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## What Big Law Litigation Leaders Are Looking Out for in 2026

By Ross Todd

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Each year, **Michele Johnson**, the global chair of the 1,100-plus attorney litigation and trial department at **Latham & Watkins**, pulls together observations and predictions from many of the firm's litigation practice leaders and shares them with me before the holidays. In this year's dispatch, Johnson noted the reports in the industry press about litigation demand outpacing the demand for transactional services for several quarters in a row heading into the end of the year.

She posited that the growth wasn't simply fueled by an increase in the volume of disputes, but that many in-house leaders are taking a more active role in trying to head off potential disputes before they develop into full-blown litigation.

"Litigation is no longer the bridge companies say they'll cross if and when they get to it. Planning for and mitigating litigation exposure is now part of the daily calculus of doing business," said Johnson in her note to me last month.

#### What are the prospects for 2026?

Johnson said she expects 2026 to be the year of "more" in litigation, with disputes becoming more complex, more technology-driven, more cross-border and "more strategically embedded in business operations."

**Jim Rouhandeh**, the head of the litigation department at **Davis Polk & Wardwell**, echoed that sentiment when we connected last month. "Everything's



Courtesy photos

L-R: Loren H. Brown of DLA Piper, James Rouhandeh of Davis Polk and Michele Johnson of Latham & Watkins.

getting bigger. Everything's getting riskier ... and that leads to more and more conflicts and ones that it's harder and harder to resolve," he said.

Rouhandeh added that trial work has picked up at his firm steadily since the COVID-19 pandemic. He said Davis Polk has been to trial six times representing Fortune 50 companies in the past two years and he sees a growing appetite among clients to try cases, especially in high-stakes matters.

"There are some very, very large companies today where it's pretty hard to say any litigation—especially a civil litigation—is a bet-the-company case," Rouhandeh said.

**Loren Brown**, chair of the disputes practice at **DLA Piper**, said that while many law firms were—and still are—going all-in on private equity and transactional

practices, there's been a realization among firm leaders that litigation is a steady business that's not slowing down any time soon. "I just think the courts are congested—as congested as they've ever been," he said. Brown added that a lot of the current innovation in the profession is centered in the plaintiffs bar, where artificial intelligence tools are being used to surface patterns that could indicate valid claims, find claimants, reach them and intake their case.

Davis Polk's Rouhandeh said that while there's been a lot of talk about AI as an agent of cost-control in litigation, those cost controls also stand to benefit government enforcers and plaintiffs lawyers, perhaps fueling more litigation. "It's surely going to bring down the cost of defending litigation, but I think its cost is also a barrier to entry in some ways for plaintiffs lawyers bringing cases, and even for the government," he said. "To the extent that they can use AI to help manage their cases, I think you're going to potentially see more as a result of that."

**Boris Feldman**, the global co-head of tech, media and telecoms sector group at Freshfields, and **Mary Eaton**, the co-head of securities and shareholder litigation at the firm, said there's already signs that AI is poised to increase the volume of securities class action filings. Feldman said there used to be a rule of thumb among securities litigators that a one-day drop of 25% or 30% in a company's stock price would probably result in a lawsuit. But now, he said, there's a world of tiny plaintiff-side firms that appear to have developed scraping models that pull in data points, such as a company's 52-week high and individual trades that generate SEC Form 4 filings. "I think we're going to see a ton more suits in the coming years, irrespective of market conditions," he said.

But will more complaints generate more significant claims against companies, or just pad defense lawyers' win percentages?

Feldman said the work of the top half-dozen or so plaintiff-side firms has always been "quite impressive." The work of smaller shops? Less so. But to analogize what technology could do for the smaller players, he pointed to a comprehensive risk profile analysis he put together himself for a client recently. He loaded the company's SEC filings, transcripts from earnings calls and investor presentations and news articles from major newspapers about it into an AI tool and asked it to do the rest. "It was certainly better than anything I would have come up with myself. And historically, one would have taken two or three young associates or paralegals, and it would have taken them a week to do it," he said. "This took about 15 minutes."

A similar tool would give small plaintiffs firms "a lot of power."

Eaton agreed that AI tools will raise the level of practice at some smaller plaintiffs firms. However, while the stratification between the top players and everyone else in the plaintiff's bar might ease somewhat, she said it won't go away completely. "There really isn't any substitute for top-notch lawyering," Eaton said.

That holds true at defense-side litigation shops as well. DLA Piper's Brown said his firm is developing a "super-user" model harnessing some lawyers and staff to becoming experts in using AI tools. But he said the firm is also doubling down on the "quintessential human skills" such boardroom presentation and courtroom advocacy. "You would think that lawyers would have more interest in and more time for honing those skills as other skills become more automated," he said.

Davis Polk's Rouhandeh, meanwhile, said that when a case makes it all the way to trial, the key remains telling stories in a way that is persuasive to judges and jurors. "It all is the human touch. It's the credibility of the witnesses," he said. "AI is not going to try your case."