

Product Liability MVP: Covington's Michael Imbroscio

By Aebra Coe

Law360, New York (December 21, 2016, 2:06 PM EST) -- Covington & Burling LLP's Michael Imbroscio had a hand in some of the biggest mass tort defense victories this past year, scoring notable wins for Eli Lilly, Roche, Bayer and others, earning him a spot on Law360's list of product liability MVPs.

A few of Imbroscio's successes over the past 12 months include securing a decision denying the creation of multidistrict litigation, despite dozens of suits filed against Eli Lilly and Co. over the antidepressant Cymbalta, his work landing an appeals court decision overturning two product liability verdicts worth roughly \$20 million against drugmaker Roche Holding AG in litigation over its drug Accutane, and his leading role on a team that successfully defended Bayer AG against more than 1,200 suits alleging harm from the intrauterine device Mirena.

According to Imbroscio, his team's many wins in 2016 can be chalked up to team members' ability to keep their eye on the ball, maintaining perspective on important issues even as they are inundated with information, as is often the case in mass tort cases.

"I think our success is driven by our ability to zero in on the key legal and factual issues in a case and drive the litigation to focus on those issues, which often can lead to a very good result for our clients," he said.

After Imbroscio joined Bayer's national defense team in litigation alleging harm from Mirena, a New York federal judge in July granted the pharmaceutical company summary judgment, wiping out more than 1,200 suits, concluding the absence of expert testimony makes it impossible to prove that Mirena can cause injuries after insertion. The decision ended multidistrict litigation alleging that Bayer failed to warn women that Mirena could perforate the uterus after insertion.

In the Cymbalta litigation, drugmaker Eli Lilly faced dozens of proposed class action lawsuit across the country alleging patients had experienced adverse symptoms after they stopped taking the



antidepressant medication. They alleged the pharmaceutical company failed to adequately warn them about the risks of discontinuing treatment.

Plaintiffs' lawyers almost immediately sought the creation of federal multidistrict litigation, but Imbroscio and his team were able to abate the coming storm by securing a decision from the judicial panel on multidistrict litigation denying creation of an MDL, a rare move on the part of the panel.

Since that decision, the defense team has twice fended off class certification in the individual cases against their client, and have won four defense verdicts in three trials conducted over the course of a month.

Imbroscio says the team that worked on the trials was made up of Covington attorneys, rather than lawyers from several different law firms, as is typical in such cases.

"The whole team effort was remarkable. It was really gratifying to have an all-Covington trial team," he said.

Another "real success" during the past year, according to Imbroscio, was a July decision by a New Jersey appeals court overturning two verdicts worth \$20 million in product liability litigation against Roche over the acne medication Accutane.

The win continues Covington's string of 14 straight appellate wins for Roche in the Accutane litigation, according to the firm.

Imbroscio described the strategy he used to tackle the Accutane cases, explaining that because Accutane is a "fabulously effective medicine" that cures "the worst kinds of acne," patients who take it and doctors who prescribe it are often using it as a last resort after other methods of treatment have failed, and thus the warning labels at issue in the case should warrant a different focus.

"The reality is the physicians who prescribe it don't do so lightly. If I could get the court to focus on the fact that doctors would prescribe Accutane even if the warning had been a little bit different — that led to a tremendous number of results," he said.

Reflecting on what he's most proud of looking back over the past year and during his time at Covington, Imbroscio says it is the team he's been able to build. The firm's product liability practice started less than two decades ago.

"We now have the breadth and depth of experience to handle almost any mass tort matter," he said. "We built the group internally through promotions to partner. I'm really proud of the team we've been able to build. It's been very gratifying."

--Editing by Kelly Duncan.