

Litigation Department of the Year (General) Finalist: Cravath, Swaine & Moore

By NYLJ Staff

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Gary A. Bornstein and Kevin J. Orsini, Partners and Co-Heads of Cravath's Litigation Department, answered the questions.

What are some of the department's most satisfying successes of the past year and why?

We were extremely thrilled to achieve a December 2023 trial victory for Epic Games in its high-profile antitrust litigation against Google challenging core aspects of the company's app store policies. The trial itself was a colossal undertaking—lasting five weeks during which we presented testimony from 36 fact witnesses and nine experts. Following trial, the jury deliberated for less than four hours before returning its verdict that Google has engaged in anticompetitive behavior in the distribution of mobile apps and in the handling of in-app payments. This was a massive victory for Epic, but will ultimately benefit all app developers who have their creations in Google's Play Store. Epic has long been an advocate for open platforms and we worked with the company for a number of years to develop a comprehensive legal strategy that would open the Android operating system to



Courtesy photo/David Johnson/Cravath

competition from alternative app stores and payment providers. It was incredibly rewarding to see this hard work and dedication come to such a positive conclusion for our client.

We also continued a string of successes this year for our client Robinhood, who we represent in the sprawling and highprofile "meme stock" litigation. This has been a highly complex and expansive matter, so much so that the claims against the company have been split into three tranches—securities law claims,

state law claims and antitrust claims. After securing dismissal of both the antitrust and state law claims, we won another major victory in November 2023 defeating class certification in the securities tranche. Unique legal challenges like these are what get us excited about the work we do—and it is all the more satisfying when we are able to deliver favorable results for our clients.

A prospective client in crisis calls and asks why your team should be retained. What is your answer?

We bring to every matter a combination of creative thinking, rigorous understanding of the law and renowned trial skill, guided by a relentless dedication to protecting and preserving our client’s mission. Equipped to take on the most critical and challenging litigation across practice areas, industries and jurisdictions, our litigators have a proven track record of overcoming tremendous odds and litigating to the finish to secure the best possible result. Just one recent example is leading PG&E in its successful defense against a massive putative class action seeking \$2.5 billion in damages for power shutoffs to prevent wildfires. Over the course of four years, we won dismissal of the action in the bankruptcy court, affirmance in the district court, argued before the Ninth Circuit and, ultimately, won a precedent-setting decision from the California Supreme Court shielding PG&E from liability.

At every step, we place paramount focus on our clients’ business needs and goals. This

ensures that the results we achieve—for example successfully defending Amgen against a Federal Trade Commission challenge to the largest acquisition in its history—deliver both a positive result in the litigation at hand as well as strategic impact to advance the clients’ long-term business goals.

What traits do you respect most in opposing firms and lawyers?

We have great respect for opposing counsel that bring to the table creative ideas and strong oral advocacy, but the true quality of a firm is often evident in the team members who may not land in the spotlight. Training is a critical part of our profession and we appreciate seeing firms that prioritize leadership opportunities for their associates and junior partners.

What is the firm doing to ensure that future generations of litigators are ready to take the helm?

The Firm is well known for the “Cravath System,” hiring the brightest and most promising law students and rotating them through practice areas to develop generalist litigators with broad legal understanding and first-rate skills. We invest heavily in mentorship and—as the contours of remote and in-office work have evolved over the recent years—we have remained steadfast in our commitment to fostering both formal and informal mentorship at all levels, as well as encouraging early and frequent leadership experience. These efforts are designed to ensure that young Cravath attorneys are building a strong foundation for both their future success and the future success of the Firm.

CRAVATH, SWAINE & MOORE LLP