

Georgia Powerhouse: Kilpatrick

By Emily Johnson

Law360 (August 22, 2023, 2:36 PM EDT) --Kilpatrick Townsend & Stockton LLP in Georgia helped an AT&T subsidiary fend off an appeal last year that affirmed the early dismissal of a \$2 million trespass suit and guided CRH PLC in selling one of its businesses for an enterprise value of \$3.8 billion, landing it a spot among top Georgia firms.

John Jett, a Kilpatrick partner, said the firm's strength is thanks to its attorneys who understand the value of working together, helping cement its place among Georgia Powerhouses featured in Law360's 2023 Regional Powerhouses list.

The firm has a long history in the Peach State. Kilpatrick & Cody, which was founded in Atlanta in 1874, merged with North Carolina firm Petree Stockton LLP in 1997, forming Kilpatrick Stockton. That firm then merged with Townsend & Townsend & Crew LLP in 2011, officially creating Kilpatrick Townsend & Stockton.

With more than 598 attorneys in the U.S., including 207 attorneys in Atlanta and Augusta, Georgia, the firm still focuses on growing its largest office in Atlanta, according to Henry Walker, the firm's chair and CEO.

Kilpatrick's Atlanta attorneys defended AT&T subsidiary BellSouth Telecommunications LLC in a lawsuit brought by KSSR Properties LLC, which sought \$2 million in damages for construction difficulties and costs associated with undisclosed underground telecommunications conduits that BellSouth installed below a public right-of-way in Atlanta in 1954.

KSSR alleged that BellSouth and Google — which was represented by another firm — were permanently trespassing on KSSR's property, which it purchased in 2000. Google installed an underground fiber optic conduit below a neighboring right-of-way in 2016, according to court documents. KSSR discovered the conduits in 2017 while developing the section to include a convenience store and a Dunkin' Donuts franchise with underground parking.

The Eleventh Circuit found in September that KSSR's trespass claim against BellSouth is time-barred under the relevant four-year statute of limitations and that Google is considered an "innocent trespasser" under Georgia law. The appellate panel upheld a lower court's decision to grant summary judgment to BellSouth and Google.



Jett said the dispute's critical issue was whether the underground facilities are a permanent trespass or a continuing trespass.

"If permanent, then the statute of limitations began running when the facilities were first placed there, which was about 70 years ago," Jett said. "If it was continuous trespass, then the statute of limitations would reset."

The trial court and the appellate panel found the underground conduits were a permanent trespass, so the statute of limitations began running when BellSouth placed the conduits underground. Jett said that clarity is important for companies.

"These kinds of issues affect technology companies in ways that you maybe wouldn't initially think about," Jett said. "You don't initially think about Google having extensive underground facilities, but it does. So now Google and AT&T, which is fundamentally a tech company, now have that clarity."

The Eleventh Circuit also upheld in July 2022 an award of nearly \$350,000 in attorney fees and litigation costs to BellSouth, finding that a state law allows fee recovery if a settlement attempt was rejected. The appellate panel held that KSSR rejected two qualifying offers to settle the case from BellSouth before BellSouth went on to defeat the company's claims.

"I think this case shows that we practice at the highest level against and alongside some of the best firms around this market or the country at large, yet our rates are very reasonable," Jett said.

Kilpatrick turned to several of its attorneys to defend BellSouth, including Jett and retired partner Sarah Jurkiewicz, whose expertise in real property law and government-owned rights of way guided the team. The trial team also included counsel Ava Conger, partner C. Allen Garrett Jr. and associate Bennett Richardson, and the appellate team included partner Adam Charnes and associate Brad Sears.

"I think this case shows that we've really adopted the value of collaborating together and the 'we before me' approach to a lot of what we do toward our client service and how we litigate cases," Jett said. "We all worked really well as a team in staying efficient, making our time records strong when they went before the court."

Kilpatrick's attorneys in the Peach State also guided clients in other major transactions in the past year.

Richard Cicchillo Jr., chair of the firm's corporate and mergers and acquisitions practices, and Kelsey Donnalley, mergers & acquisitions partner, led a team that represented CRH plc in selling its Oldcastle BuildingEnvelope business in April 2022 to KPS Capital Partners LP for an enterprise value of \$3.8 billion.

"CRH had to decide whether they wanted to invest further in growing [Oldcastle BuildingEnvelope], and they had other investment priorities," Cicchillo said. "I think they decided that the market was in a spot when it was a great time to divest that to somebody who wanted to take that business to the next level, which obviously generated a lot of capital for CRH to then redeploy to the core businesses that it wanted to grow."

But the deal faced an unforeseen last-minute challenge.

After Russia invaded Ukraine in February 2022, the team at Kilpatrick had to assess Oldcastle's exposure

to Russian suppliers.

