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Kirkland Sets Up Plaintiffs' Side Trial Group

By **Aebra Coe**

Law360 (July 10, 2019, 8:04 AM EDT) -- Kirkland & Ellis LLP has created a plaintiffs' side trial group and plans to substantially increase the number of plaintiffs' cases it takes on, many of which will be performed on a contingency fee basis, the firm announced Wednesday.



The firm, founded in Chicago, said Wednesday that its new plaintiffs' side trial group will be made up of its existing litigation attorneys. (Getty)

The group will be made up of the firm's existing litigation attorneys, many of whom will, going forward, take on significantly more plaintiffs' side cases than they have in the past, something senior litigation partner Andrew Kassof says is a firmwide endeavor that he believes will drive additional revenue to the law firm as it effectively "bets on itself" via large, commercial contingency fee cases.

"We will continue to focus our core on large-scale commercial defense work, but we will be breaking into the plaintiff-side commercial market in a more aggressive way," said Kassof, who serves as a member of the firm's global management executive committee. "We believe we can be a market leader on this side of the 'v' as well."

The types of plaintiffs' side cases the law firm plans to focus on are commercial disputes, particularly those exceeding \$50 million in value, including breach of contract, fraud, business disputes, tortious interference, trade secrets, insurance, and fraudulent conveyance disputes, among others, Kassof said.

The firm will not take on class action cases against large companies, plaintiffs' side securities lawsuits, or qui tam lawsuits on the plaintiffs' side, he added.

Kassof says the firm wants to take on cases that likely would otherwise go to a plaintiffs' boutique, because of the appeal of a contingency fee and fear of pricey billable hour invoices, by opening up its fee structure and actively recruiting clients who are looking for representation.

"Now we can do it and will take it on the same contingency fee arrangement, if the claim has merit and there are big dollars at stake," Kassof said.

According to fellow Kirkland global management executive committee member Jim Hurst, the firm spent a good deal of time crunching numbers before launching this initiative and concluded that,

based on the percentage of wins it has had on plaintiffs' cases in the past, contingency fees are a good bet for the law firm.

"We have a diverse, dynamic and incredibly talented group of trial lawyers at the firm. They are hungry to try more cases, and we view this as a way to open up our resources to new and existing clients to monetize their litigation assets through creative fee arrangements on the plaintiff side," Hurst said.

The firm has not set a particular number for how many Kirkland lawyers will take part in the new trial group, or how many cases they will take on. But Hurst said trial lawyers from "across the firm" will be committed to taking on more plaintiffs' side contingency fee cases, and if the firm experiences a tenfold increase in such cases, it would be happy with the outcome.

"Contingency fees have been a tiny part of what we do, and we want to make it a meaningful and important, impactful percentage," Hurst said.

Legal industry experts said Kirkland's decision to embrace contingency fees and effectively bet on their own cases reflects the rise of litigation funders who bet on cases and often have reaped big financial rewards as a result.

"Litigation funding is hot at the moment. If you do it right, you can get a return of 40 cents on the dollar," Jaap Bosman of TGO Consulting said. "No hourly rate would ever get you the same amount of money. Law firms have seen litigation funders making more money than they do."

And Kirkland is well-positioned as a law firm to succeed in the litigation finance game, according to Kent Zimmermann, a strategic adviser to law firms at Zeughauser Group, largely because of its expertise in litigation and the already high revenues and profits from which it can draw.

"They appear to be using those things to take a run at turbo charging their already strong financial performance," Zimmermann said.

The law firm's revenue ticked up 19.4% and 18.7% in 2017 and 2018, respectively, landing at \$3.17 billion last year, according to data from the American Lawyer. And data from **the Law360 400** shows that the firm has added to its U.S. headcount, growing by almost 50% in the last five years.

"Kirkland & Ellis' resources, both financial and talent, dwarf most smaller firms that are taking on plaintiff-side contingent-fee cases," said Mark Jungers, co-founder of legal recruiting firm Lippman Jungers LLC. "All of this gives [them] an edge and they will exploit that on behalf of their clients."

--Editing by Nicole Bleier.

Update: This story has been updated with additional commentary from legal industry experts.