



SIDLEY

FALL 2021

Sidley's Shareholder Activism & Corporate Defense Practice

LEADING THE DEFENSE OF CORPORATE AMERICA

Why Sidley is the Top Choice for Defense

Activism campaigns are bet-the-company situations — The stakes are too high to use anyone but the best

No. 1 RANKINGS

Sidley's ranking for legal company defense in all activism league tables (*Bloomberg*, *FactSet*, *Refinitiv*, and *Activist Insight*)

250 CAMPAIGNS

Sidley's team defended over 250 campaigns in the last 5 years, far more than any other U.S. law firm*

85 DEFENDED PROXY FIGHTS

Sidley's team defended more than 85 proxy fights in the last 5 years, far more than any other law firm in the world*

25% OF PROXY FIGHTS

Sidley's team was involved in 25% of all late stage proxy fights in the U.S. in the last 5 years*

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100% OF TIME

Sidley's co-chairs, Kai Liekefett and Derek Zaba, spend 100% of their time on activism and hostile M&A. *Chambers USA* ranks both as Top 5 attorneys for "Takeover Defense"

15 ACTIVISM ATTORNEYS

Sidley's team has 15 dedicated activism attorneys, the largest defense team in the world

* Note: 2016 to 2021. Includes client matters handled by Sidley team members prior to joining the Firm.

Activism League Table Rankings

Sidley is the No. 1 in all legal activism defense league tables

Bloomberg

No. 1 in *Bloomberg's Global Activism League Tables* for Company Representations
2020 & 1H 2021

FACTSET

No. 1 in *FactSet's Activism Advisor League Tables* for Company Representations
2020 & 1H 2021

REFINITIV

No. 1 in *Refinitiv's* (formerly Thomson Reuters') *Global Shareholder Activism Scorecard* for Company Representations
2020 & 1H 2021

Activist Insight

No. 1 in *Activist Insight* for Total Issuer Representations
2020 & 1H 2021

Bloomberg Law[®]

Sidley Austin Led Law Firms Battling Activist Investors in 2020

Companies used Sidley 33 times against activists last year

Global Legal Advisers - Company

Adviser	FY 2020		
	# Engagements	Stake \$b	Rank
Sidley Austin	33	\$4.1	1 ▲
Wachtell Lipton Rosen & Katz	31	\$10.4	2

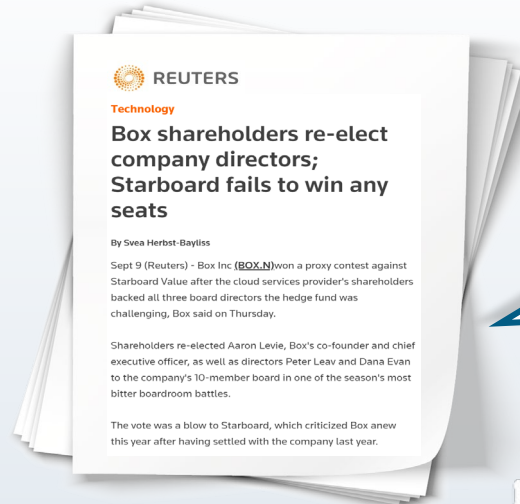
Sidley Austin LLP had more work defending companies against activist investors than any other law firm last year, according to new Bloomberg data.

Activists initiated 587 new campaigns with stakes worth \$86 billion in 2020 overall, according to the Bloomberg data. The number of new campaigns represented a 2.3% drop from 601 in 2019. But 2020's stakes were 7% higher than the \$80 billion total for 2019.

Work related to shareholder activism was down early in 2020 due to the Covid-19 pandemic but picked up later in the year, said Sidley partner Derek Zaba, a co-chairman of the firm's shareholder activism practice.

"We have enough recognized expertise that we get a lot of companies calling us out of the blue," Zaba said.

We Advise on the Landmark Activist Situations in Corporate America



Starboard, which owns an 8.4% stake in Box, has not lost a proxy vote in nearly a decade since falling to AOL in 2012. It is known in the industry for having won big victories at Darden Restaurants in 2014 and at GCP Applied Technologies last year and traditionally wins more board seats than any other activist investor, according to bankers and analysts.



