellate to pro bono. There were a couple of surprises:

- The competition was the stiffest yet. The 120 entries kept four teams of reporters and editors busy for nearly four months. The choices were very close.
- Smaller departments dominated the general category. This time their cases and their results were better.

Some things didn't change. In each contest, we whittled down the entries to a shortlist of finalists, and then visited each of them, offering these master advocates the chance to plead their cases. Not all excelled. And once again we asked for client references and, as before, some clients proceeded to scoff at the very firms they knew all too well.

In our special report we present the four winners, the runners-up, and, in the Department of the Year contest, 12 more who merited special attention. Congratulations! And let the appeals begin.

—ARIC PRESS



PHOTOGRAPHS BY DOUGLAS LEVERE



The Lifesavers

WITH DEFT STRATEGY AND DOGGED WORK, PAUL, WEISS LAWYERS STEERED THEIR CLIENTS THROUGH THE CORPORATE PLAGUE YEARS. 'THESE GUYS ARE PHENOMENAL,' SAID ONE. THAT'S WHY THEY'RE THE LITIGATION DEPARTMENT OF THE YEAR.

BY ALISON FRANKEL

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HE LAST TWO YEARS were a crucible for Citigroup Inc., the New York-based financial services behemoth and the biggest client of the litigation department of Paul, Weiss, Rifkind, Wharton & Garrison. Facing well over \$150 billion—yes, billion—in exposure from shareholder class actions arising from questionable investments and allegedly misleading analyst recommendations, Citi needed lawyers who could not only excel at what special counsel P.J. Mode calls “the nuts and bolts” of motions practice, courtroom arguments, and trial work, but could also provide something extra: “a very mature, very developed strategic sense,” says Mode. Litigating for Citi in the last two years was like playing chess on a half-dozen interconnected boards. A loss on any of them could cripple the company.

Paul, Weiss didn't lose. Firm litigators led by department cochairman Brad Karp, 45, dispatched the lower-exposure cases with alacrity. A \$10 billion securities class action by Dynegy Inc. shareholders who alleged that Citi had abetted corporate fraud was dismissed; Citi then settled the case for \$5 million to avert an appeal by plaintiffs lawyers from Lerach Coughlin Stoia Geller Rudman & Robbins. In pre-trial motions Paul, Weiss eviscerated a trio of class actions—alleging a total of about \$60 billion in shareholder losses stemming from recommendations by analyst Jack Grubman—in the courtroom of Judge Gerard Lynch; those cases then settled for a total of about \$30 million. The firm obtained the outright dismissal of four other class actions against Citi, and won a stunning ruling from the U.S. Court of Appeals for the Seventh Circuit that dismissed in its entirety a potentially disastrous Madison County, Illinois, class action purporting to consist of all brokerage customers of Citi's Salomon Smith Barney arm. And in a three-week arbitration before an NASD panel, Paul, Weiss defeated an investor's claim that Citi was responsible for the almost \$1 billion he lost in WorldCom stock.

Then there were the monsters: the Enron Corp. and WorldCom,

Inc., class actions, in which Paul, Weiss's client faced up to \$100 billion in exposure. In both cases Paul, Weiss attempted the same nuts-and-bolts tactics that succeeded in other Citi class action—in Enron, for example, the firm argued, as it did successfully in Dynegy, that the U.S. Supreme Court's interpretation of securities laws did not support private claims for abetting fraud—but to no avail. Judges overseeing the cases cut off easy exits for Citi by denying motions to dismiss and proceeding to certify classes.

That's when Brad Karp and his Paul, Weiss team showed general counsel Michael Helfer and Citi lawyers Mode and Jane Sherburne (all former partners of Wilmer, Cutler & Pickering) the value of Paul, Weiss's strategic insight. From the start of the WorldCom litigation, Karp had prepared for the eventuality of Judge Denise Cote certifying a shareholder class. As soon as she

DEPARTMENT SIZE Partners: **38**
Associates and Counsel: **144**

DEPARTMENT AS PERCENT OF FIRM Partners: **37%**
Associates and Counsel: **46%**

ESTIMATED PERCENT OF FIRM REVENUE 2005 **55%**

ON THE DOCKET Continuing to counsel Merck and AIG in government investigations; representing Salomon Smith Barney in a sex discrimination class action in California; defending BASF Corporation in patent infringement suit in Texas.



