

## Kirkland's Hurst Wins, and Then He Wins Some More—How Does He Do It?

“In order to do a good job at trial, you can’t just parachute in and know half the facts. You have to know everything,” says Kirkland & Ellis star litigator James Hurst. “The reality is, that takes time—late nights, early mornings, lots of weekends. But it’s the only way to make it work.”

By Jenna Greene

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The odds were daunting: AbbVie Inc. was facing its third bellwether trial over its prescription testosterone supplement Androgel, and it was up to Kirkland & Ellis partner James Hurst to turn the tide.

The first two trials didn’t go well. The company was hit with verdicts of \$150 million and \$140 million last year after Chicago juries found it fraudulently misrepresented Androgel’s risks. (The \$150 million award was overturned by the judge.)

For the third trial, AbbVie changed counsel, moving from Paul, Weiss, Rifkind, Wharton & Garrison and Dechert to Hurst and his team from Kirkland.

With about 4,500 more lawsuits pending by men who blame Androgel for causing heart attacks, blood clots and other harm, the pressure was on.

But Hurst pulled off the win. A federal jury in Chicago on Jan. 26 found AbbVie was not liable for an Arizona man’s pulmonary embolism—a verdict that changes the momentum for AbbVie as the MDL unfolds.

Hurst couldn’t comment specifically about the case, but it’s hardly his first huge win. He spoke with The Lit Daily last week about his approach to trying cases in general, and what he does to keep winning them.



James Hurst of Kirkland & Ellis in Chicago. November 2017.

*Jenna Greene: You’ve had an extraordinarily successful record of winning at trial. When The American Lawyer named you a Litigator of the Year in December—this was shortly before the Androgel verdict—the magazine noted you’d had six straight trial wins, all in huge cases. And when you got the same honor in 2012, it was after eight wins in a row. What do you think you do differently than other litigators?*

James Hurst: I don’t know if I can tell you what I do differently, but I can tell you what I do. I feel like

I've been extraordinarily lucky with the lawyers and teams I work with. Half the points I make in any examination, any opening or closing, come from somebody else. At Kirkland, I work with second chairs who are as talented as any first chairs I've ever seen. Carrie Karis, Andrew Kassof, Bryan Hales, Marc Sernel—these are all really, really talented trial lawyers—and they're helping me out, which is kind of amazing.

***When you're in trial, do you make it a point to let other lawyers on the team get out in front of the jury too?***

JH: I do. Typically in any trial I do, there will be four lawyers getting up on their feet. That's different I think than most opponents I face, where I usually see one or two, or maybe three lawyers. For me, it often goes down to fairly junior lawyers—sometimes senior associates, sometimes junior partners. Honestly, I think it sells. The jury gets tired of hearing from me all the time—or even gets tired of hearing from my second chair. A fresh face, for a less important witness, creates a situation where now the jury's paying closer attention, because they have a new voice and a new lawyer up there doing an examination.

***How do you prepare for trial?***

JH: Immerse myself completely, with a lot of brainstorming with other people. I feel like the best way to come up with good ideas is to get in a room with a bunch of smart people and start talking about the facts, figuring out and finding the best facts, and the best way to present them. It's that process of brainstorming that ends up producing the best product in the end.

***When The National Law Journal recognized you in its 'Winning' special report last year, you flagged time management as one key to your success as a litigator. Could you talk more about that?***

JH: I feel like in order to do a good job at trial, you can't just parachute in and know half the facts. You have to know everything. The only way to get there

is truly to immerse yourself, and start actually reading all the important exhibits, reading the deposition transcripts. The reality is, that takes time—late nights, early mornings, lots of weekends. But it's the only way to make it work.

One of the things I do is four or five days before the trial, I will give an opening statement to my entire team, which includes non-lawyers—legal assistants, secretarial assistants, the hot seat guy, whoever is available to help. And then I ask non-lawyers to go first in terms of telling me what I could do better. Sometimes that's where the best ideas come from.

