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Litigation Leaders: Kirkland's Mark Filip on Lateral Hiring, 'Perry Mason' Moments and Training the Next Generation

By Jenna Greene
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Welcome to the second installment of our occasional feature profiling the lawyers who lead the Am Law 200's premier litigation departments.

Kirkland & Ellis doesn't have a formal chair of its 700-lawyer litigation group, but Mark Filip—a member of the firm's executive committee who previously served as deputy attorney general and as a federal judge in the Northern District of Illinois—is one of its unofficial leaders and a top advocate.

The firm—winner of The American Lawyer's Best Law Firm of the Year in December of 2018—is also consistently recognized for its litigation prowess in the magazine's Litigation Department of the Year contests, taking honors as a winner, finalist or honorable mention in every competition since 2002.

Filip discussed Kirkland's litigation practice with Lit Daily.

Tell us a little about yourself—beyond what's in your law firm bio.

I was fortunate to meet my wife when we were young, and, as many people have correctly told me, I clearly married up. We have a big family, and three dogs and a cat, and, thankfully, we have shared many more laughs than tears together. Other than work and home, I also like sports, and I like to spend time outside—hiking or fishing or whatever—often with my wife or our kids.

How big is your litigation department and where are most of your litigators concentrated geographically?

Kirkland has one of the biggest litigation departments in the world, with over 700 lawyers. Most lawyers are in the United States—in New York, Washington, D.C., Chicago, Texas, and California. We also have lawyers in Europe and Asia. With technology nowadays, though, it's routine for people in different offices to work together. Our goal is to get the best team for the client regardless of office location.

In what three areas of litigation do you have the deepest bench?

First, Kirkland has a substantial number of truly exceptional trial lawyers, individuals who each have tried matters involving many billions of dollars, in multi-month trials. Included among this group are leading specialists in commercial matters, intellectual property, government-facing and regulatory issues, and MDL litigations of all sorts. The group also includes many exceptional female and otherwise diverse trial lawyers, as well as outstanding younger lawyers. This depth is one of our greatest strengths now and for the future.

Second, Kirkland has significant experience handling large crisis situations for clients, which often involve parallel proceedings in state and federal courts, in state and federal law enforcement or regulatory agencies, and Congress. There are also press and public relations aspects to these matters, and often international aspects. Naturally, there are also corporate governance and disclosure issues that are intertwined.

Kirkland's experience and depth make the firm very effective in these situations. We have senior people on the civil litigation and the government investigations sides who have done a lot of this work together. They communicate well and can see around the same strategic corners for clients because they've lived the issues together before. These cases often involve considerable time pressures and strong external forces. Experience being prepared and reacting quickly in coordinated



Kirkland & Ellis partner Mark Filip

fashion once client decisions are made is very helpful in these contexts.

Finally, Kirkland has a very deep IP litigation practice that spans all major industries, which includes all tech and life sciences patent issues, as well as trademark and copyright issues. There are many talented and experienced trial lawyers in this area as well, both in the United States and abroad. Many of our lawyers have strong technical and science backgrounds, which can be helpful too.

What are some of the firm's goals or priorities for its litigation practice?

Kirkland's No. 1 priority is client service. We try to learn our clients' goals and challenges, and help them further their goals through smart, creative, aggressive, and ethical work. In that regard, Kirkland appreciates that diversity is a great strength, and also a priority for clients. So we try to ensure that our teams are diverse across multiple dimensions, and that we offer clients the benefits of different team members' experiences and backgrounds. This is important for our performance in all areas.

Kirkland also has always focused a lot on attorney training, particularly concerning litigation events where the rubber meets the road—like trials, hearings, and key depositions.

In that regard, for more than 40 years we have offered a signature attorney training program called the Kirkland Institute for Trial Advocacy, or KITA, in which our associates and young partners get substantial mentoring from senior partners and outside experts on trial and courtroom performance. We bring hundreds of our young lawyers together, from all around the world, and give them the time and resources to prepare for mock trials in which the judges are typically senior partners or retired state or federal judges, and there are well-prepared actors performing as witnesses.

We videotape our younger lawyers so they can go back and see how they look in court because presentations can affect jurors' perceptions. And we pay hundreds of lay people to serve as mock jurors, who give critical input to our younger lawyers. Through this process, which occurs every year in different parts of the country, our lawyers develop confidence and skills so they can excel at trial work at very young ages, particularly in comparison to many peers at other firms.

The program also allows senior Kirkland lawyers to champion younger lawyers with clients when trial and hearing opportunities arise. We can be confident that our younger lawyers are prepared and will do an excellent job.

What do you see as hallmarks of your firm's litigators? What makes you different?

The depth of our courtroom experience has been a hallmark of Kirkland since its earliest days. Litigators here know the ultimate resolution of a dispute is in a courtroom, and we prepare cases so they can be successfully resolved in court and at trial if necessary. That helps focus all the preparatory work, creates leverage that most often leads to early favorable settlements, and helps us be cost-effective.

Another hallmark of Kirkland, in our government investigations and regulatory litigation practice, is that our lawyers often have substantial experience at senior levels in the government, whether at the DOJ, the SEC, Capitol Hill, or wherever, and variously in Democratic and Republican administrations.