FROM LEFT: BRAD KARP, LESLIE FAGEN,
MARTIN FLUMENBAUM, THEODORE
WELLS, JR., ROBERTA KAPLAN

did, Paul, Weiss invoked a provision in the class action rules, appealing her certification to the Second Circuit. When the circuit court agreed to hear the interlocutory appeal—just as Karp had predicted it would—leverage in the case shifted, and Citi began the negotiations with plaintiffs lawyers from Bernstein Litowitz Berger & Grossmann that led to Citi's \$2.58 billion settlement.

In Enron, Karp's key calculation was that the first bank defendant to settle with Lerach would receive a discount. He waited for a chink in the plaintiffs' case—the Supreme Court's ruling on loss causation in *Dura Pharmaceuticals, Inc.*, provided it—and opened talks that produced a \$2 billion deal.

In both cases, subsequent settlements by other defendants, who paid premiums for settling after Citi, proved the wisdom of Paul, Weiss's strategic thinking. Citi's lawyers laud the deals Paul, Weiss engineered. By any measure, they admit, the settlements involved a tremendous amount of money—but less money, in relative terms, than Citi's competitors paid. "The market," says Helfer, "has demonstrated how good these settlements were." Thanks to Karp and his Paul, Weiss team, Citigroup has closed a painful chapter of its history without devastating damage to its balance sheet or reputation.

Paul, Weiss is our 2006 Litigation Department of the Year winner because Citigroup is just one of the Fortune 100 companies that have Paul, Weiss to thank for their survival. In case after case since 2004, such clients as Hollinger International Inc., American International Group, Inc., and Merck & Co., Inc., trusted Paul, Weiss's litigators to guide them through the most perilous corporate minefields. And in a time period in which business scandal, complete with criminal and regulatory investigations and tag-along civil suits, dominated headlines, no law firm handled cases with higher stakes than Paul, Weiss—and no law firm was as successful at saving its clients' businesses.

WHEN NECESSARY, Paul, Weiss did it at trial. At the end of 2003, after the board of Hollinger International began to realize the financial shenanigans of its controlling shareholder, Canadian press baron Lord Conrad Black, the company hired Paul, Weiss to protect its assets. In January 2004, Paul,

Weiss sued Black in Delaware Chancery Court to block his attempted sale of his interest in the Canadian parent company of Hollinger International to Barclay Brothers of England. The proposed sale, Paul, Weiss litigation department cochair Martin Flumenbaum, 55, argued, would net Black a premium on his voting shares while essentially stripping Hollinger International shareholders of their most important asset, The London Daily Telegraph Group. Flumenbaum, Daniel Kramer, and their Paul, Weiss team had only three weeks to prepare for a bench trial in which they had to expose Black's manipulations. They succeeded, resoundingly. Black was enjoined from selling his shares, and Hollinger was permitted to adopt the poison pill Paul, Weiss corporate lawyers designed to prevent him from attempting the maneuver again. Flumenbaum continued as Hollinger's champion later that year, when Black tried to block the company's sale of the London newspaper for \$1.3 billion. Once again, Paul, Weiss prevailed, maintaining Hollinger International's control over its corporate destiny. "These guys," says Hollinger senior vice president Paul Healy, "are phenomenal."

In other trials since 2004, partner Steven Rosenfeld upheld the reputation of General Atlantic Partners, an \$8 billion private equity fund, by obtaining a complete defense verdict in Orange

County superior court in a complex \$149 million breach of contract case involving stock in Tickets.com, Inc. And the department's third cochair, Theodore Wells, Jr., 55, saved Schering-Plough Corporation tens of millions of dollars when he tried the damages phase of a patent infringement suit involving the pharmaceutical giant's production of swine vaccine (another firm lost the liability trial, which took place in 2000). Though the company was faced with accusations of willful infringement and damages of up to \$100 million, Wells persuaded a New Jersey jury that Schering-Plough had not willfully infringed the patent, holding damages to only \$7 million.

