

Tracie L. Bryant



Tracie Bryant of Kirkland & Ellis LLP is representing nutritional drink maker Abbott Laboratories in two pending putative class actions in California, crafting the firm's strategy and managing day-to-day aspects of the cases, earning her a spot among the class action litigators under age 40 honored by Law360 as Rising Stars.

Her Biggest Recent Cases:

One of the putative class actions targets Abbott's Ensure products in federal court, while the other involves claims against PediaSure in state court. In each case, the plaintiffs allege the drinks are not as nutritious as Abbott markets them because of their sugar content.

In the federal action, Bryant and her colleagues got a number of claims thrown out in a motion to dismiss that the court granted in part. In the state suit, Bryant recently led her team through discovery and obtained key admissions from two plaintiffs' experts during depositions, according to the law firm.

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“For a consumer packaged good, the idea of getting around class actions, I think, can be really difficult because it's one of those areas of the law where judges feel like there's not a lot of recourse outside of the class action side,” Bryant said. “But then there's the other side of it, which is that most of these cases just don't make sense to be class actions because there's a million different reasons why people buy these products.”

Other Notable Cases:

Bryant represented door and window manufacturer Jeld-Wen Inc. in two consolidated putative class actions from direct and indirect purchasers who alleged the company conspired to fix prices in the interior molded doors market with Masonite Corp.

Bryant led a team of five associates and local counsel in the cases in the Eastern District of Virginia.

Kirkland won dismissal of plaintiffs' damages claims outside the statute of limitations and several other state law claims in 2019. Then in 2020, Kirkland won a partial motion to dismiss the indirect purchasers' amended complaint, which further limited possible damages. Jeld-Wen settled both actions in the summer of 2021 for \$30.8 million and \$9.75 million before the court ruled on class certification.

Bryant said the settlements were a good outcome for Jeld-Wen.

"Antitrust actions are especially risky due to treble damages, which triples the usual risks of litigation," she said. "The certainty of settlements are beneficial in these kinds of cases, and I was pleased that we were able to achieve a favorable resolution for Jeld-Wen so they could get back to the business of running the company without worrying about continuing litigation."

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What Motivates Her:

Bryant said her family and the desire of always wanting to be better form part of her motivation.

"Part of it is the thank you to my family for everything they've done," she said. "Part of it is a promise to my kids that I will continue to work hard and continue to support them and modeling that kind of behavior so that hopefully I'll see that in them as well when they are growing up and choosing their own careers."

As someone who grew up playing sports, she also has a competitive side.

"I don't mean to sound flippant, but part of the reason I'm a litigator is because I really like to win," she said. "And yes, I will stay up an extra hour at night and try to think of one more argument, one more strategic point if I think it means we're going to win."

Why She Enjoys Being a Litigator:

Bryant has built a reputation for being a formidable class action litigator who develops new and innovative legal strategies and theories to defeat class certification and narrow claims in suits to achieve settlements on favorable terms. However, she said she considers herself a general litigation attorney.

"And it's for the same reason as what I just said — one, I like to win, and two, when I was a summer associate doing

some work on the corporate side, it just wasn't for me," she said.

As a clerk in D.C. District Court, she said she saw litigators from big law firms and the government, and she admired their work.

"I saw it clerking, and it really solidified things for me," she said.

Her Proudest Moment as an Attorney:

After finishing law school, Bryant clerked for a year in D.C. District Court for Judge Richard W. Roberts. When she was going to be sworn in to the California bar, Judge Roberts agreed to do the honor, with her husband and some of her children watching.

"It was just a really nice moment. It felt like a culmination of something," Bryant said. "That was now years ago, and I'm sure there's been other things as well that I would say I'm proud of, but if you want proudest, having everybody be there and being able to celebrate with them, I can't really think of anything else that I would be prouder of."

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