

2004

REVIEW OF CLIENT RESULTS

KIRKLAND & ELLIS LLP

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# ACCOLADES

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## FIRMWIDE

**Ranked a Top Five Law Firm by Fortune 250 Companies for the Past 10 Years**

“Who Represents America’s Biggest Companies”  
*Corporate Counsel*, November 2004

**#1 Most Prestigious Law Firm in Chicago for the Sixth Year in a Row**

“Vault Guide to the Top 100 Law Firms”  
*Vault.com*, Summer 2004

## LITIGATION

**Named 2004 USA Litigation Law Firm of the Year**

*Chambers & Partners*, May 2004

**#1 Litigation Department as Ranked by Fortune 250 Companies**

“Who Represents America’s Biggest Companies”  
*Corporate Counsel*, November 2004

**#1 Most Prestigious Litigation Practice in the Nation**

“Vault Guide to the Top 100 Law Firms”  
*Vault.com*, Summer 2004

## CORPORATE

**#1 in Corporate/M&A, Chicago**

*Chambers USA: America’s Leading Business Lawyers 2004–2005*

**#2 in Private Equity — Buyouts & Venture Capital Investment, New York**

*Chambers USA: America’s Leading Business Lawyers 2004–2005*

**#5 in Volume of North American Transactions**

“2004 M&A House League Tables”  
*mergermarket*

**#7 in U.S. Completed Mergers & Acquisitions Based on Number of Deals**

*Thomson Financial Worldwide M&A Legal Advisory*

**#1 in Tax, Chicago**

*Chambers USA: America’s Leading Business Lawyers 2004–2005*

**#3 in Real Estate, Chicago**

*Chambers USA: America’s Leading Business Lawyers 2004–2005*

## INTELLECTUAL PROPERTY

**Tied for #1 Intellectual Property Department as Ranked by Fortune 250 Companies**

“Who Represents America’s Biggest Companies”  
*Corporate Counsel*, November 2004

**Tied for #1 Among “Top IP Litigators”**

“Who Protects IP America”  
*IP Law & Business*, December 2004

**Ranked Among the Top Three Firms Representing the Most Defendants and Plaintiffs**

“Go Fish”  
*IP Law & Business*, May 2004

## RESTRUCTURING

**Top Debtor Law Firm**

“Dire Stats”  
*The Deal’s Bankruptcy Insider*

**“Transaction of the Year” Award for Representation of Conseco in its Chapter 11 Reorganization**

*Turnaround Management Association, Midwest Chapter*, October 2004

**#1 in Bankruptcy, Chicago**

*Chambers USA: America’s Leading Business Lawyers 2004–2005*

## GLOBAL RESULTS

**#1 Most Prestigious Firm in the UK as Ranked by Associates at U.S. Firms**

“2004 Legal Business Assistant Survey”  
*Legal Business*, November 2004

**Named to the Global 50**

*PLC Global Counsel 3000*, October 2004

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# LETTER FROM THE KIRKLAND & ELLIS LLP MANAGEMENT COMMITTEE

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Law firms today face an ever-changing marketplace. At Kirkland, we appreciate the demands and the opportunities of the global economy, and we have devoted substantial resources to the management of new offices and the development of new practices. But the paramount principles of our Firm remain the recruitment and promotion of the best people and pride in providing the highest quality legal services.

In terms of expansion, the Firm opened a Munich office at the close of 2004. Kirkland's seventh office focuses on our internationally acclaimed private equity and mergers and acquisitions practices. We are delighted to welcome Volker Kullmann, an accomplished German corporate lawyer, to anchor our Munich office.

Kirkland's London office celebrated its 10th anniversary in 2004. The office has grown to 40 lawyers and provides expertise in corporate, banking, tax, insolvency, intellectual property and, most recently, international arbitration and litigation.

Our San Francisco office, which opened in January 2003 with only 15 lawyers, has more than tripled in size, and provides a wide range of services to our clients, primarily in corporate, litigation and intellectual property.

In all our offices, the Firm is dedicated to hiring and promoting talent from all backgrounds. We understand that to achieve success for our clients, we must see complex issues from many different perspectives. One example of our commitment in this area is Kirkland's Minority Fellowship Program, which provides a stipend and a summer associate position in one of Kirkland's five U.S. offices following the student's second year of law school. The Firm has established Fellowships at the following law schools: Boalt, Chicago, Columbia, Georgetown, Harvard, Howard, Michigan, NYU, Northwestern, Notre Dame, UCLA, USC, Stanford and Yale.

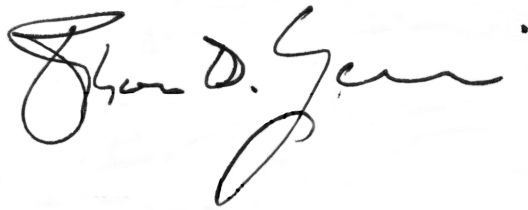
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Kirkland also is committed to serving the communities in which we practice. Our attorneys pursue a wide range of pro bono matters, including assisting a civil rights organization in the prevention of election fraud, helping a nonprofit group care for people stricken with AIDS, defending victims of racial discrimination and freeing a wrongly accused man from a Texas prison. Our lawyers know that putting their talents to work for a good cause is its own reward.

For the same reasons, the Kirkland & Ellis Foundation each year provides millions of dollars to a diverse group of cultural, civic and legal institutions in each of the cities in which we have an office as well as to a number of national and international organizations.

As this report shows, Kirkland is a strong and dynamic institution. We thank our clients and friends for their support and encouragement.

On behalf of the lawyers of Kirkland & Ellis LLP,

A handwritten signature in black ink, appearing to read "Thomas D. Yannucci". The signature is fluid and cursive, with a large initial "T" and "Y".

Thomas D. Yannucci, P.C.

Chair

Kirkland & Ellis LLP Management Committee

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# LITIGATION

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## **#1 Most Prestigious Litigation Practice in the Nation**

“Vault Guide to the Top 100 Law Firms”  
*Vault.com, Summer 2004*

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### **Practice Areas**

Antitrust & Competition

Appellate & Supreme Courts

Class Action, Mass Tort & Toxic Tort

Commercial Litigation & Arbitration

Construction

Defamation

Employment & Labor

Environmental

ERISA

Franchise & Distribution

Government Contracts

Insurance Coverage

Product Liability

Securities & Shareholder

Telecommunications

White Collar Criminal Defense

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# LITIGATION

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COURT RULES U.S. CAN'T PURSUE  
\$280 BILLION AS TOBACCO PENALTY  
—*The New York Times*

## GENERAL MOTORS

Kirkland & Ellis continues to handle some of the most challenging litigation confronting its long-standing client, General Motors Corporation. During the past year, this included serving as lead trial counsel for GMAC in a nationwide class action brought on behalf of African Americans who claimed GMAC's purchase of retail installment contracts from independent automobile dealerships violated the Equal Credit Opportunity Act. Plaintiffs sought permanent injunctive relief against GMAC's lending practices. The case was settled on favorable terms on the eve of trial.

Kirkland also continues to try GM's most significant cases alleging design and other defects in its products. For example, last summer the Firm tried a highly publicized case regarding the design of the roofs of Chevy Suburbans, in which a Kansas City jury decided that General Motors was not at fault in the death of former Kansas City Chiefs linebacker Derrick Thomas, the nine-time all-Pro Bowl player. Thomas' family was seeking more than \$100 million in damages.

## BROWN & WILLIAMSON AND R.J. REYNOLDS

Kirkland represents Brown & Williamson Tobacco Corporation, which recently merged with R.J. Reynolds Tobacco Company, in the federal government's \$280 billion RICO suit against the tobacco industry. Trial in that suit before a federal court in Washington, D.C., began in September 2004 and is not expected to be completed before mid-2005.

