



2020 PRACTICE GROUP OF THE YEAR

Class Action

Kirkland & Ellis LLP successfully defended AbbVie from a novel theory that it had created a “patent thicket” around its immunosuppressant drug Humira to block cheaper biosimilars from coming onto the market, earning the firm a spot as one of Law360’s Class Action Groups of the Year.

The proposed class of Humira purchasers had made groundbreaking accusations that AbbVie repeatedly and aggressively asserted swaths of invalid, unenforceable or noninfringed patents to edge out competition and boost its market monopoly on the drug.

But U.S. District Judge Manish Shah determined in June that AbbVie’s patent litigation was not objectively baseless and was largely protected by the Noerr-Pennington doctrine, which shields certain activity intended to influence the government.

Kirkland partner Diana Watral — named a Rising Star by Law360 this year — said that the Humira litigation was an important case because it made clear that companies such as

AbbVie can invest significant sums of money into researching future medicines, while trusting that their work can ultimately be protected by patents.

“It was a significant ruling because it’s important that companies like AbbVie be allowed to engage in that extensive research and development work,” Watral said. “AbbVie is not alone.”

The Humira case is currently on appeal before the Seventh Circuit, where consumers continue to argue that AbbVie not only aggressively asserted more than 130 patents related to Humira — which generated some \$19.2 billion globally last year — in order to fend off potential competitors, it also cut anti-competitive pay-for-delay settlements with those that challenged its intellectual property.

Kirkland in 2020 also notched several important victories for Chesapeake Energy Corp. in disputes over how to properly calculate royalty payments for various oil and gas leases in Ohio.

Facing dozens of actions in arbitrations and state and federal courts in a state where courts are still setting the confines of oil and gas law, Kirkland worked to sequence the litigation so it could create favorable precedents for its client, leading to wins in the cases in which Chesapeake faced the largest claimed damages, according to the firm.

The firm also secured a victory for Chesapeake before the Sixth Circuit, which in May upheld a lower court ruling that Chesapeake was paying landowners “exactly what the parties negotiated for” in their leases. The appellate court rejected a slew of the

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landowners’ arguments, including that the contract doesn’t explicitly cover them in Ohio and that gas sales from Chesapeake to an affiliate down the line are invalid because the contract is unsigned.

As Chesapeake has consistently treated the contract as covering Ohio, “nearly ten years into this relationship, it’s too late to change that reality now,” the Sixth Circuit said.

The rulings were important not only for Chesapeake, which faced “significant exposure” in the varied litigation, but for a burgeoning shale industry in the midwestern state, said Daniel T. Donovan, a partner with Kirkland who worked on the cases.

“These cases had a lot of industry impact,” Donovan said.

Kirkland also successfully represented Polaris Industries Inc. in

a proposed class action in Minnesota federal court over off-road vehicles with an alleged heat defect, beating back claims by owners whose vehicles had not demonstrated the purported malfunction.

In February, U.S. District Judge Wilhelmina M. Wright determined that drivers whose vehicles didn’t catch fire did not have standing to sue, as they had not claimed any facts about the defect appearing in their vehicles. Although five of the drivers alleged that their off-road vehicles generated excessive heat, they conceded that these types of vehicles typically generate high temperatures, the judge said.

The ruling — which is under appeal — is supportive of a broader argument by many companies that in product defect cases, consumers must contend that the defect actually

occurred in the related product so that they can have standing to sue, according to the firm.

While Kirkland does not break out lawyers who work on class actions into a separate entity, they are part of the firm’s litigation practice group, which includes 570 attorneys, according to the firm. Litigators work out of all of Kirkland’s 15 offices worldwide, including nine in the United States, according to the firm.

Looking ahead to 2021, Kirkland expects class action activity to be at least on par with 2020, particularly as courts continually adjust to maintaining their operations amidst the COVID-19 pandemic, Watral said.

“We’ve been quite busy, and I think we expect the next year to be increasingly busy as well,” Watral said.

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