



# 2012 Practice Group of the Year

## Securities

Kirkland & Ellis LLP's successful U.S. Supreme Court attack on the Ninth Circuit's holding that a two-year statute of limitations on insider trading claims was tolled until insiders disclosed trades put the wrap on potentially costly new claims against underwriters and, along with the firm's other work with A-list corporate clientele, won it a spot on *Law360*'s list of Securities Groups of 2012.

Kirkland attorneys, including Chris Landau and Andrew Clubok, determined that while their underwriter clients — a slew of financial companies in *Credit Suisse Securities (USA) LLC et al. v. Simmonds* — had won, or could have won on other legal grounds, they had the opportunity to clarify whether a 30-year-old Ninth Circuit precedent was out of step with other circuit courts.

The Second Circuit, for example, had found that the clock on claims lodged under Section 16(b) of the Securities Exchange Act of 1934 begins to run as soon as a fraud is discovered or should have been discovered.

In March, the high court rewarded their foresight with a unanimous ruling overturning the Ninth Circuit.

“Had our clients lost, the plaintiff's bar could have come up with creative ways to bring back literally thousands of claims going back decades. It would have been a wonderful opportunity for the plaintiff's bar, but it would have been costly for everybody else,” Clubok said. “The decision was very important for the IPO underwriting industry. We were fortunate enough to be selected to represent the industry before the Supreme Court.”

Kirkland lawyers built their case for reversal from the trial level up, winning a concurring opinion from a Ninth Circuit judge suggesting the precedent was ripe for Supreme Court consideration.

“We had basically convinced federal judges at both the district and

appellate court that this long-standing Ninth Circuit precedent just didn't make sense — and that it could have had damaging consequences,” Clubok said. “It's one of the things lawyers look for opportunities to do — to clarify the law. It's one of the things you become a lawyer to have the chance to do.”

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The *Simmonds* success — and other work in the securities legal world

taken on by some 50 Kirkland partners and as many as 100 associates — was also key in helping the Chicago-based law firm land Michael Keats, formerly Goldman Sachs Group Inc.’s associate general counsel.

“There are a lot of great firms in the country, but Kirkland stuck out,” said Keats, who joined Kirkland’s ranks in September. “Kirkland has been involved in the securities industry’s major battles as far back as I can remember.”

Clubok, Keats and another key new hire — former Debevoise & Plimpton LLP securities and white collar defense expert Neil Eggleston, who joined the firm in February — won’t be resting on their laurels after Simmonds, with so many corporate clients facing big problems.

Perhaps the highest-profile litigation going forward for the firm will be its representation of Facebook Inc. in more than three dozen putative class actions and related shareholder derivative claims against the company and its underwriters relating to the social networking giant’s initial public offering.

In October, led by Clubok, Kirkland won consolidation of the various claims in more than 40 suits in the Southern District of New York.

“It’s a great honor to represent a company like Facebook in such important litigation,” Clubok said. “One of the great things about Kirkland is that we get to work on these high-profile cases.”

Other major wins the firm delivered to its clients in 2012 included the dismissal with prejudice of a suit filed against Community Health Systems Inc. by rival Tenet Healthcare Corp. in a takeover battle. Tenet had accused CHSI of making false and misleading statements in proxy solicitation materials related to its attempt to acquire Tenet and later in connection with CHSI’s nomination of a slate of directors to the Tenet board.

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U.S. District Judge Barbara M.G. Lynn rejected Tenet’s claim that as a target in a proxy fight, it had standing to bring the suit for damages under the Securities and Exchange Act, ruling that the law was designed to prevent fraud and deal with corrective proxy disclosures — as opposed to claims such as those brought by Tenet.

Kirkland is also pressing forward on behalf of UBS AG, which accuses Highland Capital Management LP in a \$686 million suit of duping it into restructuring a complex debt securities transaction and then using fraudulent conveyances to siphon away assets related to the arrangement.

In March, a New York state appeals court largely upheld a trial court ruling denying Highland’s bid to dismiss its affiliates from the proceedings.

Other Kirkland clients in ongoing matters include General Motors Co., Knight Capital Group, Royal Bank of Scotland Group PLC, Chipotle Mexican Grill Inc. and Ally Financial Inc. — not to mention business figures including Peter Jenson, the former chief operating officer for the Harbinger Capital Partners hedge funds, in connection with an investigation by the U.S. Securities and Exchange Commission’s Division of Enforcement.

“Kirkland, in my view, for years has had the premiere securities litigation practice in the country,” Eggleston said.

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