"We knew that some of the metals had historically come from that part of the world, and we had to figure out if there was any ongoing commitment or anything that could violate sanctions," Cicchillo said. "We were able to conclude that there were other sources of materials, and it wouldn't have any impact on the business."

While Oldcastle has a large U.S. presence, the business also had a footprint in Canada, Australia and Germany, which meant coordinating with local counsel in other jurisdictions to make sure the deal got "across the finish line at the same time," Cicchillo said.

After CRH sold Oldcastle, Cicchillo, Donnalley and partner Justin Heineman led a team representing CRH's Oldcastle Infrastructure division — which provides concrete utility products for telecommunication, stormwater infrastructure and energy markets in North America — in three acquisitions last year that were valued at nearly half a billion dollars, the firm said.

One of those acquisitions was a deal with a competitor that was forced to divest some assets by the U.S. Department of Justice after the competitor initially thought it could keep them. The deal to buy several hundred million dollars worth of assets was handled within three or four weeks, Cicchillo noted.

"It was an incredibly short time period for a deal of that magnitude to go from not even a glimmer in someone's eye to basically a signed purchase agreement," he said. "Then we had to go through the antitrust process ourselves because of the size, but that was approved and we closed it. It allowed the competitor to move forward with their deal, and our client got what it considered were some great assets in the southern U.S."

Cicchillo said the firm's corporate and M&A practices are strong because its members enjoy working together and enjoy "the craft of practicing and helping clients." They also have support from the firm's intellectual property and litigation attorneys, he said.

Cicchillo said the corporate and M&A teams also get heavily "embedded" with their clients. For instance, the firm represented BellSouth before it was bought by AT&T.

"By all rights, that probably should have been the end of our involvement, because AT&T had its own lawyers," Cicchillo said. "But we had very deep contacts at ... the organization, and the result is 15 years after the acquisition, we do a ton of AT&T acquisition work and not just in the region that used to be BellSouth. I think that speaks a lot to how invested we get in our clients that even after changes of control and ownership, they still think to bring us work."

Wab Kadaba, Atlanta-based partner and chair of the firmwide intellectual property department, said the firm also handled significant IP matters last year for its clients. Kadaba leads a team of 300 attorneys and 40 patent agents firmwide. More than 75 intellectual property attorneys are based in Georgia, he said.

The firm represented Adidas in a dispute that Kadaba said was "easily the biggest case" in the athletic shoe industry. A team of about 15 Kilpatrick attorneys, mostly based in Atlanta, helped fight the case, he said.

Nike and Adidas informed two courts in August 2022 that they had reached a confidential agreement to

end dueling patent lawsuits over rival knit running shoes and competing mobile fitness tracking technology.

The settlement also covered Adidas' unrelated suit against Nike, which argued that Nike's Run Club and SNKRS apps, as well as its app-controlled shoe adjustment system, all infringed its patented technology related to mobile fitness tracking and coaching.

"That was a very substantial piece of litigation," Kadaba said. "The [U.S.] International Trade Commission moved really fast. It's all-consuming when those cases get moving."

The firm's IP department also advises Delta Air Lines Inc. in managing its global trademark portfolio, including developing strategy and working on enforcement issues. For instance, the team watches out for the use of "delta" by other companies, he said.

"That results in a lot of enforcement activity that we handle for Delta," Kadaba said. "It could be in Brazil or South Africa where someone starts using the Delta mark, and it's important for Delta to understand how those marks are being used to make sure they're not at all confused with anything similar to what Delta is going to use in those markets. That's a very substantial and ongoing piece of work."

The firm's IP clients also include Polaroid, Meta Platforms Inc., Apple Inc. and Cox Communications Inc. Kadaba said he thinks the firm attracts high-profile matters because of its reputation.

"We've been doing IP for 100 years or more," he said. "So it's in the DNA of the practice of the firm."

While Kilpatrick's Atlanta office guides clients in corporate matters, litigation and intellectual property, it also focuses on giving back to the community through pro bono work, Walker said.

Among its pro bono efforts is the firm's role as the Georgia election protection headquarters, which it has done for every national election for 17 years, according to the firm's website.

Vita E. Zeltser, an Atlanta-based data privacy and cybersecurity attorney at Kilpatrick who came to the U.S. in 1988 as a refugee from Soviet-era Ukraine, stepped up last year and began offering pro bono services to help Ukrainians flee the Russian invasion. Working with an immigration-focused nonprofit, she has helped Ukrainians secure temporary legal status in the United States last year as well as this year, according to a firm spokesperson.

"When the war broke out, it was just very personal and very shocking, especially the feeling of helplessness from abroad," Zeltser told Law360 last year. "This [help] just needs to happen. Someone's gotta do it. There's just this endless sea of need."

--Additional reporting by Rosie Manins and Andrew Karpan. Editing by Lakshna Mehta.