The largest shareholder in Wynn Resorts, Elaine Wynn is pushing to have a longtime board member, who is close to Steve Wynn, voted out at the annual meeting next week.
John Locher/Associated Press

Accolades for Sidley's Shareholder Activism Practice

Chambers USA Ranks Both of Sidley's Co-Chairs as Top 5 Attorneys for "Takeover Defense"



Ranked
3rd

Kai Liekefett

Ranked
5th

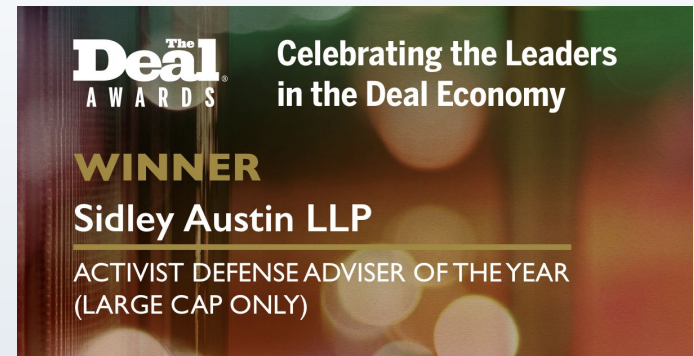
Derek Zaba

From the Chambers USA Guide:

***Kai Liekefett** retains a strong reputation for his defense work and proxy fight expertise. He is active in situations on both the domestic and international stages. "He's bright, articulate and good with boards." "He is very creative in terms of tactics." Peers report that he is a "terrific lawyer." He is "equally adept in front of a board as well as opposite an activist," according to clients, who note that he is "great at getting things done and obtaining great results." (Chambers 2017-2021)*

***Derek Zaba** splits his time between the firm's Palo Alto and New York offices. He regularly advises on proxy contests. "He speaks to the board in a way that makes sense. He's really good." (Chambers 2021)*

