



Kirkland & Ellis' environmental group recently scored victories crossing practice areas, brokering cleanup deals to usher Chemtura Corp. out of a high-profile bankruptcy and working on high-stakes transactions, earning it a place among *Law360's* Environmental Groups of 2011.

Environmental Group of the Year: KIRKLAND

The group boasts 32 lawyers in Washington, D.C., Chicago, New York and San Francisco, and it has worked on major litigation since representing Detroit's "Big Three" automakers in smog cases in the 1960s and then litigating cases involving the chemical benzene in the 1970s.

More recently, Kirkland & Ellis' environmental lawyers have also delved into transactions that require extensive environmental due diligence as well as complex bankruptcies involving companies with massive environmental liabilities including Chemtura and Tronox Inc., a pigment maker.

"Those were two of the highest-profile bankruptcies that occurred during the recession," said Walt Lohmann, who leads the firm's environmental transactional practice group. He noted the "sheer magnitude" of the environmental legacy liabilities tied to both Chemtura and Tronox.

Chemtura completed its Chapter 11 restructuring in January when it finalized the last of a group of deals with state and federal environmental regulators, property owners and others for the cleanup of roughly 100 sites for \$68 million.

The U.S. Environmental Protection Agency alone had asserted more than \$2 billion in

claims, making the settlements a major victory, Kirkland said. Brokered by a team led by Lohmann, the settlements included a \$27 million deal with the EPA covering 19 Superfund sites and a separate \$3.9 million settlement for cleanup of Brooklyn, N.Y.'s Gowanus Canal.

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"We proactively sought to settle a huge number of claims in a way that gave Chemtura a fresh start when it emerged, but also set aside resources that were aimed at continuing remediation at those sites," Lohmann said.

Meanwhile, Kirkland assisted Tronox in emerging from Chapter 11 in February, after billions of dollars in legacy environmental responsibilities helped push it into bankruptcy two years before its exit.

A key step in Tronox's path out of bankruptcy occurred in January, when Judge Allan Gropper in New York bankruptcy court approved an environmental settlement calling for Tronox to pay \$270 million in cash plus most of the proceeds from a lawsuit over its spinoff.

Judge Gropper's decision to allow Tronox to pay for the settlement with damages from its lawsuit against Anadarko Petroleum Corp. over the spinoff that allegedly saddled it with massive environmental liabilities was the "groundbreaking" element of that bankruptcy, Lohmann said.

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The firm conducted worldwide environmental due diligence on a short deadline for its client GTCR LLC in its \$675 million acquisition in March of Sterigenics International Inc., which provides contract sterilization services worldwide.

For a \$4.2 billion deal that closed in January, Kirkland conducted environmental due diligence of Baldor Electric Co. for its client

ABB Ltd. — a publicly traded company that places a premium on thorough due diligence, Land said.

While Kirkland had a hand in two major bankruptcies involving massive environmental liabilities and key deals, it also scored victories over the past year in the type of traditional environmental litigation that has been the bread and butter of the practice group for more than 50 years.

“Our environmental practice is a little different from other firms because we are primarily litigation-driven,” said Granta Nakayama, a partner who came to Kirkland after serving as a senior official with the EPA.

Kirkland’s litigators secured a major litigation victory in June, in a \$400 million proposed class action brought by Florida homeowners accusing Raytheon Co. of being responsible for a “toxic plume” that tainted groundwater.

The homeowners settled for just \$7,550 split between five plaintiffs and no attorneys’ fees after Kirkland successfully

petitioned the Eleventh Circuit to vacate the lower court’s class certification order. As part of the settlement, the plaintiffs’ lawyers admitted that no class could be certified and that they had no basis to determine Raytheon’s activities posed a health threat.

The “toxic plume” case garnered major publicity, and the Florida homeowners even brought activist and attorney Robert F. Kennedy Jr. to help wage the fight. That kind of publicity can sometimes confuse issues and raise the plaintiffs’ expectations, according to Nakayama.

“Obviously there can be tremendous public pressure to resolve the issue,” he said. “But here the legal system worked.”

In July, Kirkland managed to defeat class certification again in a case accusing The Dow Chemical Co. of negligently releasing dioxin into a river floodplain. In the first major ruling to use reasoning in *Dukes v. Wal-Mart*, a federal judge found that the plaintiffs’ claims were not similar enough to one another justify a class, according to the firm.

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Currently, Kirkland is battling a number of class actions for BP PLC in the massive multidistrict litigation stemming from the April 2010 Deepwater Horizon drilling rig explosion. While much of the litigation will play out 2012, the previous year saw the brokering of a number of settlements as well as the dismissal of a master complaint alleging citizen suit claims against BP, including claims under the Clean Water Act.

“I think it says a lot for the firm that we are representing BP” in the MDL, Nakayama said.