



# 2015 Practice Group of the Year

## Securities

The securities litigators of Kirkland & Ellis LLP hammered out another banner year for the firm and its clients in 2015, scoring courtroom wins for major league clients such as General Motors Co., Facebook Inc. and BP PLC, earning the firm a spot on *Law360's* Securities Groups of the Year.

Kirkland's team was selected for the top tier of securities practices for the second year in a row, owing in no small part to its success in fending off class actions, narrowing others, stopping derivative suits dead in their tracks and achieving hard-fought and favorable settlements on clients' behalf.

The firm's prowess in the securities area was on display in May, when it beat back an appeal of a shareholder class action alleging GM failed to disclose during a \$20 billion initial public offering in 2010 that it was engaging in "channel stuffing," or delivering inventory in excess of demand. The suit further claimed the company's registration statement for the IPO falsely stated that it was tightly monitoring inventory and that any increases were largely due to an increase in demand.

Barely a week after oral arguments, a three-judge panel for the Second

Circuit sided with Kirkland and GM, upholding the dismissal of the class action brought over what was then the largest IPO in U.S. history. The court found the automaker's alleged misstatements were in fact "quintessential commercial puffery." The panel further said that demand did increase in 2010 and GM fully disclosed the amount of increased demand and inventory.

Mark Filip, head of Kirkland's government enforcement defense and internal investigations group and a former Illinois federal judge, told *Law360* that one of the keys to Kirkland's success in the securities space is a focus on being trial-ready. While the firm is always on the lookout for the best and quickest

resolution for clients, Filip said in litigation, Kirkland has long believed that it's better to play from a position of strength and preparedness, as opposed to a position of hope and sunny optimism.

"We ... tend to prepare, not necessarily always take, but prepare cases for trial. And we try many more cases than most of our competitors in the legal marketplace," he said. "That bias toward trial is not because we hope to try cases to the detriment of our clients' interests; to the contrary, we've found that being ready to try the case oftentimes facilitates a quicker and less costly resolution than hoping the case will settle or making noise about how the case should settle."

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That negotiating stance was on display at the end of 2014, when Kirkland helped secure a deal with Irving H. Picard, the liquidating trustee of Bernard L. Madoff Investment Securities LLC, on behalf of investment firm the Herald Fund SPC, which had suffered about \$1.2 billion in losses at the hands of the notorious Ponzi schemer. The settlement gave Herald an allowed claim of \$1.6 billion in the Madoff bankruptcy, from which \$497 million in catch-up payments from four interim distributions will be paid to Madoff's customers.

In other recent action for Kirkland, the firm has taken up the defense of Facebook and its officers and directors in mammoth litigation over the social media giant's 2012 IPO, including dozens of consolidated shareholder class actions and derivative lawsuits brought in multiple venues.

As lead counsel, Kirkland obtained dismissal of four shareholder derivative suits in the sprawling multidistrict litigation over its \$16 billion initial public offering, which accuses the social network of leaking certain nonpublic information to lead underwriters.

That ruling was upheld in July, when a unanimous three-judge panel of the Second Circuit ruled that the derivative plaintiffs could not prevail in their appeal, because they failed to show they owned Facebook stock at the time of the alleged misconduct.

In another victory for Kirkland and its clients, the firm helped to get rid of litigation brought by a putative class of BP PLC investors who purchased

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BP stock prior to the April 2010 Deepwater Horizon disaster. In September, the Fifth Circuit affirmed a trial court's denial of class certification to the so-called pre-spill class.

The appellate panel said the pre-spill class of shareholders cannot meet the certification standards the U.S. Supreme Court set in its 2013 Comcast opinion, when it found there must be a sound method for calculating damages across the class.

Kirkland continues the fight on behalf of BP against a class of investors who purchased stock after the disaster, with a trial expected in June 2016.

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The core securities team at Kirkland boasts nearly six dozen lawyers and is part of the firm's broader litigation group. Kirkland has securities specialists scattered across many offices, Filip said, but they are concentrated in the firm's New York, Washington, D.C., and Chicago locations.

While private securities actions have always been one of Kirkland's core strengths, Filip said the firm also has a considerable government regulatory practice, thanks in no small part to litigators like Kirkland's Robert Khuzami,

the Securities and Exchange Commission's former head of enforcement and Deutsche Bank AG's former general counsel for the Americas.

Going forward, Filip said he sees growth on both sides of the firm's securities practice.

“We expect to continue to see litigation growth related to mergers and acquisitions, which is an increasing trend in the litigation space, as well as with SEC and other regulatory securities and related governance matters,” Filip said. “We also have long had a vibrant private securities class action practice, and we expect that to continue.”

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