The Deal recognized Sidley as "Activist Defense Adviser of the Year" in 2021

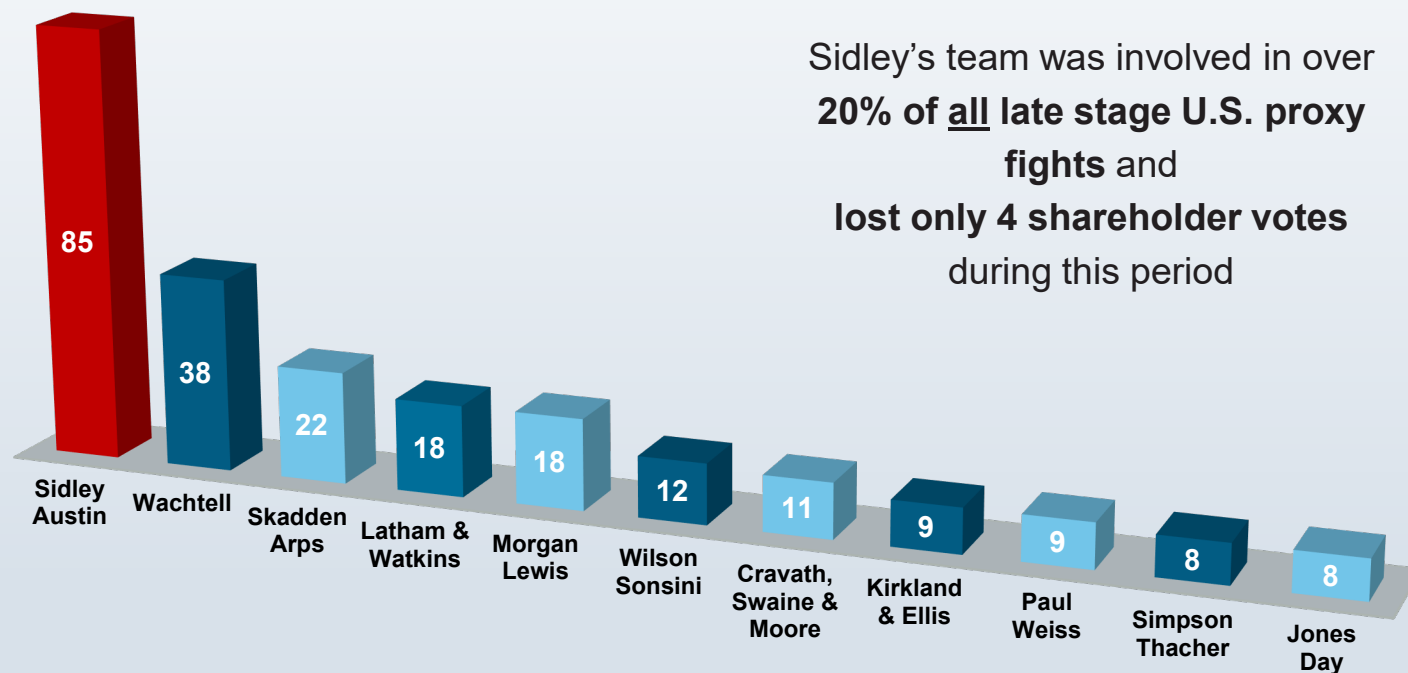


The American Lawyer named Kai Liekefett "2019 Dealmaker of the Year"



Top Law Firm's Proxy Fight Experience 2016-2021































Sidley's Team has far more proxy fight experience than any other top law firm in the past 5 years



Sidley has also negotiated more settlements than any other defense law firm in the past 5 years

Sources: FactSet (2021 Am Law 50 law firms (by gross revenue) by company representations in proxy contests from 2016 through 9/30/2021; includes matters handled by Sidley team members prior to joining the Firm)

Our Team's Select Recent High-Profile Activism Client Matters

 <p>Box Starboard Value</p>	 <p>AT&T Elliott Management</p>	 <p>Crown Castle Elliott Management</p>	 <p>International Flavors & Fragrances (CEO) Sachem Head</p>	 <p>TreeHouse Foods JANA Partners</p>	 <p>Argo Group International Voce Capital</p>
 <p>Cubic Elliott Management & Veritas Capital</p>	 <p>Alkermes Elliott Management and Sarissa Capital</p>	 <p>Big Lots Macellum and Ancora</p>	 <p>Delek US Carl Icahn & CVR Energy</p>	 <p>Texas Pacific Land Trust SoftVest & Horizon Kinetics</p>	 <p>AmTrust Financial Carl Icahn</p>
 <p>Fujifilm Xerox, Carl Icahn & Darwin Deason</p>	 <p>Wynn Resorts Elaine Wynn</p>	 <p>Herbalife Carl Icahn</p>	 <p>MiMedx Prescience Point & Parker Petit</p>	 <p>Sempra Energy Elliott Management</p>	 <p>Pandora Corvex</p>
 <p>HomeStreet Roaring Blue Lion Capital</p>	 <p>Hess Elliott Management</p>	 <p>Yahoo Starboard Value</p>	 <p>United Technologies Third Point and Pershing Square</p>	 <p>American International Group Carl Icahn & Paulson & Co</p>	 <p>BHP Billiton Elliott Management</p>
 <p>United Continental PAR Capital & Altimeter Capital</p>	 <p>E. I. du Pont de Nemours Triam Fund Management</p>	 <p>The Macerich Company Land & Buildings</p>	 <p>Cabela's Elliott Management</p>	 <p>Sysco Triam Fund Management</p>	 <p>PulteGroup Elliott Management & William J. Pulte</p>

Sidley is Frequently Hired as Special Activism Counsel

Sidley has been hired as activism special counsel, in various roles, to work alongside regular counsel from more than two dozen different AmLaw 50 law firms, even those with top corporate practices and activism experience

M&A AT&T Adds Centerview to Well-Armored Team in Defense Against Elliott

Thu 09/26/2019 14:47 PM

Takeaways

- AT&T has tapped Centerview Partners to bolster its defenses against activist shareholder Elliott Management, two sources said.
- The company is being advised by law firms Sullivan & Cromwell and Sidley Austin, sources said.
- The main tension between AT&T and Elliott is building around AT&T CEO John Stankey, one source said.

AT&T has tapped Centerview Partners to bolster its defenses against activist shareholder Elliott Management, which recently disclosed an over \$3 billion stake in the telecommunications and media giant, two sources familiar with the situation said.

The boutique bank joins a team comprising Goldman Sachs as well as a handful of other advisors, the two sources said.

