

Product Liability Group Of The Year: Covington & Burling

By Joe Van Acker

Law360, New York (January 22, 2016, 3:18 PM ET) -- Covington & Burling LLP's product liability practice is home to some of the best in the business, ranking as one of Law360's Practice Groups of the Year by notching back-to-back-to-back jury wins for Eli Lilly & Co. and snuffing thousands of claims against Hoffmann-LaRoche Inc. and Chiquita Brands International Inc.



The practice counts more than 40 attorneys among its ranks and chalked up win after win in 2015. While pharmaceutical mass torts have proven to be a particularly strong focus for the firm, Covington's major wins from the past year weren't confined to that industry alone.

Covington landed its first major victory of 2015 on behalf of Chiquita, when the U.S. Supreme Court prevented more than 6,000 Colombian nationals from proceeding with their claims that the company backed terrorist groups that killed their relatives.

After a Florida federal judge refused to dismiss the allegations that Chiquita funded those groups to protect its plantations and was therefore partly responsible for murders they committed, a legal team headed by Covington secured a reversal in the Eleventh Circuit.

The appellate court agreed in 2014 that the cases didn't belong in the U.S. because none of the alleged misconduct occurred in this country, and then declined to reconsider in February 2015.

Covington then helped persuade the nation's top court to leave the ruling intact, and the Supreme Court denied the Colombians' petition last April.

From there, the firm would earn a number of hard-fought victories for clients in the pharmaceutical industry, starting with Roche, which faced about 6,700 suits consolidated in New Jersey court alleging that its acne treatment Accutane causes Crohn's disease.

Covington led a two-week evidentiary hearing that eliminated nearly a third of those claims in one fell swoop last May.

The firm laid the groundwork for that coup earlier in the year, persuading Judge Nelson Johnson to bar testimony from two of the Accutane users' experts in light of the fact that they had failed to consider nine studies that found no link between the drug and the bowel disorder.

Judge Johnson said the experts supported the plaintiffs' position by "cherry picking evidence," and later dismissed about 2,100 cases against Roche in May, which the firm said was "unprecedented" in New Jersey's court system.

Covington partner Paul Schmidt led the charge against the two experts, and told Law360 that he credits his firm with assembling a team of seasoned litigators who have experience tackling scientific disputes.

"We pride ourselves on being able to communicate, very effectively, complex scientific issues to people who aren't familiar with them," Schmidt said. "We've been told that we've been hired, and then hired again to do more, because of that background."

That background has also been instrumental in stringing together 13 consecutive appellate victories for Roche, including a decision vacating a \$25 million verdict against the company.

Schmidt would later help Roche knock out several hundred more claims in July, when Judge Johnson found that many of the Accutane users began taking the drug after the company introduced a stronger warning.

That same month, a team led by Covington's Michael Imbroscio and Phyllis Jones blocked a class certification bid for the second time in a suit accusing Eli Lilly of concealing the withdrawal risks of its antidepressant Cymbalta.

A California federal judge presiding over the case agreed that the plaintiffs couldn't show how the company's alleged concealment caused them to overpay for the drug, accepting the Covington attorneys' position that there was too much variation between individual class members.

But the best was yet to come for Eli Lilly. With Jones and Imbroscio again at the helm, the pharmaceutical company would go on to win a trifecta of federal jury verdicts in less than a month.

On Aug. 7, 2015, a jury in California federal court sided with Eli Lilly in a bellwether Cymbalta trial, finding that the company didn't mislabel the drug.

Less than one week later, a federal judge nipped another Cymbalta trial in the bud and issued a directed verdict for Eli Lilly, finding that Covington successfully demonstrated that the plaintiff in that case never read the company's label.

Jones, Imbroscio, Schmidt and others then won a third consecutive verdict for the company on the opposite coast, convincing a Virginia federal jury to conclude on Sept. 1 that two women blaming Eli Lilly for their withdrawal symptoms didn't have proof of those issues in their medical records.

"To be able to do three back-to-back-to-back trials and get those kind of results really speaks to our trial strength," Schmidt said in an interview. "I was really proud to be a part of that, and to try those cases

with Phyllis [Jones], who I think is one of the strongest young defense lawyers in the country in this space.”

--Additional reporting by Steven Trader, Sindhu Sundar, Daniel Siegal, Michael Macagnone, Brandon Lowrey and Carolina Bolado. Editing by Emily Kokoll.

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