But more often, Paul, Weiss's success in 2004 and 2005 meant keeping its clients out of court. Merck general counsel Kenneth Frazier, for instance, hired Wells to defend the company in regulatory and criminal investigations stemming from its handling of the Vioxx withdrawal; so far, no government investigation has resulted in action against Merck. Adecco S.A., the French- and Swiss-based temporary staffing firm, brought in Paul, Weiss's Kramer to counsel it in a Securities and Exchange Commission investigation of alleged accounting irregularities; after Paul, Weiss presented the results of its five-month internal investigation—which involved 200 interviews on five continents—the SEC sent Adecco a letter confirming that it would not bring charges against the company. Washington partner Robert Parker, working for the board of The Boeing Company, conducted an internal investigation of allegations that Boeing had illicitly obtained Lockheed Martin Corporation documents. Parker produced two reports, the second of which concluded that Boeing was in compliance with an ethics program that Paul, Weiss had recommended in the first. Boeing presented both reports to the Air Force, which lifted its suspension of business with Boeing. Parker is now working with regulators and forensic accountants to conduct an internal investigation of accounting practices at Fannie Mae.

AIG is a paradigmatic Paul, Weiss representation. The insurance giant first hired partner Mark Pomerantz in 2004, intending to fight one set of SEC allegations at trial. But as the company's regulatory problems expanded, so did the scope of Paul, Weiss's engagement. Simpson Thacher & Bartlett partner Richard Beattie represents the AIG board and led the company's internal investigation, but Paul, Weiss is defending the company in investigations by the New York attorney general, the SEC, and the U.S. Department of Justice. AIG general counsel Ernest Patrikis cites the firm's "excellent rapport" with regulators. "You can measure their success in part by responses from the AG's office regarding AIG," Patrikis says. "That's attributable to actions AIG has taken, but also in part to the relations our outside counsel have with regulators." Patrikis is relying on Paul, Weiss litigators to resolve the raft of securities class actions and derivative suits spawned by the government investigations. A half-dozen partners are now at work helping AIG put its problems behind it.

One of those lawyers, department cochair Flumenbaum, is a bit overly fond of the phrase "bet the company" to describe cases like the AIG representation, but in the two years since 2004, a high percentage of Paul, Weiss's matters actually merited the description. "The wrong strategy in these cases," says Flumenbaum, "could result in the financial ruin of great institutions." The firm's litigators have worked fiendishly hard for their clients, achieving results all the more remarkable because there are only 182 lawyers in the department, 38 partners and 144 associates and counsel as of August 2005. Paul, Weiss has to approach cases strategically because it's simply not big enough to work any other way.



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AUL, WEISS HAS always had a stellar litigation reputation, beginning with the star-studded client list of Simon Rifkind, the retired federal judge who represented such clients as Jacqueline Onassis, William O. Douglas, Jane Fonda, and a plethora of major corporations. Rifkind's mantle was assumed by Arthur Liman. With his public service credentials—a former federal prosecutor,

he headed the Attica prison uprising investigation and the Senate Iran-Contra hearings—and unlikely charisma, Liman was a towering presence at the firm. He was also the litigation department's biggest rainmaker, the foundation of the firm's relationships with such key clients as Viacom Inc. and Time Warner Inc.

But only seven years ago the firm's litigation future was in serious doubt. Liman died in 1997, leaving the firm bereft. One of his protégés, Mark Belnick, had departed to head the legal department of Tyco International Ltd. Two other senior partners, Lewis Kaplan and Colleen McMahon, left Paul, Weiss for federal judgeships. At the end of 1998 Martin Flumenbaum sat down and counted the firm's litigation partners. There were 23—a dangerously small group.

To varying degrees, those 23 partners recognized that they couldn't simply rely on Liman's reputation if they wanted to maintain a first-tier litigation practice. "I thought we were in trouble," cochair Karp, then a young partner, says bluntly. "We were very, very vulnerable . . . in terms of business generation, business profile. We didn't have names as big as Arthur's." Adds Jay Cohen, another longtime partner: "When Arthur got ill, we all realized we were going to have to work much harder to bring in work."