On the legal side, the company is being advised by two law firms, said the first and a third source. One of them, Sullivan & Cromwell, is historically close to the group, said the third source. **The other, Sidley Austin, has a leading corporate defense practice, said the first and second source.**

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Examples of Sidley as Special Activism Counsel

(Incumbent Law Firm)



Sullivan & Cromwell



Cravath, Swaine & Moore



Sherman & Sterling



* Represented the CEO

Cleary Gottlieb & David Polk



TreeHouse

Skadden Arps



Paul Weiss

Kai Haakon E. Liekefett

Co-Chair of Sidley's Shareholder & Corporate Defense Practice



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SELECT EXPERIENCE

- **Box** in its proxy contest defense against Starboard
- **AT&T** in its activism campaign defense against Elliott Management
- **Crown Castle** in its activism campaign defense against Elliott Management
- **US Foods** in its activism campaign defense against Sachem Head
- **FF [CEO]** in its proxy contest defense against Sachem Head
- **TreeHouse Foods** in its cooperation agreement with JANA Partners
- **Alkermes** in its settlement agreements with Elliott Management and Sarissa Capital Management
- **Cubic** in connection with the unsolicited takeover bid by Elliott Management and Veritas Capital
- **Big Lots** in its proxy contest defense against Macellum and Ancora
- **Delek US** in defense of an unsolicited takeover bid by Carl Icahn and CVR
- **Argo Group International** in its proxy contest defense against Voce Capital
- **Texas Pacific** in its proxy contest defense against SoftVest and Horizon Kinetic
- **MiMedx** in its proxy contest defense against Prescience Point & Parker Petit
- **Elaine Wynn** in her proxy contest against Wynn Resorts
- **Fujifilm** in its proxy contest-related litigation against Xerox and Carl Icahn
- **HomeStreet** in its proxy contest defense against Blue Lion Capital
- **Cigna** in its proxy contest defense of its merger with Express Script against Carl Icahn
- **AmTrust Financial** in its proxy contest defense against Carl Icahn
- **CenterPoint Energy** in its activism defense against Elliott Management

Kai co-chairs Sidley's Shareholder Activism & Corporate Defense Practice. He has over 20 years of experience in New York, London, Germany, Hong Kong and Tokyo. In the last 5 years, Kai has defended over 85 proxy contests, more than any other defense attorney in the world, and 20% of all late-stage U.S. proxy fights.

Under Kai's leadership, Sidley rose to the top of all activism defense league tables, including the No. 1 rankings by *Bloomberg*, *FactSet*, *Refinitiv* (formerly *Thomson Reuters*) and *Activist Insight* for 2020 and H1 2021, and was recognized by *The Deal* as "Activist Defense Adviser of the Year" in 2021.

Kai was named "2019 Dealmaker of the Year" by *The American Lawyer*. In 2021, *Chambers USA* ranked him as a Top 3 leading attorney for "Takeover Defense", lauding Kai as "terrific lawyer" who is "bright, articulate and good with boards," "very creative in terms of tactics". Moreover, he was selected as one of the *Lawdragon 500* "Leading Dealmakers in America" in 2021. In 2020, Kai was elected as a fellow of *The American College of Governance Counsel*, the honorary association of lawyers widely recognized for their achievements in the field of governance.

Kai sits on the board of the New York Chapter of the *National Association of Corporate Directors* (NACD) and the *Law360* Mergers & Acquisitions Editorial Board. He speaks regularly on panels and at universities around the world, including Harvard University and Frankfurt School of Finance & Management. He is frequently interviewed and quoted as a thought leader by the media, including *CNN*, *The Wall Street Journal*, *CNBC*, *The New York Times*, *Bloomberg*, *Reuters*, *Financial Times*, *TIME Magazine*, *USA Today*, *Forbes*, *Law360* and *The Deal*.

Kai holds a Ph.D., magna cum laude, from Freiburg University; an Executive MBA, summa cum laude (best of class), from Muenster Business School; and an LL.M., James Kent Scholar, from Columbia Law School. He was in the top 0.1% nationwide in his First Legal State Exam (J.D. equivalent) and in the top 1.5% nationwide in his Second Legal State Exam in Germany.

Derek O. Zaba Co-Chair of Sidley's Shareholder & Corporate Defense Practice



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- **Hess** in its activism campaign defense against Elliott Management
- **DuPont** in its proxy contest defense against Trian
- **BHP** in its activism campaign defense against Elliott Management
- **United Technologies** in its activism campaign defense against Third Point and Pershing Square
- **Yahoo!** in its proxy contest defense against Starboard Value
- **Fiesta Restaurants** in its proxy contest defense against JCP
- **Simpson Manufacturing** in its proxy contest defense against Iron Compass
- **AIG** in its proxy contest defense against Carl Icahn and Paulson & Co

Derek co-chairs Sidley's Shareholder Activism & Corporate Defense Practice. Over the past two decades, he has been involved in dozens of activist campaigns and proxy contests in various advisory and principal capacities. He spends 100% of his time on shareholder activism campaigns, proxy fights and hostile M&A. Prior to Sidley, Derek was the head of the activism defense practice at Camberview Partners and previously served as a partner and investment professional at activist and event driven hedge funds.

