

Trials

In a closely watched antitrust case, Kirkland & Ellis LLP helped pharmaceutical giant Gilead Sciences fight multibillion-dollar claims that it stifled competition for human immunodeficiency virus medications and raised prices by paying generic competitors to stay off the market, earning the firm a spot among Law360's 2023 Trials Practice Groups of the Year.

The firm, founded in Chicago, has about 800 trial lawyers across its offices, making Kirkland one of the largest litigation practices in the world for close to 10 years, according to Devora Allon, a New York litigation partner.

"We have gotten a reputation as a firm that is ready, able and willing to go to trial, and has the bench to take these high-stakes cases to trial," Allon said. "A lot of them are cases where a client has been litigating the case for a number of years, they realize they really need to go to trial, and they come to Kirkland & Ellis."

In the Gilead matter, Kirkland took over defense less than a year ago, after the case was pending for three years. Five plaintiff groups claimed \$39.9 billion in trebled damages, but two settled before opening statements in the trial, held in the U.S. District Court for the Northern District of California. By the time the six-week trial got to the jury, the direct-purchaser plaintiffs were seeking \$10.8 billion, the firm said.

In January, a California federal judge gave final approval to Gilead's \$247 million settlement with direct purchasers of HIV medications, including an award of \$75 million for attorney fees, ending claims that Gilead worked with Teva Pharmaceuticals to delay generic versions.

"We had this amazing team that spanned across the country," Allon said. "We dug in, and we really did approach the case very creatively. We got some claims dismissed in summary judgment, and we were able to bifurcate some claims in terms of what made sense to try together."

Allon said the case was challenging due to the massive amount of exposure and the damages alleged at the outset totaled over \$20 billion.

Besides the fact that not a lot of firms would have the appetite to take such a colossal case to trial, Allon said, the topic of litigation was sensitive for the courtroom venue.

"We were trying this case to a jury in San Francisco, and I think you probably

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can't come up with a more charged issue than HIV drug pricing," she said. "The plaintiff certainly had a narrative that they were on the side of patients and innovation. And then on the other side was Big Pharma. And that was our side, and that really could not have been further from the truth."

In the end, Kirkland's trial team was able to convince the jury that Gilead was not against the patients.

"Our client had for years invested in innovation to try to eradicate HIV, which is one of the goals of the company," she said. "We worked really hard with our client to make sure that at trial, we got out

that narrative. That narrative was consistent with the facts and with the record, and it was really gratifying to see that a jury didn't subscribe to the plaintiff's oversimplified narrative."

Kirkland also represented 3M and its Aearo subsidiaries in the largest multidistrict litigation in U.S. history. The case centered on claims that defective 3M earplugs harmed the hearing of U.S. service members.

In the suit, over 230,000 current and former military service members alleged that the earplugs had design defects that resulted in hearing loss and tinnitus. The plaintiffs also alleged that the defendants knowingly sold the earplugs to the military without disclosing the defects.

Of the 27 bellwether plaintiffs, Kirkland secured defense victories in 14, or over half, of the cases, six by jury verdict and eight by dismissal. Kirkland led 3M's defense in 13 of the 14 victories.

For example, a Northern District of Florida federal jury sided with 3M in *Kelley v. 3M et al.*, a bellwether case picked by the plaintiffs. Denise Kelley, who served in the U.S. Army, blamed her deployments in Iraq and

Kuwait for her significant hearing loss starting at age 26 and later "constant" tinnitus.

The Kirkland team made the case that there were alternative causes for her hearing-related injuries, and in April 2022, the jury agreed after a nine-day trial.

Hariklia "Carrie" Karis, a Kirkland partner in Chicago, said she's proud that the firm helped bring the MDL docket to resolution for 3M.

"The massive challenges that faced that company included the fact that the case was MDL in Pensacola, which is a military town," Karis said. "We had a judge who was a former member of the military and of course a very sympathetic group of plaintiffs as current or former members of the military."

In addition, they had to contend with a very aggressive trial schedule — 27 trials scheduled over approximately a year and a half.

"We were always swimming upstream for a number of reasons," Karis said. "The ability to bring that to closure is something we're very proud of, and the ability to get some younger lawyers in meaningful roles

who now have tried one or two or more cases at a very national stage with very formidable opponents was also very gratifying and rewarding."

Another recent highlight for the litigation team was defending alcoholic beverages giant Constellation Brands Inc., the target of a trademark infringement suit by Grupo Modelo, which owns the Corona and Modelo beer brands. In that case, Kirkland trial lawyers found themselves arguing in court over the common definition of "beer."

In that case, a New York federal jury in March 2023 returned a verdict finding that a Constellation unit didn't infringe trademarks owned by Anheuser-Busch InBev SA's Grupo Modelo by peddling hard seltzers under the Corona brand.

The Constellation win was a big one for Kirkland's New York office, Allon said.

"The whole office was following that day by day," she said. "When they were out waiting for their jury, we were all waiting for the jury with them. And I remember when the verdict came in, you could hear across the office the pride at that win."

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