



LAW360

## 2015 Trial Aces

# Jim Hurst

Kirkland & Ellis LLP partner James Hurst has built an imposing record as a trial lawyer but still recalls his first major cross-examination, when he was so nervous he considered running away, a nervousness he's more than conquered since, repeatedly winning major pharmaceutical patent trials by going "for the jugular" in court.

When it comes to preparing for a cross-examination, the *Law360* Trial Ace says he still gets butterflies, but he's come a long way from the senior associate who was put on the spot two decades ago, when the witness he had been assigned to cross-examine was the only opposing witness who ended up coming to court, and the partners on the case let him sink or swim.

"He testifies before lunch, and then during lunch, I got so nervous, I thought, 'I'm in the wrong profession.' This is as scary as it gets — I actually entertained thoughts of leaving right there," Hurst said. "Then I stood up, and three questions in, I thought, 'Wow, I can do this,' and then it became fun."

Over the years, Hurst has only lost one trial of the more than 30 he has worked as first chair, with his latest victory coming just before he spoke to *Law360*.

In that case, U.S. District Judge Gregory Sleet, after a bench trial, invalidated for obviousness certain claims of a Millennium Pharmaceuticals Inc. patent on bortezomib, a billion-dollar-a-year cancer drug, enabling Hurst's client, generic-drug maker Sandoz Inc., to enter the market years earlier than it could have otherwise.

Judge Sleet backed up his ruling by citing admissions made by Millennium's experts under cross-examination by Hurst, who said that

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with hundreds of cross-examinations now under his belt, he's learned how to hone his instincts to get the most out of an opponent's witness.

"One of the things I've learned over the years is the best way to do a cross-examination is to go for the jugular, rather than picking around the edges, that's the way you win

cases,” he said. “You set up the tension, you set up the issue, you directly confront the witness with what you’re about to prove so everybody follows along.”

In the bortezomib trial, Hurst went toe-to-toe with another *Law360* Trial Ace, noted intellectual property litigation heavyweight Bill Lee of WilmerHale, emerging victorious despite Lee making the case “as hard as you could possibly make it.”

Lee, who tried two cases against Hurst last year, said the Kirkland partner brings intellectual gifts and a dynamic way to the courtroom, saying that in their trials, Hurst displayed a “really good instinct for the issues that will be important, and he pursues them really very effectively.”

“He’s someone who understands that there are limits to every case, and the facts are the facts, the issues are the issues. And he is smart enough, he is analytically gifted enough, to focus on those issues that are important,” he said.

Lee said that looking at the list of *Law360* Trial Aces, he saw several peers such as John Keker of Keker & Van Nest LLP and Ted Wells of Paul Weiss Rifkind Wharton & Garrison LLP, who, like him, are in their mid-60s. He said that Hurst, 51 years old, appears to carry many of the same traits that underlie the success of Lee’s generation of renowned trial lawyers.

“All of them are also really good at figuring out what counts ... taking the facts as given, taking the law as given and figuring out what will count with

the jury, what will count with the judge,” he said.

A 1989 graduate of the University of Pennsylvania Law School, where he was a member of the National Moot Court Team, Hurst said he has wanted to be a trial lawyer since his time in law school, when he’d defend criminal

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defendants in bench trials for the school’s legal clinic. Hurst said that he “caught the bug” for trying cases at that time and that he’s been fortunate to make it happen.

In the past five years, Hurst has racked up wins for client Hospira Inc. as it defeated patent infringement claims brought in separate cases by Sanofi-Aventis and Cubist Pharmaceuticals, getting four Cubist patents on an intravenous antibiotic and two Sanofi-Aventis patents for a blockbuster cancer drug invalidated.

A trial result that sticks in Hurst’s mind, he said, was successfully defending Abbott Laboratories when GlaxoSmithKline sought \$1.7 billion in damages for antitrust violations over allegations that Abbott had raised the

price of an HIV drug. After a four-week trial, and five days of deliberation, 10 jurors rejected the antitrust claim entirely, awarding GSK \$3.5 million on one breach of contract claim — a result Hurst chalked up to the trial team’s ability to cut through the jury’s emotion to give them the facts.

“We figured out a way to sap the anger the other side was trying to marshal against us,” he said.

Hurst spearheaded those trials during his multiple decade run at Winston & Strawn LLP, where he was the chairman of the firm’s 500-lawyer litigation department before moving to Kirkland’s Chicago office in December — a move he described as a piece of “good fortune, to go from one elite firm to another.”

Since he’s joined Kirkland, Hurst has stayed busy. He has trials upcoming in September and November and recently completed a confidential arbitration with “billions” at stake with the backing of Kirkland partner Bryan Hales.

Hales said that he saw firsthand Hurst’s tendency to go for the jugular during a cross-examination, noting that there are “a lot of really talented trial lawyers that shy away from difficult issues in a case.” But Hurst makes sure not to let an expert’s credentials or highly technical subject matter stop him from getting to the heart of an issue.

“He’ll figure out a way to go at the other side’s expert and cross-examine them on the hardest issues in the case,” Hales said. “And through a combination of preparation

and out-thinking, out-preparing, thinking of all the angles, he figures out a way to neutralize or beat the other side's key witnesses."

Hales said that despite his tendency to show no mercy during cross-examination, Hurst was a pleasure to try a case with, a trial leader who welcomes being challenged on his strategies and ideas and who doesn't let the stress of a high-stakes matter weigh on his team.

"You can be in a case with billions of dollars at stake," he said. "And yet the environment around Jim, notwithstanding what's at stake and those pressures, is such a positive, fun environment. You're getting the work done, and you're doing great things."

There's no doubt that Hurst still feels the pressure before a high-stakes trial

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said the day he stops getting butterflies before one is probably the day he stops trying cases. But the reason he keeps putting in the work is that for him, it's fun, he added.

"I'm always busy on trials, and it's what I love, so it can take a lot out of you, but the reward is worth the personal toll and cost because it's about as exciting a job as I think anybody can have. It's why they make TV shows out of trials, because they are inherently interesting," he said.

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