

Product Liability MVP: Covington's Phyllis Jones

By Allison Grande

Law360, New York (November 20, 2015, 8:24 PM ET) – Covington & Burling LLP partner Phyllis Jones achieved an impressive hat trick earlier this year by snagging victories in three separate trials held during the course of one month in sprawling litigation over Eli Lilly & Co.'s alleged concealment of the withdrawal risks of its antidepressant Cymbalta, earning her a place among Law360's Product Liability MVPs for 2015.

Jones, who is based in the firm's Washington, D.C., office and was named one of Law360's Rising Stars in 2014, has spent the past year working primarily on a score of lawsuits that have been filed in federal and state courts across the country during the past three years accusing Eli Lilly of negligently downplaying the risks of Cymbalta withdrawal in its labeling.

Since October 2014, Jones and her team of Covington attorneys have racked up a series of victories in the litigation, including the dismissal of separate failure-to-warn suits brought in the Southern District New York and the Southern District of Texas, and the rare defeat of two bids by plaintiffs to centralize dozens of the suits into federal multidistrict litigation.

August proved to be especially fruitful for Jones and her team, who took on three consecutive Cymbalta trials in the course of four weeks and scored complete defense verdicts in each.

"It's rare to get a lawyer, especially a young lawyer, who can both manage complicated litigation at a high strategic level and is equally good at standing up in court and being a trial lawyer," Covington partner Paul Schmidt, who co-chaired the three trials with Jones, told Law360. "But Phyllis is terrific at both."

The team's first trial victory came on Aug. 7, when a California federal jury found at the conclusion of the bellwether trial that the drugmaker did not mislabel Cymbalta and was therefore was not liable for the plaintiff's purported withdrawal symptoms.

Less than a week later, on Aug. 13, a California federal judge cut short a second trial and issued a directed verdict for the drugmaker that released it from those plaintiffs' claims.



Phyllis Jones
Covington & Burling

Jones and her team wrapped up the month in Virginia, where a federal jury on Sept. 1 found in Eli Lilly's favor on allegations that it had negligently failed to warn the prescribing doctors for plaintiffs Gilda Hagen-Brown and Janine Ali by understating the withdrawal risks of Cymbalta. The judge in the case had already trimmed fraud claims from the suit after the close of the plaintiffs' case the previous week.

"The wonderful thing about trial work is that it's an instant response model, in that you get an answer very quickly one way or another on how well you did, instead of having to wait for a response like you usually do with briefs," Jones said. "So while it was certainly a challenge from a scheduling perspective having trials back to back to back, having to work so quickly allowed us to make refinements in what we were doing and apply lessons from the preceding trial as we moved forward."

In all three trials, Schmidt handled the opening and closing arguments, and shared the work of questioning witnesses with Jones. Schmidt had especially high praise for Jones' cross-examination of the plaintiffs in each suit, who presented sympathetic stories that Jones was tasked with picking apart.

"She was very good at being very tough and pointing out the real problems in their claims, but being respectful and professional in doing so," Schmidt said. "She never went too far in rubbing people the wrong way, and it was absolutely clear in her examination the problems that the plaintiffs had with their cases."

Schmidt specifically recalled the benefit of being able to bring up in his closing arguments in the Virginia case what Jones had exposed in her cross-examination of the plaintiffs.

"The plaintiffs' lawyer had said in closing arguments that in order to rule for Lilly, you have to look my clients in the eye and tell them they're liars," Schmidt said. "I was able to get up and tell the jurors that they heard Ms. Jones' incredibly respectful cross-examination that showed huge problems with their case, and being able to do that in closing was huge."

Jones attributed her success in grilling the witnesses to both understanding how the plaintiffs' pre-existing medical conditions intersected with the potential withdrawal symptoms of the drug and the warnings the patients were given, as well as the recognition of the sympathetic nature of the plaintiffs' stories.

"From a jury perspective, they see a person, not an advocate or a plaintiff, and they may well be sympathetic to the person," Jones said. "Our goal is to illuminate the facts and tell the story of the sufficiency of warnings and how the symptoms were caused by something else that the plaintiffs experienced, and that doesn't require being a bully or nasty with a person."

Besides the experience derived from examining the plaintiffs, Jones also gained important insight into how to succinctly present the facts of personal injury suits due to the rapid-fire nature of the trio of trials.

"The thing that was most imprinted on me is that sometimes, less is more," Jones said. "Sometimes in the course of cases, litigators can become so enamored with certain documents and making certain points that they may adopt the view that they want to put it all out there. But given how short these trials were, we had to really focus on finding the things that mattered and had to be prepared to walk away from the things that didn't."

While no other trial dates have been scheduled in the Cymbalta litigation, there are still dozens of other failure-to-warn claims still pending in state and federal court over the drug, ensuring that Jones and her team will be kept busy with the litigation for the foreseeable future.

"Everyone who has interacted with her has been impressed by her, and for someone who has been a partner for only a couple of years, she has been remarkable in terms of her ability to be not only a terrific trial lawyer but also a really thoughtful, strategic thinker who can manage a mass tort," Schmidt said of Jones, who was promoted to partner at the end of 2013. "Judging by the rulings we got this summer, she has an incredible future in front of her."

--Editing by Catherine Sum.

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