



# 2012 Practice Group of the Year

## Class Action

Kirkland & Ellis LLP helped BP PLC ink an estimated \$7.8 billion in class action settlements last year covering economic and property damages and medical claims in multidistrict litigation over the Deepwater Horizon oil spill, work that helped place the firm among *Law360*'s Class Action Practice Groups of the Year.

Rick Godfrey and Gene Assaf, senior partners in litigation at Kirkland, said the firm takes on such massive class action matters with a combination of intense preparation and careful strategy to get the best results for clients.

"We think in terms of trying cases and managing risks," Godfrey told *Law360*. "That is our analytic mindset."

The firm long has been a major player in the world of class action litigation. Godfrey was a young associate when Amoco Corp. hired Kirkland to represent it in a class action over the oil spill resulting from the 1978 crash of its Amoco Cadiz oil tanker, according to the firm.

BP, Amoco's successor, turned to Kirkland and Godfrey more than 30

years later for counsel in connection with the 2010 Deepwater Horizon spill in the Gulf of Mexico, which spawned more than 100,000 individual claims that were eventually consolidated in an MDL in the U.S. District Court for the Eastern District of Louisiana.

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With Kirkland's help, BP negotiated with the MDL plaintiffs and filed two class action settlements in April, one to address economic losses and property damages to Gulf Coast residents and another to resolve the medical claims of workers who performed post-spill cleanup work.

Those deals, which BP has estimated will cost \$7.8 billion, won preliminary court approval in May and final approval in December and January, according to the case docket. A trial on liability and other unresolved issues in that MDL is currently set for Feb. 25.

Kirkland's litigation bench is staffed by 512 attorneys, not counting of counsel and visiting and contract lawyers, according to the firm. While the group does not have a defined class action section within it, Kirkland estimates that more than half of those litigators are working on class actions at any given time.

The firm also stays away from appointing litigation practice group leaders, according to Assaf, who said the structure works well for clients and also allows for Kirkland's more

junior lawyers to snap up additional courtroom opportunities.

The firm's focus on training its rising lawyers complements its commitment to growing organically from within, according to Assaf, who also credited junior attorney development as one of three key factors in Kirkland's class-action success.

“When we win, we sit down and say how could we have done a better job? And when we lose, we do an internal review... This is the only way one can improve: to have a pretty thick skin and be self-critical.”

“One is to prepare the case for trial from day one,” Assaf told Law360.

“Two is to empower junior lawyers to work hard and ‘own’ the case so that they are thinking about ways to win the class certification [issue], from examining expert witnesses to examining class representatives.

“The third piece is having a unique group of clients who are committed to winning the cases from day one and empowering their outside counsel to work collaboratively with them to get a result, even when we have bumps along the road.”

Another major class action matter Kirkland worked on recently was a series of product liability lawsuits against firm clients Baxter Healthcare Corp. and Teva Pharmaceuticals Industries Ltd. over the injectable anesthetic propofol.

The litigation arose out of a 2008 hepatitis C outbreak in Nevada endoscopy centers that allegedly spread because the drug, which Teva made and Baxter distributed, was sold in vials that were large enough to be used on more than one patient. According to Kirkland, the outbreak litigation represented the largest and most widely reported product liability matter in state history, with more than 250 separate suits.

Among the claims Teva and Baxter faced were those from patients who were not infected but alleged that they suffered emotional distress and had to pay for medical testing as a result of the outbreak. After those plaintiffs lost their bid for class certification in Nevada state court, they moved for consolidated of a mass action trial, according to Kirkland.

Kirkland attorneys instead managed to remove the cases to federal court, then defeated the plaintiffs' bid to have the litigation remanded in November 2011. A settlement resolved the claims early last year.

Among the class action matters in Kirkland's future is its representation

of The Hershey Co. in an antitrust price-fixing MDL that also targets several other major chocolate manufacturers.

A Pennsylvania federal court certified a class of direct purchaser plaintiffs in that action in December, and Hershey, Mars. Inc. and Nestle USA Inc. have asked the Third Circuit to review the ruling. A trial date has not been set. Godfrey said that in all class action matters, it's important to master the facts of the matter on the merits and develop a clear litigation strategy.

When a case wraps up, Kirkland lawyers take a look back to inform their work going forward, he said.

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