

LIFETIME ACHIEVERS ■ ATTORNEYS OF THE YEAR ■ IS THE BRASS RING TARNISHED?

THE AMERICAN LAWYER

law.com/americanlawyer

DECEMBER 2021



The Verdict Is In

Kirkland & Ellis is the Litigation Department of the Year.

FROM LEFT TO RIGHT: ANDREW KASSOF, ELLISEN TURNER, SANDRA GOLDSTEIN, MIKE JONES, HARIKLIA KARIS AND GREGG LOCASCIO

An **ALM** Publication

SHOCK AND AWE

With the resources of the world's largest firm at their disposal, Kirkland & Ellis litigators operate with power and precision.

By Andrew Maloney

IF YOU WANT TO KNOW what Kirkland & Ellis litigation is about, look no further than the \$577 million settlement that lead counsel Michael Jones and others won in a discrimination case against the state of Maryland and its higher education system in May. It took 12 years, nearly 37,500 pro bono hours, and an all-avenues approach—from the courts to the state capitol to the community—in service of the state's historically Black colleges and universities.

The schools had argued the state was depriving them of resources relative to other universities and that the practice was linked to segregation. Along with John C. Brittain of the University of the District of Columbia, the Lawyers' Committee for Civil Rights Under Law and others at Kirkland, Jones steered the plaintiffs' case through multiple district court trials, federal appeals, years of mediation

and advocacy in the community and the state legislature. He coordinated with the firm's appellate strategists and spared no expense for experts. He spoke to lawmakers and editorial boards, at press conferences and state-house rallies. And when the pandemic shuttered many of those avenues, he carried on with the task virtually, until lawmakers and the governor approved a payout and the court signed off.

That overwhelming use of force—all hands on deck, marshaling the immense resources of the world's highest-grossing firm—is emblematic of the Kirkland approach, Jones says.

"When we take on a matter, it's like the U.S. military: shock and awe. We find a way to be persistent, and to be creative, to try and get that outcome for our clients," Jones says. "In that way, I think it really is characteristic of the firm."

The firm is no stranger to big cases. But that one is especially resonant

now, as the legal industry and others reckon with the largest racial justice movement in decades after the murder of George Floyd in Minneapolis last year. Mark Filip, a partner at Kirkland who helps lead its government enforcement defense practice, says the settlement also showcased another firm principle: actions speak louder than words.

"That's a tangible, palpable, thunder-on-the-mountain-type outcome that's going to produce effects for generations," Filip says. "So, if you want to know what Kirkland litigation is about, it's people putting that passion and that kind of talent into whatever setting it takes to try and get something done."

The firm says it counted nearly 900 wins between August 2019 and July of this year, with 44 trial and 111 appellate victories. Its U.S. Supreme Court practice was also difficult to match, with stalwarts Paul Clement and Erin

Murphy among others arguing 14 cases before the nation's top court in that same timespan. That accounts for more than 10% of cases heard by the justices during that stretch, and puts the three-year total at 19 arguments made by six different Kirkland lawyers.

One thing that distinguishes the firm's litigation team from others, its lawyers say, is its willingness to push significant cases to even its youngest lawyers. Granted, the firm is well-known for courting very capable young lawyers. But the approach "helps train the next generation of lawyers at the firm while securing outcomes that allow them to build durable, lasting relationships with our clients," says Andrew Kassof, one of the leaders of the firm's litigation practice and a member of Kirkland's executive committee.

In addition to one of the largest pro bono settlements in history, the firm also won big in the second trial in the largest multidistrict litigation in U.S. history this year, representing multinational conglomerate 3M against claims brought by former U.S. service members that its combat earplugs were defective. There are still more than a dozen trials pending in the litigation, lead Kirkland lawyer Hariklia "Carrie" Karis says, but early defense wins can serve as an archetype for cases going forward. In this case, Karis and her team earned the first win for 3M, defeating all 10 claims brought by the plaintiffs.

Karis says the 3M cases display the firm's roster strength, from litigators with extensive experience to junior lawyers who are brought in and mentored to quickly contribute to major matters.

"Because of the size of the multidistrict litigation, and the speed with which it's moving, it's a good indicator, if you will, of the bench strength of Kirkland & Ellis' litigation department," she says. "I don't think that's an easy feat—to get ready for a dozen trials, period, with seasoned trial lawyers, but who have not been working on the case previously."

The firm handled and won a variety of cases for a diverse group of clients, from the state of Georgia in a long-lasting "water war" with the state of Florida over the Apalachicola-Chatahoochee-Flint River Basin, to Epic Games in litigation concerning the protection of dance steps in the popular video game "Fortnite."

The firm doesn't win every case, of course. It represented Bracket Holding Corp., which alleged in a fraud case that Express Scripts and United BioSource misrepresented the financial condition of their company in connection with a 2013 sale to Bracket Holding's affiliate, Parthenon Capital Partners, for \$187 million. A jury found for Kirkland in 2019, ordering the defendants to pay \$82.1 million.

WINNER

"If we won, what can we do better? If we lost? Same thing." —Mark Filip

But the Delaware Supreme Court reversed the ruling in February, finding the trial court gave a favorable jury instruction for the plaintiffs, and that certain evidence should not have been excluded.

The Kirkland lawyers say it was a hard-fought case, and that it's always difficult to take a loss because they live and breathe these cases. But win or lose, they try to apply lessons going forward through meticulous post-mortems.

"We try really rigorously, after a win or a loss, to roundtable the thing with colleagues. If we won, what can we do better? If we lost? Same thing," Filip says.

And although the firm doesn't welcome losses, its litigators recognize they're part and parcel when clients turn to you with their most difficult issues.

"We try to stay aggressive and hungry, and ruthlessly honest with ourselves," Filip says. "But we also try not to get paralyzed. Because if you win every case, you're probably not trying very tough cases." ■