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THE DEFENSE
HOT LIST

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MONDAY, AUGUST 21, 2006

Ready and willing to fight back

MAYBE IT wasn't the beginning of the end, or even the end of the beginning, but at the very least U.S. District Judge Lewis Kaplan's point was clear when he rejected on Fifth Amendment grounds statements made to prosecutors by various former KPMG executives accused of promoting legally dodgy tax shelters. It was one ruling in one case, but Kaplan managed to fire up a corporate defense bar that to that point had done little more than fulminate about a growing "culture of waiver" in white-collar crime investigations.

It was the sort of standout defense work we wanted to call attention to when we launched our Defense Hot List last year. Now as then, we looked for firms with an overall impressive track record that scored at least one significant defense win within the past 12 months. We're most interested here in firms that prevailed in a bench or jury trial, especially when the financial stakes were high, or where a win might set the tone for litigation strategy or determine the outcome of similar cases nationally. We expected nominees to devote at least half of their litigation resources to defense work.

We asked our readers to nominate defense firms that managed exemplary, cutting-edge work on the defense side. We supplemented the scores of submissions with our own research.

Vinson & Elkins' result in the KPMG case may have inspired more circumspection among

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prosecutors in white-collar criminal cases, as staff reporter Pamela A. MacLean reports. [See "Defense bar smells blood," Page S6.] It also points to the essentially conservative nature of the enterprise—for financial and institutional reasons it is individual defendants, more than corporations, who are contesting the government's tactics.

In a separate case, highlighted by contributor Emily Heller, members of the defense team resisted an aggressive approach to silica mass tort litigation as being perhaps overly hasty. Here, however, the less cautious posture succeeded so well that it has become a winning template for all manner of mass tort defense.

Another factor that stands out is the capacity of a major defense firm, backed by a wealthy corporation, to marshal the teams of researchers, experts and litigators capable of sustaining the hard slog of protracted litigation.

Arnold & Porter, for example, was put in charge of Wyeth's diet drug mass tort defense nearly a decade ago. In that time, the firm fashioned an innovative global settlement

agreement creating a trust to benefit fen-phen users, orchestrated removal to federal court and directed mopping-up actions this year against opt-out plaintiffs in New Jersey and Pennsylvania.

A little tact apparently comes in handy, too. In the Hanford Nuclear Reservation litigation (in court since the early 1990s, both at the trial and the appellate levels), the plaintiff confronting Kirkland & Ellis was dying from radioactive milk fed to her as a babe in arms on her family's farm. The only recognized cause for her form of thyroid cancer was the iodine-131 traceable to the nuclear site. It takes a deft touch to prevail upon a litigation landscape like that. Kirkland had it.

Once again, our admittedly idiosyncratic list tilts toward the big firms, but that doesn't mean there's not room for litigation boutiques like Kecker & Van Nest, which scored for intellectual property litigation and for helping Google China hire away a key executive over Microsoft Corp.'s ardent objections. We also found room for Beck, Redden & Secrest, a 31-attorney Houston boutique that ventured into hostile territory in Beaumont, Texas, to keep Wyeth from getting stuck with another \$1 billion diet-drug verdict.

Finally, we found that even firms that didn't quite make the list had lessons to teach—like when Proskauer Rose's Bert Deixler discovered that sometimes a lawyer just has to relax and let his client's freak flag fly. [NLJ](#)

Akin Gump Strauss Hauer & Feld

Akin Gump Strauss Hauer & Feld was founded in 1945 and today fields 900 attorneys in offices across the nation and world. It boasts that one in four of its attorneys is a litigator.

NOTEWORTHY CASES:

■ **De Ascencio v. Tyson Foods Inc.**, No. 00-CV-4294 (E.D. Pa. 2006). Lead counsel Michael J. Mueller with Joel M. Cohn and James L. Griffith Jr. "Donning and doffing" litigation, asserting that employees deserve to be paid for time spent preparing for work, are a top priority for the U.S. Department of Labor and unions. In what appears to be the first such claim to come before a jury, however, Akin Gump dealt a resounding defeat to employees at Tyson's chicken-processing plant in New Holland, Pa. The panel took less than four hours to conclude that preparation time should not count as work.

■ **Alaska Gasline Port Authority v. Exxon Mobil Corp.**, No. 4:05-cv-00026-RRB (D. Alaska 2006). Counsel Jim Tuite, Fairley Spillman and Paul Hewitt. When the state of Alaska accepted plans by a consortium including client Exxon Mobil to build a natural gas pipeline to the lower 48 states, a rival plan's backers accused the consortium of conspiring to hold Prudhoe Bay gas in the ground in order to inflate prices and deny the consortium the right to market the product. Akin Gump prepared the counterarguments to plaintiffs' lawyer David Boies, along with co-counsel from Beck, Redden & Secrest, securing a dismissal in June following extensive briefing and oral arguments.

■ **Ramco Oil & Gas Ltd. v. Anglo Dutch LLC**, No. 14-04-00433-CV (Texas App.—Houston 2006). Counsel Michael K. Swan and Christopher M. Odell. The firm won reversal on appeal of a \$16.6 million judgment for an independent Texas oil company that alleged Ramco, Halliburton and other defendants breached confidentiality agreements involving an oil field in Kazakhstan.

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