Flumenbaum and Leslie Fagen took over as heads of the department in 1999. Fagen says he was by then reassured that such Liman clients as Time Warner and Becton Dickinson and Company would continue to pass work down to lawyers trained by Liman, including him, Karp, Cohen, and Flumenbaum. But he and Flumenbaum also discussed bringing in lateral partners—a theretofore rare event for the firm.

Flumenbaum had his eye on Wells, whose work had impressed him and Liman when they were all involved in Drexel Burnham Lambert cases in the late 1980s. He'd talked to Wells several times over the years about joining Paul, Weiss, but in 1999 Flumenbaum intensified the courtship. Wells, who had built a first-rate white-collar and corporate defense practice at New Jersey's Lowenstein Sandler, was at first not sure that he wanted to join Paul, Weiss, despite the higher visibility the firm offered. "One of my [Lowenstein] partners said, 'Why do you need the city when you have a whole state?'" Wells says. But his wife reminded him that he'd spent ten years publicly challenging big New York City firms to make more African American partners. His own rhetoric, she said, compelled him to go to Paul, Weiss. "We were both making a statement when I came over here," he says.

Wells, who joined in 2000, was the first in a line of highly successful lateral hires. Mark Pomerantz, a former Supreme Court clerk and federal prosecutor, followed soon after from Rogers & Wells, augmenting the firm's white-collar defense practice. Dan Kramer brought his securities expertise from Schulte Roth & Zabel in 2002. Patent litigator John Nathan, a senior partner at Fish & Neave, joined Paul, Weiss in 2003, and antitrust star Kenneth Gallo of Clifford Chance joined the firm in 2004.

The lateral partners complemented Paul, Weiss's practice,

capitalizing on the talent of the young litigators the firm has always managed to attract. Their practices also complemented one another's. Wells and Pomerantz, for instance, worked together to head off an indictment of New Jersey senator Robert Torricelli in 2002. When Citigroup needed regulatory help from Pomerantz in the Enron case, Wells took over Pomerantz's caseload. Pomerantz returned the favor in 2005: Wells, who was then living in a hotel in Washington, D.C., so he could act as co-lead counsel for Philip Morris USA, Inc., in the Department of Justice

ONLY SEVEN YEARS AGO, AFTER THE DEATH OF FIRM LEGEND ARTHUR LIMAN, PAUL, WEISS'S LITIGATION FUTURE WAS IN DOUBT. "WE WERE VERY, VERY VULNERABLE," SAYS PARTNER KARP.

tobacco suit, needed to clear his docket to take on the Merck case—which came to Paul, Weiss after another lateral partner, Dan Kramer, won the 2004 dismissal of a billion-dollar securities class action against Merck. Antitrust lateral Gallo not only brought a sheaf of cases for MasterCard International Inc. to Paul, Weiss—since 2004 he has won the dismissal of 16 statewide "indirect purchaser" follow-ons to the federal antitrust class action against Visa and MasterCard—he has also contributed counsel to AIG, a representation that lateral partner Pomerantz brought in, lateral Kramer has worked on, and indigenous Paul, Weiss partners Flumenbaum and Roberta Kaplan now lead.

Flumenbaum is just one of the homegrown partners who attained a higher profile after Liman's death. "When calling Arthur was no longer an option [for clients]," says Jay Cohen, "a lot of us were able to develop relationships outside of his shadow." Cohen, for instance, handled a major set of compact disc price-fixing cases for Warner Music Group Corp. in 2004 and 2005. Warner was a Liman client, but it came to Cohen through work he did for another record company. For Time Warner in 2004, Lewis Clayton settled an ERISA case for a fraction of the plaintiffs' demand. Clayton handled the case not because of Liman's longtime relationship with Time Warner, but because Clayton has become known as an ERISA class action expert.

Les Fagen, another Paul, Weiss veteran, disposed of a \$2 billion predatory pricing case for client A.C. Nielsen & Co., knocking out the a key expert witness report on the eve of trial and forcing the plaintiff to dismiss the action. And longtime partners Carey Ramos and Aidan Synnott represented a class of music writers and publishers in efforts to shut down file-sharing businesses. (Ramos did not argue the Grokster case in the Supreme Court, but did file independent briefs on behalf of the music publishers, who were a party to the case but not part of the coalition of movie studios and record producers represented by Jenner & Block.)

