

Reed Smith's Peter Ellis on Applying Technology to the Litigation Practice and the Momentum For Racial Equity

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By Ross Todd
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Welcome to another edition of our Litigation Leaders series, featuring the litigation practice leaders of the biggest firms in the country.

Meet **Peter Ellis**, who heads the 1,000-plus lawyer litigation group at **Reed Smith**. Based in Chicago, Ellis's own practice covers the gamut of complex commercial and business litigation. He advises national and multinational clients in areas including franchise, licensing and distribution, product liability, retail, unfair competition, trademark, trade secrets, and defense against consumer-related claims.

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

Peter Ellis: I grew up in a small college town in southwestern Ohio where my parents, both retired educators, instilled fantastic, life-long values, namely: honesty, hard work, friendship, careful listening and the pursuit of fairness. I have taken these lessons with me through every stage of my education and legal career. These life values have informed and helped develop my leadership style and how I define success. As the legal industry wrestles with its role in leading through a global pandemic, as well as racial, economic and political uncertainties, I rely heavily on the fundamentals that I gained in my formative years. In particular, having lived in a very strange work-from-home environment for most of 2020, witnessing events and injustices that have fundamentally changed and highlighted how individuals, businesses (including law firms) and communities operate, I am reminded of the importance of leadership, consistency of excellence and setting high expectations for those within our circle of influence. With this in mind, I am hopeful that

the current momentum toward racial equity and inclusion creates real change in the legal industry and in the communities where we live and work. I certainly know that at Reed Smith we are viewing this as a watershed moment on which we will look back and ask ourselves what we did in response to the current demands for change—and I am proud that we will be able to answer in the affirmative that we took real steps to do our part, although there is still much work to do.



Peter Ellis, Reed Smith. Courtesy Photo

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

Reed Smith's litigation department has 1,025 litigators, with approximately two-thirds based in the U.S. and the rest in Europe, the Middle East and Asia; so it is truly global in scope. When it comes to fielding skilled litigation teams, we have the deep bench to mobilize the right talent, no matter where our clients' disputes arise. The firm's five core industry groups, Financial Services, Healthcare/Life Sciences, Entertainment & Media, Energy & Natural Resources, and Transportation, all include incredible litigators, as well as top-tier regulatory and transactional lawyers. Reed Smith has been recognized as an industry leader

in these five industry sectors since the firm's founding more than 140 years ago, and through many international and strategic combinations and mergers. In addition to our industry groups, clients are supported by dozens of marquee practices where Reed Smith is known as a "go-to" firm, such as intellectual property, international arbitration, insurance recovery, privacy & data security, product liability, labor & employment, state tax, and technology & innovation, to name a few.

In what three areas of litigation do you have the deepest bench?

We have strategically assembled extraordinary depth of experience and talent in our industry-focused practices serving our Healthcare/Life Sciences Industry, Energy & Natural Resources, and Financial Services clients.

Our Life Sciences and Healthcare Industry Group is truly top tier. **Janet Kwon**, the co-chair of our Commercial Disputes Group in the United States was retained by the University of California, Los Angeles (UCLA) as its trial counsel in the Los Angeles Superior Court Coordinated Proceeding, Olympus America Duodenoscope Litigation arising out of a high-profile infection outbreak at global hospitals, including UCLA. She is also on Allergan and AbbVie's national coordinating counsel team in the Textured Breast Implant MDL in New Jersey, and she was national counsel in the Testosterone Replacement Therapy product liability and third-party payor class action litigation in N.D. Illinois on behalf of Eli Lilly and Company.

Also on the healthcare side, **Robert Nicholas** and **Shannon McClure** in our Philadelphia office lead a large nationwide team representing AmerisourceBergen Drug Corporation, a major wholesale pharmaceutical distributor, as national counsel in the opioid lawsuits filed by states, municipalities, and other governmental entities seeking to recover costs associated with the opioid epidemic in the United States. This includes the ongoing multidistrict opioid litigation in Cleveland,

Ohio, as well as many upcoming federal and state trials around the country.