...I also literally walk through a cross examination with the hot seat guy, where I'm throwing up the ammunition, and people are in the room telling me 'No, that's not going to work. What about this?' It's a constant collaborative process. Everybody who has a spare moment, I'm making them sit down to try to help me do exams and arguments in a better way. It's totally a team approach. You can't do it alone. Or at least you can't do it well alone.

***Do you also do jury research?***

JH: I always do jury research. I've had so many examples where I thought something would sell, and I go do my jury research, get 30 people in a room, and they're listening to both sides—that's typically how I do it. And I think something is going to sell, and it doesn't sell. Or I think something is a sort of second-layer argument, and it sells for some reason. You listen to these folks talking about your case, and you get great ideas. Someone who happens to be a bus driver or something, might have a reaction where you think 'Wow. That's really intuitive and smart,' and you bring it to trial with you.

***What do you find most fun about your job?***

JH: Actually being up on my feet. I think if you're not a little nervous, you're probably at the end of your career—so I get a little nervous. But when I'm up on my feet and things are going well, I love it. It's just a ton of fun.

I believe in my cases. I find something in my cases I really, truly believe in, and I speak the truth. And I think that authenticity sells.

***So conversely, if you had a case offered to you where you felt like you really couldn't believe in it, would you decline the representation?***

JH: I wouldn't necessarily turn it down, but I'd find a different way. I had a case as a younger lawyer, maybe 10 years out, and we were just wrong. The company had done something that was absolutely, positively, no question about it negligent. So we made it all about damages, and it ended up being a successful case. You look for a winning approach, a winning theory.

***Looking back on your career, is there a win you're especially proud of?***

JH: There are many, but we had an antitrust case in California for Abbott Laboratories where [GlaxoSmithKline] was asking for \$1.7 billion after trebling. The jury was out for five days, and we ended up with a win. It was a tough case. It was a case where it was easy to try to paint my client in a bad light, I think unfairly. To win that one despite difficulties—I'm particularly proud.

***Your practice is fairly broad. Are there certain areas of law you particularly enjoy?***

JH: I don't think so. Trials tend to be about the facts of a particular case. Some cases are more challenging than others. Patent cases tend to be more challenging because they are scientifically complex, legally complex, and it takes more to deliver that in a simple way, whether for folks on the jury, or even the judge, who are not deeply immersed in the technology or the law.

In the end, what I find rewarding is taking complex facts and coming up with a way to present them—a compelling way to tell the story that's simple to understand, and that sells as an authentic truth.

***Where did you grow up, and what led you to the practice of law?***

JH: I grew up in Pennsylvania and New Jersey, and I honestly started thinking about being a lawyer when I was in seventh grade. There was a lawyer-like oral advocacy project and I felt like I did a good job, or somebody told me I did a good job, and that's all I needed. From that point forward, I thought 'I think I'd like to be a lawyer.' It ended up working out pretty well.

***What was your first job as a lawyer?***

JH: I went straight from law school to Winston & Strawn, and I was there for 25 years, until I went to Kirkland & Ellis in December of 2014.

***I'm guilty of doing this too—but how do you feel about headlines that call you 'Big Law's \$9 Million Man' in reference to your reported salary when you moved to Kirkland? Is it annoying?***

JH: I hate it, and it's embarrassing. ... It's kind of a personal detail. It's not exactly something I want to advertise.

***Sorry! I promise I won't do it for this story. I'm curious—what do you do for fun in your free time? To the extent that you have free time?***

JH: I'm a political junkie. And I'm a runner—I run when I can. And I spend time with my wife and my kids, including skiing. We ski once a year for at least a week.

***What's on deck for you? Any trials coming up?***

JH: I'm trying a case in August in front of Judge Wolf in Boston, relating to a biosimilar for Remicade, which is one of largest selling drugs in the United States. As things stand now, we're headed to trial where Janssen is going to be asking for \$1 billion in front of 12 Massachusetts citizens.