

Kirkland Crosses the ‘V’ With New Push for Plaintiffs-Side Contingency Cases

Kirkland & Ellis is launching a plaintiffs-side trial group with the aim of dramatically increasing the number of commercial disputes it handles on a contingency fee basis.

By Jenna Greene
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“We’re betting on ourselves now ... truly doubling down.”

That’s how Kirkland & Ellis partner James Hurst describes a new move by the litigation powerhouse to dramatically expand its caseload representing plaintiffs on a contingency fee basis.

On Wednesday, the firm announced it’s launching a plaintiffs-side trial group, aiming to “increase by ten-fold or more the number of contingency cases we’re taking on,” Hurst said.

No, not the ‘Have-you-been-injured-in-a-motorcycle-crash-our-operators-are-standing-by’ variety. Nor will Kirkland litigators be bringing class actions or whistleblower suits.

But the firm sees an opening to scale up its plaintiffs-side contingency work in commercial disputes. It’s a move that stands to upend the market—traditionally dominated by smaller, plaintiff-oriented shops—and is also likely to mean more head-on competition with Quinn Emanuel Urquhart & Sullivan, which has long been known for representing plaintiffs and defendants with equal zest.

True, Kirkland has already handled some such cases. Partners Reed Oslan and Mark Premo-Hopkins, for example, just won Litigator of the Week for their \$82 million jury verdict in Delaware Superior Court on behalf of Bracket Holding Corp.

“We took a look at the historical results we’ve achieved on the plaintiffs side over the last one or two decades for plaintiffs, and we’ve had some huge wins,” said partner Andrew Kassof, who co-led the team that represented Tronox Litigation Trust in winning \$14 billion in damages in 2013 against Kerr-McGee in a fraudulent conveyance suit.

Their conclusion: “We don’t think law firms need to stay so firmly on one side of the ‘v’ or the other,” Kassof said. “We want to align our incentives with our clients, and put the full breadth of the resources of the firm behind it. If we don’t come through, the clients don’t have to pay.”

It’s a pitch they anticipate resonating with smaller companies that “wouldn’t otherwise think of Kirkland because of our market rates,” Hurst said. “There’s a mindset that big firms charge by the hour, full stop.”



Todd Winters/Courtesy Photo

Kirkland & Ellis partners James Hurst, left and Andrew Kassof, right

“We really do feel it could be market disruptive. For a company that feels they’ve got a good claim but doesn’t want to spend its resources on litigation, what are their options?” Hurst continued. “Suddenly, one option is now arguably the premier litigation shop in the United States. It’s an option the market didn’t have before.”

As the world’s biggest law firm by revenue (\$3.76 billion last year), Kirkland won’t need litigation funders to bankroll its cases. As Hurst put it, “We’re more than capable of financing our own litigation.”

The firm plans on putting in major resources into vetting potential representations, which are likely to include contractual disputes, fraud, trade secrets—“any type of classic commercial dispute,” Kassof said.

Patent cases are trickier. They’re “ripe for this kind of work, but the due diligence is difficult,” Hurst said. “It’s a lot of work to figure out if a patent is valid,” adding that he’s currently handling a large patent case on contingency, though he declined to name the client.

As a bonus, Hurst and Kassof anticipate more of the plaintiffs-side cases are likely to go to trial. The firm’s defense-side clients (who are paying by the hour) tend to be risk-averse and shy away from taking their chances in court.

But if Kirkland’s money is on the line too? As Hurst put it, “We are so not afraid to take cases to trial.”