In February 2005, the U.S. Court of Appeals for the District of Columbia Circuit dismissed the government's claim for \$280 billion in "disgorgement" of alleged profits dating back to the early 1970s. The trial continues on the United States' request for injunctive and other equitable relief.

In 2004, Kirkland also successfully defended Brown & Williamson in an individual smoker suit tried to a jury in St. Louis, Missouri, and in lawsuits brought by several state attorneys general challenging B&W's marketing of Kool cigarettes.

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# LITIGATION

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**JUDGMENT FOR \$62.7 MILLION  
IS OBTAINED AGAINST EX-CEO**  
—*The Wall Street Journal*

## **CONSECO**

In October 2004, Conseco was granted partial summary judgment against Stephen C. Hilbert, Conseco's former chief executive, for \$62.7 million plus interest, as part of its litigation over a controversial loan program for directors and officers. The judgment against Mr. Hilbert was part of the company's efforts to recover hundreds of millions of dollars that was loaned to top officials pursuant to the program. The judgment, now on appeal, confirmed that Mr. Hilbert and other borrowers under the program are personally responsible for repaying the loans. This was the largest judgment against an individual in Indiana history.

## **UNITED AIRLINES**

After the close of business on Thanksgiving Eve 2004, United Airlines was notified by members of a group of aircraft financiers controlling approximately one-third of its fleet that they were immediately repossessing 14 planes. These repossessions would have resulted in the cancellation of 1,100 flights and 70,000 passenger trips during the busy holiday season. Kirkland litigators filed suit 36 hours later, on the Friday after Thanksgiving, to enjoin the repossessions on the grounds that they were part of an illegal conspiracy. After a several-hour evidentiary hearing that same day, the court granted United's motion for a temporary restraining order.

## **ARTHUR ANDERSEN**

After a three-month trial, a jury returned a verdict in November 2004 in favor of Arthur Andersen in the first audit case to go to trial since Andersen's conviction in the Enron case. Frederick's of Hollywood sued Andersen alleging fraud, breach of contract, and negligence in connection with audit work performed by Andersen. Frederick's had blamed Andersen for driving it into bankruptcy, and sought \$87 million in compensatory as well as punitive damages.



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# LITIGATION

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## **MORGAN STANLEY**

Kirkland represents Morgan Stanley in international and domestic securities litigation relating to research analyst and equity coverage litigation. For example, in June 2004 Kirkland won dismissal of a shareholder derivative lawsuit against the Board of Directors of Morgan Stanley, as well as certain individual Morgan Stanley officers, which alleged that the defendants had breached their fiduciary duties by failing to properly oversee and supervise the company's equity research department.

Kirkland also successfully defended several Morgan Stanley entities and managing directors in a New York State Supreme Court case involving allegations of fraud, negligence, breach of contract and breach of fiduciary duty. Plaintiff, a sophisticated off-shore investment vehicle, had purchased millions of dollars in collateralized bond obligation notes through its Morgan Stanley trading accounts and was claiming several million dollars in damages. In January 2004, the court dismissed the action and denied plaintiff's application for leave to replead.

## **TYCO HEALTHCARE**

In February 2004, the U.S. District Court for the Northern District of Illinois granted summary judgment in favor of Kirkland client Tyco Healthcare on all claims brought by Medline Industries. Medline sought millions in damages, and an injunction against an entire product line of Tyco's, based on Medline's contention that it had been granted exclusive rights for use of a certain type of woundcare technology. This multiparty case required application of U.S., English and Scottish law to various issues, and called for an interdisciplinary team of IP and litigation lawyers to defeat Medline's claims.

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# LITIGATION

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RYAN'S CLEARING  
OF DEATH ROW LEGAL  
—*Chicago Sun-Times*

## **ALPHARMA**

In June 2004, the U.S. Court of Appeals for the Third Circuit affirmed dismissal of a federal shareholder securities class action against Alpharma and four of its top officers and directors. Alpharma's share price on the NYSE had dropped from \$56.50 to \$38.81 the day after the company announced a restatement of its financial results for 1999 and the first two quarters of 2000 due to the booking of false sales by a Brazilian subsidiary. During this same period, the company had issued \$537 million in common stock to underwriters, and some of the individual defendants had sold as much as 77 percent of their shares in the company. Kirkland previously had won dismissal of the consolidated class action complaint in the U.S. District Court for the District of New Jersey.

## **ILLINOIS GOVERNOR ROD BLAGOJEVICH**

Kirkland defended Governor Rod Blagojevich and Illinois' Executive Branch against Illinois Attorney General Lisa Madigan and numerous state's attorneys' attempt to overturn former Governor Ryan's 2003 commutations of the sentences of all Illinois inmates sentenced to death. Their suit, which was brought as an original action in the Illinois Supreme Court, sought to override an express constitutional grant of authority to the governor. In January 2004, in a unanimous opinion, the Illinois Supreme Court sustained the governor's right to commute sentences.

## **REPUBLIC ENGINEERED PRODUCTS**

Kirkland successfully represented Republic Engineered Products in the trial of a dispute with U.S. Steel under a long-term raw material supply contract. Under the contract, U.S. Steel supplied Republic with coke, a critical raw material for making steel. In April 2004, U.S. Steel invoked a price re-opener clause, citing an alleged "structural change" in the market for coke, seeking to increase the price of Republic's most important raw material by more than \$80 million. Republic resisted the price increase, and U.S. Steel initiated arbitration under the parties' contract. Kirkland completed fact and expert discovery in this complex commercial dispute in eight weeks, culminating in an August 2004 trial before a panel of three arbitrators. The arbitration panel returned judgment for Republic, holding that no "structural change" had occurred and prohibiting U.S. Steel from raising its prices for the remainder of the contract.

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# LITIGATION

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## **BP AMERICA PRODUCTION COMPANY**

In September 2004, the Oklahoma Court of Appeals unanimously affirmed the trial court's refusal to certify a putative class of Oklahoma gas royalty owners who alleged that BP had underpaid several hundred millions of dollars of royalties since the 1970s. In January 2005, the Oklahoma Supreme Court denied plaintiffs' Petition for Certiorari to review the denial of class certification.

## **DOW CHEMICAL CO.**

During 2004, Kirkland represented Dow in government antitrust investigations of DuPont Dow Elastomers LLC, Dow's joint venture with DuPont, and resulting state and civil class action litigation. Kirkland also represented Dow in negotiating and implementing an agreement with DuPont to allocate to DuPont the vast majority of financial responsibility with respect to potential criminal and civil liabilities resulting from the government's investigations and the civil litigation, and to unwind the DDE joint venture.

## **HONEYWELL**

In January 2004, Kirkland & Ellis achieved a favorable settlement in the middle of trial on behalf of Honeywell and Saddlebrook Resorts, Inc., a former Honeywell subsidiary, in a case against Liberty Mutual Insurance Company. In the case, Honeywell and Saddlebrook sued their insurance company for denying coverage and sought recovery of the defense costs they incurred in an underlying case that was brought against Saddlebrook. The court had previously granted summary judgment for Honeywell and Saddlebrook on the issue of liability, ruling that Liberty Mutual had improperly denied coverage.

