

## Rising Star: King & Spalding's Madison Kitchens

By Jennifer Doherty

*Law360 (June 24, 2021, 2:35 PM EDT)* -- King & Spalding partner Madison Kitchens has successfully defended manufacturers facing massive exposure, including a recent Ninth Circuit appeal of a \$454 million verdict that saw his side go toe-to-toe with Michael Avenatti, earning Kitchens a spot among the class action practitioners under age 40 honored by Law360 as Rising Stars.

### *HIS BIGGEST CASE SO FAR:*

Kitchens' Ninth Circuit win came in July 2020, when the appeals court vacated a California jury's verdict against King & Spalding clients Halyard Health and Kimberly Clark Corp. The district court ruling initially found the pair liable for \$454 million in damages against a class of more than 400 hospitals and health care providers.

The case, which was filed in 2014, centered on the companies' MicroCool surgical gowns. The class, then represented by Avenatti, alleged that the manufacturers misrepresented the amount of protection the gowns provided against blood-borne pathogens, a claim that struck a nerve with the public as the Ebola crisis flooded headlines that year. The suit was even featured on "60 Minutes."

Kitchens credited his opposing counsel as a "smart, savvy lawyer" who made things very difficult for the defense.

"You can have lots of opinions on Mr. Avenatti and many people do," Kitchens said. "He has a very unique media savvy and knew how to deploy the press to create maximum pressure."

Kitchens was an associate on the team representing Halyard and Kimberly Clark when the jury handed down its \$454 million verdict in 2017, a day he still remembers as the worst of his career.

On appeal, Kitchens — now playing a pivotal role as one of two King & Spalding attorneys handling the circuit court case — and co-counsel were able to show that the juridical link doctrine Avenatti had used to establish



**Madison Kitchens**  
King & Spalding

Age: 39  
 Home base: Atlanta  
 Position: Partner  
 Law school: Harvard Law School  
 First job after law school:  
 Law clerk to Judge Frank M. Hull

standing did not apply. Moreover, the circuit court affirmed that the district judge should have decertified the class.

The defense presented evidence to show that surgical gowns were often chosen based on factors other than their protection rating, such as cost or name recognition, or sold as part of prepackaged kits known as custom procedure trays. Moreover, they were able to show that the lead plaintiff had not purchased the gowns in question from Halyard during the class period.

"We had survey evidence. We had sales records. We had economists. We had various different ways to show that there really wasn't a uniform material omission that could be applied class-wide," Kitchens said.

With the class dissolved, the parties reached a settlement in which no money changed hands.

"Given everything we had endured during that six-year odyssey, it was definitely gratifying," he said of the Ninth Circuit decision. "Next time I'd probably skip the multi-hundred-million-dollar verdict part of it."

#### ***WHY CLASS ACTION:***

Kitchens was a products lawyer who landed in class action unexpectedly.

"I was somewhat randomly staffed on a class action, and I was hooked from the beginning," he said.

"My practice allows me to pivot between different fields and disciplines," he explained. "It's always something new. I'm always learning new things. I could be working on class actions involving Corvettes, diapers or heartburn medications all in the same day."

#### ***WHAT MOTIVATES HIM:***

"It's easy to vilify corporate behemoths. But if this last year has taught us anything, it's how indispensable product manufacturers are," Kitchens said, citing assembly lines that have gone into overdrive producing medications, personal protective equipment and ventilators during the COVID-19 pandemic.

He ranks the opportunity to represent producers of innovative, life-improving products "first and foremost" among his motivations.

A sense of gratitude to the mentors he has encountered along the way also drives him to be the best attorney he can. Two people he cites as particularly influential are U.S. Circuit Judge Frank M. Hull, who hired him out of law school, and Chilton Varner, King & Spalding trial and global disputes senior counsel.

#### ***HOW HE SEES CLASS ACTIONS EVOLVING:***

Courts are starting to crack down on absent class members, whose claims are often not as viable as those of the named plaintiff representing them, Kitchens says, and the Supreme Court may soon issue guidance requiring a certain percentage of the class to provide evidence of their injuries to qualify for certification.

"Regardless of that though, even if the courts do rein in these no-injury classes, the plaintiffs bar always comes back and they always find creative ways to allow class actions," Kitchens said. "So I'm still going to be doing class actions 10 years from now."

— As told to Jennifer Doherty

*Law360's Rising Stars are attorneys under 40 whose legal accomplishments belie their age. A team of Law360 editors selected the 2021 Rising Stars winners after reviewing more than 1,400 submissions. Attorneys had to be under 40 as of April 30, 2021, to be eligible for this year's award. This interview has been edited and condensed.*

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