

## Washington Powerhouse: Perkins Coie

By Rachel Riley

*Law360 (August 22, 2023, 2:36 PM EDT)* -- Perkins Coie LLP's work in the past year has included negotiating contracts for Microsoft related to its growing partnership with OpenAI, the research and development company behind ChatGPT, and defending Amazon from eight lawsuits across the country involving claims the company illegally harvested users' biometric data.

Its success in those areas and its reputation as a trusted adviser to corporations with global reach have earned it a place among Law360's Washington Powerhouses.

While artificial intelligence has only recently risen to the forefront of the public consciousness, attorneys at Perkins Coie's Seattle headquarters have seen it coming for more than a decade, the office's managing partner, James F. Williams, told Law360.

"We have been at the cutting edge of artificial intelligence for the last 12 years," he said. "Way before anybody in mainstream media was ever talking about artificial intelligence, our lawyers were working on those issues with our clients."

The firm has deep roots in Seattle, which Williams dubbed "ground zero" of the next technological revolution. In its 111-year history in the city, it has built a "deep bench" of legal experts equipped to juggle issues related to privacy, machine learning and robotics, and other facets of AI, he said.

Perkins Coie has counseled local corporate giants in other industries, including Boeing, and has drawn attorneys who have helped it carve out specialties in sectors, from manufacturing to health care.

The Seattle office is now home to about 360 lawyers, including 130 dedicated to litigation, accounting for about a third of Perkins Coie's attorneys nationwide. The firm also has a team of 26 attorneys east of Lake Washington in Bellevue, it said.

"Very few firms nationally have 130 litigators in one office, and the fact that we're here in the Puget Sound, and we have that is really extraordinary," Williams said. "It means that we cover the vast waterfront of every conceivable form of litigation, and we have the expertise in those."

One milestone for the firm's tech-savvy team came in January, when Microsoft announced a multibillion-dollar investment in OpenAI, marking the beginning of the third phase of a partnership



between the two companies following investments in 2019 and 2021. Perkins Coie has represented Microsoft in drafting all intellectual property and commercial agreements between the two companies.

The team has nearly 60 years of collective experience working with Microsoft, helping to propel the agreements "from term sheets to signed definitives," Dave Daggett, a technology transaction partner in the Seattle office, said. But despite its decades of counseling the company through large deals, the firm's work on the OpenAI partnership felt different from the start, he said.

"Probably the most difficult issue in the aggregate was the amount of visibility this deal was going to have and has had, and drafting with the knowledge that this would not be an agreement that would likely just sit in an 'electronic drawer' somewhere," Daggett said.

OpenAI's chatbot, ChatGPT, has captivated the world since its debut in November 2022 and broader release in March.

Before the fanfare, Daggett and fellow members of Perkins Coie's Microsoft team faced the challenge of engineering an agreement that would maintain its shape and fairness in the face of likely future regulations, without knowing what exactly policymakers will do with artificial intelligence.

But he said that Perkins Coie's technology transactions and privacy law practice group includes people with professional experience in the tech sector — outside the legal realm — who contribute to the firm's understanding of what to prioritize during the deal-drafting process.

These attorneys have spent years getting to know the complex business of Microsoft and other corporations, Daggett said.

"Having done — and regularly doing — work for that client across its entire enterprise gives us a unique ability to anticipate what will and will not be issues in these mega deals," he said. "We work aggressively and relentlessly to be super practical."

"We know the clients very well, we know what does and doesn't matter to them, and we are always asking ourselves and regularly discussing with clients, 'Does this issue truly, practically matter?'" Daggett added. "Less is often much more in complex transactions like this."

The firm also represented Microsoft in its \$190 million acquisition of Fungible Inc., a company specializing in solutions for better data center performance. That transaction closed in January.

As privacy rights continue to drive a growing category of novel legal questions for data-rich companies, Perkins Coie has advised Amazon in cases involving biometrics, a variety of unique physical identifiers including fingerprints and facial structures.

The firm fought proposed class actions in Washington federal court and in Chicago federal court alleging that Amazon Rekognition software collects, analyzes and stores images of individuals' faces without their consent. Another case it's working on for the company involves claims that its Connect Voice ID software service violates the California Invasion of Privacy Act.

Perkins Coie's attorneys also represented Amazon in *McCall v. Amazon*, a lawsuit asserting claims under New York City's biometric identifier information law that was voluntarily dismissed in April.

Williams said that such cases can be especially challenging given how little the law says about the collection and disclosure of such data. Most jurisdictions, he said, rely on "ancient statutes that were designed to deal with telephone interceptions, which have no relationship whatsoever to the technology that's being used today."

"A lot of this stuff is cutting edge," Williams said. "And it's hard for people who aren't immersed in it to really understand how it works or operates. It takes a lot of learning to get judges and the people who are making the decision up to speed."

Among the firm's other highlights serving corporate clients was the settlement its lawyers obtained as lead counsel for The Boeing Co. in a 737 Max supplier's \$75 million breach-of-contract lawsuit. The parties notified a Washington federal judge of the settlement in March, just four days before a trial was set to begin over the supplier's claims that the aerospace giant wrongfully ended a contract early in 2017.

Perkins Coie also won an appeal for construction engineering company Hitachi Zosen USA Ltd. in March, when Washington state appellate judges decided the trial court couldn't instruct a jury that a contractor intentionally destroyed evidence in the case, which seeks more than \$600 million in insurance coverage in connection with a broken tunnel-boring machine owned by Hitachi.

And the firm helped Bellevue video-game developer Bungie Inc. secure a \$4.4 million arbitration award in its claims against online sellers of "cheat codes" for its popular "Destiny 2" game.

--Editing by Gemma Horowitz.