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# CORPORATE

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Lawyers 2004-2005*

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Lawyers 2004-2005*

## **#3 in Real Estate, Chicago**

*Chambers USA: America's Leading Business  
Lawyers 2004-2005*

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### **Practice Areas**

Antitrust & Competition

Asset Finance & Securitization

Capital Markets

Corporate Counseling

Corporate Governance & SEC Investigations

Derivatives

Employee Benefits

Energy

Environmental

Financing & Secured Transactions

Fund Formation

Initial Public Offerings

Insurance Regulatory

Investment Management

Leveraged Acquisitions

Mergers & Acquisitions

Mezzanine Finance

Real Estate

Tax

Trusts & Estates

Venture Capital/Private Equity

# CORPORATE

## SELECTED PRIVATE EQUITY TRANSACTIONS

Client (Private Equity Sponsor)	Type	Target	Approximate Value
Madison Dearborn Partners, LLC	Acquisition	Boise Cascade Corporation	\$3.7 B
Bain Capital, LLC	Sale	Sealy Corporation	\$1.6 B
Madison Dearborn Partners, LLC	Recapitalization	Cinemark, Inc.	\$1.6 B
Bain Capital, LLC	Acquisition	Brenntag and Interfer	€1.4 B
Sun Capital Partners, Inc. and Cerberus Capital Management, L.P.	Acquisition	Mervyn's LLC	\$1.2 B
GTCR Golder Rauner, LLC	Sale	Polypore International, Inc.	\$1.15 B
GTCR Golder Rauner, LLC	Acquisition	Prestige Brands	\$825 M
ABRY Partners LLC	Acquisition	Various East Coast cable television systems	\$765 M
Golden Gate Capital Corporation	Acquisition	Leiner Health Products, Inc.	\$650 M
Morgan Stanley Capital Partners	Recapitalization	Mission Energy New York, Inc.	\$650 M
RoundTable Healthcare Partners, LP	Sale	Sabex Holdings Ltd.	\$565 M
Bain Capital, LLC	Acquisition	Innophos, Inc.	\$550 M
Code Hennessy & Simmons LLC	Acquisition	Hillman Companies, Inc.	\$510 M
Willis Stein & Partners, L.P.	Sale	Aurum Technology Inc.	\$305 M
Oaktree Capital Management, LLC	Sale	Tumi Holdings, Inc.	\$276 M
MidOcean Partners	Acquisition	Celerity Group, Inc.	\$240 M
Audax Group Lp	Sale	Nash Elmo Holdings LLC	\$223.5 M
Frontenac Company LLC	Sale	Pro Mach Inc.	\$200+ M
Bear Stearns Merchant Banking	Minority Investment	ACA Capital Holdings, Inc.	\$140 M

# CORPORATE

## SELECTED MERGERS & ACQUISITIONS

Client	Type	Acquirer	Seller/Target	Approx. Value
Adolph Coors Company	Merger	Adolph Coors Company	Molson Inc.	\$4 B
General Motors Asset Management Corporation	Joint venture	The Mills Corporation	General Motors Asset Management Corporation	\$2 B
ChipPAC, Inc.	Merger	ST Assembly Test Services Ltd.	ChipPAC, Inc.	\$1.6 B
Merrill Lynch, Pierce, Fenner & Smith Incorporated	Acquisition through a merger	Constellation Brands, Inc.	The Robert Mondavi Corporation	\$1.36 B
Cable Design Technologies Corp.	Merger	Belden Inc.	Cable Design Technologies Corp.	\$406 M
Terra Industries Inc.	Acquisition	Terra Industries Inc.	Mississippi Chemical Corporation	\$337 M
Peter J. Solomon Company	Acquisition by tender offer	Dick's Sporting Goods, Inc.	Galyan's Trading Company, Inc.	\$300 M
Biomet Inc.	Acquisition	Biomet Inc.	Interpore International Inc.	\$280 M

## SELECTED CAPITAL MARKETS TRANSACTIONS

Client	Description of Offering	Issuer	Issuer(s) Size
Goldman, Sachs & Co.	Senior notes offering	News America Incorporated	\$1.75 B
Conseco, Inc.	Common stock, mandatorily convertible preferred stock	Conseco, Inc.	\$1.49 B
Merrill Lynch	Preferred limited voting, ordinary shares	News Corporation	\$910 M
Citigroup Global Markets	Remarketing of senior notes offering	Cendant Corporation	\$863 M
Madison Dearborn Partners, LLC	Senior notes offering	Boise Cascade LLC/Boise Cascade Finance Corporation	\$250 M
	Senior subordinated notes offering		\$400 M
Goldman Sachs J.P. Morgan Securities	Common stock (IPO)	Jackson Hewitt Tax Service, Inc.	\$638 M
NRG Energy, Inc.	Senior notes offering	NRG Energy, Inc.	\$475 M
New York & Company, Inc.	IPO	New York & Company, Inc.	\$195.5 M

# CORPORATE

## SELECTED FUND FORMATIONS

Fund	Approximate Commitments (As of 12/31/04)
CHS Private Equity V LP	\$1.25 B
HIG Bayside Fund	\$500 M
Merit Mezzanine Fund IV, L.P.	\$455 M
Bank of America Ventures VII, L.P.	\$400 M
LaSalle Japan Logistics Fund L.P.	\$400 M
MidOcean Partners II LP	\$400 M
Lincolnshire Equity Fund III L.P.	\$350 M
Caltius Partners III, L.P.	\$300 M
FdG Capital Partners II, L.P.	\$300 M
Pfingsten Executive Fund III, L.P.	\$284 M
Gryphon Partners III, L.P.	\$185 M
Waud Capital Partners II, L.P.	\$180 M

## SELECTED ASSET FINANCE & SECURITIZATION TRANSACTIONS

Client (Role)	Description of Transaction	Issuer	Asset Class	Transaction Size
General Motors Acceptance Corporation (originator)	Public offering	Capital Auto Receivables Asset Trust 2004-2	Prime retail installment sales contracts	\$2.4 B
Merrill Lynch Mortgage Capital Inc. (lender)	Principal finance investment	CompuCredit Credit Card Master Note Business Trust	Credit cards	\$1.5 B
Navistar Financial Corporation (originator)	Public offering	Navistar Financial Owner Trust 2004-B	Prime retail truck loans	\$750 M
Chemical Distribution Company (originator)	ABCP conduit financing	Jersey special purpose vehicle	U.S. and European trade receivables	\$459.9 M (€360 M)
Credit Suisse First Boston (arranger/initial purchaser)	Rule 144A offering	Cendant Timeshare 2004-1 Receivables Funding	Timeshare Loans	\$335 M

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# CORPORATE

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## TAX

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### **CONSECO**

Kirkland represented Conseco, Inc. in obtaining a closing agreement with the Internal Revenue Service to establish Conseco's right to claim a \$6 billion ordinary loss with respect to Conseco Finance Company (formerly Green Tree Financial).

### **MADISON DEARBORN PARTNERS**

Kirkland provided tax advice to Madison Dearborn Partners for its \$3.7 billion acquisition of the paper, forest products and timberland assets of Boise Cascade Corporation. The transaction presented complex tax issues involving a \$1.65 billion installment note and an investment by the selling entity in the acquired business.

### **REGAL CINEMAS**

Kirkland obtained a judgment for Regal Cinemas from the federal bankruptcy court in Delaware that the State of Florida had illegally assessed sales and use taxes against Regal Cinemas over a seven-year period. The decision of the bankruptcy court reversed an earlier decision that Regal was liable for such taxes.

### **FLEMING COMPANIES**

Kirkland represented the Fleming Companies, including its subsidiary Core-Mark, in consummating the complicated bankruptcy reorganization of Core-Mark, which involved a double drop-down taxable reorganization in order to generate a basis step-up in the assets of Core-Mark.

### **PETROLEUM PLACE**

Kirkland represented Petroleum Place, Inc., a Denver-based oil and gas firm, in its acquisition of Tristone Energy Advisors, a Canadian investment bank focused on the energy market. The complicated cross-border transaction was named "Deal of the Year" in the Canadian press.



