

Rising Star: Kirkland's Scott McMillin

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By **Christopher Norton**

Not every attorney can turn an opponent's pretrial demand for a \$1 billion settlement into an acquittal on all counts, but that's what Kirkland & Ellis LLP attorney Scott McMillin did when he represented W.R. Grace & Co. against the U.S. government in an environmental contamination case, making him one of Law360's 10 product liability attorneys under 40 to watch.

McMillin, 38, who works out of the firm's Chicago office, credited much of his success to an encouraging environment at the firm.



"At a place like Kirkland, if you have the abilities, you can run with them," he said. "If you have the skill set, there's no limitation on what you can do."

One early case that greatly contributed to the development of that winning skill set was the Rocky Flats nuclear weapons plant trial, the first time he took witnesses to trial and "the first time I had my boots directly on the ground," McMillin said.

"That's where I really cut my teeth on putting together a scientific case, working with a dozen different experts in different disciplines," he said.

McMillin's biggest career achievements, though, have come from a series of asbestos cases stemming from W.R. Grace's operation of a vermiculite mine in Libby, Mont., from 1963 to 1990. He was responsible for preparing all aspects of Kirkland's expert defense against claims of endangering the local community.

The government indicted W.R. Grace and five former employees in 2005 for knowingly endangering the town of Libby and engaging in a 30-year conspiracy to defraud the U.S. Environmental Protection Agency and the National Institute of Occupational Safety and Health.

McMillin and his team at Kirkland forced the federal government to produce more than 10 million pages of government records in the files of 10 federal agencies. Through motions practice in 2006, much of the government's scientific evidence was excluded and the government was forced to appeal to the U.S. Court of Appeals for the Ninth Circuit.

In a last-ditch mediation session before trial, the government's final settlement demand was \$1 billion.

After a three-month trial, the jury returned a verdict after less than 48 hours of deliberation, acquitting all defendants on all counts. The victory came with the deck stacked heavily against W.R. Grace and McMillin.

"We had to move to transfer because of the amount of negative publicity," he said. "We had people with sandwich boards standing out in front of the courthouse most days."

McMillin was also in charge of putting together an expert case in W.R. Grace's bankruptcy to show that the vast majority of asbestos claims levied against the company were without merit. W.R. Grace settled the claims for an amount that still preserved hundreds of millions of dollars of equity for its shareholders.

"I believe that was the first asbestos bankruptcy in which the equity holders were able to retain some of their equity," McMillin said. "I had been one of the major architects of the expert trial and was involved start to finish."

The W.R. Grace experience gave McMillin the skill set to try any large technical or scientific case, he said.

"No matter the area of expertise, I can find the right expert, I can build a multilayered, multifaceted case," McMillin said. "There's nothing they can throw at me that I wouldn't be able to attack and relish constructing the defense."

He continues to work in the products liability asbestos arena, developing scientific defenses for other companies, in a direct outgrowth of the work he did for W.R. Grace.

Outside of products liability, McMillin has worked for bankrupt Consec Inc. since 2003, in one case pursuing a \$500 million loan that former directors and officers took out from the company. He has been highly successful in recovering a confidential but generous sum through summary judgment and settlement, he said.

He got his first appellate argument out of the case, as well as his first opportunity to chair a trial.

"You can't run out there as a young partner and do the big summary judgment," McMillin said. "You need those medium-size cases to cut your teeth. Then when it comes up in the big billion-dollar products liability case, you have the resume that gives the client confidence to give you those opportunities."

McMillin offered that exact advice to younger attorneys seeking to make partner.

“Age isn't a factor,” he said. “It's how good you are that defines how much responsibility you get.”

“If you're able to handle yourself in a mature and appropriate way, it doesn't really matter what your age is,” McMillin said. “If someone tries to be condescending to you because you're young, there are ways to cut it off at the knees.”

“You have to go to the head person and say let me take this deposition, let me do this oral argument,” he said. “You may screw it up sometimes, but if you're willing to go out and try it, you can reap the rewards.”

For more information about Scott McMillin, please go to www.kirkland.com/smcmillin

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