A large team of Reed Smith lawyers led by **John McIntyre** also recently completed the settlement of the largest tax case of its type in U.S. history for Bayer with the Department of Justice. The litigation, which lasted more than 10 years, involved Bayer's entitlement to \$175 million in research and development tax credits. Bayer's claim involved more than \$6 billion in qualified research that was conducted at more than 40 research facilities across the United States.

Other high-stakes work we have led in the healthcare industry this year includes representing 10 health care companies in lawsuits filed in the U.S. Court of Federal Claims to recover hundreds of millions of dollars in risk corridors and cost share reduction payments owed under provisions of the Affordable Care Act. Our healthcare, government contracts, and appellate teams collaborated in representing these clients in the Federal Circuit and thereafter on the appeal to the U.S. Supreme Court. After the SCOTUS opinion, our team obtained and collected judgments against the government for our clients totaling more than \$1.5 billion.

In the energy and commodities sector, we continue to be involved in several landmark cases that address issues crucial to the industry's survival. Our global energy and commodities teams handle everything from lease disputes, royalty class actions, condemnations, encroachments, contract and exploration and production rights disputes to insurance recovery matters. For example, we recently won a \$44 million coverage verdict for Phillips 66 in a case involving the addition of MTBE as an oxygenate in gasoline. This is an issue on which the industry has collectively paid out billions of dollars. We also recently obtained a series of victories that ensured the completion of a company's 303-mile, \$4.6 billion natural-gas pipeline from northwestern West Virginia to southern Virginia, won a major contracts dispute for EQT in the Third Circuit, and

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won summary judgment in an international oil shipping dispute for a multinational commodities trading company, among many other cases involving critical infrastructure.

Of course, our reputation in banking and financial services is second to none, with roots extending back to the firm's very beginnings. In the U.S. and abroad, our team acts for all the biggest banks, including Bank of New York Mellon, Barclays, BMO, Citi, PNC, Santander, and many others in some of the biggest cases they face. For example, we've been representing the banking defendants in negotiating a complex multi-party, multibillion dollar settlement in a long-running dispute over credit card swiping fees.

Our work in the financial services sector is forward-looking and frequently involves Fintech and cryptocurrencies. For example, Reed Smith represented Makor Holdings in its High Court claim for payment of a fundraising fee in BitCoin relating to the Initial Coin Offering (ICO) of the LGO crypto-currency exchange. This was one of the first cases involving a claim for payment of BTC and gave rise to complex legal issues, such as the treatment of crypto-currency in the context of a debt claim, as well as the approach to quantum and valuation involving a then largely unregulated, highly volatile asset class.

Our International Arbitration team, recently named to the Global Arbitration Review's list of the top 30 arbitration practices in the world (the GAR 30), works closely with our Financial Services litigation teams, and is currently handling multibillion bond disputes in Latin America and Europe. Similarly, our financial regulatory teams are involved in numerous disputes and investigations. For example, we're representing a global merchant bank in enforcement proceedings issued by the FCA in the UK, and an investigation by the SEC and FINRA in the U.S., investigating a series of complex transactions totaling more than \$1 billion in value in emerging markets, such as Russia and Venezuela.

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

We have long focused on growing and developing our well-recognized trial practice, especially in the five industry groups where we have deep substantive experience. Given that we will be litigating through a

COVID-season of remote proceedings for the foreseeable future, our teams must be prepared to litigate and try cases efficiently and effectively in this environment. Litigation partner **Ricky Raven** recently won a six-week Zoom jury trial in state court in Northern California for Honeywell. This was the first remote trial in the long-running Bendix brakes asbestos litigations. Ricky and his team experienced first-hand the challenges of choosing and connecting with a jury, while handling multiple witnesses and experts remotely via online video.