That collective senior experience is key in advising clients with government-facing issues, because it allows us to anticipate government concerns and have answers before questions are asked. The bipartisan and collaborative nature of Kirkland's white collar group also adds substantial value for clients because we collectively have relationships outside of the firm that add credibility regardless of what might happen in an election that may occur one or two or three years after a government or congressional investigation is initiated.

Finally, our litigators at all levels work very hard and are excited to be lawyers. A client can call the most senior Kirkland litigator, who may well answer the phone herself, and she will be fully informed on a matter. There are no figureheads here or people coasting on the work of others.

How many lateral litigation partners have you hired in the last 12 months? What do you look for in lateral hires?

Kirkland is more aggressive on lateral hiring than most firms. I'm not sure of exact dates, but we added a large international risk and enforcement group with lawyers around the world; the entire Bancroft firm in Washington, D.C.; and other high-impact individuals from law firms and the government in the last couple years.

We look for top-of-market talent and personality fit. Nobody is worth adding if they are a pain in the neck, because they destroy internal culture. Kirkland looks for people who are leaders in their respective practice areas in terms of market reputation and past performance.

What were some of your firm's biggest in-court wins in the past year?

In 2018, Kirkland achieved 33 trial victories and 68 appellate wins. We secured 336 other litigation wins including motions to dismiss, summary judgments, and favorable settlements. And, specifically, our intellectual property litigators achieved 13 of those trial or arbitration

victories, and 23 appellate and 53 U.S. Patent and Trademark Office wins.

While there are many great examples of in-court wins, I'll call out a few that attracted attention. In February 2019, an IP team won a maximum statutory damage award, plus attorneys' fees and a permanent injunction, for client Take-Two Interactive Software. The victory was the latest in a series of cases involving "Grand Theft Auto Online" game.

In March 2019, the Second Circuit summarily dismissed an appeal in a putative consumer class action against Kirkland client Barnes & Noble for lack of jurisdiction.

Kirkland secured a win for St. Jude Medical and Abbott Laboratories in January 2019 in Minnesota federal court, preventing a would-be class action seeking hundreds of millions of dollars in putative damages. The team successfully argued for a change of venue, and then convinced the district court to dismiss the case on preemption grounds.

In November 2018, a California jury found in favor of Kirkland client Johnson & Johnson when it determined that the company's talcum powder products did not contribute to the plaintiff's mesothelioma diagnosis. The verdict, following a five-week jury trial, was reported as a significant turning point in the ongoing talc litigation affecting Kirkland's client.

In November 2018—after almost two decades of litigation involving two trials, five appeals, and a class certification denial—putative class action/EEOC litigation against Allstate finally came to a successful end. Kirkland defended Allstate in this litigation, in what the plaintiffs' bar claimed was among the nation's largest age discrimination case ever filed, since it began.

In summer 2018, Kirkland prevailed at trial for long-standing client Dyson against competitor SharkNinja in a false advertising case. The trial court adopted Kirkland's suggestion to allow the jury to ask questions, which they did frequently, pressing Shark on the inaccuracy of its claims. After a seven day trial, the jury returned a verdict in less than two hours, finding Shark liable for intentional false advertising and disgorging Shark of its profits.

Finally, our appellate and Supreme Court specialists are continually busy in the U.S. Supreme Court and across the

country. In the last year, Kirkland prevailed in six cases our attorneys argued at the U.S. Supreme Court.

Can you give an example or two of tactics you've employed that exemplify your firm's approach to litigating cases?

A Kirkland trial team achieved a substantial victory for GM when the first bellwether case in an MDL abruptly ended with the plaintiffs dismissing their case with prejudice. The dismissal occurred after Kirkland demonstrated that the plaintiffs were attempting to commit fraud.

The Kirkland trial team presented evidence that the plaintiff repeatedly lied about an accident, and also submitted related false documents to banks. New evidence came to light after the first trial day, when a previously unknown witness came forward.

As the trial continued, the Kirkland team worked diligently to verify the witness's credibility and the accuracy of the newly discovered evidence. The trial judge referred to the cross-examination of the plaintiff by a Kirkland trial lawyer as GM's "Perry Mason" moment of the proceedings. This is an example of how our litigation team digs into the facts and works as a team to represent our clients—never giving up on new approaches to a case and working the extra mile to present the truth to the jury.

In another example, a group of Kirkland lawyers represented Samsung when it was both a defendant and plaintiff in a large dispute initiated by Nvidia, a computer graphics company. Major news outlets reported that Nvidia sought over \$2 billion in royalties from Samsung for graphics technology in smartphones.

This example demonstrates Kirkland handling a bet-the-company type case that spans different courts and commissions. Success in these proceedings requires top litigation skills and a strong, collaborative team to juggle these various issues concurrently.

Where are you looking to build or expand in the next year?

We are always trying to get stronger. There is no pre-set goal for a specific practice area or geography. If we can add strength-on-strength, or supplement with a first-tier new addition to fill needs for our clients, we will seek to invest in that new talent.