

Litigator of the Week: A Kirkland Partner's 12-Year Quest to Get Fair Treatment for Maryland's HBCUs Yields a Half-Billion Settlement

"When all is said and done, I think this will be the case that my kids and grandkids will look back at as being the crowning achievement of my career," says Kirkland's Mike Jones.

By Ross Todd
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A federal judge in Maryland this week signed off on a historic \$577 million settlement the state reached to settle claims that Historically Black Colleges and Universities (HBCUs) in the state received second-class treatment.

The deal, which was approved by the state's legislature and signed by the governor, will fundamentally restructure higher education in Maryland making it easier for HBCUs to get approval for new academic programs and expand existing academic programs and online offerings. Our Litigator of the Week, **Mike Jones** of Kirkland, has been leading the effort both in the courts and in the court of public opinion for a dozen years.

Litigation Daily: Who was your client and what was at stake?

Mike Jones: We represented a coalition of students, alumni, and faculty at Maryland's four Historically Black Colleges and Universities (HBCUs) as well as some individual students and alumni who for years had been concerned about inadequate funding and limited academic programs. They had reached out to the Department of Justice but got no response.

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

Jones: From the beginning, we knew that we had to staff the case for the long haul. Maryland has a large, very aggressive Attorney General's office and hired two separate large law firms to supplement the government attorneys. To match these forces, our team consisted of a large number of Kirkland lawyers, especially **Karen Walker**, and those from the Lawyers' Committee for Civil Rights Under Law, led by chief counsel **Jon Greenbaum**. While I delivered the lead opening and closing arguments in both the liability and remedies trial, we divided the experts between Kirkland and the Lawyers' Committee. I led the public relations and legislative advocacy, supported by my partner **Christopher**



(Photo: Photo: Diego M. Rezairechi/ALM)

Michael D. Jones, partner with Kirkland & Ellis in Washington, D.C.

Maner. Jon Greenbaum and I split the oral argument in the 4th Circuit.

Why was this an important case for Kirkland to get involved in?

Jones: Kirkland has a long history with the Lawyers' Committee for Civil Rights, our co-counsel in the case, and we were interested in getting involved with them on behalf of the HBCU students right away. We felt that we could make a real difference in this one-of-a-kind case brought entirely by private litigants. Typically these types of cases are handled by the Department of Justice. Kirkland also has a long history with high-impact pro bono work, and we knew we could join this case and see it through to the end—12 years later in this case. A large law firm with the resources and talent can step in and bring justice to a community.

How many firm hours and resources ended up going toward this effort?

Jones: Kirkland put in over 38,000 hours. Lawyers across practice areas helped, including our appellate lawyers and

other senior litigators, who served as a sounding board through the many failed mediations. Our very professional public relations team played a key role in our public advocacy, which set the stage for our legislative advocacy and the final settlement. We led two trials, each seven weeks long; five mediations, each multiple weeks long; a Fourth Circuit appeal; and three legislative hearings. And there was never any question that we would see this through to the end. The firm believed in me and in the cause and that support was extremely helpful as we hit hurdle after hurdle.

What moments stand out to you from the two trials that were held during the course of this litigation?

Jones: What most stands out is the overflow crowd of HBCU students, faculty and alumni who attended court every day and the witnesses who described the lack of resources at Black colleges, including libraries closed because of leaks, not having adequate books in the library, and being forced to borrow books from the non-Black colleges. This testimony gave voice to the historical documents where Maryland admitted that its official policy for decades had been to “maintain the Black colleges as inferior in every aspect of their operations.”

When you look at the result that you got here, which elements of this settlement are you most proud of?

Jones: I am most proud of the fact that the team never gave up. After the court’s liability order in 2013, the State offered \$50 million. It then offered \$100 million and argued that this was more than the law required. Some politicians publicly said that this would be a “great victory” for the HBCUs. We conducted many frustrating mediations culminating in the Governor’s “last and final offer” of \$200 million. One of our most significant tactical decisions was to abandon the confidentiality of the mediation process and take our settlement discussions public. In 2019, I sent a letter to the legislative leadership and to the media outlying the logic of settling the case for \$577 million. The legislature agreed. As someone who attended an HBCU myself, as well as two of my three children, I understand how important these schools are to higher education and to promoting equity for the Black community. They must be protected and treated fairly.

In 2009, my son was 9 and he’s now 21. He was able to come to court at times and he attended the Fourth Circuit argument in Richmond and he and my daughters have seen their friends discuss the case on social media. Someone posted a couple of the articles about the case on LinkedIn. And it was inspiring to see all of the comments, including from my kids, my nieces and nephews commenting on the case and pointing out that I’m their uncle or dad. When all is said and done, I think this will be the case that my

kids and grandkids will look back at as being the crowning achievement of my career.

Mike, you told me earlier this year that some of your most important advocacy in this case was done outside the courthouse. What can other litigators take from this approach in other high-profile cases that draw lots of interest from the press and public officials?

Jones: One of the key strategic decisions that we made was to settle on a public message that was consistent with our courtroom message but much simpler. This armed alumni to better lobby the legislature. This all started in 2019 when we ratcheted up our public advocacy and our media strategy. And I sent a letter to the legislative leadership laying out why we would settle the case for \$577 million when the Governor had publicly announced that his last and final offer was \$200 million. Because of this advocacy work, the legislature drafted a bill, which they passed in 2020 and then again this year.

You also said this case is just the sort of thing President Kennedy had in mind when he invited the leaders of the major law firms to the White House to encourage them to get involved with civil rights litigation, spurring the founding of the Lawyers’ Committee. Do you hope this result inspires other firms to take on long-haul sorts of cases, especially after so many promised to promote social justice this past year?

Jones: I certainly hope so. Large law firms have tremendous resources and very talented and creative lawyers. Having them engaged in the quest for social justice is great for the country. Our resources allowed us to be resilient despite the setbacks in the case. We fully deployed all the resources of Kirkland in the same way that we would for one of our corporate clients. That level of commitment from law firms can make a huge difference on justice and equality.

Now that this has wrapped, do you have any other pro bono cases lined up or other similar efforts you hope to get involved in?

Jones: I have a couple of cases that I will be considering, but nothing that I have yet committed to.

What will you remember most about this matter?

Jones: The clients and the crowded courtroom every day of trial, as well as the public rallies in the state Capitol. My great grandfather was born enslaved in Alabama, and I attended a segregated grade school. This case felt very personal for me. Just like my ancestors never gave up trying to bring about change, I too could not stop fighting for these Maryland HBCUs. It was a long, hard fight, but I knew that I had to continue until victory was in our hands. Retreat simply was not an option.