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# CORPORATE

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## REAL ESTATE

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**BOISE CASCADE SELLS TIMBERLAND; THE \$1.65 BILLION SALE IS THE LARGEST SUCH CASH DEAL IN THE NATION'S HISTORY**  
—*Duluth News-Tribune*

### LASALLE INVESTMENT MANAGEMENT

Kirkland represented LaSalle Investment Management, Inc. in the formation of LaSalle Japan Logistics Fund I, LP (a U.S. dollar denominated partnership) and LaSalle Japan Logistics Fund II, LP (a Japanese yen denominated partnership) with total commitments of \$400 million.

### BOISE CASCADE

Kirkland represented Boise Cascade, LLC, in the sale of approximately 2.2 million acres of timberland located across the Pacific Northwest, Louisiana, Alabama, and Minnesota to Forest Capital Partners, LLC, of Boston, Massachusetts, for \$1.65 billion in cash.

### SUN CAPITAL PARTNERS

Kirkland represented Sun Capital Partners, Inc. and Cerberus Capital Management, L.P. in a joint venture with Lubert-Adler and Klaff Partners to acquire Mervyn's department stores from Target Corporation for \$1.2 billion, involving a sale-leaseback of 300 owned and leased retail stores.

### CODE HENNESSY & SIMMONS

Kirkland represented Code Hennessy & Simmons in the acquisition of 400 bowling centers from AMF Bowling Centers, Inc. for \$800 million. The transaction was financed in part through a \$250 million sale-leaseback of 186 bowling centers with iStar Financial Inc.

### STARWOOD HOTELS

Kirkland represented Starwood Hotels & Resorts Worldwide, Inc. in the development and operation of a new \$250 million convention center hotel in Boston.

### GENERAL MOTORS ASSET MANAGEMENT

Kirkland represented General Motors Asset Management in the formation of a \$2 billion joint venture with The Mills Corporation to own and operate a portfolio of nine super-regional shopping centers.

### CENTERPOINT PROPERTIES

Kirkland represented CenterPoint Venture LLC in the formation of a joint venture with WisPark LLC to own and develop approximately 1,000 acres.

**GM TO SELL HALF-INTEREST IN NINE SHOPPING MALLS**  
—*The New York Times*

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# INTELLECTUAL PROPERTY

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“Go Fish”  
*IP Law & Business*, May 2004

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### **Practice Areas**

Advertising, Marketing & Promotions  
Biotechnology, Pharmaceutical & Life Science  
Copyright Counseling  
Copyright Litigation  
Data Security & Privacy  
Information Technology Transactions  
Internet & E-Commerce  
Outsourcing  
Patent Counseling  
Patent Infringement Litigation  
Strategic Alliances  
Technology Transactions  
Telecommunications, Technology & Service  
Procurement Arrangements  
Trade Secret Counseling  
Trade Secret Litigation  
Trademark Counseling  
Trademark Litigation

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# INTELLECTUAL PROPERTY

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## JURY DECIDES MEDTRONIC BILL

—*Financial Times*

### KARLIN TECHNOLOGY/DR. GARY K. MICHELSON

Kirkland & Ellis successfully obtained a jury verdict worth more than \$580 million following a three-month trial for our clients Karlin Technology and Dr. Gary K. Michelson against Memphis-based Medtronic Sofamor Danek (a subsidiary of Medtronic, Inc.). The federal court jury in Memphis, Tennessee, found that Medtronic Sofamor Danek materially breached purchase and license agreements among the parties, engaged in wrongful conduct, infringed six asserted patents owned by Dr. Michelson, and intentionally underpaid royalties. The jury awarded Dr. Michelson and Karlin approximately \$110 million in past compensatory damages, as well as a 10 percent royalty on Medtronic Sofamor Danek's gross revenues of the implants, instruments and methods comprising the infringing systems, which is estimated to be more than \$70 million for past infringement. The jury also awarded punitive damages against Medtronic Sofamor Danek totaling \$400 million.

Following the trial victory (which was number six in *The National Law Journal's* "Top 100 Verdicts of 2004" — and the top award actually recovered), Kirkland negotiated a \$1.35 billion settlement for Dr. Michelson and Karlin Technology with Medtronic. The settlement conveyed to Medtronic Sofamor Danek more than five hundred of Dr. Michelson's U.S. and foreign patents and patent applications in the spinal field, clearing the way to allow Medtronic, the world's largest medical device manufacturer, to offer the most innovative and effective spinal cures to doctors and their patients worldwide. This settlement is the largest publicly disclosed patent settlement in history.

## CRAIN'S LIST

### 2004'S BIG LITIGATION

—*Crain's Chicago Business*

### JAYS FOODS

Kirkland & Ellis brought an action on behalf of Jays Foods, Inc. to stop an advertising campaign in which Frito-Lay made taste superiority claims ("Chicago prefers the taste of Lay's 'classic' potato chips over Jays' 'unflavored' potato chips") based on allegedly supporting consumer taste tests. Kirkland obtained expedited discovery of the alleged substantiation for Frito-Lay's claims and, within hours of that production, obtained a temporary restraining order requiring Frito-Lay "to remove and stop immediately all advertising in every and all media in which Frito-Lay claims that 'Chicago prefers the taste of Lay's over Jays' or any variation thereof." The case settled in August 2004 on confidential terms shortly before the scheduled preliminary injunction hearing.

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# INTELLECTUAL PROPERTY

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**OPENTV JUMPS 22% AFTER  
SETTLING DISNEY PATENT DISPUTE**  
—*CBS MarketWatch*

## **OPENTV CORP.**

Kirkland represented ACTV, a subsidiary of OpenTV Corp., one of the world's leading interactive television companies, in a patent litigation suit against The Walt Disney Company and Disney subsidiaries ABC and ESPN. The patents in suit related to certain systems and methods for synchronizing Internet content with television programming. OpenTV and Disney settled the case, and as part of the settlement, OpenTV granted Disney a nonexclusive, royalty-bearing license. The Walt Disney Internet Group also entered into negotiations for a multiyear development agreement with OpenTV for the creation and marketing of enhanced television programming.

## **AMAZON.COM**

Kirkland won summary judgment for Amazon.com in a patent lawsuit filed by IPXL Holdings LLC. The Eastern District of Virginia found that Amazon's Web site does not infringe IPXL's patent, and that the asserted claims of the patent are invalid. IPXL sought approximately \$50 million in damages. The judge also awarded Amazon.com attorneys' fees and costs. IPXL Holdings is now appealing summary judgment and the award of fees in the case to the U.S. Court of Appeals for the Federal Circuit.

## **SHUFFLE MASTER**

In November 2004, Kirkland obtained a preliminary injunction for Shuffle Master, Inc. against VendingData Corporation. This is the second patent infringement preliminary injunction obtained by Kirkland for Shuffle Master in 12 months. Shuffle Master's victory in this case has been widely reported in gaming industry publications.

## **GUARDIAN INDUSTRIES CORP.**

Kirkland sued seven companies on behalf of Guardian for infringement of its patents relating to technology for improving the viewing angle of flat panel LCD monitors. After Kirkland won several procedural and substantive hearings, all seven companies settled and agreed to license Guardian's patents.

