



2017 Practice Group of the Year

Securities

Kirkland & Ellis LLP notched a major victory for securities defendants in the U.S. Supreme Court this past year and fired off a volley of successful dismissal bids for corporate clients from a variety of industries, landing its securities team a slot among *Law360*'s 2017 Practice Groups of the Year.

The team is comprised of roughly 100 attorneys who handle litigation and enforcement work across the firm's offices, which span the globe from Beijing to Boston. These attorneys represent some of the most active institutional investors in the world — including The Blackstone Group, KKR & Co. LP and Bain Capital — but they also work on securities matters for companies outside the financial sector in media, metals and more.

Together, they've achieved more than three dozen wins in securities litigation cases since October 2016, but their biggest win came with the Supreme Court's decision in June to affirm the dismissal of the California Public Employees' Retirement System's 2011 suit against ANZ Securities Inc. and an array of other financial firms that had underwritten billions of dollars in debt securities issued by Lehman Brothers shortly before its 2008 collapse.

The high-profile case, which Kirkland partner Paul D. Clement argued before the high court on behalf of ANZ and the other underwriter respondents, turned around the issue of tolling in securities class actions — specifically, whether the three-year time limit on claims brought under the Securities Act is subject to the tolling doctrine established in the Supreme Court's 1974 ruling in *American Pipe & Construction Co. v. Utah*.

American Pipe established that the filing of a putative class action tolls the statute of limitations for all members of a proposed class until class certification is denied, but the Supreme Court backed the underwriters' view that the time limit CalPERS faced on its Securities Act claims was a statute of repose, not a statute of limitations, and therefore couldn't be put on pause by the *American Pipe* tolling.

The 5-4 ruling upheld the Second Circuit's decision to dismiss

CalPERS' suit as untimely, marking a victory for the more than two dozen underwriters Kirkland had represented in the case and sending ripples through the securities bar.

"What I think the decision does is it actually prohibits some strategic behavior — not by the small investor, but by the larger investors, who really have the possibility of bringing their own suit and using their leverage to try to get a better deal than the rest of the class," Clement told *Law360*.

The dismissal was one of a slew that Kirkland's securities group secured over the past year for its clients, a track record that Kirkland senior litigation partner Matthew Solum chalks up to having a deep bench of attorneys who relish diving into a complaint, taking apart its allegations and building the strongest case possible.

"Getting clients out at the motion-to-dismiss phase, before you even get to discovery, is a great result from a

client's perspective, and I think the way we get there is with the amazing talent we have at all levels of the firm," Solum said.

Solum scored just such a result on behalf of private equity firm Advent International Corp., which had been named as a defendant in a proposed class action in New York federal court stemming from Party City's 2015 initial public offering.

The suit alleged that Party City failed to disclose prior to the IPO how central massive sales of merchandise from the hit Disney movie "Frozen" had been to the retailer's 2014 sales figures and sought to hold Advent liable as a control person, citing the firm's ownership of roughly a quarter of Party City's stock at the time of the IPO.

But the judge overseeing the case told the investors in February 2017 to let it go. They had failed to show how the sales were central to the business as a whole, the judge found, granting the motions by Party City, Advent and the other defendants to dismiss the suit entirely.

Kirkland securities attorneys also succeeded in getting the London-based BASF Metals and its American affiliate BASF Corp. freed in March 2017 from a proposed stockholder class action in New York federal court alleging they were part of a massive scheme to manipulate the price of platinum and palladium.

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When it came to BASF Metals, the court was persuaded that the plaintiffs hadn't shown enough contacts between the company and the U.S. to exercise jurisdiction over it, while for BASF Corp., the court agreed that the plaintiffs hadn't backed up their accusations that the firm was involved in the alleged conspiracy.

Kirkland similarly helped Dow Chemical and Bristol-Myers Squibb Co. dispatch shareholder derivative suits over the past year and has negotiated ends to other cases, including the \$190 million settlement that Kirkland helped to reach on behalf of Deutsche Bank in September to settle class action claims that it rigged foreign exchange rates.

But as these and other achievements move into Kirkland's rear view mirror at the start of 2018, partner Mark Filip said the seeds of the team's next big wins have already been planted with the arrivals of several high-profile lateral partners.

This past year, for example, the firm expanded the group with the additions of Asheesh Goel and Zachary Brez, the co-chairs of Ropes & Gray's foreign anti-corruption and securities litigation practices. The team was also joined by Erica Williams, a

former SEC deputy chief of staff, and welcomed back W. Neil Eggleston, former White House counsel to then-President Barack Obama.

"When we add that caliber of people, in terms of their moral fiber and what they've accomplished in the world along with what they can do for clients, that's personally what I think is most gratifying in terms of what we can do as a firm," Filip said.



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