No native Paul, Weiss partner has blossomed as fully in the last five years as Brad Karp, who has become so indispensable to Citigroup that he carries an employee ID card from the bank. That relationship also has Liman roots. Karp's introduction to the client came through a Liman connection to its brokerage arm, Salomon Smith Barney, in the sex discrimination cases known as the "Boom Boom Room" litigation. Karp worked on the cases for four years, impressing Citi in-house lawyers who then fed him more work, not only for Salomon but for the parent company as well. When Jane Sherburne joined Citi as deputy general counsel, she heard about Karp, and retained him to analyze Citi's exposure in a predatory lending investigation. Karp continued to earn the respect of every Citi lawyer he worked with, not only with his big-picture analysis and creative ideas, but also with his responsiveness. Karp never turns off his BlackBerry, and has been known to answer client e-mails at three in the morning.

When Enron broke, Sherburne didn't hesitate to put Karp and Pomerantz in charge of Citi's defense. Since then, she and P.J. Mode, whom Citi general counsel Helfer hired to manage the Enron, WorldCom, research analyst, and IPO cases, have worked with dozens of Paul, Weiss litigators—Karp says that three-quarters of his partners have billed more than 100 hours on Citi matters in the last year—and have been stunned at the depth and sophistication of the department. Citi now considers Paul, Weiss its primary outside counsel—a relationship that vastly eclipses any connection Liman had to the company. Moreover, when one of the Citi lawyers Karp worked with in the "Boom Boom Room" litigation moved to JP Morgan Chase & Co., she immediately began hiring Paul, Weiss to represent JP Morgan in such cases as the New York attorney general's investigation of mortgage lending practices. That relationship has nothing to do with Arthur Liman, and everything to do with Brad Karp.

Indeed, Paul, Weiss's litigation client list today is one that even Rifkind and Liman couldn't have assembled, one that required a team of talented lawyers with expertise in a variety of practice areas. In some ways, the foundation of that success lies not with the client connections of Rifkind and Liman but with the culture they fostered. Paul, Weiss's compensation system, for instance, is intended to encourage cooperation and the cultivation of firm clients. It's a modified lockstep, with small bonuses to partners who have made extraordinary contributions. "We stress being productive and working together more than bringing in business," says Flumenbaum. "Distinctions are based on productivity more than anything else, and they're

more psychological than economically material."

And Paul, Weiss continues to attract lawyers committed to the example of public service set by Rifkind and Liman. Pro bono cases since 2004 include Roberta Kaplan's representation of 13 couples challenging New York's ban on same-sex marriage, and the firm's win at trial for low-wage workers in Santa Fe fighting to maintain the city's "living wage" ordinances. The firm's newest litigation partner, Julia Tarver, says she routinely spends between 15 and 30 percent of her time on pro bono cases, including death penalty work (the firm represents four death penalty prisoners in ongoing appeals) and the representation of detainees at Guantánamo Bay. "Everyone here does pro bono," she says. "Ted Wells has done pro bono cases with me. Marty Flumenbaum has done cases with me."

If there's a challenge for Paul, Weiss's litigation department in the next several years, it will be to maintain its culture as the department grows (46 first-year litigation associates are coming in 2006, for instance). Specialization is inevitable, much as the firm prefers to promote its generalist litigators. And as some enormous engagements—notably Citigroup's Enron and WorldCom cases—wind down, Paul, Weiss will have to weigh carefully where to redeploy its lawyers; as Wells says, "if your reputation is built on dedication and creativity, you have to be careful to protect your brand."

Right now, there's no more potent brand in litigation than Paul, Weiss's. Just as this year's Litigation Department of the Year contest was ending, Wells and his partners picked up a new case that will test their talents: Wells's defense of former vice presidential aide I. Lewis Libby, accused of perjury and obstruction of justice in the Central Intelligence Agency leak probe. Wells and his cocounsel, William Jeffress, Jr., of Baker Botts, have already said they plan to litigate the case aggressively, hinting at a head-on challenge of the reporters Libby talked to. The Libby defense is exactly the sort of high-profile, high-stakes case that made Paul, Weiss's reputation 40 years ago—and makes it the winner of the Litigation Department of the Year competition this year.

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