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# INTELLECTUAL PROPERTY

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**'CHIPPING PETS': ANIMAL-TRACKING TECHNOLOGY BREEDS BUSINESS WAR; MARKETING THEIR TERRITORY; NORCO FIRM IN GLOBAL SQUABBLE OVER MICROCHIPS, SCANNERS**

—*Press Enterprise*

## **AVID IDENTIFICATION SYSTEMS**

Kirkland represented Avid Identification Systems, a leading supplier of pet identification microchip systems, in a closely watched patent infringement and false advertising case. After a summary judgment victory against the defendants on the issue of infringement, the case was resolved by a confidential settlement. The case involved 33 patent claims, eight summary judgment motions, 25 depositions, 25 motions in limine, and separate settlement agreements with each defendant — all completed in less than eight months. An important issue in this case concerned patents and the adoption of ISO standards, making the Avid matter one of several “standards” cases Kirkland handled this year.

## **OXFORD GENE TECHNOLOGY**

Kirkland followed its patent infringement jury trial victory against Affymetrix in 2000 with two additional proceedings related to OGT's DNA array patents. In the first of those cases, also against Affymetrix, after the presentation of evidence and argument before an international arbitration panel, Affymetrix and OGT resolved their disputes over Affymetrix's license from OGT. Affymetrix paid OGT \$62.5 million, over and above settlement amounts arising from the 2000 trial and previously paid royalties. In the second case, against Mergen Ltd., the court ruled on summary judgment that Mergen had infringed OGT's patent, and against Mergen on most of its invalidity defenses. In early January 2005, Mergen consented to judgment against it on its remaining defenses, and agreed to take a license from OGT.

## **IGT**

Kirkland represented International Game Technology and Action Gaming in a patent infringement case against Alliance Gaming Corp. relating to a feature of popular video poker games, including “Triple Play Poker,” the most popular video poker game in the world. A federal jury ruled that Alliance must pay IGT and Action Gaming \$7.36 million for its patent infringement and must stop infringing.

**IGT, ACTION GAMING AWARDED \$7.36M IN ALLIANCE LAWSUIT**

—*Reno Gazette-Journal*

## **AGERE SYSTEMS**

Kirkland represented Agere Systems in a series of long-running trade secret, copyright and patent lawsuits against Intersil Corporation. After defeating Intersil's attempt to obtain a preliminary injunction against Agere's wireless LAN business, Kirkland won a series of summary judgment decisions effectively eliminating all of Intersil's non-patent claims. The case then settled less than two weeks before trial.

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# RESTRUCTURING

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## **Top Debtor Law Firm**

“Dire Stats”

*The Deal’s Bankruptcy Insider*

## **“Transaction of the Year” Award for Representation of Conseco in its Chapter 11 Reorganization**

*Turnaround Management Association, Midwest  
Chapter, October 2004*

## **#1 in Bankruptcy, Chicago**

*Chambers USA: America’s Leading Business  
Lawyers 2004–2005*

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## **Practice Areas**

Reorganization Plans

Restructuring Agreements

Fiduciary Duties & Conflict of Interest Issues

Bondholder Committee Representation

Troubled Company Counseling

Debtor-in-Possession Financing Agreements

Distressed Debt & Equity Securities

Conversion of Chapter 11 Cases to Chapter 7 Cases

Liquidation & Going-Out-of-Business Sales

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# RESTRUCTURING

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## **CORNERSTONE PROPANE PARTNERS**

In 2004, Kirkland & Ellis completed the successful reorganization of Cornerstone Propane, L.P., the fifth largest national retail propane distributor, which operates customer service centers in 33 states. The reorganization, which was completed in only six months, enabled Cornerstone to restructure more than \$600 million in debt and secure a \$50 million exit facility.

## **MAXIM CRANE RENTAL**

Kirkland represented Maxim Crane Rental, L.P., the largest crane rental company in North America, in what has been reported as one of the 10 largest U.S. bankruptcy filings of 2004. Only seven months into the case, Kirkland confirmed a plan of reorganization that restructured approximately \$800 million in debt, removing more than \$500 million in debt from the company's balance sheet. Kirkland negotiated the terms of the company's exit financing, allowing the company to emerge from bankruptcy in January 2005.

## **ALLEGIANCE TELECOM**

Kirkland & Ellis represented Allegiance Telecom, Inc., a facilities-based competitive local exchange carrier that services the small- and medium-sized business market, in its reorganization case. The Firm worked closely with Allegiance's management team and financial advisors to sell substantially all of the company's assets through a highly competitive auction process between Qwest Communications, Inc. and XO Communications, Inc. The sale was consummated under Allegiance's Chapter 11 plan, which enabled Allegiance to resolve numerous complex issues relating to its business relationships.

## **CENTIS**

Kirkland represented Centis in its successful Chapter 11 restructuring the U.S. Bankruptcy Court for the Central District of California. As reported in *Bankruptcy Court Decisions*, during the confirmation hearing Judge James N. Barr stated, "I want you to know that this is one of the best administered cases that I have presided over."

**JUDGE BARR PRAISES PROFESSIONALS  
IN CENTIS BANKRUPTCY**  
*—BCD News and Comment*

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# RESTRUCTURING

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## **CHEVYS**

Kirkland & Ellis represented Chevys Inc. and its subsidiaries in all aspects of their Chapter 11 bankruptcy cases, which culminated in Chevy's successful emergence from bankruptcy in January 2005. Chevys' plan of reorganization resulted in payment of 100 percent of secured lender claims and anticipated payments in excess of 45 percent of unsecured creditor claims.

## **FLEMING COMPANIES**

Kirkland & Ellis represented Fleming Companies, Inc. and its subsidiaries, which were the nation's largest distributor of consumable packaged goods to retailers, with more than \$17 billion in revenue in 2002. After 18 months in Chapter 11, Fleming successfully confirmed a plan of reorganization that paid off all \$609 million of outstanding senior secured debt and converted the remaining unsecured debt to equity valued at \$130 million to \$180 million. During the course of the bankruptcy cases, Kirkland assisted with the sale of the companies' wholesale distribution business, which brought in more than \$250 million. As a result of maintaining operations during the Chapter 11 cases, Fleming was also able to pay more than \$7.7 billion to taxing authorities, third-party vendors and service providers during the case. After emergence from bankruptcy, Fleming's convenience store distribution subsidiary, Core-Mark International, Inc., is operating as a viable entity and employs more than 3,400 employees.

## **PROTECTION ONE**

Kirkland represented Protection One, Inc., a leading provider of property monitoring services, in an out-of-court restructuring. Pursuant to the agreement that Kirkland negotiated with Protection One's creditors in November 2004, the company received \$73 million from its former majority owner to resolve ongoing tax disputes. The settlement facilitated a contemporaneous execution of an exchange agreement with Protection One's current parent company (and lender under the company's credit facility) who agreed to reduce the company's outstanding principal balance under its credit facility by \$120 million in exchange for the issuance of common stock. The out-of-court restructuring closed in the first quarter of 2005.



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# RESTRUCTURING

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**DDI ENDS BRIEF CHAPTER 11 STAY**  
—*Daily Deal/The Deal*

## **DDi CORP.**

Kirkland represented printed circuit board manufacturer DDi Corp. in its pre-arranged Chapter 11 bankruptcy case filed in the U.S. Bankruptcy Court in the Southern District of New York. DDi was reorganized after only four months in bankruptcy, and this restructuring was listed as one of the top ten restructurings in *Turnarounds & Workouts* magazine's annual survey of the bankruptcy industry. Kirkland negotiated and concluded the complete restructuring of DDi's debt structure, including exchanging \$200 million in convertible notes for equity, converting \$17 million in senior discount notes to warrants, and extending the maturity of the \$72 million loan by secured lender, J.P. Morgan Chase & Co., to 2008.

