



2013 Practice Group of the Year

Environmental

From taking a lead role on BP America Inc.'s team in the vast Deepwater Horizon litigation to thwarting an effort to reopen old asbestos settlements to handling the environmental analysis required in Bain Capital Partners LLC's \$1.6 billion acquisition of a global tool manufacturer, Kirkland & Ellis LLP's environmental attorneys have earned their spot on *Law360's* Environmental Practice Groups of the Year.

Granta Nakayama, a partner who leads the litigation and enforcement side of Kirkland's environmental practice, said the BP litigation comprises 700 cases in 20 federal and 10 state courts. Only a firm like Kirkland is up to the task, he said.

"I think you need a firm with a large and deep bench to handle that many matters, and we've been able to successfully do that. There aren't that many firms that have this kind of environmental capability, that can bring that many trial lawyers — that many environmental litigators — to the table and really deal with a case like this," he said.

Nakayama said Kirkland's environmental practice is unique in the sense that it's focused on environmental litigation, and clients choose them when they need real courtroom help. For example, in December 2012, Kirkland earned a

victory for client BASF Catalysts LLC when a federal judge in New Jersey dismissed a putative nationwide class action raising claims of fraud and violations of the Racketeer Influenced and Corrupt Organizations Act.

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The plaintiffs alleged that Engelhard Corp., a company acquired by BASF in 2006, had conspired for nearly 30 years with its then-outside counsel

to mislead courts and destroy evidence showing that talc from an Engelhard mine was contaminated with asbestos. The plaintiffs sought to reopen hundreds of previously settled or dismissed personal injury cases.

"Their theory was that you could reopen based on claims if you didn't have adequate information, or you didn't think the other side was particularly forthcoming. It would be of wide significance to the whole industry if they had been successful," Nakayama said.

The firm's litigation practice group includes approximately 490 commercial litigators, with 230 partners, and they are generalists, meaning they may take on environmental matters when asked to by clients that they regularly work with and represent. Approximately 30 partners across Kirkland's U.S. offices have significant experience in environmental litigation, regulatory or

enforcement matters, and the majority are in Chicago and Washington, D.C.

In another big win, Kirkland represented Dow AgroSciences LLC at the U.S. Court of Appeals for the Fourth Circuit in a dispute over the reregistration of three commonly used pesticides. The National Marine Fisheries Service had issued a biological opinion, over the objections of the U.S. Environmental Protection Agency, that the pesticides would be harmful to Pacific salmon. An appeals panel held the NMFS' opinion was arbitrary and capricious.

Nakayama said the panel's ruling was unusual because it was a very technical case based on a biological opinion, which he said courts are often reluctant to overturn.

"The fact that the Fourth Circuit did back Dow on this biological opinion, saying it was arbitrary and capricious — it really was a huge, precedent-setting decision. I think it should result in more care and rigor in the work these agencies do. The decision both bolsters the EPA's role and shows that there's legal relief possible in the right case," he said.

The win also highlighted the environmental group's appellate practice, part of its full-service approach that also includes restructuring, as evidenced in work it did in two big deals this past year.

Kirkland executed the environmental due diligence that was required in Warren Buffett's Berkshire Hathaway

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Inc. and private equity firm 3G Capital Management LLC's move to swallow up H.J. Heinz Co. in a go-private deal worth \$28 billion.

"The Heinz deal represents a circumstance where we were in a position of having to very quickly come to grips with an extremely complicated situation, in terms of a target with a long and complicated corporate history, and distill our conclusions from that review into a presentation that could be made to financing sources for the transaction," partner Walt Lohmann, co-leader of the environmental transactional practice group, said.

Kirkland's environmental transactional group comprises six partners and five associates in its Washington, D.C., office, and one partner and one associate in its San Francisco office.

The firm also assisted Bain Capital Partners in its \$1.6 billion acquisition of Apex Tool Group LLC from Danaher Corp. and Cooper Industries PLC, which is now Eaton Corp.

Kirkland managed an extensive environmental due diligence effort of the company's facilities and operations, negotiated the environmental terms of the purchase agreement and credit agreement,

responded to lender due diligence and facilitated permit transfers.

"This deal really brought together all the group's talents and skills," said partner Brian Land, co-leader of the environmental transactional practice group. "For Bain we conducted a complex, sophisticated environmental due diligence effort. It was something like 15 manufacturing facilities in five or six different countries, and we did a full analysis of the target's legacy environmental liabilities."

That work included an analysis of the history of past indemnities for environmental risks, an analysis of their accounting accruals for environmental liabilities, and teaming up with an environmental consultant to conduct a modeling of their future liabilities.

Kirkland also analyzed the company's regulatory compliance, including in the European Union.

"We pulled together a team of environmental lawyers to work on this and we made use of one of our top environmental consultants so we could move quickly on the due diligence effort," Land said. "And we conducted a sophisticated effort that I think few firms can do in a short time frame."

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