In order to drive our litigation teams toward increased productivity, Reed Smith has made significant investments in technology and knowledge management. Our focus on innovation, client value, forward-thinking personnel initiatives, diversity and inclusion, and leveraging technology is part of our DNA. Along with Gravity Stack, our legal tech subsidiary, and Global Solutions in Pittsburgh and Leeds, as well as our in house Records & E-Discovery Group, we have created a worldwide platform and culture that greatly enhances the efficiency, analytics and speed of our work, saving our clients time and money, and helping to achieve better outcomes.

Of course, retaining and recruiting top-level talent is a continuing priority across our global platform. While the current remote work environment presents some challenges, we also recognize that it has created some rather unique training opportunities for more junior lawyers, who can now easily join meetings and attend remote hearings at no additional cost to clients. We also have created extensive virtual training in specialized areas, which, this year have included sessions on taking and defending remote depositions and conducting voir dire virtually. Indeed, soon after we began working from home, we launched a 10-part trial training series designed to offer targeted and practical tips to help trial practitioners prepare to take their next case to trial on the merits. Taught by some of our most experienced and busiest lawyers, the program provides unique insights into what it means to be "RS Trial Ready," to own the documents in a case and exceed our clients' expectations in the courtroom.

Finally, it is a priority to find innovative ways to keep our teams connected, healthy—physically and mentally—and productive, despite being physically apart.

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

Reed Smith's litigators are known for being trial-ready from the very start of a case. We work toward getting everyone on the same page early in litigation proceedings, and keeping the team and clients there until the matter successfully concludes. All department members evaluate and litigate their cases through the lens of what a jury or judge will consider relevant and persuasive. From the initial case assessment of a client's dispute, we focus on positioning the matter for trial with the client's best interests and business goals top of mind, while also striving to achieve the most efficient and cost-effective resolution. However, the end game is not always winning a case in a courtroom, and clients may decide to settle once they understand the full risk and cost of taking a case to trial or hearing on the merits. Because we start every engagement by preparing to take it to trial, we are in a strong position at the settlement table, where opposing counsel know we are trial-ready.

Our clients repeatedly tell us that one of the firm's major differentiators is our Client Value Team (CVT), which works with our clients and their trial teams directly to ensure maximum efficiency, at no additional charge to the client. The CVT creates a working budget to ensure litigators are meeting or exceeding the client's budget expectations. The CVT also provides clients with project management, alternative fee arrangements, metrics and dashboards. We deliver value by integrating legal project management, from inception through the end of the engagement. We incorporate rigorous case tracking using customized legal project management tools, which allow our clients to know exactly where they are with their legal spend at any given point during the course of a litigation. With this knowledge, clients can make decisions and allocate their resources in alignment with their long-term business goals.

How many lateral litigation partners have you hired since January 1 2019? What do you look for in lateral hires?

Since January 2019, we've added 29 litigation partners, including eight in Global Commercial Disputes; five in Labor & Employment; four each in Bankruptcy & Restructuring and Insurance Recovery; three in

Transportation; two each in Intellectual Property, Data Security & Privacy, and Investigations and Regulatory Enforcement, and one in Energy & Natural Resources. The two offices where we've added the most litigation partners are Dallas, where we've added eight partners since its opening in May 2019, and Miami, where we've added three. We've also added two each in Houston, Philadelphia, Pittsburgh, Los Angeles, and Paris.

All of our newest litigators expand our reach, especially in handling complex cross-border commercial disputes. Most recently in Houston, we welcomed partner **Kevin Keenan**, who joined our Transportation Group with a global practice focused on energy transportation and infrastructure development. **Nick Austin**, a London partner who joined the firm in 2019, focuses on shipping, commodities and international trade disputes with a special focus in Japan and other Asian markets.