## **DIVA SYSTEMS CORPORATION**

Kirkland represented the Chapter 11 Trustee and currently represents the Liquidating Agent of the DIVA Systems Corporation estate in the liquidating Chapter 11 case filed in the U.S. Bankruptcy Court for the Northern District of California. DIVA provided video on demand software and hardware to cable operators both in the United States and internationally. DIVA confirmed its liquidating plan after Kirkland, together with the Trustee and his other professionals, negotiated a \$39.5 million payment from Gemstar-TV Guide International for breaching its agreement to purchase DIVA and auctioned and sold approximately 200 patents owned by DIVA. Kirkland is continuing to represent the Liquidating Agent in objecting to disputed claims, handling various litigation matters, and in winding up DIVA's estate.

**RITTER RANCH RIGHTS BOUGHT;  
18 SQUARE MILES TO BE DEVELOPED**  
—*The Daily News of Los Angeles*

## **RITTER RANCH**

Kirkland restructuring partner Robbin Itkin, as Chapter 11 Trustee for the estate of Ritter Ranch Development, L.L.C., and Kirkland & Ellis as the Trustee's counsel, consummated the successful auction sale of more than 7,000 acres of undeveloped land located in Palmdale, California, for more than \$57 million. The top bidder for the Ritter Ranch properties, SCC Acquisitions, Inc., emerged as the winner after 75 rounds of bidding.

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# GLOBAL RESULTS

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## **#1 Most Prestigious Firm in the UK as Ranked by Associates at U.S. Firms**

“2004 Legal Assistant Survey”

*Legal Business*, November 2004

## **Named to the Global 50**

*PLC Global Counsel 3000*, October 2004

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### **Practice Areas**

Antitrust & Competition

Cross-Border Transactions

Intellectual Property

International Arbitration & ADR

International Capital Markets & Securities Regulation

Leveraged Buyouts

Private Equity Funds

Restructurings, Insolvencies & Bankruptcies

Venture Capital/Private Equity

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# GLOBAL RESULTS

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## **BAIN WINS DEUTSCHE BAHN UNITS**

—*Daily Deal/The Deal*

## **BAIN CAPITAL**

Kirkland & Ellis International LLP advised Bain Capital, Ltd. in its leveraged buyout of Brenntag AG, a global chemicals distribution business, and Interfer AG, a global steel distribution business, each headquartered in Germany, for approximately €1.4 billion.

Kirkland also represented Bain Capital in its purchase of TeamSystem S.p.A., a leading Italian business software group, for €280 million from Palamon Capital Partners.

Additionally, Kirkland represented Bain Capital in its acquisition of Innophos, Inc., the North American specialty phosphates business of French chemicals group Rhodia S.A., for approximately \$550 million.

## **JEFFERSON SMURFIT GROUP**

Kirkland represented Jefferson Smurfit Group in relation to its senior credit facilities following its €3.7 billion buyout by Madison Dearborn Partners, which Kirkland had previously handled in 2002.

## **UNICREDITO ITALIANO BANK GROUP**

Kirkland represented Unicredit Banca Mobiliare on the launch of its new UK retail securitized derivatives program and arranged for the issuance of €1.7 billion of derivatives under the program.

## **CAPVEST EQUITY PARTNERS**

Kirkland represented CapVest Equity Partners L.P. in its acquisition of Vaasan & Vaasan, the largest bakery business in Finland and the Baltic region, as well as one of the largest crisp bread producers in the world. In addition to Vaasan & Vaasan Oy, the acquisition included its Baltic subsidiaries AS Leibur, A/S Hanzas Maizincas and UAB Vilnius Duona Plius, as well as the Swedish subsidiary Delice Scandinavica AB.

## **VAASAN-VAASAN, OWNER OF ESTONIA'S LEIBUR, CHANGES HANDS**

—*Baltic News Service*

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# GLOBAL RESULTS

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**SANDOZ ACQUIRES CANADA'S SABEX**  
—*Financial Times*

## **ROUNDTABLE HEALTHCARE PARTNERS**

Kirkland represented RoundTable Healthcare Partners in its sale of Sabex Holdings Ltd., a Canadian generic injectible pharmaceuticals manufacturer, to Sandoz, the generics arm of Switzerland's Novartis Pharmaceuticals, for approximately \$565 million in cash.

## **VESTAR CAPITAL PARTNERS**

Kirkland represented FL Selenia Group, a portfolio company of Vestar Capital Partners, in the refinancing of €750 million facilities incurred for its acquisition.

Kirkland also represented Vestar Capital Partners in its sale of Sab Wabco, a European leader in brake systems for the railway industry, to Faiveley Transport and Sagard for approximately €310 million.

**VESTAR WEARS BLACK  
FOR LATEST PURCHASE**  
—*Buyouts*

Additionally, Kirkland represented Vestar Capital Partners in its €300 million leveraged buyout of OGF S.A., France's largest provider of funeral services.

## **CHORDIANT SOFTWARE**

Kirkland represented Chordiant Software, Inc., a leading NASDAQ-listed U.S.- and UK-based CRM software supplier, in the acquisition by its subsidiary, Chordiant Software International, Inc., of KiQ Limited, a UK- and Dutch-based decisioning software company.

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# GLOBAL RESULTS

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**FUTURE'S BRIGHT FOR  
BLINDS COMPANY**  
—*Bristol Evening Post*

## **CHANGE CAPITAL PARTNERS**

Kirkland represented Change Capital Partners in the £115 million leveraged buyout of The Hillarys Group Limited, the largest retail residential blind manufacturer in England.

## **MAXCOM TELECOMUNICACIONES**

Kirkland represented Maxcom Telecomunicaciones, S.A. de C.V., a Mexican facilities-based telecommunications provider, in connection with a bond indenture amendment solicitation and related exchange offer of \$167.6 million of Maxcom's senior high-yield notes in exchange for new senior high-yield notes or preferred stock of the company.

## **SUN CAPITAL PARTNERS**

Kirkland represented Sun Capital Partners in the opening of its London office and the formation of Sun European Partners.

## **JALLATTE GROUP**

Kirkland represented this multijurisdictional European-based shoe manufacturer in its €150 million refinancing of bond debt and reorganization.

## **CABOVISÃO-TELEVISÃO por CABO**

Kirkland represented Cabovisão-Televisão por Cabo, a Portuguese telecommunications networks group, in its €250 million restructuring.

## **STIRLING SQUARE CAPITAL PARTNERS LLP**

Kirkland represented Stirling Square Capital Partners LLP in connection with its acquisition of Deutsch Metal Components and Permaswage SAS, U.S. and French specialist manufacturers of metal connectors and fittings for the aerospace, marine and power distribution industries. Total funding for the transaction was approximately \$150 million.

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# DIVERSITY

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## **#1 in Number of Minority Lawyers Among Large Law Firms in Illinois**

“2004 Diversity Survey”

*Chicago Lawyer, July 2004*

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### **Sponsorships**

Asian Pacific American Bar Association Educational Fund

Asian Pacific American Legal Center

Chicago Lawyers’ Committee for Civil Rights Under Law

Harvard Black Law Students Association

Housing Opportunities for Women

Japan American Society of Chicago

Lambda Legal Defense and Education Fund

Lawyers’ Committee for Civil Rights Under Law

Mexican American Legal Defense & Educational Fund

Minority Corporate Counsel Association

NOW Legal Defense & Education Fund

Public Counsel

Public Interest Law Initiative

Puerto Rican Legal Defense & Education Fund

University of Pennsylvania Asian Pacific American Law Students Association

Washington Lawyers’ Committee for Civil Rights and Urban Affairs

Western Center on Law & Poverty

Western Law Center for Disability Rights

Women’s Bar Association Foundation

Women’s DNA Initiative

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# DIVERSITY

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Kirkland & Ellis LLP's sustained commitment to hiring, retaining and promoting minorities and women is reflected in our efforts to recruit talented lawyers from diverse backgrounds, and to ensure a work environment that is conducive to their retention and promotion. The Firm's dedication to diversity has yielded proven results. For the second consecutive year, Kirkland had the highest number of minority lawyers among large law firms in Illinois. Diversity is an issue of prime importance to Kirkland, and we remain committed to attracting and cultivating the brightest legal minds from all backgrounds.

