

Litigators of the Week: How This Kirkland & Ellis Team Turned a \$6B Threat Against Its Client Into an \$855M Jury Verdict

“This team had done trials all over the country before COVID-19, but this was a new experience,” said Kirkland’s Adam Alper of the Southern District of New York’s courtroom pandemic precautions.

By Ross Todd
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What started nearly five years ago with a demand that Cognizant Technology Solutions Corp. pay punitive damages in “an amount of a multiple” of \$6,135,791,000, the company’s reported net worth at the time, ended this week with Cognizant’s opponent hit with an \$855 million trade secret jury verdict.

A Kirkland & Ellis team led by Mike De Vries, Gianni Cutri and Adam Alper turned the tables on Syntel Sterling Best Shores Mauritius Ltd., who in 2015 sued Cognizant and TriZetto, a provider of insurance claims processing software which Cognizant purchased in 2014. Prior to the deal, Syntel provided customization and technical support for TriZetto customers and Syntel sued for breach of contract after it was sidelined. But the Kirkland team meticulously made the case that it was Syntel that had misappropriated TriZetto trade secrets and infringed TriZetto copyrights.

In one of the first civil jury trials to push off in the Southern District of New York during the pandemic, jurors deliberated for just two-and-a-half hours before siding with Kirkland’s client on



(l-r) Adam Alper, Michael De Vries, and Gianni Cutri, with Kirkland & Ellis.

every question and awarding trade secret damages of nearly \$285 million and punitive damages of nearly \$570 million.

Who was your client and what was at stake?

Mike De Vries: Our clients were TriZetto, the leading provider of insurance claims processing software and its parent company Cognizant. TriZetto spent decades and hundreds of millions of dollars creating hugely successful technology that helps deliver healthcare and insurance coverage for over 170 million people, or 59% of the U.S. insured population. TriZetto signed an agreement with Syntel to help deliver that technology to its customers, but in 2012, Syntel launched a secret “Trojan horse” plan to improperly take TriZetto’s

source code, tools and documentation so that Syntel could take that technology for itself and then, in 2014, sued TriZetto to try to cover up its actions. This case was about making sure that Syntel couldn't get away with its scheme.

Who all was on your team and how did you divvy up the work?

Gianni Cutri: This case has been going on for almost six years, and we've been extremely lucky to have a wealth of really talented people contribute during that time. Numerous Kirkland attorneys have brought their top expertise to this matter. Since taking over the matter, I have led the matter, along with Mike, with **Leslie Schmidt** and **Ben Herbert** playing leading roles on the damages and technology portions of the case, and **Adam Kaufmann** handling many of Syntel's witness depositions and some critical discovery matters. Adam (with whom Mike and I have worked with for almost 15 years) played a critical role on the case, including by handling critical direct and cross examinations at trial, and **Pat Carson** handled key direct and cross examinations supporting our damages request at trial. Ben also handled our technical expert examination at trial, providing the foundation for all of our liability claims. At trial, Mike did the opening, closing and certain witness crosses, with Adam, Pat, Ben and me handling the directs and crosses of the remaining Syntel and TriZetto witnesses.

Briefly give me the rundown of the important pretrial rulings you got here.

De Vries: The Defend Trade Secret Act was passed in the early part of this case, and we were

able to successfully amend our claims to encompass trade secret misappropriation under that law. We also added expanded state law misappropriation and copyright infringement claims, all over Syntel's objections. On summary judgment, we also eliminated Syntel's main breach of contract theory, which really helped set the stage for our narrative and strategy at trial.

Cutri: This case also had some significant discovery sanctions against Syntel. Syntel refused to turn over evidence of their misconduct even after being ordered to do so. The court precluded Syntel from offering evidence that it did not unlawfully copy or misappropriate certain of TriZetto's trade secrets and also precluded Syntel from offering evidence that it had independently developed some of the TriZetto technology that we had found on their systems and which Syntel regularly advertised as its own. The Court also appointed a neutral forensic examiner, who traveled to their office and inspected Syntel's computers and found that hundreds of our client's documents and other files were on Syntel's computers.

How did you manage to turn the tables and become the plaintiff in this matter?

De Vries: Syntel started this litigation by demanding \$6 billion in damages and seeking an injunction against our client as the parties contractual relationship was coming to an end. Kirkland was brought on shortly after Syntel had started telling customers it had access to TriZetto copyright and trade secret technology. When we took over the matter, we focused on preparing the case to go to trial. That meant being relentless in discovery and getting the

information we needed to support our case. When summary judgment came around, we were well-positioned to eliminate many of Syntel's claims and press our own. We filed a motion to realign the parties and at that point it was clear that this case was properly focused on our intellectual property claims. Syntel did not oppose the motion.

What was it like being back in the Southern District handling a civil trial in person under these circumstances?

Adam Alper: This team had done trials all over the country before COVID-19, but this was a new experience. We were extremely fortunate that the SDNY had thought through the issues: Everyone, including the judge and jurors, wore masks the whole time, everyone was socially-distanced, there were no paper exhibits, and there were many other precautions that were taken. Witnesses were inside a plexiglas box with a HEPA filter and there was one podium with a plexiglas enclosure where we did openings, closings and examinations from.

Did the limitations prompted by the public health concerns change in any way how you presented your case? There were no sidebars and all your exhibits were pre-admitted, right?

Alper: That's right. There was a plexiglas barrier between us and the jury, but we communicated through that. Syntel had secret, internal documents that talked about outright "going to war" with our client, using their technology to do so. The jury clearly saw the evidence and made their message clear.

How many trials had you as a team handled together prior to this? And how did that prior experience of working together help you in the confines of this particular trial with all its surrounding limitations?

Cutri: Mike, Adam and I had done four trials together before this, and Mike and Adam have done many others together, including a four-month jury trial in Chicago right before the pandemic hit.

Alper: Mike and I talk a lot about having a telepathic connection after having done so much together. Because of that experience, we had a huge advantage, because we know what each other are thinking and can execute the plan without even talking.

What will you remember most about handling this matter?

Cutri: It was a once-in-a-lifetime opportunity to work with amazing lawyers on something we truly believed in.

Alper: Mike's closing was inspirational. It reflected the facts and the jury clearly saw that. Gianni saw this through from Day 1 with a conviction that he brings to every matter.

De Vries: Without a doubt, seeing justice done through even a pandemic gives me the greatest of confidence in the American justice system. The federal judiciary and the citizens on the jury made great sacrifices, and the jury spoke very clearly in their verdict, and we're very proud to be part of the system that allows for justice to be done.