In 2021, *Chambers USA* ranked Derek as a Top 5 leading attorney for "Takeover Defense", noting that "[he] speaks to the board in a way that makes sense" and "[he's] really good." Derek's clients are located worldwide with sizes across the market cap spectrum. He has helped dozens of public companies successfully navigate activist situations worldwide and across a wide range of industries. He has defended against the vast majority of top tier activist hedge funds, as well as many others including one time and occasional activists. He has counseled management teams and directors on hundreds of engagements with proxy advisory firms and institutional investors relating to shareholder activism, contested M&A, corporate governance and other matters.

Derek is a highly sought after speaker for panels on the topics of shareholder activism and related matters, is frequently quoted and regularly speaks on the topic of shareholder activism, including at Stanford University Law School and on public radio.

Derek holds a J.D. from Stanford Law School, where he graduated Order of the Coif; an MBA from the Olin School of Business at Washington University in St. Louis, concentrating in Finance; and a bachelor's degree in Systems Science and Mathematics, cum laude, from the School of Engineering and Applied Science at Washington University in St. Louis.

Case Study: *Box vs. Starboard*

Summary: Sidley advised Box in its successful proxy contest against Starboard. Following a settlement to replace 3 directors in March 2020, Starboard returned for a proxy contest in 2021. None of the 3 Starboard nominees were elected at the 2021 shareholder meeting. It was the activist hedge fund's first defeat since 2012.



NYSE: BOX

- Headquartered in Redwood City, California and provides an enterprise cloud platform for accessing and sharing content from anywhere
- Founded in 2005 by CEO Aaron Levie and CFO Dylan Smith, then went public in January 2015
- \$3.5 billion market cap (at the onset of Starboard's 2021 campaign)



STARBOARD VALUE LP

- Among the most prolific and aggressive activist hedge funds, Starboard has launched activism campaigns at over 100 companies since 2011
- Runs high stakes campaigns, often seeking control of company boards, the replacement of CEOs, and/or the sale of all or part of its target companies
- Typically invests in U.S. companies

Sept. 3, 2019	Starboard files a 13D disclosing a 7.5% stake in Box
March 23, 2020	Box announces a settlement with Starboard to replace 3 directors and form an Operating Committee
Dec. 1, 2020	Box announces Q3 results and guides Q4 revenue to 1.1% below analysts' consensus estimates
Dec. 2020	Starboard demands that Box explore a sale or fire its CEO
Jan. 19, 2021	Box Board forms a Strategy Committee to explore strategic options, including a potential sale of Box
Feb. 23, 2021	Reuters reports that Starboard is preparing to launch a proxy contest
March 18, 2021	Box extends director nomination deadline to May 11, automatically extending Starboard's standstill to April 6.
March 22, 2021	Reuters reports that Box is exploring a sale amid pressure from Starboard
April 8, 2021	KKR-led \$500 million strategic investment announced as outcome of strategic review. Box announces Chair and CEO roles to be separated and a new Chair announced
May 10, 2021	Starboard nominates 4 director candidates (later cuts to 3)
May 12, 2021	KKR-led in closes. Next day, Box is sued to enjoin KKR-led group's agreement to vote shares as Board recommends. Box waives voting agreement
June 30, 2021	Box completes a self-tender offer using proceeds from the KKR-led deal paying \$25.75/share tendered
July 19-20, 2021	Box and Starboard file definitive proxy materials
August 12, 2021	Box pre-announces strong Q2 financial results
August 23, 2021	ISS recommends that shareholders vote on Box's proxy card in favor of 2 of 3 Box's nominees and withhold on 3rd
August 27, 2021	Glass Lewis recommends that shareholders vote on Starboard's proxy card in favor of only Peter Feld
Sept. 9, 2021	Box's annual meeting is held. Box announces its 3 nominees have all been reelected by sizable margins
Oct. 14, 2021	Starboard files an "exit" 13D, reducing its stake to 3.9%

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