## **KIRKLAND & ELLIS LLP MINORITY FELLOWSHIP**

On September 29, 2004, Kirkland announced that it would be offering 11 fellowships to minority second-year law students. Each fellowship includes a \$15,000 stipend and a summer associate position at one of the Firm's five U.S. offices. Recently, the Firm has increased its commitment to the program by expanding it to include 14 law schools across the country. So far, Kirkland has established fellowships at Boalt Hall School of Law - University of California, Berkeley; UCLA School of Law; The University of Chicago Law School; Columbia Law School; Georgetown University Law Center; Harvard Law School; Howard University School of Law; University of Michigan Law School; New York University School of Law; Northwestern University School of Law, Notre Dame Law School; University of Southern California Law School, Stanford Law School and Yale Law School.

## **MINORITY SCHOLARSHIP PROGRAM**

From 1997 through 2003, Kirkland sponsored 16 scholarships at Northwestern University School of Law and The University of Chicago Law School. Every year, one second-year minority student from each school received a \$12,000 merit-based scholarship and was eligible to renew the scholarship in his/her third year. In addition, scholarship recipients were eligible to participate in Kirkland's Summer Program. Through these scholarships, the Firm provided \$304,000 in minority scholarship awards.

## **WOMEN'S LEADERSHIP INITIATIVE**

Kirkland & Ellis LLP Women's Leadership Initiative provides a forum for discussion of issues that are relevant to women in the Firm and in the legal community, and fosters opportunities and provides a supportive network for our female attorneys. The Initiative also creates opportunities for informal mentoring and networking across practice areas, where associates can learn invaluable leadership skills from accomplished female partners. WLI events include regular informal lunch and dinner meetings and quarterly programs focusing on skill development.

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# DIVERSITY

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## THE DIVERSITY LUNCH SERIES

Minority attorneys in Kirkland's Chicago office meet with Diversity Committee members and other partners at Firm-sponsored monthly luncheons to discuss professional development issues, hiring and recruiting efforts, as well as diversity initiatives and commitments. The lunch allows for a collegial environment and culture, while giving the Firm an opportunity to solicit and draw upon the inspiration, thoughts, and varied experiences of our diverse lawyers. In 2005, Kirkland's Washington, D.C. office will launch its own Diversity Lunch Series.

## THE SOUTH AFRICAN VISITING LAWYER PROGRAM

Kirkland's New York office is participating in the South African Visiting Lawyer Program, which was established in 2002 by the Cyrus R. Vance Center for International Justice Initiatives, a part of the Association of the Bar of the City of New York. SAVLP provides promising young South African lawyers with the opportunity to work in a law firm in New York for a one-year period. One vestige of the apartheid system has been the limitation on the ability of black lawyers and black-led law firms to obtain commercial work and to assist black business and economic development. SAVLP seeks to address these issues by assisting young lawyers to improve their commercial law skills. A corporate associate from the firm of Sonnenberg Hoffman and Galombik in Johannesburg is Kirkland's first South African visiting attorney.

## THE CHICAGO COMMITTEE ON MINORITIES IN LARGE LAW FIRMS

Kirkland is a member of the Chicago Committee on Minorities in Large Law Firms (CCMLLF). The CCMLLF provides programs to help minority law students and lawyers succeed within the large law firm environment. Our support of the CCMLLF includes an annual contribution to assist in covering the salary of the CCMLLF Executive Director. Kirkland lawyers attend and participate regularly in CCMLLF activities, and one of our partners is a member of its Board of Directors.



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# DIVERSITY

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## RECRUITMENT

In its search for the most promising attorneys from all backgrounds, Kirkland recruits students from more than 40 schools across the country and abroad. To attract top students, Kirkland participates in Minority Job Fairs, including the Cook County Minority Job Fair, the Harvard Black Law Students Association (“BLSA”) Job Fair, the Northeast BLSA Job Fair, the Northern California BLSA Job Fair, the Southern California Job Fair, and the Hispanic National Bar Association Latino Law Student Job Fair. Kirkland also interviews students from schools with a substantial number of minorities, and hosts receptions for minority student organizations at various schools. As part of a coordinated strategy to increase the recruitment of minority law students, the Firm has expanded its on-campus interview program to include the University of Texas at Austin School of Law, which has a large Hispanic student body.

## EVENT HOSTING

Kirkland also hosts and participates in a number of dinners and events celebrating the diverse nature of the communities in which we practice. Some of these events include: the Lawyers’ Committee for Civil Rights Under Law’s Annual Awards Dinner, the Minority Corporate Counsel Association’s Northeast Region Diversity Dinner Series, the Black Women Lawyers’ Association’s Roundtable Series, the Chicago Bar Association and American Bar Association’s Commission on Racial and Ethnic Diversity in the Profession’s Third Annual “Breaking Barriers, Building Bridges,” the Chicago Committee on Minorities in Large Law Firms’ Diverse Summer Associate Reception, and the Lambda Legal Defense and Education Fund’s Liberty Awards Gala.

## THE CHICAGO BAR ASSOCIATION’S CALL TO ACTION

Kirkland is one of nine leadership signatories to the Chicago Bar Association’s Call to Action, an initiative asking Chicago law firms to increase the number of female partners by three percent by the end of 2007, and to appoint more women to leadership positions. The Call to Action is also asking each signatory law firm to ensure that flexible schedules are an equitable and viable option and to eliminate any disparity in the retention, promotion and lateral recruitment of women.

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# PRO BONO

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## 2004 Nominee for the President's Pro Bono Service Award

*California State Bar Standing Committee on the Delivery of Legal Services*

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### Select Kirkland & Ellis LLP Foundation Recipients

Alzheimer's Association

Archdiocesan Legal Network

Asian American Bar Association of NY

Big Brothers Big Sisters

Chicago Children's Museum

Chicago Legal Clinic

Chicago Symphony Orchestra

Dana Farber Cancer Institute

Gifts for the Homeless, Inc.

Habitat for Humanity

Lawyers' Committee for Civil Rights Under Law

Legal Aid Society of the District of Columbia

Leukemia & Lymphoma Society

Minority Corporate Counsel Association

Music of the Baroque

Neighborhood Defender Service of Harlem

Providence Health Foundation

Rancho Los Amigos

The Baltimore Museum of Art

The Shakespeare Theatre

Washington Lawyers' Committee for Civil Rights and Urban Affairs

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# PRO BONO

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LAWYERS COME TO  
TSUNAMI VICTIMS' AID  
—*Chicago Daily Law Bulletin*

## TSUNAMI DISASTER RELIEF

In response to the devastating tsunami that struck southern Asia on December 26, 2004, the Kirkland & Ellis Foundation and Kirkland lawyers and staff donated more than \$275,000 to help alleviate the suffering of children affected by the tragedy. The majority of the donations benefited Save the Children's Asia Earthquake/Tidal Wave Relief Fund, a leading charity in the emergency mission to provide food, shelter, clean water and access to medical care to the region's children and their families.

## ROSEMARY STAMPLEY

Rosemary Stampley, an 83-year-old widow, lost her home to a greedy nephew who defrauded her by having her unwittingly sign a quitclaim deed. He then charged Ms. Stampley rent and asked her to pay off portions of a mortgage he had taken out for himself. Fortunately, she escaped to a retirement home, penniless, but hoped for compensation for her lost home. Kirkland was invited by the Center for Disability and Elder Law to take on Ms. Stampley's case, and we did. Other firms had rejected the case because of difficult legal issues and the practical challenge of communicating with Mrs. Stampley, who is deaf but does not know sign language. Kirkland attorneys met with the client, developed a plan of attack, and filed a lawsuit in Illinois state court, which resulted in a valuable settlement from third parties with interest in the property.

