



2014 Practice Group of the Year

Class Action

Kirkland & Ellis attorneys have had a big year in multidistrict litigation, winning strategic dismissals for Facebook Inc. in shareholder litigation over its initial public offering and battling hundreds of consolidated complaints on behalf of General Motors LLC over alleged ignition switch defects, earning the firm a spot among *Law360's* Class Action Groups of the Year.

The firm's class action wins over the past year include securing dismissal of all derivative complaints against Facebook in litigation over its IPO, grabbing a win for GM in shareholder litigation over its 2010 IPO and thrashing a class certification bid in an employee lawsuit against International Business Machines Corp., which led to a settlement with individual plaintiffs.

Kirkland litigation partner and global management committee member Leslie Smith attributed the firm's success to an expansive team of senior and junior litigators that are always prepared to go to trial, but have locked down the strategies necessary to be able to secure dismissal for clients before a trial even starts.

"When you have a class action, in many cases, class certification is inappropriate and a client's number

one goal is to achieve success at that early stage instead of dragging the case on," Smith said.

She added that the firm's attorneys have demonstrated that approach time and again over the past year, citing their work for GM, IBM and Facebook as examples.

"What you see in GM, Facebook and other cases across the spectrum, is that approach of being strategic up-front, approaching depositions, for example, with the goal in mind of success at the pretrial stage," Smith said.

Achieving those results can be done, she said, through *Daubert* motions or by using the class' own experts to demonstrate that certification is inappropriate or to win summary judgment.

Smith said a good example of that

this past year was the firm's work in *James Bowman et al. v. International Business Machines Corp. et al.*, led by Chicago partners Anne Sidrys and Zach Holmstead.

In 2011, IBM was hit with a proposed class action in Indiana federal court by plaintiffs alleging their Medicaid benefits were improperly terminated because of the company's performance on a \$1.4 billion government contract, the Indiana Family and Social Services Modernization Project, which was a technology overhaul of the state's welfare system.

The plaintiffs proposed a class of Medicaid beneficiaries who filed appeals but did not continue receiving benefits during the appeal process.

According to Sidrys and Holmstead, their team responded to the motion by "developing real-world, factual

scenarios showing variations among putative class members' claims and obtained targeted third-party discovery to undercut plaintiffs' experts."

The unraveling of the plaintiffs' case came soon after in August 2013, when IBM was granted its *Daubert* motions to exclude both of the plaintiffs' class experts — one who proposed a

partner Andrew Clubok to shed a number of lawsuits from class action litigation against Facebook over the performance of its IPO.

As lead counsel to the social media giant, the firm won the dismissal of all shareholder derivative suits against the company and continues to fight the main securities litigation, which

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methodology for identifying class members and one who proposed a methodology for calculating damages.

The court also denied the class certification motion, finding it impossible to identify class members without individualized analysis and concluding the proposed class lacked commonality. By November 2013, the underlying individual plaintiffs had signed on to a term sheet settling all of their claims.

A similar, preemptive strategy allowed Kirkland attorneys led by New York

has made its way to the U.S. Judicial Panel on Multidistrict Litigation.

The firm has also done significant work for General Motors in the past year, representing the automaker in another major MDL: *In re General Motors LLC Ignition Switch Litigation*, arising from GM's recalls related to alleged ignition switch defects.

More than 100 class actions have already been transferred to the MDL and have now been superseded by two massive consolidated class action complaints.

Kirkland attorneys also represent GM and senior management in *Pio et al. v. General Motors Co. et al.*, a securities fraud class action and in *The People of the State of California v. General Motors LLC*, a lawsuit accusing the automaker of violating California state law by failing to disclose the alleged ignition switch defects.

In a non-ignition-switch-related win for GM, Kirkland attorneys in September secured the dismissal of a proposed shareholder class action against the company's board over its 2010 IPO.

And then, days later, Kirkland lawyers brought an apparent typo to the court's attention — a typo that could have been construed as prejudicial against GM, according to the law firm — and the court issued an amended opinion and order on Sept. 15, correcting the typo and again dismissing the complaint with prejudice.

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