

Georgia Powerhouse: Kilpatrick

By Rosie Manins

Law360 (August 10, 2022, 2:02 PM EDT) --Kilpatrick Townsend & Stockton LLP's representation of Delta Air Lines in its cash tender offer for up to \$1.5 billion in outstanding notes capped a hot year in corporate deals for the firm, which also defeated multimillion-dollar litigation against Cox Radio and DirecTV and worked on major environmental and infrastructure projects.

Boasting the longest presence in the Peach State of the 2022 Georgia Powerhouse firms, Kilpatrick coupled 148 years of local experience with a focus on continuous improvement to stay at the top in its key practice areas of intellectual property, litigation and corporate transactions.

The firm's 200 attorneys in Georgia, at both its flagship Atlanta office and Augusta branch, dealt with increasing client needs arising out of a busy economy and the ongoing impact of the COVID-19 pandemic, according to chair and CEO J. Henry Walker IV.

"I'm really proud of what the firm did," Walker said, noting that last year followed a series of successful years of growth for the firm. "I don't know that when we went into [the pandemic] it was necessarily a given that we were going to be able to function and adapt as well as we did, under those circumstances, and in a remote environment with a lot of scary things going on."

Though Kilpatrick was founded in San Francisco in 1860, it has long been a Georgia-based firm. It opened its Atlanta office in 1874 and prides itself on being the oldest law firm in the city. The Augusta office launched in 1994.

"We're very bullish on Atlanta," Walker said. "We're excited about it. The Southeast is a good place to be. Atlanta feels like a good place to have our largest office."

The firm has 560 lawyers across 17 offices in America, as well as a global presence with offices in China, Japan and Sweden.

Walker, a "lifer" at the firm where he was a summer associate, says it prioritizes "people, brand and growth" with the goal of improving every day by building on its traditional strengths.



In Georgia, the firm's long-term clients include Atlanta's professional baseball and football teams. It also serves as primary outside counsel to The Coalition to Advance the Protection of Sports logos, or CAPS, which is a coalition of the National Football League, National Basketball Association, National Hockey League, Major League Baseball and Georgia-based collegiate trademark licensing and marketing company The Collegiate Licensing Co.

IP partner R. Charles "Charlie" Henn Jr. is part of the 50-attorney Atlanta team that handles trademark issues on a national scale for clients including Adidas and a variety of sports leagues and teams that the firm has represented for more than 20 years. He says Kilpatrick is a well-established leader in the field.

"Whether you are the Atlanta Braves or the Atlanta Falcons or the Chicago Cubs ... when teams and leagues, no matter where they are, have these issues, they call us," said Henn, another of the firm's summer interns who never left. "We're 10 [times] the size of any other trademark practice in Atlanta, and in fact, if you just took the Atlanta practitioners who do trademarks at Kilpatrick, it would probably put you in the top 10 nationally in size of practice."

Guiding Loyal Clients in a Dynamic Corporate Market

Kilpatrick corporate chair W. Benjamin "Ben" Barkley says Atlanta is a dynamic business market in which the firm has managed to retain a diverse client base, thanks in part to his predecessors. The legacy of lawyers like the late Barry Phillips, who was one of the first securities attorneys outside of New York to handle public offerings, is a factor in the firm's recent corporate successes, Barkley said.

"Some of the clients I work with, our big Atlanta companies like Interface and Delta, our senior partners had worked with in different capacities for many, many years," said Barkley, who has been with the firm's Atlanta office since a 1990 summer clerkship. "I think [Phillips] played football at the University of Georgia back when they wore leather helmets, but he was great. He had a really active public company practice. I learned a lot from him."

Barkley has been working on Delta's public financings for about 14 years and was the lead attorney in its \$1.5 billion debt tender offer. He said it was a sign of strength for the airline, considering the impact the pandemic has had on the aviation industry.

He also worked with firm partner Richard Cicchillo Jr. for Irish building materials giant CRH PLC, which bases its North American operations in Atlanta, on a \$3.8 billion divestment of its Oldcastle BuildingEnvelope to private equity firm KPS Capital Partners LP.

"It was closing a really large deal at a time when interest rates were suddenly uncertain, which always makes these deals hard," Barkley said.

The firm also represented Atlanta-based Floor & Decor in its \$90 million acquisition of commercial distributor Spartan Surfaces, as well as longtime client Flowers Foods, a Georgia-based baked foods company, in its acquisition of a portfolio of 27 properties across the country.

And Kilpatrick attorneys helped Georgia-based SiteOne Landscape Supply, a national wholesaler, close stock and asset acquisitions worth \$128 million, allowing the company to add 31 branch locations in seven states.

The firm's approximately 60 corporate attorneys in Atlanta also represented private equity group Eldridge Industries in a \$75 million investment in Illuminarium Atlanta's immersive safari experience, which was showcased alongside the city's BeltLine recreational trail. The transaction involved structuring a complex senior secured convertible note and funds future experience locations, the firm said.

Barkley said the PE group was attracted by the potential of the media market, in which investment has been steadily growing in Georgia.

Media Wins Round Out Busy Year in Court

Strong revenue growth for Kilpatrick's commercial litigation team, which saw a 10% annual rise, reflected a busy year in court for the firm's litigators overall, and particularly those based in Georgia.

The firm's Atlanta-based litigators won a February summary judgment ruling in a state trial court that ended a \$20 million fraud case brought against Cox Radio Inc. by a Georgia-based radio broadcasting company, convincing a Fulton County Superior Court judge to toss claims by Davis Broadcasting of Columbus Inc. in relation to a 2015 termination agreement.

The firm also represented DirecTV in its winning fight against franchise fees that several Georgia localities tried to impose on streaming services under the Georgia Consumer Choice for Television Act, which mandates state franchise certificates and fees for video service providers. A state trial court dismissed the case in March, finding that the localities were trying to legislate through the courts.

"The DirecTV case is a good example of new streaming technology being challenged in court, and that's become a lot at the heart of what we do," said Thomas M. "Tom" Clyde, complex commercial litigation partner and lead attorney in the Cox Radio case. "It's an important part of our practice."

Clyde said the firm's IP strength and increasing involvement with technology, media and communications companies has helped drive its growth. Georgia is increasingly seen as an attractive place to be a technology company, signaled by several tech giants' recent arrival in downtown Atlanta, he said.

Stephen E. "Steve" Hudson, chair of the firm's litigation department, said the practice was profoundly impacted, but not slowed down by, the pandemic.

"We've been very, very busy," Hudson said. "Work has been very strong."

In Atlanta, the firm has about 65 litigation department lawyers spread across eight teams, in addition to several dozen specialist trademark and patent litigators embedded within the firm's IP department.

The firm's Augusta office is solely focused on litigation and represents, among other clients, Augusta University Health, the teaching hospital associated with the Medical College of Georgia, which is the Peach State's only public medical school.

The city of Atlanta is another of the firm's longtime clients, which it recently guided through a financial review report required by a federal consent decree. The report, being considered by the U.S.

Environmental Protection Agency, supports the city's ongoing plans to spend more than \$500 million on infrastructure over the next seven years, the firm said.

"I think we'll continue to be busy," Clyde said. "One of the things that gives us the most confidence about the practice is we have a very talented group of associates here that are really the farm system for the future. And that is, I think, one of the firm's real strengths."

--Editing by Ellen Johnson.

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