## GLOBAL FRIENDS IN ACTION

Kirkland & Ellis represents Global Friends in Action, Inc., a nonprofit organization dedicated to raising funds to support organizations fighting AIDS in Africa. Kirkland helped GFIA organize in New York and file the appropriate papers to obtain an exemption under Section 501(c)(3) of the Internal Revenue Code.

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# PRO BONO

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## TONY COLEMAN

Kirkland won a reversal of the denial of a Texas State inmate's federal habeas claims before the United States Court of Appeals for the Fifth Circuit. Kirkland represented Tony Coleman, who was serving a 30-year sentence for a minor property theft conviction. While Mr. Coleman was on parole for that offense, the State improperly characterized Mr. Coleman as a sexual offender. Despite the fact that he had never been convicted of a sexual offense, the State imposed parole conditions on Mr. Coleman requiring him to register as a sexual offender and undergo intensive therapy. After Mr. Coleman did not attend the State-mandated therapy, he was reincarcerated for violating his parole conditions. He unsuccessfully challenged the constitutionality of his parole revocation in the state-court habeas system and before the federal district court in Austin, Texas. On appeal, Kirkland argued that his continued imprisonment was unconstitutional because the state never allowed Mr. Coleman an opportunity to contest the imposition of the sexual offender conditions. The Fifth Circuit panel unanimously agreed, ruling that "the Due Process Clause ... provides Coleman with a liberty interest in freedom from the stigma and compelled treatment on which his parole was conditioned," and that the state was required to provide procedural protections before imposing such conditions in the future.

ATTORNEY CAN SETTLE COURT  
CASE BUT CAN'T BIND CLIENT  
—*The National Law Journal*

## MAKINS V. DISTRICT OF COLUMBIA

On November 4, 2004, the D.C. Court of Appeals, sitting *en banc*, decided *Makins v. District of Columbia*, a case in which Kirkland served pro bono as amicus curiae counsel. The case involved a certified question of law from the U.S. Court of Appeals for the D.C. Circuit concerning the apparent authority of attorneys to settle cases on their clients' behalf. The D.C. Court of Appeals adopted in full the position advocated by Kirkland, and the court quoted extensively from Kirkland's brief in rendering its decision. The court also specifically thanked Kirkland's attorneys "for their able assistance to the court and the Bar through their excellent brief and oral argument."

## LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

Kirkland Partner Marjorie Press Lindblom has been elected co-chair of the Board of Directors for the Lawyers' Committee for Civil Rights Under Law for a two-year term beginning in September 2004. The Lawyers' Committee is a private, nonprofit, nonpartisan organization formed at the request of John F. Kennedy in 1963 to provide legal services to address racial discrimination.

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# PRO BONO

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FROM MANHATTAN, LAWYERS  
MONITOR THE NATION'S POLLS  
—*The New York Times*

## INTERNATIONAL BAR ASSOCIATION

Kirkland recently assisted the International Bar Association in connection with the defense of a member of the Zimbabwe parliament, who was involved in a physical altercation within the Zimbabwe parliament chamber. Kirkland provided information and advice to the IBA detailing the disciplinary procedures relating to the parliaments in a number of other western democracies, including England, France, the United States, South Africa and Australia.

## ELECTION PROTECTION

Kirkland's New York office hosted a voter call-in center on November 1 and 2, 2004, as a part of an effort by the Lawyers' Committee for Civil Rights Under Law and the NAACP Legal Defense and Education Fund to prevent the types of problems that resulted in four to six million votes not being counted in the 2000 election. The hotline at Kirkland was responsible for taking thousands of calls to the nationally advertised telephone number from voters in Texas, South Carolina, Kentucky, Nebraska, and Vermont. More than 20 Kirkland lawyers and legal assistants, along with other lawyer volunteers, responded to calls about registration and voting on the day before and day of the election.

## RACE DISCRIMINATION PLAINTIFF

Kirkland & Ellis was court-appointed counsel to an African-American alleging racial harassment, discrimination, and retaliation against his employer. The employee, a laborer at a manufacturing company, had filed numerous EEOC complaints. The company later fired the employee — allegedly for an unexcused absence — even though the employee had followed the company's absence rules, and the absence resulted from a workplace injury. Kirkland attorneys discovered evidence suggesting that the company's absence-based firing was a pretext, and prepared the case for trial. Following a court-sponsored mediation, the parties settled for undisclosed terms acceptable to the employee.

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# FIRMWIDE OVERVIEW

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AS OF DECEMBER 31, 2004

Total Number of Attorneys : 1076  
Partners : 468  
Associates : 608

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## Representative Clients

3M Company  
ABB Ltd.  
Abbott Laboratories  
Adams Street Partners, LLC  
The AES Corporation  
Agere Systems  
Altria Group, Inc.  
Amazon.com, Inc.  
Aon Corporation  
Apple Computer, Inc.  
Audax Group  
The Babcock & Wilcox Company  
B. Braun Medical Inc.  
Bain Capital, LLC  
Bank of America Corporation  
Barr Laboratories, Inc.  
Bear, Stearns & Co. Inc.  
BellSouth Corporation  
Black & Veatch Holding Company  
Blue Cross and Blue Shield  
Association  
Blue Point Capital Partners  
Boston Scientific  
BP America Inc.  
CIVC Partners, L.P.  
Code Hennessy & Simmons LLC  
Colgate-Palmolive Company  
Conseco, Inc.  
Constellation Energy Group  
DIRECTV, Inc.  
Dow Chemical Company  
Exide Technologies

Fortress Investment Group LLC  
Frontenac Company LLC  
General Motors Corporation  
General Motors Acceptance  
Corporation  
Georgia-Pacific Corporation  
Golden Gate Capital  
Google  
Gryphon Investors, Inc.  
GTCR Golder Rauner, LLC  
Hermès International  
Hershey Foods Corporation  
H.J. Heinz Company  
Honeywell International Inc.  
Hyatt Corporation  
Illinois Tool Works Inc.  
Infineon Technologies AG  
International Game Technology  
International Paper Company  
Kellogg Company  
Kraft Foods Inc.  
Kubota Tractor Corporation  
LaSalle Investment Management  
Lucent Technologies Inc.  
Madison Dearborn Partners, LLC  
McDonald's Corporation  
MidOcean Partners  
Molson Coors Brewing Company  
Morgan Stanley  
Motorola  
Navistar International Corporation  
New Enterprise Associates

NRG Energy, Inc.  
Oaktree Capital Management, LLC  
Parthenon Capital  
Playboy Enterprises  
Raytheon Company  
RBS Greenwich Capital  
R.J. Reynolds Tobacco Company  
Sara Lee Corporation  
Schering-Plough Corporation  
S.C. Johnson & Son, Inc.  
Siemens Corporation  
Starwood Hotels & Resorts  
Worldwide, Inc.  
Sun Capital Partners, Inc.  
Swander Pace Capital  
Tenant Healthcare Corporation  
Time Warner  
Trans World Airlines, Inc.  
UAL Corporation  
Verizon Communications  
Vestar Capital Partners  
Welsh, Carson, Anderson & Stowe  
Weyerhaeuser Company  
Whirlpool Corporation  
Whitney & Co. LLC  
William Blair & Company, L.L.C.  
Willis Stein & Partners, L.P.  
W.R. Grace & Co.







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