

Litigators of the Week: The Kirkland Trial Team That Fought Off a Former Abbott Laboratories Employee's Racial Discrimination Claims

Jim Hurst, Christa Cottrell and Rebecca Fitzpatrick made the case that a former regional sales manager at Abbott Molecular was let go as a part of a reduction in force rather than as a result of any race discrimination or retaliation.

By Ross Todd
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Facing claims of race discrimination and retaliation from a former employee, Abbott Laboratories turned to a **Kirkland & Ellis** team led by **Jim Hurst**, **Christa Cottrell** and **Rebecca Fitzpatrick**.

Over the course of two weeks in federal court in Chicago, the Kirkland team methodically made the case that Jacinta Downing, a former regional sales manager at diagnostic testing division Abbott Molecular, was let go as a part of a reduction in force rather than as a result of any discrimination. Downing was seeking back pay, future pay and emotional distress totaling at least \$7 million and three times that in punitive damages.

Last week, an eight-person jury unanimously returned a complete defense verdict, siding with Abbott on all eight of Downing's claims.

Litigation Daily: Who is your client and what was at stake?

Jim Hurst: Our client is Abbott Laboratories, one of the nation's leading healthcare companies. This was an important case for Abbott because of the seriousness and breadth of the plaintiff's allegations. She claimed she lost her job at Abbott because of her race and for lodging an internal discrimination complaint. The plaintiff sought over \$30 million, including punitive damages, and had accused over a dozen people at Abbott of engaging in race discrimination — real people being falsely accused. Her claim about some vast conspiracy was just not true. I've represented Abbott for nearly three decades, and her allegations bore no resemblance to the company I've come to know extremely well. It was personal to me and



Courtesy photos

L-R: Rebecca Fitzpatrick, Christa Cottrell, and James Hurst of Kirkland & Ellis.

to our entire team. Fortunately, a unanimous jury agreed with us.

Christa Cottrell: No question that taking a race discrimination case to trial right now was a difficult decision. But winning the case was about more than just money — it meant vindicating over a dozen individuals and proving what Abbott stands for as a company, which is about promoting diversity and inclusion.

Who all is on your team and how did you divide the work?

Hurst: We had a truly amazing team. Christa and I shared the closing, and six Kirkland lawyers handled witnesses, including two associates. Christa handled critical directs and crosses and just owned the courtroom whenever she got on her feet. Always engaging and extraordinarily effective. Rebecca put on two of our most important witnesses, one of whom was crossed for over a day. One of her redirects was among the best I've seen in my career — maybe six or seven minutes to clearly and utterly refute multiple points that the plaintiff had been trying to establish

through a day-long cross. Our partner **Taj Clayton** was also great. He joined the team literally days before trial after our partner **Britt Cramer** had to drop out unexpectedly on the trial front. She continued to help behind the scenes and was exceptional as always. Within days of joining to replace Britt at the actual trial, Taj delivered a devastating cross of the plaintiff's expert and put on our expert too. He just wowed me.

Cottrell: Because we had a rock-star team, we really tried to give everyone on-their-feet opportunities, including two associates, **Jessica Giulitto** and **Cameron Ginder**. They both took witnesses and did an incredible job. You would have thought they had been doing this for years! We were also so lucky to have **Anne Hudson** and **Dan Murdock** on the team. They are both outstanding writers, which came in handy since we ended up filing over 30 briefs for this trial.

Rebecca Fitzpatrick: Honestly, above all, we were lucky to try this case with Jim. He is truly exceptional on his feet, so creative in how he thinks about presenting evidence, and a fantastic mentor to every single team member. No matter what he had going on the next day — which was usually a lot — he would sit down with the examination outlines for the next day, or sit in on practice runs, and make the examinations so much better.

What was the courtroom setup like? Did you need to make any adjustments to your typical trial presentation because of pandemic-related protocols?

Hurst: There were a lot of changes. We were tested on a regular basis for COVID. We had to wear masks throughout the entire trial— during openings, examinations, and closing arguments. That took some getting used to.

Cottrell: The masks were tough. It really does change how you sound and present. I think we probably tried two dozen masks out before finding some that allowed for us to sound semi-clear!

Fitzpatrick: The set-up in the courtroom was different too. The jury sat in the gallery. The witnesses sat in the jury box. We asked questions from our counsel table and were restricted in where we could move around the courtroom. It was all a bit mixed up, but we made it work.

When you're representing a company and individuals accused of racial discrimination like you were here, how much thought and attention goes into the tone of your presentation?

Cottrell: A lot. The reality is that the plaintiff was a highly paid, valued employee at Abbott for a long time,

but business struggles led to her losing her job, along with dozens of others. It was not personal. It was just an unfortunate result of the fact that one of Abbott's divisions was struggling back in 2015. I think that Jim's cross of the plaintiff really conveyed that point and his respectful tone — in particular, avoiding any hint of hostility — was a big part of that.

Hurst: Everyone on our team was cognizant of tone throughout the trial. But it's not just this trial. Paying attention to your tone applies in pretty much any case where you have to maintain credibility before the jury. And having a respectful, matter-of-fact tone often plays a big part of maintaining credibility.

