

PEOPLE MOVES

BakerHostetler Expands Litigation Group With Addition of Partner Howard E. Cotton

By Robin L. Barton, *The Hedge Fund Law Report*

The litigation group at BakerHostetler has a new addition to its New York office: partner Howard E. Cotton, who joins the firm from Katten Muchin Rosenman. Cotton, who has been a litigator for 30 years, regularly serves as lead counsel in trials and appeals in state and federal courts in New York and throughout the U.S., as well as in numerous arbitration and mediation proceedings. Cotton's clients include leading financial institutions, such as [investment banks](#); hedge funds; and public and private companies, as well as their senior officers.

For additional commentary from BakerHostetler, see our two-part series covering the firm's regulatory update briefing: ["Insight on the SEC Under Chair Clayton, Examinations by OCIE and Implementation of MiFID II"](#) (Jan. 11, 2018); and ["Developments in SEC Enforcement and Hot Topics in Taxation Affecting Private Funds"](#) (Jan. 25, 2018).

"I had a great run at Katten," explained Cotton, who held many senior leadership positions there. "I thought the time was right to leave because the opportunity to service my clients in new and expanding areas such as cybersecurity was available at BakerHostetler." See ["FCA Head of Technology Outlines Regulator's Cybersecurity Expectations and Three Key Lessons for Fund Managers"](#) (Feb. 22, 2018).

Cotton provides his clients with a full menu of services, from regularly leading high-stakes commercial litigation to forging practical solutions pre- and post-litigation. For example, he regularly represents hedge funds, [funds of funds](#) and [family offices](#), as well as their personnel, in connection with litigation, conflict avoidance and risk analysis.

"I have been lucky in that I have had a large following in the funds, real estate and general litigation spaces for many years, and my clients have followed me over to BakerHostetler," remarked Cotton. "I look forward to doing for them exactly what I had previously done but in a way that is broader and deeper. I am now also able to avail myself of the many services that BakerHostetler offers across a larger geographic area."

Recognized for his considerable expertise in complex real estate, corporate and financial services litigation, Cotton regularly leads cases involving partnership and corporate shareholder derivative disputes, breach of fiduciary duty, fraud and breach of contract.

See ["Derivative Actions and Books and Records Demands Involving Hedge Funds"](#) (Oct. 17, 2014)

"My practice has historically been a concierge one. I am a litigator, but many of my clients have listened to my counsel in litigation avoidance and other areas," explained Cotton. "My team included regulatory lawyers, [fund formation](#) lawyers, transactional lawyers and lending lawyers, so that all the myriad components of a client's business could be managed from the same law firm. My clients like to think of me as their relationship partner – their consigliere, if you will."

In the current funds space specifically, Cotton said that there are probably three or four issues that are most critical.

"First, many of the larger funds are facing what I will call succession issues. Several of the biggest players in hedge funds are now approaching retirement age," explained Cotton. "There are a lot of issues relevant to replacing them, including which portfolio managers can rise to become fund managers and how to handle inevitable issues concerning competition from those who don't."

See our three-part series on succession planning: ["Why Fund Managers Must Review Their Positions on Succession Planning and CCO Outsourcing"](#) (Jun. 7, 2018); ["What Fund Managers Should Consider When Hiring and Onboarding CCOs: Determining CCO Governance Structures; and Evaluating Risks of CCO Turnover"](#) (Jun. 14, 2018); and ["A Succession-Planning Roadmap for Fund Managers"](#) (Jun. 21, 2018).

“Second, we are in a world that is becoming more and more global in nature; thus, firms are now subject to regulatory oversight not only in the States but also in Europe,” Cotton observed, with the recast [Markets in Financial Instruments Directive](#) and E.U.’s General Data Protection Regulation serving as two key examples. “That is something that is affecting clients in a very big way.”

See “[How the GDPR Will Affect Private Funds’ Use of Alternative Data](#)” (Jun. 14, 2018); and our two-part series “What Are the GDPR’s Implications for Alternative Investment Managers?”: [Part One](#) (Apr. 26, 2018); and [Part Two](#) (May 10, 2018).

“In addition, there are cybersecurity and privacy issues, which add a whole other dimension to fund management,” noted Cotton. “I have had clients in various industries, however, that are also impacted by these issues. Cybersecurity is becoming something that no client can overlook.”

“For example, I had a call the other day with a client, who asked, ‘How do we best position ourselves to be compliant with the various regulatory oversights and to best protect our data and the interests of our investors, etc.?’” remarked Cotton.

[Breaches](#) are obviously also a major concern. Cotton explained, “A breach compels clients to determine what to do about the breach; how to respond to it; how to correct the problem; and how to comply with the state, federal and global regulations.” He added, “If the breach potentially affects hundreds or thousands of investors, that immediately creates a whole other sort of five-alarm fire.”

See our three-part series on how fund managers should structure their cybersecurity programs: “[Background and Best Practices](#)” (Mar. 22, 2018); “[CISO Hiring, Governance Structures and the Role of the CCO](#)” (Apr. 5, 2018); and “[Stakeholder Communication, Outsourcing, Co-Sourcing and Managing Third Parties](#)” (Apr. 12, 2018).

“Last, many investors – including the biggest investors – are looking for separately managed accounts, which involve a whole host of additional restrictions and mandates. They also present more of a challenge for compliance officers,” noted Cotton. “It is becoming harder to just offer a product. Managers now have to be more willing to specifically tailor these products to their larger investors.”

See “[The SEC’s Recent Revisions to Form ADV and the Recordkeeping Rule: What Investment Advisers Need to Know About Managed Account Disclosure, Umbrella Registration and Outsourced CCOs](#)” (Nov. 3, 2016).

Aside from being a first-chair litigator, Cotton asserted that he brings to the mix seasoned senior counseling functions to avoid litigation; weed through regulatory oversight; avoid internal issues; and find practical and pragmatic solutions outside of the courtroom.

“Through many years of litigating in different places with different outcomes, I have a pretty good sense of where things are headed,” Cotton explained, “and I am often able to convince clients to try practical solutions short of litigation – such as mediation or [arbitration](#) – which often lead to faster and more practical outcomes.”