In June, **Felipe Berer** joined our Miami office. Berer is a "go-to," trusted advisor for Brazilian clients with matters in the U.S. and for U.S. companies doing business in Brazil. Also, European and cross-border patent litigator **Thierry Lautier** joined the firm's Paris office. In January, we added insurance recovery duo **Andy Roman** and **Richard Ejzak** in Pittsburgh. Other recent arrivals include leading privacy and data security partner **Sarah Bruno** in San Francisco and Labor & Employment duo **Jennifer Terry** and **Mark Phillips** in Los Angeles.

As a starting point in recruiting, we of course look at experience, but being a team player and appreciating the firm's culture are critical to success at Reed Smith. We have lateral candidates meet with a large number of lawyers, in person or via video, and not just the partners in his or her practice area, but lawyers across the platform who know what it takes to succeed at the firm. We are looking for partners who are invested in making a positive contribution to the life of our firm and enhancing the growth and profitability of our business.

What were some of your firm's biggest in-court wins in the past year?

Our in-court outcomes in 2019 and during the first half of 2020 were significant, including, but not limited to, precedent-setting rulings secured for our clients by the firm's Appellate Practice. For example, for client

Anthem, an administrator of ERISA health plans, the firm secured a published, precedential opinion in the U.S. Court of Appeals for the Fifth Circuit relating to significant ERISA-benefit issues. In another appellate decision, the Third Circuit affirmed the U.S. District Court for the Eastern District of Pennsylvania's grant of summary judgment for GSK in a Sarbanes-Oxley whistleblower case, alleging that GSK violated SOX when it failed to disclose certain alleged weaknesses in its IT system as part of its annual SEC filings.

The London Commercial Disputes Team had an exceptional £400 million victory for Shell in the English High Court; the Managed Care team won a critical \$29.3 million judgment for an HCSC affiliate in a hotly contested two-week arbitration in Texas; and the Government and Regulatory Enforcement contracts team scored an \$82 billion win for DynCorp in the U.S. Court of Federal Claims.

Our IP, Tech & Data practice achieved a trifecta at the PTAB for MIAX, invalidating three business method patents and claims brought by rival exchange Nasdaq; the Insurance Recovery Group successfully litigated hundreds of millions of dollars' worth of policyholder claims resulting from the Puerto Rico hurricanes; and our Labor & Employment Practice secured unanimous jury verdicts for Shell, AmeriGas and U.S. Cargo. And, of course, we prevailed in a notable case where we successfully represented Russian-owned Concord Management & Consulting in the U.S. Department of Justice's lawsuit alleging interference with the 2016 presidential campaign, a case that the government voluntarily dismissed in April 2020 after more than two years of contentious litigation.

The successful September 2020 outcome of our long-tailed litigation on behalf of PepsiCo is further representative of Reed Smith's strong litigation capabilities. Our team won affirmance from the Second Circuit, dismissing claims originally bought by Compania Embotelladora Del Pacifico, S.A. ("CEPSA"), a former Peruvian PepsiCo bottler, two decades ago. Over the period, this litigation bubbled over into three countries and more than 10 different courts before we prevailed for our client in both U.S. District Court of SDNY and on appeal rejecting the \$750 million claim. The final decision is significant for finding the PEPSICO-CEPSA Exclusive Agreement was

terminable at will because it lacked a definite term and that the agreement did not obligate PepsiCo to police transshipping, a beverage industry practice at the heart of many exclusive distribution systems for trillions of dollars of goods. Both rulings have implications far beyond beverage bottling and distribution.

On the pro bono front, we are always involved in significant immigration, asylum, death row, and civil rights cases. We also joined forces with Asian Americans Advancing Justice in filing and achieving class certification in a continuing case against ICE and the U.S. government over its wrongful detention of Vietnamese refugees residing in the United States without due process and in violation of statutory law. We were also extensively involved in protecting minority voting rights in two states regarding the November elections. This recent project is an expansion of our partnership with the NAACP Legal Defense Fund, addressing and advancing racial justice issues.

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