This case also involved laying out the reasons for a reduction in force at a large company. Were you at all concerned going into this case that you might be facing an uphill battle with jurors?

Fitzpatrick: The plaintiff claimed that the RIF was a convenient way to terminate her employment. She argued it was a "sham." So we spent a lot of time explaining the reasons for the RIF and how it restructured the organization. We had one chart we showed the jury probably a half dozen times about challenges this particular Abbott division was enduring and the need for the RIF — it was repetitive, but it did the job and it was seared into everyone's memory by the end.

Cottrell: I could recite stats from that chart from memory at this point. But it worked. And we really knew our efforts to show the RIF was necessary had won out when opposing counsel said in closing, "we're not contesting" that the business "needed a reduction in force."

Hurst: We had to prove the RIF was real, but there's a human element to this case, too. So we spent time emphasizing that we fully appreciate the human impact of a RIF, which is why Abbott gave generous severance packages to everyone who lost their jobs to help them land on their feet. The RIF was just an unfortunate reality that sometimes occurs in the business world.

Here the plaintiff and her lawyers highlight an "Exceeds Expectations" rating she received in 2011 from her manager, who left the company back in 2015. That manager ultimately testified for Abbott Laboratories. How important was that witness and his testimony for your case?

Fitzpatrick: It was probably the most dramatic point of the trial. The plaintiff really put a lot of emphasis on the fact that she got an Exceeds Expectations rating, which

is usually reserved for the very top performers. The manager who gave her that rating was transferred to a different position and the plaintiff received a much more negative review from her new manager, which she attributed to racism. We called the manager who gave her the EE rating, a former employee, and it was honestly pretty devastating to their case.

Hurst: He testified that he believed the plaintiff still needed improvement in key areas, despite the EE rating he had awarded to encourage and support her. He was just calling balls and strikes. But what was really remarkable is that he said the plaintiff had been calling him to ask him to help her on this case. And he explained that he declined to work with her because he “didn’t believe in the merit” of her case.

Cottrell: You could hear a pin drop in the courtroom. He was literally held out by the plaintiff as a “man of great integrity” and he completely disagreed with her claims.

You got a question back from the jury at one point asking: “Can we award punitives without finding ‘yes’ on any of the claims?” As a defense lawyer, what goes through your mind when you hear a question like that from the jury?

Cottrell: Well, my first thought was “oh no.” The plaintiff’s lead counsel, **Linda Friedman**, and her team are terrific lawyers and did a great job at trial. So I was a bit worried at first, but after replaying the second part of that question in my head over and over, I felt pretty good that the jury was quickly leaning our way on all liability questions.

Fitzpatrick: Yeah, the jury had to answer “no” to eight different liability questions. So we were worried that they would try to find a way to award some money, even if they didn’t think she proved up her case.

Hurst: I agree. We were all initially concerned after hearing the words “punitive damages” in a jury question, but we then speculated there was likely a holdout or two trying to figure out a way to award money out of sympathy. Everybody feels sympathy for someone losing their job, and the plaintiff was a valued employee for many years. So we understood that natural impulse.

Jim, I gather this was your first trial in court since 2019. Do I have that right? And for somebody who is

used to being at trial quite a bit, what was it like being back in front of a jury?

Hurst: While not my first trial since the pandemic began, it was my first jury trial. So many jury trials got kicked. This one felt like a normal jury trial except for the masks. And it made a difference. It’s surprisingly difficult to speak uninterrupted for long periods with a mask. I felt out of breath at times during both the opening and closing. It’s also extremely difficult to gauge the jury’s reactions when arguing to eight fully masked jurors. They felt mostly opaque to me.

What will you remember most about this matter?

Hurst: The verdict. Hearing a jury’s verdict is always thrilling and suspenseful. It’s one of the reasons they make movies about trials. But this one was particularly memorable because the plaintiff had eight chances to win with eight different theories. I think we were all holding our breath until the judge read the very last “no.” It’s also memorable — though true of every case I try for Abbott — that Abbott truly partnered with us every step of the way, including daily, detailed calls with thoughts and suggestions and one Abbott lawyer, **Sarah Chomiak**, remaining onsite throughout the trial to constantly provide invaluable insights on every aspect of the case.

Fitzpatrick: Getting through all eight liability questions will always stick with me, too. But also the fun we had — despite the seriousness of the case, the stakes, and the very long hours. We all really like each other, like working with each other, and wanted to do the best we could for each other and for Abbott, a company we really believe values diversity.

Cottrell: Hearing the verdict is definitely a moment I will never forget, but I will also remember how our team really came together on this one. We literally went from Zoom calls in our houses to working side-by-side around the clock. We had some members on the case for years and others join just days before trial, which was another change. And everyone had to adjust to the new protocols — the tests, the masks, the courtroom restrictions. The entire team really rose to the occasion, made changes to adjust, and won it. I’ll always remember this team and winning a jury trial in the middle of a pandemic.